

IN THE SUPREME COURT OF THE STATE OF NEVADA

RYAN SCOTT ANDREWS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Appeal from a Judgment of Conviction in Case Number CR16-0323
The Second Judicial District Court of the State of Nevada
Honorable Janet J. Berry, District Judge

JOINT APPENDIX VOLUME ONE

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Washoe County Public Defender

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No.: CR16-0323

v.

Dept. No.: D01

RYAN SCOTT ANDREWS,

Defendant.

AMENDED INFORMATION

CHRISTOPHER J. HICKS, District Attorney within and for the
County of Washoe, State of Nevada, in the name and by the authority
of the State of Nevada, informs the above entitled Court that RYAN
SCOTT ANDREWS, the defendant above named, has committed the crime(s)
of:

COUNT I. TRAFFICKING IN A CONTROLLED SUBSTANCE, a
violation of NRS 453.3385(2), a category B felony, (51158) in the
manner following:

That the said defendant on the 19th day of June, 2015, or
thereabout, and before the filing of this Information, at and within
the County of Washoe, State of Nevada, did willfully, unlawfully,

1 knowingly, and/or intentionally, sell, manufacture, deliver, or be in
2 actual or constructive possession of 14 grams or more but less than
3 28 grams of a Schedule I controlled substance or a mixture which
4 contains a Schedule I controlled substance, to wit: methamphetamine
5 and heroin, at 900 I Street, #218, Sparks, Washoe County, Nevada.

6 COUNT II. TRAFFICKING IN A CONTROLLED SUBSTANCE, a
7 violation of NRS 453.3385(1), a category B felony, (51156) in the
8 manner following:

9 That the said defendant on the 19th day of June, 2015, or
10 thereabout, and before the filing of this Information, at and within
11 the County of Washoe, State of Nevada, did willfully, unlawfully,
12 knowingly, and/or intentionally, sell, manufacture, deliver, or be in
13 actual or constructive possession of 4 grams or more but less than 14
14 grams of a Schedule I controlled substance or a mixture which
15 contains a Schedule I controlled substance, to wit: methamphetamine
16 and heroin, at 900 I Street, #218, Sparks, Washoe County, Nevada.

17 COUNT III. UNLAWFUL SALE OF A CONTROLLED SUBSTANCE AT OR
18 NEAR A PUBLIC PARK, a violation of NRS 453.321 and NRS 453.3345, a
19 category B felony, (55686) in the manner following:

20 That the said defendant on the 19th day of June, 2015, or
21 thereabout, and before the filing of this Information, at and within
22 the County of Washoe, State of Nevada, did willfully, unlawfully, and
23 knowingly, having possession of and dominion and control over a
24 Schedule I controlled substance, namely, methamphetamine and/or
25 heroin, sell, exchange, supply, and/or give away the said
26 methamphetamine and/or heroin to a confidential informant acting at

1 the direction of law enforcement officers, and such transaction
2 occurring within 1,000 feet of a public park, namely, Ardmore Park,
3 located at 1200 12th Street, Sparks, Washoe County, Nevada.

4
5
6 All of which is contrary to the form of the Statute in such
7 case made and provided, and against the peace and dignity of the
8 State of Nevada.

9
10 CHRISTOPHER J. HICKS
11 District Attorney
12 Washoe County, Nevada
13

14 By: /s/ Darcy Cameron
15 DARCY CAMERON
16 12100
17 DEPUTY DISTRICT ATTORNEY
18
19
20
21
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23
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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 RENO POLICE DEPARTMENT
6 SCOTT RASMUSSEN
7 SEAN GIBSON
8 JET UTTER
9 DEREK JONES
10 KEITH PLEICH
11 WES KELLER
12

13 The party executing this document hereby affirms that this
14 document submitted for recording does not contain the social security
15 number of any person or persons pursuant to NRS 239B.230.
16

17 CHRISTOPHER J. HICKS
18 District Attorney
19 Washoe County, Nevada
20

21 By /s/ Darcy Cameron
22 DARCY CAMERON
23 12100
24 DEPUTY DISTRICT ATTORNEY
25

26 PCN: RPD1504667C;SPPD0045119C;WCAS0002867C-ANDREWS

1 CODE 2475
2 WASHOE COUNTY PUBLIC DEFENDER
3 DONALD WHITE, BAR# 10467
4 P.O. BOX 11130
5 RENO, NV 89520-0027
6 (775)337-4800
7 ATTORNEY FOR DEFENDANT

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

12 THE STATE OF NEVADA,

13 Plaintiff,

CASE NO: CR16-0323

14 v.

DEPT. NO.: 1

15 RYAN SCOTT ANDREWS,

16 Defendant.

17
18 **DEFENDANT'S MOTION TO STRIKE COUNTS I AND II**

19 Comes Now, RYAN SCOTT ANDREWS, Defendant, by and through the Washoe
20 County Public Defender's Office and Donald K. White, Deputy Public Defender, and hereby
21 moves this Court to strike counts I and II of the Amended Information.

22 This Motion is made and based upon NRS 453.3385, relevant state and federal
23 constitutional provisions, and the attached Points and Authorities.

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1 State did this in order to inflate its charges against Mr. Andrews and for no other reason readily
2 evident to the defense. The statute clearly prohibits trafficking a "controlled substance," but
3 does not mention controlled substances within the body of the statute. Quite clearly, the statute
4 does not permit the State to charge Mr. Andrews with an aggregate of completely separate
5 controlled substances, i.e., combining heroin and methamphetamine from separate bags and
6 separate searches. Moreover, the defense cannot see anywhere in the statute that permits the
7 State to charge this case as it currently has even if the State tries to argue that it is charging for
8 a mixture of the two separate alleged drugs. A charge like the one the State has made in this
9 case for a mixture requires it to be exactly that, a mixture of drugs in one bag.
10

11 **III. CONCLUSION**

12 Given the above, Mr. Andrews respectfully requests an order striking counts I and II
13 from the Amended Information.
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

19 DATED this 13th day of May, 2016.

20 JEREMY T. BOSLER
Washoe County Public Defender

21
22 By /s/ Donald K. White
DONALD K. WHITE
23 Deputy Public Defender
24
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada; that on this 13th day of May, 2016, I electronically filed the foregoing documents with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

DISTRICT ATTORNEY
1 SOUTH SIERRA STREET
RENO, NV

/s/ Wendy Lucero
WENDY LUCERO

1 CODE 2645
2 Christopher J. Hicks
3 #7747
4 P.O. Box 11130
5 Reno, NV 89520
6 (775) 328-3200
7 Attorney for Plaintiff

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

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No.: CR16-0323

15 v.

Dept. No.: 1

16 RYAN SCOTT ANDREWS,

17 Defendant.

18 OPPOSITION TO MOTION TO STRIKE COUNTS I AND II

19 COMES NOW, the State of Nevada, by and through CHRISTOPHER
20 J. HICKS, Washoe County District Attorney and DARCY E. CAMERON,
21 Deputy District Attorney, and hereby opposes the defendant RYAN SCOTT
22 ANDREWS' ("the Defendant") Motion to Strike Counts I and II, filed
23 May 13, 2016. This Opposition is made and based upon the attached
24 Memorandum of Points and Authorities, all other pleadings and paper
25 on file herein, as well as any oral and/or documentary evidence that
26 may be presented at a hearing on this matter.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. STATEMENT OF FACTS**

3 On June 19, 2015, a confidential informant (CI) acting at
4 the direction of Reno Police Department (RPD) detectives was provided
5 with \$390.00 in pre-recorded buy money to purchase methamphetamine
6 and heroin from the Defendant. At approximately 2:50 p.m., the CI
7 knocked and entered the apartment located at 900 I Street, #218,
8 Sparks, Washoe County, Nevada. While inside the apartment, the
9 Defendant sold the CI 3.596 grams net weight of methamphetamine and
10 0.986 grams net weight of heroin. At approximately 6:31 p.m., the CI
11 exited the apartment and immediately provided law enforcement with
12 the purchased narcotics. Additionally, the CI informed the police
13 officers that additional methamphetamine and heroin was observed in a
14 kitchen drawer.

15 At approximately 6:36 p.m., the Defendant exited the
16 apartment and was taken into custody by RPD detectives. During a
17 search of the Defendant's person incident to his arrest, the pre-
18 recoded buy money used during the sale was found in the Defendant's
19 pants pocket.

20 At approximately 7:15 p.m., RPD Detective Scott Rasmussen
21 applied for and was granted a search warrant to search apartment #218
22 for additional controlled substances and evidence of sales. At
23 approximately 7:37 p.m., RPD detectives entered and executed the
24 search warrant of the apartment. During the search, 8.459 grams net
25 weight of heroin and 4.944 grams net weight of methamphetamine were
26 located in a kitchen drawer as previously indicated by the CI as well

1 as an additional 0.992 grams net weight of methamphetamine were
2 located in the bedroom.

3 The Defendant is currently charged by Amended Information
4 with Trafficking in a Controlled Substance - Level II for possession
5 of the narcotics found inside the residence during the search,
6 Trafficking in a Controlled Substance - Level I for possession of the
7 narcotics sold to the CI, and Unlawful Sale of a Controlled Substance
8 at or Near a Public Park for the actual sale of the narcotics to the
9 CI. It is only the two counts of Trafficking in a Controlled
10 Substance as charged in Counts I and II of the Amended Information
11 that are at issue in this motion.

12 II. ARGUMENT

13 Nevada Revised Statute (NRS) 453.3385 provides in pertinent
14 part that "a person who knowingly or intentionally sells,
15 manufactures, delivers or brings into this State or who is knowingly
16 or intentionally in actual or constructive possession of... any
17 controlled substance which is listed in schedule I, except marijuana,
18 or any mixture which contains any such controlled substance, shall be
19 punished" based upon the quantity involved. NRS 453.3385(1). In the
20 instant motion, the Defendant argues that because the methamphetamine
21 and heroin at issue in this case were packaged in separate baggies,
22 the weights of each substance cannot be combined or aggregated in
23 satisfying the weight limit thresholds required by NRS 453.3385 in
24 charging trafficking in a controlled substance. However, the State
25 is unaware and the Defendant does not cite to any binding legal
26 authority that supports this contention. The issue appears to be a

1 matter of first impression and will ultimately be left to the sound
2 discretion of this Court. Nevertheless, the Defendant's argument
3 must fail as it goes against common sense and a rational
4 understanding of the law.

5 First, even assuming *arguendo* that this Court is persuaded
6 by and accepts the Defendant's argument that controlled substances
7 packaged separately must be charged separately based upon the
8 individual weights of the individual packages involved, there is
9 absolutely no authority cited supporting the requested remedy of
10 "striking" or dismissing the charged offenses. In fact, pursuant to
11 NRS 173.095, the appropriate remedy, if any, would be amendment of
12 the information - not dismissal.

13 Second, and again assuming *arguendo* that this Court is
14 persuaded by and accepts the Defendant's argument, the resultant
15 charges would be three counts of simple possession of a controlled
16 substance for each of the baggies of controlled substances found that
17 weighed less than 4 grams and two counts of level I trafficking in a
18 controlled substance for the two baggies of controlled substances
19 that weighed more than 4 grams. This particular set of charges would
20 expose the Defendant to a maximum prison term of 24 years, as opposed
21 to the current maximum term of 21 years allowed by the current
22 offenses charged. Thus, the Defendant would be exposing himself to
23 possible more prison term over and above what his current charges
24 would allow if his argument were to be accepted.

25 Furthermore, all of the substances at issue in this case
26 are Schedule I controlled substances with no marijuana involved,

1 albeit all of the substances found are subject to the same treatment
2 and classification for sentencing purposes. Thus, if the Defendant's
3 argument is accepted and taken to its logical conclusion, it would
4 mean that if someone possessed 100 separate baggies of 100 separate
5 controlled substances but all of the same schedule and all baggies
6 weighed less than 4 grams, they would not be subject to the
7 trafficking in a controlled substance statutes and penalties despite
8 possessing illegal narcotics having a possible combined weight of
9 over 300 grams. This result goes against common sense and what was
10 clearly not the Nevada Legislature's intent in enacting the laws
11 against trafficking in a controlled substances.

12 Ultimately, there are three separate alternatives for this
13 Court to consider. First, there is the Defendant's theory: every
14 controlled substance packaged separately must be charged separately
15 and, thus, Counts I and II of the information should be amended to
16 three counts of PCS and two counts of Trafficking - Level I. Second,
17 there is the inverse of the Defendant's theory: all of the controlled
18 substances at issue in a case should be combined into just one charge
19 regardless of type, packaging, or location found and, thus, Counts I
20 and II of the information should be amended to just one count of
21 Trafficking - Level II. Third, there is the State's theory and how
22 the Defendant is currently charged: different controlled substances
23 packaged separately but recovered or found in the same place at the
24 same time can be combined and charged together and, thus, Counts I
25 and II of the information would remain unchanged.

26 ///

1 It is the State's contention that this Court disregard the
2 Defendant's theory as unreasonable and just consider whether the
3 Amended Information currently filed in this case should remain the
4 same or if it would be appropriate and reasonable to amend Counts I
5 and II to just one count of Trafficking - Level II alleging all of
6 the drugs found and at issue in the case. Frankly, the State has no
7 preference between these two alternatives and would leave it to this
8 Court's sound discretion in deciding what would be fair and just.

9 **III. CONCLUSION**

10 Based on the foregoing, the State respectfully requests
11 that the Defendant's Motion to Strike Counts I and II be denied.

12
13 AFFIRMATION PURSUANT TO NRS 239B.030

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

16 Dated this 27th day of May, 2016.

17 CHRISTOPHER J. HICKS
18 District Attorney
19 Washoe County, Nevada

20
21 By /s/ Darcy Cameron
22 DARCY CAMERON
23 Deputy District Attorney
24
25
26

1 CERTIFICATE OF SERVICE BY E-FILING

2 I certify that I am an employee of the Washoe County
3 District Attorney's Office and that, on this date, I electronically
4 filed the foregoing with the Clerk of the Court by using the ECF
5 system which will send a notice of electronic filing to the
6 following:

7
8 DONALD WHITE, ESQ.
9 PUBLIC DEFENDER
10 350 SOUTH CENTER ST.
11 RENO, NV 89501

12
13 Dated this 27th day of May, 2016.

14 /s/Gladis Estrada
15 GLADIS ESTRADA
16
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Code No. 4185

COPY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE JANET J. BERRY, DISTRICT JUDGE

THE STATE OF NEVADA,
Plaintiff,

-vs-

RYAN SCOTT ANDREWS,
Defendant.

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Case No. CR16-0323

Dept. No. 1

ORAL ARGUMENTS

June 1, 2016

Reno, Nevada

Reported by: Lesley A. Clarkson, CCR #182

A P P E A R A N C E S

FOR THE STATE:

DARCY CAMERON
Deputy District Attorney
One South Sierra Street
Reno, Nevada

FOR THE DEFENDANT:

DONALD K. WHITE
Deputy Public Defender
350 South Center Street
Reno, Nevada

THE DEFENDANT:

RYAN SCOTT ANDREWS

1 RENO, NEVADA, WEDNESDAY, JUNE 1, 2016, 1:40 P.M.

2 -oOo-

3
4 THE COURT: Good afternoon, counsel. This is State
5 versus Ryan Scott Andrews. I have two motions I think filed by
6 the defense. Is that correct, Mr. White?

7 MR. WHITE: Yes, Your Honor.

8 THE COURT: You may proceed.

9 MR. WHITE: Thank you. Your Honor, I'm going to start
10 first with our motion to strike Counts 1 and 2, specifically
11 those counts for trafficking in a controlled substance level 2,
12 and trafficking in a controlled substance level 1. He's also
13 charged in Count 3 with unlawful sale of a controlled substance
14 at or near a public park. These allegedly happened June 19,
15 2015.

16 What had happened in this case is that a confidential
17 informant set up a buy a couple of days ahead of time, I believe,
18 and told SET police that he could do this buy. He went over
19 allegedly to Mr. Andrews' apartment, where other people reside,
20 or at least other people hung out occasionally, and proceeded
21 to -- he was wired, apparently he was searched, according to
22 police reports, ahead of time, contained no contraband, drugs, or
23 anything like that, and went over to buy drugs.

24 THE COURT: So the CI went to the apartment to buy
25 drugs.

1 MR. WHITE: Correct. And he had a wire on him. And he
2 was searched ahead of time, according to police reports, and he
3 didn't have any drugs or anything. He was provided buy money.
4 And then he was there for a little while, and he walks out with
5 some drugs.

6 According to the police reports he walks out with 4
7 grams gross weight presumptive positive for heroin. And that's
8 gross weight. So it was still in the packaging at that point.
9 And 1.4 grams gross weight still in the packaging of presumptive
10 positive methamphetamine.

11 THE COURT: In separate packets. That's what's sort of
12 confusing about your motion. So these, when he bought these,
13 these were in completely separate packages, like two different
14 bags for one purchase?

15 MR. WHITE: I would have to assume they were. Because
16 they did weigh them. The police would weigh them when they got
17 to the lab, at least, just to get the gross weight to place in
18 their report. So if it was all in one baggie, Your Honor, I
19 would assume they would weigh all one thing. The heroin and
20 methamphetamine would be mixed together in one baggie, making
21 some sort of concoction, and it would weigh more than those two
22 separately.

23 Then nearly an hour later, as Mr. Andrews has already
24 been arrested and sitting in jail, they get a search warrant and
25 go over and search the house.

1 Now, backing up just a bit. The confidential informant
2 had told police after he was, I guess for lack of a better term,
3 debriefed and re-searched, I guess searched again, and handing
4 off the buy money that he had, excuse me, handing off the drugs
5 that he had allegedly obtained from Mr. Andrews, he tells them
6 there's more drugs in a kitchen drawer in the apartment.

7 So that's when they go back presumptively to go get
8 those, they get a search warrant, and they go back and search the
9 house, find more drugs in that kitchen drawer where the
10 confidential informant said he saw those drugs. Presumably
11 that's where the larger amounts come from.

12 In the lab report provided by the district attorney's
13 office and the Washoe County Sheriff's Office lab they state that
14 there was a -- let's see. These are net weights, Your Honor, and
15 they break it down. There's a total of five items weighed, and
16 I'll just go in order. The first item is 1 gram, excuse me,
17 .986, so not quite a gram, of net weight of a brown substance.
18 And then item 2 is 3.596 grams net weight of a crystalline
19 substance. Item 3 is 8.459 grams net weight of a brown
20 substance. Item 4 is 4.94 grams of a crystalline substance. And
21 item 5 is .992 grams of a crystalline substance.

22 Your Honor, the main crux of my argument here is that
23 these appears to be all bagged separately. But more than that, I
24 have never seen, ever, I have never seen two different kind of
25 substances, controlled substances, combined into one charge and

1 made into a trafficking amount as has been done here. I would
2 expect to see from there the three bags, there's three bags of a
3 crystalline substance.

4 And I will, Your Honor, for the record state that items
5 1 and 3, which were the brown substances, heroin was identified
6 in the substance through their testing. And items 2, 4 and 5,
7 methamphetamine was identified in the substance for items 2, 4,
8 and 5 through their testing.

9 So going back to what I was just about to say, I would
10 expect to see charges more similar to combining, if the State
11 wants to charge this way, and of course it would be my job to
12 defend Mr. Andrews against this, but I would expect to see
13 charges of items 1 and 3 combined for heroin, and 2, 4, and 5
14 combined for methamphetamine. Again, I have never seen two
15 different substances.

16 And I have looked in the history. I couldn't find
17 anything in the history of all of the statutes that are relevant
18 here, which is NRS 453.3385, that states that it can be done or
19 that it's ever been amended from when it was done before or that
20 it's been, there's just no history that I can see from looking at
21 it that it's ever been done like that before or even allows for
22 it. It specifically calls for, and all of them are like that,
23 quite frankly, possession of a controlled substance, NRS 453.321,
24 possession of a controlled substance, not substances. Same with
25 trafficking, trafficking in a controlled substance.

1 There is a part of trafficking and there's a part of
2 possession, well, mostly, we will stick to trafficking here
3 because that's what we are talking about, that does allow, and I
4 put it in the motion, that does allow obviously for a mixture.
5 But that is mostly based on cutting. We are never seeing pure
6 heroin or pure methamphetamine being sold or trafficked or
7 possessed by people around. It's not pure. There's usually a
8 cutting agent in it. And that stays in there as part of the
9 weight.

10 That is part of what my defendants have to deal with
11 when they are charged with these crimes, is that whatever they
12 are cutting it with, if it's cut with something completely
13 innocuous, I don't know what it's with, let's just say it's baby
14 powder for argument purposes, that baby powder gets weighed, and
15 that weight becomes part of the whole amount. And if it goes
16 above 4 grams, then we are looking at a trafficking amount of
17 methamphetamine, if it's methamphetamine and baby powder, again
18 for argument purposes.

19 But we don't see things where we say okay, there's meth
20 and there's heroin combined in there, and you also don't see in
21 the lab report where in these separate baggies that we saw heroin
22 and methamphetamine in one of the baggies. It's either heroin,
23 in the ones I described as reading this, or methamphetamine.

24 So, Your Honor, I would at least submit for the
25 purposes of this trial that it shouldn't be allowed, the State

1 shouldn't be allowed to charge heroin and methamphetamine into
2 combined weights into one charge. Again, what I was stating
3 before, is I would expect to see the methamphetamine grouped
4 together and the heroin grouped together, and then it's my job to
5 defend him at trial as to whether the State can prove that it all
6 belongs to Mr. Andrews or not.

7 And I think what would come out of that is when you
8 combine those weights, 1 and 3 combined together, which is the
9 heroin, comes out to 8.459 plus 9.86, os roughly, rounding up
10 even, to 9 and one gram, that's 10 grams. We are still, we are
11 at a trafficking level one, between 4 and 14 grams, for heroin.

12 And then for the methamphetamine, I'll, just rounding
13 up again, we have about 5 grams in item 4, 3.6 grams in item 2,
14 so that's 7.6 grams, and then in item 5, about 1 gram. So that's
15 7.6 grams or 7.7 grams, again making it a level one.

16 So my argument here is if it was charged correctly, it
17 would be two level one trafficking, not a level two and a level
18 one and a sales. Sales I have no contention with. I just plan
19 on defending that at trial.

20 THE COURT: So you want to --

21 MR. WHITE: And I did not have any, I didn't see any
22 legal authority, I looked for it, I don't see any legal authority
23 as far as that except for the statute, just saying, it doesn't
24 say substances and it doesn't say that it's allowed to be
25 combined and allowed to be a mixture.

1 THE COURT: Right now your client is charged with
2 unlawful sale of a controlled substance.

3 MR. WHITE: No, Your Honor. He's charged with level
4 one trafficking, level two trafficking, and --

5 THE COURT: So what you are suggesting.

6 MR. WHITE: It should be two level ones.

7 THE COURT: It should be two level ones, instead of a
8 level two and a level one. And it's because of separate bags and
9 not in the allegation of combining the weight.

10 There must have been a plea negotiation in here.

11 MR. WHITE: There was, Your Honor. I can look for it.

12 THE COURT: No. I have it. Because I'm just looking
13 for the amended -- do we have an amended information?

14 THE CLERK: It should be there, Your Honor.

15 MR. WHITE: You should, Your Honor. I have it. I
16 printed it up again. We have it. It was filed on April 20,
17 2016, by Miss Cameron.

18 THE COURT: So you have the motion to strike Count 1
19 and Count 2.

20 MR. WHITE: Correct, Your Honor.

21 THE COURT: But I thought Count 1 already had a level
22 one.

23 MR. WHITE: Correct, Your Honor.

24 MS. CAMERON: Count 2 is a level one.

25 THE COURT: All right. So are you through with your

1 argument?

2 MR. WHITE: I am through with my argument on that, Your
3 Honor.

4 THE COURT: I'll allow the State to respond.

5 MR. WHITE: Thank you.

6 MS. CAMERON: The problem with the defense's argument
7 is that where the different substances were found will have
8 different legal issues at trial. And so that's why I chose to
9 charge it the way I did, based upon the similarity in the
10 substances and the similarities that they would face with regards
11 to ownership, possession, dominion, and control, the legal issues
12 that those substances would be subject to at trial.

13 THE COURT: Let me just stop you there so I understand.

14 Is it, the State's concern is that some of the heroin,
15 some of the weight emanates from the CI purchase, and then some
16 emanates from the kitchen drawer purchase?

17 MS. CAMERON: Count 1, the level two is the drawer.
18 Count 2, the level one, is the sale. And so that's why I had
19 charged it separately, because when the officers come into
20 possession to those drugs, they are at separate times and by
21 separate means.

22 The Count 1 is pursuant to a search warrant, and it's
23 found in a kitchen drawer. Mr. White has already articulated
24 whether other people lived there, whether other people have
25 access to the drawer, whether it's a joint possession or somebody

1 else's drugs. So there's different legal issues as to the
2 ownership, possession, control of the kitchen drawer. So that is
3 Count 1.

4 THE COURT: Let's stay with Count 1, the kitchen
5 drawer. And you charged it as he had actual or constructive
6 possession of 14 grams or more but less than 28 grams of a
7 Schedule I controlled substance or a mixture which contains a
8 Schedule I controlled substance, to wit: Methamphetamine and
9 heroin.

10 Okay. And so as I understand Mr. White's argument,
11 he's saying that the kitchen drawer was separately packaged.

12 MS. CAMERON: They were in two separate baggies,
13 correct. There was a white crystalline methamphetamine package,
14 and there was a brown chunky heroin package. They were sold
15 separately and packaged separately.

16 THE COURT: Okay. But so within just the kitchen
17 drawer, going back to that, we had, in the kitchen drawer we had
18 8.45 grams of heroin?

19 MS. CAMERON: 8.459 of heroin and 4.944 of meth.

20 THE COURT: And so one was in one bag and one was in
21 another.

22 MS. CAMERON: Yes.

23 THE COURT: So what I have been sort of been focusing
24 on is going back to the language that talks about a mixture of,
25 because Mr. White's right, sometimes we will have, I mean

1 assuming arguendo that there was one ziplock bag that had a
2 baggie of heroin and a baggie of meth, but it was in one bag.
3 They weren't mixed together, but they were all together in one
4 bag. It seems like the whole issue here is Mr. White is saying
5 look, if they are different substances, then you have to weigh
6 them differently and charge them differently. Is that right?

7 MS. CAMERON: They were weighed separately. There are
8 the different weights.

9 I guess my argument is, if this Court has seen it,
10 somebody in their front pocket has 20 heroin balloons. Each
11 balloon of heroin is weighed and tested separately, each balloon
12 is packaged separately, but each balloon is found in the same
13 location. And generally in that kind of situation we will just
14 charge one because they are subject to the same legal kind of
15 issues. They are all found in the same place. Not because we
16 charge them because they are the same substance, but because they
17 are all Schedule I, they are all subject to the same penalties.
18 One balloon isn't going to subject the defendant to higher or
19 lesser penalties than a different balloon. They are all subject
20 to the same consequences, and so they are charged together. We
21 don't charge 20 PCSs for 20 heroin balloons. I don't think
22 there's any difference between whether somebody has 10 heroin
23 balloons and then a small bindle of methamphetamine in the same
24 pocket.

25 So the case law that I found when talking about

1 different controlled substances and how they are treated, really
2 the only case law that I found was from the federal courts with
3 regards to conspiracies, and they say well, it's one act of
4 conspiracy. Doesn't matter how many different substances,
5 because they are only going to be punished for conspiracy for
6 whatever, but not possession of different controlled substances.

7 I, with Mr. White, couldn't find anything that talked
8 about weights and combining. What I did focus on was those
9 courts that did address multiple controlled substances is how
10 they were sentenced. Some jurisdictions will sentence by
11 specific substances, not by schedule. They sentence by heroin,
12 they sentence by cocaine base. We have seen out of California
13 and the penalties that a defendant is going to be subject to is
14 contingent upon the substance that you allege. So they require
15 the district attorney and the prosecution to articulate with
16 specificity what specific substance that they are alleging so
17 that the defendant knows what penalties they are going to be
18 exposed to.

19 But in this case Schedule I is lumped together.
20 Schedule II are lumped together. All of those 162 odd Schedule I
21 controlled substances are treated the same for purposes of
22 trafficking. All whatever hundred plus Schedule II are treated
23 the same for trafficking purposes. So hypothetically, if
24 Mr. White's argument is to be followed to its logical end,
25 somebody could have a backpack on their person with three grams

1 of methamphetamine, separately three grams of heroin, separately
2 three grams of cocaine, separately three grams of hydrocodone,
3 three grams of codeine, whatever, 100 different Schedule I
4 controlled substances, all package packaged under trafficking
5 threshold and only be subject to 100 counts of PCS. That doesn't
6 seem logical.

7 I would certainly argue to the Court that that was not
8 the legislature's intent. That somebody has on their person
9 clearly with the intent to distribute or whatever 100 different
10 controlled substances, all classified and scheduled under the
11 same administrative code to be punished the same would obviate
12 their exposure to trafficking as long as they package it
13 separately. That does not make sense. It goes against common
14 sense.

15 In this particular case the substances were found at
16 the same time in different locations, so that's why I had charged
17 it separately.

18 My other alternative I would posit to the Court, I had
19 assumed Mr. White wanted each baggie charged separately. Because
20 to me it didn't make sense that the heroin in the CI's possession
21 and the heroin in the drawer would be combined into one count.
22 But that's apparently what he was arguing today. So I had
23 assumed that he was just, each baggie, three PCSs, two level
24 ones. Again, I think that's entirely burdensome, and it ends up
25 exposing the defendant to more possible prison time than I

1 already had it charged.

2 THE COURT: I know. That's what I don't understand,
3 Mr. White, is how does this inure to the benefit of your client
4 to move it to the level one rather than the level two? How does
5 this benefit him?

6 MR. WHITE: Your Honor, if it's two level ones he's
7 exposed to, in each of those he's exposed to one to six years.
8 If Your Honor was to grant my argument, the defense's argument,
9 then it would be two level ones, and those are each one to six
10 years. Right now he's charge with the level two, which is two to
11 15 years, and a level one, which is one to six years.

12 MS. CAMERON: So it was my understanding that if we did
13 it by each baggie, if you had three PCSs in two levels ones, it
14 was one charge for each baggie, that would end up being more
15 prison time. Under his theory, which is just two level ones
16 based on substance, not location, then yes, it would be exposure
17 of 12 years rather than the 15 and the six.

18 The other alternative, and what I would be perfectly
19 comfortable with doing today, I think it would be easier for
20 everybody, is just do one level two. They were, for argument's
21 sake, right, they all came from the same drawer. And if rather
22 than arguing location and, you know, or his argument is
23 substance, they all came from the same apartment, from the same
24 drawer, and the State would be fine doing just one level two.

25 THE COURT: Well, I think from an appellate perspective

1 we have got to address this. And I think it doesn't, it really
2 doesn't make sense to the Court to, because all of the research
3 that we could find, and you're right, there are no cases on this.
4 But just from a commonsense, from a practical view, it doesn't
5 make sense to say just because it's bagged separately, it's
6 weighed separately, and prosecuted separately. Because, you
7 know, as Miss Cameron says, what if your client had a backpack
8 full of, you know, 20 different baggies. Then would they be
9 allowed to charge 20 counts seeking consecutive time? Or why
10 would the legislature and the federal authorities all include the
11 word mixture?

12 And that's the research that my law clerks and interns
13 have been working on since, the last several days, trying to
14 figure out, your argument is very unusual. We hadn't seen it.

15 But it's just like you say, why is it that, let's just,
16 I've got everybody coming in now mixing heroin and meth.
17 Everybody. I call it hairy meth.

18 MR. WHITE: I've heard you say it, yes, Your Honor.

19 THE COURT: So if I accept your argument that no, we
20 don't weigh those together, and even though they are together,
21 and hairy meth is in the bag, and the supermajority of defendants
22 coming in are saying oh, yeah, I'm mixing the two all the time.

23 Then why do we have so many statutes and regulations
24 that talk about the mixture? And right here it says, in 18 USC
25 it says unless otherwise specified, the weight of a controlled

1 substance set forth in the table refers to the entire weight of
2 any mixture or substance containing a detectable amount of the
3 controlled substance. If a mixture or substance contains more
4 than one controlled substance, the weight of the entire mixture
5 or substance is assigned to the controlled substance that results
6 in the greater offense level.

7 And it looks like from the report that these were kept
8 separate. And I don't know if there were cutting agents. But if
9 they are in the same bag -- I mean this kind of goes along with
10 the cutting agent argument. I mean it seems somewhat unfair to
11 say look, you poured, you know, a half pound of baking soda in
12 there, but we are going to charge you for it.

13 MR. WHITE: But they do, Your Honor.

14 THE COURT: I know they do.

15 MR. WHITE: And they do, I just recently, you know, I
16 just recently had a client that you probably remember, younger
17 guy with, charged with LSD, which we don't see very often. Sugar
18 cubes, same kind of thing. Those were weighed, that's a
19 trafficking amount of LSD, because they weigh the entire sugar
20 cube. They don't separate the LSD from the sugar. Probably
21 impossible to do. I'm not a chemist.

22 THE COURT: I'm sure it can be done. We are
23 Ameri-cans, not Ameri-can'ts.

24 The fact of the matter is when we talk about mixture, I
25 think Miss Cameron's argument is very profound as it relates to

1 Schedule I, Schedule II, Schedule III narcotics. If this were
2 the case, then you could, I mean the prosecution would have so
3 much discretion to charge criminal defendants off the charts.
4 Every tiny little bag, every little sugar cube.

5 MR. WHITE: Yes, Your Honor, they do. I'm not saying
6 they do charge it. They have the discretion.

7 THE COURT: I understand they have the discretion.

8 MR. WHITE: It could be a little bit of an amount for
9 possession. It just has to be basically measurable.

10 THE COURT: I understand that. Here we have meth and
11 heroin, which we know are combined and used by multiple parties,
12 and we have it in one location. And just so I think I'm
13 understanding your argument, your argument is as a matter of law
14 the State is not allowed to takes those two Schedule I narcotics
15 that are found together in the same location at the same time
16 with the same warrant, they are not allowed to take those two
17 substances that are in separate bags or that are already ready
18 for sale and say these Schedule I narcotics, their gross weight
19 takes it to a level two.

20 Just so I'm clear, your argument is no, even though
21 they are both Schedule I narcotics, one heroin and one
22 methamphetamine, the State as a matter of law cannot charge the
23 defendant because they don't individually meet the weight
24 requirements.

25 Is that, am I getting it?

1 MR. WHITE: Yes. But can I add to that a little bit?

2 THE COURT: Sure.

3 MR. WHITE: And I did not read, candidly, I did not
4 read 18 USC. I did not refer to that federal code.

5 THE COURT: No, I'm just trying to find the concept of
6 having multiple substances in one location. This statement says
7 to implement the principle of penalties related to drug
8 distribution, congress was looking at a market-oriented approach
9 of punishing drug trafficking under the total quantity. And it
10 says to implement the principle, congress set mandatory minimum
11 sentences corresponding to the weight of a mixture or substance
12 containing a detectable amount of the various controlled
13 substances, including LSD. It intended that the penalties for
14 drug trafficking be graduated according to the weight of the
15 drugs in whatever form they were found.

16 So whether they were cut, uncut, pure, ready, packaged,
17 they weren't so much concerned about the form that they are in,
18 it's more the level and the quantity that they are in. And so,
19 and that's why I think the word mixture keeps coming up.

20 MR. WHITE: Yes.

21 THE COURT: But you go ahead. You were going to add to
22 your thought process of separate packaging, separate weight.

23 MR. WHITE: Well, my perspective on hearing you read
24 that, Your Honor, is that that federal law also allows for a
25 mixture. Yes, we have seen clients come in here that have

1 admitted to using two substances at the same time, using two
2 substances at the same time, but not, I don't know how they do
3 that. I honestly don't know how they do that, whether they take
4 one at a time, and then the combined effects is what they are
5 looking for. But yes, as you call it, hairy meth, I have seen a
6 little bit more of that lately.

7 That does talk about substances and a mixture. Our
8 statute talks about a substance or a mixture containing the
9 controlled substance, which allows for a cutting agent to be
10 weighed, unfortunately to many of my clients, which brings it
11 above the level.

12 That also, though, sounded like to me, after you read
13 it, Your Honor, sounds like it allows for charging, if there's a
14 mixture of two substances. A mixture of two substances. Here we
15 don't have a mixture of two substances. We have a mixture in the
16 charges of the two substances. We don't have a mixture.

17 Each bag was tested. There were five bags total here
18 that I read off. Each bag was tested, and I don't know whether
19 they were looking for other things. It doesn't -- I'm not aware
20 if they were looking for other things. But each bag, it says
21 items 1 and 3 heroin was identified in the substance. But it
22 does not say anything about meth in 1 and 3, just heroin. Items
23 2, 4, and 5, methamphetamine was identified in the substance in
24 items 2, 4, and 5. No mixture, though.

25 There is no mixture here. There is nothing here from

1 the Washoe County crime lab that states there was heroin and
2 methamphetamine in one bag and that it was tested that way.
3 That's my argument, Your Honor.

4 Location obviously is important to me in my defense.
5 But what I'm stating here is that, and I don't want to keep
6 repeating, but I do think Miss Cameron had a good argument as far
7 as the Schedule I goes. But it seems that there's no statute
8 that allows. So yes, as a matter of law I'm saying I don't think
9 it can be charged that way, because our statute does not allow
10 for the combining of substances when there has been no
11 combination of substances. Each bag was tested separately, and
12 each bag came out with its own substance and not a combination of
13 those substances in it.

14 THE COURT: So if the Court were to accept your
15 argument, then the State would amend to a level one, so how many
16 more level ones would there be? How many charges?

17 MS. CAMERON: It sounds like Count 1 would just be
18 reduced from a level two to one, it would still be three charges.
19 He wants Count 1 to be a level one.

20 THE COURT: No, because there's separate -- if you
21 accept that notion, then there would be the level one for heroin,
22 and there would be another charge level one for methamphetamine.

23 MS. CAMERON: I would have to amend Count 2, then,
24 striking meth, and it would stay a level one. That's correct,
25 Your Honor.

1 THE COURT: If you take the notion that these are each
2 packaged separately, won't that actually increase the number of
3 counts the State could bring?

4 MS. CAMERON: That's what my argument was. Then it
5 would have been three initial PCS charges for those baggies that
6 didn't meet the trafficking threshold.

7 THE COURT: So there would be a level one for the 8.4.

8 MS. CAMERON: In the drawer.

9 THE COURT: And then there would be a level one for the
10 4 point --

11 MS. CAMERON: Of methamphetamine in the drawer.

12 THE COURT: And then the CI purchase would be --

13 MS. CAMERON: One PCS for .986 of heroin, a PCS for
14 3.596 of meth. And there was an additional methamphetamine
15 baggie found in the house of .992. So that's the fifth baggie.
16 That's our outlier.

17 THE COURT: So what level is that?

18 MS. CAMERON: It's a PCS.

19 THE COURT: And then there would be the other count by
20 the school.

21 MS. CAMERON: Right. And then the sale.

22 THE COURT: So it would go from three counts to six
23 counts.

24 MS. CAMERON: Correct.

25 THE COURT: And then each of the level ones are one to

1 six?

2 MS. CAMERON: Correct.

3 THE COURT: Then what's the one by the school?

4 MS. CAMERON: It's a one to six, with a mandatory
5 consecutive one to six for the enhancement.

6 THE COURT: So a total basically seven of one to sixes.

7 MS. CAMERON: Four one to sixes, three one to fours.

8 THE COURT: And then right now it's charged with a
9 level two -- no. It was negotiated previously.

10 MS. CAMERON: And then he didn't plead, and so that's
11 why it's the amended information of a level two. Two to 15 on
12 Count 1, a one to six on Count 2, and a one to six with a
13 consecutive one to six on Count 2.

14 THE COURT: And so what research did you do on the
15 schedule of narcotics? Because I think, is there any case
16 authority in Nevada as it relates to the schedule?

17 MS. CAMERON: No. I just found by analogy on how the
18 jurisdictions were analyzing different controlled substance
19 offenses and not necessarily the combining of weights, nothing
20 with regards to this specific issue. But a lot of the courts
21 focused on how were the drugs being treated, how were they
22 penalized. And that was important to the Court in deciding if
23 the State had appropriately charged it.

24 There were a couple of cases with regards, to there was
25 a motion, I guess a motion to dismiss because there was a lack of

1 specificity, because the State had not articulated what
2 substance. In that specific jurisdiction they needed to know
3 what substance, because depending on the substance, it would
4 expose the defendant to different penalties, not just by
5 schedule, which is how the Nevada statutes are written.

6 THE COURT: But, you know, I mean the term mixture is
7 defined as portion of matter consisting of two or more components
8 that does not bear a fixed proportion to one another, however
9 thoroughly commingled, are regarded as retaining a separate
10 existence.

11 But I think the more profound consideration is the
12 schedule of narcotics, whether it's a one or a two. Because I
13 mean if you accept Mr. White's argument that, you know, there's
14 three grams of meth and three grams of heroin and three grams of
15 oxycodone, and you are walking around with your pharmacy on your
16 back with a ton of product in there, then the argument is no, no,
17 we just have three grams. So then it puts the State in the
18 position of saying okay, we are going to charge you with
19 possession times a hundred.

20 And I think, we did look for legislative history and
21 the intent, and that's what we, there just isn't a lot of law on
22 this in Nevada. But I mean I could see where the State will, you
23 know, if you accept the defense argument, the State's going to
24 say fine, we are going to charge everything, we are seeking
25 consec. And it just doesn't make any sense to say that if you

1 find a group of Schedule I narcotics that are capable,
2 particularly these drugs, of causing death or serious injury, or
3 these are the types of drugs that the legislature says we don't
4 want on the streets, we don't want them out there, and people who
5 are packaging them and have large quantities are necessarily drug
6 dealers, and people who cause a disproportionate amount of
7 problems to the citizens of the community.

8 So I think what we will do -- when is this trial
9 scheduled?

10 MS. CAMERON: The 13th.

11 THE COURT: The 13th of June?

12 THE CLERK: That is correct. June 13.

13 THE COURT: Well, let me take this under advisement. I
14 want to look at the issue of the schedule, the schedule on the
15 narcotics. I will tell you I'm inclined to deny the defense
16 motion, but I want them to be able, if they want to take it up,
17 that's fine. I'm inclined to deny it only because of the
18 scheduling of the drugs and the location. We have two separate
19 locations of drugs. And I would be more inclined to grant the
20 motion if the drugs weren't found in the same location.

21 But as I understand it -- do you have any witnesses
22 here? Do you have the lab person or the officer?

23 MS. CAMERON: No. No witness. We were relying on the
24 facts as they are, because I think the argument was really more
25 of a legal one. So no testimony for today's hearing, no.

1 THE COURT: Okay. But you both agree that the heroin
2 and the meth were found together in a kitchen drawer.

3 MS. CAMERON: Yes. There's a photograph of that.

4 THE COURT: Can I see the photographs? Do you have
5 them with you?

6 MS. CAMERON: Yes. May I approach, Your Honor?

7 THE COURT: Please.

8 MS. CAMERON: So it would be these two photographs,
9 page 11 and 12, are of the kitchen drawer.

10 THE COURT: Okay. (Reviewing document.)

11 A lot of heroin there.

12 So these picture depict how it was found?

13 MS. CAMERON: Yes.

14 THE COURT: Is that a gun?

15 MS. CAMERON: No gun was recovered, although ammunition
16 was.

17 THE COURT: So this drawer looks like a little
18 laboratory. Got the lighters, the spoons, the, it looks like
19 pipes. I don't know what that is. I thought that was a gun.
20 And then it's got the meth and the heroin, clearly in separate
21 bags.

22 So if he had both of these bags in his front pocket
23 when he was arrested, how would he be charged?

24 MS. CAMERON: With a level two trafficking.

25 THE COURT: Okay. But because they are in separate

1 bags, Mr. White's argument is they have to be charged as level
2 one.

3 MS. CAMERON: That's the argument, yes.

4 THE COURT: Okay. And then the CI buy, how did that go
5 down?

6 MS. CAMERON: The CI went into his apartment, exited,
7 handed the narcotics that were purchased to the detectives. Five
8 minutes after the CI left Mr. Andrews left, and he was
9 apprehended with the buy money in his pocket. So it was five
10 minutes after the CI exited his apartment.

11 THE COURT: How much did the CI buy?

12 MS. CAMERON: He bought .96 of heroin and 3.596 of
13 meth. So a level one. Four and a half.

14 THE COURT: And then he has the buy money, they arrest
15 him, and then they go get a search warrant, and they secure the
16 property?

17 MS. CAMERON: Yes. There's a female sleeping in a back
18 bedroom.

19 THE COURT: Okay. So they take her out or they secure
20 it.

21 MS. CAMERON: Yes.

22 THE COURT: I gotcha. Well, I will take it under
23 submission, Mr. White, but I'm inclined to deny that motion to
24 strike because it just doesn't make common sense. I see the
25 argument, it's interesting. I'll go ahead and write an order on

1 it. And I won't preclude you from renewing your motion after all
2 the testimony and all the evidence are in, as that might affect
3 the Court's judgment.

4 But looking at the pictures and just thinking about it
5 logically, it, because they are both Schedule I, it would be I
6 think certainly different if it were heroin and, you know,
7 marijuana or something that, you know, where they are not of the
8 same schedule. But these are of the same schedule. Right?
9 There's no dispute about that.

10 MR. WHITE: No.

11 THE COURT: I want to see if we can get a little more
12 research on that. But I just want you to know I'm inclined, I
13 just don't see that that's what our legislators intended, that if
14 you have got it in separate packages but it's at the same level
15 that you don't get charged at the trafficking level.

16 MR. WHITE: Thank you.

17 THE COURT: So now we have also got a motion in limine
18 for something else?

19 MS. CAMERON: If I may have one moment with defense
20 counsel.

21 THE COURT: All right. Go ahead.

22 (Discussion off the record between
23 counsel.)

24 THE COURT: So we still have the motion in limine
25 regarding prior bad acts.

1 MR. WHITE: Correct, Your Honor. Defense did this
2 motion. I'll just let what I wrote speak for itself. I did not
3 write a reply really. I just wanted to protect him from
4 anything, any prejudicial, being prejudiced in front of the jury.
5 I certainly understand that if Mr. Andrews exercises his right to
6 take the witness stand and we open the door to something like
7 that, that the prosecution can question him on older prior
8 convictions or felonies. I think there are two burglaries from
9 2009.

10 I just want Your Honor to grant our motion, obviously,
11 that as long as he doesn't take the witness stand, there's no
12 other reason to bring these up if he doesn't open the door.
13 There's no, we are not saying there's a mistake or anything like
14 that. And certainly the State is not bringing up any exceptions
15 to this, either. And it is heavily disfavored, presumptively
16 admissible under Rossi versus State as I put in my motion.

17 And should Mr., as I stated before, should Mr. Andrews
18 decide to take the witness stand, we certainly would understand
19 that if we opened the door to that, that the prosecution could
20 question him on that. But we don't want it out there to
21 prejudice him during trial.

22 THE COURT: Then I can't grant or deny the motion,
23 because I can't presume what the defense will be. But I will
24 explain, Mr. Andrews, because you have felony convictions, if you
25 choose to, at the end of the State's case in chief, with the

1 advice of your attorney, you will make a decision as to whether
2 you want to testify. I will canvass you at that time. If you
3 choose to testify, I will explain to you the State has the right
4 to cross-examine you, and they can cross-examine you about your
5 felony criminal history. Those felony convictions remain fresh
6 enough that they are going to be subject to examination should
7 you choose to testify. Okay?

8 THE DEFENDANT: Okay.

9 THE COURT: Any questions about that?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Okay. So again, I think the motion in
12 limine puts, and I don't see from the State that you intend to
13 present in your case in chief any other Petrocelli matters; is
14 that correct?

15 MS. CAMERON: That's correct, Your Honor.

16 THE COURT: And you indicate there was a woman in the
17 apartment?

18 MS. CAMERON: Yes.

19 THE COURT: Is she going to be a witness in this case?

20 MS. CAMERON: I don't know.

21 THE COURT: Okay. Because if there are any witnesses
22 or the CI, anybody who's going to be called as a witness who may
23 be referencing other criminal conduct, then we need to address
24 that pretrial.

25 MS. CAMERON: I will put on the record that in meeting

1 with the CI, he is aware of the defendant's prior criminal
2 history, and actually knew him kind of through, his brother knew
3 him from prison. So I have specifically admonished him to not
4 make any reference to prison, him ever being in prison, knowing
5 anything about him having gone to prison or his prior criminal
6 history, and he did acknowledge that he understood that.

7 THE COURT: So if you will just remind him.

8 And then again, Mr. White, in your cross-examining him
9 and within the course of your questioning you pose a question
10 that, so how were you friends with Mr. Andrews, how do you know
11 him, then that's on you. Okay?

12 MR. WHITE: Yeah. And Your Honor, I will speak to him,
13 too. And if Miss Cameron has any other things that she knows
14 about that history from speaking with the CI already, I'd
15 certainly like to be noticed of those. I don't want to step down
16 that road either obviously.

17 THE COURT: I'm sure your client will share with you as
18 well what's known and what's not. And I can always give a
19 limiting instruction if necessary.

20 So now we are scheduled for trial. Have we already
21 confirmed?

22 THE CLERK: No, we are confirmed, Your Honor. We
23 confirmed at the last hearing.

24 THE COURT: Do we have an exhibit marking?

25 THE CLERK: Yes, on Monday. That will be June 6 at

1 nine a.m.

2 THE COURT: Anything else we need to take up?

3 MR. WHITE: Not that I can think of, Your Honor.

4 THE COURT: I will try to get an order out on this
5 forthwith. As I said, my inclination is to deny the defense
6 motion to strike Counts 1 and 2. I think you have made a
7 thorough record, but there is really no case authority that
8 supports the position either way.

9 And I do think that if you want to do further research,
10 Mr. White, as it relates to the fact that these are Schedule I
11 narcotics, I think that would have probably been a more powerful
12 argument than the fact, and again the record should reflect in
13 looking at the photographs of where the drugs were found, how the
14 drugs were found, it does not make sense to the Court that the
15 legislature intended that if you had these drugs ready for sale,
16 and in point of fact the sale included heroin and meth, it
17 included both of those substances, and the circumstance presented
18 to all the courts right now is everybody is mixing heroin and
19 meth. That is their main fun drug, I guess.

20 So I think we, I'm going to look for additional
21 research related to the schedule of the narcotic versus how it's
22 packaged or found or weighed. Because I agree with the State
23 that had it been in your client's pocket, just because it's in
24 two bags, it's, you know, because it hasn't touched one another
25 or it hasn't been cut with something else, that's two different

1 charges.

2 Further, in this particular instance if the Court
3 accepted your argument, then the State could still turn around
4 and charge six different felonies, which the consequence of
5 placing charges in that perspective could also place a person as
6 a habitual offender if you get six felony convictions. So I
7 think it's a slippery slope to go down the road that you are
8 suggesting. But an interesting slope.

9 So thank you very much. We will stand in recess.

10 (2:30 p.m., proceedings concluded.)

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1 STATE OF NEVADA)
2 COUNTY OF WASHOE) ss
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5 I, LESLEY A. CLARKSON, Official Reporter of the
6 Second Judicial District Court of the State of Nevada, in
7 and for the County of Washoe, DO HEREBY CERTIFY:

8 That I was present in Department No. 1 of the
9 within-entitled Court on Wednesday, June 1, 2016, and took
10 stenotype notes of the proceedings entitled herein and
11 thereafter transcribed them into typewriting as herein appears;

12 That the foregoing transcript is a full, true and
13 correct transcription of my stenotype notes of said hearing.

14 Dated this 15th day of September, 2016.
15
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19 /s/ Lesley A. Clarkson
20 Lesley A. Clarkson, CCR #182
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

Case No. CR16-0323

Dept. No. 1

vs.

RYAN SCOTT ANDREWS,

Defendant.

ORDER

On May 13, 2016, Defendant Ryan Scott Andrews ("Defendant"), by and through counsel, Deputy Public Defender Donald White, filed a *Motion to Strike Counts I and II*. On May 27, 2016, the State of Nevada ("the State"), by and through Deputy District Attorney Darcy Cameron, filed an *Opposition*. The matter came before the Court for oral argument on June 1, 2016 at 1:00 p.m. Having reviewed the pleadings and the record in its entirety, and upon consideration of the parties' respective oral arguments, the Court finds as follows.

FINDINGS OF FACT

This case arises out of an alleged illegal sale of Schedule I narcotics, including methamphetamine and heroin, to a confidential informant ("CI") on June 19, 2015. The State alleges Defendant met with the CI in the Defendant's apartment and, while in the apartment, allegedly sold him approximately 3.596 grams net weight of methamphetamine, and 0.986 grams net weight of heroin, both schedule I narcotics. (*Opp.* at 2: 8-10). The State alleges that after the CI

1 exited the apartment, he told the police officers that he saw additional methamphetamine and heroin
2 in the Defendant's kitchen drawer. (*Opp.* at 2: 12-14). Defendant later exited the apartment, at
3 which point he was taken into custody. During a search of the Defendant's person incident to his
4 arrest, police found the pre-recorded buy money used by the CI in the Defendant's pants pockets.
5 (*Id.* at 2:15-19). Thereafter, RPD Detective Scott Rasmussen applied for and was granted a search
6 warrant to search the apartment for additional controlled substances and evidence of sales. RPD
7 detectives then entered and executed the search warrant of the apartment. (*Id.* at 2:20-24). Police
8 officers found approximately 8.459 grams net weight of heroin and 4.944 grams net weight of
9 methamphetamine in the kitchen drawer, and 0.922 grams net weight of methamphetamine in the
10 bedroom (*Id.* at 2: 8-26).

11 Defendant is currently charged by the *Amended Information* with the following counts:

- 12 (1) Trafficking in a Controlled Substance, a violation of NRS 453.3385(2), a category B
13 felony;
14 (2) Trafficking in a Controlled Substance, a violation of NRS 453.3385(1), a category B
15 felony; and
16 (3) Unlawful Sale of a Controlled Substance at or Near a Public Park, a violation of NRS
17 453.321 and NRS 453.3345, a category B felony.¹

18 Defendant filed a motion to strike counts I and II from the *Amended Information*.

19 DISCUSSION

20 NRS 453.3385 provides in pertinent part that "a person who knowingly or intentionally
21 sells, manufactures, delivers or brings into this State or who is knowingly or intentionally in actual
22 or constructive possession of ... any controlled substance which is listed in schedule I, except
23 marijuana, or any mixture which contains any such controlled substance, shall be punished" based
24 upon the quantity involved. NRS 453.3385(1).²

25 Defendant argues that because the methamphetamine and heroin at issue in this case were
26 packaged in separate baggies, the weights of each substance cannot be combined or aggregated to
27 satisfy the weight limit thresholds required by NRS 453.3385 to charge trafficking in a controlled

28 ¹ *Amended Information*, filed Apr. 20, 2016.

² Nev. Rev. Stat. Ann. § 453.3385.

1 substance. Defendant avers “the statute does not permit the State to charge Mr. Andrews with an
2 aggregate of completely separate controlled substances, i.e., combining heroin and
3 methamphetamine from separate bags and separate searches ... A charge like the one the State has
4 made in this case for a mixture requires it to be exactly that, a mixture of drugs in one bag.” (*Mot.* at
5 3: 1-10.)

6 In response, the State notes the Defendant does not cite to any persuasive legal authority to
7 support his contention, and “[t]he issue appears to be a matter of first impression...” (*Opp.* at 3: 26,
8 4: 1.) Nevertheless, the State contends Defendant’s argument “must fail as it goes against common
9 sense and a rational understanding of the law.” (*Id.* at 3: 2-4.)

10 The State avers “if this Court were to accept the Defendant’s argument, the resultant charges
11 would be three counts of simple possession of a controlled substance for each of the baggies of
12 controlled substances found that weighed less than 4 grams, and two counts of level I trafficking in
13 a controlled substance for the two baggies of controlled substances that weighed more than 4 grams
14 ... for a maximum prison term of 24 years, as opposed to the current maximum term of 21 years
15 allowed by the current offenses charged.” (*Id.* at 4:13-22).³ Furthermore, the State argues that all of
16 the substances at issue are Schedule I controlled substances, and are therefore subject to the same
17 treatment and classification for sentencing.

18 Finally, the State argues that “if the Defendant’s argument is accepted and taken to its
19 logical conclusion, it would mean that if someone possessed 100 separate baggies of 100 separate
20 controlled substances but all of the same schedule and all baggies weighed less than 4 grams, they
21 would not be subject to the trafficking in a controlled substance statutes and penalties despite
22 possessing illegal narcotics having a possible combined weight of over 300 grams.” (*Id.* at 5:2-9).
23 Further, under the Defendant’s interpretation of the law, the State would be allowed to charge 100
24 felony counts and seek consecutive prison sentences for each count. The State suggests this result
25

26 ³ (1) Trafficking in a controlled substance- Level I for the 8.459 grams net weight of heroin; (2) Trafficking in a
27 controlled substance- Level I for the 4.944 grams net weight of methamphetamine; (3) Possession of a Schedule I
28 controlled substance for the 0.986 grams net weight of heroin; (4) Possession of a Schedule I controlled substance for the
3.596 grams net weight of methamphetamine; (5) Possession of a Schedule I controlled substance for the 0.992 grams
net weight of methamphetamine; and (6) Unlawful Sale of a controlled substance at or near a public park for the actual
sale of the narcotics to the CI.


1 “goes against common sense” and was clearly not the Nevada Legislature’s intent in enacting laws
2 against trafficking in a controlled substance.

3 It is incumbent upon the Court to focus on the packaging of the controlled substances in this
4 case, the lethality of the substances, the schedules, and the amounts of the substances to decide this
5 motion. The Court finds the statute and the law contemplate that when a seller of illegal drugs sells
6 heroin and methamphetamine, which are both Schedule I products, both sold together, and located
7 together, the total weight of said Schedule I narcotics appropriately forms the basis for the changes
8 before this Court.

9 Accordingly, and good cause appearing, the Defendant’s Motion to Strike Counts I and II is
10 hereby DENIED.

11 IT IS SO ORDERED.

12 DATED this 9th day of June, 2016.

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16 JANEI J. BERRY
17 District Judge
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 9 day of June, 2016, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed the individuals listed herein and/or electronically filed the foregoing document with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

VIA ECF

Derek Dreiling, Esq.

Darcy Cameron, Esq.

Travis Lucia, Esq.

Donald White, Esq.

Division of Parole and Probation


JUDICIAL ASSISTANT

DA #15-7241

RPD RP15-014576

FILED
Electronically
CR16-0323
2016-06-10 09:44:27 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5556668 : lbarraga

1 CODE 1800
2 Christopher J. Hicks
3 #7747
4 P.O. Box 11130
5 Reno, NV 89520
6 (775) 328-3200

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

9 * * *

10 THE STATE OF NEVADA,

11 Plaintiff,

Case No.: CR16-0323

12 v.

Dept. No.: D01

13 RYAN SCOTT ANDREWS,

14 Defendant.

15 SECOND AMENDED INFORMATION

16 CHRISTOPHER J. HICKS, District Attorney within and for the
17 County of Washoe, State of Nevada, in the name and by the authority
18 of the State of Nevada, informs the above entitled Court that RYAN
19 SCOTT ANDREWS, the defendant above named, has committed the crime(s)
20 of:

21 COUNT I. TRAFFICKING IN A CONTROLLED SUBSTANCE, a
22 violation of NRS 453.3385(2), a category B felony, (51158) in the
23 manner following:

24 That the said defendant on the 19th day of June, 2015, or
25 thereabout, and before the filing of this Information, at and within
26 the County of Washoe, State of Nevada, did willfully, unlawfully,

1 knowingly, and/or intentionally, sell, manufacture, deliver, or be in
2 actual or constructive possession of 14 grams or more but less than
3 28 grams of a Schedule I controlled substance or a mixture which
4 contains a Schedule I controlled substance, to wit: methamphetamine
5 and heroin, at 900 I Street, #218, Sparks, Washoe County, Nevada.

6 COUNT II. UNLAWFUL SALE OF A CONTROLLED SUBSTANCE AT OR
7 NEAR A PUBLIC PARK, a violation of NRS 453.321 and NRS 453.3345, a
8 category B felony, (55686) in the manner following:

9 That the said defendant on the 19th day of June, 2015, or
10 thereabout, and before the filing of this Information, at and within
11 the County of Washoe, State of Nevada, did willfully, unlawfully, and
12 knowingly, having possession of and dominion and control over a
13 Schedule I controlled substance, namely, methamphetamine and/or
14 heroin, sell, exchange, supply, and/or give away the said
15 methamphetamine and/or heroin to a confidential informant acting at
16 the direction of law enforcement officers, and such transaction
17 occurring within 1,000 feet of a public park, namely, Ardmore Park,
18 located at 1200 12th Street, Sparks, Washoe County, Nevada.

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2 All of which is contrary to the form of the Statute in such
3 case made and provided, and against the peace and dignity of the
4 State of Nevada.

5
6 CHRISTOPHER J. HICKS
7 District Attorney
8 Washoe County, Nevada
9

10 By: /s/ Darcy Cameron
11 DARCY CAMERON
12 12100
13 DEPUTY DISTRICT ATTORNEY
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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 Second
3 Amended Information:
4

5 RENO POLICE DEPARTMENT
6 SCOTT RASMUSSEN
7 SEAN GIBSON
8 JET UTTER
9 DEREK JONES
10 KEITH PLEICH
11 WES KELLER

12 The party executing this document hereby affirms that this
13 document submitted for recording does not contain the social security
14 number of any person or persons pursuant to NRS 239B.230.
15

16 CHRISTOPHER J. HICKS
17 District Attorney
18 Washoe County, Nevada
19

20 By /s/ Darcy Cameron
21 DARCY CAMERON
22 12100
23 DEPUTY DISTRICT ATTORNEY
24
25
26

PCN: RPD1504667C;SPPD0045119C;WCAS0002867C-ANDREWS

Code No. 4185

COPY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BEFORE THE HONORABLE JANET J. BERRY, DISTRICT JUDGE

THE STATE OF NEVADA,

Plaintiff,

-vs-

RYAN SCOTT ANDREWS,

Defendant.

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Case No. CR16-0323

Dept. No. 1

ARRAIGNMENT

June 13, 2016

Reno, Nevada

Reported by: Lesley A. Clarkson, CCR #182

A P P E A R A N C E S

FOR THE STATE:

DARCY CAMERON
Deputy District Attorney
One South Sierra Street
Reno, Nevada

FOR THE DEFENDANT:

DONALD K. WHITE
Deputy Public Defender
350 South Center Street
Reno, Nevada

THE DEFENDANT:

RYAN SCOTT ANDREWS

1 RENO, NEVADA, MONDAY, JUNE 13, 2016, 9:23 A.M.

2 -o0o-

3
4 THE COURT: Good morning. We are, the record should
5 reflect we are outside the presence of the venire. This is State
6 versus Ryan Scott Andrews, CR16-0323.

7 We have a second amended information. Do you have a
8 copy of that, Mr. White?

9 MR. WHITE: I do, Your Honor.

10 THE COURT: Go ahead.

11 MR. WHITE: It was filed on June 10, 2016. Mr. Andrews
12 indicates to me that his name is correctly spelled at line 12.
13 We are familiar with the contents, Your Honor. I don't think we
14 need to have a formal reading. He understands now that the
15 change has been made to Count 1, which is trafficking in a
16 controlled substance, a violation of NRS 453.3385. It's a level
17 two where he faces a possible two to 15 years. It is a Category
18 B felony. And then for Count 2, that remains the same, I
19 believe, as far as unlawful sale of a controlled substance at or
20 near a public park.

21 THE COURT: And Mr. Andrews, you waive formal reading
22 of the information.

23 THE DEFENDANT: Yes, I waive the reading, Your Honor.

24 THE COURT: And how do you plead?

25 THE DEFENDANT: Not guilty.

1 MS. CAMERON: I just want to make a brief record as to
2 why it was filed, Your Honor.

3 THE COURT: Okay. Go ahead.

4 MS. CAMERON: A second amended information was filed by
5 the State Friday in agreement and discussions with counsel. We
6 discussed Counts 1 and 2 in light of the Court's ruling denying
7 the defense motion to strike, and I offered to combine both the
8 charges into just one count. And Mr. White did indicate to me
9 that was his preference, and so that there's no, it was filed
10 based on an agreement and understanding. That's why it was
11 filed.

12 THE COURT: Mr. White.

13 MR. WHITE: That's correct, Your Honor. We did kind of
14 chat about it. I think it was right after the motions hearing
15 ended. We were kind of standing right here where we are standing
16 right now. And that's correct.

17 THE COURT: Okay. And I'm looking, was there a waiver
18 of the preliminary hearing?

19 MS. CAMERON: Yes, there was.

20 MR. WHITE: Yes.

21 THE COURT: Was there an offer in this case?

22 MS. CAMERON: Yes, Your Honor. And you did do the
23 Lafler canvass back on April 12. He was thoroughly canvassed
24 regarding the original offer, the rejection of that offer, the
25 original charges that he would be facing. And that occurred on

1 April 12.

2 THE COURT: Okay. Because originally he waived his
3 preliminary examination and agreed to plead guilty to sales of a
4 controlled substance with a stipulated recommended sentence of 24
5 to of 60 months, and the State would not pursue transactionally-
6 related charges or enhancements.

7 MS. CAMERON: That's correct.

8 THE COURT: Do you recall we went over that,
9 Mr. Andrews?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Thank you.

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1 STATE OF NEVADA)
2 COUNTY OF WASHOE) ss
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5 I, LESLEY A. CLARKSON, Official Reporter of the
6 Second Judicial District Court of the State of Nevada, in
7 and for the County of Washoe, DO HEREBY CERTIFY:

8 That I was present in Department No. 1 of the
9 within-entitled Court on Monday, June 13, 2016, and took
10 stenotype notes of the proceedings entitled herein and
11 thereafter transcribed them into typewriting as herein appears;

12 That the foregoing transcript is a full, true and
13 correct transcription of my stenotype notes of said hearing.

14 Dated this 20th day of September, 2016.
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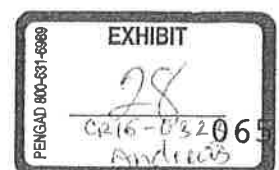
19 /s/ Lesley A. Clarkson
20 Lesley A. Clarkson, CCR #182
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Case No. CR16-0323
STATE OF NEVADA VS. RYAN SCOTT ANDREWS

Exhibit 28
Admitted June 14, 2016..

JACQUELINE BRYANT, CLERK

By: [Signature]
Deputy Clerk



L0336-16-0



WASHOE COUNTY SHERIFF'S OFFICE
CHUCK ALLEN, SHERIFF
FORENSIC SCIENCE DIVISION
911 PARR BLVD.
RENO, NV 89512-1000
PHONE (775) 328-2800
FAX (775) 328-2831



FORENSIC REPORT

LABORATORY NUMBER: L0336-16-0
AGENCY: RENO P.D.
AGENCY CASE #: 15-14576
SUSPECT: ANDREWS, RYAN
VICTIM: STATE OF NEVADA
PERSON REQUESTING: S. RASMUSSEN
DATE OF SUBMISSION: 2/3/2016
OFFENSE: CONTROLLED SUBSTANCES

I, BRAD L. TAYLOR, hereby declare:

That I am employed as a Criminalist by the Washoe County Sheriff's Office (WCSO) Forensic Science Division; that in this capacity I have qualified as an expert witness before a District Judge of the 1st, 2nd, 3rd, 4th, 7th, and 10th Judicial District Courts of the State of Nevada, to detect the presence and identity of controlled substances, the use or possession of which is regulated by Chapter 453 of NRS. That on 2/11/2016 certain evidence, described as

W291085, P86344, Bar Code 150001117, Item 1

A sealed envelope containing
a plastic bag containing 0.986 (\pm 0.005) gram net weight of a brown substance

W291084, P86345, Bar Code 150001117, Item 2

A sealed envelope containing
a plastic bag containing 3.596 (\pm 0.005) grams net weight of crystalline substance

W291049, P86341, Bar Code 150001117, Item 3

A sealed envelope containing
a plastic bag containing 8.459 (\pm 0.048) grams net weight of a brown substance

W291050, P86342, Bar Code 150001117, Item 4

A sealed envelope containing
a plastic bag containing 4.944 (\pm 0.048) grams net weight of crystalline substance

W291086, P86343, Bar Code 150001117, Item 5

**A sealed envelope containing
a plastic bag containing 0.992 (\pm 0.005) gram net weight of crystalline
substance**

was received by the said Forensic Science Division from the WCSO Evidence Section under the above agency case number(s); that the above Lab Number was assigned to such evidence; that on **2/12/2016** this evidence was examined and analyzed by me to be as follows:

Item 1, Item 3

The brown substance in these exhibits was analyzed using color tests and gas chromatography with a mass selective detector (GC/MS). HEROIN was identified in the substance in Item 1 and Item 3.

Item 2, Item 4, Item 5

The crystalline substance in these exhibits was analyzed using color tests and gas chromatography with a mass selective detector (GC/MS). METHAMPHETAMINE was identified in the substance in Item 2, Item 4, and Item 5.

That on **2/12/2016** the said evidence was re-packed in substantially the same condition as when it was first obtained by the Division and was sealed with an evidence seal bearing my initials -BLT- and on **2/12/2016** returned in this condition to WCSO Evidence; that such evidence was in the sole care and custody of the Washoe County Sheriff's Office Forensic Science Division until it was returned.

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


BRAD L. TAYLOR
CRIMINALIST

2-17-2016
Date

The net weights listed above represent a level of confidence of approximately 99%.

ORIGINAL

1 CODE 4245

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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 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR16-0323

11 v.

Dept. No. 1

12 RYAN SCOTT ANDREWS,

13 Defendant.

14 _____ /
15 VERDICT

16 We, the jury in the above-entitled matter, find the
17 defendant, RYAN SCOTT ANDREWS, GUILTY of COUNT I. TRAFFICKING IN A
18 CONTROLLED SUBSTANCE.

19
20 DATED this 15 day of June, 2016.

21
22
23 Michael Vargney
24 FOREPERSON
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1 CODE 4245
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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 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR16-0323

11 v.

Dept. No. 1

12 RYAN SCOTT ANDREWS,

13 Defendant.
14 _____/

15 VERDICT

16 We, the jury in the above-entitled matter, find the
17 defendant, RYAN SCOTT ANDREWS, GUILTY of COUNT II. UNLAWFUL SALE OF
18 A CONTROLLED SUBSTANCE AT OR NEAR A PUBLIC PARK.
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20 DATED this 15 day of June, 2016.
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23 Michael Veary
24 FOREPERSON
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COPY

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE JANET J. BERRY, DISTRICT JUDGE

THE STATE OF NEVADA, :
Plaintiff, : Case No. CR16-0323
v. : Dept. No. 1
RYAN SCOTT ANDREWS, :
Defendant. :
_____ :

SENTENCING
THURSDAY, AUGUST 4, 2016
Reno, Nevada

Reported by: Carol Hummel, CCR #340

A P P E A R A N C E S

FOR THE STATE:

TRAVIS LUCIA, ESQ.
Deputy District Attorney
One South Sierra Street
Reno, Nevada

FOR THE DEFENDANT:

EVELYN GROSENICK, ESQ.
Deputy Public Defender
350 South Center Street
Reno, Nevada

FOR THE DIVISION OF
PAROLE AND PROBATION:

Carlos Perez

1 -oOo-

2 RENO, NEVADA; THURSDAY, AUGUST 4, 2016

3 -oOo-

4
5 THE COURT: State versus Ryan Scott Andrews,
6 CR16-0323. This is a sentencing.

7 MS. GROSENICK: Thank you, your Honor. Evie
8 Grosenick on behalf of Mr. Andrews who appears in custody.

9 We have received copies of the presentence
10 investigation report in this case, and there are no
11 changes, additions or corrections.

12 Your Honor may be actually more familiar with
13 this case than I am having witnessed the trial. However,
14 I think it's important for your Honor to keep in mind in
15 consideration some of the mitigating factors in
16 Mr. Andrews' life and in the case.

17 First, the facts in this case. The
18 trafficking charge arises from what started out as a
19 confidential informant buy organized by the SET team. The
20 confidential informant, I guess he testified about going
21 into Mr. Andrews' home and purchasing drugs, given buy
22 money. However, I believe he may have testified at trial
23 that he owed money for a car.

24 THE COURT: Right.

1 MS. GROSENICK: I will note that then -- so
2 the SET team came in after the alleged buy and arrested
3 Mr. Andrews, obtained a search warrant for the apartment,
4 searched it and found trafficking level drugs there.

5 Regarding the unlawful sale of a controlled
6 substance at or near a park. I would just like to point
7 out I think that enhancement, really the purpose of that,
8 was to keep drug deals out of parks and away from
9 children. The apartment was near a park, yes. But many
10 residences throughout the city are somewhere near a park.
11 However, if a buy did occur, it occurred inside an
12 apartment, not at a park. So I would note, your Honor, I
13 think we can escape the enhancement here.

14 It was charged, and the jury found him guilty.
15 However, I think it's important to note that the purpose,
16 allegedly the purpose of that enhancement, is really to
17 punish and to deter people from conducting drug sales
18 inside a park or near a park where children could be
19 present. And that fact is not present here.

20 Mr. Andrews' criminal history is not
21 extensive. He does have one prior felony for burglary in
22 2009. And I would note that this is his first
23 drug-related conviction.

24 He also has suffered childhood abuse,

1 something that's never been treated. His father was a
2 very violent person toward himself and his mother. His
3 mother would leave sometimes for several days to get away
4 from the violence, and I think that was very hurtful to
5 Mr. Andrews as well.

6 He was also abused by a relative and a family
7 friend, and that abuse was not disclosed until later.

8 What you see is Mr. Andrews actually suffers
9 from post-traumatic stress disorder as a result of that
10 trauma, and that's something that's never been treated for
11 him. Your Honor's been doing this for, I think, over 20
12 years, so you know how co-occurring disorders can
13 complicate treatment and can complicate the time it takes
14 for somebody to actually get sober.

15 Many people who have mental health issues will
16 turn to drugs, and they're predisposed to addiction
17 anyway, that makes the problem that much worse.

18 These are issues that Mr. Andrews has been
19 struggling with. I think that he is very aware of the
20 issues he needs to deal with. As you can see, he's a
21 little bit teary-eyed right now.

22 I would call his addiction severe in light of
23 his history and in light of the report from Janice Fung.
24 I will note he started using cocaine around the age of 12

1 or 13, used it heavy during his 20s. That in turn led to
2 heavy drinking. Often people that use cocaine will use
3 the alcohol to come down off that high.

4 He also started using methamphetamine around
5 the age of 15. That's something that he used on and off,
6 but I believe he was using that prior to his arrest in
7 this case.

8 In 2008 to 2009, somewhere in there, he began
9 taking pain medication for some injuries, I think an
10 injury to his shoulder and also he was assaulted during a
11 home invasion in his house. Someone took a crowbar to his
12 head, so he has suffered a traumatic head injury as well.
13 I imagine that contributes to his post-traumatic stress
14 disorder as well as the issues of the home invasion,
15 having someone try to rob him using violence.

16 But the pain pill use led him to Dr. Rand, who
17 I believe freely dispensed the medication to him. And
18 when he was no longer able to get those pills, that led to
19 his heroin addiction.

20 I guess you can really see chronologically how
21 his addiction started and how it became deeper and deeper.
22 He was using at the time of his arrest in this case.

23 I will note that Mr. Andrews has not had
24 treatment, significant treatment, to address these issues,

1 especially the co-occurring situation. However, Janice
2 Fung indicates that he was open and honest with her and
3 feels he needs treatment, and he's very eager to get that
4 treatment.

5 He understands, your Honor, that this is a
6 mandatory prison case. However, he is looking forward to
7 taking advantage of any program that he can within the
8 prison system and also continuing that clean and sober
9 life when he is released.

10 On top of that, your Honor, although he's not
11 very close with all of his family he does have some good
12 relationships and a lot of support in his life. Today in
13 court his brother is here supporting him. His brother
14 wrote a letter that was filed with the Court. I believe I
15 emailed it to the Court and counsel.

16 THE COURT: Yes, I have it.

17 MS. GROSENICK: You have that. Okay.

18 In addition, his friend Sara is here. She
19 wrote a letter as well. She is a great friend, a great
20 source of support. And finally his girlfriend Misty is
21 here. She is clean and sober, and also a wonderful source
22 of support for him. So he does have good people who care
23 about him, want him to get the treatment he needs.

24 His mother could not be here today. She has

1 been suffering from some heart problems. She had open
2 heart surgery following a heart attack and has been very,
3 very ill. I think she wanted to be here today but was not
4 able to make it. Mr. Andrews is incredibly worried about
5 her condition, and I think the possibility of losing her
6 while he's serving his prison term.

7 So, your Honor, Mr. Andrews is not a perfect
8 person. Not at all. But none of us are. And he's got
9 some real issues that he's burdened with that he needs to
10 address, and he knows that, he realizes that.
11 Unfortunately, it just might be a little bit too late to
12 get straight programming right now since these are
13 mandatory prison charges.

14 So, your Honor, in light of that I would ask
15 for your Honor to show some leniency toward Mr. Andrews.
16 I'm requesting on Count 1 a sentence of 24 to 60 months.
17 And on Count 2 a sentence of 12 to 30 months concurrent to
18 Count 1.

19 Also, I believe as to Count 2 there is a
20 mandatory consecutive term that cannot exceed the first
21 one of 12 to 30 for the park enhancement, so I'm
22 requesting the 12 to 30 enhancement be -- I think it has
23 to be consecutive to the 12 to 30 that I'm requesting on
24 that charge. So those two, the two 12 to 30 will be

1 consecutive to each other, but I'm requesting that they
2 run concurrent to Count 1.

3 THE COURT: Mr. Andrews, did you wish to make
4 a statement before sentencing?

5 THE DEFENDANT: Yes, your Honor. I apologize
6 to the Court for having a jury trial. I never really
7 wished that. I asked all along to get a program. I was
8 accepted into a few, to even have a suspended sentence,
9 what have you. I just need help with my addiction.

10 I did do an eight-week course at the jail, a
11 couple hours each week, which I learned a great deal, but
12 there's so much more that I need to learn about my
13 addiction.

14 I was out there doing a lot of drugs, screwing
15 up, doing other stupid stuff that I'm very ashamed of. I
16 apologize to the D.A., and I appreciate any leniency the
17 Court can show me.

18 I will ask for help for my addiction. I never
19 have had it. I realize all this time I've really gotten
20 in trouble really is based on that. Looking back on it,
21 it all revolves around drugs. When I wasn't doing drugs,
22 there were good times in my life. I've been straight and
23 sober, good jobs, beautiful life. Being a great son to my
24 mother. My brother is sober now.

1 THE COURT: You did pretty well from 1993 to
2 2001. And then 2001 then you went off the rails. What
3 made you stay sober between '93 and 2001? Or did you just
4 not get caught?

5 THE DEFENDANT: No, it was not getting caught.

6 THE COURT: You were sober?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: What helped you then?

9 THE DEFENDANT: I was married. Well, I don't
10 know if it was help, but that's my personal training. I
11 love to help other people with their lives. I was always
12 very against drugs, although I did do drugs younger in my
13 life, but I decided if I got away from them different
14 things would happen in my life.

15 And some people come into life doing drugs,
16 going that route. Even this time here when I first was
17 released in June, then I got -- I was doing drugs, got put
18 back in jail. I failed to appear. I was out there
19 getting high. I went in for a couple weeks, was able to
20 get in at least like 2 1/2, three weeks clean. So when I
21 got out I didn't want to go back to the opiates.

22 I wasn't sick at the time, helped my
23 girlfriend at the time, not my girlfriend no more. I
24 helped her get sober for seven or eight days. I was proud

1 of her. On the eighth day she took a shower, smiled, and
2 asked me to go get some drugs for her. She couldn't
3 handle it, she needed to get high. I gave in. Said okay,
4 a little bit. In the restroom she's doing it in front of
5 me. I grabbed the pipe from her, methamphetamine, got
6 high.

7 I was up all night, then it led back to
8 opiates, led back to the worst time of my life.

9 As you remember probably on the stand the
10 confidential informant was asked did he ever buy drugs
11 from you? No. Ever try? No. Came over, got high.
12 Absolutely guilty of that. I was ashamed because I felt
13 like I did treat him like a little brother. I liked him.

14 I'll never really understand exactly why he
15 did what he did, owing a little money for a car that he
16 delivered. Not that big of a deal. The reason why I
17 didn't try to contact him was -- actually, I never called
18 him, never tried to contact him. I just -- all in all,
19 just making my mom, doing stuff that I never would have
20 done.

21 Drug addiction is just something else. I'm a
22 good hearted person, I love people and always want to try
23 to help. This stuff just took me down. I don't know any
24 other way to explain it.

1 I see -- I felt very guilty and ashamed of my
2 mom looking down on me making it worse. I just wanted to
3 get more high, led me to the worst part of my life. I'm
4 not -- if anyone is in here from Sun Valley, I ended up
5 out in Sun Valley with her with a friend in a trailer with
6 holes in the ground of the trailer, sitting in a little
7 room smoking methamphetamine and heroin, tin foil, the
8 people around --

9 THE COURT: That's a tough disease, that's for
10 sure.

11 State's position.

12 MR. LUCIA: Your Honor, the State's
13 recommendation with respect to Count 1 is that the Court
14 impose the 36 to 96 months as outlined in the PSI.

15 As to Count 2, I agree that the enhancement
16 must be applied to that count and that count only. What
17 the State would argue is for 12 to 48 for the sale with a
18 consecutive 12 to 48 for the enhancement being near a
19 public park.

20 We'll ask the sentence on Count 2 run
21 concurrently with Count 1, effectively bring it right
22 around the same final moment, I guess, for lack of a
23 better word.

24 I think that's a fair recommendation at the

1 end of the day, your Honor. This isn't Mr. Andrews' first
2 time in the criminal justice system. When I looked
3 back through his PSI the thing that was most striking to
4 me was his prior offenses, the arrests at least, were all
5 for violent crimes. There's an armed robbery offense that
6 was resolved for a burglary conviction.

7 And I would note if you look at the
8 disposition on that charge there is at least two prior
9 misdemeanors where the court attempted to intervene and
10 address Mr. Andrews' substance abuse problem, the first
11 being when he was rearrested on September the 29th, 2011.
12 It was for controlled substance issues. He was ultimately
13 paroled, and I would have to guess that as a condition of
14 his parole treatment was somehow a component of that.

15 Notwithstanding that opportunity he was
16 arrested again five months later for another parole
17 violation related to controlled substances. Had his
18 parole reinstated. Again, under the obvious assumption
19 that at some point that was one of the conditions that the
20 parole office decided to place on this man.

21 Notwithstanding that fact, Judge, he
22 ultimately was revoked from his parole on September the
23 9th, 2014, and picked up these charges basically eight
24 months later, just about June. So he couldn't even go a

1 year without falling back into the same trap, the same
2 repeating circle.

3 Going back to the other point that I was
4 making with respect to the nature of his prior offenses.
5 Again, there are arrests for these things that are
6 concerning to the State nonetheless.

7 The first one on Page 5 is a robbery with a
8 deadly weapon on a victim over the age of 60. Burglary
9 with the use of a deadly weapon. In 2009 there's a
10 burglary arrest. There is an arrest for an ex-felon in
11 possession of a firearm, and another count of preventing a
12 witness from testifying. Two counts. Both felonies.

13 Those were resolved for something lesser, but
14 I think it underscores a pattern of behavior here that is
15 concerning to the State, and hence the justification
16 behind arguing for something other than what effectively
17 would be a minimum recommendation.

18 With respect to the enhancement for the park.
19 It says within a thousand feet for a reason. If the
20 legislature intended to further enhance an offense for
21 somebody selling drugs inside of a park they wouldn't have
22 included the language within a thousand feet.

23 As your Honor has known, anybody who has done
24 this job for six months can tell you when there is drugs,

1 there is guns, there is violence, and that kind of stuff
2 shouldn't be within a hundred thousand miles of any place
3 where people take children.

4 So it's a fair enhancement. It's applicable
5 in this case. So for those reason, your Honor, that's the
6 State's recommendation. I think it's fair.

7 THE COURT: Sir, you're sentenced as follows.

8 You're ordered to pay the \$25 administrative
9 assessment fee, the \$3 DNA assessment fee, and \$500
10 attorney fees, his DNA has already been taken in previous
11 felonies.

12 Count 1 you're sentenced to a maximum term of
13 96 months with a minimum parole eligibility of 36 months
14 in the Nevada State Prison. And you're ordered to pay a
15 fine of \$10,000.

16 Count 2 you're sentenced to a maximum term of
17 30 months with a minimum parole eligibility of 12 months
18 in the Nevada State Prison with a like enhancement for the
19 sale of the drug near a public park, the maximum term
20 of -- consecutive maximum term of 30 months with a minimum
21 parole eligibility of 12 months.

22 And Count 2 will run concurrent with Count 1,
23 but the enhancement on Count 2 must run consecutive.
24 That's my understanding. Is that correct, counsel?

1 MS. GROSENICK: Yes.

2 THE COURT: I have evaluations here. I will
3 make an affirmative recommendation that you be classified
4 into a substance abuse mental health treatment program.
5 If you would like those evaluations sent to the prison, I
6 will be happy to do so.

7 THE DEFENDANT: Yes, please.

8 THE COURT: Then, Mr. Andrews, what you may
9 want to consider, somebody in your circumstances with a
10 number of felonies and violent felonies, is you may want
11 to consider after you complete your time to contact the
12 Delancy Street program in San Francisco and see if you can
13 live there for a number of years to hopefully stay out of
14 the system.

15 THE DEFENDANT: Okay.

16 THE COURT: Good luck to you, sir.

17 Credit for time served?

18 MR. PEREZ: 193 days.

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1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

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I, CAROL HUMMEL, Official Reporter of the Second
Judicial District Court of the State of Nevada, in and for
the County of Washoe, DO HEREBY CERTIFY:

That I was present in Department No. 1 of the
within-entitled Court on August 4, 2016, and took
stenotype notes of the proceedings entitled herein and
thereafter transcribed them into typewriting as herein
appears;

That the foregoing transcript is a full, true and
correct transcription of my stenotype notes of said
hearing.

Dated this 13th day of September 2016.

s/s Carol Hummel, CCR #340

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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. CR16-0323

12 RYAN SCOTT ANDREWS,

Dept. No. 1

13 Defendant.
14 _____ /

15 JUDGMENT OF CONVICTION

16 The Defendant having been found guilty by a jury on June 15, 2016, and no legal
17 cause being shown as to why judgment should not be pronounced against him, the Court
18 rendered judgment as follows:

19 1. That Ryan Scott Andrews is guilty of the crimes of Trafficking in a Controlled
20 Substance, a violation of NRS 453.3385(2), a category B felony, as charged in the Count I
21 of the Second Amended Information and Unlawful Sale of a Controlled Substance At or
22 Near a Public Park, a violation of NRS 453.321 and NRS 453.3345, a category B felony,
23 as charged in Count II of the Second Amended Information.

24 2. That Ryan Scott Andrews be punished by imprisonment in the Nevada
25 Department of Corrections for a minimum term of 36 months to a maximum term of
26 96 months and by payment of a fine in the amount of \$10,000.00, as to Count I, with
27 credit for time served in the amount of 193 days. As to Count II, the Defendant is
28 punished by imprisonment in the Nevada Department of Corrections for a minimum

1 term of 12 months to a maximum term of 30 months, with a consecutive sentence of
2 imprisonment in the Nevada Department of Corrections for a minimum term of 12
3 months to a maximum term of 30 months, for the enhancement under N.R.S.
4 453.3345, to run concurrently with Count I.

5 3. It is further ordered that Ryan Scott Andrews shall pay an administrative
6 assessment fee of \$25.00, the \$3.00 administrative assessment for obtaining a biological
7 specimen and conducting a genetic marker analysis and reimburse the County of Washoe
8 the sum of \$500.00 for legal representation.

9 4. Court makes an affirmative recommendation that Ryan Scott Andrews be
10 classified into a mental health treatment program within the Nevada Department of
11 Corrections.

12 5. Court orders, with the authorization of the Defendant, the evaluations filed in
13 the matter be forwarded to the Nevada Department of Corrections.

14 6. Ryan Scott Andrews is hereby advised that:

15 **Any fine, fee or administrative assessment imposed today**
16 **(as reflected in this judgment of conviction) constitutes a**
17 **lien, as defined in Nevada Revised Statutes 176.275.**

18 **Should you not pay these fines, fees, or assessments,**
collection efforts may be undertaken against you.

19 Dated this 5th day of August, 2016,
20 nunc pro tunc to August 5, 2016.

21
22 
23 DISTRICT JUDGE

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. CR16-0323

12 **RYAN SCOTT ANDREWS,**

Dept. No. 1

13 **Defendant.**
14 _____

15 **CORRECTED JUDGMENT OF CONVICTION**

16 The Defendant having been found guilty by a jury on June 15, 2016, and no legal
17 cause being shown as to why judgment should not be pronounced against him, the Court
18 rendered judgment as follows:

19 1. That Ryan Scott Andrews is guilty of the crimes of Trafficking in a Controlled
20 Substance, a violation of NRS 453.3385(2), a category B felony, as charged in the Count I
21 of the Second Amended Information and Unlawful Sale of a Controlled Substance At or
22 Near a Public Park, a violation of NRS 453.321 and NRS 453.3345, a category B felony,
23 as charged in Count II of the Second Amended Information.

24 2. That Ryan Scott Andrews be punished by **imprisonment in the Nevada**
25 **Department of Corrections for a minimum term of 36 months to a maximum term of**
26 **96 months and by payment of a fine in the amount of \$10,000.00, as to Count I, with**
27 **credit for time served in the amount of 193 days. As to Count II, the Defendant is**
28 **punished by imprisonment in the Nevada Department of Corrections for a minimum**

1 term of 12 months to a maximum term of 30 months, with a consecutive sentence of
2 imprisonment in the Nevada Department of Corrections for a minimum term of 12
3 months to a maximum term of 30 months, for the enhancement under N.R.S.
4 453.3345, to run concurrently with Count I.

5 3. It is further ordered that Ryan Scott Andrews shall pay an administrative
6 assessment fee of \$25.00, the \$3.00 administrative assessment for obtaining a biological
7 specimen and conducting a genetic marker analysis and reimburse the County of Washoe
8 the sum of \$500.00 for legal representation.

9 4. Court makes an affirmative recommendation that Ryan Scott Andrews be
10 classified into a mental health treatment program within the Nevada Department of
11 Corrections.

12 5. Court orders, with the authorization of the Defendant, the evaluations filed in
13 the matter be forwarded to the Nevada Department of Corrections.

14 6. Ryan Scott Andrews is hereby advised that:

15 **Any fine, fee or administrative assessment imposed today**
16 **(as reflected in this judgment of conviction) constitutes a**
17 **lien, as defined in Nevada Revised Statutes 176.275.**
18 **Should you not pay these fines, fees, or assessments,**
collection efforts may be undertaken against you.

19 Dated this 11 day of August, 2016,
20 nunc pro tunc to August 4, 2016.

21 
22 DISTRICT JUDGE
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1 CODE NO. 2515
2 WASHOE COUNTY PUBLIC DEFENDER
3 JOHN REESE PETTY, State Bar Number 10
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 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE

11 THE STATE OF NEVADA,

12 Plaintiff,

13 vs.

Case No. CR16-0323

14 RYAN SCOTT ANDREWS,

Dept. No. 1

15 Defendant.

16 **NOTICE OF APPEAL**

17 RYAN SCOTT ANDREWS, the defendant above named, appeals to the Supreme Court of
18 Nevada from the judgment of conviction entered in this action on August 5, 2016. This is not a
19 Fast Track Appeal.

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

22 DATED this 2nd day of September 2016.

23 JEREMY T. BOSLER
24 WASHOE COUNTY PUBLIC DEFENDER

25 By: /s/ John Reese Petty
26 JOHN REESE PETTY, 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,
Reno, Washoe County, Nevada, and that on this date I forwarded a true copy of the foregoing
document addressed to:

RYAN SCOTT ANDREWS (#1080725)
Northern Nevada Correctional Center
P.O. Box 7000
Reno, Nevada 89702

TERRENCE P. McCARTHY
Chief Appellate Deputy
Washoe County District Attorney's Office
(E-mail)

ADAM LAXALT
Attorney General State of Nevada
100 N. Carson Street
Carson City, Nevada 89701

DATED this 2nd day of September 2016.

/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 6th day of February 2017. 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:

Ryan Scott Andrews (#1080725
Southern Desert Correctional Center
P.O. Box 208
Indian Springs, Nevada 89070-0208

John Reese Petty
Washoe County Public Defender's Office