

IN THE SUPREME COURT OF THE STATE OF NEVADA

LERON TERRELL BLANKENSHIP,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Sep 04 2014 02:47 p.m.
No. 66118 Tracie K. Lindeman
Clerk of Supreme Court

Appeal from a Judgment of Conviction in Case Number CR14-0461
The Second Judicial District Court of the State of Nevada
Honorable Patrick Flanagan, District Judge

JOINT APPENDIX

JEREMY T. BOSLER
Washoe County Public Defender

JOHN REESE PETTY
Chief Deputy

350 South Center Street, 5th Floor
P.O. Box 11130
Reno, Nevada 89520

Attorneys for Appellant

RICHARD A. GAMMICK
Washoe County District Attorney

TERRENCE P. McCARTHY
Chief Appellate Deputy

One South Sierra Street, 7th Floor
P.O. Box 30083
Reno, Nevada 89520

Attorneys for Respondent

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DA #14-7234
SPD 13-11417

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Joey Orduna Hastings
Clerk of the Court
Transaction # 4365083 : shambig

1 CODE 1800
2 Richard A. Gammick
3 #001510
4 P.O. Box 11130
5 Reno, NV 89520
6 (775) 328-3200
7 Attorney for State of Nevada

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
9 IN AND FOR THE COUNTY OF WASHOE

10 * * *

11 THE STATE OF NEVADA,

12 Plaintiff,

Case No.: CR14-0461

13 v.

Dept. No.: D07

14 LERON TERRELL BLANKENSHIP,

15 Defendant.
16 _____/

17 INFORMATION

18 RICHARD A. GAMMICK, District Attorney within and for the
19 County of Washoe, State of Nevada, in the name and by the authority
20 of the State of Nevada, informs the above entitled Court that LERON
21 TERRELL BLANKENSHIP, the defendant above named, has committed the
22 crime of:

23 DESTROY OR INJURE REAL OR PERSONAL PROPERTY OF ANOTHER,
24 VALUE \$5000 OR GREATER, a violation of NRS 206.310 and NRS 193.155, a
25 felony, in the manner following, to wit:

26 That the said defendant LERON TERRELL BLANKENSHIP, on or
about the 3rd day of December, 2013, and before the filing of this
Information, within the County of Washoe, State of Nevada, did

1 willfully and unlawfully or maliciously destroy or injure the real or
2 personal property of DOUG CARLING located at 1531 C Street, #B,
3 Sparks, Washoe County, Nevada, in that the defendant wrote on all
4 the walls with a permanent marker, made holes in the sheet rock, tore
5 all the cabinet doors off, broke the ceiling fan off the ceiling, cut
6 the power lines to the house, and destroyed other property, causing
7 damage in the amount of or in excess of five thousand dollars.
8
9

10 All of which is contrary to the form of the Statute in such
11 case made and provided, and against the peace and dignity of the
12 State of Nevada.
13

14 RICHARD A. GAMMICK
15 District Attorney
16 Washoe County, Nevada
17

18 By: /s/ REBECCA DRUCKMAN
19 REBECCA C DRUCKMAN
20 3714
21 Deputy District Attorney
22
23
24
25
26

1 The following are the names and addresses of such witnesses
2 as are known to me at the time of the filing of the within
3 Information:
4

5 SHANE MINICK, SPARKS POLICE DEPARTMENT
6 WILLIAM SCOTT VALENTI, SPARKS POLICE DEPARTMENT
7 KYLE CONGDON, SPARKS POLICE DEPARTMENT
8 LUANA JOHNSON, RENO POLICE DEPARTMENT
9 DOUG CARLING, 1101 N SIERRA ST, RENO, NV 89509

10 The party executing this document hereby affirms that this
11 document submitted for recording does not contain the social security
12 number of any person or persons pursuant to NRS 239B.230.
13

14
15 RICHARD A. GAMMICK
16 District Attorney
17 Washoe County, Nevada
18

19 By /s/ REBECCA DRUCKMAN
20 REBECCA C DRUCKMAN
21 3714
22 Deputy District Attorney
23
24
25
26

PCN: SPPD0034482C-BLANKENSHIP

1 CODE 1785
2 Richard A. Gammick
3 #001510
4 P.O. 11130
5 Reno, NV. 89520
6 (775)328-3200
7 Attorney for Plaintiff

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
9 IN AND FOR THE COUNTY OF WASHOE.

10 * * *

11 THE STATE OF NEVADA,

12 Plaintiff,

Case No. CR14-0461

13 v.

Dept. No. 7

14 LERON TERRELL BLANKENSHIP,

15 Defendant.

16 GUILTY PLEA MEMORANDUM

17 1. I, LERON TERRELL BLANKENSHIP, understand that I am
18 charged with the offense of: DESTROY OR INJURE REAL OR PERSONAL
19 PROPERTY OF ANOTHER, VALUE \$5000 OR GREATER, a violation of NRS
20 206.310 and NRS 193.155, a felony.

21 2. I desire to enter a plea of guilty to the offense of
22 DESTROY OR INJURE REAL OR PERSONAL PROPERTY OF ANOTHER, VALUE \$5000
23 OR GREATER, a violation of NRS 206.310 and NRS 193.155, a felony, as
24 more fully alleged in the charge filed against me.

25 3. By entering my plea of guilty I know and understand
26 that I am waiving the following constitutional rights:

///

1 A. I waive my privilege against self-incrimination.

2 B. I waive my right to trial by jury, at which trial the
3 State would have to prove my guilt of all elements of the offense
4 beyond a reasonable doubt.

5 C. I waive my right to confront my accusers, that is, the
6 right to confront and cross examine all witnesses who would testify
7 at trial.

8 D. I waive my right to subpoena witnesses for trial on my
9 behalf.

10 4. I understand the charge against me and that the
11 elements of the offense which the State would have to prove beyond a
12 reasonable doubt at trial are that on December 3, 2013, or
13 thereabout, in the County of Washoe, State of Nevada, I did,
14 willfully and unlawfully or maliciously destroy or injure the real or
15 personal property of DOUG CARLING located at 1531 C Street, #B,
16 Sparks, Washoe County, Nevada, in that I wrote on all the walls with
17 a permanent marker, made holes in the sheet rock, tore all the
18 cabinet doors off, broke the ceiling fan off the ceiling, cut the
19 power lines to the house, and destroyed other property, causing
20 damage in the amount of or in excess of five thousand dollars.

21 5. I understand that I admit the facts which support all
22 the elements of the offense by pleading guilty. I admit that the
23 State possesses sufficient evidence which would result in my
24 conviction. I have considered and discussed all possible defenses
25 and defense strategies with my counsel. I understand that I have the
26 right to appeal from adverse rulings on pretrial motions only if the

1 State and the Court consent to my right to appeal in a separate
2 written agreement. I understand that any substantive or procedural
3 pretrial issue(s) which could have been raised at trial are waived by
4 my plea.

5 6. I understand that the consequences of my plea of
6 guilty are that I may be imprisoned for a period of 1 to 5 years in
7 the Nevada State Department of Corrections and that I am eligible for
8 probation. I may also be fined up to \$10,000.00.

9 7. In exchange for my plea of guilty, the State, my
10 counsel and I have agreed to recommend the following: The State will
11 concur with the recommendation of the Division of Parole and
12 Probation. The State will not file additional criminal charges or
13 enhancements resulting from the arrest in this case.

14 8. I understand that, even though the State and I have
15 reached this plea agreement, the State is reserving the right to
16 present arguments, facts, and/or witnesses at sentencing in support
17 of the plea agreement.

18 9. I also agree that I will make full restitution in this
19 matter, as determined by the Court. Where applicable, I additionally
20 understand and agree that I will be responsible for the repayment of
21 any costs incurred by the State or County in securing my return to
22 this jurisdiction.

23 10. I understand that the State, at their discretion, is
24 entitled to either withdraw from this agreement and proceed with the
25 prosecution of the original charges or be free to argue for an
26 appropriate sentence at the time of sentencing if I fail to appear at

1 any scheduled proceeding in this matter OR if prior to the date of my
2 sentencing I am arrested in any jurisdiction for a violation of law
3 OR if I have misrepresented my prior criminal history. I
4 understand and agree that the occurrence of any of these acts
5 constitutes a material breach of my plea agreement with the State. I
6 further understand and agree that by the execution of this agreement,
7 I am waiving any right I may have to remand this matter to Justice
8 Court should I later withdraw my plea.

9 11. I understand and agree that pursuant to the terms of
10 the plea agreement stated herein, any counts which are to be
11 dismissed and any other cases charged or uncharged which are either
12 to be dismissed or not pursued by the State, may be considered by the
13 court at the time of my sentencing.

14 12. I understand that the Court is not bound by the
15 agreement of the parties and that the matter of sentencing is to be
16 determined solely by the Court. I have discussed the charge(s), the
17 facts and the possible defenses with my attorney. All of the
18 foregoing rights, waiver of rights, elements, possible penalties, and
19 consequences, have been carefully explained to me by my attorney. My
20 attorney has not promised me anything not mentioned in this plea
21 memorandum, and, in particular, my attorney has not promised that I
22 will get any specific sentence. I am satisfied with my counsel's
23 advice and representation leading to this resolution of my case. I
24 am aware that if I am not satisfied with my counsel I should advise
25 the Court at this time. I believe that entering my plea is in my
26 best interest and that going to trial is not in my best interest. My

1 attorney has advised me that if I wish to appeal, any appeal, if
2 applicable to my case, must be filed within thirty days of my
3 sentence and/or judgment.

4 13. I understand that this plea and resulting conviction
5 will likely have adverse effects upon my residency in this country if
6 I am not a U. S. Citizen. I have discussed the effects my plea will
7 have upon my residency with my counsel.

8 14. I offer my plea freely, voluntarily, knowingly and
9 with full understanding of all matters set forth in the Information
10 and in this Plea Memorandum. I have read this plea memorandum
11 completely and I understand everything contained within it.

12 15. My plea of guilty is voluntary and is not the result
13 of any threats, coercion or promises of leniency.

14 16. I am signing this Plea Memorandum voluntarily with
15 advice of counsel, under no duress, coercion, or promises of
16 leniency.

17 17. I do hereby swear under penalty of perjury that all of
18 the assertions in this written plea agreement document are true.

19 AFFIRMATION PURSUANT TO NRS 239B.030

20 The undersigned does hereby affirm that the preceding
21 document does not contain the social security number of any person.

22 DATED this 9th day of April, 2014

23 
24 DEFENDANT

25 Maizie W. Powers
26 TRANSLATOR/INTERPRETER

Attorney Witnessing Defendant's Signature

Patricia Anderson
Prosecuting Attorney

STATE OF NEVADA,
Plaintiffs,

vs.

LERON TERRELL
BLANKENSHIP,

Defendant.

--oOo--
)
)
)
)
) Case No. CR14-0461
) Department 7
)
)

19
20 ARRAIGNMENT
21 April 9, 2014
22 9:00 a.m.
Reno, Nevada

009

1 APPEARANCES:

2 For the State:

3 OFFICE OF THE DISTRICT ATTORNEY
4 By: REBECCA DRUCKMAN, ESQ.
5 P.O. Box 30083
6 Reno, Nevada

7 For the Defendant:

8 OFFICE OF THE PUBLIC DEFENDER
9 By: MAIZIE PUSICH, ESQ.
10 350 S. Center
11 Reno, Nevada
12
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1 RENO, NEVADA, April 9, 2014, 9:00 a.m.

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3 --oOo--

4 THE CLERK: CR14-0461, State versus Leron Terrell
5 Blankenship. Matter set for arraignment. Counsel and the
6 Division, please state your appearance.

7 MS. DRUCKMAN: Rebecca Druckman on behalf of the
8 State.

9 MS. HORNBARGER: Karin Hornbarger for the
10 Division.

11 MS. PUSICH: Maizie Pusich appearing with Mr.
12 Blankenship, your Honor.

13 THE COURT: Mr. Blankenship, the State of Nevada
14 has filed an information against you charging you with
15 destruction of property greater than \$5,000. Your attorney
16 is being provided a copy of the information. Sir, I
17 understand coming to court always makes people a little
18 nervous, but how do you feel here this morning?

19 THE DEFENDANT: I'm here.

20 THE COURT: Have you taken any pill, drug or
21 medicine in the last 24 hours?

22 THE DEFENDANT: No.

23 THE COURT: Have you spoken to Ms. Pusich about
24 what we're going to do here today?

1 THE DEFENDANT: Yes.

2 THE COURT: Ms. Pusich.

3 MS. PUSICH: Your Honor, his name is correctly
4 spelled. He says we have been mispronouncing it. It's
5 Leron. There's no other corrections to make. We are
6 familiar with the contents of the information and, therefore,
7 waive a formal reading. Pursuant to negotiations, he is
8 prepared this morning to enter a plea of guilty to the only
9 felony stated. In consideration of his plea, at the time of
10 sentencing, the State will concur with the recommendation of
11 the Division of Parole and Probation. No additional charges
12 relating to this incident or arrest will be pursued against
13 Mr. Blankenship. And the parties jointly agree that the
14 Court will determine the appropriate restitution at the time
15 of sentencing.

16 MS. DRUCKMAN: That is a correct statement, your
17 Honor.

18 THE COURT: Mr. Blankenship, is that your
19 understanding of the negotiations?

20 THE DEFENDANT: Yes.

21 THE COURT: Sir, by entering a plea of guilty,
22 you're waiving certain important constitutional rights. I'll
23 explain these rights to you, and if you have any questions,
24 let me know, I'll give you a chance to talk with your

1 attorney. Sir, by entering a plea of guilty, you're waiving
2 your right to a speedy and public jury trial. Do you
3 understand that?

4 THE DEFENDANT: Uh-huh.

5 THE COURT: By entering a plea of guilty here
6 today, you're waiving your right to cross examine witnesses
7 at that trial. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: By entering a plea of guilty here
10 today, you're waiving your right to compel the attendance of
11 witnesses that may have testimony in your favor at that
12 trial. Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: By entering a plea of guilty here
15 today, you're waiving your right to remain silent. Do you
16 understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: By entering a plea of guilty here
19 today, you're waiving your right to the effective assistance
20 of counsel at trial. Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: By entering a plea of guilty here
23 today, you're relieving the State of its obligation to prove
24 each and every element of the offense beyond a reasonable

1 doubt. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Ms. Druckman, if this case had gone to
4 trial, what would the State be prepared to prove?

5 MS. DRUCKMAN: Sir, you understand had this case
6 gone to trial, the State would have had to prove beyond a
7 reasonable doubt by competent evidence that on December the
8 3rd, 2013, or thereabout, in the County of Washoe, State of
9 Nevada, you did willfully and unlawfully or maliciously
10 destroy or injure the real or personal property of Doug
11 Carling, located at 1531 C Street, number B, in Sparks,
12 Washoe County, Nevada, in that you wrote on all the walls
13 with a permanent marker, made holes in the Sheetrock, tore
14 all the cabinet doors off, broke the ceiling fan off the
15 ceiling, cut power lines to the house and destroyed other
16 property causing damage in the amount of or in excess of
17 \$5,000. Do you understand the elements of the crime as I've
18 explained it at this time. Could you answer audibly for the
19 record?

20 THE DEFENDANT: Yes.

21 THE COURT: Sir, do you understand what the
22 maximum sentence is that may be imposed in the case?

23 THE DEFENDANT: Yeah. One to five.

24 THE COURT: Is probation available?

1 THE DEFENDANT: Yes.

2 THE COURT: Did you sign this guilty plea
3 memorandum?

4 THE DEFENDANT: Yes.

5 THE COURT: Did you read it?

6 THE DEFENDANT: Yes.

7 THE COURT: Did you understand it?

8 THE DEFENDANT: Yes.

9 THE COURT: Did you talk with Ms. Pusich about it?

10 THE DEFENDANT: Yes.

11 THE COURT: Ms. Pusich, any question in your mind
12 of your client's competency to understand the nature of these
13 proceedings, enter a plea or assist counsel at trial?

14 MS. PUSICH: Your Honor, I did, but I don't
15 anymore. Mr. Blankenship is on disability, both physical and
16 mental. He is concerned that the medications he was
17 prescribed for his mental health caused or contributed to
18 cancer that he's currently battling, so he stopped taking it.
19 However, after speaking with him, I believe he understands
20 what we're doing and I would not be able to maintain a not
21 guilty by reason of insanity at the time of offense. We'll
22 have a lot of mitigating information to present the Court at
23 the time of sentencing, but I do believe he is competent.

24 THE COURT: Thank you. Sir, you understand

1 although you've made an agreement with the State, sentencing
2 is in the sole discretion of the Court. As I sit here now, I
3 don't know what the sentence is going to be. At the time of
4 sentencing, I'm going to listen to you, I'm going to listen
5 to your attorney, I'm going to listen to the State's
6 attorney, I'm going to consider all the information provided
7 to me by the Division of Parole and Probation. But do you
8 understand that sentencing in the sole discretion of the
9 Court?

10 THE DEFENDANT: Yes.

11 THE COURT: Other than that which is contained in
12 the plea agreement, has anybody threatened you or promised
13 you anything in order to get you to plead guilty here this
14 morning?

15 THE DEFENDANT: No.

16 THE COURT: Are you pleading guilty here freely
17 and voluntarily?

18 THE DEFENDANT: Yes.

19 THE COURT: Tell me what happened.

20 THE DEFENDANT: It's all stated in the paper work
21 and my explanation is not going to justify anything or change
22 the opinions inside the court, so just let it be like you
23 said in the court.

24 THE COURT: Did you tear up a kitchen or

1 something?

2 THE DEFENDANT: Everything that is stated in
3 there, except I don't see how I cut the power lines on the
4 outside.

5 THE COURT: Okay. But everything else is what
6 happened?

7 THE DEFENDANT: Uh-huh.

8 THE COURT: Based upon everything we've done here
9 this morning, do you have any questions of me about these
10 proceedings so far?

11 THE DEFENDANT: No.

12 THE COURT: Sir, as to the charge contained in the
13 information, what is your plea, guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: The Court finds that the defendant
16 understands the nature of the offense charged, the
17 consequences of his plea, has made a knowing, voluntary and
18 intelligent waiver of constitutional rights. The Court will
19 accept his plea at this time. Ms. Clerk, do we have date for
20 sentencing?

21 THE CLERK: Yes, your Honor, sentencing scheduled
22 for May 28th at 9:00 a.m..

23 THE COURT: Sir, you're going to be given a packet
24 of material from the Division of Parole and Probation. Fill

1 it out as completely as possible. It's mostly biographical
2 information. The more information the Court has about you at
3 the time of sentencing, the better -- hold on -- the better
4 job we're going to be able to do. Stay in touch with
5 Ms. Pusich. Sometimes these court dates change. If they do
6 change, Ms. Pusich is the one that is notified, but you're
7 the one responsible for making all the appearances.

8 THE DEFENDANT: Okay.

9 THE COURT: Do you have any questions about what
10 we've done here?

11 THE DEFENDANT: No.

12 THE COURT: Good luck, sir.

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1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on April 9, 2014, at the hour of 9:00
8 a.m., and took verbatim stenotype notes of the proceedings
9 had upon the arraignment in the matter of THE STATE OF
10 NEVADA, Plaintiff, vs. LERON TERRELL BLANKENSHIP, Defendant,
11 Case No. CR14-0461, and thereafter, by means of
12 computer-aided transcription, transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 11, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 19th day of May 2014.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

1 **Code 1930**
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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 **STATE OF NEVADA,**

10 **Plaintiff(s),**

Case No. CR14-0461

11 **vs.**

Dept. No. 7

12 **LERON BLANKENSHIP SR.,**

13 **Defendant(s).**
14

15 **REJECTION LETTER: MENTAL HEALTH COURT**
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1 CODE 1930

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3
4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
5 IN AND FOR THE COUNTY OF WASHOE
6

7 STATE OF NEVADA,

8 Plaintiff(s),

Case No CR14-0461

9 vs.

Dept. No. 7

10 LERON BLANKENSHIP SR.,

11 Defendant(s).
12

13 REJECTION LETTER: MENTAL HEALTH COURT

14 This letter is to inform you that the referral for Leron Blankenship Sr. on the charge of
15 Destroy or Injure Real or Personal Property of Another has been declined. After further
16 research and review, it has been determined that he/she does not qualify for the Mental
17 Health Court program due to no qualifying diagnosis.

18 If you have any questions regarding this decision, please feel free to contact us. Thank
19 you for referring a defendant to the Mental Health Court.

20 Affirmation:

21 Pursuant to NRS 239B.030, this document does not contain social security numbers.

22
23 

24 Specialty Courts Officer

25 Rene Biondo, 325-6605

26 Kayla Garcia, 325-6650

27 Fax (775) 325-6617
28

1 Code 1960
2 WASHOE COUNTY PUBLIC DEFENDER
3 MAIZIE W. PUSICH, BAR NO. 2808
4 P.O. 11130
5 Reno, NV. 89520-3083
6 (775)328-3200
7 Attorney for Plaintiff

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9
10 IN AND FOR THE COUNTY OF WASHOE

11 * * *

12 THE STATE OF NEVADA,
13 Plaintiff,

Case No. CR14-0461

14 V.:

Dept. 7

15 LERON BLANKENSHIP SR.
16 Defendant.

17 MEMORANDUM RE: SENTENCING
18 MOTION TO DIVERT TO MENTAL HEALTH COURT,
19 AND REQUEST FOR HEARING

20 COMES NOW, LERON BLANKENSHIP SR., by and through the Washoe County
21 Public Defender, JEREMY T. BOSLER and Chief Deputy MAIZIE W. PUSICH, and moves
22 this Court to divert his sentence to Mental Health Court and for a hearing. This Motion is made
23 and based upon the authority of the Fifth and Fourteenth Amendment rights to Due process of
24 law, and NRS 176A.260.

25 POINTS AND AUTHORITIES

26 Mr. BLANKENSHIP pleaded guilty to destroying or injuring the personal property of
another. Due to the monetary loss, the charge was filed as a felony. He was scheduled for
sentencing on May 28, 2014. However, both his usual attorney and the Court before whom he
entered his plea were unavailable. A defense request to reschedule was granted without

1 opposition. Sentencing is now set for June 11, 2014. A presentence report has been completed
2 and filed with the Court. In addition, an application for Mental Health Court was submitted. A
3 rejection letter was filed with the Court May 29, 2014. Correspondence regarding the
4 Rejection Letter was sent on June 6, 2014. A copy of the correspondence is attached as Exhibit
5 1 for the Court's consideration.

6
7 Mr. BLANKENSHIP qualifies for Mental Health Court Diversion. NRS 176A.260
8 authorizes diversion for a person suffering from mental illness or who is intellectually disabled,
9 and who is found guilty of an offense for which the suspension of sentence is permitted. NRS
10 206310 and 193.155 permit the suspension of sentence, as verified in the Guilty Plea
11 Memorandum filed with the Court at arraignment. People with prior felony convictions are
12 disqualified. NRS 176A.260. The current offense is a crime against property, as alleged in the
13 Information, and described in the statute. Mr. BLANKENSHIP has never previously suffered a
14 felony conviction, as documented in the Presentence Report on file with the Court. Mr.
15 BLANKENSHIP's most recent misdemeanor conviction occurred over a decade ago.

16
17 The rejection letter on file with the Court suggests that Mr. BLANKENSHIP does not
18 suffer from a qualifying mental health condition. However, he has been on social security
19 disability for many years for a qualifying mental health condition. When this circumstance was
20 brought to the attention of Mental Health Court staff, counsel was advised that Mr.
21 BLANKENSHIP's prior criminal history disqualified him.

22
23 Mr. BLANKENSHIP's prior criminal history does not disqualify him. When this was
24 brought to the attention of the Mental Health Court staff, the staff then suggested he would be
25 rejected due to his dangerousness. When asked what information supported the conclusion, no
26 response was forthcoming.

1 Sentencing is discretionary with the Court, within certain constitutional and statutory
2 parameters. The accused has a due process right to a sentence that does not rely upon
3 materially untrue information about him. *Townsend v. Burke*, 334 U.S. 736, 741, 68 S.Ct.
4 1252, 92 L.Ed. 1690 (1948). A sentence cannot rely upon evidence that is impalpable or highly
5 suspect. *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). In *Stockmeier v. State*,
6 *Bd. Of Parole Com'rs*, 127 Nev.Adv.Op. 19. 255 P.3d 209 (2011) the Supreme Court held that
7 because sentencing judges will rely upon Presentence Reports in determining sentences the PSI
8 must not include information based upon highly impalpable or suspect evidence. *Id.* at 213.

10 In the present case, information is being provided to this Court with respect to
11 sentencing that is highly impalpable or suspect. Court staff recommends denying Mr.
12 BLANKENSHIP the opportunity to address both his pending conviction and his mental health
13 issues through a Court-directed program of rehabilitation, for which he qualifies, based upon
14 information outside the Court's record. Counsel for Mr. BLANKENSHIP has not been able to
15 investigate or confront the information, because it has not been disclosed. Counsel has an
16 obligation to investigate and prepare for sentencing. *Strickland v. Washington*, 466 U.S. 668,
17 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527, 156
18 L.Ed.2d 471 (2003). In the present case, the failure to disclose information which is being
19 relied upon by other participants in the case make effective assistance impossible.

21 Based upon the foregoing, Mr. BLANKENSHIP moves this Court for an order directing
22 him to Mental Health Court diversion, or alternatively, scheduling a hearing on the matter, and
23 directing the staff to provide the information upon which they base their finding of future
24 dangerousness. Future dangerousness is not litigated frequently in the property crimes context.
25 However, it has been litigated in cases involving serious crimes of violence. In *Redmen v.*
26

1 State, 108 Nev. 227, 828 P.2d 395 (1992) the Nevada Supreme Court held that psychiatric
2 testimony regarding the future danger of the convicted murderer was improperly admitted
3 during his sentencing hearing, because it was unreliable. (The conviction and sentence were
4 affirmed on other grounds, including that the record before the Court disclosed other proof of
5 future danger). However, in the present case the Court does not have other evidence of future
6 danger. In fact, the sentencing Court does not have the information upon which the rejection
7 purportedly rests at all.

9 The Division's Report confirms that Mr. BLANKENSHIP has never suffered a felony
10 conviction, and that his most recent misdemeanor conviction occurred November 13, 2002.
11 The Report further confirms that he receives social security disability, and has since 2003 for
12 mental health issues and other medical conditions.

13 However, the report ultimately recommends against probation, without discussion or
14 explanation. The Nevada Department of Public Safety currently publishes several forms on its
15 website, including a document titled Probation Success Probability and another titled Sentence
16 Recommendation Selection Scale. Assuming without conceding that the documents are
17 scientifically valid, Mr. BLANKENSHIP should have been recommended for probation. No
18 explanation for the deviation has been provided. (It should be noted that a request for the
19 documents was sent to P&P on June 9, 2014, with a request that Counsel be notified if the
20 paperwork could not be provided. P&P responded that it could be subpoenaed. The Defense is
21 in the process of serving the subpoena, as instructed).

22 As with the Mental Health Court rejection, no explanation supported by evidence has
23 been provided to Mr. BLANKENSHIP or his counsel. Counsel's ability to effectively advocate
24 for her client is eliminated where information is being conveyed to the Court to support a
25
26

1 sentence in excess of the minimum, but is not being provided to Counsel to investigate and
2 refute.

3 Mr. BLANKENSHIP requests this Court Order that the documentation upon which
4 Probation relies in recommending incarceration also be provided to counsel to permit counsel
5 to effectively prepare and represent Mr. BLANKENSHIP consistent with the Sixth Amendment
6 to the U.S. Constitution. In the event more time is needed to obtain the records from the
7 Mental Health Court staff and from Parole and Probation, the defense requests that sentencing
8 be continued to obtain the records.
9

10 Mr. BLANKENSHIP should not be facing prison or a denial of diversion based upon
11 the lack of a record before this Court. Before the Court can make an informed decision, it
12 should have the information upon which Probation and Mental Health Court reportedly are
13 relying.
14

15 AFFIRMATION PURSUANT TO NRS 239B.030

16 The undersigned does hereby affirm that the preceding document does not contain the
17 social security number of any person.

18 Respectfully submitted this 9th day of June, 2014.

19 WASHOE COUNTY PUBLIC DEFENDER

20
21 By /s/ MAIZIE W. PUSICH
22 MAIZIE W. PUSICH
23 Chief Deputy
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office,
and that on this date, I electronically served a copy of the foregoing document.

Addressed to:

RECECCA DRUCKMAN/ ALALEM BOGALE, Deputy District Attorney

DATED this 9th day of June, 2014.

/s/ LINDA GRAY
LINDA GRAY

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INDEX OF EXHIBIT

Pages

1. Correspondence regarding the Rejection Letter dated June 6, 2014

2

FILED
Electronically
2014-06-09 01:59:41 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4468384 : mcholino

EXHIBIT 1

EXHIBIT 1

Pusich, Maizie W.

From: Biondo, Rene
Sent: Friday, June 06, 2014 4:58 PM
To: Pusich, Maizie W.
Cc: Rains, Jennifer
Subject: RE: Leron Blakenship - Resubmit from Maizie

I will generate a corrected denial letter. The Judge agreed to decline this person based on safety concerns for our team and staff.

Rene Biondo
Speciality Courts Officer II
Second Judicial District Court
75 Court St. Room 126
(775)325-6605
Fax (775)325-6617

This message and accompanying documents are covered by the electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, and may contain confidential information intended for the specified individual(s) only. If you are not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, copying, or the taking of any action based on the contents of this information is strictly prohibited. If you have received this communication in error, please notify us immediately by E-mail, and delete the original message.

From: Pusich, Maizie W.
Sent: Friday, June 06, 2014 4:45 PM
To: Biondo, Rene
Cc: Rains, Jennifer
Subject: FW: Leron Blakenship - Resubmit from Maizie

Hi Rene, the paperwork filed with the Court, and which puts applicants on notice, states he does not have a qualifying mental health condition. That is not correct.

Mr. Blankenship has prior convictions -- misdemeanors, with the most recent 12 years ago.

Does your Officer Monson have access to nonpublic information that the defense has not been able to review or confront?

Maizie

From: Rains, Jennifer
Sent: Friday, June 06, 2014 4:35 PM
To: Pusich, Maizie W.
Subject: FW: Leron Blakenship - Resubmit from Maizie

From: Biondo, Rene
Sent: Friday, June 06, 2014 4:30 PM
To: Rains, Jennifer

Cc: Garcia, Kayla; Leslie, Sheila
Subject: RE: Leron Blakenship - Resubmit from Maizie

This is the Case that Officer Monson gave a description of Leron's criminal history and he concern for the safety of all staff. Judge Breen agreed and he was declined

Rene Biondo
Speciality Courts Officer II
Second Judicial District Court
75 Court St. Room 126
(775)325-6605
Fax (775)325-6617

This message and accompanying documents are covered by the electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, and may contain confidential information intended for the specified individual(s) only. If you are not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, copying, or the taking of any action based on the contents of this information is strictly prohibited. If you have received this communication in error, please notify us immediately by E-mail, and delete the original message.

From: Rains, Jennifer
Sent: Friday, June 06, 2014 4:10 PM
To: Biondo, Rene; Garcia, Kayla; Leslie, Sheila
Cc: Pusich, Maizie W.
Subject: Leron Blakenship - Resubmit from Maizie

Leron Blakenship

I can't seem to find my sheet with referral notes and don't have a specific recollection of our staffing discussion. Maizie was notified that he was rejected for not having a qualifying diagnosis. She's in my office, and we're talking about his case. He went to NNAMHS and has an appointment with Dr. Wallace on July 31 at 9:30 a.m. Instead of his records, he brought all his intake information to Maizie; he has some limited literacy. He has been very compliant with everything she's asked him to do. He believes his diagnosis is schizophrenia and bipolar. He receives SSD in part for mental health and other medical concerns since 2003. He has historically been on mental health meds and was not taking his meds at the time of the offense. This is his first felony for destruction of property (and there's no dispute it was bad!). He was angry with the landlord for not fixing the hot water.

He has court on Wednesday in Department 7.

Jennifer H. Rains
Deputy Public Defender
Direct: (775) 337-4810
FAX: (775) 337-4856

**** Notice**** This message and accompanying documents are covered by the electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, and may contain confidential information intended for the specified individual (s) only. If you are not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, copying, or the taking of any action based on the contents of this information is strictly prohibited.

1 Code 4105
2 WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
3 MAIZIE W. PUSICH, BAR NO. 2808
4 P.O. BOX 11130
5 Reno, NV. 89520-0027
6 (775) 337-4800
7 Attorney for Plaintiff

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF WASHOE.

10 * * *

11 THE STATE OF NEVADA,
12 Plaintiff,
13 v.
14 LERON BLANKENSHIP SR.
15 Defendant.

16 Case No. CR14-0461
17 Dept. 7

18 SUPPLEMENTAL MEMORANDUM RE: SENTENCING
19 MOTION TO DIVERT TO MENTAL HEALTH COURT,
20 AND REQUEST FOR HEARING

21 COMES NOW, LERON BLANKENSHIP SR., by and through the Washoe County
22 Public Defender, JEREMY T. BOSLER and Chief Deputy MAIZIE W. PUSICH, and moves
23 this Court to divert his sentence to Mental Health Court and for a hearing. This Supplement to
24 Motion is made and based upon the authority of the Fifth and Fourteenth Amendment rights to
25 Due process of law, the Americans with Disabilities Act, 42 USC Sect. 12101 et. seq., and NRS
26 176A.260.

27 POINTS AND AUTHORITIES

28 Mr. Blankenship incorporates by this reference his Motion filed June 9, 2014. Since
29 that Motion was filed with the Court, the Division of Parole and Probation provided counsel

30 ///

1 with the raw data used to calculate his probation eligibility (see Exhibit 1). This Supplement
2 will focus on the Probation assessment.

3 Sentencing is discretionary with the Court, within certain constitutional and statutory
4 parameters. The accused has a due process right to a sentence that does not rely upon
5 materially untrue information about him. *Townsend v. Burke*, 334 U.S. 736, 741, 68 S.Ct.
6 1252, 92 L.Ed. 1690 (1948). A sentence cannot rely upon evidence that is impalpable or highly
7 suspect. *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). In *Stockmeier v. State*,
8 *Bd. Of Parole Com'rs*, 127 Nev.Adv.Op. 19. 255 P.3d 209 (2011) the Supreme Court held that
9 because sentencing judges will rely upon Presentence Reports in determining sentences the PSI
10 must not include information based upon highly impalpable or suspect evidence. *Id.* at 213.

12 The eligibility scale used by Parole and Probation ought to be based upon objective and
13 accurate information. In the present case there are scores used in determining that Mr.
14 Blankenship is merely a "borderline" candidate for supervision that are not accurate. As will
15 be shown below, they are more than inaccurate, they are discriminatory and illegal.

17 The first section of the probation success probability scale addresses prior criminal
18 history. As is consistent with the criminal history listed in the presentence report Mr.
19 Blankenship received the lowest scores except for the questions regarding prior misdemeanor
20 arrests and jail sentences. Those scores are correct. However, on the final prior criminal
21 history question the Division characterizes Mr. Blankenship's "criminal pattern" as the most
22 severe option available. The choices are none or no record of violence, random/decreased
23 severity, same type or increased severity, or history of violence. Mr. Blankenship has one
24 misdemeanor conviction for threats in 2002 in San Francisco, California. He was given jail
25 time, suspended, with probation for two years. There is no notation suggesting that he violated
26

1 the probation, or that a warrant issued regarding the case. Thus, the "history of violence" score
2 appears to be based upon a twelve-year old misdemeanor for which he successfully completed
3 probation. Were Mr. Blankenship testifying at trial, the prior would not be available to
4 impeach his testimony, even if it had been a felony. NRS 50.095(2). Yet, the misdemeanor
5 conviction is being used to increase Mr. Blankenship's alleged ineligibility for probation by
6 four points. Interestingly, had Mr. Blankenship been accused of the same type of offense as
7 that facing sentencing, his score would have been better from an eligibility standpoint. This
8 makes no legal sense. It is both impalpable and highly suspect.

10 The second part of the Probation Success Probability rating discusses the present
11 offense. In this section the Division rates Mr. Blankenship less probation-eligible on the
12 circumstances of his arrest which they list as "non-problematic" a less eligible score than
13 "voluntary." They also rate his sophistication as "moderate." Assuming that sophistication
14 means the crime is committed secretly, or in a manner designed to let one get away with its
15 commission, the level of sophistication in this case was less than zero. There was no question
16 who was responsible or what he had done.

18 Nevada has not defined "sophistication" in the context of crimes. But, the Federal
19 Government has. Sophisticated means "especially complex or especially intricate offense
20 conduct pertaining to the execution or concealment of an offense." United States Sentencing
21 Guidelines, Section 2F1.1. Mr. Blankenship's conduct was not complex or intricate in its
22 execution. His concealment was nonexistent.

24 The third section of the Probation Probability Success rating discusses social history.
25 This rating is the most offensive. First, the Division rates Mr. Blankenship as less probation-
26 eligible finding that his family situation is disruptive. He lives with his wife, who is fully

1 supportive of him. The Division then rates him less eligible for probation because he is
2 disabled. And, they choose to make him less eligible based upon his disability twice. They
3 decrease his score for being unemployed and unemployable. (Higher scores are rated as more
4 likely to succeed on probation). The instrument does not include a category for disability. This
5 Court cannot sentence Mr. Blankenship to prison because he is disabled. That type of patent
6 discrimination is unconstitutional and illegal. Americans with Disabilities Act of 1990. Yet,
7 the Division rates Mr. Blankenship as less eligible for probation because he is "unemployed"
8 and "unemployable," using two different questions to double-count the result. It is illegal and
9 unconstitutional to discriminate against the disabled. This protection applies to prisoners.
10 *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 118 S.Ct. 1952, 141 L.Ed.2d 215
11 (1998).
12

13 Title II of the Americans with Disabilities Act provides:

14 Subject to the provisions of this subchapter, no qualified individual with a
15 disability shall, by reason of such disability, be excluded from participation in or
16 be denied the benefits of the services, programs, or activities of a public entity, or
be subjected to discrimination by any such entity. 42 U.S.C. § 12132.

17 The current probation grading scale which makes a person less eligible for probation based
18 upon disability violates the ADA. Section 12131(1)(b) of the act specifically prohibits
19 discrimination by public entities which includes any department or agency of a State or States
20 or local government. The Division of Parole and Probation is a Department of State
21 Government, an agency of the Nevada Division of Public Safety.
22

23 The fourth section of the Probation Probability Success rating assesses community
24 impact. In this section, the Division rates Mr. Blankenship as having resources available, a
25 less eligible rating than "predetermined." Mr. Blankenship is already on disability and has
26

///

1 already met with and is pending assistance with Northern Nevada Adult Mental Health
2 Services. He should be rated "predetermined."

3 The final section of the Probation Probability Success scale discusses presentence
4 adjustment. In this section the Division has rated Mr. Blankenship as less eligible for probation
5 based upon his honesty and cooperation with the department and his attitude toward
6 supervision. The Division reports that Mr. Blankenship told them they had the wrong unit
7 number, and that the power lines had not been cut. But, they also document that he pleaded
8 guilty, that he completed his paperwork, and attended the interview they scheduled with him.
9 His wife submitted a letter on his behalf. Mr. Blankenship wrote in his statement to the Court
10 that he did not expect to be able to say what he expected the Court would want to hear.
11

12 The Division concludes that Mr. Blankenship scored 60 and is "borderline" for
13 probation success probability. They then recommended prison. Yet, if the Division had not
14 illegally penalized Mr. Blankenship for his disabled status, he would have scored six additional
15 points, placing him in the rating scale for which probation is recommended, scores of 65-100.
16 This change in rating would apply even if the Court did not consider the other unsupported
17 scores in the report.
18

19 A person could only score a 100 on the scale if all of the following applied: no prior
20 convictions or incarcerations, adult or juvenile, and a resident of over five years. Also, the
21 crime must be victimless with no financial or psychological impact, cannot involve a co-
22 offender, a motive, a weapon or controlled substances. It cannot involve a valuable plea
23 bargain. The person being assessed has to be over 40 years old, have a good family support
24 system, at least a college or technical program education, and a job which provides adequate
25 finances. Finally, the person would have to demonstrate strong ties to the community and no
26

1 issues with alcohol, drugs or mental health. He would also have to be candid, excited about
2 supervision and contrite. That crime, and that criminal simply do not exist. If all those
3 positives existed in a person's life, he or she would not be facing sentencing.

4 It the Court also recognizes the errors in the other ratings discussed above, Mr.
5 Blankenship would score as much more eligible for probation. However, Mr. Blankenship
6 must be viewed as probation-eligible by this Court because the Court cannot do what Probation
7 has done: punish Mr. Blankenship for his disability. Discriminating against a disabled person
8 is like discriminating against an African American. *Thompson v. Davis*, 295 F.3d 890, 898 (9th
9 Cir. 2002). Interestingly, Mr. Blankenship is both African American and disabled.

11 The rating scale used by Parole and Probation and as graded against Mr. Blankenship
12 based upon his disability discriminates based upon his disability. That type of evidence
13 violates the proscription against relying upon impalpable or suspect evidence at sentencing.
14 *Stockmeier, supra*.

16 Based upon the foregoing, Mr. Blankenship moves this Court for an order directing him
17 to Mental Health Court diversion, or alternatively, scheduling a hearing on the matter, and
18 directing the staff to provide the information upon which they base their finding of future
19 dangerousness. Future dangerousness is not litigated frequently in the property crimes context.
20 However, it has been litigated in cases involving serious crimes of violence. In *Redmen v.*
21 *State*, 108 Nev. 227, 828 P.2d 395 (1992) the Nevada Supreme Court held that psychiatric
22 testimony regarding the future danger of the convicted murderer was improperly admitted
23 during his sentencing hearing, because it was unreliable. (The conviction and sentence were
24 affirmed on other grounds, including that the record before the Court disclosed other proof of
25 future danger). However, in the present case the Court does not have other evidence of future
26

1 danger. In fact, the sentencing Court does not have the information upon which the rejection
2 purportedly rests at all.

3 The Division's Report confirms that Mr. Blankenship has never suffered a felony
4 conviction, and that his most recent misdemeanor conviction occurred November 13, 2002.
5 The Report further confirms that he receives social security disability, and has since 2003 for
6 mental health issues and other medical conditions. He is eligible for probation. He is eligible
7 for and needs the assistance of Mental Health Court.
8

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

10 The undersigned does hereby affirm that the preceding document does not contain the
11 social security number of any person.

12 Respectfully submitted this 16th day of June, 2014.

13 WASHOE COUNTY PUBLIC DEFENDER

14
15 By /s/ MAIZIE W. PUSICH
16 MAIZIE W. PUSICH
17 Chief Deputy
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office,
and that on this date, I electronically served, a copy of the foregoing document.

Addressed to:

RECECCA DRUCKMAN/ ALALEM BOGALE, Deputy District Attorney

DATED this 16th day of June, 2014.

/S/ LINDA GRAY
LINDA GRAY

1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11	STATE OF NEVADA,)	
12	Plaintiffs,)	
13	vs.)	Case No. CR14-0461
14	LERON TERRELL)	Department 7
15	BLANKENSHIP,)	
16	Defendant.)	

17
18 TRANSCRIPT OF PROCEEDINGS

19 SENTENCING

20 June 18, 2014

21 9:00 a.m.

22 Reno, Nevada

23
24 Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

1 APPEARANCES:

2 For the State:

3 OFFICE OF THE DISTRICT ATTORNEY
4 By: REBECCA DRUCKMAN, ESQ.
5 P.O. Box 30083
6 Reno, Nevada

7 For the Defendant:

8 OFFICE OF THE PUBLIC DEFENDER
9 By: MAIZIE PUSICH, ESQ.
10 350 S. Center
11 Reno, Nevada
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1 RENO, NEVADA, June 18, 2014, 9:00 a.m.

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3 --oOo--

4 THE CLERK: Case number CR14-0461, State versus

5 Leron Terrell Blankenship. Matter set for sentencing.

6 Counsel and the Division, please state your appearance.

7 MS. DRUCKMAN: Rebecca Druckman on behalf of the

8 State.

9 MS. PAPPAS: Laura Pappas for the Division.

10 MS. PUSICH: Maizie Pusich appearing with Mr.

11 Blankenship, your Honor.

12 THE COURT: This is the time set for sentencing in

13 the above-entitled case. The Court is in receipt of a

14 presentence investigation report prepared April 30th, 2014.

15 In addition, this Court has received a sentencing memorandum

16 filed June 6th, 2014, as well as a supplemental memorandum

17 regarding sentencing filed June 16th, 2014. I appreciate

18 counsel giving the Court an opportunity to review these

19 materials. Ms. Pusich.

20 MS. PUSICH: Your Honor, we don't have additions

21 or corrections to provide the Court other than what has been

22 mentioned in the documents you referred to. I don't know if

23 the State has additional information.

24 THE COURT: Any changes to the PSR?

1 MS. DRUCKMAN: Not that I'm aware of, your Honor.
2 I think the main question raised by the defense is the method
3 in which the Division elected to make their recommendation.
4 So at this time, the State would ask that Ms. Pappas be sworn
5 and take the stand.

6 THE COURT: Hang on a second. Why don't you
7 provide chairs for Mr. Blankenship and Ms. Pusich. Go ahead,
8 Ms. Pappas.

9 (One witness sworn at this time.)

10 THE COURT: Ms. Druckman, your witness.

11 LAURA PAPPAS

12 called as a witness and being duly sworn did testify as
13 follows:

14 DIRECT EXAMINATION

15 BY MS. DRUCKMAN:

16 Q. Good morning. Can you please say and spell your
17 name for the court reporter?

18 A. Laura Pappas, L-a-u-r-a, P-a-p-p-a-s.

19 Q. Can you please state your occupation and
20 assignment?

21 A. I'm a Parole and Probation supervisor currently
22 assigned to supervise several presentence investigators.

23 Q. Can you explain your training and experience that
24 qualifies you to hold that position?

1 A. I have a bachelors degree in criminal justice. I
2 was a Parole and Probation officer for approximately six
3 years. I was a special deputy with the U.S. Marshal's
4 Service for approximately two and a half years. I have been
5 a presentence investigator in a civilian position since 2002
6 and became a supervisor approximately two years ago.

7 Q. As part of your duties as a supervisor, do you
8 review and approve PSR's that are written by people for the
9 Division?

10 A. Yes.

11 Q. And are you familiar with the presentence
12 investigation report, which was prepared in the case of Leron
13 Terrell Blankenship?

14 A. Yes, I reviewed it yes yesterday and today.

15 Q. Can you explain to the Court the scoring that was
16 used in the underpinnings of the Division's recommendation?

17 A. Sure. We use a variety of tools to help us come
18 to a recommendation, in part because we try to be as
19 objective as possible and we want our recommendations from
20 the Division to be consistent across the board for like
21 cases.

22 So one of the tools we use is a PSP score, which
23 basically is an assessment tool, which then would transpose
24 numbers to the -- another form, which decides whether a

1 person is suitable for probation or not and then there's a
2 borderline field. So the PSP score covers some social
3 history, some criminal history, facts about the particular
4 case, et cetera.

5 That is a tool that we use. It's a guideline.
6 The Division is not bound by making a recommendation based
7 solely on that tool, but that is one of the tools that we
8 use.

9 The interview is another one. I believe that Mr.
10 Gregg interviewed this defendant person to person, as well as
11 the police reports and other information contained in the
12 District Attorney's file.

13 Q. Can you describe to the Court, first of all, using
14 the eligibility scale, how did the defendant present in the
15 Division's view?

16 A. In the eligibility scale, when it was conducted,
17 he scored out as borderline, which is a score of 60.

18 Q. Could you describe what it means to be borderline?

19 A. It means that, statistically speaking, the case
20 probably could have gone either way. He could have probably
21 been easily appropriate for incarceration or easily
22 appropriate for probation. That's certainly one tool.

23 Q. When the Division performs such a score, in this
24 case, can you describe to the Court the significance of the

1 defendant's criminal history information, which, just for the
2 record, included false imprisonment in 1991, grand theft in
3 1999 and convicted of threatening a crime with the intent to
4 terrorize in 2002.

5 A. Although dated and sporadic and some may consider
6 stale in nature, that is what his criminal history is. And
7 two of those three offenses do fall in what we categorize as
8 a history of violence.

9 Q. How does that history of violence relate to the
10 perceived danger of the defendant toward the community if he
11 is released on supervision?

12 A. Well, certainly a factor, but there were other
13 factors in this case when reviewing the presentence
14 investigation report and Mr. Gregg's personal notes taken
15 from the interview. There were other observations that he
16 took into consideration when making that recommendation.

17 Q. Okay. So first of all, could you describe those
18 observations to the Court?

19 A. I believe in the presentence investigation report,
20 under defendant's statement, I believe Mr. Gregg
21 characterized him as someone hostile during the interview
22 process and not very amenable to the process. Suggesting if
23 he can't get through a simple interview for the presentence
24 investigation report process, what is his behavior going to

1 be like when he's on probation?

2 Q. Does the Division also look at the underlying
3 nature of the crime and whether or not threats were directed
4 in the course of crime towards the victim of the crime?

5 A. Of course we look at the offense report and events
6 taken from the police reports and other information available
7 to the Division.

8 Q. And as a supervising officer at P and P, what is
9 your assessment of the conduct of the defendant in this case
10 and the threats made against the landlord, who is the victim?

11 A. They appear to be deliberate and repetitive in
12 nature, someone that perhaps has some anger issues.

13 Q. And coupled with the defendant's past history of
14 violence, how would you, as a Division, view that type of
15 conduct in forming your decision whether or not a person is
16 borderline and granted probation or prison?

17 A. Well, the bottom line is what the Division has to
18 do is weigh the protection of the community versus any
19 therapeutic needs that the defendant might have. And the
20 safety of the community is of utmost important in this case
21 that's weighted.

22 Q. Is it fair to say that the Division when they have
23 a case that could go in either direction is biased towards
24 the safety of the community?

1 A. I would say it's a case-by-case basis.

2 Q. But in this particular case, based on the threats
3 he made during the offense and prior to the offense, coupled
4 with his violent history, the Division felt he posed a danger
5 to the victim?

6 A. A danger to society, yes.

7 Q. Now, related to his mental health history
8 concerning bipolar disorder, paranoid schizophrenia and a
9 possible obsessive compulsive disorder, as well as attention
10 deficit hyperactivity disorder as a juvenile, does that in
11 any way enter into the Division's scoring?

12 A. His diagnosis doesn't enter into the scoring. His
13 behavior and how he presents do. There are many, many people
14 with identical diagnosis that are on probation and free in
15 the community.

16 Q. So this really was factually linked to the nature
17 of the crime, the threats he made against the victim and his
18 past history of violence?

19 A. Yes.

20 Q. Is there anything else you would like to tell the
21 Court about the Division's position related to defendant's
22 request for Mental Health Court?

23 A. In this particular case, I don't know that it was
24 even a consideration for the Division. Usually, it's on the

1 table in the beginning and it's usually contemplated in the
2 guilty plea memorandum where we would take a look at that. I
3 am aware of the motions filed by defense regarding Mental
4 Health Court. I have not spoken to any staff members there
5 and cannot speak to that.

6 MS. DRUCKMAN: Thank you very.

7 THE COURT: Ms. Pusich.

8 MS. PUSICH: Thank you, your Honor.

9 CROSS EXAMINATION

10 BY MS. PUSICH:

11 Q. Ms. Pappas, you said that statistically speaking,
12 when you have someone who is borderline, they could be sent
13 to jail or given probation. What statistics are you
14 referring to?

15 A. Just the statistical data of the form, where it's
16 denial, probation or borderline. Borderline would suggest
17 that the case could go either way based on the numbers, based
18 on the form.

19 Q. Do you know who created the form?

20 A. I do not.

21 Q. Do you know when?

22 A. I know we've been using it since at least the
23 1980s.

24 Q. So before the Americans with Disabilities Act was

1 enacted in 1990?

2 A. I will take your word for it, yes.

3 Q. But you know it was being used in the '80s?

4 A. Yes.

5 Q. Is there any sort of documentation or training
6 that teaches an officer how to answer the questions that lead
7 to the score?

8 A. There is.

9 Q. And what is that?

10 A. There is -- when people are assigned this
11 position, they're kind of on-the-job training. They're
12 usually assigned a training officer and we go through things
13 step-by-step. And even to date, when the supervisor
14 reviewing those reports, we will go to those scoring sheets
15 and review them on a -- not in every case, but as we see fit
16 or to check for the person's ability to comply with the
17 requirements of the job.

18 Q. Is there anything written that gives guidance to
19 officers in grading?

20 A. I'm sorry. Repeat the question.

21 Q. Sure. Is there anything that is written that
22 gives guidance to the officers in grading?

23 A. No.

24 Q. Are you aware of any standards or guidelines that

1 remove the subjectivity in answering the questions?

2 A. We talk about it in training sessions, because we
3 do find that, because as all the parties are aware, some of
4 those line items can be subjective rather than objective.
5 And we talk about it internally and try to be all in the same
6 boat when it comes to those particular line items.

7 Q. And a few moments ago, I believe you said you had
8 reviewed Mr. Blankenship's information yesterday, correct?

9 A. Yes.

10 Q. So it wasn't something that you reviewed in the
11 course of your duties as a supervisor before it was given to
12 the Court?

13 A. No.

14 Q. Is there any time frame that the Division uses in
15 assessing whether or not a person will be scored as having
16 displayed a criminal pattern?

17 A. No.

18 Q. Is there anything that requires that cases be of a
19 similar nature in scoring someone as having displayed a
20 criminal pattern?

21 A. Similar to like the instant offense in factual, in
22 factual regard?

23 Q. That or similar in the sense that there are a
24 series of crimes that were property related or a series of

1 crimes that were against people, that sort of thing?

2 A. Yes.

3 Q. And in this case, do you know if that type of
4 assessment was done before assessing that Mr. Blankenship was
5 displaying a criminal pattern?

6 A. I knew that it was conducted before the
7 presentence investigation report was prepared.

8 Q. Okay. Do you know if the type of discussion that
9 you have just described occurred in respect to Mr.
10 Blankenship's PSI?

11 A. I do not. I did not approve this PSI.

12 Q. Who did?

13 A. Thomas Wilson.

14 Q. Thank you, actually, I remember that. He's the
15 one who gave me the paper work. According to your training
16 or the training you give to others that you supervise, what's
17 the difference between a nonproblematic arrest and a
18 voluntary arrest?

19 A. Voluntary is where they physically go to the jail
20 and turn themselves in. A nonproblematic means it's on scene
21 and the individual is cooperative with the arresting officer
22 at the time.

23 Q. Do you know based on any statistics maintained by
24 the Division what percentages of people accused of crime in

1 Washoe County voluntarily take themselves to the Washoe
2 County and turn themselves in?

3 A. I do not have a statistical number for you. It
4 does happen, though.

5 Q. Do you know on what basis the Division rates
6 sophistication in the grading scale?

7 A. I believe it's sophistication slash premeditation.

8 Q. Do you know what that -- obviously, the only crime
9 that includes premeditation as an element is murder. So on
10 what basis does the Division assess sophistication or
11 premedication?

12 A. You'd have to look at that on a case-by-case
13 situation. I can give you a nonrelated example.

14 Q. Well, let me ask a different question.

15 A. Okay.

16 Q. There's actually a federal statute that defines
17 sophistication in the area of sentencing. Does the Division
18 rely in any way on that?

19 A. I do not believe so.

20 Q. In the part of the grading scale that rates family
21 situation includes the descriptive disruptive, is that used
22 to grade a person based upon the behavior of someone else?

23 MS. DRUCKMAN: Objection, vague as to the form of
24 the question. I'm not sure how the Division can even begin

1 to answer that.

2 THE COURT: Do you understand?

3 THE WITNESS: I don't understand the question.

4 BY MS. PUSICH:

5 Q. I'll use your form and then maybe you won't be
6 confused.

7 A. Okay.

8 THE COURT: Sustained.

9 BY MS. PUSICH:

10 Q. In the section called social history, the second
11 question that is included says family situation, and the
12 options are constructive support, moderate support,
13 nonsupport or nonexistent or disruptive.

14 A. Okay.

15 Q. Is the answer disruptive based upon the behavior
16 of someone else in the family?

17 A. It could, if it's disrupting the entire family
18 unit. If, for example --

19 Q. For example, would an allegation of child abuse
20 against a parent be graded as disruptive?

21 A. Who is the -- who is the -- what is the
22 defendant's relationship to what you're talking about? I'm
23 not following your line of questioning.

24 MS. PUSICH: Your Honor, if I could approach?

1 THE COURT: Certainly.

2 MS. PUSICH: Your Honor, what I'm showing to
3 Ms. Pappas is actually, I believe, the second page of the
4 handwritten form that is published on the Department of
5 Public Safety website.

6 THE WITNESS: I'm familiar with this form.

7 BY MS. PUSICH:

8 Q. In that second line, what does disruptive cover?
9 Whose behavior would grade someone as disruptive?

10 A. Family situation, the immediate family situation.
11 So it could be a variety of things. So, for example, if the
12 offender is a young adult living at home and the parents are
13 both involved in addictive behaviors or criminal activities
14 themselves, and the defendant, who is young, is living in
15 that home, that would be disruptive. If the parent was
16 involving that young person in criminal activity or having,
17 doing drugs with them or encouraging illegal activities, that
18 would be disruptive.

19 Q. In a circumstance where someone is accused of a
20 crime lives with his wife, who doesn't have criminal history
21 and isn't accused in the present crime, how would their
22 scoring have been listed as disruptive?

23 A. I don't know. We look at the immediate family
24 members, so I don't know what the totality of the family

1 members were in this case.

2 Q. Isn't it true, Ms. Pappas, that in the question
3 regarding employment, there is no option for disabled?

4 A. That is correct.

5 Q. And that the Division not only rates employment,
6 but also employability as separate questions, correct?

7 A. That's true.

8 Q. And that one of the choices for employability is
9 not needed, correct?

10 A. Yes.

11 Q. What would qualify a person to have their resource
12 question answered as predetermined in the Division's rating?

13 A. Predetermined? It would be if they were already
14 involved in a program of -- it's already been decided and is
15 already involved in whatever programing was predetermined.

16 Q. So if, for example, you're looking at someone who
17 appears to need drug or alcohol counseling, which is
18 frequent, and that person had already started their treatment
19 program, that would be predetermined?

20 A. If they were already in a program.

21 Q. If a person has already been determined to be
22 disabled and is receiving disability and other resources, why
23 would that not also be predetermined?

24 A. Being disabled is not being in a program.

1 Disabled is a thing. It's not services that are provided.
2 It's just a monetary benefit.

3 Q. What if a person didn't need alcohol or controlled
4 substance counseling or something like that, would they ever
5 get a predetermined rating?

6 A. You know, can I see that form again?

7 Q. Sure.

8 A. I'm sure you're aware that the forms we use are
9 computerized and we don't have them all laid out like this
10 like they do on the website.

11 Q. Right.

12 A. So it's not -- the category is not just
13 predetermined. It's predetermined slash not needed. So if a
14 person didn't have any issues to address, wasn't using drugs,
15 wasn't using alcohol, didn't have an identified mental health
16 issue or anger issue, then that would be a not needed.

17 Q. And those don't split up, correct? For example,
18 if a person has a mental health issue for which they are
19 getting assistance and have begun counseling, but the
20 Division believes they have an anger issue that isn't being
21 independently addressed, those aren't scored separately,
22 right? They're altogether?

23 A. That's correct.

24 Q. You were not a participant in Mr. Gregg's

1 interview of Mr. Blankenship, correct?

2 A. That's correct.

3 Q. Does the Division of Parole and Probation have an
4 officer who provides services to the people who are
5 participating in the Mental Health Court?

6 A. We have officers that -- yes.

7 Q. And do you know if they participate in the
8 staffings to determine if someone is eligible to participate
9 in their program?

10 A. I do not believe -- I do not believe that to be
11 true, but I don't know for certain.

12 Q. Is Officer Munson a probation officer?

13 A. Yes.

14 Q. He is assigned to the Mental Health Court,
15 correct?

16 A. I believe so.

17 Q. Is there any procedure in place with the Division
18 of Parole and Probation for someone to challenge their score
19 if they believe it's inaccurate?

20 A. I don't believe so. You mean a defendant?

21 Q. Correct. The person who is being scored.

22 A. Right.

23 Q. Since the report was written, are you aware of any
24 information regarding Mr. Blankenship's criminal history that

1 has been changed in any way?

2 A. No.

3 Q. There are no additional crimes that were not
4 included?

5 A. Not that I'm aware of.

6 MS. PUSICH: Thank you.

7 THE COURT: Thank you, Ms. Pusich. Ms. Druckman.

8 MS. DRUCKMAN: Just very briefly.

9 REDIRECT EXAMINATION

10 BY MS. DRUCKMAN:

11 Q. While you were not a supervisor that actually
12 participated in the approval of this report, are you able to
13 say as a custodian of records and a person familiar with the
14 proceedings that in fact this case was reviewed in the normal
15 process and a supervisor took a fresh look at this?

16 A. I'll tell you that Thomas Wilson is a specialist
17 four and he and another have been tasked with reviewing these
18 reports and they are authorized to do so.

19 Q. And in terms of what is the nature of supervision
20 in terms of its impact on the individual subjectivity of the
21 writer? What I'm asking in a more general way is, if
22 something comes across your desk that appears to be
23 subjective and out of line, what happens to it?

24 A. Hypothetically, if I get a case and I'm reading

1 it, while I'm reading it with my years of training and
2 experience, I have a thought in my mind which way the last
3 page should look like and what the recommendation should look
4 like. If it doesn't look like that or it's way off base, one
5 of the first things I would do is go to the rating scale, the
6 assessment scale to see if there was something I could see
7 there that they missed. Then I would have a conversation
8 with that employee to discuss it, because sometimes they have
9 information that may not have been properly communicated in
10 the report that would support their recommendation versus
11 what I see in the report.

12 Q. And so the issue of subjectivity is addressed in
13 each and every report?

14 A. If it becomes an issue, yes.

15 Q. Okay. And in your opinion, after reviewing this,
16 was subjectivity a factor skewing this report?

17 A. The selection scales do have, like I mentioned
18 earlier, some areas of subjectivity. When reviewing these
19 cases, anybody can go back, four of us can go back and
20 independently score that and come out with a little bit
21 score. I mean, it is a guideline.

22 If a defendant scored out probationable on the
23 assessment, we will be well within our right to recommend a
24 denial, if we felt it was justified or were able to support

1 that.

2 Q. And in terms of this case, as a supervisor looking
3 at it, do you support this recommendation?

4 A. I do support the recommendation.

5 Q. Now, you had indicated through questioning with
6 Ms. Pusich that you reviewed Gregg's notes as to the
7 Blankenship interview and could you describe a little bit to
8 the Court about what you did in that regard?

9 MS. PUSICH: Your Honor, I'll object to them
10 testifying to anything I haven't been provided.

11 MS. DRUCKMAN: Well, she questioned on the
12 officer's assessment of the defendant as hostile and
13 noncooperative.

14 THE COURT: Well, isn't the --

15 MS. PUSICH: Your Honor, she knows about that in
16 her report, but it's hearsay, and I haven't been given the
17 opportunity to prepare to appropriately reference that.

18 THE COURT: Sustained. We'd have to call Officer
19 Gregg.

20 BY MS. DRUCKMAN:

21 Q. And then, finally, the questions related to Mental
22 Health Court, given that this is not a case that the State
23 indicated that Mental Health Court being any type of a part
24 of the negotiations and the State is not obviously

1 recommending that, would the Division independently consider
2 Mental Health Court or not?

3 A. We can. I would say it's rare, but we can.

4 MS. DRUCKMAN: Thank you, no further questions.

5 THE COURT: Any questions?

6 MS. PUSICH: No more questions. Thank you, your
7 Honor.

8 THE COURT: As far as the State's concerned, other
9 than the victim in the case?

10 MS. DRUCKMAN: No, your Honor, except the victim
11 does want to be heard at to end.

12 THE COURT: Certainly.

13 MS. DRUCKMAN: And as per the guilty plea
14 memorandum and the negotiations, the State is concurring with
15 the recommendation. After they make their argument, I'll
16 make my argument.

17 THE COURT: All right. Thank you. Ms. Pusich.

18 MS. PUSICH: Your Honor, I appreciate Ms. Pappas
19 coming here today and waiting through the morning calendar.
20 However, her testimony doesn't allay my concerns in any way.

21 We're dealing with a document that was prepared
22 before the Americans with Disabilities Act was put in place
23 by the United States Congress in 1990. The answers to the
24 questions regarding employment and employability nowhere take

1 into account a person who has been found lawfully disabled,
2 which my client has and the Division documented.

3 I think that the Court needs to keep in mind that
4 although I had concerns with many of the questions, the
5 subjectivity specifically related to those two causes me
6 great concern, because together, the scores that he received,
7 if they had taken disability into account, he would have
8 gotten six more points. And with six more points on their
9 scale, he would not have been borderline, he would have been
10 someone who was recommended for probation.

11 So at the outset, I believe the scale itself is
12 not being appropriately used. I don't think it's complete.
13 I think because of its age, it doesn't comply with current
14 law. And I think that is a reason that, particularly in the
15 case of Mr. Blankenship, there's question to its validity at
16 all.

17 Beyond that, your Honor, I think there are many
18 other areas that show subjectivity. I'm very concerned about
19 their grading Mr. Blankenship down for having a disruptive
20 family situation when his wife has been present for every
21 appearance from the very beginning of the case and every
22 continuance. He lives with her. He has for many, many
23 years. They support each other in getting the medical
24 attention they need. And I have no way of knowing why they

1 graded him as living in a disruptive family environment.

2 I also think it's troubling that the Division
3 includes a score that may be based upon the behavior of
4 someone else. I don't think that should be held against
5 someone facing sentencing.

6 So you how this all plays into what the Court is
7 charged to do is that one of the foremost concerns, both by
8 the Nevada Supreme Court and the U.S. Supreme Court, is that
9 a judge imposing a sentence be relying upon reliable
10 information. It's considered a deprivation of my client's
11 due process if you rely upon information that is not
12 reliable, that is suspect. And I think that the information
13 provided to the Court this morning shows that this grading
14 scale, which is one of the tools relied upon by the Division,
15 is something they shouldn't be relying upon, particularly
16 with respect to a disabled individual.

17 Your Honor, the next thing that comes up and the
18 State characterized one-half of my argument when they said
19 that I had concerns about the grading scale. The second
20 concern I have is the way it is used in making applications
21 to a Mental Health Court. This is not a crime for which the
22 State's concurrence is needed to be routed to Mental Health
23 Court. Although there are many cases where we negotiate
24 that, we didn't here, but it's not a bar, because this is not

1 a crime of violence that requires their agreement.

2 What happens, your Honor, and I don't know if
3 you've come across it in maybe following or assisting in the
4 Mental Health Court is that when I make an application for
5 someone to participate, one of the first things I'm asked is,
6 is there a presentence report and can we see it? In this
7 case, giving that information to Mental Health Court already
8 includes the information I later found out was wrong.

9 On top of that, Officer Munson is in fact assigned
10 to the Mental Health Court and he participates in their
11 staffing. Again, relying on this report, he told Judge
12 Breen, and you can see from the e-mail that I attached to the
13 first motion from Ms. Biondo, that they had concerns that he
14 was too dangerous. So now the information that was not
15 properly collected and analyzed through the grading scale has
16 actually impacted my client adversely twice in the same case.

17 So it's this nasty spiral where to begin with they
18 don't include the information regarding disability, and then
19 the officer looks and says, no, we found him borderline and
20 recommended against his getting probation at all, and he's
21 standing in front of Judge Breen saying, the Division doesn't
22 think he should be in Mental Health Court either. So I feel
23 like he's being punished for his disability over and over
24 again, which violates the law.

1 During her testimony, Ms. Pappas suggested that
2 the references to Mr. Blankenship's prior criminal history
3 might be seen by some as dated and sporadic or stale in
4 nature. It's not just that they might be seen by some that
5 way, they would be seen by the Nevada Supreme Court that way.
6 And the reason the Court knows that is because the analysis
7 of cases in which the State has filed habitual criminal
8 enhancements. In this case, what they're looking at, the
9 most recent conviction, is a 12-year-old misdemeanor for
10 which he was given a probation term he completed.

11 Your Honor, I also had some concerns with their
12 determination that this was a crime of sophistication. They
13 do not define it, as I note in the moving papers, the federal
14 government has in the sentencing guidelines, and nothing
15 about what Mr. Blankenship is accused of doing and pled
16 guilty to doing in this case qualifies in any way. It wasn't
17 sneaky. It didn't point to someone else. It did not deflect
18 attention to him. He's kind of the poster child for not
19 being sophisticated in the way that this was handled.

20 Your Honor, as I noted on page five of the
21 supplemental report, the grading scale would only let a
22 person be recommended at 100 percent if they were over
23 40 years of age, a long-term resident and had virtually no
24 problems. They would also have a crime that has no victim, a

1 crime that caused no financial loss, a crime that caused no
2 physical hardship, they couldn't have problems with drugs or
3 alcohol or mental illness. If that person had all of those
4 things going for them, they wouldn't be standing next to me
5 in a courtroom.

6 Your Honor, under the circumstances, I believe
7 that the request that I make in the motions are appropriate.
8 Mr. Blankenship should in fact be granted probation and he
9 should in fact be granted Mental Health Court. He is fully
10 qualified. The grading scale is heavily biased against him
11 as a disabled person, which is not controverted.

12 One of the things I anticipate hearing and I
13 understand that the victim in this case was extraordinarily
14 frustrated and I daresay probably frightened as well. This
15 was a circumstance where Mr. Blankenship who has since gotten
16 additional assistance for his mental health issues, wasn't
17 able to follow through with everything.

18 One of the very frustrating and frightening things
19 I found out when I first started helping Mr. Blankenship is
20 when he went to get additional assistance for his mental
21 health issues, he was told he needed to sign up for the
22 Affordable Care Act. I don't know which idiot, and when they
23 come and identify themselves to me, maybe I'll apologize, but
24 which idiot suggested that to him. But what that

1 recommendation resulted in, is the ACA people were garnishing
2 nearly half of his disability check for a period of several
3 months.

4 Ultimately, some very nice social worker interns
5 in my office were able to help him try to settle some of the
6 paper work. But he was given a disability award based upon
7 his physical and mental situation that they believed would be
8 sufficient to help him live. And then when he tries to get
9 additional help, some person and I haven't identified who,
10 said, oh, no, you have to sign up for this, and when he did,
11 they started garnishing nearly half of his disability check.

12 So he was extremely frustrated. He was worried he
13 was going to be homeless and starving. In the midst of that,
14 your Honor, he did something frightening and destructive and
15 stupid. I'm not trying to insult him. That's a fair
16 characterization of what went on. Not only did he destroy
17 property, he left messages with the landlord that I'm sure
18 concerned him and he's right to have felt that way. But that
19 doesn't turn Mr. Blankenship into someone who is completely
20 healthy. He wasn't then. He's better now.

21 In fact, you may recall, we continued this last
22 week, not because we were trying to get bonus points, the
23 State seems to suggest we continue it right and left for no
24 reason, but because my client was in Renown emergency

1 suffering from complications of diabetes and also some
2 cardiac issues. His doctor did change some of his
3 medications, sent him home and he's doing better and we're
4 happy to see that. But he wasn't just skipping court on a
5 whim. He was actually hospitalized at the time.

6 So, your Honor, is this a frightening, frustrating
7 situation for the victim? Absolutely. And through no
8 actions of the victim, at many times it's been a frightening,
9 frustrating situation for Mr. Blankenship as well.

10 THE COURT: All right. Mr. Blankenship, the law
11 affords you an opportunity to address the Court at the time
12 of sentencing in terms of the presentence investigation
13 report, mitigation, punishment, any matter you want to bring
14 to the Court's attention, I invite you to do that at this
15 time, if you wish.

16 MS. PUSICH: Your Honor, he'd rather not. Thank
17 you.

18 THE COURT: All right. Thank you. Ms. Druckman,
19 do we have a victim statement?

20 MS. DRUCKMAN: Certainly, your Honor. Does the
21 Court wish to hear my argument in support of the
22 recommendation.

23 THE COURT: That's fine. Yes.

24 MS. DRUCKMAN: Very briefly, your Honor. The

1 State is in agreement with the Division's recommendation for
2 the following reasons. First of all, the nature of the
3 threats directed towards the landlord during the period
4 before the property was damaged by the defendant, these
5 threats were constant. They were repeated. There was a
6 significant number of threats directed towards the victim's
7 cell phone. He could have been additionally charged with
8 annoying phone calls or threatening phone calls. He was not,
9 because the felony obviously covered that in some form.

10 The nature of doing the sort of damage he did, the
11 victim described having almost \$7,670, give or take a few
12 cents, of damage. So it wasn't as if he just damaged a
13 little bit of property. I mean, he pretty much destroyed
14 that residence that he had rented and been evicted from.

15 And, you know, somehow in the defendant's mind,
16 that serious threats and hostility directed towards the
17 landlord were acceptable as in his mind was damage, because,
18 quote, everybody does damage. Well, it's evident when you
19 look at the type of damage that was done in this case that
20 not everybody does this type of damage. This was willful.
21 It was malicious. And it was -- it came out of a mind that
22 was hostile and violent and angry and directing that at the
23 landlord and the impact of those thoughts was this
24 destruction of the property before he moved out.

1 So the State urges the Court to find that he is a
2 continuing threat to the victim and the victim's safety and
3 to consider that in following the recommendation. The victim
4 is here. Sir, if you would come forward. Please walk up to
5 the witness stand and raise your right hand.

6 (One witness sworn at this time.)

7 DOUGLAS CARLING

8 called as a witness and being duly sworn did testify as
9 follows:

10 DIRECT EXAMINATION

11 BY MS. DRUCKMAN:

12 Q. Could you please say your name out loud and spell
13 it for our court reporter?

14 A. Douglas Carling, C-a-r-l-i-n-g.

15 Q. And can you please tell the Court what it is you
16 want to say to him?

17 A. I ran into Mr. Blankenship and his wife and I had
18 worked out a payment plan with them in order to get into the
19 residence. I had given them every opportunity to get in
20 there. We had a previous dispute with a neighbor, which I
21 got rid of the neighbor and allowed him to move to a
22 neighboring residence. I had done everything to work with
23 him.

24 And then some frustration arose over \$25. They

1 had paid the rent on time. I had allowed them to move to a
2 neighboring residence. And for some reason, he destroyed the
3 property, every inch of the drywall, kicked, written on,
4 ripped a ceiling fan out of the ceiling, kicked all the
5 cabinet doors out, wrote pretty horrible things regarding my
6 family, what he wanted to happen to them, breaks the stuff.
7 And all of this was pretty much unprovoked.

8 He wasn't getting evicted. I allowed him a new
9 residence. I allowed him a payment plan in order to get into
10 the property. This was several thousand dollars, several
11 hours of time of cleaning. There was feces smeared all over
12 the wall, on the electrical box, which I had to take apart in
13 order to get the dried feces out. And it just -- there has
14 to be a consequence for this action. It's not probation or
15 that. I mean, this cost me time away from my job, money I'll
16 never get back and it was deliberate and unprovoked.

17 Q. Can you describe to the Court the emotional effect
18 on you and your family from the threats and the phone calls?

19 A. Well, receiving phone calls saying he hopes my
20 family dies and death threats is a little unsettling. I do
21 have a job, which I have to use my mobile phone frequently,
22 so I'm picking it up or having to use my phone. It's not
23 like I can just change my phone number. And to have three or
24 four phone calls threatening me, I don't know, it's kind of a

1 hassle and ongoing.

2 Q. Can you describe to the Court whether you believe
3 he constitutes a danger to others in the community in
4 addition to you and your family?

5 MS. PUSICH: Objection, relevance.

6 THE COURT: Sustained.

7 BY MS. DRUCKMAN:

8 Q. Can you describe to the Court what penalty or
9 punishment you want the Court to impose in this case?

10 A. I mean, I heard probation, I don't know, but
11 there's not going to be anyway I can ever get compensated for
12 the amount of damages that was done and the amount of time I
13 had to put into this. But there has to be some form of
14 consequence where it's not one day in jail for causing \$7,000
15 of damage and weekends and time and trips meeting contractors
16 where it gets checked in on.

17 I mean, it has to be something where if you
18 deliberately destroy someone's property, that there's a
19 consequence to happen where it's not you're just being
20 monitored on probation. It's ridiculous.

21 Q. Could you explain what you mean to the Court when
22 you say a consequence? Are you asking for him to be
23 incarcerated?

24 A. Correct, yes, incarceration.

1 MS. DRUCKMAN: Thank you. No further questions.

2 THE COURT: All right. Ms. Pusich.

3 MS. PUSICH: No, thank you, your Honor.

4 THE COURT: Thank you, Mr. Carling. Watch your
5 step.

6 MS. PUSICH: Your Honor, I'm sorry. I do want to
7 ask a question.

8 THE COURT: Mr. Carling, come on back.

9 MS. PUSICH: He can sit if he wants. I don't
10 think it will take that long.

11 THE COURT: You remain under oath.

12 CROSS EXAMINATION

13 BY MS. PUSICH:

14 Q. You said there was a disagreement about \$25?

15 A. Yes, about a satellite dish or a deposit that was
16 owed or paid.

17 Q. But the rent had been paid and they were not being
18 evicted?

19 A. Correct.

20 Q. Was the \$25 something you had paid or something
21 that Mr. Blankenship said he had paid?

22 A. There was -- it's been a while, but it was a
23 satellite dish was put up and then transferred over and
24 there's an amount that said was owed back to him or wasn't

1 the satellite dish, but it was never -- I had given him an
2 opportunity to come in or for me to discuss it with him. And
3 it never got to that, because it was escalated to the point
4 that the property was destroyed and he moved out.

5 Q. You said before this incident occurred where he's
6 arrested and the property is destroyed, he moved units.
7 Which one did he leave and which one did he move into?

8 A. He moved out of the middle unit to an end unit,
9 unit A.

10 Q. A is where he ends up?

11 A. Correct.

12 Q. Which one was destroyed?

13 A. A.

14 MS. PUSICH: Thank you, your Honor.

15 THE COURT: Thank you, Mr. Carling.

16 THE COURT: Ms. Druckman, anything further?

17 MS. DRUCKMAN: No, your Honor.

18 THE COURT: All right. Thank you. Ms. Pusich,
19 anything further?

20 MS. PUSICH: No, your Honor. That testimony
21 doesn't change my arguments. Thank you.

22 THE COURT: All right. Thank you.

23 MS. PAPPAS: Your Honor, may I be heard briefly?

24 THE COURT: Let me hear from the Division.

1 MS. PAPPAS: I am troubled, because I know it's on
2 the record and I just need to say on the record that in no
3 way is the Division or its tools discriminating against the
4 defendant due to any disability. People are disabled and
5 collect benefits all the time and many of them can work.

6 In looking at the PSI and what he reported was his
7 disability or his diagnoses, many people work with those. So
8 could he work? Perhaps he could. We don't have a letter
9 saying that he is unable to perform any kind of job tasks.

10 We look at things that are going to affect the
11 community, affect the officers that are going to be tasked
12 with supervising him. For those reasons, our recommendation
13 is for incarceration.

14 THE COURT: Ms. Pusich, I'll give you a chance to
15 weigh in, if you wish. I understand the defense argument,
16 which is this statistical tool predates the ADA, but
17 Ms. Pusich, anything further?

18 MS. PUSICH: Your Honor, the only thing I would
19 note is that the report authored by Mr. Gregg and approved by
20 Mr. Wilson documents my client's receiving Social Security
21 disability since 2003. If more information was required to
22 change his grading scale, I think it was incumbent upon the
23 Division to tell him that.

24 THE COURT: All right. Thank you. This is a

1 difficult case. Judges have to take a lot of things into
2 consideration in determining what the appropriate sentence is
3 in every case, because every case is different, every
4 defendant is different, every victim is different, every
5 crime is different.

6 The Court has to take into consideration the
7 defendant, the defendant's background, criminal history,
8 education, military service, if appropriate, mental, physical
9 conditions.

10 The Court always to take into consideration the
11 victim or victims. In this case, there's more than just one
12 victim, more than Mr. Carling. Attached to the PSR was a
13 letter from Mrs. Blankenship, Loretta, and this Court read it
14 twice. It was very, very moving and probably the best
15 defense presented for Mr. Blankenship.

16 And just setting aside the dispute between
17 landlord and tenant, and while Mr. Blankenship didn't author
18 a substantial statement on his behalf, I think
19 Mrs. Blankenship sums it up when she says, as my husband has
20 expressed, he did not handle the situation correctly.

21 Also touching is this issue we face as a society,
22 which is oftentimes a choice between food and medicine.
23 Mrs. Blankenship says, my husband is diagnosed with bipolar,
24 paranoid diabetes, prostate problems and other mental

1 illnesses. Due to the amount of medicines needed for the
2 prostate and diabetes, he currently does not take any mental
3 health -- mental illness meds.

4 The Court takes into consideration the victim in
5 this case, and this is truly an innocent victim. This was an
6 individual who is a small businessperson, which is the
7 bedrock of our American economy. But not only that, but this
8 is an individual who is providing a service to this
9 community. Rental housing is tight in Reno. It's very
10 difficult to find rental units. And this entire community
11 depends upon the willingness of small businessmen like
12 Mr. Carling and others to take a risk and give up other
13 employment or perhaps add this as a second job, investing,
14 housing, go out and fix toilets on Thanksgiving evenings and
15 take phone calls over New Years Eve about broken heaters and
16 leaking faucets and go out and fix them.

17 In this case, as a result of this, the victim has
18 incurred substantial amounts of money to which, as he admits,
19 he'll never recover. I mean, Mr. Blankenship doesn't have
20 the wherewithal to pay these thousands and thousands of
21 dollars. The insurance only went so far.

22 In addition to that, as Mr. Carling pointed out,
23 there's other damages, the time away from work, the time he
24 spent here this morning, the time he spent every time we've

1 called this case for sentencing, meeting with contractors,
2 having to go and clean out feces from electrical boxes. I
3 don't know if you could put a figure on that.

4 The Court has to take into consideration the
5 consequences of not only the victims in the case, but the
6 nature of the offense. This offense is destruction of
7 property, and that's exactly what happened here. Someone
8 just didn't put a fist through a plywood door. This was a
9 systematic campaign to destroy the interior of that
10 residence, every aspect. It went beyond retaliation. It
11 crossed any acceptable line in terms of getting back at
12 somebody.

13 I tend to agree with the defense in this limited
14 respect, it may not have been a sophisticated act, and,
15 certainly, I think it's 3351, the sentencing guidelines, may
16 not fall under a black and white definition of sophistication
17 in terms of the type of crime, it was a systematic campaign
18 of destruction.

19 The Court has to look into the other aspects of
20 sentencing. It has to consider the goals of sentencing,
21 rehabilitation, isolation, incarceration, retribution,
22 deterrence, singular or collective.

23 In this case, rehabilitation doesn't necessarily
24 apply. Mr. Blankenship clearly knows what's right and wrong.

1 He has, as his record reflects, been in trouble before, but
2 has been able to comply with the laws. He certainly has
3 remained out of trouble for almost 12 years. And so it's not
4 as if he needs to be rehabilitated. He knows right from
5 wrong.

6 In terms of retribution, there is clearly an
7 element of that from Mr. Carling's perspective and that's a
8 factor, not a significant one, but it certainly is one that
9 the Court considers.

10 Isolation, that doesn't apply in this case. Mr.
11 Blankenship certainly integrates well in society and has been
12 able in some limited respect to maintain peaceful relations
13 with others in some respects.

14 As far as deterrence is concerned, well, I think
15 that's probably where the scales tip in this case. As
16 Mr. Carling says, there has to be consequences. Other
17 tenants who see this and find that there is no consequence to
18 it may be tempted to engage in similar destructive behavior,
19 hearing there would be no downside to it.

20 So having taken all of this into consideration --
21 let me backup. The Court has considered all of those
22 factors, the nature of the offense, the defendant's
23 background and the impact to the victim. And based on those
24 three pillars, it will be the order of the Court that the

1 defendant is to pay a \$25 administrative assessment fee, \$3
2 genetic marking assessment, \$150 DNA. I'm going to waive the
3 attorney's fees in this case. Find that the defendant does
4 not have the resources to pay the attorney's fees. The
5 defendant is sentenced to the custody of the Nevada
6 Department of Corrections for a term of imprisonment of 12 to
7 32 months. He's to pay \$3,150 in restitution. Credit time
8 served, Ms. Pappas?

9 MS. PAPPAS: One day, your Honor.

10 THE COURT: One day. That will be the order of
11 the Court.

12 MS. PUSICH: Your Honor, we would ask that he be
13 released on his own recognizance pending appeal.

14 THE COURT: That is denied. I feel that he is a
15 danger to the community. All right.

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1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on June 18, 2014, at the hour of 9:00
8 a.m., and took verbatim stenotype notes of the proceedings
9 had upon the sentencing in the matter of THE STATE OF NEVADA,
10 Plaintiff, vs. LERON TERRELL BLANKENSHIP, Defendant, Case
11 No. CR14-0461, and thereafter, by means of computer-aided
12 transcription, transcribed them into typewriting as herein
13 appears;

14 That the foregoing transcript, consisting of pages 1
15 through 43, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 29th day of July 2014.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

1 **CODE 1850**
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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 **STATE OF NEVADA,**

10 **Plaintiff,**

11 **vs.**

Case No. CR14-0461

12 **LERON TERRELL BLANKENSHIP,**

Dept. No. 7

13 **Defendant.**
14 _____/

15 **JUDGMENT OF CONVICTION**

16 The Defendant, having entered a plea of Guilty, and no sufficient cause
17 being shown by Defendant as to why judgment should not be pronounced against him,
18 the Court rendered judgment as follows:

19 Leron Terrell Blankenship is guilty of the crime of Destroy or Injure Real or
20 Personal Property of Another, Value \$5,000.00 or Greater, a violation of NRS 206.310
21 and NRS 193.155, a felony, as charged in the Information, and that he be punished by
22 imprisonment in the Nevada State Prison for a minimum term of Twelve (12) months to a
23 maximum term of Thirty-Two (32) months, with One (1) day credit for time served, and by
24 payment of restitution in the amount of Three Thousand One Hundred and Fifty Dollars
25 (\$3,150.00).

26 It is further ordered that the Defendant shall pay the statutory Twenty-Five
27 Dollar (\$25.00) administrative assessment fee, the Three Dollar (\$3.00) administrative
28 assessment fee for obtaining a biological specimen and conducting a genetic marker

1 analysis, if not previously ordered, the One Hundred Fifty Dollar (\$150.00) DNA testing
2 fee, and submit to a DNA analysis to determine the presence of genetic markers, if not
3 previously ordered, and attorney's fees are hereby waived by the Court.

4 Any fine, fee or administrative assessment imposed upon the Defendant
5 today as reflected in this Judgment of Conviction constitutes a lien, as defined in Nevada
6 Revised Statutes (NRS 176.275). Should the Defendant not pay these fines, fees or
7 assessments, collection efforts may be undertaken against him.

8 Dated this 19th day of June, 2014.

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11 Patrick T. Tanager
12 DISTRICT JUDGE
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1 CODE NO. 2515
2 WASHOE COUNTY PUBLIC DEFENDER
3 JOHN REESE PETTY, State Bar Number 0010
4 350 South Center Street, 5th Floor
5 P.O. Box 11130
6 Reno, Nevada 89520-0027
7 (775) 337-4827
8 Attorney for Defendant

9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11
12 IN AND FOR THE COUNTY OF WASHOE

13 THE STATE OF NEVADA,

14 Plaintiff,

15 vs.

Case No. CR14-0461

16 LERON TERRELL BLANKENSHIP,

Dept. No. 7

17 Defendant.

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NOTICE OF APPEAL

27 NOTICE IS HEREBY GIVEN that LERON TERRELL BLANKENSHIP, the defendant
28 above named, hereby appeals to the Supreme Court of Nevada from the judgment of conviction
29 entered in this action on June 19, 2014. This is a Fast Track Appeal.

30 The undersigned hereby affirms, pursuant to NRS 239B.030, that this document does not
31 contain the social security number of any person.

32 DATED this 17th day of July, 2014.

33 JEREMY T. BOSLER
34 WASHOE COUNTY PUBLIC DEFENDER

35 By: /s/ John Reese Petty
36 JOHN REESE PETTY, Chief Deputy

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LERON TERRELL BLANKENSHIP (#1122651)
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, Nevada 89702

CATHERINE CORTEZ MASTO
Attorney General State of Nevada
100 N. Carson Street
Carson City, Nevada 89701

DATED this 17th day of July, 2014.

/s/ John Reese Petty
JOHN REESE PETTY

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 4th day of September, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Terrence P. McCarthy, Chief Appellate Deputy,
Washoe County District Attorney's Office

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Leron Terrell Blankenship (#1122651)
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, Nevada 89702

John Reese Petty
Washoe County Public Defender's Office