



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

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Elizabeth A. Brown
Clerk of Supreme Court

Steven D. Grierson
Clerk of the Court

Brandi J. Wendel
Court Division Administrator

November 3, 2017

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: STATE OF NEVADA vs. ALEXIS PLUNKETT
S.C. CASE: 74169
D.C. CASE: C-17-324821-2

Dear Ms. Brown:

Pursuant to your Order Directing Entry and Transmission of Written Order, dated October 11, 2017, enclosed is a certified copy of the Defendant's Proposed Order filed November 1, 2017 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "Heather Ungermann", with a long horizontal flourish extending to the right.

Heather Ungermann, Deputy Clerk

Case Number: C-17-324821-2

1 **ODR**

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11 Attorneys for Defendant

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 THE STATE OF NEVADA,)

15 Plaintiff,)

16 -vs-)

17 ALEXIS PLUNKETT,)
18 Defendant.)

19 CASE NO. C-17-324821-2
20 DEPT. NO. XVII

21 **ORDER**

22 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

23 **I. STATEMENT OF THE CASE**

24 Petitioner ALEXIS PLUNKETT ("Petitioner") was charged by way of superseding grand
25 jury indictment, along with two (2) co-defendants, Andrew Arevalo and Rogelio Estrada, with
26 fourteen (14) counts including: CONSPIRACY TO UNLAWFULLY POSSESS PORTABLE
27 TELECOMMUNICATIONS DEVICE BY A PRISONER (Gross Misdemeanor – NRS 212.165,
28 199.480 – NOC 55248); and POSSESS PORTABLE TELECOMMUNICATION DEVICE BY
A PRISONER (Category D Felony – NRS 212.165 – NOC 58368).

Said indictment was the subject of a Petition for Writ of Habeas Corpus. The Court
denied her petition holding that there was slight or marginal evidence that a crime was

1 committed and that Ms. Plunkett's argument regarding jurisdiction was improper as part of a
2 pretrial writ.

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4 During the hearing on September 21, 2017, the State conceded it was charging Ms.
5 Plunkett under section 4 of the statute. Further, at the close of the hearing, the Court instructed
6 defense counsel to prepare the Order and submit to the State to approve as to form and content.
7 A Notice of Appeal was filed by the State prior to the Order being entered in this matter.
8 Further, both counsel for Ms. Plunkett and the State were out of the jurisdiction subsequent to the
9 hearing and advised the Court of the inability to submit the Order within 10 days after the
10 hearing pursuant to E.D.C.R 7.21.
11

12 **II. STATEMENT OF THE FACTS**

13 As relevant to this petition, Ms. Plunkett is alleged to have brought a cell phone into the
14 Clark County Detention Center and that once she was visiting with her clients, she is alleged to
15 have provided the phone to her clients to allow them to make or participate in calls and/or send
16 messages and/or read text messages, which the State contends is unlawful under an aiding and
17 abetting theory. However, every time a phone was brought into the jail, an authorization form
18 was signed and completed by Ms. Plunkett. That form disclosed that she was bringing the phone
19 in for the purpose of conducting case work.
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22 **III. ARGUMENT**

23 24 **A. Applicable Law**

25 Under Nev. Rev. Stat. 174.095, "any defense or objection which is capable of
26 determination without the trial of the general issue may be raised before trial by motion."
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1 Additionally, a defendant may object that the indictment fails to allege a crime at any time before
2 trial. *See Nev. Rev. Stat. 174.105(3).*

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4 **B. Discussion**

5 Ms. Plunkett is not a prisoner and therefore cannot be directly charged with violating Nev.
6 Rev. Stat. 212.165(4). Instead, any criminal culpability must be based upon some type of
7 vicarious liability. The State argues that she is criminally culpable based on a theory of aiding
8 and abetting the crime by helping her in-custody clients violate Section 4. However, this
9 argument is unpersuasive.

10 The statute in question in here is distinguishable from those cited by the State because
11 Sections 1 and 2 of 212.165 build in vicarious liability in the context of prisons. The State argues
12 that one can be criminally culpable for aiding and abetting an ex-felon who possesses a firearm.
13 While this is true, the ex-felon in possession statute does not include a separate vicarious liability
14 section like the statute at issue in this case.

15 In looking at the legislative history, it is clear that the Legislature was only concerned with
16 making sure persons in jails were covered under Nev. Rev. Stat. 212.165. During the hearings on
17 the proposed amendment to existing law, at least one person brought up punishing the person
18 that provides the phone to a jailee, but that was never acted upon by the Legislature.

19
20 Finally, the language of the sections at issue here demonstrate a clear intent for separate
21 punishment. Specifically, Sections 1 and 2 discuss the vicarious liability of a "person" that
22 provides and/or possesses a phone in a prison. In contrast, Sections 3 and 4 discuss the
23 culpability of a "prisoner" that possess a phone in a prison or jail, respectively.

24 In sum, Nev. Rev. Stat. 212.165(4) is clear and only a prisoner can be sentenced under the
25 statute. Ms. Plunkett was not a prisoner and therefore she cannot be held criminally culpable
26 under section 4 of this statute; however, she could be held liable under sections 1 or 2 of Nev.
27 Rev. Stat. 212.165.

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8 **IV. CONCLUSION**

9 Section 4 clearly demonstrates an intent to punish a prisoner for possession of a cellphone
10 without lawful authorization. Ms. Plunkett cannot be charged vicariously under Section 4
11 because Sections 1 and 2 show a clear legislative intent to carve out liability for vicarious
12 liability in the provision of cell phone context. As a result, Ms. Plunkett cannot lawfully be
13 charged with liability under Section 4.

14 **IT IS HEREBY ORDERED AS FOLLOWS:**

15 Defendant's Motion to Dismiss is Granted. The indictment against Ms. Plunkett is hereby
16 dismissed. The State is free to pursue other charges as the State deems appropriate.

17
18 DATED this 30th day of October, 2017.

19 By:

20
21 

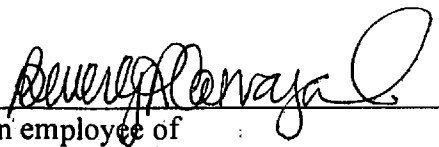
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23

DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I hereby certify that service of the foregoing **DEFENDANT'S PROPOSED ORDER** was made this 31 day of October, 2017 upon the appropriate parties hereto by depositing a true copy thereof in the United States mail, postage prepaid and addressed to:

JAY P. RAHMAN, ESQ.
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155
(702) 671-2590


An employee of
LAS VEGAS DEFENSE GROUP,
LLC.



Clerk of the Courts
Steven D. Grierson

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Las Vegas, NV 89155-1160
(702) 671-4554

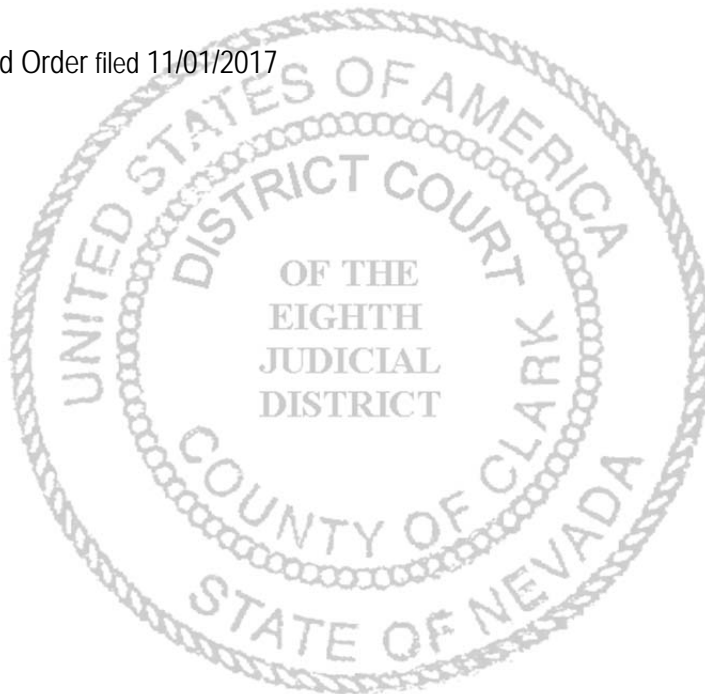
November 3, 2017

Case No.: C-17-324821-2

CERTIFICATION OF COPY

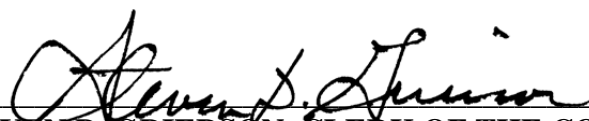
Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full, and correct copy of the hereinafter stated original document(s):

Defendant's Proposed Order filed 11/01/2017



now on file and of

In witness whereof, I have hereunto set my hand and affixed the seal of the Eighth Judicial District Court at my office, Las Vegas, Nevada, at 11:03 AM on November 3, 2017.


STEVEN D. GRIERSON, CLERK OF THE COURT