IN THE SUPREME COURT OF THE STATE OF NEVADA

IAN ANDRE HAGER, No. 72613

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

/

Appeal from a Judgment of Conviction in Case Number CR16-1457
The Second Judicial District Court of the State of Nevada
Honorable Scott N. Freeman, District Judge

JOINT APPENDIX VOLUME FIVE

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IN AND FOR THE COUNTY OF WASHOE

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TRANSCRIPT OF PROCEEDINGS

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Friday, December 16, 2016

Reno, Nevada

Reported By: SUSAN KIGER, CCR No. 343, RPR

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I N D E X

RENO, NEVADA, FRIDAY, DECEMBER 16, 2016, 10:03 A.M.

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THE COURT: We are on the record in CR16-1457, State of Nevada versus Ian Andre Hager. This is the time set to finish settling jury instructions.

We are outside the presence of the jury.

Is the State prepared to proceed?

MR. PRENGAMAN: Yes, Your Honor.

THE COURT: Defense?

MS. HICKMAN: Yes, Your Honor. Thank you.

THE COURT: Do you have an extra set of the ones that I was not going to give that you put in a pile yesterday?

MS. HICKMAN: So I marked them for myself, those ones. It's really just two, and I can give you those two.

THE COURT: And you're okay with arguing those without having them in front of you?

MS. HICKMAN: Yeah.

THE COURT: Or we can share.

MS. HICKMAN: Well, actually, there's two copies of them. I'll give you the one that has the --

THE COURT: Okay. Are you good? You've got what you need?

MS. HICKMAN: Yeah.

THE COURT: Very good. Thank you very much, Counsel.

Are counsel familiar with the Court's proposed jury instructions numbers 1 through, I believe it's 28? From the Defense?

MS. HICKMAN: Yes.

THE COURT: And from the State?

MR. PRENGAMAN: Yes.

THE COURT: Thank you. Does the State object to the giving of any of those instructions, 1 through 28?

MR. PRENGAMAN: No, Your Honor.

THE COURT: Thank you. Does the State have any additional instructions to propose?

MR. PRENGAMAN: I do not.

THE COURT: Thank you.

From the Defense perspective, does the Defense object to the giving of any instructions.

MS. HICKMAN: I do, Judge.

THE COURT: First tell me the ones you object to.

MS. HICKMAN: Do you want me to do it one at a time or pull out the ones I object to?

THE COURT: Why don't you do one at a time. Not the ones you want to put in but the ones from the packet you object to, and do them by number.

Mr. Prengaman?

MR. PRENGAMAN: An oversight. My apologies, Judge. I do have one objection I want to make.

THE COURT: Go ahead.

MR. PRENGAMAN: To instruction number 19 and on lines 13 and 14. So this is one of the proposed State instructions, up to line 12. The addition of lines 13 and 14, I would object to those.

THE COURT: Thank you. Did you want to make any for the record --

MR. PRENGAMAN: Just because I do not think it's relevant to the facts in this case. I think it tends to inject confusion, and because that was not an issue and is not a legal or factual issue here, I oppose giving it.

THE COURT: Thank you.

And response for the record?

MS. HICKMAN: Judge, I object to that as being given as well, but --

THE COURT: When you say "that," you mean --

MS. HICKMAN: That instruction.

THE COURT: Okay.

MS. HICKMAN: So I can get to that when I go through my objections, or I can do it now. How would you prefer?

THE COURT: Maybe give a response to his objection

to line 13 and 14 on instruction 14.

MS. HICKMAN: Yes. Okay. So I think it's a correct statement of the law. I think it's a further definition of the statute. I think it's relevant in this case because Mr. Hager's case was dismissed, discharged and his conviction was set aside.

THE COURT: Thank you. That's why I included it.

All right. Anything else, Mr. Prengaman?

MR. PRENGAMAN: No, thank you, Your Honor.

THE COURT: Go ahead, Ms. Hickman.

MS. HICKMAN: Thank you, Judge. I would like to start with instruction 16.

THE COURT: All right.

MS. HICKMAN: This is the instruction that defines the crime of possession of a Firearm for somebody whose either an unlawful user of a controlled substance or addicted to any controlled substance.

My objection to this instruction is essentially three-fold. My first objection is to the definition of "addicted to". That definition of addict comes from NRS Chapter 458. It is from a portion of NRS 458 that describes how a person would get into either Drug Court or Diversion Drug Court. It is not a definition of addict for all of the statutes. It says, "as defined in this section of

458 inclusive at and will be defined as" X. So I would object to the Court going into a totally different statute that is referring to the treatment of somebody in a specialty court and pulling it into a completely different chapter and statute.

I would propose an alternate instruction as to addict. I would impose -- I would propose the instruction that is provided in 27 CFR Section 478.11. That is a federal definition of what an addict is. I think that that is an appropriate definition as to addict. It mirrors the federal definition and the federal statute for what a prohibited person is. If you look at the legislative history of NRS 202.360, the intent was to mirror the federal statute. So I ask the Court to give the federal definition.

My next objection to the way that addict and user are defined in this statute comes with from the Gallegos case that has been cited multiple times. That is a case that was overturned after the Court sua sponte defined fugitive from justice as defined in the federal statute. The Court found for a number of reasons that conviction should be overturned, but one of the things they say in that decision is that grabbing a different definition that the legislature did not provide specifically in that statute does not cure the fact that there is no definition.

So I would ask the Court, if there is no definition and the Court is not willing to give the federal definition, that the Court give no definition of the term "addict" or "user."

My next objection is as to the part of a user of any controlled substance is a person who uses any controlled substance. I don't think that that is an appropriate definition of the law. I think it is overly broad. I think that it encompasses way too many people to be a user. What that essentially says is if at one time in your life you've used methamphetamine, you are a prohibited person from owning a firearm. I think it is far too broad. It is far too vague. It pulls far too many people in the realm of a prohibited person.

I think the definition of unlawful user that is in the federal statute makes sense because it's either addicted to, so you're an addict, or you're an unlawful user. So you are someone who routinely uses but you don't necessarily have an addiction to a controlled substance. And that federal definition defines how to look at that.

Whether they are arrested for Possession of a Controlled Substance in the last few years, whether they are using when they are arrested, right, there are a bunch of different things the jury can look at, and it gives them a

better sense of what an unlawful user would be.

So I object to that definition of user.

I also propose that the Court, if it's going to give this term, "addict" from 458 also defines how a person is found to be an addict in 458, which is that they are found to be an addict by a treatment provider. It is not a lay definition. It is a term that is legally defined. It is a term of art. And somebody can't come in under 458 and say, "Judge, I'm addict." You couldn't put that person into Drug Court. You would have to say, "You have to be found to be an addict," generally, by Janice Fung.

So my objection, if you give it as the State has proposed, is you need to give direction as to how you determine somebody is an addict. It is not the man on the street who says, "I'm addict. I think I'm an addict so put me in Drug Court." Those are my objections to that instruction.

THE COURT: Did you want to respond to that instruction?

MR. PRENGAMAN: Your Honor, I would incorporate -- I would ask to incorporate my Points and Authorities from the State's opposition to the vagueness motion which addresses a number of the specific cases.

I would object -- I oppose that, especially the giving of the federal definitions under the Gallegos case.

The Supreme Court specifically recognizes when Nevada adopts part of a federal statute or a statute from some other jurisdiction, if the legislature -- if the other jurisdiction has definitions included in their law and the Nevada legislature does not include those definitions, our Supreme Court has found that that is clear evidence that the legislative intent was not to include those definitions and to include something else.

Here, our legislature has done exactly that. They used a term that has already been, is familiar to the Nevada statutes, is defined in the Nevada statutes; therefore, I believe utilizing that definition is appropriate.

Additionally, the instruction informs the members of the jury that -- not that once you're a user you can never possess a firearm ever again. While you are a user, you cannot possess a firearm. It specifically tells them that on the second page at lines 10 through 14. So the Gallegos case is authority for that proposition for disregarding the federal definitions because the legislature has chosen to do it, and the definition is in this instruction. Again, familiar terminology in the Nevada statutes, as well as the common sense definition, which again, that's where we would look. Do the terms have a common ordinary definition? These do.

That's my response. Thank you.

THE COURT: Thank you. I find that I'm going to give instruction 16 as written for the reasons as stated by the State.

I believe that under the circumstances, looking for definitions to this particular unique case, 458 gave us guidance as to what the definition of addict is, and I don't believe I'm in violation of Gallegos or those teachings. As a consequence, I'm going to give 16 as proposed by the State.

MR. PRENGAMAN: Thank you, Judge.

MS. HICKMAN: I'm sorry, Judge. In that argument I proposed two different cases. So these would be Defense rejected 1 and 2.

THE COURT: Thank you so much. Why don't you give them to the clerk.

All right. What's your next objection, Ms. Hickman, please?

MS. HICKMAN: My next objection would be to 18.

THE COURT: Thank you.

MS. HICKMAN: And if I may approach, Judge, I'll have my alternative instruction.

THE COURT: Thank you.

MS. HICKMAN: My objection to this is similar to my objection to the one that we just talked about. In passing, NRS 202.360, the intention of the Nevada legislature was to

mirror the federal statute. So I would propose the federal definition in defining adjudicated mentally ill. And I would rely on the authority that is cited in my proposed instructions.

THE COURT: And you also have -- you also briefed that fairly extensively --

MS. HICKMAN: Yes.

THE COURT: -- in response in Motions in Limine and pretrial motions on this particular issue.

MS. HICKMAN: Yes. Thank you.

THE COURT: Sure. What's your next objection?

MS. HICKMAN: My next objection is --

THE COURT: Let me stop you there.

Did you want to respond?

MR. PRENGAMAN: Just for the record. The analysis is exactly the same as I just indicated. I would again incorporate by reference my Points and Authorities and my opposition to the Defense motion. Thank you.

MS. HICKMAN: My next instruction is to instruction 19. We briefly touched on that because the State also objects to this as its being given. I do have a proposed instruction. I have marked it, but I can give it to the clerk.

I would propose that the Court further define -- or further include language from NRS 176A.260 Subsection 4 as to

what the result of having your case discharged and dismissed is that the person is returned to the status that they were before the arrest, Indictment, or Information. I think that's a correct statement of the law. There are no exceptions in that statute, as is argued in this case, that someone who has been adjudicated mentally ill in those proceedings, that that part should not be set aside, that that part should not be sealed and that a person should still be subjected to the law under just that small subsection of NRS 176A. So I ask that the Court further include the language of that statute.

THE COURT: Thank you.

Mr. Prengaman?

MR. PRENGAMAN: Your Honor, as to what Ms. Hickman has just proposed, I oppose that. I believe for a number of reasons it's inappropriate. One, is that is not an issue in this case.

Two, by including that language, you're essentially giving to the jury information that they have no direction as to what they can do if it's not factually relevant. And then legally it's highly confusing because they are going to wonder, "What in the world are we supposed to do with this information? How does it impact anything in this case?" So I think it's inappropriate legally. That is a legal issue for a court to address in different circumstances. On the facts of

this case, it would be inappropriate and confusing. Thank you.

THE COURT: Thank you. On 19, I added the language in lines -- first I adopted the State's language, which didn't seem to be objected to buy the Defense, lines 1 through 12. But I added, in response to what the Court believed to be a compromise on the Defense's request that Subsection 4 be added because I do believe it's a correct statement as contained in Subsection 4. I don't believe it's confusing to the jury, and it gives them an idea of what should happen related to someone who fulfills the terms of a 176A specialty court designation and participation.

I also want to add I agree with the State's argument on number 18. I didn't say anything after you had interposed your objection on 18. And so the record is clear, I agree with the State's argument, and the State's argument they put in their vagueness points and authorities -- their opposition to vagueness points and authorities earlier in this proceeding.

That being said, what's your next objection?

MS. HICKMAN: Judge, my next objection is to instruction 22. This is the entrapment by estoppel instruction that we talked about last night when we were settling jury instructions. I said I didn't have an objection

to adding "Additionally, a Defendant must do more," that part that was added by the State, subject to reading the case that the State cited.

I did read Ramirez Valencia, which is 202 F. 3rd, 1106. It's a 2000 case out of the Ninth Circuit. This statement of law I don't think applies to the case at hand today.

In Ramirez Valencia, what happened is a person was deported. He got a federal form. The INS Form I-294, which said, "Should you wish to return to the United States," et cetera, et cetera, "it is a crime if you do it within the next five years." He was given that form when he was deported. He kept that form. After five years, he came back to the United States, and he argued, "Well, this form told me it was okay." So those are the vague and contradictory statements that were at issue in that case.

This case is much different in that Mr. Hager is not alleging he simply relied on a form and never spoke to a government official. So it's not that they were vague or inconsistent statements like they were in Ramirez Valencia. And so I think that statement of law takes the defense too far and puts an unfair burden on us in showing beyond the preponderance of the evidence, because this case is significantly different than Ramirez Valencia. In Ramirez

Valencia, they quote -- or they cite -- sorry -- a number of the cases that I also cited. The Tallmadge case, which is a case about a federal firearms dealer, and they say that this Ramirez Valencia case is different than that case because the INS form did not expressly tell the Defendant that it was lawful for him to return to the United States after five years. So in that case, they were saying he's not even entitled to the defense at all and because of the vague or inconsistent statements.

Here, once the Court has ruled, we are entitled to the defense. That is no longer irrelevant. If it was simply vague or inconsistent statements, we wouldn't be able to get the defense on. You've ruled that we put in a forward. It's now up to the jury. This case says that in an instance where there's vague or inconsistent statements, you don't get the defense. So I would ask that the Court take that language out of that instruction.

THE COURT: Thank you.

Mr. Prengaman?

MR. PRENGAMAN: Your Honor, I think all those cases say that if you don't show it, you don't get the defense. But it's an accurate statement of the law. So, number one, it's an accurate statement of the law. And the fact that a case or a case that cites that in a court of law has different facts

than our facts or any other case's facts. That would be irrelevant. It's an accurate statement of the law. It's part of the law of this defense. And so it's accurate, number one. And it wasn't just one case I cited. I cited at least two or three cases that held that proposition.

Secondly, I think it does apply in this case. It absolutely does. The Defense is claiming that the Defendant inferred from the -- what I would suggest are highly vague statements. Nobody told him -- he acknowledged that in his own testimony. "Nobody told me I could legally possess the guns." He inferred that from the -- again, what I would submit are vague statements. So the jury absolutely should have that instruction. It's correct, and it applies directly to the facts of this case and the claims the Defense has made by way of their questioning in the case.

THE COURT: Thank you. I appreciate that. I'm going to leave the paragraph in related to vagueness over the objection of the Defense for the following reason: In this particular case, the evidence was -- as the State said, there was nobody who had the ability to give the Defendant his guns back. It specifically made affirmative statements. He inferred it, it was implied, and that's where this language comes from of factual analysis. The State did not object to the remainder of the instruction but asked that that be

included for the reasons just stated by the Prosecutor. So I agree with that, and that language will stay in.

THE COURT: What's the next objection?

MS. HICKMAN: Judge, I don't have any objections to the rest of the packet.

THE COURT: Very good. Have you indicated the additional proposed instructions that you were to provide? Have you already made that as part of your argument?

MS. HICKMAN: No. I would like to do that now.

THE COURT: Very good.

MS. HICKMAN: Thank you, Judge. There are two further instructions I provided. You have both of them. The first is that a licensed firearms dealer is an authorized government official. I think that is, A, a true statement of the law. I would argue that it is applicable in this case as Sparks Police Department has directed their evidence techs to sign a form saying they are a licensed firearms dealer who is a person who can tell somebody whether or not they can legally own firearms. So I would propose that instruction as well.

THE COURT: Mr. Prengaman?

MR. PRENGAMAN: Your Honor, I oppose the inclusion of that instruction. It's inaccurate and doesn't apply to this case. That -- that as a point of -- that would essentially be the Court resolving a factual issue in this

case. The Defense says their evidence is there by implication or inference Mr. Hager, although he denied that out of his own mouth on the stand, but by way of their questioning, they're suggesting there was an inference that this individual held herself out as a firearms dealer.

Whether a firearms dealer is authorized by that instruction for federal law for different reasons for holding someone accountable for their actions in terms of sales, et cetera, has no baring on this case.

The issue in this case is whether the individual, from the evidence, are authorized to make the statements about the legality of owning guns. And their argument is that she held herself out as that. That would be resolving the factual issue. So legally I think it's inappropriate to give that instruction.

And then, factually, I think, again, it is essentially instructing the jury how to resolve a fact issue.

THE COURT: Thank you. I'm not going to give this instruction because I do adopt the State's argument and agree with it; however, also the facts of this case were that the licensed firearms dealer in evidence came from an ATF form that the Defendant never saw by way of that language, was never advised of it. In fact, I think the testimony was, was the Sparks evidence custodian indicated that that was her

section. So as a consequence, it's confusing to the jury. It isn't part of this case other than the ATF form, and I'm not going to give it for those reasons. Thank you.

Your next proposed --

MS. HICKMAN: Judge, my final proposed instruction is the instruction that defines what drug paraphernalia is. There was testimony that there was drug paraphernalia in Mr. Hager's home, that there was a meth pipe, and there were Baggies that the detectives, as part of their training and experience, recognized as potentially being drug paraphernalia.

I propose the instruction to give the jury guidance as to what drug paraphernalia is, what they consider in determining whether or not something is drug paraphernalia.

And so I would ask the Court to gave the definition of drug paraphernalia for this case. And it's directly out of the statute.

THE COURT: Thank you.

Mr. Prengaman?

MR. PRENGAMAN: Judge, I think giving that is inappropriate. If the Defendant was charged with possession of drug paraphernalia, it would be appropriate to do that because those are the elements of the crime. However, in this case, the way the evidence came in is through expert

testimony, specialized knowledge and opinion, and if the Defense wanted to attempt to flesh that out for the jury, they could have done so by their examination. I believe they did do that, and if they wanted to more fully expand it, they could have. But, again, it would be inappropriate to give that instruction. It doesn't apply to this case. The jury is not going to be asked to resolve any elements or to reach any ultimate conclusion about drug paraphernalia.

That's simply part of the facts of the case to be considered like all the others. So, Judge, I think that would be confusing to instruct them and unfair to the State at this point.

THE COURT: Thank you. There was a number of different sort of uncharged conduct that occurred in this case that were introduced for other reasons; for example, that the Defendant entered a plea to Disturbing the Peace. I'm not going to define Disturbing the Peace. The Defendant was arrested for DUI. I'm not going to define DUI. The Defendant had drug paraphernalia. He's not being charged with drug paraphernalia, and for the same reasons I'm not going to give this instruction. It was part of the trial, but I'm not going to give it because it's confusing, and he's not charged with it.

Anything else?

MS. HICKMAN: No, Judge. Thank you.

THE COURT: So there's no additional instructions from the Defense, correct?

MS. HICKMAN: That's correct.

THE COURT: Very good. All right. I think we are ready to bring the jury in.

Do you have something else?

MS. HICKMAN: Judge, I just want to make a request. After the State closes, if we can take a 5- to 10-minute recess so I can collect the items I need from the State and arrange everything.

THE COURT: Always do. I can give you 15 if you want.

MS. HICKMAN: Okay. Thank you. That would be great.

THE COURT: Very good.

All right. Let's all rise for the jury and bring them in. You all have copies of the instructions, right?

MS. HICKMAN: Yes.

MR. PRENGAMAN: Yes, Your Honor.

THE COURT: Did you all see the verdict forms as well?

MS. HICKMAN: I don't think those were e-mailed to us.

MR. PRENGAMAN: If they were the State's, the ones the State proposed, I've seen them.

MS. HICKMAN: I saw the ones the State proposed.

THE COURT: Any objection?

MS. HICKMAN: I haven't seen what they look like in the packet. But as to those, no.

THE COURT: So on the record, there's no objection to the verdict forms. Thank you.

(The jury entered the courtroom.)

THE COURT: Please be seated. I see the presence of the Defense, the Defense team, the Prosecution. And all the jurors are present.

Again, thank you for your patience. It's always one of those things where we get it together, and now we are ready to go.

I shared with you yesterday that what's going to happen this morning is I'm going to read to you the instructions of law. Then after I read you the instructions of law, each party has the ability to stand up and make closing arguments to emphasize the point that they would like to emphasize from the evidence you heard in this trial. Because Mr. Prengaman has the burden of proof, he will go first, and he will go last. So that being said:

(The jury instructions were read to the jurors.)

THE COURT: Thank you. Counsel, have I read those instructions correctly? Mr. Prengaman?

MR. PRENGAMAN: Yes, Your Honor.

THE COURT: Thank you.

Ms. Hickman, have I read those instructions correctly?

MS. HICKMAN: Yes, Your Honor. Thank you.

THE COURT: Thank you very much.

At this time we will hear closing arguments. As I indicated previously, Mr. Prengaman, who has the burden of proof, has the first and last word.

Mr. Prengaman, your closing argument.

MR. PRENGAMAN: Thank you, Your Honor.

Good morning, ladies and gentlemen. I'd like to start my argument to you with the -- one of the concepts that the Judge told you, which is instruction 18, and it is the fact that the charges in this case represent strict liability offenses. That is something different than most criminal offenses, but it is highly significant to this case, and that is the fact that the charges in this case do not require any intent to violate the law whatsoever. A person violates the law, and I'll use -- the elements essentially are the same for all Counts, I through VI, in the sense that if a Defendant willfully possesses a firearm or firearms. And that is the

extent of the intent elements of the Defense. It is the willful possession of the firearms. Beyond that there is no intent requirement. There is no intent to violate the law. There's no requirement that the Defendant had known about the law and intended to violate it or have misapprehended. If the Defendant misapprehended the law, tried to look into it and didn't understand it, thought he was doing the right thing and wasn't, that doesn't matter. That does not matter. And that is a significant thing. And to some extent, I don't know if any of you are, but someone could say, wow, that doesn't seem quite fair. But the legislature has determined that for certain crimes, and the ones in this case are among those crimes, that it is simply unallowable for certain people to have firearms. And so in this case, there has been discussion, because there's an affirmative defense about a number of things about the Defendant believes about whether he was legally entitled to have firearms.

When you are considering the affirmative defense, absolutely consider that testimony and that evidence. But when it comes to the element of the offenses that are charged in the case, the ones the State has the burden of proving, that is irrelevant. If the Defendant said, "You know what" -- I'm not saying he said this. This is just an example. "You know what? I didn't even know that I wasn't allowed to have a

firearm because I had been adjudicated mentally ill." If he said that and if it was true, that would not matter. If you found in this case that he willfully possessed the firearms, then he would be guilty. Now, that's significant but that's the law, and that's the law you all took an oath to uphold and apply in this case.

So, the -- as I'm sure you can tell, the allegations of Counts I through III and IV through VI overlap. They are different theories, if you will, of violating the statute. They all allege -- so Counts I and IV allege the same firearms. Counts II and V allege the same firearms. Counts III and VI allege the same firearms but different ways of violating the statute. Counts I through III deal with adjudication of mental illness. Counts IV through VI deal with being a user or addict of controlled substances. So you can see it is that assault rifle, the Bushmaster assault rifle, and the shotgun you see in Exhibit 57, which has actually been admitted into evidence as Exhibit 89, which are charged as to Counts I and IV. It is the Colt 1911 pistol that is shown here in Exhibit 60 and, actually, in evidence in Exhibit 86; and, likewise, that Navy Arms pistol in exhibit -- this photo 58 and 87 that are charged as to Counts I and V. And then lastly, it's the SIG Sauer and the shotgun and the Ruger rifle that are alleged as to Counts III and VI.

Now, I'm going to briefly touch on that there are two reasons. The Defendant admitted on the stand as to what the evidence shows, that he was in possession of those firearms during the periods alleged, with the exception of those that were returned later. Now, you'll see that all the counts alleged between November 6, 2015 and April 8, 2016. And as the law allows, the State has alleged a period of time on, about, in between. Now, that doesn't mean that the State has to prove that every day -- that that occurred every day. The State has to prove that at some point during that period of time, the Defendant violated the -- violated the -- committed the elements of the offense. So, for example, Counts I through III, they allege that after the Defendant had been adjudicated mentally ill, he possessed those firearms between November 6, 2015 and April 8, 2016. So if on April 8, 2016, he was in possession of those rifles after being adjudicated mentally ill, he's guilty. If on May 8th, January 8th and so forth, the State does not have to prove again that he possessed them during the entirety of that time, simply at any point during that time. Now, as to Counts IV through VI, the State has to prove that he was an addict at the time he possessed the weapons, and the State has to prove he was a user of controlled substances at the time he possessed the weapons. Now, it doesn't mean we have to prove

again he was an addict during the whole period of time or if he was a user during the whole period of time but that during that period of time when he was an addict and/or user, he possessed the firearms.

So, again, the Defendant admitted it, but you don't have to take his word for it. The evidence has shown that he did, in fact, possess those weapons beginning even before the time. But you've got a number of pieces of evidence. You have the things that he posted. You have evidence taken off of his iPhone and both photos and videos that he posted on the Internet.

So you can see here for example, in Exhibits 53 and 70, those are the guns depicted in the video posted November 28th. January 24th, he's -- and we know that from the EXIF data. You'll recall from Detective Dach's testimony, we know exactly when and where these guns were in his house and the day this photo was taken. January 25th. The assault rifle. January 27th. February 2nd. February 5th, that shotgun. And then just again, for example, February 20th, the assault rifle.

As you heard the Judge just read to you, possession may be actual or constructive. I would submit to you the evidence has shown both the Defendant was in actual and constructive possession of the firearms. He admitted he

opened them. The evidence shows he actually possessed them; for instance, when he's holding them and manipulating them in the videos. He's in constructive possession of them anytime he is in the house with those firearms. And I will submit to you that that has the most significant because, again, on the day that he was arrested, he was in actual possession of those items. He was in constructive possession of them. He left his house and was arrested. The day before that the same. He admitted to owning them. And there is I'm multiple ways to violate the statute, owning or actual or constructive possession. When it comes to that video on the 26th, and I will get to that, but I would submit to you that this has the most significance there. Because if you believe the evidence has shown that he was ingesting methamphetamine on that video, then the fact that the evidence shows also that he was in constructive possession of the firearms in his home on that day would mean that he's guilty.

These are all the firearms that were collected in this case. So you can see them all together. There were five of them as of the 26th, and that's the top five, the SIG Sauer, the assault rifle and the 1911, the shotgun and that Ruger rifle. The evidence shows that not just from his admission but from the videos, the photographs, that those items were in his home, in his possession up to the 26th. So

the videos and photos demonstrate that he had at least those firearms in his constructive possession as of the day he shot the video. And by his admission, you know that he had all of them.

So beginning with Counts I through III, the elements the Defendant willfully owned or had in his possession, custody or control, I submit to you, based on what I've just described, that element is satisfied. He was in actual constructive possession and owned those firearms for a substantial period of time, and for some of those firearms all the period of time alleged in the information. Any firearm, which you have them in evidence, and you have his admissions.

And then going to element three, after having been adjudicated mentally ill by a court of this state, any other state, or the United States. Like the Judge told you, to adjudicate means to rule upon judicially. A judge's ruling. Now, there was a lot of questions during the trial about, well was there an order? What about a staff member having sent a letter instead of a judge? None of that is required. This is what's required; to rule upon judicially. And in this case, I submit to you the evidence has shown beyond a reasonable doubt that two judges judicially ruled upon this Defendant's mental illness and sent him into Mental Health Court. And as you can see from the definition of mental illness in the statutes, and

I'll go through them specifically momentarily, but, in essence, Mental Health Court kind of sounds like what it is. The statutes say you have to be mentally ill, and if you are -- and the statutes define what mental illness means. And if you're mentally ill, the Judge finds you to be mentally ill, the Judge can put you in Mental Health Court for treatment. It's a diversionary -- as you heard in the testimony, it is a diversionary program, and if a Defendant completes it, at the end they get the conviction off their record. Essentially there is no conviction. So they can vote. They can -- if they are applying for employment, they don't have to say they have a felony conviction.

But the law does not allow them -- by virtue of the statute that precludes a mentally ill adjudicated individual from possessing a firearm, the law does not allow them to have firearms.

So in instruction 18, you have the definition of mental illness. This is what a judge has to find in order to put somebody into Mental Health Court. And I'm not going to read over all that language again, that sort of dense language. But you heard testimony in the case from Mr. Popovich about that. And Mental Health Court, of course, it is a creation of the statute. They follow the statutory definition, and that's the criteria they use for admitting

people in. And so you have to have -- the most significant thing I would submit here is the very last line of that Section 1, which is the DSM IV Axis I diagnosis. That's the severe mental illness diagnosis that Mr. Popovich talked about. It's in the Mental Health Court outline that you have in evidence. But it requires that diagnosis, and then it seriously limits the capacity as described in Section 2. That's the criteria for getting in. It's, again, the creation of 176 A 250, and that's a statute number that you will hear. When Mr. Hager gets sentenced, you'll hear that Judge talk about it. And you'll see that -- again, in the Mental Health Court guidelines that are in evidence, you will see this is the criteria that the Mental Health Court follows, of course, because of the statutory criteria.

Instruction 19 includes the statutory language for the creation of a Mental Health Court, and just as I've described for you, it says that it's a program for treatment and if a judge finds that an individual is mentally ill can place them in the program. And it describes what happens up until the completion of the program.

Exhibit 38 is the section of that Mental Health Court outline that's in evidence. As Mr. Popovich said, that shows the criteria the Mental Health Court uses, which is directly from the statute. How do you get into Mental Health

Court? You have to be found mentally ill and, otherwise, eligible. In the sense that, as he described, some people just have too much negative criminal history or, for various other reasons, may not be deemed an appropriate candidate. So, Defendant has to consent or the Defendant requests to go into Mental Health Court. "Judge, I'm mentally ill. Please place me into Mental Health Court." A judge rules upon whether the Defendant is mentally ill or not, meets the criteria, and if the Judge finds that he meets the criteria and, again, believes it's appropriate for other reasons, sends that individual into Mental Health Court. That's exactly what happened to Mr. Hager in the Sixth Judicial District Court. He went to his sentencing. Now, you saw his arraignment. He entered his plea to the charge. There was discussion about a different diversion for drug treatment. At sentencing, he -- his lawyer, on his behalf, filed the document you see here, which is a written notice of application for treatment pursuant to 176 A 250, Mental Health Court. And as it begins, "Comes now Ian Hager and makes application for treatment pursuant to 176 A 250, Mental Health Court."

As you heard in the proceedings, and I'm going to play that for you now, but as you heard, he submitted an evaluation that the Judge references and considers. We know the evaluation went to Mental Health Court. You heard he was

diagnosed with posttraumatic stress disorder. That was his qualifying diagnosis. As you heard from Mr. Popovich and you see in the instructions, PTSD, posttraumatic stress disorder, has an Axis I diagnosis under the DSM IV. That's a qualifying diagnosis for Drug Court. And the Judge talks about that, and you hear the discussion. The Defendant, in essence, says he's filed that document, says, "I'm mentally ill. I want to go into Mental Health Court." The Judge considers. There's discussion. He hears the input from the parties, and he decides, "Yes, you meet the criteria. I'm going to order you into Mental Health Court."

Now, Mental Health Court in Winnemucca, in the Sixth Judicial District, as they say, they don't have their own. So he's going to have to order him into Washoe County. And so he says, "I'm ordering you to apply, and if then in Washoe County they" -- "the Judge there deems you appropriate and you're in, you're ordered to complete that program." So this Judge finds the Defendant meets the criteria mentally ill, appropriate for the reasons they discuss in this hearing, and then orders him into Mental Health Court. He rules judicially upon the Defendant's request, "I'm mentally ill. I want to go to Mental Health Court."

(A DVD was played.)

MR. PRENGAMAN: And, of course, the Court has to

grant it. You can't go into Mental Health Court unless the Judge find that you meet the criteria and enters you in. That's exactly the discussion you're hearing in court. You don't get into Mental Health Court unless the Judge finds you're mentally ill and you meet the criteria.

(A DVD was played.)

MR. PRENGAMAN: Then the Judge made his order, order of just what he said, order suspending further proceedings pursuant to the Mental Health Court statute. As he just indicated, he ordered him into the Washoe County Mental Health Court program. And as you heard from Mr. Popovich, the specialty court manager, Mental Health Court -- in Mental Health Court, there's a presiding Judge, and there's a treatment team. And the presiding Judge determines whether a Defendant meets the criteria, which, again, you've seen the statutory criteria, and mentally ill and otherwise appropriate. You heard him talk about that. Again, not everyone who is found mentally ill gets into Mental Health Court. There could be other reasons that would keep somebody out. But the Court ultimately determines, decides is this Defendant mentally ill and appropriate for the program, and decides, accept or reject. And as you heard him testify, the mental illness finding is necessary but not sufficient. What that means is you have to be mentally ill to get into the

program, but that doesn't guarantee that you are.

And, again, same, Exhibit 38 just showing again what the criteria is, tracking the statute. So here we know from the testimony, from the documents in evidence the Defendant was diagnosed by way of a mental health evaluation, PTSD, diagnosis meeting the DSM IV, Axis I, and he was determined -- it meets the statutory and Mental Health Court definition of mentally ill. We know the Mental Health Court Judge determined he met the criteria. He was mentally ill. He was not otherwise inappropriate for the program, and he was accepted into the program.

And as you heard from Mr. Popovich, there's no other way into the Mental Health Court program except, according to the statute, a judicial determination that you're mentally ill and otherwise appropriate.

So going to the elements, element three specifically of Counts I through III, I submit to you that the evidence in this case has shown beyond a reasonable doubt that this Defendant was adjudicated. His mental illness was ruled upon judicially. He was determined to be mentally ill by statute, according to the criteria of the statute, and placed in the Mental Health Court program. Therefore, he's guilty as charged as to Counts I through III. He willfully owned -- again, the only intent element that matters here is the

willful ownership and possession which the evidence has shown. He possessed any firearm. Again, just like the timeframe, there are multiple firearms alleged with each count. The State doesn't have to prove both of them. One is sufficient. I submit the evidence has shown all. He should be found guilty of Counts I through III.

Now, as to Counts IV through VI, those are also strict liability offenses. All six counts are strict liability offenses. The elements here are the same. The first two are exactly the same as Counts I through III, willful ownership or possession of any firearm. And then element three is what's different. While an unlawful user of any controlled substance or while addicted to any controlled substance.

Instruction 16 has the definition of addicted to as well as the definition of user. A user of any controlled substance is a person who uses any controlled substance. And a user can quit using, and if a user quits using, he can possess firearms. But while a user of any controlled substance, he is prohibited from possessing firearms. And as I told you before, in order to prove the Defendant guilty, it's not just that he was a user and then at some point, at any time in the future he possessed. He must have been a user at the time of possession of the firearms, or he must have

been an addict at the time of possession. And because that charge has alternative theories, user is one, addict is another, you have to be unanimous. If you find him guilty of Counts IV through VI, IV, V, VI or all three, you must be unanimous. However, you don't have to be unanimous as to the way he violated the statute. So in other words, if six of you or three of you agree that he was an unlawful user and nine of you agree that he was an addict in possession, then that results in a unanimous verdict of guilt of that count, even though everyone doesn't agree on the way that it was violated.

Now, the evidence has shown -- and the -- that video where he purports or he represents on the video he's ingesting methamphetamine is very significant to the State's theory. By that time that he posts that video -- and we know circumstantially from a lot of different ways -- we know circumstantially from the other evidence of the EXIF data, of the references that are made in the content of the videos that he's posting these videos very close to time to when he's making them. So when the video is posted and says February 26th, you know he is -- it's not back in January of 2015. It's right around the same time that he's posting them. You also know that as to that video of February 26th because of the conversation he had with Detective Johnson. That was -- again, he met with him first on the 19th. They had

that follow-up conversation about a week later. Which if it was exactly a week later, that would have been February 26th, where the Defendant was upset with what Detective Johnson told him about his conclusions about his brother's case. And then on February 26th, the Defendant makes this video.

But those are the five weapons, apart from his admission. Again, you don't have to take his word for it. The evidence shows at least he had those five firearms in his actual or constructive possession leading up to February 26th. And, again, that means the evidence shows that afterwards, there's evidence also that he had those guns in his house. That means at the very least, when he made that video, these firearms, these five were in his constructive possession in the residence.

So the evidence that you've heard in the court proceedings that we just watched, in the course of those proceedings, the Defendant spoke to the writer of the PSI, the Presentence Investigation Report. He told her that he was, in fact, addicted to methamphetamine, he said from age 12 to 19. His last use was in January of that same year. That he had been addicted to OxyContin and that alcohol and drugs were a problem, and he had no positive direction.

He similarly made statements in his -- the paperwork, the orientation paperwork he filled out when he was

in Mental Health Court. Those documents are in evidence in the packet of documents from the Mental Health Court. But he represented similarly to her that his last method of use was smoked -- that his drug of choice was meth and that on his last use he smoked. And then you have the evidence of this video in which he represents that he is using methamphetamine.

And as to timing, you know when the timing is. You know that the content of that conversation with Detective Johnson, the subject was his brother's cause of death was -- there were multiple things factoring into it. Methamphetamine intoxification is one and that there was some accidental conduct at his own hand that factored in. You knew the Defendant was very upset about that conversation, and you know from that and in the content of that, he goes and makes this video where he expresses his agitation at the conclusions the detective has given him. And he talks about that. He talks about the different causes of death that he's had and given. He talks in the video about having an overdose fund, having had an overdose fund. Now, he gave an explanation for the reference to the muscle relaxers and Marilyn Monroe. I would suggest, in keeping what he's saying, that's a reference to the large amounts and it hasn't killed him before. And it dovetails with what he tells the detective in the interview, when he tells the detective that he's using meth, and then he

makes the statement about welcome to the suicidal body, in reference to having high tolerance for the controlled substances. But he also clearly says that he's going to disprove the theory of the police that his brother had an overdose.

And then he does perceive to go back and snort. And then when he's done, he brings the book that has residue on it that we see fall off the book in the photo -- in the video.

Now, if all -- of that was all that there was, if it was just the things he talked about historically and then the video and he comes in and says "Well, it was solved," I would say that the evidence doesn't prove that he's guilty of those, 4, 5 and 6. But that's not all. And it really goes to his credibility when he came into court and talked to you. He told you that he was using salt, that it wasn't methamphetamine.

Now, when he sat down with the detective in the interview room, the detective -- and you heard from the detective. They talked about a number of things in the course of the interview. But he got to the point where he brought up the video, and this is the Defendant's initial reaction when the video was brought up.

(The DVD was played.)

MR. PRENGAMAN: And then as the then Detective, now

Sergeant Rowe, told you, in the course of that interview, he never -- he never gave an alternative explanation. He never disavowed that it was methamphetamine. He said it was methamphetamine. Then later on, the detective got to a point where he explained to the Defendant that "You're going jail, and this video and what you told me is the reason." So when he said "You're going because of this, what we saw in the video," the Defendant didn't say, "No, it wasn't." He said, "You can't prove that." That's what he said. And the detective told him, "You just told me you use methamphetamine." And his response was not "It wasn't meth. It was salt. It wasn't. I was just trying to send a message to the detective." He didn't say a word of what he told you from the witness stand. What he did was say, "The truth Fs me again." Again, not "It was salt" not, "Hey, don't put me in jail because of that because it wasn't really meth," not a word. "Truth Fs me again."

And then while he was testifying, when I was asking him questions about that, you heard me ask him, "Well, in your interview with the detective, you told him it was meth," and he said, "Well, I was just trying to get the detective to look into my brother's case to help me. I thought maybe if I told him that that he would help me." And I confronted him with the fact that the Detective -- "Didn't the detective tell you

that he was from a different jurisdiction," and he couldn't. And then the Defendant diverted. He went off. He said, "Well, you know, I was kind of" -- I mean, he didn't use the word "discombobulated," but, in essence, he says, "I was discombobulated from the way they arrested me." I would submit -- and when I asked him, "When he told you you were going to jail and you said 'the truth Fs me,' why didn't you say it at that point?" And he had some other excuse. He had some other explanation. But I submit to you when he was describing that, that was not credible. If the real reason that he lied to the detective was that he wanted help, it doesn't make sense, and it's not consistent with what you saw on the witness stand. If it was truthful, he couldn't have -- he would have had a straight answer for why he didn't tell him. But first of all, that doesn't make sense. It doesn't make sense for somebody who is confronted with going to jail and with the detective telling you right to your face that the reason you're going has to do with your own admissions for you to then say you think you're sending some kind of message or you think the detective is going to help you, especially when he's told you he's from a different jurisdiction. Especially when he's told you he's not in a position to help you because it's another jurisdiction's case.

So I submit to you that what you heard from the

stand was not credible. What you heard in the interview and about the interview was. The reason he didn't tell the detective in the interview that he used salt was because he didn't use salt. If that was true, he would have coughed it up. He would have told him at some point. Instead of saying "The truth Fs me again," he would have told him it wasn't, but he didn't. For those reasons, ladies and gentlemen, on the 26th, I submit to you that that was an indication of his most recent use. Now, if he's an addict who has beaten it, he wouldn't have, I submit to you, a meth pipe in his drawer. If he was an addict who had gotten over his addiction, who had beat it such that he was no longer addicted to methamphetamine, that would have been gone. An alcoholic doesn't keep a bottle of alcohol in his drawer. But this Defendant kept his meth pipe in the drawer. And, again, you saw his demeanor when he was questioned about that fact, about why is it in the drawer. He wouldn't even -- he wouldn't even acknowledge really, "Yeah, it's mine." That took a little confrontation to get him to even acknowledge it was his. "And the last time I used it" -- well, if what he was saying was true, he would have straight answers for that stuff. "Yeah, I beat it." "Yeah, I left it in there." "I didn't know about it, and the last time I used it was whatever." But that's not what you saw. I submit what you saw was him get elevated when

he was questioned about a subject that he wasn't telling the truth about. And, again, he had it in the drawer, and that's an indicator that he had not beaten it, that he was not over his addiction. And so with that, his use on the 26th is evidence that he was an addict, that he was still addicted, that he had been using it, and that this is on the 26th, that it is simply another method he was using as an addict. And by virtue of that, he was not allowed to have those firearms in his possession.

But, additionally, it is certainly, I would submit to you, evidence that he is a user of controlled substances. The pipe in his drawer and his use, that is evidence that his most recent, that we can show, occasion of use was on the 26th, when he made that video when he was very upset, with a specific reason to send a message to Detective Johnson. And that was, again, the only -- the most recent instance of use. But when he was using, he was in constructive possession of those firearms, at least again those five that we know were in his home, that we can show from the videos and the photos, and certainly all seven by what he said from the witness stand. So for those reasons, I submit the evidence has shown he's guilty of those counts.

Now, the Judge told you that the Defense is claiming an affirmative defense in the case. Now, I know at the

beginning in voir dire, the Judge told you that a criminal Defendant never has to prove anything, and this is one limited instance where they do, and that's significant. It is significant. The State doesn't have a burden when it comes to the affirmative defense. The burden is on the Defense. They actually have to prove that it's more likely than not each and every element of this affirmative defense. And, again, I want to emphasize that the charges are strict liability, that in the course of talking about the Defendant's testimony about what he knew or what he believed about his ability to possess firearms, that is absolutely -- I'm not saying it's not. It's absolutely relevant when you consider and deliberate the affirmative defense and whether the Defendant has proven those elements. But when it comes to the charges in the information, the charges that you're considering, his knowledge, what he said from the stand, what he represented about his knowledge is not relevant. Even if a Defendant, any of Defendant, if it was said and it was true, "I didn't know. I didn't believe that I was prohibited from having a firearm," that does not matter. And the law that you must apply is that regardless of any belief, true or not, if the Defendant was in actual or constructive possession or owned those firearms after having been adjudicated mentally ill or while a user or addict, he's guilty. So his statements about knowledge and

beliefs cannot be really considered. They don't matter -- and I don't say that lightly. They don't matter to these charges.

So the Defense -- the elements the Defendant has to prove are these five elements: They first must prove that an authorized government official empowered to render the claimed erroneous advice. So several things there. An authorized government official. Now, notice what it doesn't say. It doesn't say somebody who the Defendant believed was authorized. It says an authorized government official, empowered, not somebody the Defendant thought was empowered or inferred was empowered, but somebody empowered to render the claimed erroneous advice. Somebody who gives erroneous advice. Not somebody who was negligent but somebody who affirmatively gave advice.

They secondly must prove that that person who gave the erroneous advice had been made aware of all the relevant historical facts. And as you can see, the concept is that if you go to somebody and ask them for advice on a subject, it's only reasonable to expect that they can use their authority to give the advice and you can rely on it if they have all the facts, if they know everything is relevant. So the Defense has to show that the individual was aware of all the relevant historical facts. The person must have affirmatively told the Defendant that the proscribed conduct was permissible. So

again, not inferred. Not just an inference. Affirmatively told advice. This individual, the authorized individual must have given affirmative advice that was wrong. The Defendant has to show he relied on the false information and that his reliance was reasonable. And it must be more than just that the government official made a vague or contradictory statement. A vague something statement, "Well, gosh, I inferred from that vague statement." Again, it's got to be affirmative advice.

So in this case, the Defense called Joanna Bellamy and Lori Renfroe. Miss Bellamy was the Sparks' evidence technician. Lori Renfroe was the Nevada Highway Patrol evidence technician. Now, in -- now, if there is any variance, if I accidentally misspeak, your recollection of facts of this case controls. But Miss Bellamy addressed four firearms that were returned. I would submit to you that based on the evidence, two of those are firearms that are alleged in this case and two of those were not. Miss Renfroe testified about two firearms, the SIG Sauer and the Bushmaster assault rifle that was returned from the Highway Patrol. And Miss Renfroe returned those before November, and Miss Bellamy returned them in early 2016. So both of them came in and testified that they are evidence custodians. They work in their respective agencies managing property in evidence. They

are not law-enforcement officers. They told you they don't enforce the law. They are not police officers. They don't give legal advice. They are not authorized to interpret or give interpretations. That's not their job. They handle evidence and property. Evidence gets booked in. If it's evidence in a case -- if it's somebody's property and they want it back, if it's not evidence, they give it back. If it's a firearm, they try to do their best to see if they feel it's appropriate that they can return the firearm. But that's it. That's what they do. They are not somebody you go to and, you know, "I wonder if I am legal to have my firearm. I will go ask the Sparks' evidence custodian." They are not authorized nor, I submit, would it be reasonable to expect somebody in that position to render advice about the legality of firearm possession. They told you, "We don't give advice. We don't give guidance or recommendations."

And recall and remember what is -- again, what is happening here. This is not going to somebody and saying, "Hey, I want an official rendition of an opinion as to whether I can legally possess this firearm." They are not giving out like a certificate. If the evidence custodian says, "I'm going to release your firearms to you," that's not like a certification that you're free and clear, "I can possession guns." You remember the testimony. I think it was Miss

Bellamy who said, you know, "I run their history. I look into their history. I do my best." But NCIC isn't perfect. It shows arrests and convictions. Not everything is in there. So they do their best to look into the background. I think it was Miss Bellamy who said, "I don't know all the Nevada laws about firearms." That's not what she's doing. She's running backgrounds to see if she can find any anything that would preclude her from returning the firearm. That's what they both said. So, again, they are not purporting to give out anything. Let's say an ex-felon -- let's say a user, a user of a controlled substance, hypothetically decides "Before I use controlled substances today, I'm going to go down to the Sparks Police Department and get my guns." And goes down there, and sure enough the guns are ready. Say Miss Bellamy ran the history, didn't find any history that she thought was concerning. Nothing to prevent her -- they're his guns. They're not evidence in a criminal case. "I've got to give them back." It's his property. So she gives them back, and he goes home. And then say a neighbor smells a funky smell, reports it, the police show up. They end up talking to him at the door, smelling the drugs, and they see that he's got the guns right there, and he gets arrested. Now, that Defendant can't say, "Wait a second. Sparks evidence gave me my guns back. I am free and clear. I am legal to possess these

guns." That's ridiculous. That's unreasonable. But that's not unlike what the Defendant is claiming happened in this case. She's not certifying anything about the legality of gun possession. The federal form that she asked him to fill out to make those representations, same thing, that form doesn't -- it's in evidence. Im sure the Defense will talk about it. But read it. It doesn't say, "If you fill this out, you're legal to possess guns." It is for federal firearm transactions. Miss Bellamy said it doesn't address state law. It's not any kind of certification, if you fill this out, you get to have your guns no matter what. Let's say that I go down to the Sportsman's Warehouse and I'm going to purchase a firearm. They are going to have me fill out this form. I fill it out. They give me a gun that I purchased. Does that mean if I happen to have a felony conviction, I'm free and clear to possess the gun because I fill out the form and they sold me a gun and they didn't catch it in the background check? Absolutely not. Nobody would reasonably think that what these people do, with that form or without the form, equates to any type of certification or representation that you are legal to own a firearm no matter what. At best, at best what they do amounts to this: "I didn't find anything that I think stops me from giving these back." That's a far cry from affirmative advice. It's far cry from saying, you

know, "Mr. Hager, you are free and clear. Even though you've been to Mental Health Court, even though the Judge determined that you're mentally ill and put you in Mental Health Court, you're good to possess these guns. That's not going to preclude you." That is a far cry from the type of representation about proscribed conduct, the advice about proscribed conduct that these elements require. And particularly things she didn't know or didn't find out about. That's coming up as one of the elements, but that, I would submit, factors in here. There's no representation that, "You know what, I checked into your background, and now you're good to go regardless of things I didn't know or didn't find out about." Absolutely not, a far cry from that. They have to show that they are not aware of all the relevant historical facts, and from the testimony here, you know that neither one of these individuals were aware of all the relevant facts. They both told you they didn't know the Defendant had been judged mentally ill in Mental Health Court. What they saw when they were looking into the Defendant was a court order, the one that you get at the end of your diversion, and it says that the conviction was no longer. But all it said -- you heard the testimony. I believe the document is in evidence. All it said was specialty court. It didn't say anything about Mental Health Court anywhere on there. And both of these

witnesses told you they didn't know anything about Mental Health Court. The Defendant didn't tell them, and it didn't come up anywhere. They had no knowledge of the proscribed conduct. When that says proscribed conduct, the proscribed conduct is what he's charged with. That's the proscribed conduct. And neither of these witnesses knew anything about the proscribed conduct, which is the Defendant's possession after being adjudicated or being a user or addict, which I would submit came later. They couldn't have known about that. I don't think the Defense is going to -- well, I'll let them make their argument. But they certainly couldn't have known what he might do in the future as far as controlled substance they cannot affirmatively tell the Defendant the conduct was permissible. So, again, he must do more than show that the government made vague or contradictory statements. And, again, I would submit at best it's vague. What he's saying is really, "The fact they told me they looked into my history and gave my guns back and helped me carry them up to my car, I took that as an affirmative representation that I was allowed to have my guns." That's not what this -- that doesn't cut the mustard with this standard. This standard requires that the person affirmatively tells the Defendant the proscribed conduct was permissible. And, again, they didn't even know anything about Mental Health Court or any of those issues.

They didn't even know the information that would have allowed them to give advice about the proscribed conduct. But they didn't give any advice whatsoever. They did not affirmatively tell him, affirmatively tell him that the proscribed conduct was permissible.

The Defendant didn't rely on any false information because they didn't give him false information. Also, you heard the testimony that during their interview -- I mean during his interview with the detective, when the detective began and said "You're going to jail" and it's talked about the controlled substance use and the video, him not being allowed to have firearms, he did not say -- he said, The truth Fs me again." Did he not say. "Wait a second. You guys told me that I could" -- "your evidence technician downstairs told me that I could possess these guns. I thought I was allowed to have these." That's not what he said. He said "The truth Fs me again." That, I submit, is evidence that did he not rely -- that he didn't -- until he had heard testimony and took the stand, then he said he relied on it. But at the time, when he was sort of right there on the spot talking about this, in custody, going to jail, that would be the time that he would have said it if it was true, if he had relied on it and that's what he was thinking. But it wasn't. And, again, it wasn't reasonable. You don't expect evidence

technicians to give legal advice. You don't expect them to be experts on the subjects that we are talking about.

Additionally, this Defendant had some knowledge about the fact that Nevada law -- Nevada has its own special law. Nevada has its own statute that precludes certain persons from possessing firearms. He was arrested. And remember the Judge's admonition. You heard evidence about the Defendant being arrested for other crimes. You've seen the Court proceedings. You're not to consider that, that he did something then, and use that to consider his guilt here. Those were all admitted for very specific reasons. And so do not consider it for those. But on this subject, what it showed you is that he knew -- because remember my questions to him: "You were arrested for two crimes, one of which was being a prohibited person in possession of a firearm."

"Yes."

"You went to court on that. A Judge showed you the document that" -- the complaint that has the charges, that has the statute number, right?

"Right."

"And he asked you, 'You are aware of that. You've read it. You understand it?'"

"I do."

And then he went forward in time into the Court

proceedings that we see in the two videos. But what that means is that he knew because he had been charged with being a prohibited person in possession of a firearm. He had knowledge that, yeah, Nevada has a statute that addresses this very subject. So to say, knowing that, "When I went to Sparks and these evidence custodians, because they released it to me, because they told me they looked in the background and there was nothing that they thought would keep me from getting my guns, that I inferred from that, even though I know better, I know there's statute," that's not reasonable. I'm not submitting it doesn't meet the other elements but it certainly is not reasonable reliance.

So for those reasons, ladies and gentlemen, I submit to you that the Defense has not proved their affirmative defense that they have the burden of. They have proven beyond a reasonable doubt certainly that the Defendant is guilty of Counts I through III, being a prohibited person because he was adjudicated mentally ill and he possessed the firearms that are alleged. I submit to you that the State has proven Counts IV through VI, and that is on the credibility of the Defendant. If you believe what he told you in court, then you should find him not guilty of 4 through 6. I submit to you it's really that simple. I submit to you that on the evidence, that's what it comes down to. If you believe what

he told you on the witness stand, then he's not guilty. But if you believe that he was not telling the truth on the witness stand and he was telling the truth when he was talking to Detective Rowe, that it would be unreasonable for him to react the way he did in truth, if he had actually used salt instead of methamphetamine, if you believe that when he was being cross-examined, his answers, his evasiveness, his elevated demeanor is indicative of him not telling the truth, that if he had a truthful answer, he would have just been able to say, "Well, why would you think he's going to help you if he told you he's from a different agency and can't help you," that there would have been a different and more truthful demeanor and answer rather than the evasion and, "Oh, I was discombobulated." Well, you know he wasn't that discombobulated. You know from Detective Rowe's testimony that he sat there and talked about a number of subjects, not just the meth on the video. They talked about the guns, the house, a number of subjects, how long he lived there, who lived there with him. It wasn't as he portrayed it here. You know that from what you heard. So if you believe that he was not being truthful here, there's only one reason for it, and that's because he's being truthful in the interview and that he is guilty of 4 through 6. But if you believe he's telling the truth or if you're uncertain -- if you're uncertain, then

I haven't met the burden beyond a reasonable doubt. I have to prove it beyond a reasonable doubt. So if you believe on those counts, "I just don't know" -- and I'm not saying you can do that and quit. If you deliberate and you truly believe that you just aren't sure, then it wouldn't be fair to convict him and don't convict him. So if you believe him or you're not sure, find him not guilty. But if you believe that he lied on this witness stand, there's one reason for it, and that's because he was using methamphetamine. And if he was, he was a prohibited person in possession of those firearms, and you should find him guilty.

Thank you.

THE COURT: Thank you, Mr. Prengaman.

Ladies and gentlemen, traditionally I give the Defense a little bit to organize their thoughts and get ready. So we'll take a short 15-minute recess. Now, listen to my admonition. The case isn't over yet. You haven't heard the Defense side and Mr. Prengaman's final summation. During this recess it is your duty not to converse amongst yourselves or with anyone else on any subject connected with the trial, or to read, watch, or listen to any report of or commentary on the trial by any person connected with the trial, or by any medium of information, including without limitation newspaper, television, radio, Smartphones and the internet. You are not

to form or express an opinion on any subject connected with this case until it is finally submitted to you. It will finally be submitted to you after this break. Follow the admonition, and I'll see you in 15 minutes.

(A break was taken.)

THE COURT: Back on record in CR16-1457, State versus Ian Andre Hager. I see is the Defense, Defense team, the Prosecution. All our jurors are present. Thank you very much.

Ms. Hickman, it's time for your closing argument.

MS. HICKMAN: Thank you.

Ladies and gentlemen, you can call it whatever you want to call it. You can split hairs anyway you want to split hairs. And you can pick certain words out of definitions and try to assign them more meaning than they really are. But here is the important thing about Mr. Hager. Two different agencies gave him back his firearms. The State started its case by explaining to you that these are strict liability crimes and that Mr. Hager's intent didn't matter at all. But in this case, there is a defense to a strict liability crime, and it's called entrapment by estoppel. What this defense is is that if we meet these elements by a preponderance of the evidence, you must find Mr. Hager not guilty of the crimes that are charged against him.

So, to start we can look at the authority of the people who gave Mr. Hager his guns back. And the first is Lori Renfroe from Nevada Highway Patrol. And she came in, and she testified. She said, "I'm not a law enforcement. I'm not a lawyer. I work for the evidence room." But what she did tell you and what the State never mentioned is who told her that she could give guns back to Mr. Hager. The District Attorney's Office that prosecuted him. The District Attorney's Office who dismissed a charge of him being a prohibited person in possession of a firearm. The District Attorney's Office who stood at this table in Humboldt County and said, "I recommend that this person goes into Mental Health Court." The District Attorney's Office who got the dismissal of that case. And the same District Attorney's Office who had the PSI that Ms. Okuma testified to Mr. Hager's reports of methamphetamine use. And Ms. Renfroe gave Mr. Hager back these two firearms. And you'll remember that these two firearms were given back to Mr. Hager on August 28th of 2015, and he took this picture on that day, on the day that Lori Renfroe gave him back those firearms.

And we can talk about the authority of Ms. Bellamy. Ms. Bellamy also is an evidence technician, but she gave Mr. Hager his guns back after he filled out a form. And the State talked about how this form doesn't tell anybody you can

have guns back under state law. Well, Ms. Bellamy specifically said to Mr. Hager, "This is my part. This is the part that I get to fill out." Well, ladies and gentlemen, look at that part. What does that say to you? "It is my belief that it is not unlawful for me to sell, deliver, transport or otherwise dispose of the firearms on this form." And it also talks about state law, the information in the current state laws and published ordinances. It does talk about state law, and it defines the type of person who this section is for, a licensed firearm dealer. And if you look at the definition of the purpose of the form right here, "The information and identification on this form are designed so that a person who is licensed" -- and it goes on to tell you can sell, transfer or give a firearm back to somebody. And the State argued, "Well, these people aren't aware of all the relevant facts. They don't know what's going on." Well, they were. They are aware of the relevant facts. The District Attorney's Office in Humboldt County, who knew Mr. Hager was in Mental Health Court because he put him there, right -- that was the negotiations. He recommended it. When Ms. Renfroe called him and said, "Hey, Mr. Hager wants the guns that we took from him in the criminal case that got him into Mental Health Court. He'd like those back," the District Attorney said, "Wait. Wait until August of 2015." So she called him

and said: I talked to the District Attorney, keep in mind, who prosecuted you, the office who prosecuted you, who knows you were in Mental Health Court, and they want me to hold onto the guns until August of 2015. And then she called him. She called him and she said: Hey, Humboldt County sent your guns down here as a favor to you. Can you please come pick them up.

And Ms. Bellamy told you that she knew that he had been in specialty courts. She herself went and found the dismissal. And she knew specialty courts can be Mental Health Court or Drug Diversion Court. And she didn't follow-up on that. She didn't ask him, "Hey, what specialty court were you in?" She released the firearms to him.

The District Attorney in Humboldt County also knew at one point Mr. Hager said, "I was an addict." Now, at the time they were returning the firearms, it was over ten years ago, so it's not relevant. But at one point, he said, "Yes, I was an addict." And that District Attorney also knew that he said, "I used drugs in January of 2013." And that District Attorney said, "After August of 2015, please give him those guns back." He completed Mental Health Court. And the State wants to argue that this defense doesn't apply here because nobody affirmatively said, "Mr. Hager, I affirmatively state to you that you may legally possess firearms." Well, how much

more affirmative can it be to have a conversation with someone and have them say, "I need to look to make sure you can have firearms. I talked to the District Attorney who prosecuted you. He said you can have them back, but not yet. That District Attorney's Office and our evidence room in Humboldt has sent your firearms down here to Reno. Please come get them. Oh, and by the way, let me carry them out to your car for you." Right? "Let me put them in your car, Mr. Hager. Take them home." What is more affirmative than that? What is more affirmative than somebody who says, "I can give you a firearm. I know the State laws." Helping you to your car with firearms from a state agency, from the Sparks Police Department.

And on top of that, let's talk about how the Sparks Police Department got those guns that were released. How did they get those guns? They took them from him. They took them from him after he completed Mental Health Court, right? Twice. Twice they took them from him. In March of 2015 and again in August of 2015. And not once, not one time did somebody say to him, "I'm taking these from you because you can't have guns." No, not once. Did he rely on that information? Absolutely. Absolutely he relied on that info, right? It's almost comical how much he relied on it. He's putting pictures on his Facebook. He's taking videos of

himself with a selfie stick and setting them up. He relied on that information that he could have the firearms back. He relied on them walking him to his car and putting them in there with him. Was it reasonable? Well, the State has a million reasons why it's not reasonable. One of them is because he's been charged as a prohibited person before. You know what they didn't tell you? It's what you already know. That charge was dismissed. It was dismissed. They charged him with being a prohibited person in possession of a firearm, and then they dismissed it. He doesn't need to know that that charge is out there. What's more important to him personally is that they dismissed it. And, again, that same District Attorney knew he had been charged with it, knew he had been through Mental Health Court, sat through the sentencing, acknowledged the evaluation that said he had PTSD, said, "Yeah, give him his guns back after he's completed Mental Health Court. Just hold onto them until August." What is more reasonable? As you sit here today, what else could Mr. Hager have done? "Oh, thank you, District Attorney, for telling the evidence tech to give me my guns back. I'm going to go hire a lawyer to look into this. I'm going to go in front of the Judge and say, 'Hey, Judge, everybody is telling me I can have my guns back but I don't know if that's true or not.'" No. It is reasonable when somebody says, "I've spoken

to the District Attorney who prosecute you, and you can have your guns back." "I certify that it is not unlawful for me to sell, deliver, transport or otherwise dispose of the firearms listed here." It's reasonable. It is absolutely reasonable.

We have to prove that too beyond a preponderance of the evidence. Is it more likely than not? A definition of preponderance of the evidence. Is it more likely than not a government official told Mr. Hager he could have his guns back, somebody whose authorized to do so? A District Attorney? Right? Somebody who says she's a federal firearms dealer, fills out the ATF 4473 Form, calls him, helps him to his car? Is it more likely than not those people are able to tell him whether or not he can have his firearms back? Yes. Is it more likely than not they knew all the information that was necessary? Yes, absolutely. One of them was in court when he went into Mental Health Court. One of them was there when he said, "I was an addict from when I was 12 to 19. I used in January of 2013." Did he rely on it? Did we prove it was more likely than not he relied on it? Absolutely. And have we proved more likely than not it's reasonable? Yes. This negates that strict liability that the State was talking to you about. And entrapment by estoppel mandates that you find if we have shown that to, you that it's more likely than not, you must find him not guilty, you must.

So I want to talk a little bit about Mr. Hager's addictions. He told you, "Yes, I've had problems with controlled substances. Yes, I drank alcohol. I was addicted to alcohol after my sister died. I was addicted to methamphetamine when I was younger. I relapsed after I buried six family members, my wife left me, I was diagnosed with MS and my dog died." But even back in 2013, no one found him to be an addict. Nobody. His attorney filed a request to go into Drug Court under NRS 458 asking if he be an addict. And then what did that attorney do? Turned around and withdrew it. There's no finding that he has ever been an addict, ever. So if he wasn't an addict in 2013 when he actually used methamphetamine, he cannot now be an addict in 2015 and 2016, when it's been at least two years since he's used drugs. And he told you he's no longer an addict. But you don't necessarily have to believe Mr. Hager. You can look at all the surrounding circumstances to see is he routinely using drugs? Detective Johnson met with Mr. Hager multiple times in February. Officer Raker had contact with him in 2015. Then Detective, now Sergeant Edmondson, went out on a call and said, "No, it didn't look to me like he was on methamphetamine." Detective Dach testified that he talked to him when he was arrested in April. It didn't appear to him as if he was under the influence. Detective Rowe interviewed him

in April, said, "No, didn't look to me like he was under the influence at that time."

Also when the State was questioning Mr. Hager, it came out that not only are those the only law enforcement people who saw him, Detective Gallup saw him, Sergeant Leery saw him. How many law enforcement personnel do you have to have contact with? And for none of them to take your guns and book you as a prohibited person ever? There's nothing indicating that this man is addicted to methamphetamine, nothing. He hasn't used it for at least two and a half years. And not a single law-enforcement officer can tell you that they thought he was under the influence of methamphetamine when they actually had contact with him.

The State asked Mr. Hager when he was testifying, "Mr. Hager, would you agree with me that once addict, always an addict?" And what did Mr. Hager say? "I don't agree with that." The definition of addict also doesn't agree with that. You have to be addicted to a controlled substance to the extent that you endanger the health, safety or welfare of himself or herself or any other person. It doesn't say once you've done it, you've always done it. It is present sense, and present sense tells you that he's not addicted to controlled substances.

So I want to talk a little bit about this unlawful

user because the State also wants to hang its hat on this onetime use of alleged methamphetamine in February of 2016.

Mr. Hager made a movie, and he told you he made a movie. And you can look at this, and you can see that it's a movie. It's dramatic. It's theatrical. It's edited. It's got music playing over it. It's got words written on it. And it's done for a particular purpose. Not to get high, not to enjoy the euphoria or the rush that comes from smoking or snorting or ingesting a controlled substance. It's done because this is a man whose heart is broken. He's desperate. He's frustrated. He's worked with a detective for over two years investigating his brother's death, which he believes in his heart of hearts that his brother was murdered, and he feels like his is not getting the response he deserves. And you're not here to decide whether or not the detectives are giving him that response. But you can look at the testimony of Mr. Hager and of Detective Johnson and see he's not using drugs because he's addicted to them. He's making a movie. And we can see all sorts of movies where there's drug use, and it looks really real. Pulp Fiction. Casino. Scarface. Those movies look more real than the movie of him snorting salt. And if you believe Detective Dach and Rowe and all these detectives that come in and say, "Yeah. No, I can look at a Baggie quickly on a video and tell you I know that's

drugs. I know that," they know that's drugs because they want him convicted. They would know it was drugs if they did their jobs. They would know that.

As a side issue, the detectives look in Mr. Hager's bedside drawer in a room that he doesn't sleep in, and they find some unused Baggies. They find a pipe, and they some more Baggies that looked to me like they have never been used. And Mr. Hager told you, "Well, they've never had controlled substances in them." But I want to talk to you about what the police knew at the moment they hoped this drawer and took this picture. What did they know? They knew -- they knew that Mr. Hager had made a video where he alleged that he had ingested a near lethal dose of methamphetamine. Knew it. They knew he was either being arrested for or about to be arrested for and being accused of being an unlawful user of or addicted to methamphetamine. They knew it. Detective Rowe told you, "I told him that's what I was arresting him for." They knew that they were going to arrest him for a crime that this may or may not support. They knew they had a legit search warrant. They were allowed to be in the house. They were allowed to look in things like this drawer, and they were allowed to collect things. They knew they had all the time in the world. They could have been there for a week if they need to. They could have spent all the time they needed. And if

they didn't think they could collect these things under those search warrants, I guarantee you those detective, with their combined years and years and years of law enforcement, knew they could have gotten a search warrant and collected this. This isn't a cop on day one saying, "Oh, whoops, I messed up." These are experienced detectives that know exactly what they are doing. And they knew by not collecting these things and coming in and saying, "Well, here is what I think those are," -- damaging testimony, right? They knew it. It was a strategic decision that they made. They knew they could get a field test and at least test these things to see if they were presumptive positive if they didn't want to waste the time it took them to book them into evidence and have them go up to the crime lab. Could have done it, 30 seconds. Didn't do it. They could have collected these. They could have actually made some effort, booked them into evidence, sent them to the crime lab, an accredited crime lab that they use all the time, that other agencies use. They could have told them if those things ever actually contained methamphetamine. But they didn't. They didn't. They closed the drawer. They left the house. They came in here and testified, "Oh, well, here is what I think those things are." And they are now asking you to convict Mr. Hager of a crime that there is no evidence of. Think about why they wouldn't have collected those.

Detectives with 10, 12, 14 years of experience. They no better. Ladies and gentlemen, you can't do it. The government cannot take a man's liberty, brand him a felon for the rest of their life on shoddy police work, not even shoddy, strategically poor police work, assumption and conjecture work. They want you to make those assumptions and say, "That's okay, you don't need test them." You can't give the police that kind of pass.

When Mr. Prengaman was addressing you, he said, "Well, we know it's methamphetamine because Mr. Hager said it was methamphetamine." He said it by himself. So because he said it, don't hold the police to any kind of standard. Don't expect law enforcement to do their jobs. But think about all the videos you saw, right? You didn't just see one video where he says "Oh, I'm snorting methamphetamine. Please go investigate my brother's death. Guys, look, I'm doing it." He made a lot of videos, and you saw those videos. And he made those videos, like I said earlier, because he is so desperate. He is so desperate. He feels like he does not have an audience anymore of detectives who will work to solve what he believes is his brother's murder. He believes it. And he had Detective Fox for a long period of time who listened to him, who responded to his text messages and then retired and stopped responding.

But you know what else Mr. Hager is? He's all bark and no bite. He's all show, no go. He's all hat and no cowboy because he also told the detectives he was going to do a lot of other things. On March 16th he makes a video that you watched to Detective Johnson. He says, "You better do your job or I will kill everyone involved." He also, in the video to Detective Johnson, says, "I will never pull over for any of you, and if I do, you don't want to walk up to my car." And then on March 21st, he says, "I'm going to give you until midnight, Detective Johnson, and then I'm going to fucking finish it all." Well, he didn't kill anybody, right? The police walked up to his car. They arrested him. He let them search his car. He voluntarily talked to Detective Rowe. And midnight on March 21st came and went and not one single thing happened. He's bluffing. He's trying to make this seem like a very urgent situation so that these detectives will do really what he wants them to do. Again, that's not the issue, if they respond, if they don't respond. It's a distraction. You can look at the videos and you can see that Mr. Hager is all hat and no cowboy. Mr. Hager never snorted a near lethal dose of methamphetamine. The last time he used methamphetamine is when he self-admitted to it April 4th of 2014 in Drug Court -- or in Mental Health Court, which he successfully completed despite this test. And there is

nothing, nothing, nothing, nothing that you can look at, even with all of the power of the State and every detective from Sparks Police Department showing up, nothing.

MR. PRENGAMAN: Objection to that, Your Honor.

THE COURT: It's overruled.

Go ahead. It's argument. Go ahead.

MS. HICKMAN: There is nothing indicating that between this date and the date he actually was arrested he used methamphetamine, other than his words, that he used it once.

But, like I said earlier, you don't have to believe Mr. Hager, right? Because he told you on one hand he used methamphetamine in the video, right? That's what he says to Detective Rowe. And then here he tells you it was salt. But what you can look at are all the circumstances that surround this. Don't look at those two statements in a vacuum. Look again at why all these videos are being made. To send a message. To send a message. The mere discussion that he has with Detective Johnson to, in his mind, make Detective Johnson do his job, that's what he wants him to do, right? And Detective Johnson told you, "I think I was doing my job. I think I was doing a good job." But that's not what's important. What's important is what he's thinking and what he's actually doing. And in that video, he doesn't snort

anything. He doesn't snort salt. He doesn't snort methamphetamine. He goes off screen, and he sits down, and he pretends.

So let's talk about now what happened the government could have done if they wanted to actually make you think he used methamphetamine. They could have asked his friends, "Hey, how was Ian after the 26th? Was he sick? Did he go to the hospital? Did he call you?" Nope. They had all of his telephone contacts. They could have looked through it and seen if there was somebody he bought drugs from. They didn't do that. They could have looked through his text messages to see what was going on through his texts. Did he text somebody and say, "Can I get some methamphetamine. I'm about to overdose. I'm going to take a lethal dose on camera, put it on my public Facebook page and send it to a cop." Really? I mean, we want to talk about things that are reasonable or unreasonable. On top of that, again, think about what the government knew when they went into Mr. Hager's house. And when they went into his house to search, knowing he was being arrested because of this video, and conveniently for them, he is the worst housekeeper on earth. Terrible. So everything would have still been there. And everything was still there, thankfully, for Mr. Hager because he can't go back and edit the photos that they took. He didn't ask them to put salt on

the pony wall in his house. That was there because what Mr. Hager is telling you is true. And even if they didn't believe that, if they said maybe he put salt in that container on his food that he eats in the loft -- this is the table that he smoked methamphetamine -- or allegedly snorted methamphetamine off of, right? And thankfully the cops are interested in guns. That's what they were there for. You can see the firearm right here. But you know what else you can see in this? Whoops. You can see a pile of salt right here on the bench where he poured it out when he made a fake video to get a cop's attention because he wanted them to figure out what happened to his brother. He didn't plant this. I bet the cops didn't plant it either. It's there because what he told you is true. And on top of that, he was extremely obvious about what he was snorting off of, right? A Bible. Well, there it is. There it is. These guys are detectives. It's not Reno 9-1-1. They are experienced, trained, smart people how have been in law enforcement for years, and these guys can't collect a Bible that they watched somebody on a video walk up and say, "There, it's done"? Why? Why didn't they do it? Because they know it would disprove their theory. Why didn't they take any kind of swab of this area? Why didn't they collect the straw? Why didn't they collect the Baggies? Because you know it's all still there. And this

wasn't just some, "Hey, this is going down. We have got to think fast. We have got to think about it." You heard all the detectives testify. "We made tactical decisions." "We made a big plan." "We surrounded the house." "We went to a house down the street and did surveillance." "We followed him." Right? It's a big deal. And they can't collect the items that are in the video? They had all the time in the world, and they made a decision to not prove that to you.

Ladies and gentlemen, Mr. Hager was in possession of firearms like this Colt 1911 on the day that he was arrested. He was in the possession of a Winchester 20-gauge on the day he was arrested, Bushmaster 223 assault rifle, a SIG Sauer handgun. Those were all in his house. Never been an issue, right? Those guns were taken from him after he successfully completed Mental Health Court, and, again, not by day-one police officers saying, "I don't really know the law. I don't know what I'm doing." Sergeant Edmondson was there. Detective Gallup was there. Sergeant Leery, who is his next-door neighbor, was there. He didn't arrest him for being a prohibitive person in possession of a firearm. They took his guns and they booked them for safekeeping. Same thing happened to him in August. They come out to his house. They collect a firearm. Nobody talks to him about being a prohibited person in possession of a firearm. Nobody. Nobody

thinks he's using drugs. Nobody thinks he's an addict. Nobody is worried except for about his safety. But they let him stay home with a friend. But what changed? What changes over a year later from when they first take the Colt 1911 from him? I'll tell you what changed. Mr. Hager had the audacity to say mean things to the police department. He picked a worthy opponent. He called Detective Fox a fucking pussy. He drove by a government building on a public street and angrily said Scott Johnson's name and told the detective to do his fucking job. Asked the detective if it looks like he's fucking playing. He told Detective Johnson that he thinks he's too big of a fucking pussy to actually arrest murderers. That's why we are here. That's why they are all here, sitting here.

MR. PRENGAMAN: Object, Your Honor. That's not evidence in this case.

THE COURT: Sustained.

MR. PRENGAMAN: Move to strike.

THE COURT: Stricken.

MS. HICKMAN: We are here because he said mean things about police officers. Detective Johnson sat here and he said, "Oh, yeah, he sent me these videos on March 31st, and I was scared, not just for myself but for my family." This is a detective. He knows how to get a protection order, right?

He knows how to write up an arrest warrant. He knows how to call the District Attorney's Office and say, "Hey, this person is committing a felony of threatening a public officer. Please go arrest him." He knows those things. Did he? Did he?

You want to talk about people's credibility. Look at the credibility of the police officers in this case, the kind of work that they did, and ask why Mr. Hager is sitting right there. Detective Johnson told you he was scared for his family, himself. A detective? And this man is not arrested for 18 days? That's more than half a month. More than two weeks. Mr. Hager would not have been in possession of this Colt 1911 if it hadn't been given back to him by the Sparks Police Department. Mr. Hager would not have been in possession of this Bushmaster 223 assault rifle if it had not been given back to him by the same agency who arrested him, by the same District Attorney's Office who put him in Mental Health Court. If the same Nevada Highway Patrol had not called him and said "Come pick up your guns. The District Attorney said you can have them in August," he wouldn't have this. If someone from those departments hadn't walked him out to his car with him and helped him load them. Wouldn't have been in possession of it had he not been affirmatively told, "You can have firearms." Would not have been in his home.

Ladies and gentlemen, that SIG Sauer was taken from Mr. Hager before he went into Mental Health Court. That SIG Sauer was returned to him after he successfully completed that program. He's not a prohibited person because of his mental health, and even if he were, he relied on the actions, the words, the advice. He believed that he could have that firearm and that it was reasonable. He relied on it. He's not an unlawful user. He's not addicted to. He is none of those things. And because he is none of those things, ladies and gentlemen, he's not guilty. Thank you.

THE COURT: Thank you, Ms. Hickman.

Mr. Prengaman, your final summation to the jury.

MR. PRENGAMAN: Thank you, Your Honor.

First, ladies and gentlemen, I would submit what you just heard are two things -- two big things. One is misdirection. It's okay to say that the police could have done more, and they probably could have. They probably could have collected some more things from the house. But to suggest to you all that you shouldn't make him a felon, first of all, it's inappropriate. The instructions tell you you shouldn't consider the penalty at all when you deliberate. So that argument from the lawyer is an inappropriate argument, and you should disregard it.

MS. HICKMAN: Judge, I object to that

characterization.

THE COURT: Overruled. It's argument.

Go ahead.

MR. PRENGAMAN: The second thing was some blatant misstatements about the evidence in this case, and I'll get to that. But first the police. To suggest that you should somehow find this Defendant not guilty to send a message to the police about their work is inappropriate. What you should do and must do because that's what you're here for, that's the oath you've taken, is to take the facts of this case, the evidence as you determine them, take the elements of the crimes and see if they match. And if the State has proved the facts of the crimes beyond a reasonable doubt, you should find him guilty.

Now, right now I'm going to suggest to you that you should find the Defendant guilty of Counts I, II, III and IV because they didn't even touch it, didn't even argue about the facts, didn't take issue with any of the facts that the State disproved. You get into Mental Health Court because the Judge adjudicates you mentally ill and puts you there. Once you're adjudicated mentally ill, you can't possess firearms. He was, he did, and he's guilty beyond a reasonable doubt of Counts I, II, and III. And his intent doesn't matter. It's strict liability. Strict liability.

As to the Counts 4, 5, 6. Now, could the police have gathered more evidence? They probably could have. But the issue isn't -- it may affect what the proof is. In other words, if the police don't gather evidence, it may affect the proof that comes into court and is available for you to consider, and if it's not enough, I've already told you, if you don't believe there's enough evidence that this Defendant was an addict or user on Counts IV, V and VI, then find him not guilty of those counts. But to suggest you should do something or there was something inappropriate with the police is just wrong. And much of what she said is not sustained by the evidence. I mean, the overstatements -- she said Edmondson, Leery, Raker, and Gallup never arrested the Defendant as a prohibited person. Now, remember part of that has to do with the fact that you have not heard from a couple of those people. They didn't even testify in this courtroom. The others only testified about seeing the Defendant, and that was Edmondson and Raker. They saw the Defendant for a very short period of time, and they said, you know, "It didn't appear to me" -- and I'm generalizing greatly here. But they both said, "It didn't appear to me that he was under the influence, more drunk. But it's possible he had drugs on board." That's about what they said. But none of those witnesses said, and she didn't ask, if they knew he had been

in Mental Health Court. There's no evidence that anybody knew that he had told other people or the police he was in Mental Health Court or that any of these people even knew that. So the idea that somehow you should judge the evidence because the police didn't arrest him before because they tried to deal with him, because they tried to allow him to stay in his home and take the guns away and then ultimately some evidence technicians gave them back, the idea that they didn't arrest him for something or that they should have is not something before you. That's not evidence for you to consider in this case, and you didn't hear evidence about it. If she wanted to have that evidence, she could have subpoenaed those witnesses and called them in just like the others she did and ask them about that. But she didn't. You didn't hear that evidence, and you should disregard what she said. That is not supported by the evidence.

So what does the evidence show? Could the police have collected that pipe? They could have. I'm not saying they couldn't have. But what does that mean for you today that they didn't? They said, "Based on my training and experience, that looked like a crack pipe." And the evidence in this case is it was because he told you. And that's the evidence in the case to consider. So if you think they could have done a better job in that regard but didn't, the bottom

line is you still know that that's a crack pipe. I'm sorry. Not a crack pipe, a methamphetamine pipe. And you can consider that because that's the evidence in this case. And the fact that they didn't, really, you should do nothing about that except know that there's evidence for you to consider or not.

So is that salt that she showed you in that photo or is it methamphetamine or is it something else? Why didn't she ask the Defendant that on the stand? She had the Defendant on the stand. Showed him the other photo of the salt. Why not that one? Now, again, I'm not going to beat that horse. Nothing has changed from what I argued to you before. I submit to you this case comes down to this Defendant's admissions. If, as he said in the video, if, as he said in the interview, that was methamphetamine and he's got the methamphetamine pipe in his drawer, that is evidence. And he's admitted that he's been addicted to it before. All of that together shows you that he is a user of a controlled substance. And his most recent instance of use is on February 26th or the day or two after he made that video. And if you believe that beyond a reasonable doubt, he's guilty of Counts IV, V and VI. Again, consider all the evidence. Consider his demeanor on the stand. Consider what he didn't say when he was in the interview. Consider the fact that he

was told "You're going to jail." How would you expect a person who react in that scenario if they had done salt instead of methamphetamine? And consider, again, if he lied on the stand, I submit to you you should find him guilty. Because the only reason you lie is because the truth is what you stand up for.

MS. HICKMAN: Object.

THE COURT: Overruled.

MR. PRENGAMAN: If you believe what he said or you're unsure -- again, my burden is beyond a reasonable doubt. So if you are not sure beyond a reasonable doubt that did he meth on that day, because that is central to the State's theory, if he did the meth, that is evidence that he is a user, and that's an instance, an occasion of use. If he's addict -- which I submit he would be because he's shown he hasn't kicked it. He has got the meth pipe. That is evidence on that occasion that, on February 28th or the 26th or the day or two after he made that video and he had possession of firearms, he was an addict using. Now, if you don't believe that find him guilty.

On the Defendant's affirmative defense, where they half the burden of proof, this lawyer came and told you that the DA who prosecuted the case told the evidence technician that -- to release the evidence. And that was 100-percent

false. She stood here and said the evidence custodian called the DA who prosecuted the case and he told her. That's false. That's not the evidence in this case. Remember, she came in, Ms. Renfroe, and she said, "I faxed a form to the DA's office. It was faxed back to me." She never talked to anyone in person. The form was signed on the line for District Attorney, and it said release on this date. That's it. That was what her testimony was. I asked her, "Do you know who it was?" She didn't recognize the signature. She couldn't even say it was a District Attorney, a Prosecutor. She said the form came back. She released it on the day that the form said. She didn't know if the prosecution -- even the Prosecutor who prosecuted the case didn't know if he was still in the office, had no clue. So when she suggests to you that the DA in court could -- was the one that released that evidence, the only person in the evidence in this case that knew the Defendant had been to Mental Health Court, that's false. That's not the evidence.

(A DVD was played.)

MR. PRENGAMAN: Now, she's got the burden on that issue, and there he is. Where was he here? She called the evidence custodian. She subpoenaed the evidence custodian from Sparks and NHP. Why didn't she subpoena that guy in here? If that's the guy that said, "Hey, you can have the

guns back" -- and I submit even if that's the case, that doesn't meet their burden. But what she just argued to you, what she has represented to you over and over -- I mean, she must have said ten times, "The DA who prosecuted the case said, 'Release the guns.'" False. Why didn't she bring him in here to say, "You released it"? Where is he? Why not? You can infer from her failure to do that that it wouldn't support what she just told you. The evidence certainly doesn't. Why didn't she subpoena the person who signed the form? You didn't even see the form. That was never in evidence. It was her saying, "I remember I faxed the form. It came back, and I couldn't read the signature." That's the actual evidence in the case. Why didn't she subpoena the person who signed the form? Why didn't she bring that person in to testify before you? She did not. And you can't inferred -- what she just argued was not in evidence. You can't infer from the -- a page that the person who signed it was a District Attorney. Maybe. But if it was, it's not the same guy that prosecuted the case, not anybody that knew the history of the case, not anybody that knew -- you don't even know, for instance, if it went to somebody who told his or her secretary, "Sign it and send it back." "What's the day that he gets off probation? Let's release the guns." You have no idea if somebody who had no clue about the case did that. You

know nothing. And that's an affirmative burden on them that they have not met.

Now, again, I'll argue to you that even if it was, it doesn't meet the burden because saying "I'll release the guns" doesn't tell him "You are allowed to have them." But they did not show that. They did not show that. If it was as she says, you bet they would have had the people on the stand to say that in this courtroom, and they would have their burden. So I submit what you can infer from that is that it wasn't that guy.

So -- so she not show you that the evidence showed that these people were authorized. Nothing changed from what I argued to you before. Evidence custodians, not authorized, do not have the power and authority to give the advice. They have not established that. Nothing changed.

Now, again, she argued to you that you they were -- she just said they were aware of the fact. Well, they weren't. Remember the evidence. They both came in here and said they had no clue about Mental Health Court. And this defense isn't like a -- this is not a game. You have an individual who they have -- by lack of argument, they have a -- I'm not going to say they conceded, but they didn't touch the evidence that he is an adjudicated person for mental illness who is not supposed to possess firearms. But the law

says that person, strict liability, cannot possess a firearm. And it's not a game. This defense is a defense -- as you can see from the elements, what this defense says is if you go to somebody who actually has the authority to give a final word, to give advice on the subject and you give them all the relevant facts, "Hey, I was in Drug Court. I've been adjudicated mentally ill. What is your official opinion about the law as it relates to my ability to have firearms," if you do that to the appropriate person and that person tells you, "You know what, you can possess the firearms," the police can't turn around and arrest you for following that advice. But it is very limited, and that's why they have to prove each and every element. They can't just proof 1 or 2; they have to prove every single one.

Now, again, the argument was made at the very beginning taking words out of context. I'm not taking anything out of context. My argument to you is based on the letter of the law as the Judge has given it to you, and authorized government official. Not one assumed, speculated, inferred. And she didn't show you the facts otherwise. That's the letter of the law. Not -- not I believed it, not I was mistaken. They have to prove that we are actually dealing with somebody authorized, they have it, the evidence custodians are. It has to be advice. And she didn't show you

there was advice given. It was inference. Inference, if that. Now, I submit he didn't rely on it, and that was something that after he saw what the evidence was, he got on the stand, and that was the best way to try to explain away what he was responsible for. But it is not reasonable to infer from somebody again simply doing their job, giving his guns back, infer that he is allowed to possess them. Using that form is not -- again, remember, the same form that I would sign. I would go down to buy a gun. I'm going to sign that form. The person whose selling it to me is going fill out the bottom portion, and they are going to sell me a gun. And if I haven't represented to them -- if I filled out the form and there's something that I've held back or something I didn't know about and they didn't catch it, selling me that gun doesn't give me a license to possess the gun when I shouldn't, especially for things they didn't know about.

Now, she held that form up and said it -- she claims that the bottom part represents that this person is a dealer. The evidence was the following: She said, "I don't know where he got the form. Probably at the front desk. He filled out his part. It came back to me through the office. I didn't see him. When he came to pick up his guns, after he had taken them, then I signed my" -- "on that portion." She told you he never even saw it. She didn't sign it and give it to him. He

never walked away with a copy. And from the witness stand, he told you something different. He told you that she had the form there and she said, "No, you don't fill that out. That's me." Now, that's not what she told you. That was completely contrary to what she told you. It's not like he brought the form. It came to her through the inner office, and because she already had it, she called him and said, "You can come get your guns." But can just take what he said. Even if she said "That's my portion," what he's telling you is that he didn't even read it, if he started to try to fill it out and she said, "No, that's my portion." But even if he did, it does not represent to him that he can possess guns. It does not give him a license just like it doesn't give a license to anybody who purchases a gun and fills out that form to hold it when they shouldn't, to possess guns when they shouldn't. It is not a representation of any kind.

So they didn't -- they were not aware of all the relevant historical facts. Nobody knew about Mental Health Court. And proscribed conduct is not just possessing the gun. Proscribed conduct is the charge in this case. The authority has to have told him that the proscribed conduct, possession by a person adjudicated mentally ill or possession by an addict or a user, they have to tell that person that proscribed conduct is legal, and that never occurred. And the

people that provided his guns back to him never were afforded that information. So they certainly could not have given the type of erroneous advice that the Defense requires. It was not affirmative, and, again, did he not rely on it.

Now, the Defendant's lawyer just argued to you that -- about that charge, about that prior prohibited person in possession charge, she said. What the DA didn't mention was that it got dismissed. Well, you all heard that it did. He went in. He was charged with two things. There was a plea bargain. He pled to one of them. That wasn't my point. That's another misdirection. My point was that he told you on the witness stand that he knew what the charge was, that he had read that document, that he had affirmed that he understood it to the Judge. And the point is he knew about the statute in Nevada that prohibits people from having firearms. So when he says, "Oh, I inferred that because these people gave me back my guns, I could have them," he knew exactly where to go to look. And that makes claiming reliance on inference all the more unreasonable. It was not reasonable. You cannot infer erroneous affirmative advice from negligence, from something that somebody missed or didn't know. At best all that happened in this case was that the Defendant went to some evidence custodians who didn't know all the facts. They did their best to look into his past. There

was critical information that just -- it doesn't pop up in NYIC. It wasn't their obligation. They are not obligated. You can't turn it around and say they had some obligation to find it. Because this defense doesn't say if the government was negligent or if they missed something, you get a windfall. You get to be a mentally ill adjudicated person having guns. That's not what this is about. This is about if the government has affirmatively told you that you can do what the statute says you can't and then you do it, then you can't be held accountable. But that is not what happened in this case. That is not what happened. This Defendant was adjudicated mentally ill. He had firearms and wasn't supposed to. It's a strict liability defense, and they have not proved these elements to you by a preponderance of the evidence. For those reasons you should find this Defendant guilty as charged in Counts I, II, and III. And, again, like I said, if you believe what he said and you find him not guilty, that means I haven't met my burden. If you believe he lied, there's one reason, and that's because he did methamphetamine. And I submit to you that if you find that beyond a reasonable doubt, then you should also find him guilty of IV, V and VI. Thank you, ladies and gentlemen.

THE COURT: Thank you, Mr. Prengaman.

All right. Ladies and gentlemen, it's time for me

to give the case to you. You may talk amongst yourselves. You may share what you believe the facts to be amongst yourselves. You may form and express opinions. You may talk about this case. You must have a unanimous verdict. At this time I'm going to have the deputy step forward and be sworn in. And there's one back there as well. Go ahead.

(Whereupon the deputy was sworn.)

THE COURT: Thank you. And you also have the assistance of other deputy sheriffs, do you not, deputy?

THE BAILIFF: Yes, sir.

THE COURT: Thank you very much. All right. Ladies and gentlemen, one of the most difficult times in a trial related to jury service is the fact that in a criminal jury trial, there's 12 jurors, and throughout this week there's been 13 of you. And the reason why there's been 13 is that if somebody became sick or infirm during the trial, we don't call the trial off. So we have what's called an alternate juror. When you're an alternate juror, you need to hear all the evidence, think about the evidence, listen to the closing arguments, but you don't get to vote unless one of the jurors becomes sick or infirm during deliberations and prior to the verdict. So that juror would have to be on call, and they would be excused at this time, along with giving their phone number and information to our bailiff so that they could

called if somebody gets sick. And the alternate juror in this case is Ms. Kelly.

Thank you, Ms. Kelly, for your attention. Don't go too far away. You're excused to go home, but you're on call. So if, in fact, we need to call you for some reason during deliberations, we will bring you back, and the deliberations will start anew so you can go from the beginning. Thank you for your time and attention, and your service is very much appreciated. You're excused.

JUROR KELLY: Thank you.

THE COURT: All right. All right. Ladies and gentlemen, this is the time for you to retire to the jury room. I told you yesterday I don't have time limits. Do your deliberations as you do them. That's an area that's strictly for you. You've heard the arguments. You've heard the closing arguments. It's now time for you to do your job. We will wait for the call of the jury.

All rise for the jury.

(The jury left the courtroom.)

THE COURT: Thank you. Please be seated. All right. Please don't go too far away. Make sure that we have all your phone numbers and that you can be over here fairly quickly if there's any questions or if there's a verdict. I need to say that I thought this case was tried very well.

Very unusual issues. I used the term yesterday in chambers when we were settling jury instructions that it had a lot of ebbs and flows. I was most impressed how the lawyers were able to very quickly, on their feet, move with different rulings the Court had made and made this a very, very powerful trial.

I will share with you, Mr. Hager, that your lawyers did an excellent job, and you, sir, got your money's worth from those lawyers every step of the way. You should be very proud of what they have done.

THE DEFENDANT: I am, sir.

THE COURT: You as well, Mr. Prengaman, represented the State very, very well in this case.

No matter what the verdict is for either side, very well done as far as the Court is concerned.

MR. PRENGAMAN: Thank you.

THE COURT: We'll wait for the call of the jury. We'll be in recess until then.

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THE COURT: We are on the record outside the presence in CR16-1457, State versus Ian Andre Hager. I note the presence of the defense and prosecution attorneys.

Do you waive your client's appearance for this purpose?

MS. HICKMAN: I do, Judge. Thank you.

THE COURT: We received an instruction -- excuse me. We received a question. It reads as follow. If jury has irreversible split decision on certain counts, does that automatically render our final vote as not guilty?

The response that I had prepared was: Your verdict must be unanimous, meaning all 12 jurors must agree to a verdict whatever it may be.

Does anybody object to that answer?

MS. HICKMAN: No.

MR. PRENGAMAN: No, Your Honor.

THE COURT: I mean, did you want to add anything for the record?

MR. PRENGAMAN: No, Your Honor.

THE COURT: Okay. I'm going to include that. And not hearing any objection, that will be my response.

And don't go too far away, we may get more questions, you never know. But I'm going to let them deliberate. So I'll do that now.

Thank you very much.

MS. HICKMAN: Thank you.

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THE COURT: Back on the record in CR16-1457, State versus Ian Andre Hager.

You may be seated. Thank you.

I note the presence of the Defense, the Prosecution.

It's my understanding we have a verdict; is that correct?

THE BAILIFF: Yes, Your Honor.

THE COURT: Does anybody have any matters outside the presence before I bring in the jury?

MR. PRENGAMAN: No, Your Honor.

MS. HICKMAN: No, thank you.

THE COURT: Thank you. All rise for the jury.

Thank you. Please be seated.

Let the record reflect the presence of the Defendant, his attorney, Deputy District Attorney for the State. I see all 12 members are here.

Who has been selected as foreperson?

THE FOREPERSON: I have.

THE COURT: Thank you.

Has the jury reached a verdict?

THE FOREPERSON: Yes, sir.

THE COURT: Would you please hand the verdict to the bailiff.

All right. The clerk will now read the verdicts out loud. Would you please stand.

THE COURT CLERK: The State of Nevada, Plaintiff,

versus Ian Andre Hager, Defendant.

Verdict: We, the jury in the above entitled matter, find the Defendant, Ian Andre Hager, guilty of Count I, Possession of a Firearm By a Prohibited Person.

Dated the 16th day of December, 2016. Signed by foreperson, Patricia Cruz-Hernandez.

Verdict: We, the jury in the above entitled matter, find the Defendant, Ian Andre Hager, guilty of Count II, Possession of a Firearm By a Prohibited Person.

Dated the 16th day of December, 2016. Signed by foreperson, Patricia Cruz-Hernandez.

Verdict: We, the jury in the above entitled matter, find the Defendant, Ian Andre Hager, guilty of Count III, Possession of a Firearm By a Prohibited Person.

Dated the 16th day of December, 2016. Signed by the foreperson, Patricia Cruz-Hernandez.

Verdict: We, the jury in the above entitled matter, find the Defendant, Ian Andre Hager, guilty of Count IV, Possession of a Firearm By a Prohibited Person.

Dated the 16th day of December, 2016. Signed by foreperson, Patricia Cruz-Hernandez.

Verdict: We, the jury in the above entitled matter, find the Defendant, Ian Andre Hager, guilty of Count V, Possession of a Firearm By a Prohibited Person.

Dated the 16th day of December, 2016. Signed by foreperson, Patricia Cruz-Hernandez.

Verdict: We, the jury in the above entitled matter, find the Defendant, Ian Andre Hager, guilty of Count VI, Possession of a Firearm By a Prohibited Person.

Dated the 16th day of December, 2016. Signed by foreperson, Patricia Cruz-Hernandez.

THE COURT: Thank you, Ms. Clerk.

THE COURT CLERK: Thank you.

THE COURT: All right. Before the verdict is recorded, do either party wish to have the jury polled?

MS. HICKMAN: Yes, please.

THE COURT: All right. You may be seated.

Would you please poll the jury.

THE COURT CLERK: Mr. Cowen, are these the verdicts to which you agree?

JUROR COWEN: Yes.

THE COURT CLERK: Ms. Bosch, are these the verdicts to which you agree?

JUROR BOSCH: Yes.

THE COURT CLERK: Ms. Francis -- Mr. Francis, are these the verdicts to which you agree? Mr. Francis. Sorry.

JUROR FRANCIS: Yes.

THE COURT: Ms. Snyder, are these the verdicts to

which you agree?

JUROR SNYDER: Yes.

THE COURT CLERK: Ms. Menghini.

THE COURT: Menghini.

THE COURT CLERK: I'm sorry?

THE COURT: Menghini.

THE COURT CLERK: Menghini.

Are these the verdicts to which you agree?

JUROR MENGHINI: Yes.

THE COURT: Ms. Cruz-Hernandez, are these the verdicts to which you agree?

JUROR CRUZ-HERNANDEZ: Yes.

THE COURT CLERK: Ms. Suber, are these the verdicts to which you agree?

JUROR SUBER: Yes.

THE COURT CLERK: Mr. Hegge, are these the verdicts to which you agree?

JUROR HEGGE: Yes.

THE COURT CLERK: Ms. Fahrion, are these the verdicts to which you agree?

JUROR FAHRION: Yes.

THE COURT CLERK: Ms. Halminiak, are these the verdicts to which you agree?

JUROR HALMINIAK: Yes.

THE COURT CLERK: And Mr. Lemus, are these the verdicts to which you agree?

JUROR LEMUS: Yes.

THE COURT CLERK: Thank you.

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

Ladies and gentlemen, as you know, the right to trial by jury is one of our basic and fundamental constitutional guarantees. I firmly believe in this right, that is the right of every person accused of a crime to be judged by a fair and impartial jury.

You must have jurors, and unfortunately jury service is something many persons shirk from and do not wish to become involved. That's why I'm so pleased that you 12 men and women have been willing to give of your valuable time. You've been most attentive and most conscientious.

On behalf of counsel, and the parties, and Department 9 of the Second Judicial District Court, I wish to thank you for your careful deliberation you gave to this case.

The question may arise as to whether you may now talk to other persons regarding this matter. I advise you that you may, if you wish, talk to other persons and discuss your deliberation which you gave this case. You're not required to do so. And if any person persists in discussing

this case after you had indicated you do not wish to do so, or raise objection as to your result or as to how you deliberated, you'll report that fact directly to me.

You're excused with the thanks of the Court, counsel, and, of course, this county. Thank you for your duty. You're now excused.

All rise for the jury.

(The jury left the courtroom.)

THE COURT: You may be seated.

Ms. Clerk, do you have a date for Sentencing?

THE COURT CLERK: Do you need a special set?

MS. HICKMAN: Judge, I don't need a special set. I would like the Court to consider actually short setting sentencing. I don't know that we need a new PSI. I think through the course of this trial you learned more about Mr. Hager than a PSI informed you of. We've had a PSI in the last five years, so if we can short set it, I would ask for that.

MR. PRENGAMAN: Your Honor, my only concern, I don't want to speak for the Division, but if they would need more -- I think the Division typically wants more time. But I'll leave that to the Court.

THE COURT: I need a presentence report in this case. I appreciate your request. If he hasn't had one in

five years, I need data other than his prior record.

MS. HICKMAN: It's been three years 2013.

THE COURT: I still need a presentence report. I'm going to order a presentence report in this case.

THE COURT CLERK: February 8th at 9:00 a.m.

THE COURT: Do you need a special set?

MS. HICKMAN: Can we just trail the calendar?

THE COURT: You can.

The Defendant is remanded to custody under the same terms and conditions.

And we will see you back here February 8th.

Please make sure that he communicates with the Division of Parole and Probation and participates.

MS. HICKMAN: Do you have a questionnaire?

THE COURT CLERK: Yes.

MS. HICKMAN: Thank you.

THE COURT: We'll be in recess.

(Proceedings concluded.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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

That I am not a relative, employee or independent contractor of counsel to any of the parties, or a relative, employee or independent contractor of the parties involved in the proceeding, or a person financially interested in the proceedings;

That I was present in Department No. 9 of the above-entitled Court on December 16, 2016, and took verbatim stenotype notes of the proceedings had upon the matter captioned within, and thereafter transcribed them into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 105, is a full, true and correct transcription of my stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 14th day of April, 2017.

/s/ Susan Kiger

SUSAN KIGER, CCR No. 343

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 16th day of August 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

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

Ian Andre Hager (#1172948)
Tonopah Conservation Camp
HC 76
Box 8045
Tonopah, Nevada 89049

John Reese Petty
Washoe County Public Defender's Office