

1 CASE NO. CR-FP-18-2614

2 DEPT.NO. 2

FILED

2019 FEB 27 AM 10:13

ELKO CO DISTRICT COURT

Electronically Filed  
Mar 04 2019 08:18 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

3  
4  
5 IN THE FOURTH JUDICIAL DISTRICT COURT

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

7  
8 THE STATE OF NEVADA,

9 Appellant,

10 vs.

11 KIMBERLY MARIE NYE,

12 Respondent.

NOTICE OF APPEAL FROM AN

ORDER GRANTING MOTION TO

SUPPRESS EVIDENCE

13  
14 TO: KIMBERLY MARIE NYE, the Respondent above-named; and  
15 DAVID D. LOREMAN, Attorney for the Respondent above-named; and  
16 To the Clerk of the Fourth Judicial District Court.

17 YOU AND EACH OF YOU will please take notice that the State of Nevada, the  
18 Appellant above-named, does, by and through its counsel of record, CHAD B. THOMPSON,  
19 Elko County Deputy District Attorney, pursuant to the provisions of NRS 177.015, hereby  
20 appeal to the Supreme Court and the State of Nevada from that certain Order Granting  
21 Motion to Suppress, filed on February 25, 2019. This appeal is to all issues of law and fact  
22 comprised in the Order granting the motion to suppress.

23 Dated this 27 day of February, 2019.

24 TYLER J. INGRAM  
Elko County District Attorney

25  
26 By: 

27 CHAD B. THOMPSON  
Chief Criminal Deputy District Attorney  
State Bar Number: 10248

28 Affirmation Pursuant to NRS 239B.030  
SSN Does Appear  
SSN Does Not Appear aw

1 CERTIFICATE OF SERVICE

2  
3 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the  
4 Elko County District Attorney's Office, and that on the 27th day of February, 2019, I  
5 served the foregoing NOTICE OF APPEAL FROM AN ORDER GRANTING MOTION TO  
6 SUPPRESS by mailing, faxing or delivering or causing to be mailed, faxed or delivered, a  
7 copy of said document to the following:

8 By hand-delivering to:

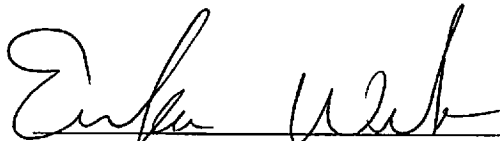
9  
10 THE HONORABLE ALVIN R. KACIN  
11 DISTRICT JUDGE  
12 Elko County Courthouse  
Elko, NV 89801

13 By mailing to:

14 DAVID D. LOREMAN  
15 ATTORNEY AT LAW  
445 5TH STREET, SUITE 210  
ELKO, NV 89801

16 TRACIE K. LINDEMAN  
17 CLERK OF THE SUPREME COURT  
18 SUPREME COURT BUILDING  
19 CAPITOL COMPLEX  
CARSON CITY, NV 89701

20 THE HONORABLE AARON FORD  
21 ATTORNEY GENERAL  
22 100 N. CARSON STREET  
23 CARSON CITY, NV 89701-4717

24   
25  
26 ERIKA WEBER  
CASEWORKER

27  
28 DA# F-18-00921

1 CASE NO. CR-FP-18-2614

2 DEPT. NO. 2

FILED

2019 FEB 27 AM 10:15

ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY \_\_\_\_\_ *JP*

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

8  
9 THE STATE OF NEVADA,

10 Appellant,

CASE APPEAL STATEMENT

11 vs.

12 KIMBERLY MARIE NYE,

13 Respondent..  
14

15 1. The State of Nevada is the name of the Appellant filing this case appeal  
16 statement by and through the Elko County District Attorney.

17 2. The Judge who issued the Order Granting Motion to Suppress Evidence is the  
18 Honorable ALVIN R. KACIN of the Fourth Judicial District Court of the State of Nevada, in  
19 and for the County of Elko.

20 3. The parties to the proceedings in the Fourth Judicial District Court are  
21 KIMBERLY MARIE NYE and the STATE OF NEVADA.

22 4. The parties involved in this appeal are KIMBERLY MARIE NYE and the STATE  
23 OF NEVADA.

24 5. The name, law firm, address, and telephone number of all counsel on appeal  
25 are:

26 CHAD B. THOMPSON  
27 ELKO COUNTY CHIEF CRIMINAL DEPUTY DISTRICT ATTORNEY  
28 540 COURT STREET, 2<sup>ND</sup> FLOOR, ELKO, NV 89801  
PHONE NUMBER: (775) 738-3101

Affirmation Pursuant to NRS 239B.030  
SSN Does Appear  
SSN Does Not Appear *gw*

1  
2 Attorney for Appellant, State of Nevada

3  
4 THE HONORABLE AARON FORD  
5 ATTORNEY GENERAL  
6 100 N. CARSON STREET  
7 CARSON CITY, NV 89701-4717  
8 PHONE NUMBER: (775)687-3538

9 Attorney for Appellant, State of Nevada

10 DAVID D. LOREMAN  
11 ATTORNEY AT LAW  
12 445 5TH STREET, SUITE 210  
13 ELKO, NV 89801

14 Attorney for Respondent.

15 6. Respondent was represented by appointed counsel in the Fourth Judicial  
16 District Court.

17 7. Respondent is represented by appointed counsel on appeal.

18 8. The Criminal Information was filed in the District Court on July 6, 2018.

19 9. The Order Granting Motion to Suppress appealed from was entered and filed  
20 on February 25, 2019, before the Respondent went to jury trial which was scheduled to be  
21 held March 12, 2019.

22 Dated this 27 day of February, 2019.

23 TYLER J. INGRAM  
24 Elko County District Attorney

25  
26 By: 

27 CHAD B. THOMPSON  
28 Chief Criminal Deputy District Attorney  
State Bar Number: 10248

1 CERTIFICATE OF SERVICE

2  
3 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the  
4 Elko County District Attorney's Office, and that on the 24th day of February, 2019, I  
5 served the foregoing CASE APPEAL STATEMENT, on the Respondent above-named by  
6 mailing, faxing or delivering or causing to be mailed, faxed or delivered, a copy of said  
7 document to the following:

8 By delivering to:

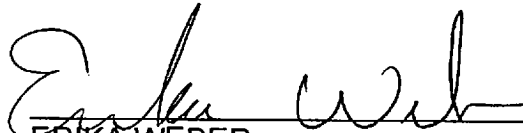
9 THE HONORABLE ALVIN R. KACIN  
10 DISTRICT JUDGE  
11 ELKO COUNTY COURTHOUSE  
ELKO, NV 89801

12 By mailing to:

13 DAVID D. LOREMAN  
14 ATTORNEY AT LAW  
445 5TH STREET, SUITE 210  
ELKO, NV 89801

15 TRACIE K. LINDEMAN  
16 CLERK OF THE SUPREME COURT  
17 SUPREME COURT BUILDING  
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CARSON CITY, NV 89701

19 THE HONORABLE AARON FORD  
20 ATTORNEY GENERAL  
21 100 N. CARSON STREET  
22 CARSON CITY, NV 89701-4717

23   
24 \_\_\_\_\_  
25 ERIKA WEBER  
26 CASEWORKER  
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1 CASE NO. CR-FP-18-2614

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2019 FEB 27 AM 10:14  
ELKO CO DISTRICT COURT  
CLERK \_\_\_\_\_ DEPUTY \_\_\_\_\_

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

8  
9 THE STATE OF NEVADA,

10 Appellant,

11 vs.

12 KIMBERLY MARIE NYE,

13 Respondent..  
14

DESIGNATION OF  
RECORD ON APPEAL

15 COMES NOW the State of Nevada, by and through its counsel of record, CHAD B.  
16 THOMPSON, Elko County Deputy District Attorney, and designates the following record on  
17 appeal in the above-captioned case.

- 18 1. The Criminal Complaint filed in the Elko Justice Court  
19 2. The Preliminary Hearing Transcript held on June 26, 2018 and all exhibits admitted at  
20 said hearing.  
21 3. The Criminal Information filed in the Fourth Judicial District Court, County of Elko,  
22 State of Nevada.  
23 4. The Motion to Suppress filed by Nye.  
24 5. The Opposition to the Motion to Suppress filed by the State.  
25 6. The Supplemental to the Opposition to the Motion to Suppress filed by the State.

26 ///

27 ///

28 ///

Affirmation Pursuant to NRS 239B.030  
SSN Does Appear  
SSN Does Not Appear

\_\_\_\_\_

1 7. The Transcript of the Motion to Suppress evidentiary hearing held on Feb. 14, 2019  
2 and all exhibits admitted at said hearing.

3 8. The Order Granting Motion to Suppress filed February 25, 2019.

4 Dated this 27 day of February, 2019.

5  
6 TYLER J. INGRAM  
7 Elko County District Attorney

8  
9 By: 

10 CHAD B. THOMPSON  
11 Chief Criminal Deputy District Attorney  
12 State Bar Number: 10248  
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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 24th day of February, 2019, I served the foregoing DESIGNATION OF RECORD ON APPEAL by mailing, faxing or delivering or causing to be mailed, faxed or delivered, a copy of said document to the following:

By hand delivering to:

THE HONORABLE ALVIN R. KACIN  
DISTRICT JUDGE  
ELKO COUNTY COURTHOUSE  
ELKO, NV 89801

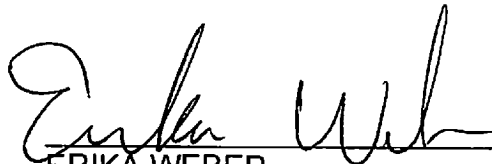
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DAVID D. LOREMAN  
ATTORNEY AT LAW  
445 5TH STREET, SUITE 210  
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TRACIE K. LINDEMAN  
CLERK OF THE SUPREME COURT  
SUPREME COURT BUILDING  
CAPITOL COMPLEX  
CARSON CITY, NV 89701

By mailing to:

THE HONORABLE AARON FORD  
ATTORNEY GENERAL  
100 N. CARSON STREET  
CARSON CITY, NV 89701-4717

  
\_\_\_\_\_  
ERIKA WEBER  
CASEWORKER

DA# F-18-00921



PGM ID-DSPDOC  
DATE 2/27/19

ELKO COUNTY COURT SYSTEM  
CASE#: EC DC CR-FP-18-0002614

PAGE 1  
TIME 11:14

TYPE: FELONY - AGAINST PERSONS

STATUS: PENDING

-----JUDGE -----  
CURRENT: KACIN, ALVIN R

--PARTY #--

PL 001: NEVADA, STATE OF  
VS.

-----ATTORNEYS-----  
THOMPSON, CHAD

DF 002: NYE, KIMBERLY MARIE  
DOB: 3/11/89

LOREMAN, DAVID D  
HILL, KRISTON N

INAC

CHARGE 1: FP POSSESS A C/S-METH

NRS 453.336(F)

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MAJOR EVENTS

7/12/18 ARRAIGNMENT (DC)	FOR: 8/06/18 10:30 DC2SEC	002
8/01/18 FILE CHECKED OUT BY:	MALOTTE	000
9/11/18 EARLY CASE CONF.	FOR: 1/14/19 10:30 DC2SEC	002
9/11/18 HEARING ON MOTION	FOR: 2/14/19 15:30 DC2SEC	002
9/11/18 JURY TRIAL -- DAY 1	FOR: 3/12/19 9:00 DC2SEC	002
9/11/18 JURY TRIAL AD'L DAYS	FOR: 3/13/19 9:00 DC2SEC	002
9/11/18 JURY TRIAL AD'L DAYS	FOR: 3/14/19 9:00 DC2SEC	002
9/12/18 FILE CHECKED IN BY:	PECK	000
1/09/19 FILE CHECKED OUT BY:	MALOTTE	000
1/16/19 FILE CHECKED IN BY:	JALLEN	000
2/07/19 FILE CHECKED OUT BY:	MALOTTE	000
2/25/19 FILE CHECKED IN BY:	PLUNKETT1000	
2/27/19 STATUS HEARING	FOR: 3/04/19 11:30 DC2SEC	002

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FILING PROCEEDINGS

DATE	EVENT	COMMENT	EVENT DATE	ENTRY PERSON/P
3/29/18	BOOKING INFORMTN RPT			DEMARS 002
		BOOKING DATE 03/29/18 AT 03:15		
3/29/18	APPL FOR APPT ATTY			DEMARS 002
		APPLICATION FOR APPOINTMENT OF ATTORNEY		
3/29/18	ORD APPOINTING ATTY			DEMARS 002
3/30/18	BOOKING INFORMTN RPT			DEMARS 002
		BOOKING DATE 03/29/18 AT 03:15 "REVISED"		

PGM ID-DSPDOC  
DATE 2/27/19

ELKO COUNTY COURT SYSTEM  
CASE#: EC DC CR-FP-18-0002614

PAGE 2  
TIME 11:14

4/02/18 BAIL BOND AS5 1213803 (\$5,000.00)	DEMARS	002
4/02/18 RECEIPT(S) ECSO BAIL BOND RCPT #26377	DEMARS	002
4/02/18 AGREEMENT TO APPEAR and Waive Extradition	DEMARS	002
4/05/18 MOT TO WITHDRAW AS COUNSEL AND MOTION FOR APPOINTMENT OF NEW COUNSEL AND SUBMISSION	DEMARS	002
4/11/18 ORD ALLW WTDRLW ATTY	DEMARS	002
4/24/18 CRIMINAL COMPLAINT	DEMARS	001
6/20/18 MOTION PURSUANT TO NRS 174.315(B)	DEMARS	002
6/21/18 NON-OPPOSITION TO DEFENDANT'S MOTION PURSUANT TO NRS 174.315(6)	DEMARS	001
6/29/18 ORD BINDING OVER -DC	DEMARS	000
7/05/18 FILE OPEN - DC CRIM FILE OPENED - DC CRIMINAL	JALLEN	000
7/05/18 RECORD OF CT PROC.	DEMARS	000
7/06/18 CRIMINAL INFORMATION Certified copy issued	RODRIGUEZ	001
7/10/18 ORD GRANTING MOTION PURSUANT TO NRS 174.315(6)	DEMARS	000
7/12/18 ARRAIGNMENT (DC)	FOR: 8/06/18 10:30 DC2SEC	002
7/16/18 SUBPOENA(S) FILED SALLY WOOD W/STOCKMEN'S CASINO WAS SERVED ON 06/21/18 AT 9:00 AM. FILED IN ECJC 06/26/18	DEMARS	002
7/16/18 SUBPOENA(S) FILED BART ORTIZ W/ELKO POLICE DEPT WAS SERVED ON 06/22/18 AT 12:15 PM. FILED IN ECJC 06/26/18	DEMARS	002
7/16/18 SUBPOENA(S) FILED JOSH BOGDON W/ELKO POLICE DEPT WAS SERVED ON 06/21/18 AT 4:15 AM. FILED IN ECJC 06/26/18	DEMARS	002
7/16/18 SUBPOENA(S) FILED	DEMARS	002

PGM ID-DSPDOC  
DATE 2/27/19

ELKO COUNTY COURT SYSTEM  
CASE#: EC DC CR-FP-18-0002614

PAGE 3  
TIME 11:14

NICHOLAS E HURLBURT W/STOCKMEN'S CASINO WAS UNABLE TO  
BE SERVED. FILED IN ECJC 06/26/18

7/16/18 SUBPOENA(S) FILED MATTHEW LOCUSON W/ELKO POLICE DEPT WAS SERVED ON 06/21/18 AT 4:15 AM. FILED IN ECJC 06/26/18	DEMARS	002
7/16/18 SUBPOENA(S) FILED MAX TORRES W/STOCKMEN'S CASINO WAS SERVED ON 06/21/18 AT 15:00 PM. FILED IN ECJC 06/26/18	DEMARS	002
7/16/18 SUBPOENA(S) FILED SHANE DAZ W/ELKO POLICE DEPT WAS UNABLE TO BE SERVED. FILED IN ECJC 06/26/18	DEMARS	002
8/01/18 FILE CHECKED OUT BY: DC 2 for review/signature	MALOTTE	000
8/06/18 HRG - DC2-ARRAIGN	MALOTTE	002
8/07/18 REQUEST - DISCLOSURE BY DEFENDANT OF EVIDENCE RELATING TO DEFENSE PLACED IN DC2 BOX	PLUNKETT	001
8/07/18 TRANSCRIPT-PRELIM PRELIMINARY HEARING HELD 06/26/18. FILE CK'D OUT. PLACED PLEADING IN DC2'S P/U BOX AT 12:00 PM.	DEMARS	000
9/11/18 EARLY CASE CONF.	FOR: 1/14/19 10:30 DC2SEC	002
9/11/18 HEARING ON MOTION HEARING ON MOTION	FOR: 2/14/19 15:30 DC2SEC	002
9/11/18 JURY TRIAL -- DAY 1 JURY TRIAL - DAY 1	FOR: 3/12/19 9:00 DC2SEC	002
9/11/18 JURY TRIAL AD'L DAYS JURY TRIAL ADDITIONAL DAYS	FOR: 3/13/19 9:00 DC2SEC	002
9/11/18 JURY TRIAL AD'L DAYS JURY TRIAL ADDITIONAL DAYS	FOR: 3/14/19 9:00 DC2SEC	002
9/12/18 FILE CHECKED IN BY:	PECK	000
9/12/18 JURY INSTRUCTIONS	PECK	000
9/12/18 PRETRIAL ORDER	PECK	000
12/13/18 MOT TO SUPPRESS	PECK	002
1/04/19 OPPOSITION TO MOTION TO SUPPRESS	PECK	001

PGM ID-DSPDOC  
DATE 2/27/19

ELKO COUNTY COURT SYSTEM  
CASE#: EC DC CR-FP-18-0002614

PAGE 4  
TIME 11:14

1/04/19 SUPPLEMENTAL OPPOSITION TO MOTION TO SUPPRESS	PECK	001
1/09/19 FILE CHECKED OUT BY: DC 2 for review/signature	MALOTTE	000
1/14/19 HRG - DC2 CRHRG	MALOTTE	002
1/14/19 NOTICE OF INTENT TO USE EXPERT WITNESS (FILE CHECKED OUT SENT PLEADING TO DC 2)	PECK	001
1/16/19 FILE CHECKED IN BY:	JALLEN	000
2/07/19 FILE CHECKED OUT BY: DC 2 for review/signature	MALOTTE	000
2/14/19 HRG - DC2 CRHRG	MALOTTE	002
2/25/19 FILE CHECKED IN BY:	PLUNKETT	1000
2/25/19 ORD GRANTING MOTION TO SUPPRESS	PLUNKETT	1000
2/26/19 NOTICE OF WITNESSES	PECK	001
2/27/19 NOTICE OF APPEAL FROM AND ORDER GRANTING MOTION TO SUPPRESS EVIDENCE	PECK	001
2/27/19 CASE APPEAL STATEMNT	PECK	001
2/27/19 RECORD ON APPEAL DESIGNATION OF	PECK	001
2/27/19 STATUS HEARING	FOR: 3/04/19 11:30 DC2SEC	002
2/27/19 CLERK'S CERTIFICATE FOR SUPREME COURT APPEAL	JALLEN	000

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BONDS

3/31/18 BOND-SURETY SURETY BOND (ORG AMT: 5,000.00 RCPT: 26377 DEMARS  
POSTED BY: ELKO BAIL BONDS  
-----

PEOPLE INVOLVED

ENTERED	PERSON	PERSON TYPE	STATUS	ENTRY	PERSON
7/10/18	HILL, KRISTON N	ATT	INACTIVE		DEMARS

FILED

2019 FEB 25 PM 12:43  
ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY JB

1 Case No. CR-FP-18-2614

2 Dept. No. 2

3  
4  
5  
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 STATE OF NEVADA,

10 Plaintiff,

11 vs.

**ORDER GRANTING MOTION TO  
SUPPRESS**

12 KIMBERLY MARIE NYE,

13 Defendant.  
14 \_\_\_\_\_/

15 In this case, Defendant Kimberly Marie Nye is charged with one count of possession of a  
16 controlled substance (methamphetamine). Nye has pled not guilty to the charge. Her trial is set to  
17 begin on March 12, 2019.

18 On December 13, 2018, Nye filed a motion to suppress evidence. She seeks an order  
19 suppressing evidence resulting from her arrest for trespassing on March 29, 2018. This evidence  
20 includes two quantities of methamphetamine and a pipe that Officer Bartolo Ortiz of the Elko Police  
21 Department found in his warrantless search of a backpack that Nye had with her when she was  
22 arrested. The prosecution has opposed the motion, arguing that the search was a valid search  
23 incident to arrest. The prosecution also contends the contraband would have been inevitably  
24 discovered in a lawful inventory at the Elko County Jail.

25 The court held an evidentiary hearing on the motion on February 14, 2019. Ortiz and  
26 Melonie Edgmond, the deputy who booked Nye, testified at the hearing. The court has since  
27 reviewed the transcript of Nye's preliminary hearing at the request of the parties. Having carefully  
28 considered the testimony and other evidence admitted at the both hearings, the court is granting the  
motion.

1 **A. FINDINGS OF FACT**

2 Then an 11-year veteran of the Elko Police Department, Ortiz was dispatched to deal with a  
3 "disturbance being caused by a male and two females" at the Stockmen's Casino in Elko on March  
4 29, 2018, at approximately 2:50 AM. When he arrived, Ortiz saw Sergeant Matthew Locuson,  
5 Corporal Shane Daz and Officer Joshua Bogdon with Nye and a Stockmen's security guard, Nicholas  
6 Hurlburt. Because Nye was intoxicated and proceeding to cause "a disturbance with the police[,]"  
7 and also refused to leave despite being "previously trespassed" from the casino, Hurlburt placed the  
8 woman under citizen's arrest.

9 **I**

10 Nye was arrested by 3:15 AM. Nye, who had a backpack on the floor next to her when she  
11 was arrested, yelled and cursed during the arrest. Nye even told Bogdon to bend her over and "fuck"  
12 her. Nye told the officers that she wanted to give the backpack to a friend; however, no one appeared  
13 to be accompanying her. Because Nye was continuing to cause a disturbance, attract onlookers and  
14 become "aggressive" with officers, Ortiz decided to immediately remove the backpack and her from  
15 the casino.

16 On the way to Ortiz's patrol car, Nye continued to be "belligerent." Nevertheless, Ortiz was  
17 able to place her in the passenger area of the car. After putting the backpack in the car's trunk, the  
18 officer drove the short distance to the Elko County Jail with his arrestee. On the way to the facility,  
19 Nye continued to yell and call Ortiz "every name in the book."

20 At the jail, Edmond "started the booking process" by searching Nye. Ortiz proceeded to  
21 retrieve and look through Nye's backpack "before having it placed in the property bin at the jail."  
22 During his inspection of the backpack's "main compartment," Ortiz discovered the pipe and a "little  
23 black container" inside a "sunglass case." Inside the "little black container," Ortiz found  
24 methamphetamine. During his examination of the backpack's "side pocket," Ortiz found "a clear  
25 container" containing more methamphetamine. Ortiz agrees that he did not produce an inventory of  
26 the backpack and its contents. The contraband was found by 3:26 AM.

27 But for Nye's conduct, which raised safety concerns for the officers, Ortiz would have  
28 searched the backpack incident to arrest at the Stockmen's. Although he appeared at one point to



1 also characterize such a search as an “inventory,” Ortiz acknowledges that the intrusion is not  
2 performed to produce a written list of the property in the container searched. At bottom, Ortiz agrees  
3 he searches containers such as Nye’s backpack to look for weapons and contraband.

## 4 II

5 In so many words, Edgmond maintains booking deputies “inventory” the contents of  
6 arrestees’ bags. The deputy suggests these intrusions are performed pursuant to a written policy  
7 directing “the receipt, custody, storage, and disposition of an inmate’s property upon admission to  
8 the [jail.]” See Exhibit 1, Copy of Elko County Sheriff’s Office Detention Division Policy Chapter  
9 600. Section IV(b) and Section IV(f) of the policy essentially require booking deputies to produce an  
10 inventory of an inmate’s clothing and personal property “at the time of booking.” Section IV(j)  
11 requires booking deputies to describe all inmate property “in sufficient detail to ensure the property  
12 can be identified properly.” The policy does not contain standardized criteria regulating the opening  
13 of containers found during inventories.

14 When a person is booked into the jail, the arresting officer will in practice conduct an  
15 immediate on-camera search of any containers (such as bags or purses) accompanying the arrestee to  
16 the facility. These searches occur when the arresting officer has not “had a chance to be able to do it  
17 out on the street,” commonly because the arrestee “is combative or . . . the weather doesn’t allow [the  
18 officer] to really search.” Even if an officer performs a pre-booking search or a search at the time of  
19 booking, the booking deputy will conduct a second search “[i]n case the [arresting] officer missed  
20 something,” i.e. contraband or other items (such as knives) that are not permitted or must be stored in  
21 locked containers in the facility. In other words, it appears booking deputies invariably search  
22 arrestees’ bags and purses specifically for contraband and weapons before putting the containers in a  
23 facility “holding bag.” Because they do not want to become witnesses to crimes such as possession  
24 of a controlled substance, booking deputies prefer that arresting officers perform thorough pre-  
25 booking searches of such containers.

26 In any event, Edgmond produced no written inventory of the contents of Nye’s backpack,  
27 which is described in a property receipt as simply a “bag.” See Exhibit 2, Copy of Elko County  
28

1 Sheriff's Office – Receipt for Property Stored.<sup>1</sup> In practice, whether a list of the items in such a  
2 container is produced depends on whether it contains many items or just a few. Edgmond essentially  
3 agrees that the overriding purpose of the intrusion is to look for weapons and contraband.

4 **B. CONCLUSIONS OF LAW**

5 1. The methamphetamine and pipe were found in an unlawful search of the backpack by Ortiz.

6 2. The methamphetamine and pipe would not have been inevitably discovered in a *lawful*  
7 inventory of the backpack's contents.

8 3. The methamphetamine and pipe should be suppressed.

9 **C. ANALYSIS**

10 To explain these conclusions of law, the court provides the following legal analysis.

11 1. The methamphetamine and pipe were found in an unlawful search of the backpack by Ortiz.

12 "Article 1, Section 18 of the Nevada Constitution and the Fourth Amendment to the United  
13 States Constitution prohibit unreasonable searches and seizures such that warrantless searches are  
14 per se unreasonable unless an established exception, like a search incident to arrest, applies." Grace  
15 v. Eighth Jud. Dist. Ct., 132 Nev. \_\_\_, \_\_\_ (2016) (citations omitted). "The authority to search  
16 incident to arrest derives from the need to disarm and prevent any evidence from being concealed or  
17 destroyed." State v. Greenwald, 109 Nev. 808, 810 (1993). Here, the prosecution cites New York v.  
18 Belton, 453 U.S. 454 (1981), and primarily argues that Ortiz legally searched Nye's backpack  
19 incident to arrest. Given Rice v. State, 113 Nev. 425 (1997), the court is constrained to disagree.

20 In Rice, a University of Nevada patrol sergeant stopped a suspect "for not having a headlight  
21 or a reflector on his bicycle." 113 Nev. at 427. The suspect "immediately 'escalated' his voice and  
22 became hostile." Id. Further, the suspect "was agitated, highly aggressive and demonstrated jerky  
23 movements[.]" Id. "[B]ased on past experience," the patrol sergeant felt the suspect "was either  
24 looking for an escape route or a physical altercation." Id. Thinking the suspect might escape, the  
25 patrol sergeant "asked him to step off of the bicycle and remove his backpack because it appeared to  
26 have a heavy object in it." Id.

27  
28 <sup>1</sup> This document was admitted as Exhibit 2 at the hearing on Nye's Motion to Suppress. A review of the receipt leads the court to conclude  
that the rest of the items listed in the inventory are the articles of clothing and jewelry Nye was wearing when booked.

1 Just as the patrol sergeant started to pat the bag, he saw the suspect “move his right hand  
2 down.” Id. The patrol sergeant “then saw ‘a bulk and distinctive outline’” of a Derringer in one of  
3 the suspect’s pockets. Id. The peace officer responded in part by handcuffing the suspect and taking  
4 the firearm. Id.

5 Another officer arrived after the suspect was arrested for operating a bicycle without a  
6 headlight and carrying a concealed weapon. Id. After the patrol sergeant put the suspect in a patrol  
7 car, the other officer “walked over, got the backpack, [and] opened it to check it to make sure there  
8 was no further contraband.” Id. In the backpack, the peace officers “found money, two bullets, and  
9 what they thought to be drugs and drug paraphernalia.” Id. Apparently, the patrol sergeant  
10 maintained the pair “were attempting to conduct an inventory on the scene.” Id.

11 The district court in Rice denied a motion to suppress the firearm and the evidence found in  
12 the backpack. Id. at 426. The Nevada Supreme Court effectively affirmed the denial of the motion  
13 to suppress the firearm, but reversed the decision not to suppress the contraband in the backpack.  
14 Relying primarily on Greenwald, the Rice court concluded that the search of the backpack was  
15 neither a valid search incident to arrest nor an inventory. Id. at 430-31. In Greenwald, the court held  
16 that the search of the suspect’s motorcycle after he “was safely locked away in a police car was not a  
17 valid search incident to arrest because there was no conceivable need to disarm him or prevent him  
18 from concealing or destroying evidence.” Id. at 430 (citing Greenwald, 109 Nev. at 810). As in  
19 Rice, “[t]he same is true in this case.” Id. Nye was placed in a patrol car and then given to a  
20 booking deputy before Ortiz searched the backpack. In other words, like the suspect in Rice, Nye  
21 was safely under law enforcement control before her backpack was searched. “Thus, under  
22 Greenwald, the backpack was not validly searched incident to arrest.” Id.

23 2. The methamphetamine and pipe would not have been inevitably discovered in a lawful  
24 inventory of the backpack’s contents.

25 Apparently recognizing the constitutional problem with Ortiz’s search, the prosecution  
26 contends the methamphetamine and pipe should not be suppressed because they would have been  
27 inevitably discovered in a lawful inventory of the backpack’s contents. The court again disagrees.

1       “The exclusionary rule, while not acting to cure a Fourth Amendment violation, is a remedial  
2 action used to deter police from taking action that is not in accordance with proper search and seizure  
3 law.” State v. Allen, 119 Nev. 166, 172 (2003) (citing United States v. Leon, 468 U.S. 897, 906  
4 (1984)). But “[e]xclusion is only appropriate where the remedial objectives of the exclusionary rule  
5 are served.” Id. (citing Powell v. State, 113 Nev. 41, 45 (1997)). Under the inevitable discovery  
6 doctrine, if the prosecution can prove by a preponderance of the evidence that illegally-recovered  
7 evidence ultimately or inevitably would have been discovered by lawful means, then the deterrence  
8 rationale has so little basis that the evidence should be admitted at trial. Proferes v. State, 116 Nev.  
9 1136, 1141 (2000). In this case, the court has little doubt that Edgmond inevitably would have  
10 discovered both quantities of methamphetamine and the pipe in Nye’s backpack had Ortiz not  
11 searched it first. However, the court cannot conclude the contraband would have been found in a  
12 *lawful* inventory.

13       The jailhouse inventory search “constitutes a well-defined exception to the warrant  
14 requirement.” Illinois v. Lafayette, 462 U.S. 640, 643 (1983). “At the station house, it is entirely  
15 proper for police to remove and list or inventory property found on the person or in the possession of  
16 an arrested person who is to be jailed.” Id. at 646. In this case, Edgmond’s testimony leaves no  
17 doubt that it is her habit, routine and practice to closely examine the contents of containers such as  
18 Nye’s backpack for contraband. Therefore, and because Edgmond has been directed to do  
19 inventories by the Elko County Sheriff, the court can safely assume the deputy performed this search.  
20 *See* NRS 48.059. But there is also no doubt that Edgmond failed to produce a written inventory of  
21 the search. This dereliction violates the fundamental principle that “a police officer must produce an  
22 actual inventory when she or he conducts an inventory search.” Weintraub v. State, 110 Nev. 287,  
23 289 (1994) (citations omitted). “Without an inventory, we can have no inventory search.”  
24 Greenwald, 109 Nev. at 811. For that reason alone, the court must conclude that Edgmond would  
25 not have inevitably discovered the methamphetamine and pipe in a *lawful* inventory search.

26       3.     The methamphetamine and pipe should be suppressed.

27       Clearly, evidence obtained in violation of the Fourth Amendment of the United States  
28 Constitution and the Nevada Constitution is inadmissible at trial in many criminal cases. Mapp v.

1 Ohio, 367 U.S. 643 (1961); NRS 48.025(1)(b) (providing that all relevant evidence is admissible,  
2 except “as limited by the Constitution of the United States or of the State of Nevada”). Given the  
3 longstanding rule of Greenwald and Rice, the court is not persuaded by the prosecution’s argument  
4 that “[a]pplication of the exclusionary rule is unwarranted” here. Ortiz indeed engaged in deliberate  
5 conduct in violation of Greenwald and Rice that is worthy of deterrence. *See Herring v. United*  
6 *States*, 555 U.S. 135, 144 (2009) (exclusionary rule applies to “deliberate, reckless, or grossly  
7 negligent conduct, or in some circumstances recurring or systemic negligence,” not every error that  
8 occurs). The pipe and the two quantities of methamphetamine must be suppressed.

9 **C. ORDER**

10 Accordingly,

11 Nye’s Motion to Suppress is GRANTED.

12  
13  
14 DATED this 22 day of February, 2019.

15  
16  
17 

18 The Honorable Alvin R. Kacin  
19 District Judge/Department 2  
20  
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28

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 25<sup>th</sup> day of February, 2019,  
served by the following method of service:

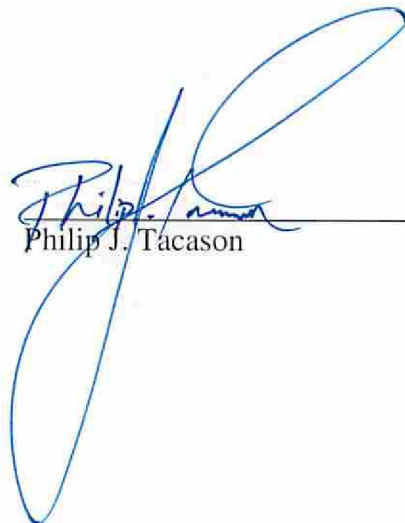
- 4 ( ) Regular US Mail ( ) Overnight UPS  
5 ( ) Certified US Mail ( ) Overnight Federal Express  
6 ( ) Registered US Mail ( ) Fax to # \_\_\_\_\_  
7 ( ) Overnight US Mail ( ) Hand Delivery  
( ) Personal Service (X) Box in Clerk's Office

8 a true copy of the foregoing document addressed to:

9 Elko County District Attorney's Office  
[Box in Clerk's Office]

10 David Loreman, Esq.  
11 [Box in Clerk's Office]

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Philip J. Tacason



# Exhibit 1

Exhibit 1



**ELKO COUNTY SHERIFF'S OFFICE**  
**DETENTION DIVISION POLICY**  
**CHAPTER 600**

SECTION : 625  <b>INMATE PERSONAL PROPERTY, CONTROL SYSTEM FOR INMATE MONEY</b>	RELATED POLICIES:
<i>This policy sets forth certain internal standards for the Elko County Sheriff's Office and violations of these standards are grounds for administrative action within the department. This policy does not create a standard of care for tort liability and the standards set forth herein may not be used for a basis for any civil action against the department or its employees.</i>	
DATE IMPLEMENTED: 12/07/18	
REVIEW DATE: 12/04/18	
By Order of the Sheriff:	Date:
	12/7/18

- I. **Purpose:** The purpose of this policy is to direct the receipt, custody, storage, and disposition of an inmate's property upon admission to the detention facility, as well as ensuring a systematic record keeping of the monies an inmate has at the time of booking, and of monetary transactions during their incarceration in the Elko County Detention Center.
- II. **Policy:** It is the policy of the facility to provide for an accurate accounting of property coming into the custody of this facility and to account for, record, and track all inmate monies upon the admission of an inmate as well as the safe storage of the property and disposition of the property upon release. Space must be provided for the secure storage of personal property of newly admitted inmates.

### III. Definitions:

- a. Safe: A temporary repository for inmate cash received, until a bank deposit can be made.
- b. Inmate Property/Cash Receipt: A three-part receipt made out by a deputy upon receiving property or cash for an inmate after incarceration
- c. Monies Considered Cash: - All U.S. currency, verified money orders, cashier's checks, checks from other law enforcement agencies..
- d. Monies not Considered Cash: Travelers checks, unverified money orders, foreign currency, credit cards, casino chips and personal checks
- e. Personal Property: Inmate's clothing, bulk property, and valuables such as wallets, jewelry, medication, etc.
- f. Personal Property Bag: Secured bag in the detention facility property room where inmate's valuables, i.e. wallets, jewelry, clothing etc. are individually stored.
- g. Property Room: Secured area in detention facility where all inmate property, clothing and valuables are stored.

### IV. Procedure, general property:

- a. The sheriff or his designee will set forth a list of items that an inmate will be allowed to keep in their possession while in the facility.
- b. All property shall be inventoried and receipted.
- c. During the intake process, the inmate shall be required to remove all of their personal property from their person/clothing.
  - i. The inmate's personal clothing will be searched for detection of contraband.
- d. Inmates will wear facility clothing for all court appearances, except jury trials when they may wear civilian clothing.
- e. Inmates will be issued facility shoes; they may not retain and/or receive personal shoes
  - i. Trustees may be allowed to wear personal footwear while performing duties as a trustee. The approval of the type of footwear permitted is at the discretion of the on duty supervisor. The type and location of the duty being performed should be taken into consideration when approving trustee footwear.
- f. All clothing and personal property will be recorded on the property sheet at the time of booking.
  - i. The inmate will sign the inventory copy acknowledging the correct property.
  - ii. A copy of the inmate's property inventory will be placed in their inmate file and in their property bag.
- g. All inmate's clothing will be inspected and placed in the property bag.
  - i. If necessary, it should be washed.

- ii. The bag will be tagged with the inmate's name and ID number and placed in the Property Room for storage
- h. Inmate large personal property will be placed in a property bag, tagged with inmate's name and ID number and secured in the property bag in the property room. All large inmate personal property must fit inside the property bag. All inmate personal property too large to fit in the property bag shall be removed from the facility by the arresting officer. It shall be noted in the detention log in the event property is removed from the facility by an arresting officer.
- i. Small property shall be secured in an envelope within the property bag. Small property items such as jewelry shall be handled in the following manner:
  - i. The item shall be removed during pat down process
  - ii. The items shall be placed in a small bag/envelope and placed in the property container
  - iii. The items shall be inventoried at the booking desk in view of a camera
  - iv. The items shall be returned to the bag or envelope, sealed and placed into the inmate's property bag.
- j. All inmate property shall be described in sufficient detail to ensure the property can be identified properly. The description should note any damage or identifying marks. Deputies should describe the property using terms such as gold colored as opposed to a gold ring. Describe stones by color not name.
- k. If feasible, this accounting shall take place in the presence of the officer bringing the inmate to the facility or some other staff member.
- l. The inmate shall be asked to sign the receipt confirming the property, to include cash, which was taken from them.
  - i. Any refusal to sign the inventory shall be documented by the booking deputy.
  - ii. If an inmate is inebriated, is a mental health detainee, or is mentally ill or mentally retarded, there shall be at least one witness to verify the accounting. As soon as the inmate is able to understand the accounting, the inmate shall sign the receipt.
  - iii. In any case where the inmate makes an immediate protest of discrepancy between the items/cash seized and what they had on their person, the on duty supervisor shall be called if available.
- m. Personal property/valuables may be released to a family member or friend at the request of the inmate but only with signed documentation from the inmate as well as a documented acknowledgement of receipt by the person to whom the inmate requested the property be turned over to.
- n. Indigent inmates can obtain personal clothing from detention staff. The inmate will forward an inmate request form to a supervisor who will authorize the issue of indigent personal clothing.
- o. Items such as alcohol, marijuana, marijuana paraphernalia and perishable food items are considered contraband by this facility and as such are not allowed within the detention facility. The disposition of such items, on the prisoner's

person at the time of arrest, shall be the responsibility of the arresting officer, however, in no event will these items be allowed within the detention facility. The inmate shall be informed that such property will not be stored during incarceration and will be disposed of. Any items such as described above shall be removed from the facility by the arresting officer.

- p. Non-folding knives, firearms, ammunition or dangerous weapons shall not be accepted into this facility.
- q. All property held shall be properly tagged with the prisoner's identification and the booking officer's identification.
- r. Once documented, the property shall be placed in the area designated for prisoner property.
- s. Inmate Property Seized For Evidence
  - i. A law enforcement agency may examine any inmate property upon request.
    - 1. In order to seize property a subpoena or search warrant must first be obtained.
    - 2. A copy of the subpoena or search warrant will be placed in the inmate's ID file and a property receipt made out and distributed as stated on the form.
  - ii. A Property Receipt must be made out by the arresting officer and a copy given to the inmate and a copy placed in the inmate's Personal Property File.

**V. Control system for inmate money**

**a. Deposit account**

- i. The sheriff or designee shall account for all money so accepted and deposit the money in a trust fund which has established in a bank, credit union or savings and loan association qualified to receive deposits of public money. During the time of the inmate's incarceration, the sheriff may also accept and deposit in the trust fund money belonging to the inmate which is intended for use by the inmate to purchase items at the commissary. Interest and income earned on the money in the fund, after deducting any applicable charges, must be credited to the account established for the commissary pursuant to NRS 211.360. If a commissary has not been established, the interest and income earned must be deposited with the county treasurer for credit to the county general fund.

**b. Count accuracy**

- i. To ensure the accuracy of all monies taken from inmates at the time of incarceration, a minimum of two deputies should be present while inmate monies are being counted whenever practical.

**c. Booking**

- i. An account will be established, under the inmate's name and I.D. number whether or not the inmate has any monies.

ii. At booking, all U.S. currency and approved monies will be counted and the amount will be logged into the Commissary/Inmate Money Accounting computer. The system will generate (3) receipts upon initial booking entry.

1. Verified money orders, checks from other law enforcement agencies, and payroll checks will be endorsed by the inmate if necessary, and entered as cash.
2. Traveler's checks, unverified money orders, foreign currency, credit cards, casino chips, casino cash vouchers and personal checks will be counted, logged and placed in the inmate's personal property. Casino chips shall be identified individually by denomination.
3. Those monies received as cash will be placed into a cash envelope with an accompanying computer receipt. The envelope will be labeled with the inmate name, ID number, cash amount, Deputy's name and ID number. Loose change shall be counted and receipted for and placed into the inmates property.
4. The envelope will be sealed and placed into the designated safe.
5. The inmate will sign the second commissary account receipt showing the amount of money deposited to the inmate's account, and that receipt will be placed in the inmate's file.

**d. Post Booking Money Transactions**

i. Monies received by detention division personnel will be processed in the following manner.

1. The Detention Division will only accept money orders and cashier's checks via the U.S. Mail.
2. Cash received in the mail will be returned to the sender marked "refused." A log entry shall be made to document the refusal and return. The log entry will include the inmate name and ID number, the amount of cash, and the address it was returned to.
3. The staff member receiving inmate funds will log onto the Commissary system and enter the funds into the inmate's account. The system deposit will generate three receipts.
4. Those monies received as cash will be placed into an envelope with an accompanying computer receipt. The envelope will be labeled with the inmate name, ID number, cash amount, deputy's name and ID number
5. The second receipt will be signed by the inmate and placed into the inmate's file, and the third receipt will be given to the person delivering the cash to the inmate's account. If the monies are received via U.S. Mail the third receipt will be forwarded to the inmate file with the second receipt.
6. If the commissary system is malfunctioning the inmate property/cash receipt will be use in the following manner: one to person leaving money or inmate file where applicable/one placed in envelope and one remain in booklet. Money shall be entered



into the system as soon as possible after the malfunction has been rectified.

7. If Detention division personnel receive money orders or cashier's checks via U.S. Mail, and the inmate refuses to endorse the item for deposit to their account, it will not be accepted. Instead the item will be returned to the sender as refused by addressee. If there is no return address the item will be forwarded to the address of record for the inmate. A subsequent entry shall be made into the daily log documenting the inmate, person sending the item, and disposition of refused item.
8. Other jurisdiction commitment fees will be paid by the inmate at time of booking. Booking deputies will deposit the fees into the inmate's commissary account. Deputies will generate a check payable to the Elko County Treasurer and forward that check to the sheriff's administrative assistant for processing.
9. Receivables for meals and booking fee are automatically deducted. Detention division personnel are not authorized to override or alter this feature without expressed approval from the detention division lieutenant.
10. Medical and transport fees are set up in the system. Detention deputies need to manually add these fees to the inmate's account

**e. Accounting and balancing**

- i. Deposits shall be processed on a weekly basis the designated detention supervisor will reconcile the amount of cash to the system receipts and prepare the deposit. The designated supervisor will verify the funds to the amount in the commissary system and prepare the deposit documents. An employee other than the one who prepared the deposit will perform the physical transfer of monies to the bank. The bank deposit will be made in person during bank business hours. If received at the time of deposit, the employee making the deposit will initial the deposit receipt, and return the receipt to administration for filing with that day's financial transaction records. If a receipt is to be mailed it shall be mailed to the administrative office of the sheriff's office.
  1. Detention division lieutenant will remove the monies from the safe located in the booking area. This function shall be done weekly.
- ii. The designated division supervisor will balance the cash drawer portion of the commissary system weekly. Any discrepancy will be addressed that same day by a thorough review and subsequent documentation retention. Any discrepancy not resolved will be brought to the attention of the detention lieutenant before the close of that same business day.
- iii. The monthly bank statement will be addressed in a timely manner and shall be reconciled with bank and Commissary system records each month by the Support Services Manager or designee. The bank statement will be opened and reviewed by the Support Services Manager or designee for reconciliation. Once the statement has been balanced a copy shall be forwarded to the comptroller.

f. **Release, general property:** When an inmate is released, a determination shall be made by the staff responsible for release to determine if the prisoner has any property held by the detention facility.

- i. Staff releasing the property shall verify the identity of the inmate matches up to the tagging on the property.
- ii. The inmate shall be presented with a receipt for their signature acknowledging the receipt of the property.

g. **Release, monetary**

i. Upon release from facility the balance in the inmate's money account will be returned to the inmate, in the form of an EZ-Card regardless of whether or not the actual cash has been deposited into the bank account. In the event the inmate is being transferred to another facility or the amount of money is over \$1000.00.

1. It is the responsibility of the deputy to zero the inmate's account. It is the duty of the on duty supervisor to verify this function.
2. In the event that a released inmate shows a balance due, they will be so notified of the debt owed to the detention division, and will sign the account receipt acknowledging the outstanding debt.

a. Notify the inmate that the monies owed will remain, and should he return to custody at a later date, any money in his possession will be taken to satisfy the outstanding debt.

ii. In the event the commissary computer system has a malfunction and a check cannot be issued the releasing deputy will not distribute any cash. They will obtain a valid mailing address from the inmate and inform the inmate an EZ-Card will be mailed once the system malfunction is repaired. The mailing address will be documented in the release file and forwarded to the detention division lieutenant. The inmate may also collect their funds at the detention control room during normal business hours. If the funds are obtained by the inmate in person or if the funds are returned by mail it shall be noted in the detention log. In this event the EZ Card or check shall be voided and funds returned to the inmates account and noted in the detention log.

h. **Voided checks**

- i. At times errors or system malfunctions may require a check to be voided and another issued. It is important to remember the receipt must be voided in the commissary system, not the check. The check itself will be marked "void" on its face. The voided system receipt will be attached to the check and forwarded to the support services manager.
- ii. Once the receipt has been voided in the commissary system you may process another check to issue to the inmate.
- iii. If a check has been voided it shall be noted on the comment section of the receipt along with an explanation as to the reason for the check being voided.

i. **Abandoned property**

- i. Any property that remains in the property storage area for more than thirty (30) days after the release of a prisoner, transfer of a prisoner, death of a prisoner, or other termination of the prisoner's detention at the facility, shall be disposed of in accord with the Nevada Revised Statutes.

**j. Training**

- i. New officers will receive training on the detention commissary system during their FTO period. A detention center field training officer (FTO) will conduct the training. Any deputy who feels they need additional training shall contact a sergeant and request such remedial training, which will be provided by a FTO.

**k. System Security**

- i. Division personnel are only authorized to sign into the commissary system using their personal ID and password. Your individual ID and password is personal and confidential and shall not be shared with others.
- ii. Division personnel will log off the commissary system immediately following the completion of the task for which they logged onto the system. No one should leave their system ID active and unattended. Any personnel who fail to follow this policy may be held accountable for any account discrepancies attributed to their personal ID and password.
- iii. Personnel are prohibited from sharing their password with other personnel, or persons outside this agency. Any personnel who share their password with others, or who permit another person to sign into the commissary system under their ID/password may be held accountable for any account discrepancies attributed to its use.
- iv. Deputies will report any problems with system access to the detention lieutenant.

PLAINTIFF EXHIBIT NO: 1  
CASE NO.: CR-FP-18-2614  
DISTRICT COURT: JUDGE ALVIN R. KACIN  
DATE MARKED: 02/14/19  
DATE ADMITTED: 02/14/19  
CLERK: DM

# Exhibit 2

# Exhibit 2



# Elko County Sheriff's Office

## Receipt for Property Stored

Receipt Number: 41673  
Property stored for: 111565

Date: 03/29/2018 04:45:10  
Booking Number: 18EL00752

**KIMBERLY NYE**

I, KIMBERLY NYE, certify that on the above date and time, the following personal property was accepted into storage:

ITEM	DESCRIPTION	CASH	QUANTITY	LOCATION
Shoes	blk/pnk	N	1	BAG 22/
Pants	blue	N	1	BAG 22/
Belt	blk	N	1	BAG 22/
bag	blk	N	1	BAG 22/
Shirt	gry	N	1	BAG 22/
capriis	multi color	N	1	BAG 22/
rings	2-s/c, 2- c/c	N	4	BAG 22/
earrings	studs	N	6	BAG 22/
garment	blk bra	N	1	BAG 22/

Property Stored For:

Property Received By:

\_\_\_\_\_  
KIMBERLY NYE

\_\_\_\_\_  
Edmond M D

Report Includes:

4:54 AM 3/29/2018





# Elko County Sheriff's Office

## Receipt for Property Returned

Receipt Number: 41742  
Property returned for: 111565

Date: 03/31/2018 21:31:44  
Booking Number: 18EL00752

KIMBERLY NYE

I, KIMBERLY NYE, certify that on the above date and time, the following personal property items were returned to me:

ITEM	DESCRIPTION	CASH	QUANTITY	LOCATION
Shoes	blk/pnk	N	1	BAG 22/Elko Property Room
Pants	blue	N	1	BAG 22/Elko Property Room
Belt	blk	N	1	BAG 22/Elko Property Room
bag	blk	N	1	BAG 22/Elko Property Room
Shirt	gry	N	1	BAG 22/Elko Property Room
capriis	multi color	N	1	BAG 22/Elko Property Room
rings	2-s/c, 2- c/c	N	4	BAG 22/Elko Property Room
earrings	studs	N	6	BAG 22/Elko Property Room
garment	blk bra	N	1	BAG 22/Elko Property Room

Property Returned By:

  
Alexander G M

Property Received By:

  
KIMBERLY NYE

Report Includes:

38

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

**RECORD OF COURT PROCEEDINGS**

Present - Honorable ALVIN R. KACIN, District Judge,  
and Officers of the Court.

STATE OF NEVADA,

Plaintiff,

Date: 08/06/18

VS.

Case No.: CR-FP-18-2614

Dept: 2

KIMBERLY MARIE NYE,

Defendant.

State of Nevada represented by Justin M. Barainca, Esq.

Defendant present, not in custody, and represented by

David D. Loreman, Esq.

Division of Parole and Probation represented by Sara Macias.

Court Clerk, Darla Malotte, present.

Lisa Manley present as Court Reporter.

**ARRAIGNMENT – NOT GUILTY**

Court convened at 11:56 a.m.

The Court noted the presence of the parties.

This was the date and time set for an arraignment on the Criminal Information filed July 6, 2018 charging COUNT 1: POSSESSION OF A CONTROLLED SUBSTANCE, A CATEGORY E FELONY AS DEFINED BY NRS 453.336. (NOC 51127).

A certified copy of the Criminal Information was presented to the Defendant.

The Defendant advised that he reviewed the Criminal Information with her attorney, and was satisfied with legal representation to date.

The name of the Defendant was correctly stated.

Defense counsel waived the formal reading of the Criminal Information.

The Court read the charging portion of the Criminal Information and asked the Defendant to enter a plea.

The Defendant entered a plea of not guilty to the charge.

The Court advised the Defendant of the right to be tried within 60 days from today's date.

The Defendant waived the sixty-day rule.

The Court found that the Defendant waived her right to a trial within 60 days knowingly, intelligently, and voluntarily and with the assistance of Counsel.

The Court advised that it would set a 3-day trial and call 90 prospective jurors.

The Court **ORDERED** the Defendant be continued released on her previously posted bail bond in the amount of \$5,000.00.

Court adjourned at 12:00 p.m.

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

**RECORD OF COURT PROCEEDINGS**

Present - Honorable ALVIN R. KACIN, District Judge,  
and Officers of the Court.

STATE OF NEVADA,

Plaintiff,

Date: 02/14/19

VS.

Case No.: CR-FP-18-2614

Dept: 2

KIMBERLY MARIE NYE,

Defendant.

State of Nevada represented by Chad B. Thompson, Esq.  
Defendant not present, not in custody, and represented by  
David D. Loreman, Esq.  
Court Clerk, Darla Malotte, present.  
Lisa Manley present as Court Reporter.

**PRETRIAL MOTION HEARING**

Court convened at 3:42 p.m.

The Court noted the presence of the parties.

This was the date and time set by the Court for a hearing on Pretrial Motions.

The Court advised that this matter was scheduled for Jury Trial scheduled to begin March 12, 2019 through March 14, 2019 on the Criminal Information filed July 6, 2018 charging COUNT 1: POSSESSION OF A CONTROLLED SUBSTANCE, A CATEGORY E FELONY AS DEFINED BY NRS 453.336. (NOC 51127).

The Court noted a Motion to Suppress was filed by Defense counsel on December 13, 2018 and the State filed an Opposition to the Motion on January 4, 2019.

The State advised that it would be filing an Offer of Proof regarding the methamphetamine pipe and advised that he was prepared to argue the matter. The State advised that it had two witnesses to

present, Deputy Melanie Edgmond and Officer Bart Ortiz, and further advised that Officer Ortiz was not present in the courtroom and had been advised of the rule of exclusion.

Defense counsel advised that he had no witnesses to present and requested the Court rely upon the preliminary hearing transcript.

The State had no objection to the Court relying upon the preliminary hearing transcript and advised of 6 Exhibits that were stipulated to being admitted. The State stipulated to the Court reviewing the exhibits admitted at the preliminary hearing for its decision.

The Court and Counsel discussed a matter regarding an offer that had been rejected.

The Court advised Counsel to proceed on the Motion to Suppress.

Defense counsel waived the presence of the Defendant for this hearing.

The State called its first witness.

Melanie Edgmond was sworn.

The State offered Plaintiff's Exhibit 1, Elko County Sheriff's Department Detention Division Policy; Plaintiff's Exhibit 2, Elko County Sheriff's Office Receipt for Property Stored; Plaintiff's Exhibit 3, Elko County Sheriff's Office Booking Sheet; Plaintiff's Exhibit 4, Unsworn Declaration of Custodian of Dispatch Records; Plaintiff's Exhibit 5, Photo; and Plaintiff's Exhibit 6, Goggle Maps, for admission pursuant to stipulation with Defense counsel.

The Court **ORDERED** Plaintiff's Exhibit 1 through 6 admitted pursuant to stipulation.

The Witness was examined on direct by the State. Witness examined on cross by Defense counsel. Redirect by the State. No recross. Witness excused.

Bartolo Ortiz was sworn and examined on direct by the State. Witness examined on cross by Defense counsel. No redirect by the State. Witness excused.

Defense counsel requested to submit the matter based upon its brief.

The State presented argument opposing the Motion to Suppress.

Defense counsel presented reply argument.

The Court advised that it would take this matter under consideration.

Court adjourned at 4:58 a.m.

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

**RECORD OF COURT PROCEEDINGS**

Present - Honorable ALVIN R. KACIN, District Judge,  
and Officers of the Court.

STATE OF NEVADA,

Plaintiff,

Date: 01/14/19

VS.

Case No.: CR-FP-18-2614

Dept: 2

KIMBERLY MARIE NYE,

Defendant.

State of Nevada represented by Chad B. Thompson, Esq.  
Defendant not present, not in custody, and represented by  
David D. Loreman, Esq.  
Court Clerk, Darla Malotte, present.  
Lisa Manley present as Court Reporter.

**EARLY CASE CONFERENCE**

Court convened at 10:42 a.m.

The Court noted the presence of the parties.

This was the date and time set by the Court for an Early Case Conference hearing on the Criminal Information filed July 6, 2018 charging COUNT 1: POSSESSION OF A CONTROLLED SUBSTANCE, A CATEGORY E FELONY AS DEFINED BY NRS 453.336. (NOC 51127). The Court advised that this matter was scheduled for jury trial to begin March 12, 2019 through March 14, 2019 and was set as a priority 2 setting and further advised that a Pretrial Motion hearing was scheduled for February 14, 2019. The Court inquired if there were any offers made in this matter.

The State advised that a plea offer for attempted possession was extended before the preliminary hearing and had been rejected.

Defense counsel advised that the offer was a wobbler for a felony or a gross misdemeanor.

The State advised that the offer still existed if the Defendant wished to consider the plea offer further.

The Court noted that Defense counsel filed a Motion to Suppress and the State opposed the Motion.

The State advised that no further offers of proof would be filed.

The Court noted the preliminary hearing transcripts had been received.

The State advised that a Notice of Expert Witness would be filed.

Counsel advised that they had nothing further.

The Defendant was continued released on the previously posted bail bond in the amount of \$5,000.00.

Court adjourned at 10:44 a.m.

PGM ID-EXEXIPS  
DATE 2/27/2019

ELKO COUNTY COURT SYSTEM  
EXHIBIT DATA FOR:

PAGE 1

NEVADA, STATE OF

CRFP180002614-001

EXHIBIT #	EXHIBIT DESCRIPTION	LOCATE	LOGGED	BY	DISP
1- PH 06/26/18	PHOTO	ENV V	7/05/18	DM	E
2- PH 06/26/18	PHOTO	ENV V	7/05/18	ADE	E
3- PH 06/26/18	STOCKMAN'S 86 RECORD FORM	ENV V	7/05/18	ADE	E
4- PH 06/26/18	NICHOLAS HURLBURT'S WRITTEN STATEMENT	ENV V	7/05/18	ADE	
5- PH 06/26/18	INTIAL REPORT FROM OFFICER ORTIZ	ENV V	7/05/18	ADE	
1- HRG 02/14/19	ELKO CO. SHERIFF'S DEPT. DETENTION DI	ENV V	2/14/19	ADE	E
2- HRG 02/14/19	ELKO COUNTY SHERIFF'S OFFICE RECEIPT	ENV V	2/14/19	DM	E
3- HRG 02/14/19	ELKO COUNTY SHERIFF'S OFFICE BOOKING	ENV V	2/14/19	DM	E
4- HRG 02/14/19	UNSWORN DECLARATION OF CUSTODIAN OF R	ENV V	2/14/19	DM	E
5- HRG 02/14/19	PHOTO	ENV V	2/14/19	DM	E
6- HRG 02/14/19	GOOGLE MAP	ENV V	2/14/19	DM	E



Case No. CR-FP-18-0002614

Dept. No. 2

FILED

2019 FEB 27 A 11: 04

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

ELKO CO. DISTRICT COURT  
CLERK \_\_\_\_\_ DEPUTY JA

STATE OF NEVADA,

Appellant,

vs.

CLERK'S CERTIFICATION

KIMBERLY MARIE NYE,

Respondent,

I, KRISTINE JAKEMAN, the duly elected, acting and qualified County Clerk and Ex-Officio Clerk of the District Court of the Fourth Judicial District of the State of Nevada, in and for the County of Elko, do hereby certify that the annexed are true, full and correct copies of certain documents in Case No. CR-FP-18-0002614, Dept. 2, STATE OF NEVADA, Appellant, vs. KIMBERLY MARIE NYE, Respondent, as appears on file and of record in my office.

WITNESS My Hand and Seal of said Court on February 27, 2019.

KRISTINE JAKEMAN, ELKO COUNTY CLERK

By   
JONI L ALLEN, DEPUTY CLERK

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be sent electronically and/or mailed a certified copy of the annexed documents in Case No. CR-FP-18-0002614, Dept. 2, STATE OF NEVADA, Appellant, vs. KIMBERLY MARIE NYE, Respondent, as appears on file and of record in this Court, to the following:

Elko County District Attorney's Office  
[csmtih@elkocountynv.net](mailto:csmtih@elkocountynv.net)  
[cthompson@elkocountynv.net](mailto:cthompson@elkocountynv.net)  
[ksullivan@elkocountynv.net](mailto:ksullivan@elkocountynv.net)

David Loreman  
Attorney Pick Up Box  
Elko County Clerk's Office

Aaron Ford  
Nevada Attorney General  
Attn: Criminal Division  
100 North Carson Street  
Carson City, NV 89701-4717

DATED this 27th, day of February, 2019.



JONI L ALLEN, Deputy Clerk