

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS WILLIAM MOONEY,)

Appellant,)

v.)

THE STATE OF NEVADA,)

Respondent.)

NO. 72736

Electronically Filed
Aug 17 2017 10:43 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Judgment of Conviction
Fourth Judicial District Court, Elko
The Honorable Alvin Kacin, District Judge

JOINT APPENDIX

KRISTON N. HILL

Elko County Public Defender

569 Court Street

Elko, NV 89801

NV Bar Number 11883

ADAM PAUL LAXALT

Attorney General, State of Nevada

100 North Carson Street

Carson City, NV 89701

NV Bar Number 12426

BENJAMIN C. GAUMOND

Deputy

Elko County Public Defender

569 Court Street

Elko, NV 89801

NV Bar Number 8081

TYLER J. INGRAM

Elko County District Attorney

540 Court Street

Second Floor

Elko, NV 89801

NV Bar Number 11819

Attorneys for Appellant

DAVID A. BUCHLER, Deputy

Elko County District Attorney

540 Court Street, Second Floor

Elko, NV 89801

NV Bar Number 11070

Attorneys for Respondent

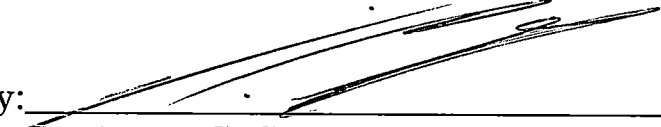
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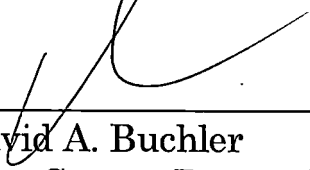
7 RESPECTFULLY SUBMITTED this 12th day of July, 2017.

8 Kriston N. Hill, Elko County Public Defender
9 569 Court Street (Physical Address)
10 571 Idaho Street (Mailing Address)
11 Elko, NV 89801; (775)738-2521

12
13 By: 
14 Benjamin C. Gaumond
15 Elko County Deputy Public Defender
16 Nevada Bar Number 8081
 bgaumond@elkocountynv.net

17 RESPECTFULLY SUBMITTED this 13 day of July, 2017.

18
19 Tyler J. Ingram
20 Elko County District Attorney
21 540 Court Street, 2nd Floor, Elko, NV 89801
22 Elko, Nevada 89801; (775)738-3101

23 By: 
24 David A. Buchler
25 Elko County Deputy District Attorney
 Nevada Bar Number 11070
 dbuchler@elkocountynv.net

AFFIDAVIT OF SERVICE

STATE OF NEVADA)

: ss.

COUNTY OF ELKO)

I, BENJAMIN C. GAUMOND, being first duly sworn, deposes and
says that on the 17th day of August, 2017, I served
a copy of the foregoing JOINT APPENDIX by:

(a) sending a copy via electronic service to the Clerk of the Supreme
Court, Nevada Attorney General's Office, and the Elko County
District Attorney's Office; and

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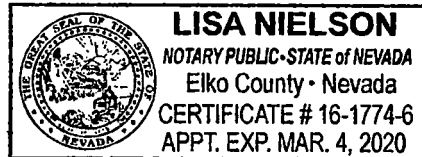
1 (b) mailing, postage paid at Elko, Nevada, one (1) copy to Thomas
2 William Mooney, NDOC #1174250, Southern Desert Correctional
3 Center, 20825 Cold Creek Road, P.O. Box 208, Indian Springs, NV
4 89070; and
5

6 DATED this 17th day of AUGUST, 2017.
7

8
9
10
11 BENJAMIN C. GAUMOND

12 SUBSCRIBED AND SWORN to before me
13 this 17th day of AUGUST, 2017.

14
15
16 NOTARY PUBLIC FOR SAID
17 COUNTY AND STATE



FILED

Case No. CR-FO-16-0304

2017 MAY 12 PM 12:33

Dept. II

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY LP

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF ELKO

ooOoo

THE STATE OF NEVADA

:

Plaintiff,

:

v.

:

ARRAIGNMENT

THOMAS WILLIAM MOONEY,

:

Defendant.

:

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter
came on for hearing on June 13, 2016, at the hour of 9:20
a.m. of said day, before the HONORABLE ALVIN R. KACIN,
District Judge.

COPY 1

1 Case No. CR-FO-16-0304

2 Dept. II

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6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

8 00000

9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : ARRAIGNMENT

12 THOMAS WILLIAM MOONEY, :

13 Defendant. :

14 _____/

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16 TRANSCRIPT OF PROCEEDINGS

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20 a.m. of said day, before the HONORABLE ALVIN R. KACIN,
21 District Judge.

22

23

24

25

1

APPEARANCES

1

2

3 For the Plaintiff:

JEFFREY C. SLADE, ESQ.
Deputy District Attorney
540 Court Street
Second Floor
Elko, Nevada 89801

4

5

6

7 For the Defendant:

BRIAN GREEN, ESQ.
Deputy Public Defender
569 Court Street
Elko, Nevada 89801

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5 THIS ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS IS PRODUCED IN
6 INSTANT FORM. THERE WILL BE DISCREPANCIES BETWEEN THE
7 ROUGH DRAFT AND THE FINAL CERTIFIED VERSION OF THE RECORD
8 BECAUSE THE ROUGH DRAFT HAS NOT BEEN EDITED, PROOFREAD,
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10 DISCREPANCIES IN THE PAGE AND LINE NUMBERS APPEARING IN THE
11 ROUGH DRAFT AND THE EDITED, FINALIZED AND CERTIFIED FINAL
12 VERSION.

13

14 THIS ROUGH DRAFT IS NOT TO BE QUOTED FROM BY THE GENERAL
15 PUBLIC OR THE MEDIA.

16

17 PLEASE CONTACT THE COURT REPORTER FOR FURTHER ASSISTANCE.

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1 THE COURT: Next case is CR-FO-2016-304. State
2 of Nevada, plaintiff; Thomas William Mooney, defendant.

3 Mr. Mooney is here with his counsel Brian Green.
4 We have Jeffrey Slade, Elko County deputy district
5 attorney, to represent the State.

6 Sara Macias is here from the Division of Parole
7 and Probation's local office.

8 This is the date and time set for an arraignment
9 in this case.

10 Parties ready for that?

11 MR. SLADE: State is, Your Honor.

12 MR. GREEN: Yes, Your Honor.

13 THE COURT: We have a certified copy of the
14 information filed May 11 this year. It's 13 pages. I have
15 a certified copy which I will hand down to counsel and his
16 client.

17 Mr. Mooney, do you read, speak, write and
18 understand the English language?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you satisfied with your lawyer
21 and confident in his abilities to represent you?

22 THE DEFENDANT: Yes.

23 THE COURT: And he's appointed by the court?

24 THE DEFENDANT: Yes.

25 THE COURT: Have you met with him and gone over a

4

1 copy of this Information before coming in?
2 THE DEFENDANT: Yes.
3 THE COURT: Okay. First page, middle left, about
4 line 12 there. Thomas William Mooney is what the State
5 thinks your name is. Is that your name?
6 THE DEFENDANT: Yes.
7 THE COURT: Is that true and correct?
8 THE DEFENDANT: Yes.
9 THE COURT: Is it correctly spelled there?
10 THE DEFENDANT: Yes.
11 THE COURT: All proceedings will go forward under
12 that name in the Information's caption.
13 What is the defendant's intent today?
14 MR. GREEN: We are going to enter a plea of not
15 guilty, set it for trial.
16 THE COURT: Okay. Now, Mr. Mooney, Mr. Green,
17 does the defense waive the formal reading of the charges?
18 MR. GREEN: We do, Your Honor.
19 THE COURT: Mr. Mooney, go ahead and stand up.
20 I'm going to summarize each charge for you and ask for your
21 plea after each one, so listen carefully.
22 State's alleged in the Information that you
23 committed these offenses on March 5, 2016, in Elko County,
24 Nevada.
25 Count 1 is possession of a component of an

5

1 explosive or incendiary device with the intent to
2 manufacture an explosive or incendiary device. That's a
3 category B felony under Nevada law.
4 Specifically, the State's alleged that you
5 possessed, actually or constructively, a component of an
6 explosive or incendiary device: duct tape and/or hobby
7 cord and/or detonation cord and/or explosive and/or
8 incendiary materials. And that at the time you possessed
9 this stuff, you had the intent to manufacture an explosive
10 or incendiary device or devices.
11 How do you plead to that charge?
12 THE DEFENDANT: Not guilty.
13 THE COURT: In the alternative to Count 1, there
14 is Count 2, possession of an explosive or incendiary
15 device, a Category D felony under Nevada law.
16 Here the State alleges that you in or near any
17 private habitation, a residence in Spring Creek, willfully
18 and unlawfully possessed an explosive and/or incendiary
19 device, and/or willfully and unlawfully possessed any
20 explosive or incendiary material, substance or component
21 that may readily be converted to an explosive or incendiary
22 device. Here, duct tape and/or hobby cord and/or
23 detonation cord and/or explosive and/or incendiary
24 materials.
25 How do you plead to that charge?

6

1 THE DEFENDANT: Not guilty.
2 THE COURT: Count 3 is possession of a component
3 of an explosive or incendiary device with the intent to
4 manufacture an explosive or incendiary device or devices, a
5 Category B felony under Nevada law.
6 Specifically, the State alleges that you
7 possessed, actually or constructively, a component of an
8 explosive or incendiary device: duct tape and/or hobby
9 cord and/or detonation cord and/or explosive and/or
10 incendiary materials.
11 And at the time you possessed these things, you
12 had the intent to manufacture an explosive or incendiary
13 device or devices.
14 How do you plead to that charge?
15 THE DEFENDANT: Not guilty.
16 THE COURT: In the alternative to Count 3, there
17 is Count 4, possession of an explosive or incendiary
18 device, a Category D felony under Nevada law.
19 Here the State alleges that in or near any
20 private habitation in Spring Creek, you willfully and
21 unlawfully possessed an explosive or incendiary device,
22 and/or willfully and unlawfully possessed any explosive or
23 incendiary material, substance or component that may
24 readily be converted to an explosive or incendiary device:
25 Duct tape and/or hobby cord and/or detonation cord and/or

7

1 explosive and/or incendiary materials.
2 How do you plead to that charge?
3 THE DEFENDANT: Not guilty.
4 THE COURT: Count 5 is possession of a component
5 of an explosive or incendiary device with the intent to
6 manufacture an explosive or incendiary device or devices, a
7 Category B felony under Nevada law.
8 And here the State alleges that you possessed,
9 actually or constructively, a component of an explosive or
10 incendiary device: Duct tape and/or hobby cord and/or
11 detonation cord and/or explosive and/or incendiary
12 materials.
13 Further, that at the time you possessed this
14 stuff you had the intent to manufacture an explosive or
15 incendiary device or devices.
16 How do you plead to that charge?
17 THE DEFENDANT: Not guilty.
18 THE COURT: In the alternative to Count 5, Count
19 6, possession of an explosive or incendiary device, a
20 Category D felony as defined by the Nevada Revised
21 Statutes.
22 Here the State alleges again that you in or near
23 a private habitation in Spring Creek, you willfully and
24 unlawfully possessed an explosive and/or incendiary device,
25 and/or willfully and unlawfully possessed any explosive or

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1 incendiary material, substance or component that may
2 readily be converted to an explosive or incendiary device.
3 Again, duct tape and/or hobby cord and/or
4 detonation cord and/or explosive and/or incendiary
5 materials.

6 How do you plead to that charge?

7 THE DEFENDANT: Not guilty.

8 THE COURT: Count 7 is possession of a component
9 of an explosive or incendiary device with the intent to
10 manufacture an explosive or incendiary device or devices,
11 again a category B felony under the Nevada Revised
12 Statutes.

13 Here the State alleges that you possessed,
14 actually or constructively, a component of an explosive or
15 incendiary device: A CO2 cartridge and/or hobby cord
16 and/or detonation cord and/or explosive and/or incendiary
17 materials.

18 And that at the time you possessed this stuff,
19 you had the intent to manufacture an explosive or
20 incendiary device or devices.

21 How do you plead to that charge?

22 THE DEFENDANT: Not guilty.

23 THE COURT: In the alternative to Count 7, there
24 is Count 8, possession of an explosive or incendiary
25 device, a Category D felony under Nevada law.

9

1 Here the State alleges that in or near Spring
2 Creek, a residence out there, you willfully and unlawfully
3 possessed an explosive or incendiary device, and/or
4 willfully and unlawfully possessed any explosive or
5 incendiary material, substance or component that may
6 readily be converted to an explosive or incendiary device.

7 Here, a CO2 cartridge and/or hobby cord and/or
8 detonation cord and/or explosive and/or incendiary
9 materials.

10 How do you plead to that charge?

11 THE DEFENDANT: Not guilty.

12 THE COURT: Count 9 is possession of a component
13 of an explosive or incendiary device with the intent to
14 manufacture an explosive or incendiary device or devices, a
15 Category B felony under Nevada law.

16 Here the State alleges you possessed, actually or
17 constructively, a component of an explosive or incendiary
18 device: A CO2 cartridge and/or hobby cord and/or
19 detonation cord and/or explosive and/or incendiary
20 materials.

21 Further, that at the time you possessed this
22 stuff you had the intent to manufacture an explosive or
23 incendiary device or devices.

24 How do you plead to that charge?

25 THE DEFENDANT: Not guilty.

10

1 THE COURT: In the alternative to Count 9, there
2 is Count 10, possession of an explosive or incendiary
3 device, a Category D felony under Nevada law.

4 Here the State alleges that in this residence in
5 Spring Creek you willfully and unlawfully possessed an
6 explosive or incendiary device, and/or willfully and
7 unlawfully possessed any explosive or incendiary material,
8 substance or component that may readily be converted to an
9 explosive or incendiary device. Here, CO2 cartridge and/or
10 hobby cord and/or detonation cord and/or explosive and/or
11 incendiary materials.

12 How do you plead to that charge?

13 THE DEFENDANT: Not guilty.

14 THE COURT: Count 11 is possession of a component
15 of an explosive or incendiary device with the intent to
16 manufacture an explosive or incendiary device or devices, a
17 Category B felony under Nevada law.

18 The State alleges here that you possessed,
19 actually or constructively, a component of an explosive or
20 incendiary device: a CO2 cartridge and/or hobby cord
21 and/or explosive and/or incendiary materials.

22 Further, at the time you possessed this stuff,
23 you had the intent to manufacture an explosive or
24 incendiary device or devices.

25 How do you plead to that charge?

11

1 THE DEFENDANT: Not guilty.

2 THE COURT: In the alternative to Count 11 there
3 is Count 12, possession of an explosive or incendiary
4 device, a Category D felony under Nevada law.

5 The State alleges here that in or near this
6 residence in Spring Creek you willfully and unlawfully
7 possessed an explosive or incendiary device and/or
8 willfully and unlawfully possessed any explosive material,
9 substance or component that may readily be converted to an
10 explosive or incendiary device: A CO2 cartridge and/or
11 hobby cord and/or detonation cord and/or explosive and/or
12 incendiary materials.

13 How do you plead to that charge?

14 THE DEFENDANT: Not guilty.

15 THE COURT: Count 13 is possession of a component
16 of an explosive or incendiary device with the intent to
17 manufacture an explosive or incendiary device or devices,
18 again a Category B felony under Nevada law.

19 The State alleges here that you possessed,
20 actually or constructively, a component of an explosive or
21 incendiary device: Again, a CO2 cartridge and/or hobby
22 cord and/or detonation cord and/or nails and/or explosive
23 and/or incendiary materials.

24 And at the time you possessed this stuff, you had
25 the intent to manufacture an explosive or incendiary device

12

1 or devices.

2 How do you plead to that charge?

3 THE DEFENDANT: Not guilty.

4 THE COURT: Count 14, in the alternative to Count
5 13, is possession of an explosive or incendiary device, a
6 Category D felony under Nevada law.

7 Here the State alleges in this residence in
8 Spring Creek you willfully and unlawfully possessed an
9 explosive or incendiary device, and/or willfully and
10 unlawfully possessed any explosive or incendiary material,
11 substance or component that may readily be converted to an
12 explosive or incendiary device: A CO2 cartridge and/or
13 hobby cord and/or detonation cord and/or nails and/or
14 explosive and/or incendiary incendiary materials.

15 How do you plead to that charge?

16 THE DEFENDANT: Not guilty.

17 THE COURT: Count 15 is possession of a component
18 of an explosive or incendiary device with the intent to
19 manufacture an explosive or incendiary device or devices.
20 Again, a Category B felony under Nevada law.

21 The State alleges here that you possessed,
22 actually or constructively, a component of an explosive or
23 incendiary device: Duct tape and/or hobby cord and/or
24 detonation cord and/or explosive and/or incendiary
25 materials.

13

1 Further, at the time you possessed this stuff,
2 you had the intent to manufacture an explosive or
3 incendiary device or devices.

4 How do you plead to that charge?

5 THE DEFENDANT: Not guilty.

6 THE COURT: In the alternative to Count 15, there
7 is Count 16, possession of an explosive or incendiary
8 device, a Category D felony under Nevada law.

9 Here the State alleges that in this residence in
10 Spring Creek you willfully and unlawfully possessed an
11 explosive and/or incendiary device, and/or willfully and
12 unlawfully possessed any explosive or incendiary materials,
13 substance or component that may readily be converted to an
14 explosive or incendiary device: Duct tape and/or hobby
15 cord and/or detonation cord and/or explosive and/or
16 incendiary materials.

17 How do you plead to that charge?

18 THE DEFENDANT: Not guilty.

19 THE COURT: Count 17 is possession of a component
20 of an explosive or incendiary device with the intent to
21 manufacture an explosive or incendiary device or devices, a
22 Category B felony under Nevada law.

23 The State here alleges that in this residence in
24 Spring Creek you willfully and unlawfully possessed an
25 explosive and/or incendiary device, and/or willfully and

14

1 unlawfully possessed any explosive and/or incendiary
2 materials, substance or component that may readily be
3 converted to an explosive or incendiary device: A CO2
4 cartridge and/or hobby cord and/or detonation cord and/or
5 explosive and/or incendiary materials.

6 How do you plead to that charge?

7 THE DEFENDANT: Not guilty.

8 THE COURT: In the alternative to Count 17, there
9 is Count 18, possession of an explosive or incendiary
10 device, a Category D felony under Nevada law.

11 State alleges here that you possessed, actually
12 or constructively, a component of an explosive or
13 incendiary device: A CO2 cartridge and/or hobby cord
14 and/or detonation cord and/or explosive and/or incendiary
15 materials.

16 Further, at the time you possessed this stuff,
17 you had the intent to manufacture an explosive or
18 incendiary device or devices.

19 How do you plead to that charge?

20 THE DEFENDANT: Not guilty.

21 THE COURT: Count 19, possession of a component
22 of an explosive or incendiary device with the intent to
23 manufacture an explosive or incendiary device or devices, a
24 Category B felony under Nevada law.

25 The State alleges that you possessed, actually or

15

1 constructively, a component of an explosive or incendiary
2 device: Duct tape and/or hobby cord and/or detonation cord
3 and/or explosive and/or incendiary material.

4 Further, that at the time you possessed this
5 stuff, you had the intent to manufacture an explosive or
6 incendiary device or devices.

7 How do you plead to that charge?

8 THE DEFENDANT: Not guilty.

9 THE COURT: In the alternative to Count 19, there
10 is Count 20, possession of an explosive or incendiary
11 device, a Category D felony under Nevada law.

12 State alleges here that at this residence in
13 Spring Creek you willfully and unlawfully possessed an
14 explosive and/or incendiary device, and/or willfully and
15 unlawfully possessed any explosive or incendiary material,
16 substance or component that may readily be converted to an
17 explosive or incendiary device: Duct tape and/or hobby
18 cord and/or detonation cord and/or explosive and/or
19 incendiary materials.

20 How do you plead to that charge?

21 THE DEFENDANT: Not guilty.

22 THE COURT: Count 21 is possession of a component
23 of an explosive or incendiary device with the intent to
24 manufacture an explosive or incendiary device or devices, a
25 Category B felony under Nevada law.

16

1 State alleges here that you possessed, actually
2 or constructively, a component of an explosive or
3 incendiary device: Here a metal pipe and/or brass pipe
4 and/or end cap hobby cord and/or detonation cord and/or
5 explosive and/or incendiary materials.

6 Further, at the time you possessed this stuff,
7 you had the intent to manufacture an explosive or
8 incendiary device or devices.

9 How do you plead to that charge?

10 THE DEFENDANT: Not guilty.

11 THE COURT: In the alternative to Count 21, there
12 is Count 22, possession of an explosive or incendiary
13 device. That's a category D felony.

14 Here the State has also alleged in this residence
15 in Spring Creek you willfully and unlawfully possessed an
16 explosive and/or incendiary device, and/or willfully and
17 unlawfully possessed any explosive or incendiary material,
18 substance or component that may readily be converted to an
19 explosive or incendiary device. Here, a metal pipe and/or
20 brass pipe nipple and/or hobby cord and/or detonation cord
21 and/or explosive and/or incendiary materials.

22 How do you plead to that charge?

23 THE DEFENDANT: Not guilty.

24 THE COURT: Count 23 is possession of a component
25 of an explosive or incendiary device with the intent to

17

1 How do you plead to that charge?

2 THE DEFENDANT: Not guilty.

3 THE COURT: Count 25 is possession of a component
4 of an explosive or incendiary device with the intent to
5 manufacture explosive or incendiary device, a Category B
6 felony under Nevada law.

7 State alleges here that you possessed, actually
8 or constructively, a component of an explosive or
9 incendiary device: ball bearings and/or BBs and/or steel
10 epoxy adhesive.

11 Further, at the time you possessed this stuff,
12 you had the intent to manufacture an explosive or
13 incendiary device or devices.

14 How do you plead to that charge?

15 THE DEFENDANT: Not guilty.

16 THE COURT: Count 26 is possession of a component
17 of an explosive or incendiary device with the intent to
18 manufacture an explosive or incendiary device or devices.
19 That's a felony under Nevada law again.

20 Here the State alleges that you possessed,
21 actually or constructively, a component of an explosive or
22 incendiary device.

23 Here, a pipe and/or end caps and/or CO2
24 cartridges.

25 Further, at the time you possessed this stuff,

19

1 manufacture an explosive or incendiary device or devices, a
2 Category B felony under Nevada law.

3 State alleges here that you possessed, actually
4 or constructively, a component of an explosive or
5 incendiary device: A metal pipe and/or brass pipe nipple
6 and/or end cap hobby cord and/or detonation cord and/or
7 explosive and/or incendiary materials.

8 Further, that at the time you possessed this
9 stuff, you had the intent to manufacture an explosive or
10 incendiary device or devices.

11 How do you plead to that charge?

12 THE DEFENDANT: Not guilty.

13 THE COURT: Count 23 -- excuse me, Count 24 is in
14 the alternative to Count 23. Again, possession of an
15 explosive or incendiary device, a Category D felony under
16 Nevada law.

17 State alleges here that in this residence in
18 Spring Creek you willfully and unlawfully possessed an
19 explosive and/or incendiary device, and/or willfully and
20 unlawfully possessed an explosive and/or incendiary
21 material, substance or component that may readily be
22 converted to an explosive or incendiary device: a metal
23 pipe and/or brass pipe nipple and/or hobby cord and/or
24 detonation cord and/or explosive and/or incendiary
25 materials.

18

1 you had the intent to manufacture an explosive or
2 incendiary device or devices.

3 How do you plead to that charge?

4 THE DEFENDANT: Not guilty.

5 THE COURT: Count 27 is possession of a component
6 of an explosive or incendiary device with the intent to
7 manufacture an explosive or incendiary device or devices.
8 That again is a felony under Nevada law.

9 Here the State's alleged that you possessed,
10 actually or constructively, a component of an explosive or
11 incendiary device: hobby cord and/or detonation cord
12 and/or cold packs and/or ammonium nitrate and/or potassium
13 chlorate and/or petroleum jelly and/or match heads.

14 Further, at the time you possessed this stuff,
15 you had the intent to manufacture an explosive or
16 incendiary device or devices.

17 How do you plead to that charge?

18 THE DEFENDANT: Not guilty.

19 THE COURT: Count 28 is possession of a firearm
20 by a person previously convicted of a felony offense.
21 That's a Category B felony under Nevada law.

22 State alleges here that you owned and/or
23 possessed, actually or constructively, and/or had custody
24 of and/or control of a firearm, a Kalashnikov or AK style
25 rifle 7.26 by 39 millimeter or similar firearm.

20

1 Further, that at the time you owned and/or
2 possessed and/or had custody and/or control of this firearm
3 you had previously been convicted of committing a felony
4 criminal offense or offenses.

5 How do you plead to that charge?

6 THE DEFENDANT: Not guilty.

7 THE COURT: Count 29 is possession of a firearm
8 by a person previously convicted of a felony offense.
9 Again a Category B felony under Nevada law.

10 And here the State alleges that you possessed,
11 actually or constructively, and/or had custody of and/or
12 control of a firearm, a 12-gauge shotgun or similar
13 firearm; and that at the time you possessed and/or had
14 custody and/or control of this firearm, you had previously
15 been convicted of committing a felony criminal offense or
16 offenses.

17 How do you plead to that charge?

18 THE DEFENDANT: Not guilty.

19 THE COURT: Count 30 is possession of a firearm
20 by a person previously convicted of a felony offense.
21 Again a Category B felony under Nevada law.

22 The State alleges here that you owned and/or
23 possessed, actually or constructively, and/or had
24 control -- custody of and/or control of a firearm, a Marlin
25 model 81TS .22 caliber rifle or similar firearm.

21

1 we have a lack of jurors. I would suggest perhaps a higher
2 number.

3 THE COURT: 110 usually gets us through, no
4 problem.

5 What does the State think?

6 MR. SLADE: Submit it to the Court on that issue,
7 Your Honor.

8 THE COURT: What kind of higher number are you
9 talking about?

10 MR. GREEN: I was originally thinking about 150.
11 I know the experience I had with Linda Fields, originally
12 there was 150 summoned, only about -- unfortunately, only
13 about 40 percent showed the first time; we had to draw a
14 second panel.

15 THE COURT: I have never had that happen to me.

16 All right. That's a lot of jurors to bring in.
17 Of course, this is not a murder case like that other case,
18 but, you know, I understand this will have some notoriety.

19 Has it made the front page of this paper already?
20 I don't keep track of this stuff very well.

21 MR. GREEN: It has been, yes.

22 THE COURT: Okay. I guess there is a reporter
23 here today.

24 MR. GREEN: I know the Department 2 courtroom is
25 awfully small.

23

1 And that at the time you owned and/or possessed
2 and/or had custody and/or control of this firearm you had
3 been previously convicted of committing a felony criminal
4 offense or offenses.

5 How do you plead to that charge?

6 THE DEFENDANT: Not guilty.

7 THE COURT: Record reflects your not guilty pleas
8 to Counts 1 through 30.

9 Do you understand these charges?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. We'll set this matter for
12 trial. State's calling for a 4-day jury trial. What is the
13 defense's estimation?

14 MR. GREEN: Pardon me, Your Honor?

15 THE COURT: Four-day jury trial? Is that enough
16 time?

17 MR. GREEN: That's sufficient.

18 THE COURT: All right. It will be set for a
19 4-day jury trial. We'll go ahead and summon 110 venire
20 persons for this. We'll select the jury in the Elko County
21 commission room.

22 MR. GREEN: I am a little bit concerned about the
23 number of jurors. This is a high profile case that Mr.
24 Mooney is going to be front page in the newspaper every
25 time, and I -- I don't want to get this continued because

22

1 THE COURT: I am not picking the jury there. I
2 just order the commissioners to make the room available
3 when I want it since they don't get me proper facilities.

4 All right. Anyway, what is the deal with the
5 60-day rule?

6 MR. GREEN: He is going to ask for a trial within
7 60 days.

8 THE COURT: I don't know if we can accommodate
9 that. We may be able to. The calendar is very business.

10 At any rate, we will make the effort do that.
11 The fact it's a 4-day trial helps. It may take awhile to
12 select the jury.

13 Anyway, we'll set this for a 4-day jury trial.
14 Is he under a prison sentence?

15 MR. GREEN: No. He has a sentencing for a
16 Category E felony, I think he said, in two weeks.

17 THE COURT: Here?

18 THE DEFENDANT: I believe so.

19 MR. GREEN: It is in this district, yes.

20 THE COURT: Well, in Department 2?

21 THE DEFENDANT: It's your courtroom, I know that.

22 THE COURT: Department 2. All right. Who
23 represents him in that case?

24 MR. GREEN: Mr. Lockie.

25 THE COURT: All right. Well, the bail is

24

1 \$440,000, I guess, in this case, right?
2 He will be remanded to the custody of the sheriff
3 in lieu of doing that, posting that bail.
4 We'll make an effort to set this for a 4-day jury
5 trial within the next 60 days, calendar permitting.
6 Hopefully, we can find the dates to do it that will work
7 with counsel's calendar as well.

8 Are there any plea negotiations going on in this
9 case or --

10 MR. GREEN: There has been an offer that we have
11 not accepted.

12 THE COURT: So there is no open offer at this
13 point; is that correct?

14 MR. GREEN: It's -- I think it's still open, but
15 we have some issues we need to look at.

16 THE COURT: All right. I think at 150 even, you
17 are pushing that in that room down there. I will go ahead
18 and take your counsel and summon 150, and we'll go from
19 there.

20 Court's in recess on this.

21 (WHEREUPON, the hearing was concluded at 9:45 a.m.)

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1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
4

5 I, Lisa M. Manley, Official Reporter for the Fourth
6 Judicial District Court, Dept. II, of the State of Nevada,
7 in and for the County of Elko, was present in the
8 above-entitled court on June 13, 2016;

9 The foregoing transcript is an uncertified rough draft
10 transcription of my stenotype notes of said proceedings.
11 This transcript has not been edited, proofread, finalized,
12 indexed or certified.

13

14 DATED: At Elko, Nevada, this 8th day of May, 2017.

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1 CASE NO.: CR-FO-16-304

2 DEPT. NO.: 2

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ELKO CO DISTRICT COURT

CLERK _____ DEPUTY A

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

THE STATE OF NEVADA,

Plaintiff,

vs.

THOMAS WILLIAM MOONEY,

Defendant.

MOTION TO
SUPPRESS EVIDENCE

COMES NOW the Defendant, THOMAS WILLIAM MOONEY (herein after referred to as "Thomas"), by and through his attorney, BRIAN D. GREEN, Deputy Elko County Public Defender, and moves this Honorable Court for an order suppressing all evidence obtained as a result of the search of the Defendant's bedroom by Elko County Sheriff's Deputy Brian Shoaf, and subsequent search of the bedroom by law enforcement pursuant to a search warrant obtained from observations made and evidence obtained by Deputy Shoaf during his initial search of the bedroom.

This Motion is made and based upon the pleadings and papers on file herein, the

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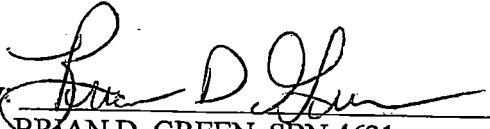
Elko County
Public Defender

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1 Points and Authorities attached, and such other evidence as this Court deems just and
2 proper.

3
4 DATED this 5th day of August, 2016.

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6 KRISTON . N. HILL.
7 ELKO COUNTY PUBLIC DEFENDER
8 569 Court Street
9 Elko NV 89801

10 By 
11 BRIAN D. GREEN, SBN 4621
12 Elko County Deputy Public Defender

13
14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **FACTS**

16
17 At approximately 1:44 a.m on March 5, 2016 Elko County Sheriff's Deputy Brian
18 Shoaf was dispatched to 260 Cliff Place, Spring Creek, Nevada on a report of concern that
19 two juveniles were consuming controlled substances and the female juvenile could be
20 suicidal. (Preliminary Hearing Transcript, hereinafter "PHT", p.28, 1.22 – p.29, 1.13.)
21 After arriving at the residence, Deputy Shoaf met with the Defendant's parents, Aliene
22 Mooney and William Mooney. The "juveniles"¹ had left the residence by the time Deputy
23 Shoaf arrived. (PHT p.29 – 1.22 – p.30, 1.12.)

24
25 William Moony was "frustrated and upset with the way Thomas was living" and
26 "felt disrespected by the way Thomas was treating not only the way Mr. Mooney's
27
28

29 Elko County
Public Defender

¹ The Defendant was not a juvenile, having attained the age of 18 years prior to the date of the incident.

1 belongings throughout the house, but also the condition of Thomas' bedroom. Mr.
2 Mooney tried to open the door to the bedroom to show Deputy Shoaf, but it was locked.
3 Deputy Shoaf inquired as to whether the Mooney's regularly went into the bedroom and
4 was informed that they had not done so recently due to the condition of the room. He
5 asked Mr. Mooney if Thomas regularly kept the door locked and was informed that he
6 does. He then inquired as to how long Thomas had lived there, and was informed Thomas
7 had lived there his entire life with the exception of some time he had spent in Arizona.
8 (PHT p.30, l.11 - p.32, l.24.) Deputy Shoaf then informed the Mooneys that Thomas has a
9 reasonable expectation of privacy in the room. (PHT p.32, ll.17-23.) Nonetheless, Mrs.
10 Mooney came back with a set of keys and opened the door. (PHT p.32, l.23 - p.33, l.12.)

11
12 At the time the door was opened Deputy Shoaf was approximately ten feet away
13 (PHT p. 39, ll.19-24) and the lights in the room were off. (PHT p.34, ll.3-4.) Although
14 Deputy Shoaf was able to detect the faint odor of burnt marijuana coming from the room,
15 he did not do so until after walking to the opened door. (PHT p.33, ll.15-18.)

16
17 The time was between midnight and dawn, and it was clearly dark, so after getting
18 to the opened doorway, Deputy Shoaf used his flashlight to see into the room. (PHT p.39,
19 l.25 - p.40, l.16.) As a result of the flashlight search of the room, Deputy Shoaf observed
20 what he believe to be illegal contraband. He entered the room to close a window. While in
21 the room, he stopped to examine one particular object which he determined could possibly
22 be illegal contraband. Thereafter a warrant was obtained to search Thomas' bedroom, and
23 the search made pursuant to that warrant let to seizure of the physical evidence sought to be
24 suppressed from evidence by the Defendant, namely firearms, homemade explosives,
25 components for making explosive devices, and various literature.
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1
2 ARGUMENT
3

4 The Fourth Amendment to the U.S. Constitution provides: "The right of the
5 people to be secure in their persons, houses, papers, and effects, against unreasonable
6 searches and seizures, shall not be violated. . . ." [T]he Fourth amendment protects
7 people, not places. What a person knowingly exposes to the public, even in his own
8 home or office, is not subject to Fourth Amendment protection. (Citations omitted.) But
9 what he seeks to preserve as private, even in an area accessible to the public, may be
10 constitutionally protected."(Citations omitted.) *Katz v. United States*, 389 U.S. 347,
11 351-52, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).
12
13

14 In *People v. Nunn*, 55 Ill.2d 344, 304 N.E.2d 81 (1973), the Supreme Court of
15 Illinois held that the consent given by a mother for police to search her son's room (the
16 mother had actually requested the search be performed) which was located in her home
17 was invalid, and upheld suppression of the evidence obtained as a result of the search. In
18 that case the premises searched consisted of a locked bedroom and adjoining kitchenette
19 which was only accessible through the bedroom. The son was nineteen years of age at
20 the time of the search and had left the home approximately ten to fourteen days before
21 the search occurred. At the time the son left the home he "locked the door to his room
22 and told Mrs. Nunn to allow no one to enter." *Id.* at 345-346.
23
24

25 "The person searched must have an actual expectation of privacy, and this
26 expectation must be reasonable. If such a reasonable expectation does exist, then either
27 a warrant or the personal consent of the owner must be obtained." *Id.* at 348. "On the
28 basis of the facts in this case, which indicate that the defendant's mother knew that she
29

1 was not to enter his quarters or to allow anyone else to do so, the defendant has a
2 reasonable expectation of privacy therein." *Id.* at 350. The Court then went on to find
3 the son's expectation of privacy to the bedroom and adjoining kitchenette reasonable.
4 *Id.* at 351-353.

6 In *State v. Carsey*, 59 Ore. App. 225 650 P.2d 987 (1982), the Court of Appeals
7 of Oregon upheld the suppression of evidence. In that case the grandson was a nineteen
8 years old ward of the county juvenile court and was on parole from the MacLaren School
9 for Boys. His grandparents had been given custody by the Children's Services Division
10 and he resided in their home. The grandson paid his grandparents \$60.00 a month for
11 rent and performed his own cleaning and washing. His grandfather never went to his
12 room and his grandmother only did so to "stick her head in and tell him that a meal was
13 ready." The grandson had exclusive use of his and control of his room. Law
14 enforcement and the grandson's probation officer, requested and was given consent to
15 search the room by the grandmother. Prior to requesting consent to search, the officer
16 has been informed that he did not have sufficient evidence to obtain a search warrant for
17 stolen property, and believed that the grandson would not consent to a search of his
18 room. *Id.* at 228 - 229.

23 In *Bucknell v. State*, 720 S.W.2d 526 (Tex. Crim. App. 1986), the Court of
24 Criminal Appeals of Texas held that consent given by the Appellant's father to search of
25 the Appellant's room was not valid. (Although ruling that the evidence obtained should
26 have been suppressed by the trial court, the Appellate Court found it to be harmless error
27 due to the considerable other evidence of the Appellant's guilt, and therefore upheld the
28 conviction.) Although residing in his father's home, the Appellant had kept his door

1 locked for two to three years before the search and no one else had access to the room.

2 *Id.* at 528.

3
4 In the case at bar, the Defendant kept his room locked and had exclusive use and
5 possession of it. He locked the door before leaving prior to Deputy Shoaf's arrival and it
6 was still locked when the Deputy arrived. After determining that the Defendant had
7 resided there all of his life (with the exception of some time spent in Arizona), that he
8 regularly kept the door locked, and that the Mooneys had not gone into the room for
9 some considerable time., he determined and advised the Mooneys that the Defendant had
10 a reasonable expectation of privacy to the room. Nonetheless, when the Defendant's
11 mother unlocked and opened the door, Deputy Shoaf moved ten feet or so to get to the
12 doorway, where he then used a flashlight to aid him in observing what was in the room.
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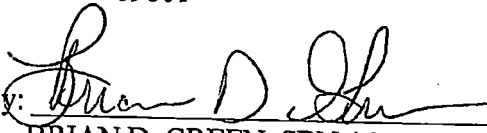
15 Based on the facts set forth above, the Defendant clearly had an expectation of
16 privacy to his bedroom, and exercised reasonable efforts to maintain that privacy. Nor
17 can it be said that his expectation of privacy is not reasonable. The greatest protection
18 afforded by the Fourth Amendment is to the privacy one is entitled to in the place where
19 he resides. Therefore, the Court should suppress all evidence obtained as a result of the
20 search of the Defendant's bedroom by Elko County Sheriff's Deputy Brian Shoaf, and
21 subsequent search of the bedroom by law enforcement pursuant to a search warrant
22 obtained from observations made and evidence obtained by Deputy Shoaf during his initial
23 search of the bedroom, namely firearms, homemade explosives, components for making
24 explosive devices, and various literature.
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28 ///

1 WHEREFORE, IT IS RESPECTFULLY PRAYED that the Court enter an order
2 suppressing all evidence obtained as a result of the search of the Defendant's bedroom by
3 Elko County Sheriff's Deputy Brian Shoaf, and subsequent search of the bedroom by law
4 enforcement pursuant to a search warrant obtained from observations made and evidence
5 obtained by Deputy Shoaf during his initial search of the bedroom, namely firearms,
6 homemade explosives, components for making explosive devices, and various literature.
7
8

9
10 DATED this 5th day of August, 2016.

11 KRISTON N. HILL.
12 ELKO COUNTY PUBLIC DEFENDER
13 546 Court Street
14 Elko NV 89801

15 By: 
16 BRIAN D. GREEN, SBN 4621
17 Elko County Deputy Public Defender
18
19

20 **AFFIDAVIT OF BRIAN D. GREEN**

21 STATE OF NEVADA)
22 : ss.
23 COUNTY OF ELKO)

24 BRIAN D. GREEN, being first duly sworn, deposes and says:

- 25 1. That I am an attorney duly licensed to practice law in the State of Nevada.
26
27 2. That I am an Elko County Deputy Public Defender and this office has been
28 appointed to represent the Defendant because of his indigency and have done
29 so at all critical stages.

Elko County
Public Defender

15

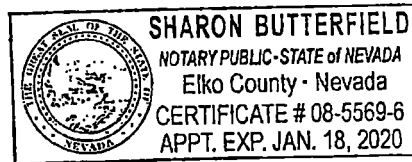
1 3. That this Motion is made in good faith and not for purpose of delay.

2 4. I make these statements under penalty of perjury.

3
4 
5 BRIAN D. GREEN

6 SUBSCRIBED AND SWORN to before me
7 this 5th day of August, 2016.

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11 
12 NOTARY PUBLIC




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17 **NOTICE OF MOTION**

18 A hearing on Defendant's **Motion to Suppress** is requested and a court reporter is
19 requested. It is estimated that two (2) hours should be set aside for hearing on this matter.

20
21 DATED this 5th day of August, 2016.

22 KRISTON N. HILL.
23 ELKO COUNTY PUBLIC DEFENDER
24 569 Court Street
25 Elko NV 89801

26 By: 
27 BRIAN D. GREEN, SBN 4621
28 Elko County Deputy Public Defender

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01 Bruce D. Linn

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1 CASE NO.: CR-FP-16-0304

2 DEPT. NO. 2

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ELKO CO DISTRICT COURT

CLERK DEPUTY

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6 IN THE FOURTH JUDICIAL DISTRICT COURT
7 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA
8

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 THOMAS WILLIAM MOONEY,

13 Defendant.
14

OPPOSITION TO MOTION
TO SUPPRESS EVIDENCE

15 COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, KRISTIN
16 MCQUEARY, District Attorney for the County of Elko, and DAVID A. BUCHLER, Deputy
17 District Attorney, and submits the following Points and Authorities in support of this
18 Opposition, together with all pleadings and papers on file herein.

19 Dated this 22 day of August, 2016.

20 KRISTIN MCQUEARY
21 Elko County District Attorney

22
23 By:

24 DAVID A. BUCHLER
25 Deputy District Attorney
26 State Bar No. 11070
27
28

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1 POINTS AND AUTHORITIES

2 **I. Relevant Facts**

3 The State accepts Defendant's rendition of the facts with the following additions,
4 clarifications and exceptions:

5 In response to the State's question as to whether a photograph of the bedroom which
6 contained the explosives and firearms which gave rise to this prosecution was Defendant's
7 bedroom, William Mooney (William) testified "Well, I don't say it's his room; it's my house."
8 PHT 20, line 24-25. The State followed up by asking if Defendant lived in that room, and
9 William testified that Defendant "was staying there ..." but William considered the bedroom to
10 be William's room and property. PHT 20, line 24, PHT 21 line 1-5.

11 William also testified that he was not asked or otherwise instructed by law
12 enforcement to open Defendant's room; it was his wife's (Aline) choice to open the locked
13 door. PHT 24, line 25, PHT 25, line 1-3. William testified that he wanted law enforcement to
14 see the room in which Defendant was staying. PHT 24, line 9-17.

15 Deputy Shoaf served in the United States Marine Corps for fourteen years prior to his
16 employment as a Deputy for the Elko County Sheriff's Department. PHT 27, line 8-17. As a
17 Marine, Deputy Shoaf received training and is experienced in various types of explosives,
18 including but not limited to homemade explosive devices. PHT 28, line 3-21. Deputy Shoaf
19 also came into contact with homemade explosive devices in the course of deployments to
20 Iraq. *Id.*

21 After arriving at 260 Cliff Place, Spring Creek in response to a report of two juveniles
22 consuming controlled substances and a juvenile female making statements regarding
23 suicide, Deputy Shoaf was invited into the residence by William. PHT 30, line 5-10.

24 Deputy Shoaf testified that he did not ask or instruct William or Aline to open the
25 bedroom door. PHT 32, line 25 – PHT 33 line 1-2. Deputy Shoaf testified that the first thing
26 he noticed when Aline opened the door, prior to entry, was the faint odor of marijuana
27 emanating from the bedroom. PHT 33, line 15-18.

1 Before entering the room, in response to William's request that Deputy Shoaf observe
2 the bedroom, Deputy Shoaf used a flash light to illuminate the room. PHT 40, line 12-16.
3 Upon doing so Shoaf observed what appeared to be a tourniquet; the stock of what he
4 believed to be a Kalashnikov/AK-47 rifle; cold compress packs – which Deputy Shoaf knows
5 from training and experience to be a material used in making homemade explosive devices;
6 a shotgun; drug paraphernalia; and, homemade explosives and/or antipersonnel devices, all
7 of which were in plain sight. PHT 34-37. Subsequently, William turned on the bedroom lights.
8 PHT 40, line 17-19.

9 Deputy Shoaf shared the above information with Deputy Stake. Law enforcement
10 applied for and was granted a search warrant for William's residence. PHT 45, line 6-17.
11 During the execution of the search warrant, law enforcement located marijuana, drug
12 paraphernalia, firearms, ammunition, explosive devices, components of explosive devices,
13 antipersonnel materials, and instruction manuals regarding the manufacture and tactics of
14 explosive devices. Defendant has moved for the suppression of the evidence listed above
15 claiming an expectation of privacy in the room. The State opposes Defendant's Motion.

16 **II. Legal Argument**

17 Defendant cited three cases from foreign jurisdictions in support of his Motion, all of
18 which contain common facts – law enforcement's request for consent to search, a lack of
19 actual authority or the reasonable belief that the grantor of consent had the authority, and the
20 absence of a search warrant – rendering them materially distinguishable from the instant
21 case.

22 In *People v. Nunn*, 55 Ill.2d 344 (1973), defendant challenged the search that “was
23 consented to by his mother, in whose house the [Defendant's] bedroom and kitchenette were
24 located.” *Id.* at 345. Prior to the search, defendant's father contacted the police and
25 requested the room be searched. Law enforcement “declined unless [defendant's mother]
26 gave written consent.” *Id.* at 346.

27 While defendant did not pay rent he “gave [his mother] five to ten dollars a week
28 intermittently” in exchange for living at her house. *Id.* at 346. Importantly, “[a]pproximately ten

1 to fourteen days preceding he search, the Defendant 'moved out', locked the door to his
2 room and told [his mother] to allow no one to enter." *Id.* Also, the defendant's mother did not
3 object to his request. *Id.* at 352. "[I]n the face of such knowledge, the police knew that the
4 defendant was in no way consenting to their search of his property." *Id.* at 353. The court
5 observed that "the sole purpose in [*Nunn*, *supra*,] was to rummage through the rooms, which
6 had been occupied and then locked by the defendant. *Id.* at 354.

7 In *State v. Carsey*, 59 Ore. App. 225 (1982), law enforcement *requested consent* from
8 defendant's grandmother to search the defendant's bedroom located in her home. Notably,
9 defendant paid "\$60.00 a month for room and board, and his grandmother had an
10 understanding with him that his room was under his exclusive control." *Id.* at 231. The court
11 observed that

12 To uphold a search based on third party consent, it must be shown
13 that the third party "possessed common authority over or other
14 sufficient relationship to the premises or effects sought to be
15 inspected," *United States v. Matlock*, *supra*, 415 U.S. at 171, in
16 such a manner that the nonconsenting party must have either
17 assumed the risk that the third party would consent to the search or
18 that he retained no reasonable expectation of privacy in the
19 premises or property searched. *State v. Williams*, 48 Or App 293,
20 297, 616 P2d 1178 (1980).

21 *Id.* at 230. Additionally, "cases upholding a parent's authority to consent to the search of the
22 minor child's room involve considerations not present here, such as ... the child not paying
23 room and board. *Id.* at 231.

24 In *Bucknell v. State*, 720 S.W.2d 526 (1986), the appellant claimed "his father lacked
25 the capacity to *consent* to the search of appellant's padlocked bedroom." *Id.* at 528. Therein
26 "the third party [consenting to the search was the] homeowner and father of appellant." *Id.*
27 The father "testified that he was allowed to go into appellant's room 'only when [appellant]
28 was there." *Id.* Further, "Appellant had the only key to the lack for the last two to three years
he resided and the house ... [and] no one was allowed in appellant's room." The court's
analysis hinged on whether the third party "exercise[ed] equal control and equal use of the
premises being searched." *Id.* at 529.

1 Instead, this case is similar to the facts presented in *State v. Miller*, 110 Nev. 690
2 (1994). In *Miller*, the Millers employed a twelve-year-old named Jennifer to babysit their
3 young children. Jennifer was specifically instructed to stay out of the Miller's bedroom. *Id.* at
4 694. Through Jennifer's employment she developed a belief that the Millers were involved in
5 the sale of marijuana. Concerned by this suspicion Jennifer first called Secret Witness to
6 report her observations but law enforcement did not follow up on the report. *Id.* at 692.
7 Subsequently, while she was babysitting, Jennifer called 911 and requested an officer
8 respond to the Miller's home. Law enforcement responded to the dispatch call and
9 discovered a quantity of marijuana along with materials associated with the sales of
10 controlled substances. *Id.* The Millers filed a motion to suppress alleging "that the
11 circumstances amounted to a warrantless and unauthorized search of a private residence by
12 police." *Id.* at 694.

13 The Nevada Supreme Court stated at the outset that "[t]he resolution of this issue
14 requires an analysis of the relationship between the babysitter and the police." *Id.* The Court
15 stated that is was

16 clear that the child was acting out of respect for the law, and that
17 the police had previously experienced no contact with Jennifer, nor
18 had they sought through some means to promote her cooperation
19 in uncovering any criminal conduct. Likewise apparent is the fact
20 that Officer Brown could not have either confirmed or allayed young
21 Jennifer's fears without asking to see what it was that she was
22 calling about. In short, Officer Brown did not make Jennifer "the
23 hands and feet of the police" or a police agent by responding to *her*
24 call concerning what she feared might be the presence of illicit
25 drugs in the apartment where she was babysitting. The officer
26 testified that Jennifer promptly told him that "it's in there," after
27 which he followed her to the bedroom where she secured the bag
28 containing the subject of her concerns. Upon handing Officer Brown
29 the grocery bag, he saw immediately that it was full of baggies of
30 marijuana.

31 *Id.* at 695-696. Furthermore,

32 The United States Supreme Court has held that the Fourth
33 Amendment "is wholly inapplicable to a search or seizure, even an
34 unreasonable one, effected by a private individual not acting as an
35 agent of the government or with the participation or knowledge of

1 any government official." United States v. Jacobsen, 466 U.S. 109,
2 114, 80 L. Ed. 2d 85, 104 S. Ct. 1652 (1984). It is clear that the
3 disjunctive prong of the ruling pertaining to acting as a government
4 agent is satisfied in the instant case. Jennifer was acting purely out
5 of her concern for what she feared was the maintenance of illicit
6 drugs by the Millers in the apartment where she was employed to
7 tend their two small children. The facts of record provide no
8 predicate for finding an agency relationship between Jennifer and
9 the police.

10 Apropos to this issue are two rulings by the United States Supreme
11 Court declaring that evidence secured wholly on the initiative of a
12 private person is admissible, *Burdeau v. McDowell*, 256 U.S. 465,
13 475, 65 L. Ed. 1048, 41 S. Ct. 574 (1920), and that it is no part of
14 the policy underlying the fourth and fourteenth amendments to
15 discourage citizens from aiding to the utmost of their ability in the
16 apprehension of criminals. . . . There was not the slightest
17 implication of an attempt on their [police] part to coerce or dominate
18 her . . . or direct her actions

19 *Id.*

20 In the instant case, law enforcement did *not* request to search Defendant's room, and
21 no facts support any suggestion that Defendant's parents were acting as agents of the State.
22 Nor is there any claim that William and Aline were coerced to invite Deputy Shoaf into their
23 residence so he could view the bedroom. William made it abundantly clear to Deputy Shoaf
24 and at the preliminary hearing that it was his bedroom located in his residence. Defendant
25 was just staying there. Aline had a key to the bedroom; and, while William had not been in
26 the bedroom for a period of time he stated it was due to the condition of the room. There is
27 no indication that either William or Aline had been excluded from the bedroom by Defendant.
28 Furthermore, Defendant did not pay rent in exchange for staying in the bedroom.

William summoned law enforcement to his residence, invited Deputy Shoaf into the
residence and insisted that he observe the condition of the bedroom where Defendant was
staying. Aline unlocked the bedroom door without and prompting or request by law
enforcement. After Aline opened the bedroom Deputy Shoaf smelled the odor of marijuana.
After again being told by Williams that he needed to see the condition of the room, Deputy
Shoaf illuminated the bedroom with a flashlight and observed drug paraphernalia, firearms,

1 explosive devices, explosive components and instruction manuals. Defendant was neither
2 present when William and Aline invited Deputy Shoaf into the residence nor is there any
3 evidence that he objected William and Aline's entry into the bedroom.

4 In addition to *not* being agents of the State it is the State's position that William and
5 Aline had authority to enter the bedroom and had the authority invite law enforcement into
6 the bedroom. United States Supreme Court cases "firmly establish that police officers may
7 search jointly occupied premises if one of the occupants consents." See *United States v.*
8 *Matlock*, 415 U.S. 164, 94 S. Ct. 988, 39 L. Ed. 2d 242 (1974), *Fernandez v. California*, 134
9 S.Ct. 1126, 1129 (2014).

10 In *Georgia v. Randolph*, 547 U.S. 103 (2006) the Court observed

11 To the Fourth Amendment rule ordinarily prohibiting the warrantless
12 entry of a person's house as unreasonable per se, *Payton v. New*
13 *York*, 445 U.S. 573, 586, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980);
14 *Coolidge v. New Hampshire*, 403 U.S. 443, 454-455, 91 S. Ct.
15 2022, 29 L. Ed. 2d 564 (1971), one "jealously and carefully drawn"
16 exception, *Jones v. United States*, 357 U.S. 493, 499, 78 S. Ct.
17 1253, 2 L. Ed. 2d 1514, 1958-2 C.B. 1005 (1958), recognizes the
18 validity of searches with the voluntary consent of an individual
19 possessing authority, *Rodriguez*, 497 U.S., at 181, 110 S. Ct.
20 2793, 111 L. Ed. 2d 148. That person might be the householder
21 against whom evidence is sought, *Schneckloth v. Bustamonte*, 412
22 U.S. 218, 222, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973), or a fellow
23 occupant who shares common authority over property, when the
24 suspect is absent, *Matlock*, *supra*, at 170, 94 S. Ct. 988, 39 L. Ed.
25 2d 242, and the exception for consent extends even to entries and
26 searches with the permission of a co-occupant whom the police
27 reasonably, but erroneously, believe to possess shared authority as
28 an occupant, *Rodriguez*, *supra*, at 186, 110 S. Ct. 2793, 111 L. Ed.
2d 148.

23 *Id.* at 109. Again, William made it clear that the bedroom and house were his property.
24 Defendant was just staying there. Aline possessed a key to the bedroom, there is no
25 indication that Defendant paid rent or objected to his parents access to the bedroom.

26 Alternatively, if the Court finds that William and Aline were in some way acting as
27 agents of the State or that William and Aline lacked the actual authority to provide access to
28 the bedroom to law enforcement, *Illinois v. Rodriguez*, 497 U.S. 177 (1990) is instructive.

1 Therein, the United States Supreme Court observed that

2 in order to satisfy the "reasonableness" requirement of the Fourth
3 Amendment, what is generally demanded of the many factual
4 determinations that must regularly be made by agents of the
5 government -- whether the magistrate issuing a warrant, the police
6 officer executing a warrant, or the police officer conducting a search
7 or seizure under one of the exceptions to the warrant requirement --
8 is not that they always be correct, but that they always be
9 reasonable. As we put it in *Brinegar v. United States*, 338 U.S.
10 160, 176, 93 L. Ed. 1879, 69 S. Ct. 1302 (1949):

11 "Because many situations which confront officers in the course of
12 executing their duties are more or less ambiguous, room must be
13 allowed for some mistakes on their part. But the mistakes must be
14 those of reasonable men, acting on facts leading sensibly to their
15 conclusions of probability."

16 We see no reason to depart from this general rule with respect to
17 facts bearing upon the authority to consent to a search. Whether
18 the basis for such authority exists is the sort of recurring factual
19 question to which law enforcement officials must be expected to
20 apply their judgment; and all the Fourth Amendment requires is that
21 they answer it reasonably. The Constitution is no more violated
22 when officers enter without a warrant because they reasonably
23 (though erroneously) believe that the person who has consented to
24 their entry is a resident of the premises, than it is violated when
25 they enter without a warrant because they reasonably (though
26 erroneously) believe they are in pursuit of a violent felon who is
27 about to escape. See *Archibald v. Mosel*, 677 F.2d 5 (CA1 1982).

28 *Illinois v. Rodriguez*, 497 U.S. 177, 185-186 (1990).

It is the State's position that it was reasonable for Deputy Shoaf to believe that William and Aline had authority to enter Defendant's bedroom. Williams invited Deputy Shoaf invited into the residence; William insisted that Deputy Shoaf observe the bedroom; and, in response to Deputy Shoaf's questions stated that the bedroom was William's bedroom and Defendant was just staying there. There was no suggestion that neither William nor Aline had been excluded from the bedroom. And, the bedroom door was opened by Aline with a key that she possessed without any prompting or request by Deputy Shoaf.

25

1 **III. Conclusion**

2 Neither William nor Aline were acting as agents of the State when they caused Deputy
3 Shoaf to be summoned to their residence, invited him into the residence, asked him to
4 observe the bedroom in which Defendant was staying, and opened the bedroom door to
5 facilitate William's request. Deputy Shoaf did not ask for consent or otherwise suggest or
6 prompt the bedroom door to be opened. William and Aline did this on their own accord.
7

8 William and Aline also had authority to invite Deputy Shoaf into the bedroom. William
9 stated that the bedroom was his property, located in his house and Defendant was just
10 staying there. Aline had a key to the room. Alternatively, if the Court finds that William and
11 Aline did not have actual authority, it was reasonable for Deputy Shoaf to believe that they
12 had the authority to permit his entry into the bedroom.
13

14 Based upon the facts and legal authority set forth above Defendant's Motion to
15 Suppress should be denied.
16

17 Dated this 22 day of August, 2016

18 KRISTIN MCQUEARY
19 Elko County District Attorney

20
21 By: 

22 DAVID A. BUCHLER
23 Deputy District Attorney
24 State Bar No. 11070
25
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NOTICE

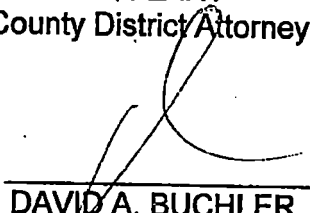
TO: BRIAN D GREEN, Attorney for the above-named Defendant and
The Clerk of the FOURTH JUDICIAL DISTRICT COURT.

A hearing on this Opposition is requested and a court reporter is requested. It is
estimated that one (1) hour should be set aside for the hearing on this Opposition.

Dated this 22 day of August, 2016.

KRISTIN MCQUEARY
Elko County District Attorney

By:



DAVID A. BUCHLER
Deputy District Attorney
State Bar No. 11070

CERTIFICATE OF SERVICE


I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the
Elko County District Attorney's Office, and that on the 22nd day of August, 2016, I served
the foregoing Opposition To Motion To Suppress, by delivering, or by causing to be hand
delivered, a copy of said document to the following:

By delivering to:

HONORABLE ALVIN R KACIN
IN THE FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

By delivering to:

BRIAN D GREEN
ATTORNEY AT LAW
569 COURT STREET
ELKO, NV 89801



GEORGIA JORDAN
CASEWORKER

27

1 CASE NO.: CR-FO-16-304
2 DEPT. NO.: 2
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FILED
2016 SEP -2 AM 11:27
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY KA

6 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO
8

9 THE STATE OF NEVADA,
10 Plaintiff,
11 vs.
12 THOMAS WILLIAM MOONEY,
13 Defendant.

REPLY TO OPPOSITION TO
MOTION TO
SUPPRESS EVIDENCE

14
15 COMES NOW the Defendant, THOMAS WILLIAM MOONEY (herein after
16 referred to as "Thomas"), by and through his attorney, BRIAN D. GREEN, Deputy Elko
17 County Public Defender, and replies to the State's Opposition To Motion To Suppress
18 Evidence as follows:
19

20 The State incorrectly argues that the facts of the instant case are similar to the facts
21 in *State v. Miller*, 110 Nev. 690 (1994).
22

23 In the instant case, when asked to see the condition of the bedroom, which was
24 locked, Deputy Shoaf inquired as to the Defendant's habitation of room, including the
25 duration of that habitation, and learned that the door was kept locked and the Defendant's
26 parents did not access the room. He then recognized the Defendant's expectation to
27 privacy in the room and warned the Defendant's parents accordingly. Nonetheless, after
28 the Defendant's mother opened the door, Deputy Shoaf then moved approximately ten feet
29

Elko County
Public Defender

28

1 to the doorway, where he conducted a search with the aid of his flashlight, followed by a
2 warrantless entry into the room to close the window, during which he stopped to examine
3 an object the thought might be possible contraband.
4

5 Given the facts of this case, the Defendant did not "knowingly expose" any
6 contraband to the public. By keeping his door locked he did just the opposite. He intended
7 to "preserve as private" that which was in his bedroom, and it was only discovered as a
8 result of Deputy Shoaf's search of the room, commencing with his movement to the
9 doorway once the door had been unlocked and opened. The statement made by the
10 Defendant's father that it is his house does not diminish the Defendant's expectation of
11 privacy in his room.
12

13
14 In *Miller*, on the other hand, a twelve year old babysitter contacted police to report
15 her discovery of what she thought was possibly drugs. During the period in which she had
16 been babysitting the children, there had been previous incidents in which she had been
17 exposed to either the contraband or conduct associated with the sales of that contraband.
18 When the officer arrived at the residence, he inquired as to where possible drugs were and
19 followed the babysitter to the back bedroom, where the babysitter retrieved and handed to
20 the officer an open grocery bag containing what smelled like and appeared to be marijuana
21 packaged in smaller baggies. *Id.* at 692. The babysitter initiated a private search for the
22 contraband that violated neither the federal nor the Nevada Constitution. *Id.* at 697.
23 Although she had previously made a report to Secret Witness, law enforcement failed to
24 act on that report. *Id.* at 692. It was only after she discovered the contraband and
25 contacted dispatch to report her discovery that the police became involved and the
26
27
28

1 evidence was voluntarily given to the officer by the babysitter. It was not discovered as a
2 result of any search made by the officer.

3
4 The United States Supreme Court has held that the Fourth Amendment "is wholly
5 inapplicable to a search or seizure, even an unreasonable one, effected by a private
6 individual not acting as an agent of the government or with the participation or
7 knowledge of any government official." United States v. Jacobson, 466 U.S. 109,
8 114 (1984). *Id.* at 696.
9

10 In its argument, the State focuses on the Defendant's mother having unlocked the
11 door and the Defendant's father requesting the search, stating that it is house. The issue in
12 this case is not about what the Defendant's parents did. It is about the search conducted by
13 Deputy Shoaf with full knowledge and understanding of the Defendants' habitation of the
14 room and acknowledgement of the Defendant's expectation and right to privacy to the
15 room.
16

17
18 The State goes on to argue that even if the Defendant's parents lacked authority to
19 consent to the search of the room, the search by Deputy Shoaf should nonetheless be
20 upheld as reasonable in light of the facts. Given Deputy Shoaf's inquiry as to the
21 Defendant habitation of the room, the knowledge that the Defendant kept it locked and that
22 his parents did not have regular access to it, and acknowledgment of the Defendant's
23 expectation and right to privacy, Deputy Shoaf's search of the room was not reasonable.
24

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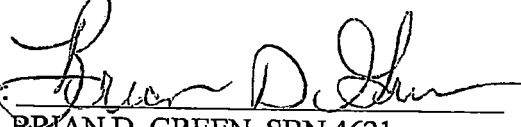
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1 WHEREFORE, the Court should grant the Defendant's Motion To Suppress
2 Evidence filed in this matter.
3
4
5
6

7 DATED this 2nd day of September, 2016.

8 KRISTON . N. HILL.
9 ELKO COUNTY PUBLIC DEFENDER
10 569 Court Street
11 Elko NV 89801

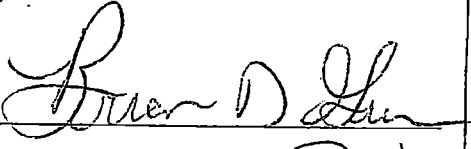
12 By: 
13 BRIAN D. GREEN, SBN 4621
14 Elko County Deputy Public Defender
15
16

17 **CERTIFICATE OF SERVICE**

18 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of
19 the Elko County Public Defender's Office, and that on the 2nd day of September,
20 2016, I served the foregoing MOTION TO SUPPRESS, by delivering or causing to be
21 delivered a copy of said document, to the following:
22
23

24 ELKO COUNTY DISTRICT ATTORNEY'S OFFICE
25 540 Court Street
26 Elko, NV 89801

27 HONORABLE ALVIN R. KACIN
28 571 Idaho Street
29 Elko, NV 89801


31

Elko County
Public Defender

FILED

Case No. CR-FO-2016-0304

2016 SEP 14 AM 11:27

Dept. II

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY _____

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF ELKO

00000

THE STATE OF NEVADA

Plaintiff,

v.

THOMAS WILLIAM MOONEY,

Defendant.

:

:

:

:

:

PRE-TRIAL MOTIONS

HEARING

TESTIMONY OF WITNESSES

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter
came on for hearing on September 7, 2016, at the hour of
1:43 p.m. of said day, before the HONORABLE ALVIN R. KACIN,
District Judge.

Reported by Lisa M. Manley, CCR #271

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A P P E A R A N C E S

For the Plaintiff: DAVID A. BUCHLER, ESQ.
Deputy District Attorney
540 Court Street
Second Floor
Elko, Nevada 89801

For the Defendant: BRIAN GREEN, ESQ.
Deputy Public Defender
569 Court Street
Elko, Nevada 89801

I N D E X

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1 Case No. CR-FO-2016-0304

2 Dept. II

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6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

8 00000

9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : PRE-TRIAL MOTIONS

12 THOMAS WILLIAM MOONEY, : HEARING

13 Defendant. : TESTIMONY OF WITNESSES

14 _____/

15

16 TRANSCRIPT OF PROCEEDINGS

17

18 BE IT REMEMBERED that the above-entitled matter
19 came on for hearing on September 7, 2016, at the hour of
20 1:43 p.m. of said day, before the HONORABLE ALVIN R. KACIN,
21 District Judge.

22

23

24

25 Reported by Lisa M. Manley, CCR #271

1

1 BRIAN SHOAF

2 called as a witness in said case, having been first
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. GREEN:

6 Q. Would you state your name and spell your last
7 name for the record?

8 A. My name is Brian Shoaf, S-h-o-a-f.

9 Q. Mr. Shoaf, how are you employed?

10 A. I'm a deputy with the Elko County Sheriff's
11 Office.

12 Q. How long have you been employed in that
13 position?

14 A. Approximately three years.

15 Q. Were -- were you on duty on March 5 -- at some
16 time on March 5 of this year?

17 A. Yes, sir, I was.

18 Q. What shift were you working?

19 A. Working the graveyard shift.

20 Q. What are the hours of graveyard shift?

21 A. 6 p.m. to 6 a.m.

22 Q. 12-hour shifts?

23 A. Yes, sir.

24 Q. Did something happen at approximately 1:44
25 a.m.?

3

1 A P P E A R A N C E S

2

3 For the Plaintiff: DAVID A. BUCHLER, ESQ.
4 Deputy District Attorney
5 540 Court Street
6 Second Floor
7 Elko, Nevada 89801

8 For the Defendant: BRIAN GREEN, ESQ.
9 Deputy Public Defender
10 569 Court Street
11 Elko, Nevada 89801

12 I N D E X

13 STATE'S WITNESSES:

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18 Cross-Examination by Mr. Green 50

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25 Examination by The Court 27
26 Redirect Examination by Mr. Green 29

27 ALINE MOONEY
28 Direct Examination by Mr. Green 31
29 Cross-Examination by Mr. Buchler 33
30 Examination by The Court 36
31 Redirect Examination by Mr. Green 38

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2

1 A. Yes, sir.

2 Q. What was that?

3 A. We got a call for a suicidal female.

4 Q. Did you respond to that call?

5 A. Yes, sir, we did.

6 Q. Do you recall where you responded to?

7 A. Initially we were responding to the residence
8 at -- on Cliff Place. And then during the -- during our
9 travels to the residence, we were informed that the
10 individuals had left the house.

11 Q. Was it 260 Cliff Place?

12 A. Sounds correct, yes, sir.

13 Q. And was that in Spring Creek?

14 A. Yes, sir, it is.

15 Q. Do you recall what time you arrived at that
16 residence?

17 A. Approximately 2:05 in the morning.

18 Q. It was dark?

19 A. Yes, sir, it was.

20 Q. Were you -- did you meet anybody at that
21 residence?

22 A. Yes, sir.

23 Q. Who did you meet?

24 A. I met a William and Aline Mooney.

25 Q. Did you ultimately go into that residence?

4

34

1 A. Yes, sir, I did.
 2 Q. Were you invited?
 3 A. Yes, sir, I was.
 4 Q. Where did you go into the residence?
 5 A. When looking at the front of the residence,
 6 there is a front door directly in the center of the house,
 7 and there is also a sliding glass door to the left.
 8 Aline Mooney met me at the sliding glass door
 9 and invited me into the residence.
 10 Q. Once you were inside the residence, where did
 11 you go?
 12 A. We were standing in a second living room is
 13 what I would term it, we moved into the kitchen, and that's
 14 where I met Mr. William Mooney; that is where we had our
 15 discussion.
 16 Q. Did you ultimately go into the hallway?
 17 A. Yes, sir, we did.
 18 Q. What occurred in that hallway?
 19 A. To get to the hallway, Mr. Mooney had asked me
 20 or had told me that he was extremely pissed off at his son
 21 for the way that he was living, for the things that he was
 22 doing, and for the condition in which he was treating his
 23 house.
 24 We moved to that hallway and Mr. Mooney then
 25 again showed me, pointed to the end of the hallway towards

5

1 a closed door, said, "That's Thomas's bedroom."
 2 Q. Have you come to know who he referred to as
 3 Thomas?
 4 A. I do now, yes, sir.
 5 Q. That individual that you now know as Thomas,
 6 do you see him in court today?
 7 A. I would believe it's the gentleman sitting to
 8 your left.
 9 MR. BUCHLER: We'll stipulate to the
 10 identification of the defendant as Thomas Mooney.
 11 THE COURT: Is that acceptable, Mr. Green?
 12 MR. GREEN: Yes, Your Honor.
 13 THE COURT: Court will accept the stipulation
 14 then, the identification of the defendant Thomas Mooney.
 15 Q. (By Mr. Green) You said the door to the
 16 bedroom was closed?
 17 A. Yes, sir, it was.
 18 Q. What happened with respect to that door?
 19 A. I was speaking with Mr. and Mrs. Mooney in the
 20 hallway. I noticed some -- a hole in the dry wall, or a
 21 poorly patched hole. I also noticed some damage to the
 22 exterior of the door to that room.
 23 I asked Mr. Mooney about that. He indicated
 24 that Thomas was destroying a lot of the house, and he again
 25 spoke about the condition of the room and how pissed off he

6

1 was that -- how Thomas was living and the things that he
 2 was doing in the room.
 3 Q. Did somebody try to open that door?
 4 A. Yes, sir.
 5 Q. Who was that?
 6 A. Aline Mooney.
 7 Q. What happened when she attempted to open that
 8 door?
 9 A. She had some difficulty initially because of
 10 objects lying on the floor.
 11 Q. When she first tried to open the door, what
 12 was the state of the door?
 13 A. It was locked.
 14 Q. What happened when she discovered it was
 15 locked?
 16 A. She came back down the hallway towards me
 17 and -- where I was talking to Mr. Mooney, and she said --
 18 well, you know, I asked if it was normally closed and
 19 locked.
 20 Mr. Mooney, William, indicated that, yes, it was.
 21 I stated how long it had been locked for, and he stated for
 22 as long as he could remember.
 23 I asked him if they had gone in and out of the
 24 room at their own free will, and he said, "yes, we do." He
 25 said it had been a little while since he had done so

7

1 because of the condition in which Thomas had left it.
 2 Q. Did you also ask about -- anything with regard
 3 the length of -- that Thomas had occupied that room?
 4 A. Yes, sir, I did.
 5 Q. Could you be a little more specific about what
 6 you asked?
 7 A. I asked Mr. Mooney how long Thomas had lived
 8 in the room. He said his entire life except for the time
 9 that he was in Arizona.
 10 Q. As a result of the information you received
 11 from that inquiry, did you inform the Mooneys of anything?
 12 A. I did. I told the Mooneys that Thomas had a
 13 reasonable expectation of privacy to that room.
 14 Q. What happened after that?
 15 A. William Mooney became very agitated and said
 16 something to the effect of, "Well, fuck that. This is my
 17 goddamn house. I pay for it."
 18 Q. Did the door ultimately get unlocked?
 19 A. Yes, sir, it did.
 20 Q. Who did that?
 21 A. Aline Mooney.
 22 Q. And you indicated that there was some
 23 difficulty initially opening the door?
 24 A. Yes, sir.
 25 Q. Why was that?

8

35

1 A. Because of objects on the ground.
2 Q. At the time the door was unlocked, where were
3 you located?
4 A. Approximately ten feet down the hallway.
5 Q. The door to the room, was it the end -- was it
6 directly at the end of the hallway, or did the door go to
7 one side or the other?
8 Do you know -- do you understand what I mean?
9 A. I don't understand the question, sir.
10 Q. Okay. The hallway has walls on each side,
11 correct?
12 A. Yes, sir.
13 Q. Okay. And then there is a wall at the end?
14 A. The door was at the end of the hallway.
15 Q. The door was directly at the end of the
16 hallway?
17 A. Yes, sir.
18 Q. So you would walk straight down the hallway
19 and into the room?
20 A. Absolutely. Yes, sir.
21 Q. All right. And did the door -- when you
22 opened the door, did it open up into -- was the room
23 basically straight in front, or was it to the side of the
24 doorway from the hall?
25 A. The door opened from the right to the left,

9

1 into the room. The door was to the left side of the room
2 and the room was opened up to the right of the doorway.
3 Q. So most of the room would have been out of
4 sight from the hall? From ten feet down the hall?
5 A. The majority, yes.
6 Q. After the door was opened, what did you do?
7 A. I stood there with Mr. Mooney, and Mr. Mooney
8 indicated to me again that he wanted me to see the
9 condition in which Thomas was living.
10 Q. What did you do in response to that?
11 A. Mr. Mooney walked down the hallway and I
12 followed him.
13 Q. You went -- where did you stop?
14 A. Before I entered the room.
15 Q. Okay. Right at the doorway?
16 A. Right at or just before to it.
17 Q. What was the lighting conditions in the room
18 at the time?
19 A. It was dim light, almost dark.
20 Q. Did you look inside the room?
21 A. I did, sir.
22 Q. Did you use the aid of anything to look inside
23 the room.
24 A. I used a flashlight.
25 Q. At that time did you enter the room?

10

1 A. Not directly, no, sir.
2 Q. Pardon me?
3 A. No.
4 Q. Let me ask this question. Did some detectives
5 eventually become involved?
6 A. Yes, sir.
7 Q. Prior to the involvement of the detectives,
8 did you ever enter the room?
9 A. Yes, sir, I did.
10 Q. Okay. What was the purpose of that?
11 A. Number one was to identify an object that I
12 observed on the bookshelf that I believed to be dangerous,
13 and number two was to close the window to preserve the
14 scene.
15 Q. Were the lights turned on?
16 A. Yes, sir.
17 Q. Who turned them on?
18 A. William Mooney.
19 Q. And you said you saw an item on the bookshelf?
20 A. Yes, sir.
21 Q. How far away from the door was that?
22 A. Two feet, maybe three.
23 Q. You said the room opened up to the right of
24 the doorway?
25 A. Correct.

11

1 Q. Okay. Where was the bookshelf located?
2 A. To the left of the doorway.
3 Q. Against the wall?
4 A. Yes, sir.
5 Q. And the actual open end of the bookcase would
6 have been facing towards the center of room?
7 A. Correct, sir.
8 MR. GREEN: No further questions.
9 THE COURT: Cross-examination.
10 MR. BUCHLER: Thank you, Your Honor.
11 CROSS-EXAMINATION
12 BY MR. BUCHLER:
13 Q. Deputy, prior to your duties as an Elko County
14 Sheriff's Office deputy, what did you do for a living?
15 A. I was active duty with the United States
16 Marine Corps.
17 Q. What was your job in the Marines?
18 A. I was a counterintelligence specialist.
19 Q. Did you have any training relating to
20 explosives in connection with your duties?
21 A. Yes, sir, I did.
22 Q. Briefly describe that for us?
23 A. I had received multiple different training
24 evolutions prior to combat deployment to Iraq and
25 Afghanistan.

12

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1 Q. What types of things were you trained to
2 recognize?
3 A. Homemade explosive devices, improvised
4 explosive devices, and those components that commonly make
5 those up.
6 Q. Did you have occasion to use those -- to use
7 those training skills in the course of your deployment?
8 A. Yes, sir, I did.
9 Q. What types of things are you looking for when
10 you are trying to identify a homemade explosive device?
11 A. Any of the components or materials that are
12 used to make up the actual explosive material; any
13 components or materials that are used to house that
14 explosive material; anything that could be used potentially
15 as shrapnel; things such as loose wires, and things of that
16 nature, that would be used as connecting cables for that
17 stuff.
18 Q. You said the device or things that may house
19 explosive devices. Is there a typical type of vessel or
20 container that you are looking for?
21 A. There is no typical, sir.
22 Q. In connection with your duties as a sheriff's
23 deputy, have you received any training regarding controlled
24 substances?
25 A. Yes, sir.

13

1 Q. Specifically, have you come into contact with
2 the odor of marijuana?
3 A. Yes, sir, I have.
4 Q. You are able to identify that?
5 A. Yes, sir.
6 Q. When the report initially came in on March 5,
7 2016, the call to the Mooney residence, was there also a
8 report of controlled substances activities at the house?
9 A. Yes, sir.
10 Q. So you arrived at 2:05 or so. Did you ask to
11 come into the house when you were met by Mr. and
12 Mrs. Mooney?
13 A. I don't recall the exact conversation I had
14 with Mrs. Mooney, but Mrs. Mooney did invite me into the
15 house.
16 Q. Was it a pleasant conversation?
17 A. Yes, sir, it was.
18 Q. Did you make any demands to be permitted to
19 enter the house at all?
20 A. No, I did not.
21 Q. Were there any other officers or deputies with
22 you at that point?
23 A. No, sir.
24 Q. Leading up to Mr. Mooney talking to you
25 about -- about the defendant's bedroom, did you ask to see

14

1 the bedroom?
2 A. I asked both Mr. and Mrs. Mooney, who I was
3 speaking with equally, where this incident had occurred.
4 They said that the female that was with Mr. Mooney was
5 suicidal and that they were using drugs. He didn't
6 elaborate into what type of drug. And I asked where that
7 all occurred.
8 Q. And why did you ask that?
9 A. Normal course of duties to investigate what is
10 going on. He is telling me that drug use has been
11 happening in his house and he's pissed off about it.
12 Q. Did you feel you had a duty to follow up on
13 that?
14 A. Yes, sir.
15 Q. You asked where this activity took place, but
16 did you ask to see the bedroom?
17 A. He indicated the bedroom. And I asked where
18 the bedroom was in relation to where we were standing in
19 the kitchen, and he said "down the hallway."
20 And then that's when he indicated that he was
21 again extremely pissed off at the way Thomas Mooney was
22 living and the way that he kept that room.
23 Q. Did you in any way indicate "I want to see
24 this bedroom"?
25 A. No, sir.

15

1 Q. Did you in any way order either Mr. or Mrs.
2 Mooney to show you this bedroom?
3 A. No, sir.
4 Q. You testified a short time ago that Mr.
5 Mooney -- it seems Mr. Mooney made it clear that the house
6 belonged to him. Would that be correct?
7 A. Yes, sir.
8 Q. Did he likewise make it clear who owned the
9 bedroom in which the defendant was staying?
10 A. Yes, sir.
11 Q. What did he say about that?
12 A. He said, "This is my damn house, it's my damn
13 room," something to that effect.
14 Q. Did Mr. Mooney or Ms. Mooney indicate that
15 they received rent payments or anything like that from the
16 defendant for staying there?
17 A. I don't recall.
18 Q. Did you see where Mrs. Mooney retrieved the
19 key to the room from?
20 A. No, sir, I did not.
21 Q. When she walked away, presumably to get the
22 key, was she gone for a long time?
23 A. Maybe a minute or two, sir.
24 Q. Mr. Mooney opens the door. And you indicated
25 to Mr. Green that you illuminated the room with a

16

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1 flashlight; is that right?

2 A. No, Mrs. Mooney opened the door.

3 Q. I'm sorry, Mrs. Mooney opened the door.

4 Let me ask you about that. Mrs. Mooney comes
5 back with the key. Did you ask her to open the door at
6 that point?

7 A. She indicated that she had a key. William
8 Mooney indicated that they had a key to the room. And I
9 said, "Thomas still has a reasonable expectation of
10 privacy."

11 Q. What happened at that point?

12 A. Aline Mooney walked down the hallway and
13 opened the door.

14 Q. Without any sort of prompting from you?

15 A. No, sir.

16 THE COURT: No, that was incorrect? Or no, there
17 was no prompting?

18 THE WITNESS: No prompting.

19 THE COURT: That was an unclear answer to me of
20 the question.

21 THE WITNESS: I'm sorry, Your Honor. No
22 prompting.

23 THE COURT: It's not your fault. I'm sorry, you
24 said no prompting?

25 THE WITNESS: Correct.

17

1 on that night, that Mr. and Mrs. Mooney, that it was
2 permissible for them to be in the bedroom in which Thomas
3 was staying?

4 A. Yes.

5 Q. Mrs. Mooney opens the door. Was it at that
6 point that you used your flashlight?

7 A. Soon after, yes, sir.

8 Q. Soon after. Before using the flashlight, did
9 anything catch your attention?

10 A. The faint smell of odor of marijuana.

11 Q. Were you able to smell that prior to entering
12 the room?

13 A. Yes, sir.

14 Q. What was the first thing that you noticed when
15 you looked into the room with your flashlight?

16 A. I recall looking immediately to the right of
17 the room towards the middle, and there was a bed. On top
18 of the bed, bedding was disrupted. There was also an
19 ashtray sitting on the bed. I believe some rolling papers.
20 There was also the stock end or the butt stock
21 end of what I believed to be an AK-47 or a Kalashnikov
22 rifle.

23 Q. Why did you take note of the rolling papers?

24 A. Because again William Mooney had indicated
25 that his son Thomas was using code 400 or --

19

1 THE COURT: Thank you. I think it's an important
2 point, so I got to make sure. Thank you.

3 Mr. Buchler.

4 Q. (By Mr. Buchler) So you did not prompt Ms.
5 Mooney to open it up?

6 A. That is correct.

7 Q. "It" being the door?

8 A. Correct.

9 Q. Although you talked to the Mooneys about a
10 reasonable expectation of privacy in the room, after you
11 heard what Mr. Mooney had to say and what Ms. Mooney --
12 well, Mrs. Mooney's actions, did that cause you to change
13 your mind at all?

14 A. When Mr. Mooney was emphatic after walking
15 back down towards the doorway, saying, "You have got to see
16 how he is living. Look at this damn room. Look what he's
17 done to my room," --

18 Q. That --

19 A. -- I felt compelled to look into the room and
20 see the condition he was talking about, why he was so mad.

21 Q. Did you feel compelled as a law enforcement
22 officer to do that?

23 A. Absolutely.

24 Q. Did you believe, based on the totality of the
25 circumstances that you encountered at the Mooney residence

18

1 Q. What's that mean?

2 A. Drugs, he was using drugs, or illicit
3 narcotics. He did -- you know, I had the smell of burnt
4 marijuana coming from the bedroom. Rolling papers are
5 commonly used for that.

6 Q. And at this point are you still outside of the
7 defendant's bedroom?

8 A. Yes, sir.

9 Q. Was the rifle significant in your
10 observations?

11 A. Significant in nature because I'm seeing a
12 Kalashnikov rifle sitting on someone's bed.

13 Q. What was the next thing that you noticed, if
14 anything?

15 A. I began looking around. I saw a colored
16 tubing that was laying on the -- towards the top of the bed
17 that I commonly associate with the use of controlled
18 substances.

19 I noticed a duffel bag on the floor, at the
20 foot of bed, directly in front of me. It was full of -- I
21 could see orange prescription bottles with the white tops,
22 along with cold compress packs, like EZ Cold, or something
23 of that nature.

24 There was a dresser to the front left, and the
25 bookcase was to my left just on the other side of the door.

20

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1 I observed multiple items of drug paraphernalia, glass
2 pipes.

3 I noticed again some more on the bookcase,
4 which led my attention to the approximate 15 silver -- and
5 they were very shiny in my flashlight -- CO2 cartridges
6 that were lying either on the bookcase or on the floor.

7 Q. And you are still outside the room at this
8 point?

9 A. Yes, sir.

10 Q. I'm going to back you up a little bit to your
11 observation of the cold compresses.

12 A. Yes, sir.

13 Q. Is that significant for you, based on your
14 training and experience, with regards to explosives?

15 A. Yes, sir, it is.

16 Q. Why?

17 A. Because the materials contained within the
18 cold compresses can be filtered out to be used to make
19 homemade explosives.

20 Q. Similarly, the shiny objects on the bookshelf,
21 were those significant, based on your training and
22 experience in explosives?

23 A. Yes, sir.

24 Q. Why?

25 A. CO2 canisters are very easy to accelerate,

21

1 very easy to set off. They do create a very nice little
2 bang for the buck, so to speak, as far as an explosion.

3 They are easily used again if they are not destroyed.

4 Q. So after you noticed the CO2 cartridges, what
5 was the next thing that happened?

6 A. I continued to observe them. I saw several of
7 them to have a green -- I call it a wick sticking out of
8 it, much like it was being used for somebody to light
9 something up that was contained inside of it.

10 Q. And would that wick be consistent with
11 homemade explosives in conjunction with the cold compresses
12 and the CO2 canisters?

13 A. Yes, sir.

14 Q. After observing the wicks, what else did you
15 say, if anything?

16 A. I saw multiple rectangular objects on the
17 bookshelf. They appeared to be silver and what I thought
18 was wrapped in duct tape or around it. But I saw the wick
19 sticking out of one of them. The other two were turned in
20 such a way I couldn't see into them.

21 I entered the room and turned it to face me
22 and observed -- to fully face me, I should say -- and
23 observed the CO2 canister with a green wick sticking out
24 and then various nails wrapped around the outside or
25 exterior of the CO2 canister, then it appeared to be

22

1 wrapped in duct tape.

2 Q. Was that significant to you?

3 A. Yes, sir.

4 Q. Why?

5 A. That's the makeup of an anti-personnel
6 explosive.

7 Q. Shrapnel?

8 A. Yes, sir.

9 Q. So just before that, that's when you actually
10 entered the bedroom; is that correct?

11 A. Yes, sir.

12 Q. Is that when you shut the window and --

13 A. Yes.

14 Q. -- backed out of the room?

15 A. Yes, sir.

16 Q. Do you recall at what point Mr. Mooney turned
17 the lights on?

18 A. It was while we were -- while I was looking
19 into the room with my flashlight, he reached around the
20 doorway and flipped the light on.

21 Q. And at that point could you see everything
22 that you just described in plain sight?

23 A. Yes, sir.

24 Q. Was that the point where you walked in, closed
25 the window, and backed everything out, you said?

23

1 A. Yes, sir. Based on the totality of what I
2 had.

3 Q. Did you believe criminal activity was afoot?

4 A. Yes, sir.

5 Q. At any point in your conversation with Mr.
6 Mooney, did he indicate to you that -- that he was
7 instructed by the defendant that Mr. Mooney was not allowed
8 to have access to that bedroom?

9 A. No, sir.

10 Q. At any point in your contact with Mrs. Mooney
11 did she indicate to you that the defendant excluded her
12 from the room?

13 A. No, sir.

14 Q. Anything at all to indicate that the
15 defendant's parents were not allowed to be in that bedroom?

16 A. No, sir.

17 MR. BUCHLER: That is all we have, Your Honor.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. GREEN:

21 Q. When the door was initially opened, did you
22 detect the odor of the marijuana?

23 A. Yes, sir.

24 Q. Do you recall testifying at preliminary
25 hearing?

24

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1 A. I remember being there, sir.
2 Q. Pardon me?
3 A. I remember being there.
4 Q. Do you remember testifying there?
5 A. Yes, sir.
6 Q. Do you remember testifying that you detected a
7 faint odor of burnt marijuana as you got closer to the
8 door?
9 A. I don't recall my exact statements on that
10 day, sir.
11 Q. Okay. I don't know if you are familiar with
12 these transcripts or not. There is four pages on each sheet
13 of paper. You will see it's divided into four. So at the
14 bottom of each fourth, there is a page number.
15 And I would ask you to review the transcript
16 of your testimony at the preliminary hearing. And you are
17 more than welcome look at this.
18 It indicates that your testimony actually
19 started on page 27. If you want to verify that this is
20 your testimony. I specifically ask you to review page 33,
21 lines 16 through 18.
22 A. Okay.
23 Q. Are you satisfied that that is a transcript of
24 your testimony?
25 A. Yes.

25

1 Q. Did reading that review — refresh your memory
2 with respect to when you detected the odor of the
3 marijuana?
4 A. Yes, sir.
5 Q. Did you — did you detect that marijuana as
6 you moved closer to the door?
7 A. Yes, sir.
8 Q. When the door was initially opened, you
9 testified that you were about ten feet away. At that point
10 could you see the cold compresses?
11 A. No, sir.
12 Q. Could you see the rifle on the bed?
13 A. No, sir.
14 Q. Could you see the yellow prescription bottles?
15 A. No.
16 Q. Did you see the rolling papers?
17 A. No.
18 Q. How about the pipes or other paraphernalia?
19 A. No, sir.
20 Q. How about the CO2 cartridges?
21 A. No, sir.
22 MR. GREEN: No further questions.
23 THE COURT: Anything based on that?
24 MR. BUCHLER: Real briefly, Your Honor.
25 RE-CROSS-EXAMINATION

26

1 BY MR. BUCHLER:
2 Q. Deputy, your testimony at the prelim and your
3 testimony now, am I understanding you correctly that you
4 were still outside the bedroom when you made these initial
5 observations, the odor, the rolling papers, the tourniquet,
6 the Kalashnikov?
7 A. Yes, sir.
8 Q. You just had to move closer to the door, but
9 not through it?
10 A. Correct.
11 MR. BUCHLER: That's all I have, Your Honor.
12 THE COURT: All right. Court has a few
13 questions.
14 EXAMINATION
15 BY THE COURT:
16 Q. It's my understanding — and this is probably
17 obvious in the preliminary hearing transcript. Like I
18 said, I didn't read it.
19 So the defendant wasn't on site when you got
20 there, right?
21 A. Correct, sir.
22 Q. And the defendant's — I guess there wasn't a
23 female there, other than Aline, right?
24 A. At the residence?
25 Q. Correct.

27

1 A. Yes, sir.
2 Q. Was this — was this a — you said you closed
3 the window to the room?
4 A. Yes, sir.
5 Q. I assume that was to prevent somebody from
6 getting through the window into the room to get to this —
7 these explosives?
8 A. Yes, sir.
9 Q. What you thought were, in your opinion, based
10 on your training and experience, those explosive devices?
11 A. Yes, sir.
12 Q. So that must mean that this is a ground floor
13 room?
14 A. Yes, sir, it is.
15 Q. I see. Okay. And it was March?
16 A. Yes, sir.
17 Q. It was cold outside, I assume?
18 A. I remember it being fairly cool.
19 Q. Spring Creek in Elko County, Nevada, in March,
20 all right, at two in the morning?
21 A. Yes, sir.
22 Q. Did anybody tell you why the window was open?
23 A. No, sir.
24 Q. Okay. Okay. There was a search warrant then
25 applied for after this and —

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40

1 A. Yes, sir.
2 Q. — it was executed on the room with the
3 detectives and you, I assume?
4 A. And the Elko County bomb squad.
5 Q. Okay. Was there just the one window to the
6 room?
7 A. Yes, sir.
8 Q. I assume you stayed on scene to make sure
9 nobody got into the room?
10 A. Yes, sir.
11 Q. While you applied or —
12 A. While we applied.
13 Q. You or your fellow peace officers applied for
14 the search warrant?
15 A. Yes, sir.
16 THE COURT: Okay. That's all I have.
17 Anything else based on that? We'll start with
18 you, Mr. Green. Deputy Shoaf was your witness.
19 REDIRECT EXAMINATION
20 BY MR. GREEN:
21 Q. In relation to where you arrived and was led
22 into the residence, was that the front of the residence?
23 A. It's what I would call the front of the
24 residence, yes, sir.
25 Q. Where was this bedroom located?

29

1 A. On the front to the right.
2 Q. In the front?
3 A. As I am pulling into the driveway, it was to
4 the front right.
5 Q. The window was open?
6 A. The window was on the far right side of the
7 house.
8 Q. Oh, it was around the corner?
9 A. Yes, sir.
10 Q. Okay. So from outside you didn't detect any
11 odor of marijuana?
12 A. No, sir.
13 MR. GREEN: No further questions.
14 THE COURT: Anything based on that, Mr. Buchler?
15 MR. BUCHLER: Nothing, Your Honor.
16 THE COURT: Thank you. May we excuse Deputy
17 Shoaf?
18 MR. BUCHLER: The State needs him held subject to
19 recall.
20 THE COURT: You can't leave yet, you'll have to
21 take a seat outside the courtroom. Please remember the rule
22 of exclusion.
23 I'm going to take a five-minute recess.
24 (WHEREUPON, a short recess was taken)
25 THE COURT: We're back on the record for Case

30

1 CR-FO-2016-304. Again, State versus Mooney.
2 Mr. Mooney is back in court with counsel Brian
3 Green, Elko County Deputy Public Defender.
4 Elko County Deputy District Attorney David
5 Buchler is back to represent the State.
6 We're continuing on with the remainder of our
7 hearing, just the motion to suppress evidence now.
8 All right. Next witness then for Mr. Mooney.
9 MR. GREEN: Aline Mooney, please.
10 THE COURT: Mrs. Mooney, the door comes out to
11 you. The clerk will swear you in. Please raise your right
12 hand.
13 (WHEREUPON, the witness was sworn)
14 THE COURT: Please have a seat at the witness
15 stand. Door comes out to you. Watch your step.
16 If you feel like you're yelling a little bit, you
17 are probably just about the right volume for us to hear
18 you. Please keep that in mind.
19 Mr. Green, go ahead.
20 ALINE MOONEY
21 called as a witness in said case, having been first
22 duly sworn, testified as follows:
23 DIRECT EXAMINATION
24 BY MR. GREEN:
25 Q. Would you spell your first and last name for

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1 the record, please?
2 A. A-l-i-n-e, M-o-o-n-e-y.
3 Q. And my understanding is it's Mrs. Mooney,
4 correct?
5 A. Yes.
6 Q. Mrs. Mooney, where do you reside?
7 A. 260 Cliff Place in Spring Creek, Nevada.
8 Q. This individual immediately to my left here?
9 A. Yes.
10 Q. Do you recognize him?
11 A. Yes. That's my son, Thomas.
12 MR. BUCHLER: We'll stipulate to the
13 identification, Your Honor.
14 THE COURT: All right. Thank you.
15 Q. On March 5 of this year, do you know where
16 Thomas resided?
17 A. In our home.
18 Q. Did he have his own bedroom?
19 A. Yes.
20 Q. How long had he resided in that home?
21 A. Oh, since he was born. We got him when he was
22 four days old.
23 Q. The — the door to his — the door to his
24 room?
25 A. Um-hmm.

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1 Q. Did it have a lock on it?
2 A. It did recently, uh-huh. Yeah, at that time
3 it was locked.
4 Q. How recent?
5 A. Since about January that year.
6 Q. Since the lock was installed, did your son
7 regularly keep it locked when he was not there?
8 A. Yes.
9 Q. Did you have regular access to that room?
10 A. No.
11 Q. Did your husband have regular access to that
12 room?
13 A. No.
14 MR. GREEN: No further questions.
15 THE COURT: Cross-examination.
16 MR. BUCHLER: Thank you, Your Honor.
17 CROSS-EXAMINATION
18 BY MR. BUCHLER:
19 Q. Mrs. Mooney, when you say that you didn't have
20 regular access, does that mean you didn't go into the room
21 oftentimes?
22 A. I didn't go into it after it was locked, but.
23 Q. You had a key; is that correct?
24 A. Yes, uh-huh.
25 Q. And that was your own key?

33

1 A. It was the key that came with the lock,
2 uh-huh.
3 Q. Did you buy the lock?
4 A. Yes. I bought it for a different door and it
5 didn't fit that door, but Thomas said it would fit his
6 door, and we wanted a lock on his door.
7 Q. You wanted a lock on his door?
8 A. His father wanted a lock on his door, yes. It
9 was his idea.
10 Q. So the installation of the lock on your son's
11 door, that wasn't something that -- that he demanded?
12 A. No. My husband or my son?
13 Q. Your son. Your son didn't demand this lock?
14 A. Oh, no. No.
15 Q. Where did you keep that key?
16 A. I think it was just on the kitchen counter in
17 a little saucer thing.
18 Q. When law enforcement arrived at your home on
19 November -- I'm sorry, March 5 of 2016, prior to you
20 opening the door to your son's bedroom, do you remember
21 meeting with Deputy Shoaf?
22 A. I did not stay with -- he and my husband were
23 up at the kitchen counter and I was in the living room, I
24 was not with them.
25 Q. At some point you opened the door, though; is

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1 that correct?
2 A. Yes. I heard them going down to the hall and
3 try to open the door, um-hmm.
4 Q. So what did you do when you heard them try to
5 open the door?
6 A. I got the key to open it.
7 Q. Did law enforcement ask you to go get the key?
8 A. They did not ask me for the key.
9 Q. Did law enforcement order you to open that
10 door in any way?
11 A. No.
12 Q. Did you feel compelled by law enforcement,
13 forced by law enforcement to open this door?
14 A. No.
15 THE COURT: I'm sorry, you said?
16 THE WITNESS: No.
17 THE COURT: Thank you.
18 Q. You did that on your own free will?
19 A. Yes.
20 MR. BUCHLER: That's all we have, Your Honor.
21 THE COURT: Any redirect?
22 REDIRECT EXAMINATION
23 BY MR. GREEN:
24 Q. Okay. You testified that it was your husband
25 that was wanting that lock on the door?

35

1 A. Yes.
2 Q. After that lock was installed, your son
3 Thomas, he chose to keep it locked when he wasn't there?
4 A. Yes.
5 Q. And when you returned with the key, did you
6 hear Deputy Shoaf advise you that Thomas had an expectation
7 of privacy in that room?
8 A. He may have said that, yes. I'm not sure. I
9 can't remember for sure, but I think he did.
10 Q. All right.
11 MR. GREEN: No further questions.
12 THE COURT: Anything based on that?
13 MR. BUCHLER: No, Your Honor.
14 THE COURT: Okay. I have some questions again.
15 Maybe this would be covered with another witness; if so, I
16 apologize. If it's in the preliminary hearing transcript,
17 again, I apologize.
18 EXAMINATION
19 BY THE COURT:
20 Q. Did your son pay you rent to stay at your
21 place?
22 A. No.
23 Q. Was anybody else living there except you,
24 William and Thomas here?
25 A. No. Not at that time. He had a friend over

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1 that night, but no one else was staying there at that time.
2 Q. Okay. You had a friend there that night?
3 A. No, Thomas did.
4 Q. Okay. That was the -- a lady?
5 A. Um-hmm.
6 Q. And you called the police because --
7 A. My husband called the police. I was sound
8 asleep, I did not know.
9 Q. You didn't know the police were called until
10 they got there?
11 A. Well, no, my husband told me that I better get
12 dressed, that he had called the police.
13 Q. And you let the officer into the house?
14 A. Pardon me?
15 Q. You let the officer into the house when the
16 officer showed up?
17 A. Oh, yes.
18 Q. I see. You invited him in?
19 A. Yes.
20 Q. All right. Do you know what marijuana smells
21 like?
22 A. No. I have been told I should find out, but
23 I -- I don't have a very good sense of smell anyway, so I
24 don't know.
25 Q. Okay. Thank you. Did you go into the room

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1 when you opened up the door for the officer? Unlocked the
2 lock?
3 A. I think the light was off. I went in and
4 turned on the lamp. That was -- and then he was saying
5 something --
6 Q. Who is "he"?
7 A. The officer.
8 Q. Uh-huh.
9 A. Said something about there were drugs and
10 paraphernalia, he thought, and I left.
11 Q. Okay. Did you know what was going on in that
12 room before you opened up the lock?
13 A. No.
14 Q. So you didn't --
15 A. I just thought this would just take care of it
16 and they could look at the room and leave. Because the
17 last time I saw it, it was just a messy room, so.
18 THE COURT: Anything based on that?
19 MR. GREEN: No.
20 MR. BUCHLER: Nothing, Your Honor.
21 THE COURT: Okay. Thank you very much. Do you
22 want to retain Aline?
23 MR. BUCHLER: State does.
24 THE COURT: We'll have you take a seat outside
25 the courtroom. Please remember the rule of exclusion I

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1 told you about. Thank you, Mrs. Mooney.
2 Next witness.
3 MR. GREEN: We have no more witnesses.
4 THE COURT: Over to the State.
5 MR. BUCHLER: We would call Mr. Mooney.
6 THE COURT: Okay. William Mooney.
7 Mr. Mooney, that door comes out to you. Please
8 come on up here with us. We'll have you sworn in as a
9 witness. Please raise your right hand.
10 (WHEREUPON, the witness was sworn)
11 THE COURT: Please have a seat at the stand.
12 Thank you.
13 Mr. Buchler, go ahead.
14 WILLIAM E. MOONEY, JR.
15 called as a witness in said case, having been first
16 duly sworn, testified as follows:
17 DIRECT EXAMINATION
18 BY MR. BUCHLER:
19 Q. Sir, would you please state your name for the
20 record?
21 A. William E. Mooney, Jr.
22 Q. Please spell your first and last, sir?
23 A. First William, w-i-l-l-i-a-m. M-o-o-n-e-y.
24 Q. Thank you, sir. Where did you reside on March
25 5, 2016?

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1 A. 260 Cliff Place, Spring Creek, Nevada, 89815.
2 Q. Elko County?
3 A. Elko County.
4 Q. Who did you live there with at that time, sir?
5 A. Pardon me?
6 Q. Who did you live there with at that time, sir?
7 A. My wife and my son.
8 Q. Your wife Aline?
9 A. Yes, sir.
10 Q. Is this your son over to my left in the red?
11 A. Yes, sir.
12 MR. BUCHLER: Your Honor, could the Court please
13 recognize the identification of the defendant.
14 THE COURT: The record will so reflect.
15 Q. Mr. Mooney, we've heard testimony that you
16 contacted 911, or summoned law enforcement in some degree
17 or capacity, in the early morning hours of March 5, 2016;
18 is that correct?
19 A. 911.
20 Q. And sometime thereafter did a Deputy Shoaf
21 arrive, or some representative from law enforcement?
22 A. Correct.
23 Q. And when the deputy arrived, was he invited
24 into your home?
25 A. Sure, yes.

40

43

1 Q. He didn't kick down the door or anything like
2 that?

3 A. No guns drawn either.

4 Q. All right. It was a friendly situation, sir?

5 A. Pardon me?

6 Q. It was a friendly situation, sir?

7 A. By all means. And professional.

8 Q. When the deputy entered the house, did you say
9 anything about the condition of your son's room?

10 A. I told him it was a mess.

11 Q. Did you express your anger or your unhappiness
12 with the way that your son was treating his bedroom?

13 A. I could have. I don't remember.

14 Q. Did you offer to or did you insist on showing
15 the deputy the bedroom?

16 A. I didn't insist, no. Seemed like he asked if
17 he could go in there, and I said, "yes, but it's a mess in
18 there."

19 Q. Do you remember telling the deputy that he
20 needed to see the condition of the bedroom or how your son
21 was treating the bedroom in your home?

22 A. That doesn't sound like something I would say
23 for the simple reason that I wasn't pleased at all with the
24 condition of that room.

25 Q. I'm sorry, I didn't hear you there?

41

1 A. I don't know if I would have said that. It's
2 not something that I would say because I wasn't happy with
3 the condition of that room. Just to invite people, to use
4 it as a show case, no, I wouldn't have done that.

5 Q. Who owns that house at 260 Cliff Place?

6 A. Aline and I.

7 Q. Do you consider that your home?

8 A. That's the only one we have, yes.

9 Q. What about the rooms that are within that
10 home, sir? Are those your rooms?

11 A. Well, it's our house and the rooms go with our
12 house. I presume it is, yes.

13 Q. Did you indicate to the deputy that it was
14 your house? Yours and Aline's?

15 A. I could have. Yes, I could have.

16 Q. And did you indicate to the deputy that your
17 son's bedroom was essentially your room because it's in
18 your house?

19 A. I don't -- I could have. I don't really
20 remember.

21 Q. Going back to statements that may have been
22 made about law enforcement seeing Thomas's room, do you
23 recall telling the deputy that he needed to see the room to
24 understand the extent in which your son had trashed the
25 room? And I'm paraphrasing.

42

1 A. Well, I don't know. Like I said, I wasn't
2 pleased with that room. It's not something I would have
3 people go parading around in.

4 Q. Did law enforcement instruct you to open that
5 door?

6 A. No.

7 Q. Did law enforcement instruct you to get the
8 key, or have your wife get the key to that room and open
9 it?

10 A. No.

11 Q. You did that? That was your own choice, sir?

12 A. Actually it was her choice.

13 Q. But you didn't object?

14 A. No.

15 Q. When the door to the room that your son was
16 staying was initially opened, do you remember encouraging
17 or telling the officer, the deputy, that he needed to move
18 closer to the room in order to appreciate the extent which
19 it was trashed or treated?

20 A. Could you repeat that, please?

21 Q. Sure. After Mrs. Mooney opened the bedroom
22 door, do you remember telling Deputy Shoaf that he needed
23 to move closer to the room in order to be able to see --

24 A. I don't remember saying that. He was standing
25 right there, he could see it himself.

43

1 Q. Okay.

2 MR. BUCHLER: That's all we have, Your Honor.

3 THE COURT: Mr. Green, any cross-examination?

4 MR. GREEN: No.

5 THE COURT: All right. I do have some questions.

6 EXAMINATION

7 BY THE COURT:

8 Q. It's my understanding your son has been living
9 in your home pretty much his whole life?

10 A. Correct.

11 Q. There was some time that he was in Arizona,
12 not living there, but --

13 A. Correct.

14 Q. That period of time apparently wasn't very
15 long?

16 A. Right.

17 Q. Okay. How long had he been living in your
18 home this stretch?

19 A. Oh, quite awhile.

20 Q. Okay. Couple years? A year?

21 A. Yeah, I would say.

22 Q. You know what I'm talking about, when he came
23 back from Arizona and took up residency again?

24 A. He was mostly in that -- he and a girl had a
25 little apartment in Elko for a little while, but that

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1 didn't last long.
2 No, most of his life he was in that room.
3 Q. Okay. This was his childhood room, it sounds
4 like?
5 A. Oh, yes. And his high school room and his
6 adult room.
7 Q. Okay. When he was a little kid, he lived in
8 this room?
9 A. By all means. That was where his crib was.
10 Q. Okay. My understanding is there was a lock on
11 this door, sir?
12 A. Yes.
13 Q. One thing that hasn't come out -- again, maybe
14 it's in the preliminary hearing transcript, gentlemen --
15 but was this a regular door lock? Like a knob that fits
16 into the door and locks?
17 A. Yeah. It was a regular doorknob. I can't
18 remember whether it was push-in-and-turn or whether there
19 was a latch on it. It could have been a push-in-and-turn.
20 Q. It wasn't padlocked?
21 A. Oh, no, no. It was right on the doorknob
22 itself.
23 Q. There was a key to this lock?
24 A. Pardon me?
25 Q. There was a key to the lock, I guess?

45

1 A. Correct.
2 Q. How long had the lock been on there before
3 March 5, do you know?
4 A. Oh, quite awhile.
5 Q. Okay. You might understand why I am trying to
6 figure out how long quite awhile is. Can I narrow you down
7 a little more on time?
8 A. I can't ask him, I guess. But I don't know.
9 It could have been there two years, it could have been
10 there five years. I don't know.
11 Q. Okay. Who had access to the key?
12 A. To the what?
13 Q. To the key to the lock?
14 A. Well, Thomas had the key and Aline had one. I
15 don't think I knew that.
16 Q. Oh, okay. How did it come to be that you
17 called the police?
18 A. Pardon me?
19 Q. How did it come to be that you called 911?
20 A. The girl was talking about killing herself.
21 Q. From where?
22 A. From where?
23 Q. Yeah.
24 A. In the bedroom.
25 Q. Okay. You could hear this?

46

1 A. Oh, yeah. Yes.
2 Q. Could you see into the bedroom or --
3 A. Pardon me?
4 Q. Were you hearing this, or could you just see
5 into the bedroom or --
6 A. I could hear it through the wall.
7 Q. I guess your bedroom --
8 A. Right next to it.
9 Q. -- is adjacent to the --
10 A. Yes.
11 Q. Do you know what I mean? Right next to it?
12 A. Yes, just a wall.
13 Q. Did you know if the girl was still in there
14 when the police showed up?
15 A. Oh, no, they were gone.
16 Q. You knew they had left by then?
17 A. (Nods head)
18 Q. Is that a yes?
19 A. Pardon me?
20 Q. Is that a yes?
21 A. That's a yes.
22 Q. Okay. Then you told the deputy about that,
23 that they had left?
24 A. He already knew.
25 Q. Oh, he did. How did he know that, do you

47

1 know?
2 A. They stopped them on the highway.
3 Q. Oh, I see. Do you know how they got out of
4 that bedroom?
5 A. They walked out.
6 Q. Out the door?
7 A. Right.
8 Q. With the lock on it?
9 A. Correct. Correct.
10 Q. Okay. It was my understanding that this is a
11 ground-floor room?
12 A. Yes.
13 Q. If a guy wanted to, he can get in and out the
14 window into the room?
15 A. Yes, but it's pretty high. He would have to
16 be on --
17 Q. Could you grab on to the window and climb up
18 there through it?
19 A. He could. I couldn't.
20 Q. "He" meaning?
21 A. Thomas. You would want to be young and
22 slender.
23 Q. He is younger than you and he could do it?
24 A. Yes.
25 Q. How old is he?

48

45

1 A. How old is he?
2 Q. Yeah.
3 A. Twenty-six.
4 Q. Okay. Do you know what marijuana smells like?
5 A. I'm not real -- an expert on drugs. I am not
6 going to say I haven't been around it. Could I go smell
7 marijuana? Probably not.
8 Q. Well, I'm just -- did you smell any marijuana
9 that night?
10 A. Well --
11 Q. When the deputy was there?
12 A. That room was such a pig pen, you don't know
13 what you were smelling in there.
14 Q. Okay.
15 A. It could have been dirty socks, it could have
16 been dog. Who knows.
17 Q. Okay. Did you have any concerns about what
18 was in the room?
19 A. No.
20 Q. Okay.
21 THE COURT: All right. Anything based on that?
22 REDIRECT EXAMINATION
23 BY MR. BUCHLER:
24 Q. Mr. Mooney, you said that the lock was on that
25 door for sometime?

49

1 A. Correct.
2 Q. Two to five years or so?
3 A. Correct.
4 Q. Is it true that you wanted that lock on the
5 door?
6 A. I didn't care. It didn't bother me one bit.
7 Q. Well, how did the lock come to be installed on
8 that door then?
9 A. Oh, it was probably on that door ever since we
10 bought the house.
11 MR. BUCHLER: That's all we have, Your Honor.
12 A. See, the people that had it before us, their
13 father lived in there. And that door could have very
14 well -- you know, I forget. I mean, we have been in there
15 for years.
16 MR. BUCHLER: That's all we have, Your Honor.
17 THE COURT: Mr. Green.
18 CROSS-EXAMINATION
19 BY MR. GREEN:
20 Q. The night that we're talking about that the
21 deputy was there and you said that they walked out the door
22 of the room, was it Thomas that locked the room behind him?
23 A. Oh, I don't know. I wasn't there. I didn't
24 see them walk out the door.
25 Q. Okay. You didn't lock that door that night?

50

1 A. Oh, no.
2 MR. GREEN: Nothing further.
3 THE COURT: Okay. May we excuse Mr. Mooney?
4 MR. BUCHLER: Ask that he be held subject to
5 recall.
6 THE COURT: All right. Please have a seat outside
7 the courtroom. We're almost done. Watch your step there.
8 And please remember the rule of exclusion.
9 (WHEREUPON, the evidentiary portion of the hearing was
10 concluded)
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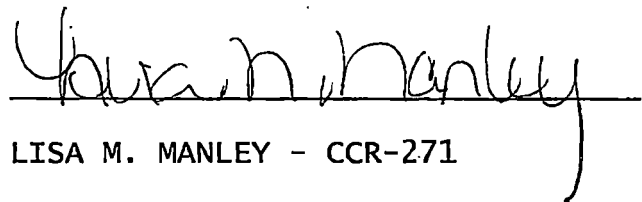
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1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
4 I, LISA M. MANLEY, Official Court Reporter of the Fourth
5 Judicial District Court, Dept. II, of the State of Nevada,
6 in and for the County of Elko, do hereby certify that I was
7 present in court during all the proceedings had in the
8 matter of the State of Nevada, plaintiff, versus
9 THOMAS WILLIAM MOONEY, defendant, heard at Elko, Nevada, on
10 September 7, 2016, and took verbatim stenotype notes
11 thereof; and that the foregoing 51 pages contain a full,
12 true and correct transcription of my stenotype notes so
13 taken, and a full, true and correct copy of all proceedings
14 had.
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15
16
17 
18 LISA M. MANLEY - CCR-271

19 OFFICIAL COURT REPORTER
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1 Case No. CR-FO-16-304

2 Dept. No. 2

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ELKO CO DISTRICT COURT

CLERK _____ DEPUTY _____

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6 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO
8

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

ORDER DENYING MOTION TO
SUPPRESS

12 THOMAS WILLIAM MOONEY,

13 Defendant.
14 _____ /

15 Defendant Thomas William Mooney is charged with multiple felony counts related to the
16 possession of homemade explosive devices and their components. He also faces three felony
17 charges of Possession of a Firearm by a Person Previously Convicted of a Felony Offense.
18 Defendant has pled not guilty to all charges. His trial is set to begin in October 2016.

19 On August 5, 2016, Defendant filed a Motion to Suppress Evidence. Defendant is apparently
20 seeking suppression of all evidence derived from the discovery of firearms and explosive
21 devices/components in the bedroom he occupied in his parents' home through March 5, 2016. The
22 State opposed the motion on August 22, 2016.

23 The court held an evidentiary hearing on the motion on September 7, 2016. Defendant
24 appeared for the hearing and was represented by his counsel, Elko County Deputy Public Defender
25 Brian Green. The State was represented by Elko County Deputy District Attorney David Buchler.
26 Deputy Brian Shoaf (hereinafter "Shoaf") of the Elko County Sheriff's Office and Defendant's
27 parents, Aline Mooney (hereinafter "Aline") and William Mooney (hereinafter "William"), testified
28 at the hearing. During the proceeding, the parties agreed that the court should consider the transcript

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1 of the preliminary hearing held in this case.

2 The court concludes that Shoaf and Aline are credible and reliable witnesses. The court
3 questions the reliability of much of William's testimony because he was simply not certain about a
4 significant portion of it.

5 **A. FINDINGS OF FACT**

6 Having carefully considered the evidence admitted at the hearing on the Motion to Suppress
7 Evidence and the preliminary examination, the court hereby makes the following findings of clear
8 and convincing fact.

9 Defendant is 26 years old. He has lived in his parents' house at 260 Cliff Place in Spring
10 Creek, Nevada, nearly his entire life. Prior to his arrest in this case on March 5, 2016, Defendant
11 was living rent-free with his parents and occupying the same ground floor bedroom he used when he
12 was a child, adolescent and younger adult.

13 On March 5, 2016, at approximately 1:45 AM, William made a 9-1-1 call to report that a girl
14 in Defendant's room was threatening to kill herself. Shoaf, a three-year employee of the Elko
15 County Sheriff's Office and a fourteen-year veteran of the United States Marine Corps, responded to
16 the call.¹

17 Shoaf arrived at the Mooney residence shortly after 2:00 AM. Aline answered the door, and
18 invited him into the home. By that time, only Defendant's parents were in the residence. William
19 told Shoaf, inter alia, that: (a) Defendant and his female guest had been "yelling and screaming" in
20 the bedroom Defendant occupied; and (b) he asked Defendant and the guest to leave the house after
21 they failed to "shut up." William confirmed that Defendant's female companion was "suicidal."
22 William confirmed that Defendant and his companion were using drugs in the bedroom. William
23 also told Shoaf "that he was frustrated and upset with the way that [Defendant] was living, and that
24 . . he felt disrespected by the way that [Defendant] was treating not only [William's] belongings
25 throughout the house, but also the condition of [the] bedroom."

26 William insisted that Shoaf look at the bedroom "to see that it was trashed," but its door was
27 closed and locked. William told Shoaf that Defendant had been regularly locking this door for a long
28

¹ Shoaf testified that he was dispatched on an, "initial call . . . for two juveniles who were consuming controlled substances and a juvenile female who had made suicidal comments."

1 time.² Although he represented that he and his wife were free to go in and out of the room, William
2 essentially stated that they had been avoiding it because it was "trashed." At that point, Shoaf told
3 William that Defendant had a reasonable expectation of privacy in the room.

4 Whatever Shoaf's assessment, Aline retrieved a key to the doorknob. Without any request or
5 other prompting from Shoaf, Aline unlocked and opened the door.³ William responded to Shoaf's
6 opinion regarding Defendant's expectation of privacy with agitation, stating "something to the effect
7 of, 'well fuck that . . . this is my goddamn house . . . I pay for it.'"

8 After the door was opened, Shoaf moved toward the room and noticed a faint odor of burnt
9 marijuana emanating from it. As he stood in a hallway, Shoaf illuminated the bedroom with a
10 flashlight.⁴ Shoaf immediately noticed that the room was in "disarray" and that the bedroom window
11 was open. On a bed, Shoaf saw a "device that appeared to me . . . could be used as a tourniquet."
12 Near the middle of the bed, Shoaf saw the butt stock of a Kalashnikov "AK-47" rifle. Near the foot
13 of the bed, Shoaf saw a package of rolling papers. On the floor, Shoaf saw a black duffel bag
14 containing many prescription pill bottles, as well as multiple "cold compression packs." Between a
15 dresser and a bookcase, Shoaf saw the butt stock of a shotgun. On a bookshelf, Shoaf noticed
16 numerous glass pipes commonly used to smoke controlled substances, along with several shiny silver
17 CO2 canisters, a few of which had a green fuse protruding from them. Shoaf also saw a "cylinder-
18 type object that appeared to be wrapped in silver duct tape" with a green wick attached to it.

19 During his military service, which included combat deployments to Iraq and Afghanistan,
20 Shoaf received training in the construction and recognition of homemade explosives, commonly
21 known as "improvised explosive devices" (hereinafter "IEDs"). In Shoaf's training and experience:
22 (a) cold compression packs contain ammonium nitrate, a fuel for homemade explosives; (b) CO2
23 cartridges can be used as an IED that is "very easy to accelerate, very easy to set off[;]" and (c) the
24 "cylinder-type object" is an anti-personnel device used to injure people.⁵ Believing the bedroom was
25

26 ² William insisted on equipping the door with a locking doorknob; however, he and Aline kept a key for the lock.

27 ³ Shoaf observed that the door and some nearby drywall were damaged.

28 ⁴ Believing that Defendant's parents had common authority over the bedroom despite the fact that its door was locked, Shoaf felt it was his duty to comply with William's demand to see the room at that point. William turned on the bedroom lights as Shoaf observed it with the flashlight.

⁵ Shoaf's later in-room inspection of the device revealed that it was covered in nails as well. Apparently, a bomb squad detonated this and other explosives after they were seized in the execution of a search warrant. The anti-personnel device was essentially a homemade nail bomb.

1 a dangerous area, Shoaf told William and Aline to leave, entered the bedroom and closed the
2 window, briefly inspected the nail bomb, and then left the bedroom and closed its door.

3 After Shoaf secured the bedroom, one of his colleagues applied for and received a warrant to
4 search the bedroom. During the execution of the warrant, Shoaf and other law enforcement officers
5 found the devices, explosive components and firearms forming the bases of the charges in this case.
6 A review of the preliminary hearing transcript reveals that Defendant made several in-custody
7 admissions about the contents of his bedroom as well.

8 B. CONCLUSIONS OF LAW

9 Having made the foregoing findings of fact, the Court makes the following conclusions of
10 law.

11 1. Defendant had a reasonable expectation of privacy in the bedroom in which Shoaf discovered
12 the firearms and explosive devices/components.

13 2. When he first saw the firearms and explosive devices/components in the bedroom, Shoaf was
14 not conducting a Fourth Amendment search.

15 3. After he saw the firearms and explosive devices/components in plain view, Shoaf lawfully
16 entered the bedroom to close the window, briefly inspect the nail bomb, and shut the door.

17 4. Assuming for the sake of argument that Shoaf's initial observation of the firearms and
18 explosive devices/components was a "search" under the Fourth Amendment, Defendant's parents
19 lawfully consented to the search.

20 C. ANALYSIS

21 To explain the conclusions of law set forth above, the court makes the following legal
22 analysis.

23 1. Defendant had a reasonable expectation of privacy in the bedroom in which Shoaf discovered
24 the firearms and explosive devices/components.

25 The United States and Nevada Constitutions prohibit unreasonable searches and seizures.
26 Herman v. State, 122 Nev. 199, 204 (2006); State v. Lisenbee, 116 Nev. 1124, 1127 (2000) (Fourth
27 Amendment of the U.S. Constitution requires that the government respect the right of the people to
28 be secure in their persons against unreasonable searches and seizures); State v. Taylor, 114 Nev.

1 1071, 1078 (1998). This restraint on conduct generally prohibits government officials from
2 undertaking searches and seizures absent some individualized suspicion. Lisenbee, 116 Nev. at 1127
3 (citing Chandler v. Miller, 520 U.S. 305, 308 (1997)).

4 "In order to assert a violation under the Fourth Amendment, one must have a subjective and
5 objective expectation of privacy in the place [allegedly] searched or items seized." Taylor, 114 Nev.
6 at 1077 (citing Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring)). The parties
7 agree that Defendant had such an expectation of privacy in the bedroom in which Shoaf discovered
8 the firearms and explosive devices/components. Even though Defendant had no ownership or
9 leasehold interest in the bedroom, the court also agrees. *See* Alward v. State, 112 Nev. 141, 149 n.7
10 (1996) (noting that defendant's lack of ownership of tent searched by law enforcement officials did
11 not preclude standing to challenge search's lawfulness); Rakas v. Illinois, 439 U.S. 128, 143 (1978)
12 (capacity to claim Fourth Amendment protection depends not upon property right in an invaded
13 place but upon whether person claiming such protection has legitimate expectation of privacy in that
14 place); *see also* Minnesota v. Olson, 495 U.S. 91, 96-99 (1990) (defendant's "status as an overnight
15 guest is alone enough to show that he had an expectation of privacy in the home that society is
16 prepared to recognize as reasonable," and that such status provided him "with privacy, a place where
17 he and his possessions will not be disturbed by anyone but his host and those his host allows
18 inside").

19 Thus, Defendant had an expectation of privacy in the bedroom, which he had occupied for
20 most of his life as of March 5, 2016, simply because he was occupying it with the permission of his
21 parents, the bedroom's owners and his hosts. Although that expectation of privacy was not nearly as
22 extensive as he seems to argue and the State appears to concede, *see* Commonwealth v. Mallory, 775
23 N.E.2d 764, 766 (Mass. App. Ct. 2002), the court shall treat it as unlimited for this analysis.

24 2. When he first saw the firearms and explosive devices/components, Shoaf was not conducting
25 a Fourth Amendment search.

26 If an inspection by a law enforcement officer does not intrude upon a legitimate expectation
27 of privacy, there is no "search" subject to the Fourth Amendment. *See* Illinois v. Andreas, 463 U.S.
28 765, 771 (1983) ("[i]f the inspection by police does not intrude upon a legitimate expectation of

1 privacy, there is no 'search' subject to the Warrant Clause") (citation omitted). In this case, there
2 was no such intrusion. Aline invited Shoaf into the home in which he saw the bedroom containing
3 the evidence for which Defendant seeks suppression. With the consent of the home's owners, Shoaf
4 proceeded to the hallway from which he saw that evidence in plain view with a flashlight after Aline
5 unlocked and opened the bedroom door on her own accord.⁶

6 Under the plain-view doctrine, "if police are lawfully in a position from which they view an
7 object, if its incriminating character is immediately apparent, and if the officers have a lawful right of
8 access to the object, they may seize it without a warrant." Minnesota v. Dickerson, 508 U.S. 366,
9 375 (1993) (citing Horton v. California, 496 U.S. 128, 136-37 (1990); Texas v. Brown, 460 U.S.
10 730, 739 (1983)); Connors v. State, 116 Nev. 184, 187 n.3 (2000). Here, Defendant does not seem to
11 argue that Shoaf was not in a lawful position when he viewed the firearms and explosive
12 devices/components. Instead, he contends that the deputy unlawfully used a flashlight to "search"
13 the bedroom from the hallway.

14 Although the Nevada Supreme Court has not considered the use of a flashlight to see inside a
15 residence, "most courts addressing this issue have reasoned that, so long as the officer makes the
16 observation from a lawful vantage point, the officer, during hours of darkness, may use a flashlight
17 to make plain view observations that during daylight would not constitute a search." People v.
18 Glick, 250 P.3d 578, 584 (Colo. 2011). For instance, in United States v. Dunn, the Supreme Court
19 upheld the investigating police officers' use of their flashlights during evening hours to see into a
20 darkened barn. 480 U.S. 294, 305 (1987). The Court reasoned that, because the officers looked into
21 the "essentially open front" of the defendant's barn from a lawful vantage point, "the officers' use of
22 the beam of a flashlight . . . did not transform their observations into an unreasonable search within
23 the meaning of the Fourth Amendment." Id. Other authorities support the proposition that the use of
24 a flashlight to assist the natural vision at night does not make an observation a "search." See State v.
25 Humphrey, 138 P.3d 590, 596 (Utah Ct. App. 2006) (upholding plain view observations made by
26 officers who used flashlights to illuminate interior of defendant's mobile home after officers were

27 ⁶ The Court notes that Aline and William were not acting as agents of the government when they provided Shoaf a view of the bedroom,
28 thus rendering the Fourth Amendment's protections inapplicable as to them. See United States v. Jacobsen, 466 U.S. 109, 114 (1984);
State v. Miller, 110 Nev. 690, 696 (1994) (agency relationship did not exist between police and a babysitter who "initiated contact with law
enforcement in order to have the police examine what she thought might possibly be illegal drugs"). In Miller, as here, law enforcement
"simply accommodated [a] desire to have them inspect the object of . . . concern[]" 110 Nev. at 696.

1 allowed inside by defendant, and stating "the use of a flashlight to assist the natural vision at night
2 does not make an 'observation' a 'search'"); State v. Johnson, 793 A.2d 619, 630 (N.J. 2002)
3 (upholding observations made by police officer who, lawfully on defendant's front porch to
4 investigate report of drug activity, used flashlight to observe contraband in plain view);
5 Commonwealth v. Pietrass, 467 N.E.2d 1368, 1373 (Mass. 1984) (reasoning that officer's use of
6 flashlight to look through home's window from its enclosed front porch was not search if officer was
7 lawfully on porch); State v. Crea, 233 N.W.2d 736, 739-40 (Minn. 1975) (holding that police who
8 were lawfully on premises investigating theft acted reasonably when they used flashlights to look
9 through uncovered basement window).

10 The court agrees with all authority cited immediately above. This authority is ample support
11 for the proposition that Shoaf did not violate Defendant's right to be free from an unreasonable
12 search by using a flashlight to make a plain view observation that during daylight would not
13 constitute a search under the Fourth Amendment. "When an officer's plain view observation of
14 evidence during daylight would not constitute a search for purposes of the Fourth Amendment, the
15 fact that the officer uses a flashlight because darkness has fallen does not transform the officer's
16 observations into an unreasonable search." Glick, 250 P.3d at 585. Thus, when he first saw the
17 firearms and explosive devices/components from his location outside Defendant's bedroom, Shoaf
18 was not conducting a Fourth Amendment search.

19 3. After he saw the firearms and explosive devices/components, Shoaf lawfully entered the
20 bedroom to close the window, briefly inspect the nail bomb, and shut the door.

21 Based on his military training and experience, Shoaf immediately recognized there were
22 homemade explosives and explosive components in Defendant's bedroom. Thus, the deputy had
23 probable cause to believe Defendant constructively possessed dangerous, life-threatening contraband
24 in violation of NRS 202.261 and NRS 202.262. Weber v. State, 121 Nev. 554, 583 (2005) (noting
25 that probable cause requires trustworthy facts and circumstances which would cause person of
26 reasonable caution to believe it more likely than not that specific items sought in search are subject
27 to seizure and at place to be searched). In the court's opinion, exigent circumstances justified
28 Shoaf's warrantless entry into the room at that point to close the window, inspect the nail bomb and
shut the door, thus preventing access to the room by people other than law enforcement officers.

1 Missouri v. McNeely, 569 U.S. ___, ___, 133 S. Ct. 1552, 1558 (2013) (noting that exigent
2 circumstances exception to warrant requirement applies where exigencies of situation make needs of
3 law enforcement so compelling that warrantless search is objectively reasonable under the Fourth
4 Amendment); Kentucky v. King, 563 U.S. ___, 131 S.Ct. 1849, 1853-54 (2011) (“[i]t is well
5 established that ‘exigent circumstances,’ including the need to prevent the destruction of evidence,
6 permit police officers to conduct an otherwise permissible search without first obtaining a warrant”);
7 Cupp v. Murphy, 412 U.S. 291, 296 (1973).

8 For all of these reasons, the court easily concludes that Shoaf lawfully entered the bedroom to
9 close the window, briefly inspect the homemade nail bomb and shut the door after he saw the
10 firearms and explosive devices/components.

11 4. Assuming for the sake of argument that Shoaf’s initial observation of the firearms and
12 explosive devices/components was a “search” under the Fourth Amendment, Defendant’s parents
13 lawfully consented to the search.

14 “A warrantless search is valid if the police acquire consent from a cohabitant who possesses
15 common authority over the property to be searched.” Casteel v. State, 122 Nev. 356, 360 (2006)
16 (citing Illinois v. Rodriguez, 497 U.S. 177, 181 (1990)); *see also* McMorran v. State, 118 Nev. 379,
17 383 n.4 (2002) (citing Rodriguez for proposition that “a third party who possesses common authority
18 over the premises may give voluntary consent to a search”). However, “[t]he government has the
19 burden of establishing the effectiveness of a third party’s consent” by clear and convincing evidence.
20 State v. Miller, 110 Nev. 690, 699 (1994) (Young, J., dissenting); Herman, 122 Nev. at 204; Thurlow
21 v. State, 81 Nev. 510, 515 (1965). “It can accomplish this task in three ways.” Miller, 110 Nev. at
22 699. “First, the government can come forward with evidence of both joint access and shared use or
23 control over the area that was searched.” Id. (citing United States v. Matlock, 415 U.S. 164, 171 n.7
24 (1974)). “Such a showing would demonstrate that the third party had actual authority to consent.”
25 Id. “Second, it can show that the owner of the property to be searched expressly authorized the third
26 party to give consent.” Id. “Finally, the government may establish valid consent by means of the
27 ‘apparent authority doctrine.’” Id. at 699-700. “There, a search is valid if the officer reasonably
28 believes that the third party has actual authority to consent.” Id. (citing Rodriguez, 497 U.S. at 188).

1 In the court's opinion, there is clear and convincing evidence that William and Aline, who
2 permitted Defendant to live rent-free in their residence and possessed a key to the bedroom at issue,
3 had actual common authority to consent to any pre-entry "search" Shoaf conducted. Even if there
4 was not such actual authority, clear and convincing evidence of "apparent authority" to consent
5 predominates. Any reasonable deputy in Shoaf's position would conclude that parents who had a
6 key to a bedroom in which they permitted their adult son to stay, and who so forcefully claimed a
7 privilege to enter that room after summoning authorities to their home, retained actual authority to
8 consent to a law enforcement officer's entry therein. Where, as here, the parent's consent was
9 obviously not the product "of duress or coercion, express or implied," McMorran, 118 Nev. at 383,
10 and the parent in fact *insisted* on an observation later claimed to be a "search," that consent is lawful.

11 For the foregoing reasons, assuming for the sake of argument that Shoaf's initial observation
12 of the firearms and explosive devices/components was a Fourth Amendment "search," Defendant's
13 parents lawfully consented to the search.

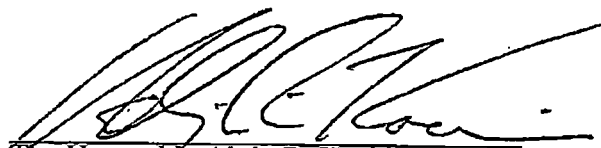
14 **C. ORDER**

15 "The exclusionary rule, while not acting to cure a Fourth Amendment violation, is a remedial
16 action used to deter police from taking action that is not in accordance with proper search and seizure
17 law." State v. Allen, 119 Nev. 166, 172 (2003) (citing United States v. Leon, 468 U.S. 897, 906
18 (1984)). Regardless of whether his initial discovery of the firearms, explosives, and explosive
19 components in Defendant's bedroom was a plain view observation or a "search" under the Fourth
20 Amendment, Shoaf did not violate anyone's constitutional rights in this case. Therefore, the
21 exclusion of this evidence and its fruit is not appropriate.

22 Accordingly,

23 1. Defendant's Motion to Suppress Evidence is DENIED.

24 DATED this 16 day of September, 2016.

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The Honorable Alvin R. Kacin
District Judge/Department 2

1 CERTIFICATE OF SERVICE

2 Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Alvin R. Kacin, District
3 Judge, Fourth Judicial District Court, Department 2, and that on this 16 day of September, 2016,
served by the following method of service:

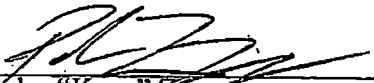
4 () Regular US Mail
5 () Certified US Mail
6 () Registered US Mail
() Overnight US Mail
() Personal Service

() Overnight UPS
() Overnight Federal Express
() Fax to # _____
() Email
(X) Box in Clerk's Office

7 a true copy of the foregoing document addressed to:

8 Elk County District Attorney's Office
[Box in Clerk's Office]

9
10 Elko County Public Defender's Office
[Box in Clerk's Office]

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13 Pedro "Kepa" Zugazaga
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FILED

2016 OCT -7 PM 3: 27

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY 4

CASE NO. CR-FO-16-0304

DEPT. NO. II

IN THE FOURTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

STATE OF NEVADA,

Plaintiff,

SECOND AMENDED

CRIMINAL

vs.

INFORMATION

THOMAS WILLIAM MOONEY

Defendant.

COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by and through its Counsel of Record, the Elko County District Attorney's Office, and informs the above-entitled Court that Defendant above-named, on or about the 5th day of March, 2016, at or near the location of Cliff Place and/or the community of Spring Creek, within the County of Elko, and the State of Nevada, committed a crime or crimes described as follows:

COUNT 1

POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED BY NRS 202.261.

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s). Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

1 In the alternative to Count 1,

2 COUNT 2

3 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY**
4 **D FELONY AS DEFINED BY NRS 202.262.**

5 The Defendant in or near any private habitation within the State, described as a
6 residence located at or near 260 Cliff Place and/or the community of Spring
7 Creek, willfully and unlawfully possessed an explosive and/or an incendiary
8 device; and/or willfully and unlawfully possessed any explosive or incendiary
9 material, substance or component that may readily be converted to an explosive
or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord
and/or explosive and/or incendiary material(s).

10 COUNT 3

11 **POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY**
12 **DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR**
13 **INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED**
14 **BY NRS 202.261.**

15 The Defendant possessed, actually or constructively, a component of an
16 explosive or incendiary device, to wit: duct tape and/or hobby cord and/or
17 detonation cord and/or explosive and/or incendiary material(s). Further, at the
time the Defendant possessed said component, he had the intent to
manufacture an explosive or incendiary device or devices.

18 In the alternative to Count 3,

19 COUNT 4

20 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY**
21 **D FELONY AS DEFINED BY NRS 202.262.**

22 The Defendant in or near any private habitation within the State, described as a
23 residence located at or near 260 Cliff Place and/or the community of Spring
24 Creek, willfully and unlawfully possessed an explosive and/or an incendiary
25 device; and/or willfully and unlawfully possessed any explosive or incendiary
26 material, substance or component that may readily be converted to an explosive
or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord
and/or explosive and/or incendiary material(s).

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COUNT 5

POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED BY NRS 202.261.

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s). Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

In the alternative to Count 5,

COUNT 6

POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY D FELONY AS DEFINED BY NRS 202.262.

The Defendant in or near any private habitation within the State, described as a residence located at or near 260 Cliff Place and/or the community of Spring Creek willfully and unlawfully possessed an explosive and/or an incendiary device; and/or willfully and unlawfully possessed any explosive or incendiary material, substance or component that may readily be converted to an explosive or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s).

COUNT 7

POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED BY NRS 202.261.

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s). Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

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1 In the alternative to Count 7,

2 COUNT 8

3 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY**
4 **D FELONY AS DEFINED BY NRS 202.262.**

5 The Defendant in or near any private habitation within the State, described as a
6 residence located at or near 260 Cliff Place and/or the community of Spring
7 Creek willfully and unlawfully possessed an explosive and/or an incendiary
8 device; and/or willfully and unlawfully possessed any explosive or incendiary
9 material, substance or component that may readily be converted to an explosive
10 or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation
11 cord and/or explosive and/or incendiary material(s).

12 COUNT 9

13 **POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY**
14 **DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR**
15 **INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED**
16 **BY NRS 202.261.**

17 The Defendant possessed, actually or constructively, a component of an
18 explosive or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or
19 detonation cord and/or explosive and/or incendiary material(s). Further, at the
20 time the Defendant possessed said component, he had the intent to
21 manufacture an explosive or incendiary device or devices.

22 In the alternative to Count 9,

23 COUNT 10

24 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY**
25 **D FELONY AS DEFINED BY NRS 202.262.**

26 The Defendant in or near any private habitation within the State, described as a
27 residence located at or near 260 Cliff Place and/or the community of Spring
28 Creek willfully and unlawfully possessed an explosive and/or an incendiary
device; and/or willfully and unlawfully possessed any explosive or incendiary
material, substance or component that may readily be converted to an explosive
or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation
cord and/or explosive and/or incendiary material(s).

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COUNT 11

**POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY
DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR
INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED
BY NRS 202.261.**

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s). Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

In the alternative to Count 11,

COUNT 12

**POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY
D FELONY AS DEFINED BY NRS 202.262.**

The Defendant in or near any private habitation within the State, described as a residence located at or near 260 Cliff Place and/or the community of Spring Creek willfully and unlawfully possessed an explosive and/or an incendiary device; and/or willfully and unlawfully possessed any explosive or incendiary material, substance or component that may readily be converted to an explosive or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s).

COUNT 13

**POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY
DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR
INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED
BY NRS 202.261.**

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation cord and/or nails and/or explosive and/or incendiary material(s). Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

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In the alternative to Count 13,

COUNT 14

POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY D FELONY AS DEFINED BY NRS 202.262.

The Defendant in or near any private habitation within the State, described as a residence located at or near 260 Cliff Place and/or the community of Spring Creek willfully and unlawfully possessed an explosive and/or an incendiary device; and/or willfully and unlawfully possessed any explosive or incendiary material, substance or component that may readily be converted to an explosive or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation cord and/or nails and/or explosive and/or incendiary material(s).

COUNT 15

POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED BY NRS 202.261.

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s). Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

In the alternative to Count 15,

COUNT 16

POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY D FELONY AS DEFINED BY NRS 202.262.

The Defendant in or near any private habitation within the State, described as a residence located at or near 260 Cliff Place and/or the community of Spring Creek willfully and unlawfully possessed an explosive and/or an incendiary device; and/or willfully and unlawfully possessed any explosive or incendiary material, substance or component that may readily be converted to an explosive or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s).

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COUNT 17

POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED BY NRS 202.261.

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s). Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

In the alternative to Count 17,

COUNT 18

POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY D FELONY AS DEFINED BY NRS 202.262.

The Defendant in or near any private habitation within the State, described as a residence located at or near 260 Cliff Place and/or the community of Spring Creek willfully and unlawfully possessed an explosive and/or an incendiary device; and/or willfully and unlawfully possessed any explosive or incendiary material, substance or component that may readily be converted to an explosive or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s).

COUNT 19

POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED BY NRS 202.261.

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s). Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

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1 In the alternative to Count 19,

2 COUNT 20

3 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY**
4 **D FELONY AS DEFINED BY NRS 202.262.**

5 The Defendant in or near any private habitation within the State, described as a
6 residence located at or near 260 Cliff Place and/or the community of Spring
7 Creek willfully and unlawfully possessed an explosive and/or an incendiary
8 device; and/or willfully and unlawfully possessed any explosive or incendiary
9 material, substance or component that may readily be converted to an explosive
or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord
and/or explosive and/or incendiary material(s).

10 COUNT 21

11 **POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY**
12 **DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR**
13 **INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED**
14 **BY NRS 202.261.**

15 The Defendant possessed, actually or constructively, a component of an
16 explosive or incendiary device, to wit: metal pipe and/or brass pipe nipple and/or
17 end cap hobby cord and/or detonation cord and/or explosive and/or incendiary
material(s). Further, at the time the Defendant possessed said component, he
had the intent to manufacture an explosive or incendiary device or devices.

18 In the alternative to Count 21,

19 COUNT 22

20 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY**
21 **D FELONY AS DEFINED BY NRS 202.262.**

22 The Defendant in or near any private habitation within the State, described as a
23 residence located at or near 260 Cliff Place and/or the community of Spring
24 Creek willfully and unlawfully possessed an explosive and/or an incendiary
25 device; and/or willfully and unlawfully possessed any explosive or incendiary
26 material, substance or component that may readily be converted to an explosive
or incendiary device, to wit: metal pipe and/or brass pipe nipple and/or hobby
cord and/or detonation cord and/or explosive and/or incendiary material(s).

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1 COUNT 23

2 **POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY**
3 **DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR**
4 **INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED**
5 **BY NRS 202.261.**

6 The Defendant possessed, actually or constructively, a component of an
7 explosive or incendiary device, to wit: metal pipe and/or brass pipe nipple and/or
8 end cap hobby cord and/or detonation cord and/or explosive and/or incendiary
9 material(s). Further, at the time the Defendant possessed said component, he
10 had the intent to manufacture an explosive or incendiary device or devices.

11 In the alternative to Count 23,

12 COUNT 24

13 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY**
14 **D FELONY AS DEFINED BY NRS 202.262.**

15 The Defendant in or near any private habitation within the State, described as a
16 residence located at or near 260 Cliff Place and/or the community of Spring
17 Creek willfully and unlawfully possessed an explosive and/or an incendiary
18 device; and/or willfully and unlawfully possessed any explosive or incendiary
19 material, substance or component that may readily be converted to an explosive
20 or incendiary device, to wit: metal pipe and/or brass pipe nipple and/or hobby
21 cord and/or detonation cord and/or explosive and/or incendiary material(s).

22 COUNT 25

23 **POSSESSION OF A COMPONENT OF EXPLOSIVE OR INCENDIARY**
24 **DEVICE WITH THE INTENT TO MANUFACTURE EXPLOSIVE OR**
25 **INCENDIARY DEVICE, A CATEGORY B FELONY AS DEFINED BY NRS**
26 **202.261.**

27 The Defendant possessed, actually or constructively, a component of an
28 explosive or incendiary device, to wit: ball bearings and/or BBs and/or steel
epoxy adhesive. Further, at the time the Defendant possessed said component,
he had the intent to manufacture an explosive or incendiary device or devices.

COUNT 26

POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY
DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR
INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS
202.261.

1 The Defendant possessed, actually or constructively, a component of an
2 explosive or incendiary device, to wit: pipe(s) and/or end cap(s) and/or CO2
3 cartridges. Further, at the time the Defendant possessed said component(s), he
4 had the intent to manufacture an explosive or incendiary device or devices.

5 COUNT 27

6 **POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY**
7 **DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR**
8 **INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS**
9 **202.261.**

10 The Defendant possessed, actually or constructively, a component of an
11 explosive or incendiary device, to wit: hobby cord and/or detonation cord and/or
12 cold packs and/or ammonium nitrate and/or potassium chlorate and/or
13 petroleum jelly and/or match heads. Further, at the time the Defendant
14 possessed said component(s), he had the intent to manufacture an explosive or
15 incendiary device or devices.

16 COUNT 28

17 **POSSESSION OF A FIREARM BY A PERSON PREVIOUSLY CONVICTED**
18 **OF A FELONY OFFENSE, A CATEGORY B FELONY AS DEFINED BY NRS**
19 **202.360**

20 The Defendant on or about the date, and at the place alleged above owned;
21 and/or possessed, actually or constructively; and/or had custody of and/or
22 control of the following described firearm: a Kalashnikov or AK style rifle 7.62 x
23 39 mm or similar firearm.

24 Further the Defendant, at the time he owned, and/or possessed, and/or had
25 custody and/or control of said firearm had been previously convicted of
26 committing a felony criminal offense or offenses.

27 COUNT 29

28 **POSSESSION OF A FIREARM BY A PERSON PREVIOUSLY CONVICTED**
OF A FELONY OFFENSE, A CATEGORY B FELONY AS DEFINED BY NRS
202.360

The Defendant on or about the date, and at the place alleged above owned;
and/or possessed, actually or constructively; and/or had custody of and/or
control of the following described firearm: a 12 gauge shotgun or similar firearm

1 Further the Defendant, at the time he owned, and/or possessed, and/or had
2 custody and/or control of said firearm had been previously convicted of
3 committing a felony criminal offense or offenses.

4 COUNT 30

5 **POSSESSION OF A FIREARM BY A PERSON PREVIOUSLY CONVICTED**
6 **OF A FELONY OFFENSE, A CATEGORY B FELONY AS DEFINED BY NRS**
7 **202.360**

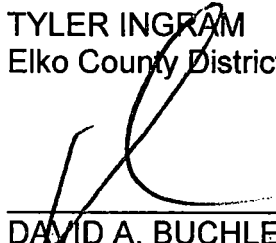
8 The Defendant on or about the date, and at the place alleged above owned;
9 and/or possessed, actually or constructively; and/or had custody of and/or
10 control of the following described firearm: Marlin model 81TS .22 caliber rifle or
11 similar firearm

12 Further the Defendant, at the time he owned, and/or possessed, and/or had
13 custody and/or control of said firearm had been previously convicted of
14 committing a felony criminal offense or offenses.

15 All of which is contrary to the form of the Statute in such cases made and provided,
16 and against the peace and dignity of the State of Nevada.

17 Dated: October 7, 2016.

18 TYLER INGRAM
19 Elko County District Attorney

20 
21 _____
22 DAVID A. BUCHLER
23 Deputy District Attorney
24 State Bar Number: 11070
25
26
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1 **CERTIFICATE OF SERVICE**


2 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the
3 Elko County District Attorney's Office, and that on the 7th day of October, 2016, I hereby
4 served a copy of the Second Amended Criminal Information, by delivering, mailing, faxing, or
5 causing to be delivered, faxed, or mailed, a copy of said document to the following:

6 By delivering to:

7
8 HONORABLE ALVIN R. KACIN
9 FOURTH JUDICIAL DISTRICT COURT
10 ELKO COUNTY COURTHOUSE
11 ELKO, NV 89801

11 By delivering to:

12 BRIAN D GREEN
13 ATTORNEY AT LAW
14 569 COURT STREET
15 ELKO, NV 89801

16 
17 GEORGIA JORDAN
18 CASEWORKER

18 DA # F-16-01747

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FILED

2016 OCT 25 AM 10:36

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY _____

1 CASE NO. CR-FO-16-0304

2 DEPT. 2

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6 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO
8

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 THOMAS WILLIAM MOONEY,

13 Defendant

MEMORANDUM OF

CONDITIONAL PLEA

AGREEMENT

14
15 I, THOMAS WILLIAM MOONEY, hereby state that the following is a true and
16 correct account of the plea agreement in this matter between myself, my attorney,
17 BRIAN D. GREEN, of the Elko County Public Defender's Office, and DAVID A.
18 BUCHLER, of the Elko County District Attorney's Office.
19

20 CONDITIONAL GUILTY PLEA AGREEMENT

21 I, THOMAS WILLIAM MOONEY, hereby agree to plead guilty to: Count 28,
22 Possession of a Firearm by a Person Previously Convicted of a Felony Offense, a
23 Category B Felony as Defined by NRS 202.360; Count 29, Possession of a Firearm by a
24 Person Previously Convicted of a Felony Offense, a Category B Felony as Defined by
25 NRS 202.360; and Count 30, Possession of a Firearm by a Person Previously Convicted
26 of a Felony Offense, A Category B Felony as Defined by NRS 202.360, as more fully
27 alleged in the charging document attached hereto as Exhibit 1.
28

Elko County
Public Defender

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1 My decision to plead guilty is based upon the plea agreement in this case which is
2 as follows: This plea agreement does not affect the jury verdicts as a result of trial on
3 Counts 1 through 27, inclusive, set forth in Exhibit 1 attached hereto. In exchange for my
4 pleas of guilty to Counts 28, 29, and 30, the Elko County District Attorney's Office has
5 agreed to allow me to reserve my right to appeal the adverse ruling on my pretrial Motion
6 To Suppress Evidence and any adverse rulings with respect to the jury trial on Counts 1
7 through 27, inclusive. At the time of my sentencing on all counts contained in Exhibit 1,
8 both sides remain free to argue.

9
10 CONSEQUENCES OF THE PLEA

11 I understand that by pleading guilty I admit the facts which support all the
12 elements of the offenses to which I now plead guilty.

13
14 I understand that as a consequence of my plea of guilty I may be imprisoned for a
15 period of not more than six years and may be fined by up to \$5,000.00 on each count to
16 which I now plead guilty. I understand that the law requires me to pay a \$25.00
17 administrative assessment fee, a \$3.00 GMA fee, and I may be required to pay \$150.00
18 for and submit to testing of my genetic markers.

19
20 I understand that if the offenses to which I am pleading guilty were committed
21 while I was incarcerated on another charge or while I was on probation or parole for a
22 felony, that I am not eligible for credit for time served toward the offenses.

23
24 I understand that, if appropriate, I will be ordered to make restitution to the victim
25 of the offense to which I am entering pleas of guilty to or the victim of any related
26 offense which is being dismissed or not prosecuted pursuant to this agreement. I will also
27 be ordered to reimburse the State of Nevada for expenses related to my extradition, if
28 any.

1 I understand that I am eligible for probation for the offenses to which I am
2 pleading guilty. I understand that, except as otherwise provided by statute, the question
3 of whether I receive probation is in the discretion of the sentencing judge
4

5 I understand that if more than one sentence of imprisonment is imposed and I am
6 eligible to serve the sentences concurrently, the sentencing judge has the discretion to
7 order the sentences be served concurrently or consecutively.
8

9 I understand that information regarding charges not filed, dismissed charges or
10 charges to be dismissed pursuant to this agreement may be considered by the judge at
11 sentencing.
12

13 I have not been promised or guaranteed any particular sentence by anyone. I
14 know that my sentence is to be determined by the court within the limits prescribed by
15 statute. I understand that if my attorney or the State of Nevada or both recommend any
16 specific punishment to the court, the court is not obligated to accept the recommendation.
17

18 I understand that if I am not a citizen of the United States, any criminal conviction
19 will likely result in serious negative immigration consequences including, but not limited
20 to the following:

- 21 1) Removal from the United States through deportation;
- 22 2) The inability to reenter the United States;
- 23 3) The inability to renew and/or retain any legal residence status;
- 24 4) The inability to become a United States citizen;
- 25 5) The inability to establish legal residency in the United States;
- 26 6) Ineligibility for Deferred Action for Childhood Arrivals (DACA); and/or
- 27 7) An indeterminate term of confinement by the United States Federal
28 Government based on my conviction and immigration status.

1 I understand that no one can promise me that this conviction will not result in
2 negative immigration consequences if I am not a United States citizen.
3

4 I understand that the Division of Parole and Probation of the Department of Motor
5 Vehicles and Public Safety may or will prepare a report for the sentencing judge before
6 sentencing. This report will include matters relevant to the issue of sentencing, including
7 my criminal history. I understand that this report may contain hearsay information
8 regarding my background and criminal history. My attorney and I will each have the
9 opportunity to comment on the information contained in the report at the time of
10 sentencing.
11

12 WAIVER OF RIGHTS

13 By entering my pleas of guilty, I understand that I have waived the following
14 rights and privileges:
15

16 1. The constitutional privilege against self-incrimination, including the right
17 to refuse to testify at trial, in which event the prosecution would not be allowed to
18 comment to the jury about my refusal to testify.
19

20 2. The constitutional right to a speedy and public trial by an impartial jury,
21 free of excessive pretrial publicity prejudicial to the defense, at which trial I would be
22 entitled to the assistance of an attorney, either appointed or retained. At trial, the state
23 would bear the burden of proving beyond a reasonable doubt each element of the offense
24 or offenses charged.
25

26 3. The constitutional right to confront and cross-examine any witnesses who
27 would testify against me.
28

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

6. The right to appeal the conviction, with the assistance of an attorney, either appointed or retained, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035. If I wish to appeal, I have thirty (30) days to appeal from the written entry of judgment.

VOLUNTARINESS OF PLEA

I have discussed the elements of the charges against me with my attorney and I understand the nature of those charges against me.

I understand that the State would have to prove each and every element of the charges against me at trial beyond a reasonable doubt.

I have discussed with my attorney any possible defenses and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights and waiver of rights have been thoroughly explained to me by my attorney.

I believe that entering pleas of guilty and accepting this plea bargain is in my best interest and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

77

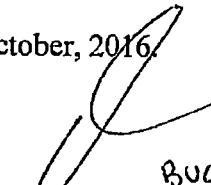
1 I am not now under the influence of intoxicating liquor, a controlled substance or
2 other drug which would in any manner impair my ability to comprehend or understand
3 this agreement or the proceedings surrounding my entry of these pleas.
4

5 My attorney has answered all my questions regarding this guilty plea agreement
6 and its consequences to my satisfaction and I am satisfied with the services provided by
7 my attorney.
8

9 DATED this 20 day of October, 2016.
10

11 
12 THOMAS WILLIAM MOONEY

13 Agreed to on this 24 day of October, 2016.
14

15 
16 DAVID A. BUCHER, SBN 11070
17 Elko County Deputy District Attorney
18 540 Court Street
19 Elko, Nevada 89801
20

21 CERTIFICATE OF COUNSEL

22 I, the undersigned, as the attorney for the defendant named herein and as
23 an officer of the court hereby certify that:
24

25 1. I have fully explained to the defendant the allegation contained in the
26 charge to which a guilty a plea is being entered.
27

28 2. I have advised the Defendant of the penalties for that charges and the
restitution that the defendant may be ordered to pay.
78

Moreover, I have explained that regardless of what Defendant may have been told by any attorney, if the Defendant is not a United States Citizen, no one can promise the Defendant that this conviction will not result in negative immigration consequences and/or impact Defendant's ability to become a United States citizen and/or legal resident.

5. To the best of my knowledge and belief, the Defendant:

b. Executed this agreement and will enter guilty pleas pursuant hereto voluntarily, and

DATED this 20 day of October, 2016.

BRIAN D. GREEN, SBN 4621
Deputy Public Defender
569 Court Street
Elko, Nevada 89801

79

FILED

1 CASE NO. CR-FO-16-0304

2 DEPT. NO. II

2016 OCT -7 PM 3:27

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY *[Signature]*

3
4
5 IN THE FOURTH JUDICIAL DISTRICT COURT
6 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO
7

8 STATE OF NEVADA,

9 Plaintiff,

SECOND AMENDED

CRIMINAL

10
11 vs.

INFORMATION

12 THOMAS WILLIAM MOONEY

13 Defendant.
14

15 COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by
16 and through its Counsel of Record, the Elko County District Attorney's Office, and informs the
17 above-entitled Court that Defendant above-named, on or about the 5th day of March, 2016,
18 at or near the location of Cliff Place and/or the community of Spring Creek, within the County
19 of Elko, and the State of Nevada, committed a crime or crimes described as follows:

20 COUNT 1

21 **POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY**
22 **DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR**
23 **INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED**
24 **BY NRS 202.261.**

25 The Defendant possessed, actually or constructively, a component of an
26 explosive or incendiary device, to wit: duct tape and/or hobby cord and/or
27 detonation cord and/or explosive and/or incendiary material(s). Further, at the
28 time the Defendant possessed said component, he had the intent to
manufacture an explosive or incendiary device or devices.

1
2 In the alternative to Count 1,

3 COUNT 2

4 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY**
5 **D FELONY AS DEFINED BY NRS 202.262.**

6 The Defendant in or near any private habitation within the State, described as a
7 residence located at or near 260 Cliff Place and/or the community of Spring
8 Creek, willfully and unlawfully possessed an explosive and/or an incendiary
9 device; and/or willfully and unlawfully possessed any explosive or incendiary
10 material, substance or component that may readily be converted to an explosive
11 or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord
12 and/or explosive and/or incendiary material(s).

13 COUNT 3

14 **POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY**
15 **DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR**
16 **INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED**
17 **BY NRS 202.261.**

18 The Defendant possessed, actually or constructively, a component of an
19 explosive or incendiary device, to wit: duct tape and/or hobby cord and/or
20 detonation cord and/or explosive and/or incendiary material(s). Further, at the
21 time the Defendant possessed said component, he had the intent to
22 manufacture an explosive or incendiary device or devices.

23 In the alternative to Count 3,

24 COUNT 4

25 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY**
26 **D FELONY AS DEFINED BY NRS 202.262.**

27 The Defendant in or near any private habitation within the State, described as a
28 residence located at or near 260 Cliff Place and/or the community of Spring
Creek, willfully and unlawfully possessed an explosive and/or an incendiary
device; and/or willfully and unlawfully possessed any explosive or incendiary
material, substance or component that may readily be converted to an explosive
or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord
and/or explosive and/or incendiary material(s).

///

///

COUNT 5

POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED BY NRS 202.261.

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s). Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

In the alternative to Count 5,

COUNT 6

POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY D FELONY AS DEFINED BY NRS 202.262.

The Defendant in or near any private habitation within the State, described as a residence located at or near 260 Cliff Place and/or the community of Spring Creek willfully and unlawfully possessed an explosive and/or an incendiary device; and/or willfully and unlawfully possessed any explosive or incendiary material, substance or component that may readily be converted to an explosive or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s).

COUNT 7

POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED BY NRS 202.261.

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s). Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

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1 In the alternative to Count 7,

2 COUNT 8

3 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY**
4 **D FELONY AS DEFINED BY NRS 202.262.**

5 The Defendant in or near any private habitation within the State, described as a
6 residence located at or near 260 Cliff Place and/or the community of Spring
7 Creek willfully and unlawfully possessed an explosive and/or an incendiary
8 device; and/or willfully and unlawfully possessed any explosive or incendiary
9 material, substance or component that may readily be converted to an explosive
10 cord and/or explosive and/or incendiary material(s).

11 COUNT 9

12 **POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY**
13 **DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR**
14 **INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED**
15 **BY NRS 202.261.**

16 The Defendant possessed, actually or constructively, a component of an
17 explosive or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or
18 detonation cord and/or explosive and/or incendiary material(s). Further, at the
19 time the Defendant possessed said component, he had the intent to
20 manufacture an explosive or incendiary device or devices.

21 In the alternative to Count 9,

22 COUNT 10

23 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY**
24 **D FELONY AS DEFINED BY NRS 202.262.**

25 The Defendant in or near any private habitation within the State, described as a
26 residence located at or near 260 Cliff Place and/or the community of Spring
27 Creek willfully and unlawfully possessed an explosive and/or an incendiary
28 device; and/or willfully and unlawfully possessed any explosive or incendiary
material, substance or component that may readily be converted to an explosive
or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation
cord and/or explosive and/or incendiary material(s).

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COUNT 11

**POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY
DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR
INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED
BY NRS 202.261.**

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s). Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

In the alternative to Count 11,

COUNT 12

**POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY
D FELONY AS DEFINED BY NRS 202.262.**

The Defendant in or near any private habitation within the State, described as a residence located at or near 260 Cliff Place and/or the community of Spring Creek willfully and unlawfully possessed an explosive and/or an incendiary device; and/or willfully and unlawfully possessed any explosive or incendiary material, substance or component that may readily be converted to an explosive or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s).

COUNT 13

**POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY
DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR
INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED
BY NRS 202.261.**

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation cord and/or nails and/or explosive and/or incendiary material(s). Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

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1 In the alternative to Count 13,

2 COUNT 14

3 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY**
4 **D FELONY AS DEFINED BY NRS 202.262.**

5 The Defendant in or near any private habitation within the State, described as a
6 residence located at or near 260 Cliff Place and/or the community of Spring
7 Creek willfully and unlawfully possessed an explosive and/or an incendiary
8 device; and/or willfully and unlawfully possessed any explosive or incendiary
9 material, substance or component that may readily be converted to an explosive
10 or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation
11 cord and/or nails and/or explosive and/or incendiary material(s).

12 COUNT 15

13 **POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY**
14 **DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR**
15 **INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED**
16 **BY NRS 202.261.**

17 The Defendant possessed, actually or constructively, a component of an
18 explosive or incendiary device, to wit: duct tape and/or hobby cord and/or
19 detonation cord and/or explosive and/or incendiary material(s). Further, at the
20 time the Defendant possessed said component, he had the intent to
21 manufacture an explosive or incendiary device or devices.

22 In the alternative to Count 15,

23 COUNT 16

24 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY**
25 **D FELONY AS DEFINED BY NRS 202.262.**

26 The Defendant in or near any private habitation within the State, described as a
27 residence located at or near 260 Cliff Place and/or the community of Spring
28 Creek willfully and unlawfully possessed an explosive and/or an incendiary
device; and/or willfully and unlawfully possessed any explosive or incendiary
material, substance or component that may readily be converted to an explosive
or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord
and/or explosive and/or incendiary material(s).

///

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COUNT 17

POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED BY NRS 202.261.

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s). Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

In the alternative to Count 17,

COUNT 18

POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY D FELONY AS DEFINED BY NRS 202.262.

The Defendant in or near any private habitation within the State, described as a residence located at or near 260 Cliff Place and/or the community of Spring Creek willfully and unlawfully possessed an explosive and/or an incendiary device; and/or willfully and unlawfully possessed any explosive or incendiary material, substance or component that may readily be converted to an explosive or incendiary device, to wit: CO2 cartridge and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s).

COUNT 19

POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED BY NRS 202.261.

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s). Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

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1
2 In the alternative to Count 19,

3 COUNT 20

4 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY**
5 **D FELONY AS DEFINED BY NRS 202.262.**

6 The Defendant in or near any private habitation within the State, described as a
7 residence located at or near 260 Cliff Place and/or the community of Spring
8 Creek willfully and unlawfully possessed an explosive and/or an incendiary
9 device; and/or willfully and unlawfully possessed any explosive or incendiary
10 material, substance or component that may readily be converted to an explosive
11 or incendiary device, to wit: duct tape and/or hobby cord and/or detonation cord
12 and/or explosive and/or incendiary material(s).

13 COUNT 21

14 **POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY**
15 **DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR**
16 **INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED**
17 **BY NRS 202.261.**

18 The Defendant possessed, actually or constructively, a component of an
19 explosive or incendiary device, to wit: metal pipe and/or brass pipe nipple and/or
20 end cap hobby cord and/or detonation cord and/or explosive and/or incendiary
21 material(s). Further, at the time the Defendant possessed said component, he
22 had the intent to manufacture an explosive or incendiary device or devices.

23 In the alternative to Count 21,

24 COUNT 22

25 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY**
26 **D FELONY AS DEFINED BY NRS 202.262.**

27 The Defendant in or near any private habitation within the State, described as a
28 residence located at or near 260 Cliff Place and/or the community of Spring
Creek willfully and unlawfully possessed an explosive and/or an incendiary
device; and/or willfully and unlawfully possessed any explosive or incendiary
material, substance or component that may readily be converted to an explosive
or incendiary device, to wit: metal pipe and/or brass pipe nipple and/or hobby
cord and/or detonation cord and/or explosive and/or incendiary material(s).

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COUNT 23

POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A CATEGORY B FELONY AS DEFINED BY NRS 202.261.

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: metal pipe and/or brass pipe nipple and/or end cap hobby cord and/or detonation cord and/or explosive and/or incendiary material(s). Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

In the alternative to Count 23,

COUNT 24

POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY D FELONY AS DEFINED BY NRS 202.262.

The Defendant in or near any private habitation within the State, described as a residence located at or near 260 Cliff Place and/or the community of Spring Creek willfully and unlawfully possessed an explosive and/or an incendiary device; and/or willfully and unlawfully possessed any explosive or incendiary material, substance or component that may readily be converted to an explosive or incendiary device, to wit: metal pipe and/or brass pipe nipple and/or hobby cord and/or detonation cord and/or explosive and/or incendiary material(s).

COUNT 25

POSSESSION OF A COMPONENT OF EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE EXPLOSIVE OR INCENDIARY DEVICE, A CATEGORY B FELONY AS DEFINED BY NRS 202.261.

The Defendant possessed, actually or constructively, a component of an explosive or incendiary device, to wit: ball bearings and/or BBs and/or steel epoxy adhesive. Further, at the time the Defendant possessed said component, he had the intent to manufacture an explosive or incendiary device or devices.

COUNT 26

POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS 202.261.

1
2 The Defendant possessed, actually or constructively, a component of an
3 explosive or incendiary device, to wit: pipe(s) and/or end cap(s) and/or CO2
4 cartridges. Further, at the time the Defendant possessed said component(s), he
5 had the intent to manufacture an explosive or incendiary device or devices.

6 COUNT 27

7 **POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY**
8 **DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR**
9 **INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS**
10 **202.261.**

11 The Defendant possessed, actually or constructively, a component of an
12 explosive or incendiary device, to wit: hobby cord and/or detonation cord and/or
13 cold packs and/or ammonium nitrate and/or potassium chlorate and/or
14 petroleum jelly and/or match heads. Further, at the time the Defendant
15 possessed said component(s), he had the intent to manufacture an explosive or
16 incendiary device or devices.

17 COUNT 28

18 **POSSESSION OF A FIREARM BY A PERSON PREVIOUSLY CONVICTED**
19 **OF A FELONY OFFENSE, A CATEGORY B FELONY AS DEFINED BY NRS**
20 **202.360**

21 The Defendant on or about the date, and at the place alleged above owned;
22 and/or possessed, actually or constructively; and/or had custody of and/or
23 control of the following described firearm: a Kalashnikov or AK style rifle 7.62 x
24 39 mm or similar firearm.

25 Further the Defendant, at the time he owned, and/or possessed, and/or had
26 custody and/or control of said firearm had been previously convicted of
27 committing a felony criminal offense or offenses.

28 COUNT 29

POSSESSION OF A FIREARM BY A PERSON PREVIOUSLY CONVICTED
OF A FELONY OFFENSE, A CATEGORY B FELONY AS DEFINED BY NRS
202.360

The Defendant on or about the date, and at the place alleged above owned;
and/or possessed, actually or constructively; and/or had custody of and/or
control of the following described firearm: a 12 gauge shotgun or similar firearm

1 Further the Defendant, at the time he owned, and/or possessed, and/or had
2 custody and/or control of said firearm had been previously convicted of
3 committing a felony criminal offense or offenses.

4 COUNT 30

5 **POSSESSION OF A FIREARM BY A PERSON PREVIOUSLY CONVICTED**
6 **OF A FELONY OFFENSE, A CATEGORY B FELONY AS DEFINED BY NRS**
7 **202.360**

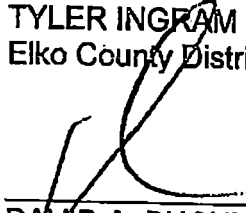
8 The Defendant on or about the date, and at the place alleged above owned;
9 and/or possessed, actually or constructively; and/or had custody of and/or
10 control of the following described firearm: Marlin model 81TS .22 caliber rifle or
11 similar firearm

12 Further the Defendant, at the time he owned, and/or possessed, and/or had
13 custody and/or control of said firearm had been previously convicted of
14 committing a felony criminal offense or offenses.

15 All of which is contrary to the form of the Statute in such cases made and provided,
16 and against the peace and dignity of the State of Nevada.

17 Dated: October 7, 2016.


18 TYLER INGRAM
19 Elko County District Attorney

20 
21 DAVID A. BUCHLER
22 Deputy District Attorney
23 State Bar Number: 11070
24
25
26
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28

[illegible]

By delivering to:

By delivering to:


GEORGIA JORDAN
CASEWORKER

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FILED

Case No. CR-FO-2016-0304

2017 MAY 12 PM 12:33

Dept. II

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY LP

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF ELKO

ooOoo

THE STATE OF NEVADA

:

Plaintiff,

:

v.

:

CHANGE OF PLEA HEARING

THOMAS WILLIAM MOONEY,

:

Defendant.

:

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter
came on for hearing on October 31, 2016, at the hour of
9:20 a.m. of said day, before the HONORABLE ALVIN R. KACIN,
District Judge.

COPY 92

***** WARNING *****

THIS ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS IS PRODUCED IN
INSTANT FORM. THERE WILL BE DISCREPANCIES BETWEEN THE
ROUGH DRAFT AND THE FINAL CERTIFIED VERSION OF THE RECORD
BECAUSE THE ROUGH DRAFT HAS NOT BEEN EDITED, PROOFREAD,
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ROUGH DRAFT AND THE EDITED, FINALIZED AND CERTIFIED FINAL
VERSION.

THIS ROUGH DRAFT IS NOT TO BE QUOTED FROM BY THE GENERAL
PUBLIC OR THE MEDIA.

PLEASE CONTACT THE COURT REPORTER FOR FURTHER ASSISTANCE.

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1 Case No. CR-FO-2016-0304

2 Dept. II

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6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

8 00000

9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : CHANGE OF PLEA HEARING

12 THOMAS WILLIAM MOONEY, :

13 Defendant. :

14 _____/

15

16 TRANSCRIPT OF PROCEEDINGS

17

18 BE IT REMEMBERED that the above-entitled matter
19 came on for hearing on October 31, 2016, at the hour of
20 9:20 a.m. of said day, before the HONORABLE ALVIN R. KACIN,
21 District Judge.

22

23

24

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1

APPEARANCES

1

2

3 For the Plaintiff:

CHAD THOMPSON, ESQ.
Deputy District Attorney
540 Court Street
Second Floor
Elko, Nevada 89801

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7 For the Defendant:

BRIAN GREEN, ESQ.
Deputy Public Defender
569 Court Street
Elko, Nevada 89801

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3 ***** WARNING *****

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5 THIS ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS IS PRODUCED IN
6 INSTANT FORM. THERE WILL BE DISCREPANCIES BETWEEN THE
7 ROUGH DRAFT AND THE FINAL CERTIFIED VERSION OF THE RECORD
8 BECAUSE THE ROUGH DRAFT HAS NOT BEEN EDITED, PROOFREAD,
9 FINALIZED, INDEXED OR CERTIFIED. THERE WILL ALSO BE SOME
10 DISCREPANCIES IN THE PAGE AND LINE NUMBERS APPEARING IN THE
11 ROUGH DRAFT AND THE EDITED, FINALIZED AND CERTIFIED FINAL
12 VERSION.

13

14 THIS ROUGH DRAFT IS NOT TO BE QUOTED FROM BY THE GENERAL
15 PUBLIC OR THE MEDIA.

16

17 PLEASE CONTACT THE COURT REPORTER FOR FURTHER ASSISTANCE.

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1 THE COURT: This is Case CR-FO-2016-0304. State
2 of Nevada is plaintiff. Thomas William Mooney is the
3 defendant.

4 Mr. Mooney is back in court. He is with counsel
5 Brian Green, Elko County deputy public defender.

6 Elko County deputy district attorney Chad
7 Thompson is here to represent the State.

8 Again Sara Macias is here from the Division of
9 Parole and Probation's local office.

10 This is a change of plea hearing actually for Mr.
11 Mooney, who, a couple weeks ago or so, was convicted of 27
12 counts related to possessing explosives or incendiary
13 devices or components thereof with intent to manufacture
14 explosive or incendiary devices.

15 Anyway, I think the jury convicted of 27 counts.

16 There is now a second amended criminal
17 information on file.

18 I think that was done because during the trial
19 there was some -- there was an error in some charging
20 language that actually a juror brought to the attention of
21 the prosecutor and the Court, and we dealt with that.

22 I guess the other idea was that he was going to
23 plead guilty to Counts 28 through 30.

24 And he's still doing that today; is that correct?

25 MR. GREEN: Yes, Your Honor. To clarify the

4

1 record, though, there is 27 counts that was addressed in
2 the trial; some of those were pled alternatively. So Mr.
3 Mooney was convicted of 14 counts.

4 THE COURT: Okay. Yeah. Well, he wouldn't have
5 been convicted of all 27. Was it the first -- I guess it
6 was 1 through 24 that were pled alternatively?

7 MR. GREEN: Correct. And he was found guilty on
8 the odd numbers, except for one pair of those odd/even
9 numbers, 16 -- 15 and 16 or --

10 THE COURT: Okay.

11 MR. GREEN: Or 17 or 18. I believe the last
12 three were stand-alone charges and he was found guilty on
13 those.

14 THE COURT: That's right. Counts 25 through 27
15 were possession of components, stand-alone charges.

16 Yeah, I have done a lot of work since then. Now
17 I do remember it was 11 counts he was convicted of between
18 Counts 1 through 24.

19 MR. GREEN: Right. He was found not guilty on
20 Count 17 and 18.

21 THE COURT: All right. Well, be that as it may,
22 we were supposed to have a bifurcated trial. Then I think
23 the trial ran a little long and I felt that the defendant's
24 offer to plead out on Counts 28 through 30, preserving the
25 right to appeal on my denial of the motion to suppress,

5

1 MR. GREEN: We do, Your Honor.

2 THE COURT: Please stand, Mr. Mooney.

3 I'm going to summarize this -- summarize these
4 charges and ask for you pleas after each one, so listen
5 carefully.

6 In the Second Amended Information the State
7 alleges that on or about March 5, 2016, in Spring Creek,
8 Elko County, Nevada, you committed these offenses: Count
9 28 is possession of a firearm by a person previously
10 convicted of a felony offense. That is a Category B felony
11 under Nevada law.

12 And here the State alleges that you owned and/or
13 possessed, actually or constructively, and/or had custody
14 of or control of a firearm, a Kalashnikov or AK style rifle
15 7.62 by 39 millimeter or similar firearm.

16 And at the time you owned or possessed or had
17 custody and control of this firearm you had previously been
18 convicted of committing a felony criminal offense or
19 offenses.

20 How do you plead to that charge?

21 THE DEFENDANT: Guilty.

22 THE COURT: Count 29 is possession of a firearm
23 by a person previously convicted of a felony offense, a
24 Category B felony again under Nevada law.

25 And here the State alleges that you owned and/or

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1 could work for me.

2 I guess ultimately the State felt that was
3 appropriate.

4 Now we have a plea agreement for him to plead
5 guilty to those charges. Is that right?

6 MR. GREEN: Yes.

7 THE COURT: All right. Here is the Second
8 Amended Criminal Information. We have a certified copy up
9 here. That was filed on October 7.

10 Mr. Mooney, I know, speaks and understands the
11 English language quite well. Seems like a pretty
12 intelligent guy.

13 You read and write the language, correct, Mr.
14 Mooney?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. First page, Thomas
17 William Mooney, that continues to be true and correct?

18 THE DEFENDANT: Yes.

19 THE COURT: It's correctly spelled there, Mr.
20 Mooney?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All proceedings will go forward under
23 that name in the caption still.

24 Does the defense waive the formal reading of
25 Counts 28, 29 and 30?

6

1 possessed, actually or constructively, and had custody of
2 and/or control of a firearm, here a 12-gauge shotgun or
3 similar firearm; that at the time you owned, possessed or
4 had custody and control of the firearm you had previously
5 been convicted of committing a felony offense or offenses.

6 How do you plead to that charge?

7 THE DEFENDANT: Guilty.

8 THE COURT: And Count 30 is possession of a
9 firearm by a person previously convicted of a felony
10 offense, a Category B felony under Nevada law.

11 And here the State alleges that you possessed or
12 owned, actually or constructively, possessed or had custody
13 of and/or control of a firearm, a Marlin model 81TS .22
14 caliber rifle or similar firearm.

15 And again that at the time you owned and/or
16 possessed or had custody and control of the firearm you had
17 previously been convicted of committing a felony criminal
18 offense or offenses.

19 How do you plead to the charge?

20 THE DEFENDANT: Guilty.

21 THE COURT: Do you understand all these charges,
22 sir?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: The record reflects your guilty pleas
25 to Counts 28 through 30. Please have a seat.

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1 Mr. Mooney, before I can accept these pleas, I do
2 have to ask you some questions. I'm trying to figure out
3 whether your pleas are made knowingly, intelligently and
4 voluntarily, that there are enough facts to support your
5 pleas, and that you have full knowledge of the maximum
6 sentence that can happen in this case on each charge.

7 So first, how old are you today?

8 THE DEFENDANT: Twenty-six.

9 THE COURT: Date of birth?

10 THE DEFENDANT: February 7, 1990.

11 THE COURT: Okay. I know you have been
12 incarcerated here for sometime at the jail. How long has
13 it been now?

14 THE DEFENDANT: Eight months.

15 THE COURT: Were you working before that?

16 THE DEFENDANT: I was.

17 THE COURT: What were you doing?

18 THE DEFENDANT: I was a pizza delivery driver.

19 THE COURT: Okay. What other work have you done
20 in your life?

21 THE DEFENDANT: Mostly as a cook.

22 THE COURT: Education again?

23 THE DEFENDANT: High school GED.

24 THE COURT: When did you get your GED?

25 THE DEFENDANT: When I was 17.

9

1 Do you have a copy of that in front of you?

2 MR. GREEN: I do.

3 THE COURT: Thank you, Mr. Green. This is a
4 seven-page document. I have the original up here. But I
5 want you to look at page 6, about line 11. They have a
6 signature line for Thomas William Mooney with a signature
7 on that line.

8 Do you see that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Is that your signature, sir?

11 THE DEFENDANT: Yes, sir, it is.

12 THE COURT: Did you read through this carefully
13 and completely before you signed it?

14 THE DEFENDANT: I did.

15 THE COURT: Did you understand it before you
16 signed it?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you still understand it?

19 THE DEFENDANT: Yes.

20 THE COURT: All right. If you had any questions
21 about this important document, I assume you asked Mr. Green
22 those questions?

23 THE DEFENDANT: I did.

24 THE COURT: Did he answer those questions to your
25 satisfaction?

11

1 THE COURT: All right. And I think when you were
2 arrested we learned in trial that you had been living out
3 with your parents at their home, your childhood home, in
4 Spring Creek?

5 THE DEFENDANT: Mostly.

6 THE COURT: All right. So you are an Elko County
7 resident?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, I'm assuming you are a U.S.
10 citizen. But when I take these pleas I have to inform you,
11 if you are not a U.S. citizen, any criminal conviction in
12 this case could have bad consequences for your residency in
13 this country, up to, and including, removal, deportation
14 from the U.S., and they don't let you back in the country.

15 That's if you are not a U.S. citizen.

16 Do you understand that?

17 THE DEFENDANT: I do.

18 THE COURT: Do you still wish to plead guilty
19 with that understanding?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. You're making the plea
22 under a written memorandum of plea agreement, correct?

23 THE DEFENDANT: Yes.

24 THE COURT: It's called Memorandum of Conditional
25 Plea Agreement. It's filed October 25.

10

1 THE DEFENDANT: He did.

2 THE COURT: Are you satisfied with his services,
3 generally confident in his abilities to represent you?

4 THE DEFENDANT: Yes.

5 THE COURT: All right. Did your attorney explain
6 that crimes, including this one, are broken -- well,
7 basically three counts but the same offense you're pleading
8 guilty to for each one.

9 THE DEFENDANT: Yes.

10 THE COURT: So has he explained the elements of
11 this crime to your satisfaction?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did he explain that the State has the
14 burden of proving each and every element of this crime
15 beyond a reasonable doubt to a 12-person jury before you
16 could be found guilty of any of these three?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. Do you understand you are
19 giving up the right to make the State do that by pleading
20 guilty?

21 THE DEFENDANT: Yes.

22 THE COURT: As I explained, I think -- sort of
23 coming back to me now -- at the last trial, you know, it's
24 up to you whether you plead guilty or not. You don't have
25 to plead guilty and you can have your trial, and it will be

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1 the second part of your case.
2 We wouldn't do it bifurcated, we would just do it
3 separate trials on these three counts. And you could make
4 the State prove it beyond a reasonable doubt, each of these
5 offenses, all elements of the charges.
6 Do you understand all that?
7 THE DEFENDANT: I understand.
8 THE COURT: Do you understand you are giving up
9 the right to make the State do that by pleading guilty?
10 THE DEFENDANT: Yes, sir.
11 THE COURT: You are willing to do that still?
12 THE DEFENDANT: Yes, sir.
13 THE COURT: All right. You don't want to have a
14 separate trial now?
15 THE DEFENDANT: No.
16 THE COURT: Okay. Has your attorney discussed
17 defenses that he thought could be available in this case or
18 you thought could be available?
19 THE DEFENDANT: Yes.
20 THE COURT: All right. And do you understand you
21 are giving up the right to present these defenses by
22 pleading guilty?
23 THE DEFENDANT: Yes, sir.
24 THE COURT: You are willing to do that?
25 THE DEFENDANT: Yes, sir.

13

1 THE COURT: Do you have any alcohol or other
2 drugs in your system right now, including illegal drugs,
3 prescription medications, or even over-the-counter
4 medications?
5 THE DEFENDANT: No, sir.
6 THE COURT: You are sober and in full control of
7 your mind?
8 THE DEFENDANT: Yes, sir.
9 THE COURT: I believe that you are now talking to
10 you and seeing you here for a bit today. I think you seem,
11 as you always do in these proceedings, to have it all
12 together.
13 With that, Mr. Green, I guess we know his deal.
14 Why don't you just remind us. He is pleading guilty to all
15 three, and what?
16 MR. GREEN: He is, Your Honor. He is pleading
17 guilty to Counts 28, 29 and 30; each count being a charge
18 of possession of a firearm by a person previously convicted
19 of a felony offense.
20 In exchange for those pleas, he -- well, first of
21 all, his plea agreement does not affect the jury verdicts
22 as a result of the trial in Counts 1 through 27, inclusive,
23 set forth in the Second Amended Criminal Information.
24 In exchange for his plea to Counts 28, 29 and 30,
25 the Elko County District Attorney's office has agreed to

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1 THE COURT: All right. Did your attorney explain
2 your constitutional rights to you otherwise, Mr. Mooney?
3 THE DEFENDANT: Yes.
4 THE COURT: All right. The rights are listed in
5 your memorandum of plea agreement on pages 4 and 5.
6 I know you said you read that carefully and
7 completely, but I still ask, do you understand you are
8 giving up these valuable rights as to these charges by
9 pleading guilty?
10 THE DEFENDANT: Yes, sir.
11 THE COURT: That's what you're willing to do
12 still?
13 THE DEFENDANT: Yes, sir.
14 THE COURT: Do you have any physical problems
15 today, Mr. Mooney?
16 THE DEFENDANT: No, sir.
17 THE COURT: Do you have any mental health
18 problems?
19 THE DEFENDANT: No.
20 THE COURT: Okay. Have you ever been diagnosed
21 with a mental illness or difficulty?
22 THE DEFENDANT: No.
23 THE COURT: No. Okay. So you feel okay in your
24 mind today?
25 THE DEFENDANT: Yes, sir.

14

1 allow Mr. Mooney to reserve his right to appeal the adverse
2 ruling on his pre-trial motions to suppress evidence and
3 any adverse rulings with respect to the jury trial on
4 Counts 1 through 27, inclusive, of which I am not aware of
5 any really issues from the trial.
6 At the time of the sentencing on all counts the
7 State remains free to argue. Both sides remain free to
8 argue.
9 THE COURT: Is that correct, Mr. Thompson?
10 MR. THOMPSON: It is.
11 THE COURT: Is that your understanding of the
12 deal, Mr. Mooney?
13 THE DEFENDANT: Yes, sir.
14 THE COURT: All right. The prosecutor will go
15 over the elements of the crimes you're pleading guilty to,
16 be the same for all three, the maximum sentence for all
17 three, and whether you are probation eligible.
18 Mr. Thompson.
19 MR. THOMPSON: State would have to show that on
20 or about the 5th day of March, 2016, within the county of
21 Elko, the defendant possessed, actually or constructively,
22 and/or had custody of and/or control of a firearm. And at
23 the time he was previously convicted of committing a felony
24 offense.
25 And it's a Category B felony, punishable by up to

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1 six years in the Nevada State Prison, with a minimum term
2 of one year. He may further be punished by a fine of up to
3 \$5,000.

4 Under the 40 percent rule, the maximum effective
5 sentence would be 28 to 72 months, the minimum effective
6 sentence would be 12 to 30 months. And they are -- he will
7 be eligible for probation.

8 THE COURT: Okay. Is that correct, Mr. Green?

9 MR. GREEN: That is correct, Your Honor.

10 THE COURT: So fine on this one is five thousand
11 dollars maximum?

12 MR. THOMPSON: Yes.

13 THE COURT: I always found that to be a little
14 odd for a Category B felony.

15 But anyway, did you understand that as well, Mr.
16 Mooney?

17 MR. GREEN: I did.

18 THE COURT: Again, whether you get probation on
19 any of these charges you will be convicted of, that's up to
20 me as the sentencing judge. I can say no probation and you
21 got to go to prison straight away. It could be up to 72
22 months on each count with parole eligibility after 28
23 months.

24 The prosecutor went over the minimum effective
25 sentencing range.

17

1 THE COURT: All right. The constitutional rights
2 you give up by pleading guilty as to these three charges --
3 we've already covered the right to the speedy and public
4 jury trial.

5 You are giving up the right to remain silent.
6 Remember, if you were silent, that could not and would not
7 be used against you by the court or jury.

8 You are giving up the right to testify in your
9 own defense, which I know you did as to Counts 1 through
10 27.

11 But you are giving up the right to testify on
12 your own defense on Counts 28, 29 and 30.

13 You know what that is all about.

14 You are also giving up the right to cross-examine
15 the prosecution's witnesses against you, the right to
16 subpoena witnesses to testify in your defense, and the
17 right to appeal any defect or problem, at least through
18 this point in the proceedings, with regard to Counts 28, 29
19 and 30.

20 Do you understand all that?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you still wish to plead guilty
23 with that understanding?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Of course, if you do

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1 Do you understand all of these aspects of
2 sentencing?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Including the 40 percent rule for
5 sentencing?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You also understand concurrent and
8 consecutive sentences?

9 THE DEFENDANT: I do.

10 THE COURT: Which one is better for you?

11 THE DEFENDANT: Concurrent.

12 THE COURT: Right. That's where you get to serve
13 your sentences at the same time, right?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Consecutive is one on top of the
16 other.

17 Whether you get concurrent or consecutive
18 sentences is up to me as the sentencing judge. I could run
19 all of these sentences consecutively or I could run all of
20 them concurrently or do something -- run some
21 consecutively, some concurrently. It's all up to me as the
22 sentencing judge. There is a lot of discretion with that.

23 With that understanding, do you still wish to
24 plead guilty?

25 THE DEFENDANT: Yes, sir.

18

1 plead guilty here and the Court accepts your plea, I would
2 wrap up your sentencing all at the same time, along with
3 these other charges, get you sentenced on the same day.

4 You would still reserve the right to appeal my
5 denial of the motion to suppress as to all charges.

6 Has anyone coerced you, intimidated you, or put
7 you in fear to get your plea?

8 THE DEFENDANT: No, sir.

9 THE COURT: Has anyone offered you anything we
10 have not placed on the record to get your pleas?

11 THE DEFENDANT: No, sir.

12 THE COURT: Okay. Do you still think pleading
13 guilty is the best thing to do, all things considered, on
14 these three remaining counts?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Stand up, please, and let
17 me know what you did wrong on these charges.

18 THE DEFENDANT: I'm -- I'm not --

19 THE COURT: Let me get you started. What kind of
20 guns did you have?

21 THE DEFENDANT: I had a -- I'm sorry. I'm not
22 really understanding what you want to know.

23 THE COURT: Well, we're talking about guns. Did
24 you have these? Did you hear the guns --

25 THE DEFENDANT: I had firearms, yes.

20

1 THE COURT: Which firearms were they again?
2 THE DEFENDANT: I had a 12-gauge shotgun, a .22
3 bolt-action rifle, and a Romanian WASR-10 AK-style rifle.
4 THE COURT: Okay. Were you convicted of a felony
5 by the time you possessed these firearms, Mr. Mooney?
6 THE DEFENDANT: Yes, sir.
7 THE COURT: And you had been convicted, I guess,
8 in Arizona of some kind of drug felony; is that right?
9 THE DEFENDANT: Yes, sir.
10 THE COURT: When was that conviction?
11 THE DEFENDANT: 2008, maybe 2009.
12 THE COURT: All right. So you possessed these
13 firearms at your parents' house out in Spring Creek back in
14 March, was it?
15 THE DEFENDANT: Yes, sir.
16 THE COURT: All right. Anything else you want me
17 to canvass on, Mr. Thompson?
18 MR. THOMPSON: No.
19 THE COURT: Mr. Green?
20 MR. GREEN: No, Your Honor.
21 THE COURT: Court finds a factual basis for your
22 pleas, Mr. Mooney.
23 Do you have any questions about the proceedings
24 for me today?
25 THE DEFENDANT: No, thank you.

21

1 THE COURT: Do you need more time to talk to your
2 lawyer before I decide whether to accept these three guilty
3 pleas?
4 THE DEFENDANT: No.
5 THE COURT: All right. Last question for me
6 today, most important one for you today, on these three
7 counts, do you still want me to accept your guilty pleas,
8 which means you give up your valuable rights, and I will
9 set your case for a sentencing hearing, it will be the same
10 day as the other charges I would sentence you on, and I
11 will tell you what the penalty is then?
12 THE DEFENDANT: Yes, sir.
13 THE COURT: All right. Then the Court accepts
14 your guilty pleas. I do find they're made knowingly,
15 intelligently, and voluntarily, with full knowledge of your
16 rights, maximum sentence on each, probation is an option.
17 I think we talked about concurrent, consecutive sentences,
18 all the rest of it.
19 So we'll set this case for a sentencing hearing.
20 I can't remember when the other sentencing hearing is.
21 MR. GREEN: We were going to set that through the
22 judicial assistant, and I haven't seen it on my calendar.
23 THE COURT: We haven't gotten it set yet?
24 MR. GREEN: No. To refresh the Court's memory,
25 we were going to get Mr. Mooney evaluated, see if he posed

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1 a risk to society.
2 We made arrangements with Dr. Coard. Dr. Coard
3 came down to the jail, saw Mr. Mooney for about 10 minutes,
4 indicated he has about 10 hours of testing that he is going
5 to be doing.
6 And I believe somebody last week said something
7 about Dr. Coard had been ill, or something to that effect.
8 So he probably needs a little bit of time.
9 I was thinking perhaps the 23rd of January.
10 THE COURT: That he would be done?
11 MR. GREEN: Well, I was thinking that for the
12 sentencing date. The 16th is a holiday.
13 THE COURT: Well, was Mr. Buchler anticipating a
14 longer sentencing hearing with some evidence? I can't
15 remember on this one.
16 MR. GREEN: That's right. We were looking -- I'm
17 sorry, I forgot about that. We were looking at the
18 possibility of calling some character witnesses, depending
19 on the results of the evaluation.
20 THE COURT: Why don't we do this: I will again
21 bring this to my judicial assistant's attention that we
22 have to set this for a hearing. We are just going to have
23 to look for a day, a non-law and motion day, where I can
24 receive this evidence.
25 What I would like is the parties to get together,

23

1 see if the lawyers can come up with some idea of time. If
2 you need an afternoon, let me know. If you need an hour
3 and a half, let me know. Two hours, whatever it is.
4 MR. GREEN: I think an hour to an hour and a half
5 would be sufficient.
6 THE COURT: I would think so. Okay. Anyway,
7 Stefanie will be in touch with you on that.
8 Mr. Mooney will be remanded to the custody of the
9 sheriff.
10 I'll tell her to look into late January, early
11 February even.
12 MR. GREEN: Okay.
13 (WHEREUPON, the hearing was concluded at 9:42 a.m.)
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1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)

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5 I, Lisa M. Manley, Official Reporter for the Fourth
6 Judicial District Court, Dept. II, of the State of Nevada,
7 in and for the County of Elko, was present in the
8 above-entitled court on October 31, 2016;

9 The foregoing transcript is an uncertified rough draft
10 transcription of my stenotype notes of said proceedings.
11 This transcript has not been edited, proofread, finalized,
12 indexed or certified.

13
14 DATED: At Elko, Nevada, this 8th day of May, 2017.

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FILED

2017 MAY 12 PM 12:34

ELKO CO DISTRICT COURT

CLERK DEPUTY *LS*

1 Case No. CR-FO-2016-0304

2 Dept. II

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6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

8

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9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : SENTENCING HEARING

12 THOMAS WILLIAM MOONEY, :

13 Defendant. :

14 _____/

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16 TRANSCRIPT OF PROCEEDINGS

17

18 BE IT REMEMBERED that the above-entitled matter
19 came on for hearing on February 28, 2017, at the hour of
20 10:53 a.m. of said day, before the HONORABLE ALVIN R.
21 KACIN, District Judge.

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1 Case No. CR-FO-2016-0304

2 Dept. II

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6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

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9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : SENTENCING HEARING

12 THOMAS WILLIAM MOONEY, :

13 Defendant. :

14 _____/

15

16 TRANSCRIPT OF PROCEEDINGS

17

18 BE IT REMEMBERED that the above-entitled matter
19 came on for hearing on February 28, 2017, at the hour of
20 10:53 a.m. of said day, before the HONORABLE ALVIN R.
21 KACIN, District Judge.

22

23

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1

1 APPEARANCES

2

3 For the Plaintiff:

DAVID A. BUCHLER, ESQ.
Deputy District Attorney
540 Court Street
Second Floor
Elko, Nevada 89801

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7 For the Defendant:

BRIAN GREEN, ESQ.
Deputy Public Defender
569 Court Street
Elko, Nevada 89801

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3 ***** WARNING *****

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5 THIS ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS IS PRODUCED IN
6 INSTANT FORM. THERE WILL BE DISCREPANCIES BETWEEN THE
7 ROUGH DRAFT AND THE FINAL CERTIFIED VERSION OF THE RECORD
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12 VERSION.

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15 PUBLIC OR THE MEDIA.

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17 PLEASE CONTACT THE COURT REPORTER FOR FURTHER ASSISTANCE.

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1 THE COURT: This is Case CR-FO-2016-0304.

2 The State of Nevada is plaintiff.

3 Thomas William Mooney is the defendant.

4 State is represented by David Buchler, Elko
5 County deputy district attorney.

6 We have Marni Pool here from the Division of
7 Parole and Probation's local office.

8 Mr. Mooney is here. He is with his counsel,
9 Brian Green, from the Elko County public defender's office.

10 We have a sentencing hearing. Are the parties
11 ready?

12 MR. BUCHLER: State is, Your Honor.

13 MR. GREEN: Yes, Your Honor.

14 THE COURT: This has been continued, I think, a
15 couple times. So here we are.

16 Now, I assume there is evidence for sentencing.

17 MR. BUCHLER: We intend to submit one photograph,
18 then just argument.

19 THE COURT: Then evidence for the defense?

20 MR. GREEN: We have Dr. Coard on CourtCall.

21 THE COURT: Is he your only witness today?

22 MR. GREEN: He is.

23 THE COURT: Okay. I see Mr. Mooney's parents are
24 back there. They are not testifying today?

25 MR. GREEN: No. I think.

4

1 THE COURT: Okay.
2 MR. GREEN: We have submitted letters.
3 THE COURT: All right. Yes. Which the Court has
4 reviewed two or three times now. So good enough.
5 All right. The photograph is marked as an
6 exhibit?
7 MR. BUCHLER: It's marked State's 1, Your Honor.
8 We would move for its admission.
9 THE COURT: Any objection to 1?
10 MR. GREEN: No, Your Honor.
11 THE COURT: All right.
12 MR. BUCHLER: If I could hand it up to you.
13 THE COURT: Thank you. We'll go over to the
14 defense. Do you wish to call Dr. Coard at this time?
15 MR. GREEN: Correct.
16 THE COURT: All right.
17 Dr. Coard, this is Judge Kacin. I'm some
18 distance away from you on the bench. But we're having a
19 sentencing hearing in Mr. Mooney's case, State versus
20 Mooney. Sorry to keep you waiting.
21 Can you hear us okay?
22 DR. COARD: I can, Your Honor.
23 THE COURT: Okay. I can hear you as well. I
24 think you will have even -- you'll hear the attorneys even
25 better than me because they are closer to the intercom than

5

1 I am.
2 So would you please raise your right hand and be
3 sworn.
4 (WHEREUPON, the witness was sworn)
5 THE COURT: All right. Mr. Green, please
6 proceed.
7 DR. HERBERT F. COARD, III
8 called telephonically as a witness in said case,
9 having been first duly sworn, testified as follows:
10 DIRECT EXAMINATION
11 BY MR. GREEN:
12 Q. Yes. It's Dr. Coard, correct?
13 A. That's correct.
14 Q. And would you state your full name for the
15 record, please?
16 A. Sure. It's Herbert F. Coard, III.
17 Q. Okay. Coard is spelled C-o-a-r-d; is that
18 correct?
19 A. That's correct.
20 Q. Okay. What do you do for a living?
21 A. I am a psychologist.
22 Q. How long have you been a psychologist?
23 A. I have been a psychologist for over 16 years.
24 Q. Would you describe your educational
25 background?

6

1 A. Yes. I have a doctoral degree from the
2 University of Missouri St. Louis, and then completed a
3 post-doc re-specialization as a clinical psychologist at
4 the Rosalind Franklin School of Medicine.
5 Q. And what is your doctorate degree in?
6 A. I have a doctorate in education -- educational
7 psychology.
8 Q. And what was the post-doctorate studies?
9 A. It was as a clinical psychologist at an ATA
10 approved program.
11 Q. Do you practice as a clinical psychologist?
12 A. I practice as a clinical psychologist, yes.
13 Q. And since you have been practicing psychology,
14 what -- have you held any positions with any form of the
15 government?
16 A. I have. I am still currently on active duty
17 as United States Public Health Officer.
18 I have a small private practice in which this
19 evaluation was conducted.
20 As part of my -- as part of my government
21 service, I served 10 years in the United States Navy as a
22 psychologist. And I currently work now for the Indian
23 Health Service as part of the United States public service.
24 When I transferred from the Navy to the U.S.
25 Public Health Service, I worked for approximately three

7

1 years for the Federal Bureau of Prisons conducting forensic
2 evaluations for treatment for inmates in the Bureau of
3 Prisons.
4 Q. So you went to the military for a period of
5 time?
6 A. For approximately ten years.
7 Q. Okay. And did you serve anywhere in
8 particular with the military?
9 A. Yes. I have deployed three times --
10 THE COURT: All right. You're on the intercom.
11 It's not the greatest system in the world. The court
12 reporter is having trouble hearing what you are saying,
13 sir.
14 So if you could keep your voice elevated, please,
15 Doctor.
16 THE WITNESS: I will.
17 THE COURT: Thank you very much.
18 A. So I have -- so I have served three -- done
19 three deployments to Iraq, Bahrain and Kuwait. When I
20 served -- when I did my time in Iraq, I was assigned to the
21 Second Marine Division and had special duties assigned
22 working on counter IED teams, which was basically
23 responsible for investigations and determinations of
24 individuals who were planning fortified bombs and other
25 types of bombs that would potentially cause injury.

8

1 As part of that, I was responsible for
2 doing -- conducting interviews, reviewing intelligence
3 reports, and received extensive training related to bomb
4 making and -- and investigations.

5 MR. GREEN: At this time we would offer Dr. Coard
6 as a -- as an expert in the field of clinical psychology.

7 MR. BUCHLER: No objection.

8 THE COURT: All right. The Court will permit Dr.
9 Coard to give his opinion in that area, clinical
10 psychology.

11 Mr. Green, please proceed.

12 Q. (By Mr. Green) Are you familiar with an
13 individual by the name of Thomas William Mooney?

14 A. I am. I was requested by your office to
15 conduct a forensic evaluation.

16 Q. Did you do that?

17 A. I did. I conducted a forensic evaluation and
18 interviewed him in the Elko County Jail October 20,
19 November 14, and December 18 of 2016; and wrote a report
20 for January 4, 2017.

21 Q. As part of that process did you review any
22 documents?

23 A. I did. The documents were provided from your
24 office. They included the report of the investigation, the
25 interviews. There was the interview that was conducted by

9

1 the sheriff's department, appurtenant to that were the
2 arrest documents and reports of the investigation.

3 Q. Did you review any character letters?

4 A. Oh, yes. I'm sorry. There were a number of
5 character letters that were also contained within the
6 packet.

7 Q. Did you perform any testing on Mr. Mooney?

8 A. I did. I conducted -- I did two types of
9 psychological testing with Mr. Mooney: The Personality
10 Assessment Inventory and the Millon Clinical Multiaxis
11 Inventory IV.

12 Q. What is the purpose of the Personality
13 Assessment Inventory?

14 A. Well, one is to get some sense or ability to
15 compare Mr. Mooney to others who have known clinical
16 conditions.

17 Sometimes in -- within the context of a
18 forensic evaluation individuals sometimes may not be as
19 truthful or honest about reporting symptoms, feeling they
20 could gain favor with the Court for having mental illness.

21 So this is a good way to compare Mr. Mooney to
22 others, and also to assess the validity of his statements.
23 Because there are ways within the psychological testing to
24 document whether or not somebody is overendorsing or
25 underendorsing symptoms.

10

1 In this particular case, Mr. Mooney was very
2 honest in how he reported his symptoms, somewhat guarded in
3 some aspects, which was part of kind of his presentation in
4 the clinical interview also.

5 Q. What did the results of that assessment
6 reveal?

7 A. Well, the psychological testing contained a
8 variety of different areas that -- that I think the things
9 that I would draw attention to the Court is that there is
10 some pretty strong evidence to support that Mr. Mooney has
11 had a long period of time in which he's used substances.

12 And that during that period of using
13 substances, he's also probably, more likely than not, has
14 also experienced difficulty surrounding moods. Particularly
15 bipolar types of symptoms. Not to the point where we would
16 it call a Bipolar I, which is where people have
17 hallucinations or delusions.

18 He has reported some delusional
19 hallucinations, but primarily as a result of using
20 substances.

21 And for that reason, the evidence -- certainly
22 the evidence that I collected in the psychological testing
23 does support some difficulty with moods.

24 Also, there is some indications that Mr.
25 Mooney has some anxiety concerns that may significantly

11

1 impact his ability to kind of interact with others. And he
2 does a lot of worrying, and a lot of worrying and hence a
3 lot of distraction to himself to try to deal with some of
4 the negative moods symptoms.

5 I think the other thing that we also assess is
6 his amenability for treatment. And there is -- it does
7 appear to be that Mr. Mooney is very amenable to
8 psychological treatment.

9 At the present time Mr. Mooney is not
10 currently being treated for his Bipolar II disorder. He is
11 only taking intermittently trazodone while he has been in
12 custody.

13 Q. The Millon Clinical Multiaxial Inventory IV,
14 what does that -- what does that determine?

15 A. Well, this is just another instrument that
16 starts to really look at more -- some personality concerns
17 and other clinical pathologies.

18 And so it's a great way of really trying to
19 assess, when there are some concerns that come up on the
20 Personality Assessment Inventory, to really kind of delve
21 down a little bit deeper to look at what are the particular
22 things.

23 It also gives me a little bit better sense
24 kind of some of the -- if somebody has a lot of substance
25 abuse problems, it will give me some additional details

12

1 that will help me kind of figure out in comparison to him.
2 It also helps me -- helps kind of identify
3 these personality characteristics, and this idea that he
4 was very lonely, socially apprehensive at times; he
5 lacked -- he also seemed to have a fairly low self-esteem.

6 And -- but he -- it does also tell me that he
7 has the ability to kind of manage anger. Both instruments
8 indicated that there was no underlying anger management
9 difficulty or process relating to anger.

10 Q. With respect to anger management, is there an
11 issue with his ability to actually express his anger?

12 A. Yes. I think -- I would be careful about
13 saying expressing his anger. I think that he turns a lot
14 of his anger probably inside and kind of goes after himself
15 versus going after others.

16 Q. Did you find -- now you said that Mr. Mooney
17 suffers from Bipolar II. Is that correct?

18 A. Yes.

19 Q. Okay. And --

20 A. Per the clinical interview.

21 Q. So did you find -- what are the symptoms of
22 Bipolar II?

23 A. So people who have Bipolar II usually have
24 episodes that have to do with hypomanic behavior. And
25 hypomanic behavior could be things like increased risk

13

1 So this also explains a lot of the
2 difficulties that he has had.

3 Now, with Bipolar II and Bipolar I, you cycle
4 between those hypomanic or manic episodes into the
5 depressive episodes, which then leads to -- and the
6 depressive phase usually lasts a lot longer than the
7 hypomanic behavior.

8 I think the really important part in that is
9 that when considering the offense and what Mr. Mooney has
10 ultimately been convicted of in these circumstances, there
11 does appear to be some convincing evidence to me that when
12 he was engaged in the manufacturing and production of these
13 devices, he was probably in a hypomanic state.

14 He described that as he was producing them he
15 would frequently have difficulty sleeping. Didn't say he
16 was up for multiple days, but said, yeah, he had a lot of
17 energy. Very risk-taking types of behavior, obviously.
18 Making the devices, improvising the devices, weaponizing
19 the devices.

20 But at the same time, he -- when he did
21 explode those devices -- by his self-report, I mean, that
22 is it, of course -- he indicates he went to an area that
23 would be relatively safe.

24 But I would also argue that the judgment is
25 somewhat impaired, too, because he ended up choosing to

15

1 taking, engaging in increasing goal directive behavior,
2 inappropriate sexual activities.
3 Substance abuse is sometimes also seen as part
4 of that hypomanic behavior.

5 It's not to a severity that we would call it
6 manic mania, which would be where there is delusional
7 thoughts, where auditory and visual hallucinations are part
8 of the process. But it certainly does tend to impact
9 overall functioning.

10 The best way to kind of describe bipolar
11 symptoms is that patients or clients have this inconsistent
12 performance.

13 They -- I had a great example of a patient who
14 had Bipolar II who was installing toilets in a work -- in a
15 housing site. And when he was hypomanic, you know, he
16 could do like 13, 14 toilets a day. But when he cycled
17 into the depressive thing, he would only be able to do
18 three or four.

19 So that certainly creates a lot of conflict
20 within the employment setting, because now he is, you know,
21 "well, why aren't you doing as well as you did three days
22 ago or four days ago?"

23 And so that creates a lot of conflict. And
24 Mr. Mooney, his way of kind approaching conflict is
25 avoidance, social isolation.

14

1 store these devices in a structure, i.e., his home.

2 Q. Did you note any issues with respect to
3 anxiety in Mr. Mooney?

4 A. Yeah. I also -- I also believe that Mr.
5 Mooney has anxiety issues, for a lot of reasons. It's
6 hard -- you know, in the setting that he is currently in,
7 and wondering what is going to happen with him, there is a
8 lot of worrying that is occurring.

9 But I do think that that symptom popped up
10 even before he was arrested. So I think I did give him a
11 diagnosis of generalized anxiety disorder also.

12 Q. Is there any relationship between the
13 substance abuse and the bipolar and anxiety issues?

14 A. Well, the substance use, usually people who
15 have substance use problems, they usually try -- or have
16 anxiety disorders usually try to avoid the use of
17 substances that are more stimulating. Sometimes they will
18 use substances like cannabis in order to kind of calm
19 themselves down.

20 But when -- in relationship to Mr. Mooney and
21 the bipolar symptoms, I believe that probably the uses of
22 substances is probably engaging a risky behavior. So using
23 substances certainly facilitated more risky behavior.

24 And I think that also because of the
25 substances that he -- his choice of substances certainly

16

1 would make it harder for him, at times, to make good
2 decisions. You know, the use of alcohol, the use of
3 opiates, would certainly impair or negatively impact his
4 judgment.

5 which certainly is not good when you are
6 already experiencing the symptoms of poor judgment as a
7 result of Bipolar II.

8 Q. As part of this process, did you interview Mr.
9 Mooney?

10 A. I did. I saw Mr. Mooney three times.

11 Q. Go ahead.

12 A. Yes. I saw him on three separate occasions in
13 the Elko County Jail.

14 Q. And did he disclose his factual history?

15 A. He did. He was very honest -- based off the
16 information that was provided to me by you, he was very --
17 I think he was very honest in his presentation.

18 Like I said, psychological testing, which I
19 did early in the process, was a little guarded. But
20 ultimately I think he was -- he was pretty much -- he was
21 very interested in trying to understand how it got to the
22 situation that he was in.

23 Q. So did his -- did the history that he
24 revealed, is that consistent with the results of the
25 psychological testing?

17

1 A. It is.

2 Q. How about the history that was revealed in the
3 letters, reference letters that you have reviewed, was that
4 consistent with the results of psychological testing?

5 A. It seems to be fairly consistent, yes.

6 Q. And did you form an opinion as to whether Mr.
7 Mooney poses a risk of harming anyone with these types of
8 devices in the future?

9 A. Well, it is clear that Mr. Mooney has engaged
10 in the production of devices that are designed to cause
11 mass destruction. To me this is certainly a factor that I
12 would consider related to violence in the future.

13 But at the same time, I am also going to
14 indicate that I think he has -- this was very experimental
15 when he was doing it. And by his-self report, we have no
16 real way to verify this, but it appears that this occurred
17 over a very short window of time.

18 And as a result, he really kind of didn't
19 move, you know, forward with what we would typically see.

20 The experimental component to this is -- you
21 know, there are lots of people who make explosive devices.
22 The concerning part to me about the -- the future acts of
23 violence using explosive devices is that he started the
24 process of weaponizing, which is a little different than
25 what we would typically expect in the experimental stage.

18

1 But I think this goes back to his interest in
2 joining the military. And I think he had kind of a
3 fascination about that. He learned that -- the things that
4 he learned are widely available in the public media through
5 Army field manuals, et cetera.

6 I mean, that's the only -- there is -- I mean,
7 we can't just discount that as a risk of future acts of
8 violence.

9 I do really think that if we manage his
10 psychiatric symptoms, the Bipolar II, I think we will
11 significantly reduce the issues related to recidivism.

12 Q. Would you agree that it's kind of exciting to
13 take things like this out in the desert and just detonate
14 them?

15 A. I will tell you that one of my experiment --
16 one of the experiences working on counter IED teams was
17 actually building devices and exploding them. As an adult
18 I found it extremely exhilarating to do.

19 Q. And you had no intentions of harming anyone
20 when you did that, correct?

21 A. Correct. It was much more learning about how
22 the process works, yeah. So, yes, I will definitely concur
23 with that.

24 Q. You indicated that Mr. Mooney was amenable to
25 treatment. What would you recommend with respect to

19

1 treatment?

2 A. Well, I definitely think that Mr. Mooney needs
3 substance abuse treatment even though he has been
4 incarcerated for almost a year now. The -- what I refer to
5 as the speaking-thinking about use of substances is still
6 there because that really hasn't been addressed as part of
7 his current incarceration.

8 I also believe that the best way to manage his
9 substance abuse problem is also to effectively manage his
10 bipolar and his anxiety disorders.

11 We would typically look at like what's called
12 a dual diagnosis treatment program would probably be the
13 best avenue for Mr. Mooney at this point in time.

14 Q. You are aware that Mr. Mooney has been in drug
15 court and done a program, I believe, at New Frontier.

16 A. I am. But I also recognize that New Frontier
17 does not do a good job of the dual diagnosis. If you are
18 substance only, that would probably, you know, work. But I
19 think Mr. Mooney needs something much more intensive. Just
20 having the substance abuse counselor work with him is going
21 to be insufficient to address the pathways that lead to
22 substance use.

23 Q. Where could Mr. Mooney receive these -- the
24 treatment that he needs?

25 A. Well, as you and I have talked in the past,

20

1 there are a lot of the programs that may be -- that would
2 be potentially good programs for him. But because of his
3 issues of -- surrounding violence and the charge, it's
4 going to be some limited types of things.

5 I believe in my conversations with you I did
6 talk with Carson-Tahoe. Once he is Medicaid eligible, if
7 the judge would determine to release him on some type of
8 probation and he was able to obtain Medicaid services,
9 Carson-Tahoe would be willing to take him for substance
10 abuse treatment and dual diagnosis treatment.

11 Q. Would that be an inpatient program?

12 A. It would. They probably would be -- it
13 probably would be a 14-day inpatient program.

14 Q. Would that include the evaluation for
15 medication to address his issues?

16 A. It would. He would be seen by a psychiatrist
17 on a daily basis.

18 Q. What about aftercare?

19 A. Well, I think that the next step after that
20 would be for them to construct some type of aftercare
21 program.

22 There is an option for, and I think Mr. Mooney
23 would probably do well given some of the dynamics in the
24 home environment, that I think living in some type of a
25 substance-free type of group home, something that could be
21

1 psychological care be more important than the program of
2 discipline?

3 A. Yes.

4 Q. So you would recommend that over sending him
5 to boot camp?

6 A. Yeah, I -- the -- my problem with -- my
7 problem with the boot camp with him is -- is he has a
8 chronic kidney condition that he experiences a lot of
9 discomfort.

10 And my understanding is that if he can't cut
11 the regimental discipline program because he starts having
12 a lot of medical issues, that is going to be something
13 that's going to potentially preclude him from
14 participation.

15 Which I think is going to just set him up for
16 a real negative cycle. You know, he wants to participate,
17 he has got this kidney thing where he passes kidney stones
18 on a regular basis, he fails out, then what do we do. It's
19 just further failure for him.

20 MR. GREEN: I have no further questions.

21 THE COURT: Any cross?

22 MR. BUCHLER: Yes, Your Honor. Thank you.

23 CROSS-EXAMINATION

24 BY MR. BUCHLER:

25 Q. Doctor, this is David Buchler. I am appearing
23

1 closely supervised by probation and parole, might be a good
2 avenue for discharge after he completes substance abuse and
3 dual diagnosis treatment.

4 Q. Carson-Tahoe program, do they have any
5 facilities or connection with facilities on the western
6 side of the state to provide some of that group home
7 aftercare?

8 A. I know that they -- they don't have a direct
9 connection, but I do know we have had some luck in the past
10 with them helping us find sober living communities
11 throughout the state.

12 Q. Are you familiar with the program of
13 regimental discipline?

14 A. Yes.

15 Q. Would a program of regimental discipline be
16 beneficial to Mr. Mooney?

17 A. Yes.

18 Q. What -- what, if any, psychological services
19 could he expect from that program, do you know?

20 A. Once again, many of these programs are not
21 really geared up to really provide more intensive, but a
22 lot of times we are able, if he is eligible for Medicaid,
23 sometimes you can plug in services. Which I think would be
24 probably the best thing for him.

25 Q. Would -- in your opinion, would the -- the
22

1 for the State.

2 When you use the term "weaponized," based on
3 your training and experience, what does that mean to you,
4 sir?

5 A. So we -- we talk about weaponizing when people
6 start using -- start adding things to the devices that
7 would cause more casualties or more property damage.
8 Primarily casualties.

9 So he has -- he had a number of substances,
10 BBs, nails, and which he was starting to attach to his
11 devices, which is certainly -- I mean, it's interesting to
12 figure out, but that certainly is kind of the next step.
13 It's kind of interesting to watch things blow up, but to
14 watch things blow up and cut things through starts being
15 really concerning for me.

16 Q. Concerning how?

17 A. Because the number of casualties that it could
18 potentially cause significantly goes up.

19 Q. It's my understanding that you said that the
20 weaponization of these bombs is a factor related to
21 violence; is that correct?

22 A. Correct.

23 Q. What are other factors that are related to
24 violence in a similar context?

25 A. Well, when we talk -- well, I think that one
24

1 of the other factors to think about is in relationship to
2 whether or not there was any ideology.
3 Bombers come in a variety of different
4 flavors, and in this circumstance, he was unable to
5 identify any ideology. So he's not doing this to, you
6 know, blow things up because he is against government or
7 against certain people or has a grudge against someone else
8 or trying to conceal a crime.

9 It's much more experimental, based off of his
10 report, and then the types of devices that he was doing.

11 I think that the other part is that there
12 seems to be a distance between when he made the devices,
13 exploded the devices. There was this huge gap of time.
14 And I will admit that the evidence is based off his
15 self-report that he did engage, use these devices during
16 that period of time. We have no evidence to support either
17 way. Just based off his own statements.

18 But I do think that the attitudes that he has,
19 his personality structure, doesn't come out -- doesn't come
20 out with a strong, like, antisocial flavor that would tell
21 us, "I am doing this because I hate people, I want to" --
22 you know, "I don't care about people."

23 He doesn't have those types of
24 characteristics, which is -- you know, which would be much
25 more concerning. Because bombing is an impersonal act.

25

1 substances I can use. Let me read this manual and do
2 this." And then they build bigger and bigger devices.
3 There is evidence that he had a number of
4 different sized pipes, which is certainly supportive of
5 that.

6 But at some point he stopped. And the
7 rationale for the reason that he stopped was that it was no
8 longer interesting. Or another act, another component that
9 I was wondering about, is whether he stopped because he was
10 no longer having the symptoms associated with the Bipolar
11 II and the hypomanic phase.

12 Q. Again, the report of -- the ceasing the bomb
13 making activities, that is again based on Mr. Mooney's
14 self-report, correct?

15 A. That's correct. There is no -- there is no
16 other data as part of the investigation that supported
17 anything other than, you know, he produced these devices.

18 This is what he reported.

19 Q. And you are obviously aware that there were
20 bomb making materials still in his possession at the time
21 that he was -- he was found to have these things, right?

22 Doesn't appear to be any effort that he got
23 rid of these things?

24 A. Yeah, you know, I agree. But I also go back
25 to -- and this is -- I mean, I won't say there is a strong

27

1 You leave a device and you make it explode. You may not
2 even be present, you may not even want to watch it happen.

3 He doesn't have characteristics that we would
4 see associated with, like, "I don't really care what
5 happens to people." He actually seems pretty adversely
6 affected when bad things happen to people, which, you know,
7 is certainly a protective factor in this particular case.

8 Q. You've used the term on a number of occasions
9 throughout your testimony that you think that the bomb
10 making was experimental, correct?

11 A. Correct.

12 Q. But you are also aware that Mr. Mooney has
13 testified during trial, and I believe stated to law
14 enforcement, that he has had an interest in explosives
15 throughout his life. Are you aware of that, sir?

16 A. I am.

17 Q. So a life-long fascination with something, how
18 does that translate into being experimental, sir?

19 A. Well, life-long fascination is one thing that
20 certainly he has. But the actual production, based off of
21 what he's saying, is a very limited narrow window.

22 Experimentation would -- for me, would be -- a
23 lot of times what starts to happen, and we do see a little
24 bit of this in this case, is that the experimental phase
25 starts with, "Let me see what happens. Let me see what

26

1 basis in science for this idea, but we do know that when --
2 when people like making bombs, they covet the materials,
3 they don't allow them to just lie around, they don't put
4 them at bottoms of piles of stuff.

5 I mean, the police report tells us that his
6 room where he was storing all this stuff was loaded with
7 stuff, clothing and other things. And these devices,
8 because he hadn't used them or -- I mean, potentially he
9 could have hid them, but it doesn't sound that way. It
10 sounds like they were at the bottom of a pile.

11 When I have seen other investigations, looked
12 at other people about where they keep bomb making
13 materials, they are usually very conservative in how they
14 store them. They usually recognize these things have a lot
15 of potential danger. They take very good care of them.
16 They store them in special places. Places so it would be
17 hard for, you know, law enforcement or for officials to be
18 able to find them or discover them.

19 That's not what he did. So that fascination
20 that he had seems to be more consistent with he had it, it
21 went away, and that's why he didn't remember where all the
22 stuff was. That is definitely one hypothesis I could have
23 about this case.

24 Q. You're aware, though, that many of these
25 devices were found in plain sight on book shelves, correct?

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1 A. There were some that were found on book
2 shelves, yes.
3 Q. And that there were other devices or
4 components that were in plain sight on window sills,
5 correct?
6 A. Yes.
7 Q. So despite the mess of this room, it wasn't as
8 though those were after thoughts that have been buried by
9 clothing and other personal property. You are aware of
10 that, right?
11 A. Yeah, I -- I recognize that. But at the same
12 time, they were also not well -- you know, if these were
13 things that he was intending to use in the future, I would
14 expect -- I would have expected or have in the past would
15 have seen these things well taken care of, well stored; not
16 sitting out in public view or at the bottom of a pile of
17 clothes.
18 Q. You are aware that Mr. Mooney also had posts
19 on social media indicating his, I guess, boasting of these
20 devices. Are you aware of that?
21 A. Yes.
22 Q. Now, I want to go back to -- I want to touch
23 on it briefly, this experimental -- this term
24 "experimental" that you have used.
25 Don't you think it would be a fair

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1 characterization to say that if somebody was -- has an
2 infatuation or a strong interest in a particular activity,
3 say, bomb building, and then that goes to the next step of
4 maybe getting some manuals, then that moves on towards
5 actually building explosives, then that goes even further
6 to weaponizing these explosive devices. Isn't that a
7 pattern of escalation?
8 A. It is. But there is this huge window based
9 off of his self-report that he stopped doing that and kind
10 of moved on to other things.
11 So no, I don't necessarily agree with the
12 pattern of escalation.
13 Q. One last thing -- couple last things.
14 Page 7 of your report, it's my understanding
15 that you note that his insight, Mr. Mooney's insight, his
16 insight, judgment and impulse control appear to be fair?
17 That is your opinion, correct, sir?
18 A. Yes.
19 Q. So Mr. Mooney's actions weren't compelled by
20 some overwhelming mental health condition; wouldn't that be
21 fair to say?
22 A. I believe during the period of time in which
23 he had the hypomanic episodes, I think he was making really
24 poor choices. I think when I evaluated him I saw less of
25 the hypomanic episodes.

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1 So I would imagine that during the hypo --
2 during episodes of hypomania that he would be very
3 impulsive, more impulsive. And I would have probably, if I
4 had evaluated him during an episode of hypomania, I would
5 have indicated that they were poor, not fair.
6 Q. They were poor.
7 MR. BUCHLER: That's all we have, Your Honor.
8 THE COURT: Any redirect?
9 REDIRECT EXAMINATION
10 BY MR. GREEN:
11 Q. As far as his lack of impulse control,
12 judgment, those types of things, did his use of substances
13 have anything -- play any part in that?
14 A. Yes. If he is using substances, his impulse
15 control is probably going to be worse.
16 MR. GREEN: No further questions.
17 THE COURT: Recross?
18 MR. BUCHLER: Nothing based on that. Thank you.
19 THE COURT: All right. May we excuse Dr. Coard?
20 MR. BUCHLER: That's fine with the State.
21 MR. GREEN: Yes, Your Honor.
22 THE COURT: All right. Dr. Coard, thank you for
23 your testimony. We'll hang up now. Have a nice day.
24 THE WITNESS: Thank you, Your Honor.
25 THE COURT: Any other evidence for the defense

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1 today?
2 MR. GREEN: No, Your Honor.
3 THE COURT: All right. I seem to have a copy of
4 the pre-sentence investigation report -- was that first
5 volume back in there, Kepa? Why don't you grab that?
6 I am assuming the parties have received the
7 pre-sentence investigation report?
8 MR. BUCHLER: State has, Your Honor.
9 THE COURT: Okay. Great.
10 The defense has as well? You said you are ready
11 to go, I assume you have.
12 MR. GREEN: Yes.
13 THE COURT: We initially had this case set for
14 sentencing about one month ago. We had it set one month
15 ago. So obviously we would have to change the sentencing
16 date to today's date, February 27.
17 Did the State have any other -- well, and then,
18 before we go there, that would impact credit for time
19 served. I suppose we have another, what, 32, 33 days? Is
20 that correct?
21 MS. POOL: I have 361 days, Your Honor.
22 THE COURT: 361?
23 MS. POOL: Yes.
24 And, Your Honor, page 1, at the top of the page,
25 it should say the Honorable Alvin Kacin, Department 2. My

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1 apologies.
2 THE COURT: So 361 days credit time served?
3 MS. POOL: Yes, Your Honor.
4 THE COURT: Does the defense agree with that?
5 MR. GREEN: Yes, Your Honor.
6 THE COURT: Okay.
7 And no errors, omissions or corrections for the
8 State, Mr. Buchler?
9 MR. BUCHLER: That's correct, Your Honor.
10 THE COURT: Any for the defense, Mr. Green?
11 MR. GREEN: It has been awhile. Let me -- I have
12 none noted.
13 THE COURT: Okay. And, of course, the defendant
14 was convicted of Counts 1, 3, 5, 7, 9, 11, 13, 15, 17, 19,
15 21, 23, 26 and 27 at a jury trial.
16 I believe those were all possession of a
17 component of an explosive or incendiary device with intent
18 to manufacture the same.
19 I think those were all those counts.
20 Then he pled guilty to Counts 28, 29 and 30,
21 which are possession of a firearm by a person previously
22 convicted of a felony offense.
23 Correct me if I'm wrong, he reserved the right to
24 appeal the denial of the motion to suppress that the
25 defendant filed. Was that right?

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1 MR. GREEN: Correct.
2 THE COURT: Of course, since he went to trial, he
3 has preserved this issue with regard to the other counts.
4 Other than that, I think both parties are free to
5 argue.
6 All right. Mr. Buchler.
7 MR. BUCHLER: Thank you, Your Honor. It's the
8 State's position that throughout that Mr. Mooney has
9 attempted to minimize his actions. It's our position that
10 this isn't some experimentation.
11 As indicated in our cross-examination of the
12 doctor, we -- we view this as more of an escalation.
13 Defendant claims that he has been interested in
14 explosives from a young age, just lost interest, "hey, I
15 didn't get around to getting rid of these bombs and these
16 explosive materials."
17 But if Your Honor recalls, in some of the
18 photographs that were adduced at trial, I mean, Mr.
19 Mooney's room was in extreme disarray, there was personal
20 property all over the place, it was a total mess.
21 However, despite that, there were IEDs, one with
22 anti-personnel material attached to it, in plain sight.
23 Deputy Shoaf was able to observe these devices from the
24 doorway.
25 When the warrant was served, there was a number

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1 of devices that were in plain sight. These weren't things
2 buried under personal property. They weren't long
3 forgotten things. At least that's our position. That's
4 based on the evidence that was adduced.
5 Defendant has claimed throughout that these are
6 just fun toys. He said in his Facebook page, "Me like
7 things that go boom," or something to that effect. Just
8 tries to play this off as fireworks or firework type
9 materials.
10 However, you will recall that the State had a
11 number of law enforcement officers that were qualified as
12 experts in explosives, and a number of them testified as to
13 the efficacy of these devices. And more than once we heard
14 that from -- if one of these IEDs was at the witness stand
15 and was detonated, it would cause death or destruction all
16 the way to the back of the room.
17 I mean, we're talking about injuries as -- what
18 he called minor -- minor as losing a finger up the spectrum
19 towards losing hands, limbs, permanent disfigurement,
20 death.
21 These were not toys, Your Honor. And he chose to
22 store these -- those bombs in a residential neighborhood in
23 his parents' house in Spring Creek.
24 And some of these materials, we heard testimony,
25 were of such an unstable nature that the bomb squad wasn't

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1 able to move these to an evidence locker, evidence vault.
2 Many of these bombs and materials were destroyed on site
3 for the safety of the public; it was just too dangerous to
4 move them.
5 And then we have Mr. Mooney in possession of
6 three guns and quite a bit of ammunition.
7 And the State doesn't have any issue with guns,
8 but we do have an issue when you have ex-felon drug users
9 in possession of firearms.
10 You have got drugs, guns and bombs. And that is
11 an inherently dangerous situation. It's dangerous for the
12 community, it's dangerous for law enforcement. Nothing
13 good can come of this situation, Your Honor.
14 Mr. Mooney, he acted in complete disregard for
15 the law. He is somebody that, as the doctor testified,
16 there are factors related to violence in Mr. Mooney's case.
17 Namely, according to the defense's expert, the
18 weaponization of these bombs.
19 So it's our position that based on the dangerous
20 situation that Mr. Mooney created, the number of crimes,
21 and the seriousness of the violations, that P and P's
22 recommendation just isn't proportionate.
23 So here's what we are asking the Court to do.
24 With regards to Counts 1, 3, 5, 7 and 9, we are asking that
25 you impose a sentence of 12 to 36 months for each of those

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1 counts and run each of those counts consecutive.
2 with regard to Counts 28, 29 and 30, we are
3 similarly asking the Court impose a sentence of 12 to 36
4 months on all three of those counts, have those run
5 consecutive, and then consecutive to 1, 3, 5, 7 and 9. So
6 what that amounts to is a sentence of 8 to 25 years in the
7 Nevada State Prison.

8 We think that that -- it's a reasonable
9 recommendation in light of just the dangerous nature and
10 the -- just the disregard of the law here, and we think
11 that it serves justice in this situation.

12 There is remaining counts, obviously, and what
13 we'll do is we'll submit those to the Court's discretion.
14 But we think that, as described to the Court and as
15 requested, that that sentence is again proportionate and
16 reasonable for what we've seen here.

17 THE COURT: Thank you. Mr. Green.

18 MR. GREEN: Yes, Your Honor. First of all, what
19 I remember from the testimony was not that these devices
20 could cause death from the witness stand all the way to the
21 back of the room.

22 There was, as I recall the testimony, up close,
23 yes, there was that potential, and even some distance away
24 of, you know, a matter of feet, seven, ten feet, whatever,
25 of risk of injuries to others. But these were not large

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1 insight are further hindered by his psychological issues as
2 well as his substance abuse.

3 And perhaps his substance abuse is probably in
4 some ways nothing more than self-medication for some of the
5 psychological issues.

6 I think we see that all the time.

7 On the other hand, going out and getting these
8 things, by Dr. Coard's own testimony and based on his
9 experience, it's exciting to do stuff like this. We
10 probably have all seen news stories about mining, and when
11 we see these news stories in the newspaper, what do they
12 always show? The hillside where when they blast, the rocks
13 and the dust fly in the air, and then we hear the boom.
14 It's those things we find exciting.

15 And undoubtedly Mr. Mooney found that exciting to
16 experiment with that. That's why they sell fire crackers
17 and other forms of fireworks. Even though it was bad
18 judgment, it was something exciting to do.

19 There is absolutely no evidence in the social
20 media, by any witnesses or anything else, there is
21 absolutely no evidence to show that Mr. Mooney intended to
22 use these devices to harm anybody or to engage in any
23 destruction of property.

24 And to say that this would have escalated to that
25 point is nothing but mere speculation, especially

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1 devices capable of mass destruction.

2 Second of all, I don't disagree with Mr. Buchler
3 in respect to guns, drugs and bombs is not a good
4 combination. That's just simply all there is to it.

5 Two of those firearms, one is a single shot
6 shotgun that he purchased for very little money, another
7 one was a .22 that his father gave him when he was growing
8 up. The third one was an AK-47 type of rifle, which he
9 purchased, I believe, if I remember the testimony, from a
10 young lady that needed the money and she had a child.

11 As an ex-felon, he definitely should not have had
12 those firearms. That's just the law.

13 Now, in one way Mr. Mooney did what we want our
14 children to do, they take an interest in something, they
15 learn about it, they explore.

16 However, it's obvious that he used poor judgment
17 and chose the wrong subject to explore and experiment with.
18 He chose not only a dangerous subject, but one that has
19 potential harm.

20 He is a young man, and judgment in a young -- we
21 all have judgment problems, but our judgment isn't as good
22 in our youth as it is in our age with our experience.
23 That's just all there is to it.

24 And second of all, the lack of judgment, insight,
25 those are further hindered, his judgment and hindsight --

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1 considering what the evidence appears to be as he
2 experimented with this, he got some excitement, he laid it
3 aside and kind of forgot about it, the whole subject, the
4 devices he had manufactured.

5 And yeah, okay, some of those devices are in
6 plain sight on bookshelves and perhaps elsewhere in the
7 room. But like anything else we have in our home that's on
8 our shelves, we're not paying attention to them, we kind of
9 forget about them, they are just there, it's a normal part
10 of what we see, we don't focus on them, and they don't
11 register.

12 And perhaps even looking for something on a
13 bookshelf, you have to physically move these around without
14 really making -- just, "Oh, I've got these, I've got to get
15 rid of them, I've got to do something with them."

16 That was Mr. Mooney's testimony is, "I needed to
17 get rid of these devices, I just didn't do it. I intended
18 to, but I didn't. I never got around to doing it."

19 There is nothing, absolutely nothing, that
20 incarceration can do for Mr. Mooney that cannot be done
21 with some supervision. And it's clear that Mr. Mooney does
22 need some psychological services, and that can be managed
23 with his probation officer to see that -- that he gets
24 those services.

25 I will tell the Court that Mr. Mooney did apply

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1 for Medicare and he was turned down simply because he was
2 incarcerated. Once he is out of custody he should qualify
3 for Medicare, and then he could go ahead and be treated at
4 Carson-Tahoe behavioral.

5 Or another option -- I forget the name of it --
6 but there is a program in Twin Falls that does take Nevada
7 Medicare -- I'm sorry, Medicaid. If I said Medicare
8 previously, I meant Medicaid. But the program in Idaho
9 also accepts Nevada Medicaid. Dr. Coard is recommending
10 Carson-Tahoe.

11 Supervision can -- by parole and probation, they
12 can see that he follows through on that and he follows
13 through on any aftercare requirements or recommendations.

14 With that in mind, we are asking the Court to
15 suspend Mr. Mooney's sentences and place him on probation.

16 THE COURT: Thank you for your argument.

17 Mr. Mooney, you don't have to make a statement,
18 you certainly can before I sentence. Is there anything
19 that you would like to say, sir?

20 THE DEFENDANT: Yes, Your Honor. I would just
21 like to say that, you know, when I was doing this I never
22 intended it to be anything more than just a hobby. I
23 didn't have any, like, nefarious or malicious intentions of
24 any kind. I was just on drugs and I wasn't thinking things
25 through. And I should have known better. And I just

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1 didn't think about it. And I would like to get help for my
2 drugs, my bipolar disorders.

3 THE COURT: All right. Well, I will just make a
4 few observations before I pronounce sentence.

5 Mr. Mooney was 26 years old by the time he
6 committed these offenses. And the State, I think, in
7 conjunction with the defendant's testimony, convinced me
8 beyond a shadow of a doubt that Mr. Mooney committed these
9 offenses.

10 So I don't think this is a case where I am
11 wondering, you know, in the back of my mind, was this
12 offense committed or not. Clearly he built bombs.

13 And I do recall the testimony as well, and I
14 think it was perhaps Officer Spring from the bomb squad, I
15 am pretty sure, as Mr. Buchler represented it, testified
16 that one or some of these bombs could do damage in a room
17 like this to people some distance away.

18 I don't know if it was the back of room, but that
19 these are very, very dangerous objects that Mr. Mooney
20 created.

21 And obviously that is a negative for him at this
22 sentencing.

23 The other thing that is a negative is he is an
24 ex-felon. He has no business possessing any firearms, and
25 building bombs beyond that.

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1 Obviously, it's against the law in our state to
2 build incendiary devices, explosives devices like this, for
3 anybody. But it's an aggravating circumstance in this case
4 that he had been convicted of a felony by that time.

5 By the time of age 26, in my view, a person
6 certainly should know better. And you are held to that
7 even if you are, I guess the idea is, self-medicating by
8 using drugs.

9 This is a very dangerous situation. Of course
10 Mr. Green has to allow for that.

11 Drugs, bombs, guns, ex-felon. Doesn't add up to
12 probation. I don't think he is going to get probation in
13 this case. That, to me, is an extreme position based on
14 the evidence I have seen here.

15 Now, that said, I also think the State's position
16 is somewhat extreme, given what I heard in the evidence,
17 too.

18 There was no evidence that Mr. Mooney was a hate
19 monger, someone who has an agenda to go out and do injury
20 to a person or a group of people based on that person or
21 group's race, gender, national origin, political party
22 affiliation, sexual orientation, whatever it may be, that
23 he is out there to do injury to people because of those
24 things.

25 I think if I had seen that type of evidence, the

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1 State's recommendation would make a lot more sense to me.

2 But clearly it's concerning that an ex-felon
3 using drugs in his parents' house with guns is building
4 bombs, weaponizing devices that can do a lot of damage to a
5 lot of people if he wanted that to happen.

6 So there is no probation.

7 At any rate, I think I have to consider in this
8 sentence mostly specific deterrence. He needs to
9 understand by this sentence that he is never ever to
10 possess a firearm again unless somewhere down the road in
11 his life he gains that right back. It's going to be really
12 difficult with this criminal record now. Never to possess
13 guns, never to possess weapons.

14 I am just glad nobody got killed out there,
15 including Mr. Mooney, and especially his parents.

16 I mean, I feel -- I feel nothing but sympathy for
17 his parents who, you know, are putting their son up in
18 their house, calling the police because they are concerned
19 about his conduct out there, and then this happens.

20 Now they are here to watch their son get
21 sentenced like this. That's a sad set of circumstances,

22 But I need to protect the community, put him out
23 of commission for a while, deter him from doing this in the
24 future this way. And he will then be in the system, and
25 whatever mental health he is going -- assistance he is

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1 going to get is going to have to be there. I am not going
2 to leave it up to Mr. Mooney.
3 I know how probations work a lot of times.
4 People don't do what they are supposed to do on probation
5 despite the best efforts of their probation officer. And I
6 have a concern about letting him out right now. He is
7 going to have to be dealt with in the prison system.

8 At any rate, here is the sentence.

9 The administrative assessment, first of all, is
10 \$25; DNA administrative assessment is \$3. The DNA fee
11 apparently has already been paid in connection with another
12 case.

13 I will enter judgments of conviction against him
14 on Counts 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 26,
15 27, 28, 29 and 30.

16 For all those counts preceding Count 28 I'm going
17 to order that Mr. Mooney serve 72 months in the Nevada
18 State Prison with parole eligibility coming after 28
19 months. Those sentences can be served concurrently. These
20 were all found in the same place at the same time in the
21 same room. I think that's appropriate based on the
22 testimony and evidence I heard at this trial, and for all
23 the other reasons I have said.

24 Counts 28, 29 and 30, sentence there is going to
25 be 60 months in the prison with parole eligibility after 24

45

1 months.

2 Those sentences can be served consecutively to
3 what I have ordered with the other counts, but concurrently
4 with each other.

5 This is in recognition of what I think are two
6 different crimes, building bombs and possessing guns, by a
7 guy who has no business possessing guns.

8 I will state the aggregate sentence in the
9 judgment, as I am required to. It's going to be 132
10 months, I believe, in the prison with parole eligibility
11 after -- coming after 52 months. I guess that is the
12 aggregate sentence that I have to pronounce.

13 I believe the top end then would be 11 years;
14 four and a half years is at the bottom. If he does well in
15 prison, he can get out at the lower end of that. But he
16 has got to demonstrate something.

17 And 361 days will be credit for time served.

18 Anything else?

19 MR. BUCHLER: Not from the State, thank you.

20 THE COURT: I wish you the best of luck.

21 THE DEFENDANT: Thank you.

22 THE COURT: This is extremely dangerous conduct.
23 It needs to be punished. You need to be deterred. Don't
24 ever touch this stuff again.

25 THE DEFENDANT: Yes, sir.

46

1 THE COURT: I wish Mr. and Mrs. Mooney the best.
2 Court's in recess.

3 (WHEREUPON, the hearing was concluded at 12:02 p.m.)

47

1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
4

5 I, Lisa M. Manley, Official Reporter for the Fourth
6 Judicial District Court, Dept. II, of the State of Nevada,
7 in and for the County of Elko, was present in the
8 above-entitled court on February 28, 2017;

9
10 The foregoing transcript is an uncertified rough draft
11 transcription of my stenotype notes of said proceedings.
12 This transcript has not been edited, proofread, finalized,
13 indexed or certified.

14
15 DATED: At Elko, Nevada, this 8th day of May, 2017.
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FILED

CASE NO. CR-^{Fs}FP-16-0304

DEPT. NO. 2

2017 MAR -1 PM 3: 27

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY 

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

THE STATE OF NEVADA,

Plaintiff,

vs.

THOMAS WILLIAM MOONEY,
AKA: TOM MOONEY,

Defendant.

JUDGMENT OF CONVICTION

(Incarceration {Prison} / Jury Verdict and
Guilty Plea)

On October 7, 2016, the above-named Defendant, THOMAS WILLIAM MOONEY, AKA TOM MOONEY (date of birth: 02/07/1990 {age: 27}, place of birth: Reno, Nevada) was found guilty by a jury verdict of the crimes of: **COUNT 1: POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS 202.261. (NOC 51429);** **COUNT 3: POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS 202.261. (NOC 51429);** **COUNT 5: POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS 202.261. (NOC 51429);** **COUNT 7: POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS 202.261. (NOC 51429);** **COUNT 9: POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR**

SCANNED

1 INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR
2 INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS 202.261. (NOC
3 51429); COUNT 11: POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR
4 INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR
5 INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS 202.261. (NOC
6 51429); COUNT 13: POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR
7 INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR
8 INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS 202.261. (NOC
9 51429); COUNT 15: POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR
10 INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR
11 INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS 202.261. (NOC
12 51429); COUNT 17: POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR
13 INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR
14 INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS 202.261. (NOC
15 51429); COUNT 19: POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR
16 INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR
17 INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS 202.261. (NOC
18 51429); COUNT 21: POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR
19 INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR
20 INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS 202.261. (NOC
21 51429); COUNT 23: POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR
22 INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR
23 INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS 202.261. (NOC
24 51429); and COUNT 27: POSSESSION OF A COMPONENT OF AN EXPLOSIVE OR
25 INCENDIARY DEVICE WITH THE INTENT TO MANUFACTURE AN EXPLOSIVE OR
26 INCENDIARY DEVICE OR DEVICES, A FELONY AS DEFINED BY NRS 202.261. (NOC
27 51429), which crimes occurred on or about the 5th day of March, 2016.
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1 On October 31, 2016, Defendant entered pleas of guilty to the crimes of: COUNT 28:
2 **POSSESSION OF A FIREARM BY A PERSON PREVIOUSLY CONVICTED OF A FELONY**
3 **OFFENSE, A CATEGORY B FELONY AS DEFINED BY NRS 202.360.1. (NOC 51460);**
4 **COUNT 29: POSSESSION OF A FIREARM BY A PERSON PREVIOUSLY CONVICTED**
5 **OF A FELONY OFFENSE, A CATEGORY B FELONY AS DEFINED BY NRS 202.360.1.**
6 **(NOC 51460); and COUNT 30: POSSESSION OF A FIREARM BY A PERSON**
7 **PREVIOUSLY CONVICTED OF A FELONY OFFENSE, A CATEGORY B FELONY AS**
8 **DEFINED BY NRS 202.360.1. (NOC 51460),** which crimes occurred on or about the 5th day
9 of March, 2016.

10 At the time said Defendant entered his pleas of guilty, this Court informed him of the
11 privilege against compulsory self-incrimination, his right to a speedy trial, his right to a trial by
12 jury, and his right to confront his accusers, in addition to other rights set forth in his
13 memorandum of plea agreement. At said time Defendant was also advised of the maximum
14 penalty for the crimes to which he would plead guilty and the elements of those crimes. After
15 being so advised, the Defendant stated that he understood these rights and that he still
16 desired this Court to accept his pleas of guilty.

17 As a result of the foregoing, this Court on Tuesday, February 28, 2017, finds the
18 above-named Defendant guilty of the crimes of COUNT 1: **POSSESSION OF A**
19 **COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO**
20 **MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY**
21 **AS DEFINED BY NRS 202.261. (NOC 51429); COUNT 3: POSSESSION OF A**
22 **COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO**
23 **MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY**
24 **AS DEFINED BY NRS 202.261. (NOC 51429); COUNT 5: POSSESSION OF A**
25 **COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO**
26 **MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY**
27 **AS DEFINED BY NRS 202.261. (NOC 51429); COUNT 7: POSSESSION OF A**
28 **COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO**
MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY

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1 AS DEFINED BY NRS 202.261. (NOC 51429); COUNT 9: POSSESSION OF A
2 COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO
3 MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY
4 AS DEFINED BY NRS 202.261. (NOC 51429); COUNT 11: POSSESSION OF A
5 COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO
6 MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY
7 AS DEFINED BY NRS 202.261. (NOC 51429); COUNT 13: POSSESSION OF A
8 COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO
9 MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY
10 AS DEFINED BY NRS 202.261. (NOC 51429); COUNT 15: POSSESSION OF A
11 COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO
12 MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY
13 AS DEFINED BY NRS 202.261. (NOC 51429); COUNT 17: POSSESSION OF A
14 COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO
15 MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY
16 AS DEFINED BY NRS 202.261. (NOC 51429); COUNT 19: POSSESSION OF A
17 COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO
18 MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY
19 AS DEFINED BY NRS 202.261. (NOC 51429); COUNT 21: POSSESSION OF A
20 COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO
21 MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY
22 AS DEFINED BY NRS 202.261. (NOC 51429); COUNT 23: POSSESSION OF A
23 COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO
24 MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY
25 AS DEFINED BY NRS 202.261. (NOC 51429); COUNT 26: POSSESSION OF A
26 COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO
27 MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY
28 AS DEFINED BY NRS 202.261. (NOC 51429); COUNT 27: POSSESSION OF A

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1 COMPONENT OF AN EXPLOSIVE OR INCENDIARY DEVICE WITH THE INTENT TO
2 MANUFACTURE AN EXPLOSIVE OR INCENDIARY DEVICE OR DEVICES, A FELONY
3 AS DEFINED BY NRS 202.261. (NOC 51429); COUNT 28: POSSESSION OF A FIREARM
4 BY A PERSON PREVIOUSLY CONVICTED OF A FELONY OFFENSE; A CATEGORY B
5 FELONY AS DEFINED BY NRS 202.360.1. (NOC 51460); COUNT 29: POSSESSION OF A
6 FIREARM BY A PERSON PREVIOUSLY CONVICTED OF A FELONY OFFENSE, A
7 CATEGORY B FELONY AS DEFINED BY NRS 202.360.1. (NOC 51460); and COUNT 30:
8 POSSESSION OF A FIREARM BY A PERSON PREVIOUSLY CONVICTED OF A FELONY
9 OFFENSE, A CATEGORY B FELONY AS DEFINED BY NRS 202.360.1. (NOC 51460), for
10 which he was found guilty and hereby sentences said Defendant on this 28th day of
11 February, 2017, as follows:

12
13 IT IS HEREBY ORDERED that the Defendant shall pay a genetic
14 administrative assessment of \$3.00.

15 For Count 1, the Defendant is hereby sentenced to serve a maximum
16 term of 72 months in the Nevada Department of Corrections with a
minimum parole eligibility after 28 months served.

17 For Count 3, the Defendant is hereby sentenced to serve a maximum
18 term of 72 months in the Nevada Department of Corrections with a
19 minimum parole eligibility after 28 months served.

20 For Count 5, the Defendant is hereby sentenced to serve a maximum
21 term of 72 months in the Nevada Department of Corrections with a
minimum parole eligibility after 28 months served.

22 For Count 7, the Defendant is hereby sentenced to serve a maximum
23 term of 72 months in the Nevada Department of Corrections with a
24 minimum parole eligibility after 28 months served.

25 For Count 9, the Defendant is hereby sentenced to serve a maximum
26 term of 72 months in the Nevada Department of Corrections with a
minimum parole eligibility after 28 months served.

27 For Count 11, the Defendant is hereby sentenced to serve a
28 maximum term of 72 months in the Nevada Department of
Corrections with a minimum parole eligibility after 28 months served.

1 For Count 13, the Defendant is hereby sentenced to serve a
2 maximum term of 72 months in the Nevada Department of
3 Corrections with a minimum parole eligibility after 28 months served.

4 For Count 15, the Defendant is hereby sentenced to serve a
5 maximum term of 72 months in the Nevada Department of
6 Corrections with a minimum parole eligibility after 28 months served.

7 For Count 17, the Defendant is hereby sentenced to serve a
8 maximum term of 72 months in the Nevada Department of
9 Corrections with a minimum parole eligibility after 28 months served.

10 For Count 19, the Defendant is hereby sentenced to serve a
11 maximum term of 72 months in the Nevada Department of
12 Corrections with a minimum parole eligibility after 28 months served.

13 For Count 21, the Defendant is hereby sentenced to serve a
14 maximum term of 72 months in the Nevada Department of
15 Corrections with a minimum parole eligibility after 28 months served.

16 For Count 23, the Defendant is hereby sentenced to serve a
17 maximum term of 72 months in the Nevada Department of
18 Corrections with a minimum parole eligibility after 28 months served.

19 For Count 26, the Defendant is hereby sentenced to serve a
20 maximum term of 72 months in the Nevada Department of
21 Corrections with a minimum parole eligibility after 28 months served.

22 For Count 27, the Defendant is hereby sentenced to serve a
23 maximum term of 72 months in the Nevada Department of
24 Corrections with a minimum parole eligibility after 28 months served.

25 For Count 28, the Defendant is hereby sentenced to serve a
26 maximum term of 60 months in the Nevada Department of
27 Corrections with a minimum parole eligibility after 24 months served.

28 For Count 29, the Defendant is hereby sentenced to serve a
maximum term of 60 months in the Nevada Department of
Corrections with a minimum parole eligibility after 24 months served.

For Count 30, the Defendant is hereby sentenced to serve a
maximum term of 60 months in the Nevada Department of
Corrections with a minimum parole eligibility after 24 months served.

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1 IT IS FURTHER ORDERED that the sentences for Counts 1-27 shall
2 run concurrently with one another.

3 IT IS FURTHER ORDERED that the sentences for Counts 28-30 shall
4 run concurrently with one another.

5 IT IS FURTHER ORDERED that the sentences for Counts 28-30 shall
6 run consecutively to the sentences for Counts 1-27.

7 IT IS HEREBY FURTHER ORDERED that the aggregate sentence
8 shall be a maximum 132 months in the Nevada Department of
9 Corrections with a minimum parole eligibility after 52 months served.

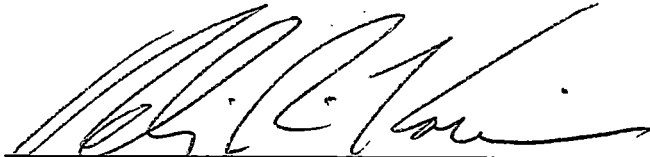
10 IT IS HEREBY FURTHER ORDERED that the Defendant shall receive
11 credit for 361 days heretofore served as of February 28, 2017.

12 IT IS FURTHER ORDERED that the Defendant shall forthwith pay to the Elko County
13 Clerk the administrative assessment of \$25.00.

14 At the time said Defendant entered his plea of not guilty on June 16, 2016, at the time
15 of jury trial, at the time of his pleas of guilty on October 31, 2016, and at the time he was
16 sentenced, he was represented by Brian Green, Esq.

17 THEREFORE, the Clerk of the above-entitled Court is hereby directed to enter this
18 Judgment of Conviction as part of the record in the above-entitled matter.

19 DATED this 1 day of March, 2017.

20 
21 ALVIN R. KACIN
22 District Court Judge
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District
3 Court, Department 2, and that on this 1st day of March, 2017, I served by hand delivery
4 by placing a copy of said document in the agency box located in the Elko County Clerk's
5 Office, a true copy of the foregoing document to:

6 Elko County District Attorney (2)

7 Brian Green, Esq.

8 State of Nevada, Division of Parole & Probation

9 Elko County Sheriff

10 Director, Nevada Department of Corrections
11 (copy to accompany Defendant at time of transport)

12
13 
14 James A. Conner

15 **CERTIFICATE OF SERVICE**

16 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District
17 Court, Department 2, and that on this 1st day of March, 2017, I served by regular U.S.
18 Mail, a true copy of the foregoing document to:

19 Nevada Department of Corrections
20 Offender Management Division,
21 Sentence Management
22 PO Box 7011
23 Carson City, NV 89702

24
25 
26 James A. Conner
27
28

1 CASE NO. CR-FO-16-0304

2 DEPT. NO. 2

FILED

2017 MAR 29 PM 3:32

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY CR

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4
5 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
6 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

NOTICE OF APPEAL

11 THOMAS WILLIAM MOONEY,

12 Defendant.
13
14

15 TO: The Elko County District Attorney's Office.
16

17 ~~NOTICE~~ is hereby given that the above-named Defendant, THOMAS WILLIAM
18 MOONEY, hereby appeals to the Supreme Court of Nevada from the JUDGMENT OF
19 CONVICTION entered in this action on the 1st day of March, 2017.

20 This appeal is to all issues of law and fact.

21 DATED this 29th day of March, 2017.
22

23 KRISTON N. HILL, ESQ.
24 ELKO COUNTY PUBLIC DEFENDER

25 By: [Signature]
26

27 BENJAMIN C. GAUMOND, ESQ.
28 Nevada Bar Number 8081
29 Deputy Elko County Public Defender
569 Court Street (Physical Address)
571 Idaho Street (Mailing Address)
Elko, Nevada 89801

4/8/29 2017 PM 4:04

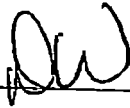
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CERTIFICATE OF SERVICE

I hereby certify, pursuant to the provisions of NRAP 25(d), that I am an employee of the Elko County Public Defender's Office, and that on the 29th day of March, 2017, I served the foregoing NOTICE OF APPEAL by hand-delivering a copy of said document to the following:

THE HONORABLE ALVIN KACIN
District Court Judge, Department 2, Elko County Courthouse
571 Idaho Street
Elko, Nevada 89801

ELKO COUNTY DISTRICT ATTORNEY'S OFFICE
540 Court Street, 2nd Floor, Elko, Nevada 89801



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CERTIFICATE OF MAILING

I hereby certify, pursuant to the provisions of NRAP 25(d), that I am an employee of the Elko County Public Defender's Office, and that on the 29th day of March, 2017, I mailed, postage prepaid, a copy of the foregoing NOTICE OF APPEAL to the following:

CLERK OF THE SUPREME COURT
Supreme Court Building
201 South Carson Street
Carson City, Nevada 89701-4702

ADAM P. LAXALT, NEVADA ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4717