

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA BACHARACH

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

DOCKET NUMBER: 69677

Electronically Filed
Jun 09 2016 09:48 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S FAST TRACK APPENDIX VOLUME VII

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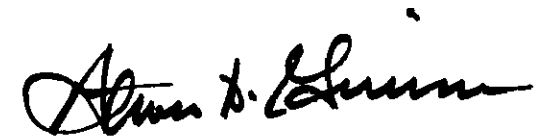
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

VS.

JOSHUA W. BACHARACH,

Defendant.

CASE NO. C299425

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

THURSDAY, NOVEMBER 5, 2015
TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 4
VOLUME IV

APPEARANCES:

For the State:

JOHN FATTIG, ESQ.
MEGAN S. THOMSON, ESQ.
Chief Deputy District Attorneys

For the Defendant:

ROCHELLE T. NGUYEN, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

TRANSCRIBED BY: BRITTANY MANGELSON, INDEPENDENT TRANSCRIBER

1 THURSDAY, NOVEMBER 5, 2015 AT 4:05 P.M.

2
3 [Outside the presence of the jury]

4 THE COURT: Just in case -- let's do jury instructions just in case.

5 1 is the introduction

6 2, If in these instructions.

7 3 is the indictment.

8 4 is to constitute the crime charged.

9 MS. NGUYEN: Is it the full indictment or just those additional three --

10 THE COURT: No, just three counts.

11 MS. THOMSON: Just the three counts.

12 THE COURT: 5, The Defendant is presumed innocent.

13 6, You are here to determine.

14 7, The evidence which you are to consider.

15 8, The credibility or believability.

16 You better get him a tie. The purple one that he's wearing that was my
17 tie.

18 MS. NGUYEN: Oh, it was?

19 THE COURT: I don't wear it anymore, obviously. I gave it to Defendants.

20 9, A witness who has special knowledge. Do we need that one?

21 MS. NGUYEN: We don't have any experts.

22 THE COURT: Do we need --

23 MS. THOMSON: Well, arguably, because it's the definition of the firearm.
24 We had the person testify. It's up to you guys I guess.

25 THE COURT: All right.

1 MS. THOMSON: Yeah, the finger -- yeah, we do.
2 THE COURT: 10, A person who has been convicted of a felony.
3 11 -- I don't know how that number got at the bottom.
4 MS. THOMSON: Because I am bad at stuff.
5 MS. NGUYEN: Do we have white-out?
6 THE COURT: 11, There --
7 MS. THOMSON: Is it an NRS or is the instruction number?
8 MS. NGUYEN: It's just an instruction number. There's some white-out tape
9 up there?
10 MS. THOMSON: Then it's missing on the next page.
11 MS. NGUYEN: Oh.
12 THE COURT: Yeah. That's 12 on the next page.
13 MS. NGUYEN: I bet that line is missing from the next page.
14 MS. THOMSON: It is if it's at the bottom.
15 THE COURT: I just --
16 MS. NGUYEN: No, it's not.
17 THE COURT: No.
18 MS. THOMSON: Really?
19 MS. NGUYEN: Oh, it is.
20 THE COURT: It is. I put the number 12 on there.
21 MS. NGUYEN: That works.
22 MS. THOMSON: Do you want me to go back and mess with and have them
23 reprint those two pages?
24 THE COURT: 13 is mere presence.
25 This is just cautionary.

1 14, It is a constitutional right.
2 15, Although you are to consider.
3 16, In your deliberation.
4 17, You are to consider.
5 18.
6 19 is you'll listen to Counsel.
7 State is familiar with Jury Instructions 1 through 19?
8 MS. THOMSON: Yes, Your Honor.
9 THE COURT: Satisfied with them?
10 MS. THOMSON: Yes, Your Honor.
11 THE COURT: You've had an op -- do you have any others you wish to
12 propose?
13 MS. THOMSON: No, Your Honor.
14 THE COURT: You've looked at the verdict form?
15 MS. THOMSON: Yes, Your Honor.
16 THE COURT: You're satisfied with it?
17 MS. THOMSON: Yes, Your Honor.
18 THE COURT: Ms. Nguyen you've -- you're familiar with the Jury Instructions
19 1 through 19?
20 MS. NGUYEN: That's correct.
21 THE COURT: You're satisfied with them?
22 MS. NGUYEN: Yes.
23 THE COURT: Do you have any more you wish to propose?
24 MS. NGUYEN: No. I submitted the mere presence and the alterations had
25 been made on these as well that I had requested.

1 THE COURT: All right. So you worked with the State and you're satisfied that
2 those alterations took place?

3 MS. NGUYEN: That's correct.

4 THE COURT: And you've looked at the verdict form?

5 MS. NGUYEN: Yes.

6 THE COURT: Satisfied with them?

7 MS. NGUYEN: Yes.

8 THE COURT: All right. Now we just have to -- oh, Fattig is -- where did -- oh,
9 there he is. Are you ready?

10 MR. FATTIG: I'm just doing the JOC's, Your Honor. There's going to be
11 exhibits [indiscernible].

12 THE COURT: Well we just did the jury instructions just in case. Why don't
13 you keep those?

14 MS. THOMSON: Are we on the record now or no?

15 THE COURT: Well I guess we're going with this ex-felon anyway.

16 MS. THOMSON: Yeah.

17 THE COURT: Yeah. Did you get that on -- oh, good.

18 MS. THOMSON: In which case, are we still on the record?

19 THE COURT: Yeah.

20 MS. THOMSON: Then I don't know that we were when we previously
21 discussed having you just read the specials and telling them that they're still bound
22 by all the prior instructions, instead of sitting here. That way we have on the record
23 that Ms. Nguyen agrees to --

24 THE COURT: Am I --

25 MS. THOMSON: -- just reading the specials?

1 THE COURT: Am I --
2 MS. NGUYEN: Yes.
3 THE COURT: -- reading 1 through 19?
4 MS. THOMSON: I think that there are like three that reasonably we need to
5 read and just admonish them that --
6 THE COURT: Tell which ones I --
7 MS. THOMSON: -- they're still bound by the prior instructions also.
8 THE COURT: you and Ms. Nguyen decided which ones --
9 MS. NGUYEN: You want to start --
10 THE COURT: -- you want me to read in case we have to read them.
11 MS. THOMSON: I think we give them the entire packet, but decide --
12 MS. NGUYEN: Yeah.
13 MS. THOMSON: -- what to read out loud.
14 THE COURT: I'm not giving them each one of those.
15 MS. THOMSON: That's fine.
16 THE COURT: They can have one.
17 MS. THOMSON: That's fine. I mean, assuming that's fine.
18 MS. NGUYEN: Yeah, that's fine.
19 [Colloquy between Counsel]
20 MS. THOMSON: 10 through 13 is what we're going to ask that you read.
21 THE COURT: All right.
22 MS. THOMSON: And also admonish that they're still bound by the prior
23 instructions.
24 [Colloquy between the Court and the Clerk]
25 THE COURT: You guys ready for the jury?

1 MS. NGUYEN: Yes.

2 [In the presence of the jury]

3 THE MARSHAL: All rise, please.

4 And be seated.

5 THE COURT: All right. Were you able to elect a jury foreperson? If so --

6 THE FOREPERSON: Yes.

7 THE COURT: -- who is --

8 THE FOREPERSON: Yes.

9 THE COURT: Okay. Did you reach a verdict?

10 THE FOREPERSON: Yes.

11 THE COURT: Is it unanimous?

12 THE FOREPERSON: Yes.

13 THE COURT: Would you hand that to the marshal, please?

14 The clerk will now read the verdict into the record.

15 THE CLERK: District Court, Clark County, Nevada. The State of Nevada,
16 plaintiff, versus Joshua W. Bacharach, Defendant. Case Number C-14-299425,
17 Department Number VIII.

18 Verdict: We, the jury, in the above titled case find the Defendant
19 Joshua W. Bacharach, as follows:

20 Count 1, attempt murder with use of a deadly weapon; guilty of attempt
21 murder with use of a deadly weapon.

22 Count 2, discharge of a firearm from or within a structure or vehicle,
23 Walnut; guilty of discharge of a firearm from or within a structure or vehicle.

24 Count 3, assault with a deadly weapon, Carey and North Gateway;
25 guilty assault with a deadly weapon.

1 Count 4, discharge of a firearm from or within a structure or vehicle,
2 Carey and North Gateway; guilty of discharge of a firearm from or within a structure
3 or vehicle.

4 Count 5, assault with a deadly weapon, Carey and North Gateway;
5 guilty of assault with a deadly weapon.

6 Count 6, discharge of a firearm from or within a structure or vehicle,
7 Carey and North Gateway; guilty of discharge of a firearm from or within a structure
8 or vehicle.

9 Count 7, assault with a deadly weapon, Carey and North Lamb; guilty of
10 assault with a deadly weapon.

11 Count 8, discharge of a firearm from or within a structure or vehicle,
12 Carey and North Lamb; guilty of discharge of a firearm from or within a structure or
13 vehicle.

14 Count 9, assault with a deadly weapon, Carey and North Lamb; not
15 guilty.

16 Count 10, discharge of a firearm from or within a structure or vehicle,
17 Carey and North Lamb; not guilty.

18 Count 11, assault with a deadly weapon, Carey and Dolly; guilty of
19 assault with a deadly weapon.

20 Count 12, stop required on signal of police officer; guilty of stop
21 required on signal of police officer.

22 Count 13, resisting public officer with use of a firearm; future of resisting
23 public officer with use of a firearm

24 Count 14, possession of firearm with altered or obliterated serial
25 number; guilty of possession of firearm with altered or obliterated serial number.

1 Dated this 5th day of November, 2015. I don't know the number of the
2 foreperson is.

3 THE COURT: The foreperson was number --

4 THE FOREPERSON: 13.

5 THE COURT: Number 13?

6 THE FOREPERSON: Yes.

7 THE COURT: No.

8 THE CLERK: Couldn't be.

9 THE FOREPERSON: 13.

10 THE COURT: Huh?

11 THE FOREPERSON: Number 13.

12 MR. FATTIG: He was the alternate.

13 THE FOREPERSON: 11 left.

14 THE COURT: Trevor. Is it Trevor?

15 THE FOREPERSON: Yes.

16 THE COURT: Trevor Yanke.

17 THE CLERK: Trevor Yanke, foreperson.

18 Are these your verdicts?

19 THE COURT: So you say you one, so say you all.

20 THE CLERK: So you say you one, so say you all?

21 THE JURY: Yes.

22 THE COURT: Would you poll the jury?

23 THE CLERK: Juror Number 1, is this your verdict as read?

24 JUROR NUMBER 1: Yes.

25 THE CLERK: Juror Number 2, is this your verdict as read?

1 JUROR NUMBER 2: Yes.
2 THE CLERK: Juror Number 3, is this your verdict as read?
3 JUROR NUMBER 3: Yes.
4 THE CLERK: Juror Number 4, is this your verdict as read?
5 JUROR NUMBER 4: Yes.
6 THE CLERK: Juror Number 5, is this your verdict as read?
7 JUROR NUMBER 5: Yes.
8 THE CLERK: Juror Number 6, is this your verdict as read?
9 JUROR NUMBER 6: Yes.
10 THE CLERK: Juror Number 7, is this your verdict as read?
11 JUROR NUMBER 7: Yes.
12 THE CLERK: Juror Number 8, is this your verdict as read?
13 JUROR NUMBER 8: Yes.
14 THE CLERK: Juror Number 9, is this your verdict as read?
15 JUROR NUMBER 9: Yes.
16 THE CLERK: Juror Number 10, is this your verdict as read?
17 JUROR NUMBER 10: Yes.
18 THE CLERK: Juror Number 11, is this your verdict as read?
19 JUROR NUMBER 11: Yes.
20 THE CLERK: Juror Number 12, is this your verdict as read?
21 JUROR NUMBER 12: Yes.

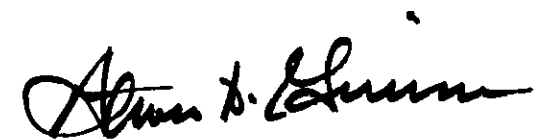
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1 THE COURT: All right. The clerk will now record the verdict in the minutes of
2 the court.

3 [Trial concluded at 4:15 p.m.]
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21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
22 acknowledge that this is a rough draft transcript, expeditiously prepared, not
23 proofread, corrected, or certified to be an accurate transcript.

24 
25 _____
Brittany Mangelson
Independent Transcriber



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

VS.

JOSHUA W. BACHARACH,

Defendant.

CASE NO. C299425

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

THURSDAY, NOVEMBER 5, 2015
TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 1 - VOLUME I
(BIFURCATED TRIAL)

APPEARANCES:

For the State:

JOHN FATTIG, ESQ.
MEGAN S. THOMSON, ESQ.
Chief Deputy District Attorneys

For the Defendant:

ROCHELLE T. NGUYEN, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

TRANSCRIBED BY: BRITTANY MANGELSON, INDEPENDENT TRANSCRIBER

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STATE’S EXHIBITS

208 & 209

Judgments of conviction

4

1 THURSDAY, NOVEMBER 5, 2015 AT 4:15 P.M.

2
3 [In the presence of the jury]

4 THE COURT: You thought this was all, it's not. You can be seated. We
5 have a second part of the trial that you couldn't know about. There's three counts of
6 possession of firearm by an ex-felon.

7 State, are you ready on the possession of firearm by an ex-felon?

8 MR. FATTIG: Yes, Your Honor.

9 THE COURT: Do you want to make an opening statement?

10 MR. FATTIG: No, we would waive open.

11 THE COURT: Defense wish to make an opening statement?

12 MS. NGUYEN: We would waive.

13 THE COURT: You have documents to file or you have filed with the Court?

14 MR. FATTIG: I do, Your Honor. I have, in terms of the evidence in this part of
15 the trial, two certified judgments of conviction showing that Joshua Bacharach, ID
16 Number 1900105 in State's Proposed Exhibit 208. It shows that in Case Number
17 C256298, Joshua Bacharach was convicted of the felony offense of possession of
18 stolen vehicle on December 1st of 2009.

19 And on -- in State's Proposed Exhibit 209 is a certified judgment of
20 conviction showing that Joshua Bacharach was convicted in Case Number C293845
21 on May 13th of 2014 for the felony offense of attempt theft. And we would move to
22 admit these two certified judgments of conviction.

23 THE COURT: You've reviewed those?

24 MS. NGUYEN: I have reviewed those.

25 THE COURT: All right. They'll be admitted.

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[STATE’S EXHIBITS 208 & 209 ADMITTED]

MR. FATTIG: And we would rest our case.

THE COURT: All right. Would Counsel approach the bench a minute?

[Bench Conference Begins]

THE COURT: Do I have to canvas him about taking the stand?

MS. THOMSON: Ah, probably ought to.

MR. FATTIG: Yeah, I think so.

THE COURT: All right.

MS. NGUYEN: Can we take him in the --

THE COURT: I’m going to have --

[Bench Conference Concludes]

THE COURT: I’m going to have the jury just step out for a minute. Tom, take them out in the hall for just a -- if you’ll just take them out in the hall for a minute. You’ll be right back in.

[Outside the presence of the jury]

THE COURT: All right. The door is closed.

Mr. Bacharach, do you want -- wish to testify in this hearing?

THE DEFENDANT: No, sir.

THE COURT: All right. You’ve discussed that with your attorney, you believe that’s in your best interest?

THE DEFENDANT: Yes, sir.

THE COURT: All right. So we can bring them back in?

MS. NGUYEN: Yes.

THE COURT: All right. And you're going to rest as well?

MS. NGUYEN: Yes.

1 [In the presence of the jury]

2 THE MARSHAL: All rise, please.

3 And be seated.

4 THE COURT: All right. Stipulate to the presence of the jury.

5 MR. FATTIG: Yes.

6 MS. NGUYEN: Yes, Your Honor.

7 MS. THOMSON: Yes, Your Honor.

8 THE COURT: And Defense?

9 MS. NGUYEN: Your Honor, we'd rest.

10 THE COURT: I just would inform you that the jury instructions that were

11 previously given to you and read to you and that you have copies of are still in force.

12 [The Court read the Indictment aloud]

13 THE COURT: A person who has been convicted of a felony in this or any

14 other state, or in any political subdivision -- this is Jury Instruction 10 -- political

15 subdivision thereof, or of a felony in violation of the laws of the United States of

16 America, unless he has received a pardon and the pardon does not restrict his right

17 to bear arms, shall not own or have in his possession or under his custody or control

18 any firearm. Neither the concealment of the firearm, nor the carrying of a weapon

19 are necessary elements of the offense.

20 Firearm includes any firearm that is loaded or unloaded; operable or

21 inoperable.

22 Instruction Number 11: Firearm includes any device designed to be

23 used as a weapon from which a projectile may be expelled through the barrel by the

24 force of any explosion or other form of combustion.

25 Instruction 12: The law recognizes two kinds of possession: Actual

1 and constructive. A person who knowingly has direct physical control over a thing,
2 at a given time, is then in actual possession of it.

3 A person who, although not in actual possession, knowingly has both
4 the power and the intention, at a given time, to exercise dominion or control over a
5 thing, either directly or through another person or persons, is then in constructive
6 possession of it.

7 The law recognizes also that possession may be sole or joint. If one
8 person alone has actual or constructive possession of a thing, possession is sole. If
9 two or more persons share actual or constructive possession of a thing, possession
10 is joint.

11 You may find that the element of possession as that term is used in
12 these instructions is present if you find beyond a reasonable doubt that a defendant
13 had actual or constructive possession, either alone or jointly with others.

14 An act or a failure to act is knowingly done, if done voluntarily and
15 intentionally, and not because of mistake or accident or other innocent reason.

16 Instruction 13: Mere presence at the scene of a crime or knowledge
17 that a crime is being committed is not sufficient to establish that a defendant is guilty
18 of an offense, unless you find beyond reasonable doubt that the defendant was a
19 participant and not merely a knowing spectator.

20 However, the presence of a person at the scene of a crime and
21 companionship with another person engaged in the commission of the crime and a
22 course of conduct before and after the offense are circumstances which may be
23 considered in determining whether such person aided and abetted the commission
24 of that crime.

25 And then the other jury instructions were previously given to you and

1 then signed by Douglas E. Smith, the District Court Judge.

2 You will also have a verdict form, the same. And it will -- your
3 foreperson can go over that with you when you get back in the jury room.

4 Before you do, do you have any argument, State?

5 MS. THOMSON: Just briefly, Your Honor.

6 THE COURT: Okay.

7 **CLOSING ARGUMENT BY THE STATE**

8 BY MS. THOMSON:

9 You all have already found that he possessed the .25 caliber, you found
10 that he possessed the .45 caliber. The question now is, is he a felon and did he
11 possess the rifle. The magazine associated to that rifle was found in the same bag
12 as the .25 caliber you heard. That is sufficient to show that he absolutely knew that
13 that rifle was in the vehicle.

14 You'll have both judgments of the conviction, certified court records with
15 you in the back as you're deliberating. We'd ask that you find him guilty of ex-felon
16 possession of a firearm as to each of those three guns that he had that day. Thank
17 you.

18 **CLOSING ARGUMENT BY THE DEFENSE**

19 BY MS. NGUYEN:

20 And I would ask you to look the information that you were presented
21 over the last week in regards to that rifle that was found in the back that was
22 wrapped in either a white shirt or a white sheet of some sort. I don't believe that the
23 State has proven beyond a reasonable doubt that he had possession of that. Thank
24 you.

25 THE COURT: Thank you. All right.

1 Tom, take the jury to deliberation.

2 [The jury retired to deliberate at 4:24 p.m.]

3 [Trial resumed at 4:34 p.m.]

4 [In the presence of the jury]

5 THE MARSHAL: All rise, please.

6 And be seated.

7 THE COURT: The record will reflect the presence of the Defendant, his
8 attorney and the Deputy District Attorneys for the State, and all 12 members of the
9 jury. Has the jury reached a verdict?

10 THE FOREPERSON: Yes.

11 THE COURT: Will you hand that to -- was it unanimous?

12 THE FOREPERSON: Yes.

13 THE COURT: The Clerk will now read the verdict into the record.

14 THE CLERK: District Court, Clark County, Nevada. The State of Nevada,
15 plaintiff, versus Joshua W. Bacharach, Defendant. Case Number C-14-299425,
16 Department Number VIII.

17 Verdict: We, the jury, in the above titled case find the Defendant
18 Joshua W. Bacharach, as follows:

19 Count 15, possession of a firearm by ex-felon, .25 caliber Colt; guilty of
20 possession of a firearm by ex-felon.

21 Count 16, possession of a firearm by ex-felon, 7.62 Ebank rifle; guilty of
22 possession of a firearm by ex-felon.

23 Count 17, possession of a firearm by ex-felon, .45 caliber Colt; guilty of
24 possession of a firearm by ex-felon.

25 Dated this 15th day of November, 2015, Trevor Yanke, foreperson.

1 Ladies and gentlemen of the jury, are these your verdicts as read?
2 THE JURY: Yes.
3 THE COURT: Poll the jury, please?
4 THE CLERK: Juror Number 1, is this your verdict as read?
5 JUROR NUMBER 1: Yes.
6 THE CLERK: Juror Number 2, is this your verdict as read?
7 JUROR NUMBER 2: Yes.
8 THE CLERK: Juror Number 3, is this your verdict as read?
9 JUROR NUMBER 3: Yes.
10 THE CLERK: Juror Number 4, is this your verdict as read?
11 JUROR NUMBER 4: Yes.
12 THE CLERK: Juror Number 5, is this your verdict as read?
13 JUROR NUMBER 5: Yes.
14 THE CLERK: Juror Number 6, is this your verdict as read?
15 JUROR NUMBER 6: Yes.
16 THE CLERK: Juror Number 7, is this your verdict as read?
17 JUROR NUMBER 7: Yes.
18 THE CLERK: Juror Number 8, is this your verdict as read?
19 JUROR NUMBER 8: Yes.
20 THE CLERK: Juror Number 9, is this your verdict as read?
21 JUROR NUMBER 9: Yes.
22 THE CLERK: Juror Number 10, is this your verdict as read?
23 JUROR NUMBER 10: Yes.
24 THE CLERK: Juror Number 11, is this your verdict as read?
25 JUROR NUMBER 11: Yes.

1 THE CLERK: Juror Number 12, is this your verdict as read?

2 JUROR NUMBER 12: Yes.

3 THE COURT: The clerk will now record the verdict in the minutes of the
4 court.

5 Ladies and gentleman, as you know, the right to trial by jury is one of
6 the basic fundamental constitutional rights that I firmly believe in. And that is that
7 every person accused of a crime be judged by a fair and impartial jury. But to have
8 a fair and impartial jury panel you must have jurors and unfortunately, jury service is
9 something that many people shirk. They don't wish to become involved.

10 That is why I'm pleased that 12 men and women have been willing to
11 give of your valuable time. You've been most attentive and consciousness. On
12 behalf of Counsel, the parties, the Eighth Judicial District Court, I wish to thank you
13 for your careful deliberation in the case.

14 The question now may arise as to whether you may now talk to other
15 persons regarding this matter. I advise you that you may, if you wish, talk to other
16 persons and discuss your deliberation which you gave in this matter. You're not
17 required to do so, however, and if any person persists in discussing this case after
18 you have indicated that you don't wish to talk about it or raise an objection as to your
19 result as you deliberated, you'll report that directly to me through the marshal and I'll
20 take care of it.

21 The jury is now excused with the thanks of the Court and Counsel.
22 You'll follow Tom, please.

23 [Outside the presence of the jury]

24 THE COURT: All right. The jury's left. The door is pretty closed.

25 Thank you all. Good job everybody. Good job, Ms. Nguyen.

1 Defendant is remanded without bail pending a sentencing date of:

2 THE CLERK: December 30th, 8:00 a.m.

3 MS. NGUYEN: Your Honor, is it possible for him to not be remanded into the
4 Clark County Detention Center. I understand they're remanded without bail. He'd
5 like to go back up to High Desert.

6 THE DEFENDANT: I'm --

7 MS. NGUYEN: He's set to expire next week and then they'll bring him back
8 down after his expiration.

9 THE COURT: You know whatever the jail decides. I don't make that call.

10 THE CORRECTIONS OFFICER: They can bring him back.

11 MS. NGUYEN: They'll bring him back? Okay.

12 THE CORRECTION OFFICER: They're going to send him back to NSP.

13 THE COURT: If they want to send him up there they can. It's up to you guys.
14 But he's to be held without bail.

15 THE CORRECTION OFFICER: Yeah. They'll send him back and then if he's
16 expired there, they'll send him back.

17 THE COURT: All right. Thank you.

18 MS. THOMSON: And Your Honor, does the jury wait in the back to talk to us
19 or do they --

20 THE COURT: No. Third floor.

21 MS. THOMSON: Third floor.

22 THE COURT: If you want to talk to the jury go to the third floor.

23 MS. THOMSON: Okay.

24 MS. NGUYEN: Thanks.

25 MS. THOMSON: Thank you, Your Honor.

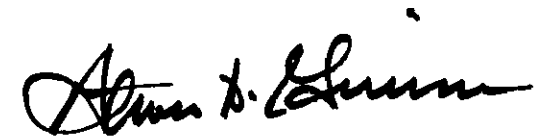
1 THE DEFENDANT: Thank you, Rochelle.
2 MS. NGUYEN: Thanks.
3 THE COURT: Thank you guys.
4 MR. FATTIG: Thank you.
5 THE DEFENDANT: You guys have a good weekend.
6 MS. THOMSON: Thank you. You too.

7 [Evening recess at 4:40 p.m.]
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21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
22 acknowledge that this is a rough draft transcript, expeditiously prepared, not
proofread, corrected, or certified to be an accurate transcript.

23 
24 _____

25 Brittany Mangelson
Independent Transcriber



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JOSHUA W. BACHARACH
JOSHUA WILLIAM BACHARACH,

Defendant.

CASE NO. C299425

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE
WEDNESDAY, DECEMBER 30, 2015

TRANSCRIPT OF PROCEEDINGS
SENTENCING

APPEARANCES:

For the State:

JOHN FATTIG, ESQ.
Chief Deputy District Attorney

MEGAN S. THOMSON
Chief Deputy District Attorney

For the Defendant:

ROCHELLE T. NGUYEN, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

1 WEDNESDAY, DECEMBER 30, 2015 AT 8:25 A.M.

2
3 THE COURT: C299425, Joshua Bacharach. Time set for rendition of
4 sentence. Any cause or reason why sentencing should not proceed today?

5 MS. NGUYEN: No, Your Honor.

6 THE COURT: State wish to be heard?

7 MS. THOMSON: Yes, Your Honor. I would first note that Officer McNabb
8 wished to be present today however he has severe bronchitis and was not able to
9 make it today. So I just wanted to inform the Court that it was not -- that he's not
10 interested, it's just that he was not able to be present based on medical issues.

11 THE COURT: All right.

12 MS. THOMSON: In this case I'm going to ask Your Honor to sentence the
13 Defendant to a term of 28 to 70 years. This is an individual who has demonstrated
14 he is a danger to the community. Even at the point that we're in the middle of trial,
15 he was expressing to the CO as he's coming up for trial that he didn't understand
16 what everyone's being ruffled feathers was about --

17 MS. NGUYEN: Objection, Your Honor. This is kind of hearsay and I think it's
18 inappropriate the conversations that he's having potentially with an unnamed CO
19 during transport.

20 MS. THOMSON: And the statements he chooses to make are attributable to
21 him.

22 THE COURT: Yeah, you don't have to -- you don't have to say anything. You
23 don't have to use that.

24 MS. THOMSON: Yes, Your Honor.

25 Looking at through the PSI, he indicated to the examiner that he did not

1 have any mental health issues. He doesn't think drugs are an issue which tells us
2 that there is no underlying reason that he committed this offense, that he's
3 committed any of his previous offenses. He's a danger to our community.

4 Looking at this offense, we see not just that he was a danger to the
5 officer who attempted that simple traffic stop, but also to everyone else who's on the
6 roadways and to everyone who happened to be in their homes that night. As he
7 discharged his firearm from the moving vehicle, he did not have the ability to control
8 specifically where that fire -- bullet went when he projected it from the firearm. While
9 he was aiming at the officer, attempting to kill that officer, he risked the lives of
10 everyone in that community at the time he was doing it, as he discharged the firearm
11 over and over again.

12 Going through -- in addition to the possibility of harm to each of the
13 individuals in the community along with the officer, the harm that was actually
14 caused, while not physical, was extensive. In addition to the officer who wrote a
15 statement and you have attached to the PSI, who has had insomnia, who has been
16 afraid to do his job because of this, there's the harm to his family, who now every
17 time he goes to work has the real possibility not just the speculative possibility that
18 he may not come home that night. There's the harm to every other officer who that
19 night had to respond to a call where very possibly their partner, their friend, their
20 almost like family could have been dead on the roadway that night because they
21 were completing -- he was completing a traffic stop.

22 This isn't a situation where an officer expects to go in to a violent
23 situation. And that is what officers do, they respond to all kinds of situations. But
24 this was a simple traffic stop to say, hey, turn off your brights. And instead Officer
25 McNabb had the unfortunate opportunity to then have his life on the line and the

1 possibility of dying that night in the street alone as the Defendant fled away in the
2 vehicle.

3 In addition to this case, the Defendant's history of violence is extreme.
4 Looking through his priors, he started out with battery on a police officer, gross
5 misdemeanor. He has a history of domestic violence. He has a prior attempt
6 murder where he received a gross misdemeanor. That really highlights the fact that
7 he has had opportunity after opportunity after opportunity to change his life, to make
8 better decisions. And instead, he's continued to engage in his criminal behavior to
9 the extent that on the night of this offense, he not only gathered three firearms, he
10 put on a bullet-proof vest and went out seeking an altercation, seeking to cause
11 harm to other individuals.

12 In this case, the fact that we have such a simple start as a traffic stop
13 and it ended in his attempting to murder the police officer and putting hundreds of
14 lives in danger merits the term of 28 to 70 years. And ask the Court to give him a
15 term of 16 to 40 years on the attempt murder with use, obviously running the use
16 consecutively. A term of 2 to 5 years on the stop required on signal of a police
17 officer because it was danger to each person on the roadway as he fled, the officer
18 shooting at him. And that should run consecutively because of the excessive
19 danger. I'm going to ask the Court to add a term of 2 to 5 years for each of those
20 firearms. Being both a felon and on probation at the time he committed this offense,
21 each of those firearms should stand for themselves in a punishment running
22 consecutively to both the stop required and the attempt murder. And a 4- to 10-year
23 term on the discharging of firearm from the vehicle because he put the lives of those
24 people in their homes nearby in danger as he shot without being able to aim well.
25 And that's risking bullets flying through homes and taking people who are doing

1 nothing but staying in their homes lives.

2 Based upon his history, based upon the attitude he's demonstrated
3 throughout his criminal behaviors and the fact that he has no explanation that would
4 justify -- that's not a good word -- that would explain why he engaged in behavior
5 like this. He is a danger to the community, not just to the citizens, but to the police.
6 And frankly, in this behavior, a danger to himself. So a 28- to 70-year term is
7 appropriate in the State's eyes.

8 THE COURT: Before your attorney has an opportunity to speak, is there
9 anything you want to say?

10 THE DEFENDANT: Yes, Your Honor. I just want to put it on record that we
11 do plan to put in a notice for appeal and that you've seen the vid -- you were in trial
12 with me, you've seen the video and I wasn't on that video. And that body cam
13 showed what the officer seen and what happened that night and I wasn't on it. So
14 however you feel, I'm going to go with your judgment, sir.

15 MS. NGUYEN: Your Honor --

16 THE COURT: Counsel.

17 MS. NGUYEN: -- I am not going to belabor the facts of the case. I know the
18 Court was able to sit through this trial and witness the video that was presented by
19 the State.

20 I would like to point out a couple of things that are contained in the PSI
21 because I think the characterization by the State is a little misleading. They talked
22 about how he has, like, an extensive violent history. And I think when I look at it, I
23 do see, you know, two -- four gross misdemeanors and two felonies. The two
24 felonies are both for nonviolent felony acts, both theft charges including the attempt
25 theft that he was on probation for. But what I do see that's consistent, that is not

1 consistent with maybe the statements that he made to the PSI writer is that he does
2 have a long history of drug use and drug abuse. And you can see that from starting
3 in 2005 with an arrest for possession of narcotics paraphernalia.

4 This Court has -- and there's one in 2006 for possession of a controlled
5 substance, later, you know, reduced to a misdemeanor. We have another narcotics
6 paraphernalia in 2007. And while some of the other charges, the theft charges,
7 don't have drug charges specifically included in them, I think this Court has the
8 experience to know that a lot of theft and a lot of crime and a lot of impulse crime
9 occurs when people are under the influence. It wasn't a defense that we chose to
10 use because it wasn't a complete defense to the charges in this case, but I do know
11 that he was under the influence and that is an issue that he will have to continue to
12 address either when he's in prison or ultimately when he gets out, depend -- no
13 matter what the sentence is by this Court.

14 What I'm asking this Court to do is sentence him to 8 to 30 years,
15 amongst all the counts however you feel appropriate to distribute those counts. In
16 this case, he is lucky that there was no one injured and that no one was actually
17 shot. Obviously someone has experienced emotional trauma and I think that's
18 understandable. We are lucky that no one was physically hurt, including him.

19 With that, I would ask, again, the Court to sentence him to 8 to 30
20 years.

21 THE COURT: You know, I was waiting for an answer of why he was wearing
22 a bullet-proof vest. I didn't get it from you and I didn't get it from him. Interesting, I
23 don't know -- I've been in this business since 1982. I don't know any person that's
24 not a police officer that owns a bullet-proof vest. So here's this gentleman, I mean,
25 this poor officer was checking this car out, the bright lights and so the officer went to

1 stop him and the first thing you do is stick a .45 out and shoot at him. And --

2 THE DEFENDANT: You didn't see me on that video.

3 MS. NGUYEN: Sh. Sh.

4 THE DEFENDANT: You didn't see me on the video --

5 MS. NGUYEN: Sh. Sh.

6 THE DEFENDANT: -- or with a bullet-proof vest.

7 THE CORRECTIONS OFFICER: Sir.

8 MS. NGUYEN: Sh.

9 THE DEFENDANT: They didn't catch me with none of it.

10 THE COURT: And you hit your own car when you --

11 THE DEFENDANT: No, I didn't -- I didn't -- you didn't see, in that video, it
12 didn't show me shooting at nothing.

13 THE COURT: Tom, get the duct tape out because if he talks out again, I want
14 him duct taped.

15 THE DEFENDANT: Yes, Your Honor, my bad.

16 THE COURT: The only reason you would wear a bullet-proof vest is either
17 you're on your way to create mischief in this community or you had just created
18 mischief. But that's the only reason you would need that.

19 And then as I look at your record, well, it's interesting on page 3, your
20 social history, Defendant was interviewed via telephone, was uncooperative, and
21 declined to answer many of the questions. And then I look at your criminal record,
22 two prior felony convictions, been to prison twice; gross misdemeanor four times; jail
23 12 times; probation revoked, one.

24 It started out in -- your adult history started out in 2003 with resisting
25 and battery on an officer. And then you were arrested in 2004 for battery domestic

1 violence. And then you were arrested in 2005 for disorderly conduct. You got the
2 benefit of bootcamp. That didn't help, that was in I think 2006. Nope, that was
3 2005. And then in 2006, you were arrested for attempt murder with a deadly
4 weapon, convicted of attempt battery with substantial bodily harm. And then in
5 2009, resisting a public officer which you were convicted. Then 2009, battery
6 domestic violence which you were convicted. Then 2009, in June, resisting a public
7 officer, obstructing an officer, and you were convicted possession stolen vehicle.
8 Then in 2013, attempt robbery, that's the one where you were put on probation, you
9 violated and you were revoked.

10 Then we have this case. I did see the evidence, I did see the trial, I
11 listened to the witnesses, you were found guilty by the jury. You are adjudged guilty
12 of attempt murder with the use of a deadly weapon, a felony. You're sentenced to
13 the maximum 96 to 240 months on the attempt murder. Because you used a deadly
14 weapon in this, on the street, shooting randomly and at the officer, but other people
15 could have been hurt. You're sentenced to a consecutive 96 to 240 months for the
16 use of a deadly weapon.

17 Count 2, discharging a firearm from or within a structure or vehicle.
18 You're adjudged guilty, sentenced to a consecutive 72 to 180 months with \$5,000
19 fine.

20 Count 3, assault with a deadly weapon, a felony. You're sentenced to
21 the maximum, and I'm maxing you on everything.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: 28 to 72 months, \$5,000 fine, consecutive to Counts 1 and 2.

24 Count 4, discharging a firearm from or within a structure. You are
25 sentenced to 72 to 180 months, consecutive to the first three counts, with \$5,000

1 fine.

2 Count 5, you are senten -- assault with a deadly weapon, a felony.
3 You're sentenced to 28 to 72 months, consecutive with the first case with \$5,000
4 fine, first four counts.

5 Count 6, you are found guilty of discharging a firearm at or within a
6 structure or vehicle, felony. You're sentenced to 72 to 180 months consecutive to
7 the first five, with \$5,000 fine.

8 Count 7, assault with a deadly weapon, a felony. You're adjudged
9 guilty. Sentenced 28 to 72 months, consecutive to the first six counts, \$5,000 fine.

10 Count 8, discharging a firearm from or within a structure or vehicle, a
11 felony. You're sentenced to 72 to 180 months, Nevada Department of Corrections,
12 consecutive with the first seven with a \$5,000 fine.

13 Counts 9 and 10, the jury found you not guilty.

14 Count 11, assault with a deadly weapon, a felony. You're sentenced to
15 28 to 72 months, Nevada Department of Corrections, \$5,000 fine, that'll be
16 consecutive to the first eight counts.

17 Count 12, stop required on a police officer, a felony, you're sentenced
18 to 28 to 72 months, consecutive, with a \$5,000 fine to the first ten counts, or
19 whatever counts. The first --

20 MR. FATTIG: One through 8 and 11.

21 THE COURT: Yeah. Yes.

22 Count 13, resisting a public officer with use of a firearm, a felony, you're
23 sentenced to -- you're adjudged guilty, you're sentenced to 24 to 60 months in
24 Nevada Department of Corrections, consecutive to the other counts with a \$10,000
25 fine.

1 Count 14, possession of a firearm with altered or obliterated serial
2 number, you're sentenced to 19 to 48 months, Nevada Department of Corrections,
3 consecutive to the other counts, with \$5,000 fine.

4 Count 15, you are adjudged guilty of possession of a firearm by an ex-
5 felon, you're sentenced to 28 to 72 months in Nevada Department of Corrections,
6 with \$5,000 fine consecutive to the other counts.

7 Count 16, possession of a firearm by an ex-felon, you're adjudged
8 guilty. It's a felony. You're sentenced to 28 to 72 months, Nevada Department of
9 Corrections, with a \$5,000 fine consecutive to the other counts.

10 Count 17, possession of firearm by an ex-felon, felony. You're
11 adjudged guilty, you're sentenced to 28 to 72 months, Nevada Department of
12 Corrections, consecutive to the other counts, \$5,000 fine.

13 The total fine is \$75,000. The sentence aggregate is 747 days, if I
14 added it correctly to 1884 -- excuse me, months, 747 to 1884.

15 With credit for time served of?

16 MS. THOMSON: There's no days, he was on probation.

17 THE COURT: You're on probation, you get no credit. Thank you.

18 MS. THOMSON: Thank you, Your Honor.

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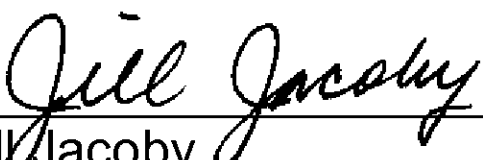
MR. FATTIG: Thank you.

MS. NGUYEN: And, Your Honor, I do have the intention to file a notice of appeal, just for the record.

THE COURT: That's fine.

[Proceeding concluded at 8:41 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case.



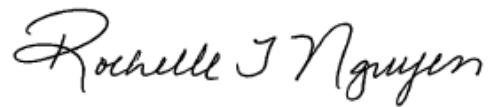
Jill Jacoby
Court Recorder

CERTIFICATE OF ELECTRONIC TRANSMISSION

The undersigned hereby declares that on June 08, 2016, an electronic copy of the foregoing APPELLANT'S FAST TRACK APPENDIX VOLUME VII was sent via the master transmission list with the Nevada Supreme Court to the following:

STEPHEN B. WOLFSON
Clark County District Attorney

ADAM PAUL LAXALT
Nevada Attorney General

A handwritten signature in cursive script that reads "Rochelle T. Nguyen".

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