

1
2 IN THE SUPREME COURT OF THE STATE OF NEVADA

3 Electronically Filed
4 Aug 02 2019 02:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

5 THE STATE OF NEVADA,
Appellant,

6 vs.

CASE NO. 78230

7 KIMBERLY MARIE NYE,
Respondent.

8 JOINT APPENDIX

9 Appeal From The Fourth Judicial District Court

10 Of The State of Nevada

11 In And For The County Of Elko

12 THE HONORABLE AARON D. FORD
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1 Dated this 2 day of August, 2019.

2
3 TYLER J. INGRAM
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5 540 Court Street, 2nd Floor
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8 By:



Chad B. Thompson
Deputy District Attorney
Nevada Bar Number: 10248

9 Dated this 2nd day of August, 2019.

10 By:



DAVID D. LOREMAN
Attorney for Respondent
State Bar Number: 3867

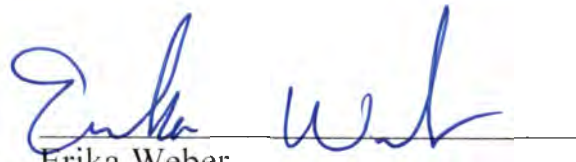
CERTIFICATE OF SERVICE

I certify that this document was filed electronically with the Nevada Supreme Court on the 2nd day of August, 2019, Electronic Service of the JOINT APPENDIX shall be made in accordance with the Master Service List as follows:

Honorable Aaron D. Ford
Nevada Attorney General

and

David D. Loreman
445 5th Street, Suite 210 Elko, NV 89801
Attorney for Respondent


Erika Weber
CASEWORKER

DA#: AP-19-00513

1 CASE NO EL-JC-CR-F-18-2614

2018 APR 24 AM 10:07

3
4
5 IN THE ELKO JUSTICE COURT
6 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

7
8 STATE OF NEVADA,

9 Plaintiff,

CRIMINAL

10 vs.

COMPLAINT

11 KIMBERLY MARIE NYE

12 Defendant
13

14
15 COMES NOW, THE STATE OF NEVADA the Plaintiff in the above-entitled
16 cause, by and through its Counsel of Record, the Elko County District Attorney's Office,
17 and based upon the Declaration Of Probable Cause and/or the narrative report and the
18 Officer Declaration executed by the submitting officer in connection with said narrative
19 report complains and alleges that the Defendant above-named, on or about the 29th
20 day of March, 2018 at or near the location of the city of Elko, within the County of Elko,
21 and the State of Nevada, committed the following described criminal offense(s)

22
23 COUNT 1

24 **POSSESSION OF A CONTROLLED SUBSTANCE, A CATEGORY E FELONY**
25 **AS DEFINED BY NRS 453.336. (NOC 51127)**

26 That the Defendant did unlawfully, and knowingly or intentionally, possess,
27 actually or constructively, a controlled substance, to wit methamphetamine
28

1 All of which is contrary to the form of the statute in such cases made and
2 provided, and against the peace and dignity of the State of Nevada Said Complainant.
3 therefore, prays that the Defendant be dealt with according to law
4

5 The undersigned hereby declares under penalty of perjury the foregoing
6 Complaint is true to the best of his/her knowledge, information and belief
7

8 Dated: April 23, 2018

9 TYLER J INGRAM
10 ELKO COUNTY DISTRICT ATTORNEY

11
12 
13 CHAD B THOMPSON
14 Deputy District Attorney
15 State Bar No 10248
16
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1 **The Issue Of Obtaining The Discovery**

2 **Available In This Matter**

3 **To: The Defendant's Counsel or The Defendant Representing Himself/Herself**

4 The Elko County District Attorney's Office has an open file discovery policy. This
5 means you will be provided with a complete copy of all reports, photos and compact
6 discs received by the DA's Office from the submitting Officer and agency in connection
7 with this case. Private Counsel and/or Defendants appearing without Counsel will be
8 charged a reasonable copying and duplication fee. If this is a misdemeanor case the
9 State believes and avers that by providing a copy of the discovery containing the names
10 and addresses of the witnesses the State may call in its case-in-chief, the State is
11 fulfilling its discovery obligations pursuant to NRS 174.234 (1)(b)(2) which provides that
12

13 (2) The prosecuting attorney shall file and serve upon the
14 defendant a written notice containing the name and last
15 known address or place of employment of any witness the
16 prosecuting attorney intends to call during the case in chief
17 of the State whose name and last known address or place of
18 employment have not otherwise been provided to the
19 defendant pursuant to NRS 171.1965 or 174.235
20

21 Extradition Scope: Adjoining States Only (CA, OR, ID, UT, AZ)

22
23 DA #F-18-00921/ REPORT # 2018-00006159/ OFFICER ORTIZ / AGENCY: ELKO
24 POLICE DEPARTMENT
25
26
27
28

F-18-00921
EW

Case No. EL-JC-CR-F-18 2614

FILED

2018 AUG -7 AM 9:30

IN THE ELKO TOWNSHIP JUSTICE COURT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO
THE HONORABLE ELIAS D. GOICOECHEA, JUSTICE OF THE PEACE

-oOo-

STATE OF NEVADA,

Plaintiff,

V.

KIMBERLY MARIE NYE,

Defendant.

PRELIMINARY HEARING

ELKO CO. DISTRICT ATTORNEY

2018 AUG -7 AM 10:30

COPY

TRANSCRIPT OF PROCEEDINGS

Tuesday, June 26, 2018
Elko, Nevada

APPEARANCES:

For the Plaintiff: Chad Thompson, Esq.
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28 EXHIBITS:

Admitted

29	PX-1	Glass Pipe/Containers	20
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1 THE COURT: Go ahead and be seated.

2 Good morning, we'll be on the record. Today
3 is July [sic] 26th. It's 11:02 in the morning. This is
4 the Elko Justice Court. I'm Elko Justice of the Peace
5 Elias Goicoechea.

6 This is Case No. EL-JC-CR-F-18-2614. This is
7 the State of Nevada versus Kimberly Marie Nye. The
8 record will reflect that Ms. Nye is present in court
9 today, and she is out of custody, with her attorney,
10 Dave Lockie from his law office -- I mean, Dave Loreman
11 from his law office, and Mr. Chad Thompson is
12 representing the State for the District Attorney's
13 Office.

14 We're here on a matter, a criminal complaint
15 filed April 24th alleging about the 29th day of March,
16 at or near the location of the City of Elko, within the
17 County of Elko and the State of Nevada, that the
18 committed following described criminal offense had
19 occurred. Count 1 is possession of a controlled
20 substance.

21 And are the parties ready to proceed with the
22 preliminary hearing?

23 MR. THOMPSON: The State is.

24 MR. LOREMAN: Yes, Your Honor.

25 THE COURT: And do we have witnesses,

1 Mr. Thompson?

2 MR. THOMPSON: The State just has one,
3 Bartolo Ortiz.

4 THE COURT: Mr. Loreman.

5 MR. LOREMAN: Yes, Your Honor, I would be
6 calling also Officer Ortiz, Officer Bogdon,
7 Sergeant Locuson, Ms. Sally Wood [sic], and I believe
8 there would be a representative from the Stockmen's
9 security team as well that was subpoenaed. I am unsure
10 of the name.

11 THE COURT: So we have Officer Bogdon,
12 Sergeant Locuson, Sally Wood [sic], Mr. Loreman?

13 MR. LOREMAN: And a person who is the -- was
14 on security at that time for the Stockmen's.

15 THE DEFENDANT: Nick.

16 THE COURT: Could we get a name?

17 THE DEFENDANT: I think his name is Nick.

18 MR. LOREMAN: What's the name?

19 UNIDENTIFIED SPEAKER: Max --

20 THE DEFENDANT: He's not here.

21 UNIDENTIFIED SPEAKER: -- is here to
22 represent.

23 THE DEFENDANT: Yeah, no, that's not him.

24 MR. LOREMAN: What's your name.

25 MR. TORRES: Marcelino Torres.

1 THE COURT: Who is it?

2 THE DEFENDANT: I do remember him, though.

3 (Whereupon, Mr. Loreman and the Defendant
4 confer)

5 MR. THOMPSON: I'm sorry, what's your first
6 name, sir?

7 MR. TORRES: Marcelino.

8 MR. THOMPSON: Marcelino?

9 MR. TORRES: And Torres is the last name,
10 Marcelino Torres.

11 MR. THOMPSON: Marcelino Torres, got it.

12 THE COURT: All right. So did either party
13 want the rule of exclusion to be invoked?

14 MR. THOMPSON: Yes, please.

15 MR. LOREMAN: Yes, Your Honor.

16 THE COURT: All right. So those of you who
17 have been named as a witness, the rule of exclusion has
18 been invoked. That means you cannot discuss the
19 testimony and/or the facts of the case outside of the
20 courtroom. It does not mean that you can't have
21 conversation, but you can't discuss your testimony
22 and/or the facts of the case. If Mr. Loreman and/or
23 Mr. Thompson come out to talk to you about your
24 testimony, then you can talk with either one of those
25 attorneys; however, you have to be out of the hearing of

1 the other witnesses at that time.

2 And who's going to be called first,
3 Mr. Thompson, Mr. Ortiz?

4 MR. THOMPSON: Officer Ortiz, yes.

5 THE COURT: Officer Ortiz. So the rest of
6 you that have been named as a witness, will you have a
7 seat outside, please.

8 Officer Ortiz, raise your right hand. Do you
9 swear the testimony you're going to provide to the Court
10 today is going to be the truth, the whole truth, and
11 nothing but the truth, so help you God?

12 MR. ORTIZ: I do.

13 THE COURT: All right. Would you have a
14 seat, state your name, and spell your name for the
15 record, please.

16 THE WITNESS: My name is Bartolo Ortiz. The
17 last is spelled O-R-T-I-Z, first is spelled
18 B-A-R-T-O-L-O.

19 THE COURT: Go ahead, Mr. Thompson.

20 BARTOLO ORTIZ

21 (Sworn as a witness, testified as follows)

22 DIRECT EXAMINATION

23 BY MR. THOMPSON:

24 Q. What's your occupation?

25 A. Patrol officer with the City of Elko Police

1 Department.

2 Q. How long have you been with them?

3 A. Eleven years.

4 Q. Have you been trained in the identification of
5 suspected narcotic substances?

6 A. Yes, I have.

7 Q. And do you use a particular kit to do that?

8 A. Yes, we do.

9 Q. And is that called a narcotics identification kit?

10 A. Yes.

11 Q. And have you been trained and certified in its use?

12 A. Yes.

13 Q. Do you recall when that happened?

14 A. I do not know, the training, no.

15 Q. How long ago?

16 A. I don't recall how long ago.

17 Q. Okay.

18 A. But I use it on a daily basis with my patrol
19 functions when I come into illegal narcotics or
20 suspected illegal narcotics.

21 Q. Okay. And as far as having to recertify or
22 anything, is that required in order to use that NIK
23 test?

24 A. No.

25 Q. Okay. And you've done it on how many occasions

1 would you estimate?

2 A. In eleven years?

3 Q. Yes.

4 A. I couldn't count. I couldn't tell you.

5 Q. Lots?

6 A. Yes.

7 Q. All right. I want to direct your attention to the
8 29th of March, 2018.

9 Were you working that particular day?

10 A. Yes.

11 Q. And specifically around the 2:50 hour in the
12 morning, did you get a call to respond to the Stockmen's
13 Casino?

14 A. Yes.

15 Q. And what was the nature of that call for the
16 purposes of your state of mind?

17 A. Disturbance being caused by a male and two females
18 that were together. The disturbance was towards casino
19 staff, security guard.

20 Q. Okay. And again, were you going there with a
21 particular end in mind?

22 A. Yes.

23 Q. What was that?

24 A. To remove the individuals who were causing the
25 disturbance from casino property.

1 Q. Okay.

2 A. The Stockmen's Casino property.

3 Q. So at some point in time, did you show up to the

4 Stockmen's Casino?

5 A. Yes.

6 Q. And that's in the City of Elko, County of Elko,

7 State of Nevada?

8 A. Yes.

9 Q. And where did you first go?

10 A. Main entrance, front desk area. The slot machines

11 are right next to the front desk --

12 Q. Okay.

13 A. -- the checkouts.

14 Q. And who did you encounter there?

15 A. I saw Sergeant Locuson, Corporal Daz, Officer Bogdon

16 speaking with the female.

17 Q. So three other officers --

18 A. A female and then the -- a security, a security

19 guard.

20 Q. And do you remember who that security guard was?

21 A. Nicholas, Holt (phonetic). I don't know if I'm

22 pronouncing it right, Holburt (phonetic), Hurlbolt

23 (phonetic).

24 Q. Okay. Did you spell that in your report?

25 A. Yes, I did.

1 Q. And do you -- is it H-U-R-L-B-U-R-T?

2 A. Yes.

3 Q. However you pronounce it, but that's the spelling?

4 A. Yes.

5 Q. Okay. So those individuals were all at this front
6 desk/slot machine area?

7 A. Yes.

8 Q. And you said the female that was there, is that
9 female in the courtroom with us today?

10 A. Yes.

11 Q. Would you state where she's seated and describe what
12 she's wearing.

13 A. She's seated to my left, your right, light brown
14 long hair in a ponytail, wearing glasses, and a white
15 and grey dress shirt.

16 MR. THOMPSON: Okay, may the record reflect
17 the identification --

18 THE WITNESS: Striped shirt.

19 MR. THOMPSON: -- of the Defendant.

20 THE COURT: The record will so show.

21 BY MR. THOMPSON:

22 Q. Okay. So when you got there, who did you interact
23 with first?

24 A. Actually, I was the last officer to get there, and I
25 was just -- I was in the back listening to what was

1 going on basically.

2 Q. Okay. Did you speak with this security officer,
3 Nicholas Hurlburt?

4 A. Yes.

5 Q. Okay. And at some point in time, as a result of
6 speaking with him, did you end up arresting Ms. Nye, or
7 the Defendant in this case?

8 A. Yes.

9 Q. And again, for the purposes of your state of mind,
10 what was it that Mr. Hurlburt told you about Ms. Nye?

11 A. She just -- she's been belligerent, had been cut off
12 from drinking alcohol at their establishment, and wanted
13 her to move on. That's all he wanted, her to move on.
14 She saw that she was causing a disturbance with the
15 police now, so it reminded him that she'd been
16 previously trespassed, was going to go get the trespass
17 notice. And as she refused to leave, he would wish to
18 place her under citizen's arrest.

19 Q. Okay. And did she refuse to leave?

20 A. Yes.

21 Q. Did you ask her to leave?

22 A. Everyone there asked her to leave. She continued to
23 gamble, smoke a cigarette, drink her alcohol --

24 MR. LOREMAN: I'd object, Your Honor, it's
25 nonresponsive. The question was: Did you ask her to

1 leave and --

2 THE WITNESS: Yes, I asked her to leave.

3 BY MR. THOMPSON:

4 Q. How did she respond?

5 A. She wasn't going. She refused to leave.

6 Q. What did she do?

7 A. Continued to do what she was doing, gambling and
8 drinking, smoking a cigarette.

9 Q. Okay. Did other people ask her to leave as well?

10 A. Yes.

11 Q. And how did she respond to those people?

12 A. She refused.

13 Q. And you said Mr. Hurlburt, did he ask her to leave?

14 A. Yes, he did.

15 Q. While you were there?

16 A. Yes.

17 Q. And again, did she --

18 MR. LOREMAN: Objection, that wasn't for
19 state of mind. I would object on hearsay.

20 MR. THOMPSON: It's a question. It's not --
21 there's no offering of the truth of the matter asserted.
22 It's a question that is offered to her. We're offering
23 it for context purposes for her response.

24 THE COURT: Anything else, Mr. Loreman?

25 MR. LOREMAN: The offer is the statement was

1 made to say that she was asked by Mr. Hurlburt to leave
2 the establishment. For the truth of that matter, we
3 don't have the witness here in this court today that can
4 testify to that. He is unavailable.

5 THE COURT: It will be overruled.

6 MR. LOREMAN: There's no context.

7 MR. THOMPSON: It's not hearsay.

8 THE COURT: Overruled.

9 BY MR. THOMPSON:

10 Q. Okay. Did Mr. Hurlburt ask her to leave?

11 A. Yes.

12 Q. And how did she respond to that question or demand?

13 A. She just refused.

14 Q. And she kept staying there?

15 A. Yes.

16 Q. Kept gambling?

17 A. Yes.

18 Q. And you said she had a cigarette?

19 A. She had a drink and her pack of cigarettes on the
20 slot machine area.

21 Q. All right. So you said at some point in time,
22 Mr. Hurlburt went to go get a piece of paper?

23 A. Yes.

24 Q. Okay. And, again, what was -- did he provide that
25 to you?

1 A. Yes.

2 Q. All right. And for purposes of your state of mind,
3 what was that piece of paper?

4 A. It was a trespass notice with the female we were
5 having contact with, her name, the date and time she was
6 trespassed, the reason why she was trespassed, and then
7 her picture on the trespass notice.

8 Q. Okay. I'm showing you Exhibit 3 here. Do you
9 recognize that?

10 A. Yes. This is a copy of the trespass form. The
11 original one is actually clear, and it shows her
12 picture.

13 Q. You can actually see the picture of her?

14 A. Yes.

15 Q. And does the picture match the Defendant here?

16 A. Yes.

17 Q. Okay. And what was the date that this was issued?

18 A. After reviewing it, the date issued was March 21st,
19 2018.

20 Q. Okay. And Mr. Hurlburt provided you with that copy?

21 A. Yes, he did.

22 Q. And then, again, you ended up placing her under
23 arrest then at some point?

24 A. Yes.

25 Q. And why was that?

1 A. Mr. Hurlburt, in my presence, told the female I'm
2 placing you under citizen's arrest.

3 Q. Okay. Because this was what time in the morning?

4 A. 2:50, 3:00 in the morning.

5 Q. All right. But he placed her under citizen's arrest
6 in your presence?

7 A. Yes.

8 Q. So what did you do at that point?

9 A. I asked her to get up, she was under arrest. She
10 got a little belligerent with the officers. I had to be
11 assisted by Corporal Daz in placing the handcuffs on
12 her, and I escorted her out.

13 Q. Okay. Could you describe "a little belligerent with
14 officers?"

15 A. She was going off, yelling, cursing at us, even to
16 the point one of the officers, Officer Bogdon, telling
17 her -- telling him -- this is her state of mind --

18 MR. LOREMAN: Objection, hearsay.

19 MR. THOMPSON: It's a statement by the
20 Defendant.

21 MR. LOREMAN: A statement by Officer Bogdon.
22 That was what Officer Bogdon said.

23 BY MR. THOMPSON:

24 Q. Were you about to give us Officer Bogdon's statement
25 or yours?

1 A. No, my statement. I was going to give you my
2 statement.

3 Q. What you told Officer Bogdon?

4 A. No.

5 Q. Okay. I want you to tell us what she said when she
6 was being belligerent.

7 A. In my presence, what I heard coming out of her mouth
8 was to fuck off, that she's going to get off on this.
9 She's going to have her stepdad or her dad get her off
10 on the charge. She told Officer Bogdon to bend her over
11 and fuck her. That was her state of mind in that --
12 that morning.

13 Q. Okay. Now, have you seen other people who are
14 intoxicated?

15 A. Yes.

16 Q. Did she exhibit signs of somebody who was
17 intoxicated?

18 A. Yes.

19 Q. All right. And so you guys placed her in handcuffs,
20 and what did you do with her at that point?

21 A. Grabbed her belongings, escorted her out, at one
22 point kind of lifting her up and moving her. Then she
23 walked off on her own outside.

24 Q. With regards to her belongings, what belongings did
25 she have with her?

1 A. Just her backpack, her stuff with her, her personal
2 belongings.

3 Q. Okay. Did she say anything about that backpack?

4 A. She wanted to pass it on to a friend.

5 Q. Okay. Were there any friends around?

6 A. No.

7 Q. There was nobody else with her?

8 A. No.

9 Q. The whole time you were dealing with her, she was
10 there by herself?

11 A. Yes.

12 Q. And when you tried to get her to go to the car and
13 stuff, was she cooperating or walking?

14 A. At the end, yes.

15 Q. Okay. Was there a time that she wasn't?

16 A. From the casino floor to my -- to our car, kind of
17 had to grab her and force her out.

18 Q. You had to carry her?

19 A. Not carry her, no.

20 Q. Okay. And so --

21 A. Just move her along.

22 Q. Just move her along?

23 A. Yes.

24 Q. All right. Was she belligerent the whole time to
25 the car?

1 A. Yes.

2 Q. All right. And then were you the one that
3 transported her to the jail?

4 A. Yes.

5 Q. Was her mood still the same or different in the car?

6 A. The same.

7 Q. Did she continue to make those threats and such to
8 you there?

9 A. Yes.

10 Q. When you get to the jail, what did you do at that
11 point?

12 A. Deputies come out. They took custody of the female.
13 They started the booking process by searching her. I
14 grabbed her property. I inventoried her backpack before
15 having it placed in the property bin at the jail.

16 Q. Okay. Now, do you normally search somebody incident
17 to arrest, like on the premises?

18 A. At the time of the arrest, yes.

19 Q. Okay. And did you do that in this case?

20 A. No.

21 Q. And why is that?

22 A. Just because of how she was acting.

23 Q. What do you mean by that?

24 A. I didn't feel safe to do it on-scene, how she was
25 acting. I felt that I needed to get her -- remove her

1 from the scene and take her straight to jail.

2 Q. Okay. So when you got to the jail, the jail staff
3 took her?

4 A. Yes.

5 Q. And then you took her property, her purse or
6 whatever it was?

7 A. Yes.

8 Q. And you went through that as part of an inventory
9 process?

10 A. Yes.

11 Q. Did you find anything of note when you were going
12 through that bag?

13 A. Yes.

14 Q. What did you find?

15 A. In the main compartment, I found a sunglass case.
16 Inside the sunglass case, there was a burnt glass pipe,
17 and then a black container, probably like a film
18 container, a little black container with a white crystal
19 substance inside.

20 Q. Okay. And anything else?

21 A. And then on the main compartment on the side pocket,
22 there was a clear container with some more white crystal
23 substance inside.

24 Q. Okay. Show you what's marked here as Exhibit 1 --
25 did you take photographs of these items afterwards?

1 A. Yes, I did.

2 Q. Showing you Exhibit 1, do you recognize what's being
3 depicted there?

4 A. Yes.

5 Q. And did you take these photographs?

6 A. Yes, I did.

7 Q. Okay. Are these the glass pipe and the containers
8 that you've described?

9 A. Yes.

10 Q. Is that a fair and accurate representation of them
11 as you saw them on that day after you found them in the
12 bag?

13 A. Yes.

14 MR. THOMPSON: We'll offer Exhibit 1.

15 THE COURT: Any objections, Mr. Loreman?

16 MR. LOREMAN: For the purposes of the prelim,
17 no objections.

18 THE COURT: Number 1 will be admitted.

19 (Whereupon, Plaintiff's Exhibit 1 admitted)

20 BY MR. THOMPSON:

21 Q. All right. And so could you just point out which
22 were the items that you found in the one compartment and
23 which were inside the sunglasses.

24 A. This sunglass case, the pipe, and the black
25 container were found within the sunglass case in the

1 main compartment of the backpack. The clear white
2 container was found in the side pocket of the main
3 compartment.

4 Q. Of the bag?

5 A. Of the bag.

6 Q. Not the sunglass case?

7 A. No, not the sunglass case.

8 Q. And then showing you Exhibit 2, is this just a
9 close-up of those items with the lids opened?

10 A. Yes.

11 Q. All right. And is that a fair and accurate
12 representation of how you found them?

13 A. Yes.

14 MR. THOMPSON: We'll offer Exhibit 2.

15 THE COURT: Any objections?

16 MR. LOREMAN: Same, Your Honor, no objections
17 for the purposes of the prelim.

18 THE COURT: So number 2 will be admitted
19 without objection.

20 (Whereupon, Plaintiff's Exhibit 2 admitted)

21 BY MR. THOMPSON:

22 Q. Okay. Did you take any steps to try and identify
23 this white substance?

24 A. Yes.

25 Q. What did you do?

1 A. I used the NIK kit, narcotics identification kit,
2 for methamphetamine. I looked at it. In my training
3 and experience, it appeared to be like meth so I grabbed
4 a NIK kit. I tested both of them separately in both
5 containers.

6 Q. So you tested both of the white substances from both
7 --

8 A. The one in the black -- the one in black and the one
9 in the clear one.

10 Q. All right. And did you do that according to your
11 training and experience with the NIK test?

12 A. Yes.

13 Q. And did you get a result?

14 A. Yes.

15 Q. What was that?

16 A. It was a presumptive positive test for meth.

17 Q. For both of the vials?

18 A. For methamphetamine, yes.

19 Q. Did you do anything to try and obtain a weight --

20 A. Yes.

21 Q. -- of how much was in there?

22 A. Yes.

23 Q. And how did you go about doing that?

24 A. I weighed each container separately, and I just got
25 -- I obtained a gross weight, the weight with -- just

1 basically the container and the meth.

2 Q. So basically, as we see them with --

3 A. As we see is how I weighed it.

4 Q. With their lids off?

5 A. Just how you see it. Just how it is on the picture.

6 I believe it's going to be example -- or Exhibit 1.

7 Q. Well, so how did you weigh it? What did you use?

8 A. The black and the clear containers, that's how I
9 weighed them.

10 Q. Okay. With the lids on?

11 A. Yes, just a gross. It wasn't a net weight with just
12 the methamphetamine.

13 Q. And what were the weights?

14 A. I don't recall. I'd have to review my report for
15 that one.

16 Q. Would that help to refresh your memory to do so?

17 A. Yes.

18 MR. THOMPSON: May the witness be allowed to
19 do so?

20 THE COURT: He may.

21 BY MR. THOMPSON:

22 Q. This is Exhibit 5. Is that a copy of your report?

23 A. (No audible answer)

24 Q. Just read it to yourself.

25 A. Yes.

1 Q. Does that help to refresh your memory?

2 A. Yes.

3 Q. Okay. Did that help to refresh your memory?

4 A. Yes, it did.

5 Q. All right. What were the weights that you got?

6 A. 2.28 in the black container and 10.08 grams in the
7 clear, both grams. Again, that was a gross weight with
8 everything together.

9 Q. Okay. And then what did you do with those two
10 containers?

11 A. I properly packaged everything into evidence and
12 placed it into evidence -- in our evidence locker at the
13 Elko Police Department.

14 Q. All right. And that's where they are at this time?

15 A. Yes.

16 Q. Okay. And at some point, did you identify the
17 Defendant by name?

18 A. Yes.

19 Q. And how did you go about doing that?

20 A. Identified her on-scene. She identified herself as
21 Kimberly Nye and provided her date of birth.

22 MR. THOMPSON: I'll pass the witness.

23 THE COURT: Thank you, Mr. Thompson.

24 Mr. Loreman, cross.

25 MR. LOREMAN: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. LOREMAN:

3 Q. Officer Ortiz, when you arrived at the casino, you
4 were under the impression that there was a male and
5 another female, correct?

6 A. A male and two females, yes.

7 Q. So there was a male and another female that was in
8 your call, correct?

9 A. Yes.

10 Q. And did you do anything to find that male and other
11 female?12 A. The officers on-scene did. I was the last to
13 arrive, sir.

14 Q. But I'm asking you, did you do anything?

15 A. No.

16 Q. Okay. Now, in reviewing your report, I believe you
17 stated my client asked her backpack to go with a friend.

18 A. Yes.

19 Q. Do you remember what your statement to her was that
20 you wrote in the report?21 A. About her -- that property -- is it the statement
22 about the property per policy has to go with her?23 Q. Well, you said that I advised Nye all property on
24 her person would go to the jail with her.

25 A. Yes.

1 Q. Okay. And what policy is that?

2 A. That's within our Elko Police Department policy. I
3 don't recall that at the time, no.

4 Q. Okay. Is there any -- do you know any specific
5 number to that policy?

6 A. No.

7 Q. Do you usually impound vehicles when you stop them
8 if there's a person that can take the vehicle in say a
9 driving under the influence case?

10 A. I've done that before.

11 Q. Where you've let a person take the car --

12 A. Yes.

13 Q. -- that's in the vehicle?

14 A. If it's within a reasonable time, yes.

15 Q. Okay. And if someone has a wallet, they can give it
16 to somebody that is there as well, correct?

17 A. Do I do that or --

18 Q. Yeah.

19 A. I don't understand the question.

20 Q. Well, do you always take property no matter where it
21 is just to take it?

22 A. Yes, I do.

23 Q. Why?

24 A. So I can later on not be called out for a theft.

25 I've had that happen before.

1 Q. If you give that property to someone else that's
2 there that she is -- she would have been giving it to
3 them, how is that being brought up on a theft?

4 A. My experience in the past, if items are given out to
5 friends, acquaintances, family members, when the
6 individual or arrestee bails out, there's been times
7 where that property that was given over before that
8 individual went to jail, it's not being returned back
9 and they call up.

10 Q. And you have three officers there watching?

11 A. Uh-huh.

12 Q. And you have security cameras, correct?

13 A. Yes.

14 Q. So how would that not protect you from being accused
15 of theft?

16 A. Not accuse me, the individual that was -- it's given
17 to.

18 Q. And why is that your problem?

19 A. Why is that my problem?

20 Q. Yeah.

21 A. It's not my problem.

22 Q. So if you give somebody the property that they don't
23 want to go with them if they're going to jail, why is
24 that an issue with you?

25 A. I want to avoid a theft report when they bail out.

1 Q. No, that wasn't your testimony on direct. I believe
2 your testimony was you didn't have -- there was nobody
3 there to give it to.

4 A. Isn't that what you said?

5 A. Yes, I did, yeah.

6 Q. Okay. Did you actually look for somebody?

7 A. No.

8 Q. So you don't know if there was somebody to give it
9 to or not, correct? You never tried.

10 A. There was no one in the immediate area, no.

11 Q. But you never tried?

12 A. No.

13 Q. Now, when you do an inventory check of property at
14 the jail, do you normally not fill out a form with the
15 inventory on it?

16 A. No.

17 Q. So you do fill out an inventory form?

18 A. I don't fill one out.

19 Q. Why not? What's the use of an inventory without an
20 actual inventory?

21 A. That's the deputies' job to do that. They do it in
22 there. I don't book them in.

23 Q. So you were doing something that the deputies were
24 supposed to be doing?

25 A. They would do it in the booking process when they

1 inventory everything, yes.

2 Q. Okay. So why were you doing it?

3 A. Because I had not inventoried it on the scene.

4 Q. So you stated you're doing an inventory, but yet,
5 you never did an inventory?

6 A. I did an inventory, but I didn't do their job. When
7 a deputy - in the booking process, deputies search
8 them, take them in the cell. They do a strip search.
9 They put them in a holding cell, the arrestee in a
10 holding cell. Depending on what they're doing and when
11 that arrestee came in, they'll take them back out and
12 then start the booking process, fingerprints, pictures,
13 and then start going through their property bin and
14 everything enters into their system.

15 Q. So they would then do the inventory search and write
16 everything down, correct?

17 A. Yes.

18 Q. Okay. And you did another inventory search before
19 that, correct?

20 A. I did it before they took custody of her.

21 Q. Okay. Why would you do an inventory search if
22 they're going to do an inventory search?

23 A. Because I didn't do my own outside.

24 Q. Why would you do any inventory search if you're
25 bringing that property in for them to do an inventory

1 search?

2 A. Anything that the deputies are called where --
3 they're going to call me later.

4 Q. Okay. If you have a policy of doing an independent
5 inventory search, why don't you have anything written
6 down showing an inventory?

7 A. I didn't do one.

8 Q. Okay. Why doesn't the Sheriff have anything down
9 for an inventory?

10 A. They should have an inventory in the --

11 Q. And if they don't?

12 A. -- in the booking.

13 Q. Why wouldn't they have it?

14 MR. THOMPSON: I'm going to object. He
15 doesn't have personal knowledge --

16 THE WITNESS: I don't know.

17 MR. THOMPSON: -- as far as whatever the
18 Sheriff's Office has.

19 MR. LOREMAN: Well, Your Honor, he was
20 testifying as to the procedure of the arrest so I wanted
21 to know if he knows why the Sheriff would not have an
22 inventory if they're supposed to do an inventory search.

23 MR. THOMPSON: I would object. He doesn't
24 have personal knowledge of that.

25 THE COURT: Sustained.

1 BY MR. LOREMAN:

2 Q. So as far as you know, you didn't have an inventory,
3 correct?

4 A. No.

5 Q. And as far as an inventory that, under your
6 policies, the Police Department, you're there to
7 determine what is in the bag so that you, at a later
8 time, don't get called on the carpet for stealing
9 things, correct?

10 A. Correct.

11 Q. And primarily for valuables, correct?

12 A. No.

13 Q. What else is it for?

14 A. Any illegal contraband.

15 Q. Well, that's not an inventory search, sir, is it?

16 A. What's that?

17 Q. An inventory search is not to determine if there's
18 illegal -- anything in that bag. An inventory search is
19 to determine what's in the bag, correct?

20 A. I still don't understand what you're asking, sir.

21 Q. Well, your policy you were talking about earlier,
22 you stated that the policy was to determine what was
23 there so that you would not at a later date be called
24 for any kind of theft of items within the person's
25 property, correct?

1 A. Not me, no.

2 Q. Isn't that the policy for an inventory search?

3 A. I didn't say that.

4 Q. You didn't testify to that earlier?

5 A. I did not testify for me stealing, no.

6 Q. No, I'm asking you what the policy for the Police

7 Department is for an inventory search.

8 A. For an inventory search?

9 Q. Yes.

10 A. In regards to what?

11 Q. Well, don't you have a policy about doing an

12 inventory search? What is it for? What's the purpose

13 of an inventory search?

14 A. For a vehicle? For a person? For --

15 Q. I'm asking you, what is the policy for an inventory

16 search?

17 A. To gather all the information on whatever you're

18 searching and document that.

19 Q. Okay. And why would you need an inventory search?

20 A. So that officer, another person, or for example, a

21 tow -- tow companies, the tow truck, nothing is -- when

22 you inventory a car, you write everything down so it

23 notes that everything is in there, and it doesn't get

24 stolen.

25 Q. Okay. And you just stated you write everything

1 down, but that's something you didn't do in this case,
2 correct?

3 A. No.

4 MR. THOMPSON: Asked and answered, I'm going
5 to object.

6 THE COURT: Sustained.

7 BY MR. LOREMAN:

8 Q. Do you have any basis or reason why you went beyond
9 an inventory search and decided to open up containers
10 within the bag?

11 A. I don't understand your question.

12 Q. Well, once you saw that there was -- what the --
13 there was this container and this container, what was
14 the necessity for an inventory search to open those
15 containers?

16 A. To see what was in the containers within the bag.

17 Q. And the bag was at the Police Department -- or at
18 the Sheriff's Office. It was presumably in custody, and
19 you didn't have a warrant, correct?

20 A. No.

21 Q. Now, you -- earlier you testified, and I believe it
22 is Exhibit -- State's Exhibit 3, that it was a copy of a
23 form shown to you by a Stockmen's employee, correct?

24 A. Yes.

25 Q. And are you aware or did you have any knowledge as

1 to whether this, in fact, had ever been made -- have
2 notice to the Defendant in this case?

3 A. It's on the trespass notice.

4 Q. Where is it noticed that she got a copy of this?

5 A. Can I see that? It's date of issued was March 21st,
6 was notified on the 20th, notified by Jackie?

7 Q. Are you sure that that's what that means?

8 A. That's what I took it as.

9 Q. Okay. Do you know that that form down below says
10 notified. Is there anything next to that?

11 A. On the bottom or --

12 Q. Yes, in the body.

13 A. Date notified, March 20, 2018.

14 Q. No, there's a notified in the body of that --

15 A. Reason for eighty-sixed?

16 Q. Under it.

17 A. Notified on?

18 Q. There's no date, correct? There's nothing.

19 A. March 20th, 2018. There's two of them.

20 Q. Direct your attention to the --

21 A. Okay.

22 Q. Is there anything by it?

23 A. No.

24 Q. Okay. And did you ask the Stockmen's employee if,
25 in fact, she had been notified?

1 A. He told me she was notified. I didn't ask, no.

2 Q. I actually didn't ask you what he said. I asked you

3 --

4 A. Okay, no.

5 Q. -- if you asked him.

6 A. No, I did not ask, no.

7 Q. Okay. Now, in your callout, you had been called out
8 for a male and two females, correct?

9 A. Yes.

10 Q. And you had arrested my client, but there has been
11 no action -- there was no action taken against a male
12 and another female, correct?

13 A. No.

14 Q. Okay. Now, a quick question about your report, and
15 this may just be bad diction, but it states that the
16 citizen's arrest form and permanent trespass form were
17 attached to your initial report. And as I reviewed
18 this, this says this is your initial report. You don't
19 have any other report then the one that we've been
20 presented with, correct?

21 A. I don't understand your question. What are you
22 trying to ask me?

23 Q. It seems to say there could be a possible second
24 report. Have you only done one report in this matter?

25 A. It reads initial report, correct?

1 Q. Yes.

2 A. Yes, that's my initial report.

3 Q. Okay. So there is no other report?

4 A. There could be another report. If there was a
5 supplement request, it would be noted as a supplement
6 report.

7 Q. Well, I'm just referring to your language here. It
8 states --

9 A. Correct.

10 Q. -- that I later attached the citizen's arrest form
11 and permanent trespass form to my initial report. It
12 doesn't say to this initial report.

13 A. Correct.

14 Q. So I just want to make sure, this is the only report
15 that we have?

16 A. Correct.

17 Q. Okay. Now, were you requested by the District
18 Attorney's Office to obtain video surveillance at the
19 time of the incident?

20 A. Yes, I was.

21 Q. And did you take any action to obtain that video
22 surveillance?

23 A. Yes, I did.

24 Q. And what happened?

25 A. They would say they'd get to it.

1 Q. Okay. And at the present time, is there any video
2 surveillance left of this incident?

3 A. No.

4 Q. And just to clarify, when you were engaging with
5 Ms. Nye, you stated that she had a pack of cigarettes
6 and a drink by the machine, correct?

7 A. Yes.

8 Q. And when you and Officer Daz or Corporal Daz
9 handcuffed her, she did not have the backpack on,
10 correct?

11 A. Uh --

12 Q. It was not hanging -- she didn't have it on her
13 arms? She didn't have to take it off, correct?

14 A. I don't recall on that. I don't recall if she had
15 it on or if it was down to the side by her feet.

16 Q. Could it have been sitting down on her feet?

17 A. I don't recall.

18 Q. I didn't ask if you recall. It could have been? Is
19 that a possibility?

20 A. It's a possibility, yes.

21 Q. Okay. Well, you were very specific with the fact
22 that she had cigarettes and a drink on the machine. I
23 thought you'd have some kind of recollection of the
24 backpack. You weren't given the backpack. You picked
25 it up, correct?

1 A. I don't recall.

2 Q. Okay.

3 MR. LOREMAN: I'd pass the witness.

4 THE COURT: Mr. Thompson, redirect.

5 REDIRECT EXAMINATION

6 BY MR. THOMPSON:

7 Q. Just to clarify, you had previously testified that
8 Mr. Hurlburt had asked her to leave, and I just -- as
9 far as him presenting you with Exhibit 3, which was the
10 trespass form, had he asked her to leave before he
11 provided you with that form?

12 A. Yes.

13 Q. And she had refused to leave at that point?

14 A. She --

15 Q. Well, when he asked her to leave, she refused to go?

16 A. Yes.

17 Q. And then he went and got the permanent 86 form?

18 A. Yes.

19 Q. Okay.

20 MR. THOMPSON: I don't have anything else.

21 MR. LOREMAN: And, Your Honor, I entertain
22 the same objection for the record that I object, that
23 that's hearsay information and it should be stricken.

24 MR. THOMPSON: The Court's already ruled on
25 this.

1 MR. LOREMAN: I understand that. This is for
2 the record.

3 THE COURT: All right, Mr. Loreman, we'll
4 take it.

5 Would you like Mr. Ortiz to be excused, or
6 can he be retained -- or should he be retained?

7 MR. LOREMAN: I've asked the questions I
8 needed to ask him pursuant to my subpoena.

9 MR. THOMPSON: He can be excused as far as
10 I'm concerned.

11 THE COURT: All right. Officer Ortiz, you're
12 excused.

13 MR. ORTIZ: Thank you, sir.

14 THE COURT: Just make sure until the
15 conclusion of the case you don't discuss anything with
16 the other witnesses, please.

17 MR. ORTIZ: So I've been excused?

18 THE COURT: You've been excused.

19 MR. ORTIZ: Okay, thank you.

20 THE COURT: Mr. Thompson.

21 MR. THOMPSON: The State rests.

22 THE COURT: Mr. Loreman.

23 MR. LOREMAN: I'd call Sally Wood [sic].

24 THE COURT: Ms. Wood [sic], will you raise
25 your right hand. Do you swear the testimony you're

1 going to provide to the Court today will be the truth,
2 the whole truth, and nothing but the truth, so help you
3 God?

4 MS. WOODS: I do.

5 THE COURT: All right. Have a seat and state
6 your name and spell your name for the record, please.

7 THE WITNESS: Sally Woods; S-A-L-L-Y,
8 W-O-O-D-S.

9 THE COURT: Mr. Loreman, go ahead.

10 MR. LOREMAN: Thank you, Your Honor.

11 SALLY WOODS

12 (Sworn as a witness, testified as follows)

13 DIRECT EXAMINATION

14 BY MR. LOREMAN:

15 Q. Ms. Woods [sic], were you an employee of the
16 Stockmen's property group back in March of this year,
17 2018?

18 A. Yes, I was.

19 Q. And what was your job at the casino?

20 A. I had just started training EOD, executive on duty.

21 Q. Okay. And were you on duty somewhere on or about
22 March 21st of '18, 2018?

23 A. Oh, my gosh. It depends on what time. I don't
24 remember far back, how far back. Do you have a time?

25 Q. I'm going to hand you what's been marked as

1 State's Exhibit 3.

2 Do you recognize that form?

3 A. Yes.

4 Q. Okay. And is that your signature at the bottom?

5 A. It is.

6 Q. Now, in that -- on that form, it talks about a
7 reason for eighty-six. So this is an eighty-six record
8 form, correct?

9 A. Yes.

10 Q. Okay. And it does a -- it says permanent as well,
11 correct?

12 A. Yes.

13 Q. And the person who it's for is Kimberly Nye?

14 A. Yep.

15 Q. And do you know personally Kimberly Nye?

16 A. I do not.

17 Q. Okay. At the time, was this something that you
18 filled out?

19 A. Yeah, I was actually in charge of filling these out.
20 I would get the information from the other managers, and
21 then I would go on my computer and fill it out and
22 disperse it.

23 Q. Okay. And who is Jackie?

24 A. Jackie is the general manager for the hotel.

25 Q. Okay. And where it says notified by Jackie, is that

1 something where she notified you about the incident?

2 A. Yes.

3 Q. Okay. And down on that form where it says notified
4 on, is that for the person?

5 A. There should have been a date on there.

6 Q. And that would have been where it was -- where the
7 person in this form would be notified, correct?

8 A. Right, right.

9 Q. Okay. So if there's no date on there, would you
10 then, based on your form and how it's done, would then
11 show that there was never notification on her at that
12 time?

13 A. Right. Usually, what happens if we get a thing like
14 this, if the person is not in there at the time, once
15 that person is notified, whoever notifies that person,
16 then comes in and writes on the form notified on this
17 date at this time, and then they sign their name.

18 Q. Okay. So at the present time in the condition this
19 form is in, based on your policies at the casino at the
20 time, this person was not notified?

21 A. Right.

22 Q. Okay. And other than this form, do you have any
23 knowledge, personal knowledge, as to whether
24 Kimberly Nye was notified about this?

25 A. I have none.

1 Q. Okay.

2 MR. LOREMAN: I have nothing further of this
3 witness.

4 THE COURT: Thank you, Mr. Loreman.

5 Mr. Thompson, cross.

6 MR. THOMPSON: Can we go ahead and admit
7 Exhibit 3?

8 MR. LOREMAN: I have no objections to
9 admitting Exhibit 3.

10 THE COURT: State's Exhibit 3 is admitted
11 with no objections.

12 (Whereupon, Plaintiff's Exhibit 3 admitted)

13 CROSS-EXAMINATION

14 BY MR. THOMPSON:

15 Q. So what about this portion up here where it says
16 date notified 3/20/2018 and notified by Jackie?

17 What does that mean?

18 A. This is the date that I issued it, and this is the
19 date that she notified the EOD, and she -- that's who
20 notified it. So notified down here is when the person
21 is actually --

22 Q. Is when the person's actually notified?

23 A. Right, correct, yeah.

24 Q. Okay, all right. But this would have been the EOD
25 --

1 A. When the EOD gets notified.

2 Q. Who was Jackie?

3 A. No, Jackie is general manager. I was the EOD on
4 duty.

5 Q. So Jackie told you. Notified by was Jackie.

6 A. Right, yep. And then I go and make the form --

7 Q. Gotcha.

8 A. -- and then I disperse all the forms to all the
9 areas that need it, and then whoever notifies that
10 person -- because a lot of times, the person is not in
11 there when we eighty-six them.

12 Q. When you eighty-six them, I gotcha.

13 A. Right.

14 Q. Okay. And then once you fill this out, then what do
15 you do with the form?

16 A. I take the form downstairs to the general manager,
17 and she looks through it and makes sure everything is
18 okay on it, and then she signs off on it.

19 Q. Okay. And then what happens after that?

20 A. Then I make the copies, and they go to all the areas
21 that it needs to go to.

22 Q. What does that mean?

23 A. Which would be like one copy would go to the hotel,
24 one copy would go to the cage, and then one copy --

25 Q. For what purpose? Why does it go to them?

1 A. So that they can -- if we have a person that comes
2 in, they can actually look through the book to see if
3 the person is actually eighty-sixed and if they need to
4 be notified.

5 Q. Gotcha, okay.

6 MR. THOMPSON: Nothing else.

7 THE COURT: Thank you. Mr. Loreman, do you
8 have anything else on that?

9 MR. LOREMAN: Yes, Your Honor, just one more
10 question regarding the exhibit.

11 REDIRECT EXAMINATION

12 BY MR. LOREMAN:

13 Q. And you had stated on Mr. Thompson's
14 cross-examination that you would take it down to the
15 general manager, and they would sign off on it. On this
16 form, there is only your signature; is that correct?

17 A. Yeah.

18 Q. So the general manager never signed off on it,
19 correct?

20 A. Correct.

21 Q. So this would then have never been copied and
22 distributed, correct?

23 A. It could have been copied. It probably didn't get a
24 signature.

25 Q. Okay. So there's a possibility the GM never got to

1 sign it?

2 A. Right.

3 Q. Okay.

4 THE COURT: Mr. Thompson, any questions on
5 that?

6 MR. THOMPSON: No.

7 THE COURT: Can this witness be excused --

8 MR. LOREMAN: Nothing further, Your Honor.

9 THE COURT: -- or does she need to be --

10 MR. LOREMAN: Yes, Your Honor.

11 THE COURT: -- retained?

12 So you're excused, however, until the
13 conclusion of this case, please don't discuss your
14 testimony with any of the other witnesses.

15 MS. WOODS: Sounds good.

16 THE COURT: Thank you. Mr. Loreman, your
17 next witness?

18 MR. LOREMAN: Your Honor, I'd call Josh
19 Bogdon, Officer Bogdon.

20 THE COURT: Officer Bogdon, raise your right
21 hand to be sworn. Do you swear the testimony you're
22 going to provide to the Court today is going to be the
23 truth, the whole truth, and nothing but the truth, so
24 help you God?

25 MR. BOGDON: I do.

1 THE COURT: Have a seat, state your name, and
2 spell your name for the record, please.

3 THE WITNESS: Joshua Bogdon, Joshua,
4 J-O-S-H-U-A, Bogdon, B-O-G-D-O-N.

5 THE COURT: Go ahead, Mr. Loreman.

6 MR. LOREMAN: Thank you, Your Honor.

7 JOSHUA BOGDON

8 (Sworn as a witness, testified as follows)

9 DIRECT EXAMINATION

10 BY MR. LOREMAN:

11 Q. Officer Bogdon, who are you employed by?

12 A. Elko Police Department.

13 Q. And how long have you been so employed?

14 A. Since July of 2016.

15 Q. And have you gone through training?

16 A. Yes.

17 Q. And what was that training?

18 A. Approximately four months of basic POST Academy in
19 Carson City and approximately four months in field
20 training here in Elko.

21 Q. Thank you. And on March -- and just for returning
22 your mind to March 29th of 2018, were you on a graveyard
23 shift on that date?

24 A. Yes.

25 Q. And did you have a reason to be called to Stockmen's

1 at approximately 3:00 a.m. in the morning?

2 A. Yes.

3 Q. And was that in regard to a disturbance that was
4 there?

5 A. Yes.

6 Q. Okay. And when did you arrive?

7 A. I'm not sure what time. It was likely around the
8 time of the call.

9 Q. Okay. And was there anybody else there before you
10 got there?

11 A. I don't remember if there was or not.

12 Q. When you arrived, what did you do?

13 A. I went inside the casino.

14 Q. Did you engage with any other individuals in the
15 casino?

16 A. I spoke to a lady named Kimberly Nye.

17 Q. Okay. And when you spoke with Ms. Nye, do you
18 recall where she was at?

19 A. Not initially, no.

20 Q. Okay. When you say "not initially," was there -- at
21 some point did she move?

22 A. I'm not sure if she moved from her original location
23 or not, but I do remember I talked to her later on.

24 Q. Well, when you talked to her later on, where was
25 that?

1 A. Sitting on a casino -- on the casino floor near the
2 northwestern entrance.

3 Q. Okay, when you say "sitting on the casino," was she
4 actually sitting on the floor, or was she at a machine?

5 A. The time that I can recall speaking to her, she was
6 sitting at a machine.

7 Q. Okay. And were you aware as to whether she had a
8 backpack or not?

9 A. She did have at least one bag that I can recall.

10 Q. And was that bag next -- down on the floor next to
11 her?

12 A. Yes.

13 Q. And when she was there, did any other officers come
14 to assist you?

15 A. Yes.

16 Q. And who came to assist you?

17 A. I know at least Sergeant Locuson and Officer Ortiz.
18 I think some others may have passed through, but I don't
19 recall who.

20 Q. Okay. Did you continue to engage Ms. Nye?

21 A. Yes, I stood with her.

22 Q. Okay. Was there any employee of the casino there as
23 well?

24 A. Yes.

25 Q. Was that a security guard?

1 A. I don't remember if it was or not.

2 Q. Okay. Were you there when Ms. Nye was placed in
3 handcuffs?

4 A. Yes.

5 Q. And was that inside the casino?

6 A. Yes.

7 Q. And what do you remember of that -- the cuffing?
8 What do you remember? How did it go?

9 A. I'm not sure specifically. She was placed in
10 handcuffs. It seemed fairly routine. She was somewhat
11 aggressive towards us, but...

12 Q. Was it overly-aggressive or just she was
13 intoxicated?

14 A. A little bit of both.

15 Q. Okay. And when she was being cuffed, did she -- the
16 backpack was still down on the floor, correct?

17 A. I'm not sure if it was or not.

18 Q. Okay. Did you see any officers taking it off of
19 her?

20 A. I don't recall now.

21 Q. But you don't remember seeing that?

22 A. No.

23 Q. Okay. Do you recall what happened after she was
24 handcuffed?

25 A. No.

1 Q. Okay. Were you there?

2 A. After?

3 Q. After she was handcuffed, were you there?

4 A. Yes.

5 Q. Okay. And you don't recall what happened to her
6 after she was handcuffed?

7 A. She was taken outside.

8 Q. Okay. And who took her outside?

9 A. I don't remember who took her outside.

10 Q. Okay. Do you recall her going outside with her
11 backpack on, or was it being carried by an officer?

12 A. I'm not sure if it was or not.

13 Q. Okay. Did you ever pick up the backpack?

14 A. I don't know if I did.

15 Q. Okay. You don't know, or you don't --

16 A. I do not recall.

17 Q. Okay. As far as your part in this incident, did you
18 make any other contacts with any other individuals in
19 the casino that were related to the call that had gone
20 out with regard to the disturbance?

21 A. I had spoken to an employee of the casino at some
22 point.

23 Q. Did you engage any other party, though, besides
24 Ms. Nye?

25 A. No.

1 Q. And you recall the call was for three individuals,
2 correct?

3 A. To my knowledge, it was to two individuals.

4 Q. Two individuals. But you only -- there was only
5 engaged in one individual at the time, correct?

6 A. Yes.

7 Q. And you made no other contacts but Ms. Nye?

8 A. Yes.

9 MR. LOREMAN: I'd pass the witness.

10 THE COURT: Thank you, Mr. Loreman.

11 Mr. Thompson.

12 CROSS-EXAMINATION

13 BY MR. THOMPSON:

14 Q. And was the call that the casino wanted people
15 removed?

16 A. I don't recall if they wanted them removed, but I do
17 know that someone had spilled a drink on somebody else,
18 and there was people inside that were being belligerent.

19 Q. Okay. And so when you got there, were the -- did
20 you ask Ms. Nye to leave?

21 A. I don't recall if I did or not.

22 Q. Okay. Did any security or hotel people ask her to
23 leave?

24 A. I'm not sure either.

25 Q. You weren't the lead officer on this case?

1 A. No.

2 Q. Is that part of the reason why you're having a hard
3 time remembering this?

4 A. Yes.

5 Q. You didn't write a report?

6 A. No.

7 Q. You didn't know that this would be an important
8 thing to remember back then?

9 A. Correct.

10 Q. We're now in June, and we're talking about
11 March 29th. How many other arrests have you been a part
12 of during these other months?

13 A. Probably a hundred.

14 Q. Okay. Dealing with intoxicated people as well?

15 A. Yes.

16 Q. People that need to be removed or they're being
17 belligerent?

18 A. Yes.

19 Q. Some that get arrested; some that don't?

20 A. Yes.

21 MR. THOMPSON: I don't have anything else.

22 THE COURT: Thank you, Mr. Thompson.

23 Mr. Loreman.

24 MR. LOREMAN: Just a couple questions.

25 ///

///

1 REDIRECT EXAMINATION

2 BY MR. LOREMAN:

3 Q. Officer Bogdon, as part of being on the Police
4 Department and going through your training, isn't it
5 true that you have to watch and observe and recount
6 those observations as part of your training?

7 A. Yes.

8 Q. And it's an important thing when you are dealing
9 with something like this where you're supposed to be
10 accurate with your observations, correct?

11 A. Yes.

12 MR. LOREMAN: Okay, thank you, nothing
13 further.

14 THE COURT: Mr. Thompson, anything on that?

15 RECROSS-EXAMINATION

16 BY MR. THOMPSON:

17 Q. But you guys divvy up responsibilities as far as
18 whose call it's going to be when you get there, don't
19 you?

20 A. Can you rephrase that, please.

21 Q. Well, you had four officers show up. How did it
22 turn out to be that this was Officer Ortiz' case?23 A. It was in the beat that he was assigned to that
24 night.

25 Q. Oh, so by area?

1 A. Yes.

2 Q. So when you respond to a different area, there's a
3 higher likelihood that maybe it's not going to be
4 something that you're going to write a report on or be a
5 part of?

6 A. Correct, if we go to a certain area that isn't in
7 the area we're assigned for that night, we're there to
8 perhaps start the investigation, keep the peace. And if
9 the -- who should be the investigating officer is on his
10 way, we keep the area maintained until he gets there.

11 Q. And then let him do the investigation?

12 A. Yes.

13 Q. Gotcha.

14 MR. THOMPSON: Thank you, nothing else.

15 MR. LOREMAN: Nothing based on that.

16 THE COURT: All right, can --

17 MR. LOREMAN: He may be excused.

18 THE COURT: Excused?

19 MR. THOMPSON: Yes.

20 THE COURT: All right, you're excused.

21 However, due to the length or the conclusion of the
22 case, the other witnesses are still under the rule of
23 exclusion.

24 Your next witness, Mr. Loreman.

25 MR. LOREMAN: Lieutenant Locuson.

1 THE COURT: Lieutenant Locuson?

2 MR. LOREMAN: I believe it's Lieutenant
3 Locuson.

4 MR. THOMPSON: I don't know. I think it's
5 sergeant.

6 MR. LOREMAN: Well, I'll find out. It's
7 sergeant.

8 MR. LOCUSON: Yeah, I'm a sergeant.

9 THE COURT: Sergeant Locuson, will you raise
10 your right hand. Do you swear the testimony you're
11 going to provide to the Court today will be the truth,
12 the whole truth, and nothing but the truth, so help you
13 God?

14 MR. LOCUSON: I do.

15 THE COURT: State your name and spell your
16 name for the record, please.

17 THE WITNESS: It's Matthew Locuson,
18 L-O-C-U-S-O-N.

19 THE COURT: Go ahead, Mr. Loreman.

20 MR. LOREMAN: Thank you, Your Honor.

21 MATTHEW LOCUSON

22 (Sworn as a witness, testified as follows)

23 DIRECT EXAMINATION

24 BY MR. LOREMAN:

25 Q. Sergeant Locuson, where are you currently employed?

1 A. For the City of Elko for the Police Department.

2 Q. And how long have you been with the City of Elko
3 Police Department?

4 A. Twenty-one years.

5 Q. And during that time period, one of the things that
6 you're trained and you continue to do is make
7 observations and recount those observations, correct?

8 A. I would suppose, yes.

9 Q. And do you recall if you were on duty on March 29th
10 of 2018?

11 A. Yes, sir.

12 Q. And did you go to a call that was at the Stockmen's
13 Casino?

14 A. Yes, sir.

15 Q. And there were other officers at that time at the
16 casino, correct?

17 A. Yes, sir.

18 Q. Do you recall who was there?

19 A. Officer Ortiz, Officer Bogdon, myself, and I believe
20 Corporal Daz were all there.

21 Q. Okay. And when you were there, did you arrive prior
22 to those other officers, or were you kind of in the mix?

23 A. I -- I don't know, probably -- I -- the fair answer
24 would be in the mix. I don't readily recall who arrived
25 first or last or in between.

1 Q. And when you arrived, did -- was there a person that
2 you had any engagement with as far as this matter that
3 you talked to or anything of that nature?

4 A. I don't -- I know there were people in the casino.
5 I don't remember who I necessarily spoke to or saw.

6 Q. Okay. Do you remember the officers being around
7 Ms. Nye?

8 A. I remember Ms. Nye, yes. I remember her being in
9 the casino near the front desk.

10 Q. Okay. And was she at a machine?

11 A. Uh-huh, yes.

12 Q. Okay. And when she was at that machine, do you
13 recall her having a backpack on her?

14 A. No, not really. I remember her being there. I
15 don't necessarily remember what was with her.

16 Q. Okay. And as far as your recollection, do you
17 recall if there was a backpack sitting down by the
18 machine?

19 A. I don't remember that either. I don't.

20 Q. Were you there when Corporal Daz and Officer Ortiz
21 handcuffed my client?

22 A. I remember her being arrested, yes.

23 Q. And is that handcuffed?

24 A. Generally, yes.

25 Q. Okay. And when they handcuffed her, do you recall

1 whether Officer Ortiz or Corporal Daz removed her
2 backpack to have to handcuff her, or did they just put
3 her hands and her arms together and do her wrists?

4 A. I just remember her getting arrested and handcuffed.

5 Q. Okay. Did you -- did there seem to be any
6 extraneous issues or motion or anything with regard to
7 getting her in the handcuffs by the officers? Did they
8 have to take anything from her?

9 A. I don't recall that.

10 Q. Okay. And in this -- at the time this was going on,
11 did you engage any other patron of the Stockmen's that
12 may or -- or may have been involved in this matter at
13 all?

14 A. I don't remember doing that, no. I remember there
15 were people in the casino, but I don't remember anybody
16 specifically.

17 Q. Okay. And you recall that there were other
18 individuals that were supposedly being belligerent with
19 regard to the casino employees and patrons, correct?

20 A. I believe that was the nature of the call.

21 Q. Okay. But as far as you know from your time there,
22 there was no other person aside from Ms. Nye --

23 A. I --

24 Q. -- that was being engaged by anybody?

25 A. I'm sorry, that was causing a problem? Is that what

1 you're asking me?

2 Q. Well, that there was nobody else that -- who was
3 being engaged by any of the other officers, correct?

4 A. I don't believe so, no.

5 Q. And you didn't engage anybody else?

6 A. No.

7 Q. Okay.

8 MR. LOREMAN: I'd pass the witness.

9 THE COURT: Thank you, Mr. Loreman.

10 Mr. Thompson.

11 CROSS-EXAMINATION

12 BY MR. THOMPSON:

13 Q. Did you talk to Ms. Nye?

14 A. If I did, it was very briefly.

15 Q. Okay. Did anyone ask her to leave the casino?

16 A. I have no idea.

17 Q. Okay.

18 A. I don't know.

19 Q. So you're the sergeant and Corporal Daz -- could you
20 just explain for us the hierarchy as far as who was in
21 charge this night.

22 A. It would have been me.

23 Q. Okay. And then you can delegate, obviously?

24 A. I can delegate authority or like the tasks of the
25 officers, yes.

1 Q. Okay. So how did this end up being Officer Ortiz'
2 case?

3 A. It was probably his beat assignment that night, his
4 responsibility area of town.

5 Q. So the Stockmen's Casino would have been his beat?

6 A. That would have fallen in beat 3.

7 Q. Okay. And then as far as practices regarding other
8 officers who respond, do they -- as far as we know,
9 Officer Ortiz is the only one that wrote a report. Why
10 no other officers write reports on instances like this?

11 A. I would say in this case we didn't, and I didn't
12 feel it was necessary to have the whole shift write a
13 report on this incident. With what I know in this case,
14 what I saw was a simple citizen's arrest for a
15 trespassing. That was corroborated by employees of the
16 Stockmen's and who ultimately made a citizen's arrest of
17 Ms. Nye.

18 Q. Okay. And then you and the other officers had
19 nothing to do with the contraband that was later found
20 by Officer Ortiz at the jail?

21 A. No, sir, I did not go to the jail. There was no
22 reason for us to go to the jail.

23 Q. Okay.

24 MR. THOMPSON: I don't have anything else.

25 THE COURT: Thank you, Mr. Thompson.

1 MR. LOREMAN: Nothing based on that, Your
2 Honor.
3 THE COURT: Can Sergeant Locuson be excused?
4 MR. LOREMAN: Yes.
5 THE COURT: All right. Sergeant Locuson --
6 Mr. Thompson, you're good with that?
7 MR. THOMPSON: Oh, yeah.
8 THE COURT: Okay. So you're excused --
9 MR. LOCUSON: Thank you.
10 THE COURT: -- but please don't discuss your
11 case until the conclusion, please.
12 MR. LOCUSON: Yes, sir.
13 THE COURT: Mr. Loreman, your next witness.
14 MR. LOCUSON: My final witness, Mr. Torres.
15 THE COURT: Mr. Torres, if you'll come up
16 here, please. If you'll raise your right hand to be
17 sworn. Do you swear the testimony you're going to
18 provide to the Court today will be the truth, the whole
19 truth, and nothing but the truth, so help you God?
20 MR. TORRES: I do.
21 THE COURT: All right. Have a seat. State
22 your name and spell your name for the record, please.
23 THE WITNESS: Marcelino Torres-Martines,
24 M-A-R --
25 THE COURT: Go ahead and have a seat so we

1 can get you a little bit closer to the microphone,
2 please.

3 THE WITNESS: Okay.

4 THE COURT: Thank you.

5 THE WITNESS: M-A-R-C-E-L-I-N-O, Martines,
6 M-A-R-T-I-N-E-S, Torres, T-O-R-R-E-S.

7 THE COURT: Mr. Loreman, go ahead.

8 MR. LOREMAN: Thank you.

9 MARCELINO TORRES

10 (Sworn as a witness, testified as follows)

11 DIRECT EXAMINATION

12 BY MR. LOREMAN:

13 Q. Mr. Torres, you're employed with the Stockmen's
14 Casino?

15 A. Yes, sir.

16 Q. And what is your position there?

17 A. I'm a security guard.

18 Q. And were you on duty on March 29th of 2018?

19 A. Yes, I was.

20 Q. At approximately 3:00 in the morning?

21 A. No, sir, I was at 8:00 in the morning.

22 Q. As part of your duties, do you take care of
23 videotape?

24 A. No, sir.

25 Q. And who does?

1 A. EOD's, executive on duties.

2 Q. Do you ever view videotapes?

3 A. No, sir.

4 Q. Is there somebody that watches the videotapes?

5 A. Yes, whoever is in the eight-hour work time. If
6 anybody needs to go see the videotape, that person
7 watches the video.

8 Q. Does videotape -- or does the video cover the area
9 up by the front desk?

10 A. Yes, sir.

11 Q. And are you aware or do you have any knowledge as to
12 why if a police officer has requested certain videotape,
13 that it wasn't produced to him?

14 A. I don't know about that one.

15 MR. LOREMAN: I have nothing further of this
16 witness, Your Honor.

17 THE COURT: Thank you, Mr. Loreman.

18 Mr. Thompson, do you have any questions for
19 the witness?

20 CROSS-EXAMINATION

21 BY MR. THOMPSON:

22 Q. Do you know a security officer by the name of
23 Nicholas Hurlburt?

24 A. Nick?

25 Q. Nick.

1 A. I work with him or I relieved him once in a while,
2 talked a little bit about -- with him.

3 Q. Okay. So you normally work the day shift?

4 A. Yes, sir.

5 Q. And did Nick work the night shift?

6 A. Yes, sir.

7 Q. You didn't work at the same time, though?

8 A. Never, not yet anyway.

9 Q. And if somebody's being belligerent or drunk or
10 stupid at the Stockmen's Casino, what would be you guy's
11 policy or procedure in dealing with that kind of a
12 person? What would be the first thing you do?

13 MR. LOREMAN: Object, beyond the scope of
14 direct.

15 MR. THOMPSON: He's a security guard. I can
16 ask him about his procedures and his job.

17 THE COURT: Go ahead, Mr. Thompson.

18 BY MR. THOMPSON:

19 Q. What would you do?

20 A. First thing, whoever reported anything like that, I
21 would go to the place where the action is being taken,
22 and at the same time, I would be in touch with the
23 executive on duty, and the executive on duty would be
24 with me at the place.

25 Q. Okay. And at what point in time would you ask a

1 person to leave?

2 A. If the person is pretty drunk or is insulting
3 people, then we would do it.

4 Q. Okay.

5 A. Or I would tell EOD or EOD would tell me go ahead
6 and ask him to leave the place.

7 Q. Okay. So you can do that or the EOD can do that?

8 A. If the EOD gives me permission, otherwise, she's the
9 one or he's the one that's supposed to do it.

10 Q. Okay. And so do you know who the EOD would have
11 been for the night shift? Who's that?

12 A. Right now?

13 Q. Well, back on March 29th.

14 A. I'm not sure at that time.

15 Q. Would there be an EOD during the night shift?

16 A. Yes, sir.

17 Q. Okay.

18 MR. THOMPSON: I don't have anything else.

19 THE COURT: Thank you, Mr. Moreman. Do you
20 have any redirect?

21 MR. MOREMAN: Nothing based on that, Your
22 Honor.

23 THE COURT: And Mr. Torres, can he be
24 excused?

25 MR. THOMPSON: Yes.

1 MR. LOREMAN: Yes.

2 THE COURT: And are you resting, Mr. Loreman?

3 MR. LOREMAN: Just for the record, Your
4 Honor, I believe the Stockmen's was not responsive to my
5 subpoena. I asked for an employee that was on duty at
6 2:50 a.m. from the Stockmen's. Clearly, Mr. Torres was
7 day shift and wasn't on duty at that time. So the
8 Stockmen's did not send the employee for that time
9 period.

10 THE COURT: Thank you, Mr. Loreman.

11 Mr. Torres, you've been excused. You can --
12 you're free to go.

13 MR. TORRES: Thank you, sir.

14 THE COURT: You're welcome.

15 MR. LOREMAN: I have no other witnesses, Your
16 Honor.

17 THE COURT: No other witnesses, and being
18 we've excused everybody, we have no rebuttal?

19 MR. THOMPSON: No.

20 THE COURT: Closing.

21 MR. THOMPSON: I'll waive the initial.

22 THE COURT: Go ahead, Mr. Loreman.

23 MR. LOREMAN: Your Honor, specifically, my
24 argument on this is that the State did not show that
25 there was a basis or reason for the actual arrest.

1 There was nobody here that testified as to the citizen's
2 arrest. The person who did it is not -- was not in
3 court to be present to testify that he, in fact, did
4 make a citizen's arrest.

5 So there's no evidence that the citizen's
6 arrest -- no competent evidence that a citizen's arrest
7 was made. Therefore, any search would be inappropriate
8 in this case, and I would submit that based on that, the
9 evidence with regard to any drugs that were found in the
10 backpack should not be -- should be stricken from the
11 record in this matter and not be bound over.

12 THE COURT: Thank you, Mr. Loreman.
13 Mr. Thompson.

14 MR. THOMPSON: It sounds like Mr. Loreman was
15 making a motion to suppress there basically, but he
16 didn't file anything beforehand, and he didn't even use
17 those particular words in this particular argument that
18 he's made. We showed slight or marginal evidence that
19 she was in possession of methamphetamine. That's what
20 we have to show here.

21 With regards to the -- putting her in custody
22 and as far as the search of it goes, that would be the
23 subject of a motion to suppress. He can file that
24 upstairs. He could have filed it before this, but he
25 didn't do that. And to raise it at this juncture, we

1 think it's untimely for the Court to even consider that
2 that's an issue before the Court at this juncture.

3 The only issue for the Court to decide is
4 whether or not we have shown by slight or marginal
5 evidence that she was in possession, knowingly in
6 possession of this methamphetamine that we have shown by
7 the photographic evidence and the testimonial evidence
8 from Officer Ortiz. And so that's what the Court is to
9 consider, and we've done that.

10 If you're inclined to deal with this motion
11 to suppress, we did show -- Officer Ortiz to talk about
12 how she was asked to leave, and she refused to leave,
13 regardless of what this form eighty-six says. She was
14 asked to leave, and she refused to leave, by somebody
15 who's the security guard. Was asked to leave, and she
16 refused. He then put her under citizen's arrest, and
17 they took her away. It seems at this stage of the game,
18 there's sufficient evidence to bind her over.

19 THE COURT: Thank you. So the information
20 that's been provided today for the purpose of a
21 preliminary hearing, there has been slight or marginal
22 evidence that Ms. Nye was in possession of a controlled
23 substance, and we will go ahead and on Count 1, the
24 possession of controlled substance, bind over to
25 District Court.

1 Is there anything else to be discussed at
2 this time?

3 MR. THOMPSON: No.

4 MR. LOREMAN: No, Your Honor.

5 THE COURT: All right. Then we'll be
6 adjourned in this case.

7 (Whereupon, proceeding concluded)

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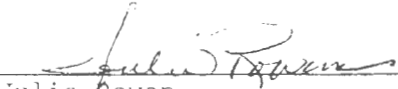
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STATE OF NEVADA)
) ss.
COUNTY OF CARSON)

I, Julie Rowan, Transcriptionist for the Elko Township Justice Court of the State of Nevada, in and for the County of Elko, have transcribed the proceedings held in the above-entitled Court on June 26, 2018.

The foregoing is a true and correct transcript, to the best of my ability, from the electronic sound recording of the proceedings held in the above-entitled matter.

DATED: This 31st day of July, 2018.



Julie Rowan

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ELKO JUSTICE COURT

STATE OF NEVADA EXHIBIT #: 1 ✓

MARKED FOR IDENTIFICATION: ✓

ADMITTED IN EVIDENCE: ✓

CASE #: EJ-C-R-F-18-2614

03/29/2018



ELKO JUSTICE COURT

STATE OF NEVADA EXHIBIT #:

MARKED FOR IDENTIFICATION:


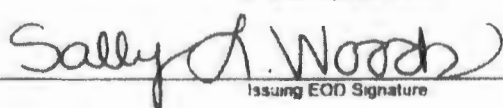
ADMITTED IN EVIDENCE

CASE # 2-JC-CR-F-18-2614

#2018-6159
0174



86 RECORD FORM

Name: Kimberly Nye		
Alias/Nickname:		
Height: 5'4		
Hair Color: Brown	Eye Color: UNK	
Scars/Marks/Tattoos:		
Security Report #		
Date Issued: 03/21/18		
Date Notified: 03/20/18		
Notified By: Jackie		
Reason for 86: Does not check out on time. Had a pet in the room with out notifying us.		
Notified on		
Perminate Duration/Expiration Date		Distribution Checklist:
 Issuing EOD Signature		<input type="checkbox"/> Security / Surveillance(Original)
		<input type="checkbox"/> General Manager
		<input checked="" type="checkbox"/> Hotel Front Desk
		<input type="checkbox"/> Commercial Cage File
		<input type="checkbox"/> Scoreboard Cage File
GM Signature/Approval (for Exclusions in excess of 72 hrs)		<input type="checkbox"/> Stockmen's Cage File

16

ELKO JUSTICE COURT

STATE OF NEVADA EXHIBIT #:

MARKED FOR IDENTIFICATION:

ADMITTED IN EVIDENCE:

CASE # ELJC-R-F-18-2614

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ELKO DISTRICT COURT

CLERK OF DISTRICT COURT

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1 CASE NO CR- FP -18-2614
2 DEPT NO 2
3
4

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

8 THE STATE OF NEVADA, CRIMINAL
9 Plaintiff, INFORMATION
10 vs
11 KIMBERLY MARIE NYE,
12 Defendant.

13 COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by
14 and through its Counsel of Record, the Elko County District Attorney's Office, and informs the
15 above-entitled Court that Defendant above-named, on or about the 29th day of March, 2018,
16 at or near the location of the city of Elko, within the County of Elko, and the State of Nevada,
17 committed a crime or crimes described as follows:

18
19 COUNT 1

20 **POSSESSION OF A CONTROLLED SUBSTANCE, A CATEGORY E**
21 **FELONY AS DEFINED BY NRS 453.336. (NOC 51127)**

22 That the Defendant did unlawfully, and knowingly or intentionally, possess,
23 actually or constructively, a controlled substance, to wit: methamphetamine.


24 ///
25 ///
26 ///
27 ///
28

zw

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


4 Dated June 28, 2018.
5

6 TYLER J INGRAM
7 Elko County District Attorney .

8 
9 CHAD B. THOMPSON
10 Chief Criminal Deputy District Attorney
11 State Bar Number: 10248

12 **Declaration By State's Counsel Estimating**
13 **The Number Of Days Needed For Trial**
14

15 **COMES NOW THE STATE OF NEVADA**, by and through its Counsel of Record the
16 Elko County District Attorney's Office and, specifically by the Deputy District Attorney
17 assigned the above-entitled matter, who, by his signature hereunder would declare to the
18 above-entitled Court that it is State's Counsel's estimate that 2 days, including jury selection,
19 should be set aside for the trial of this matter

20 
21 CHAD B THOMPSON
22 Chief Criminal Deputy District Attorney
23 State Bar Number: 10248

24 Witnesses' names and addresses known to the District Attorney at the time of filing
25 the above Criminal Information, if known, are as follows


26 NICHOLAS EMMETT HURLBURT 511 MEISS LAKE RD MACDOEL CA 96058

27 BARTOLO ORTIZ 1448 SILVER STREET ELKO NV 89801-3924
28

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By delivering to.

By mailing to:


ERIKA WEBER
CASEWORKER

DA # F-18-00921

1 CASE NO. CR-FP-18-2614

2 DEPT. NO. 2

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ELKO CO. DISTRICT COURT

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5
6 **IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT**
7 **OF THE STATE OF NEVADA, IN AN FOR THE COUNTY OF ELKO**
8

9 **THE STATE OF NEVADA**

10 Plaintiff,

11 **MOTION TO SUPPRESS**

12 vs.

13 **KIMBERLY MARIE NYE,**14 Defendant.
15

16 **COMES NOW**, Defendant, **KIMBERLY MARIE NYE**, by and through her
17 attorney of record, **DAVID D. LOREMAN, ESQ.**, of David D. Loreman, Chtd., who
18 Moves to Suppress the Evidence Obtained by the State. This Motion is made and based
19 upon the papers and pleadings on file, and the Points and Authorities attached hereto and
20 incorporated herein by this reference.

21 **DATED** this 13th day of December 2018.

22 **DAVID D. LOREMAN, CHTD.**
23 **445 Fifth Street, Suite 210**
24 **Elko, NV 89801**
25 **(775) 738-6606**

26 By: 
27 **DAVID D. LOREMAN, ESQ.**
28 State Bar No. 3867
Attorney for Kimberly Marie Nye



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **ISSUES PRESENTED:**

- 3 1. Whether Officer Ortiz search of Nye's backpack was a valid inventory search.
- 4 2. Whether the search of Nye's backpack at the jail was a proper search incident to
- 5 arrest.

6 **FACTS:**

- 7 1. Ms. Nye was bound over on the possession charge after the June 26, 2018
- 8 preliminary hearing.

- 9 2. Officer Ortiz testified that on March 29, 2018, he responded to a call from the
- 10 Stockmen's Casino regarding a disturbance of a security guard caused together by a male and
- 11 two females. Preliminary Hearing Transcript [P.H.T.] 8. Thus, Ortiz expected to be removing
- 12 these persons from the casino. P.H.T. 8. Ortiz entered the casino and proceeded to the front
- 13 desk area where he encountered Sgt. Locuson, Corporal Daz, and Officer Bogdon speaking with
- 14 one of the two females. See P.H.T. 9. Ortiz also encountered the security guard whom he
- 15 believed was named Hurlburt. See P.H.T. 9-10. Inasmuch as Ortiz was the last officer to get to
- 16 Stockmen's he initial listened to the rest. See P.H.T. 10-11. Eventually he spoke with the
- 17 security officer who described the woman, Ms. Nye as being belligerent being cut off from
- 18 drinking alcohol, P.H.T. 11. The guard said that all he wanted Nye to do was to move on.
- 19 P.H.T. 11. Inasmuch as Nye was now causing a disturbance with the police the guard
- 20 remembered that "she'd been previously trespassed, [and] was going to get the trespass notice.
- 21 And as she refused to leave, he would wish to place her under citizen's arrest. P.H.T. 11.

- 22 3. Ortiz indicated that Nye refused to leave after "Everyone there asked her to leave.
- 23 She continued to gamble, smoke her cigarette, drink her alcohol--" P.H.T. 11. Everyone
- 24 included the security guard. P.H.T. 12, 13. Nye's drink and her cigarettes were in the area of
- 25 the slot machine she was playing. P.H.T. 13.

- 26 4. The security guard went to get a piece of paper which turned out to be "a trespass
- 27 notice with the female we were having contact with, her name, the date and time she was
- 28 trespassed, and then her picture on the trespass notice. P.H.T. 13-14. This document indicated

1 Nye was trespassed on March 21. P.H.T. 14. It indicated Nye had been notified of this by
2 someone named Jackie on March 20. P.H.T. 34. The security guard also indicated Nye had
3 been notified. P.H.T. 34-35.

4 5. At about 2:50 or 3:00 P.M. the security guard then told Nye he was placing her
5 under citizen's arrest. P.H.T. 15. Ortiz asked Nye to get up because she was under arrest. She
6 got "a little belligerent" so Ortiz had to be assisted by Corp. Daz in getting handcuffs on her.
7 P.H.T. 15. The little belligerence included "going off, yelling, [and] cursing at us . . ." plus
8 telling them to "fuck off, that she was going to have her stepdad or dad get her off on the charge.
9 She told Officer Bogdon to bend her over and fuck her." P.H.T. 15-16. Ortiz concluded that
10 Nye was intoxicated. P.H.T. 16.

11 6. Having placed Nye in handcuffs the officers "Grabbed her belongings, escorted
12 her out, at one time kind of lifting her up and moving her. Then she walked off on her own
13 outside." P.H.T. 16.

14 7. The belongings of Ms. Nye included "her backpack, her stuff with her, her
15 personal belongings." P.H.T. 17. Regarding the position of the backpack Ortiz stated that "I
16 don't recall if she had it on or if it was down to the side by her feet." P.H.T. 37. He did not
17 recall if he was given the backpack or picked it up. P.H.T. 37-38.

18 8. Ms. Nye told the officers that she wanted to "pass it [the backpack] to a friend."
19 Ortiz indicated that there were no friends of Nye around at this time and no one with her. P.H.T.
20 17. It is believed contrariwise that when Nye wanted to leave her backpack with her friend,
21 Ortiz told him he would be arrested if he took it.

22 9. In any event Ortiz did not look for the person to whom Nye referred, and
23 indicated that "There was no one in the immediate area" to give it to. P.H.T. 28. Ortiz wrote in
24 his report that he told her she could not because all property on her person would go to jail with
25 her. P.H.T. 25: Exhibit A, Ortiz Report. He indicated that this was the Elko Police Department
26 Policy but did not know any specific number for this policy. P.H.T. 25-26. Contrariwise, he
27 indicated that in vehicle stops when there is a person who can take the vehicle he has let a person
28 take the car "If it's within a reasonable time." P.H.T. 26. Contrariwise, he when asked about

1 wallets he answered yes when asked whether he always takes the person's property no matter
2 where it was. P.H.T. 26. He indicated that this was "So I can later on not be called out for a
3 theft. I've had that happen before." P.H.T. 26. He apparently thought this could happen when
4 allowing property to be given to friends. See P.H.T. 27. After being reminded that there were
5 three officers watching and security cameras going when Nye wanted to give off the backpack,
6 Ortiz here apparently worried instead that an accusation of theft might be possible not against
7 him but against the person to whom the back pack might have been given. See P.H.T. 27.

8 In any event to get Nye to the police car from the casino the police had to "just move her
9 along" as she continued to be belligerent. P.H.T. 17-18. She apparently continued to make
10 threats as she was transported to the jail. P.H.T. 18. At the jail deputies came out, took Nye
11 into custody, and started their booking process by searching her. P.H.T. 18.

12 10. Ortiz grabbed Nye's property and "inventoried her backpack before having it
13 placed in the property bin at the jail." P.H.T. 18. Ortiz indicated then when he did an inventory
14 at the jail he normally did not fill out an inventory form because "That's the deputies' job to do
15 that. They do it in there." P.H.T. 28. He indicated that he was inventorying it at the jail
16 "Because I had not inventoried it on the scene" and "Because I didn't do my own outside."
17 P.H.T. 29. Ortiz indicated that the primary purposes of his inventory were not to be accused of
18 stealing; to find "Any illegal contraband" and "to gather all the information on whatever you're
19 searching and document that." P.H.T. 31, 32.

20 11. Ortiz further elaborated that "I did an inventory, but I didn't do their [the
21 deputies'] job. When a deputy – in the booking process, deputies search them, take them to the
22 cell. They do a strip search. They put them in a holding cell, the arrestee in a holding cell.
23 Depending on what they're doing and when the arrestee came in, they'll take them back out and
24 then start the booking process, fingerprints, picture, and then start going through their property
25 bin and everything enters into their system." P.H.T. 29 (emphasis added).

26 12. Ortiz then agreed that the deputies at the jail would then do the inventory search
27 and write everything down. See P.H.T. 29.

28 13. Ortiz indicated that he normally searches an arrestee incident to an arrest "at the

1 time of the arrest.” P.H.T. 18. In this case he did not search Nye at the Stockmen’s when
2 making the arrest “Just because of how she was acting. . . . I didn’t feel safe to do it on scene,
3 how she was acting. I felt that we needed to get her – remove her from the scene and take her
4 straight to jail.” P.H.T. 18-19.

5 14. In any event, as Ortiz was going through the backpack as part of the inventory
6 purpose he “found a sunglass case, there was a burnt glass pipe, and then a black container,
7 probably like a film container, a little black container with a white crystal substance inside.”
8 P.H.T. 19. He also found “on the main compartment on the side pocket [of the backpack], there
9 was a clear container with some more white crystal substance inside.” P.H.T. 19. Ortiz later
10 refers to this as a “clear white container.” P.H.T. 21. Both substances NIK tested positive as
11 methamphetamine. P.H.T. 22.

12 15. Ortiz indicated that he opened the containers in the backpack “To see what was
13 within the containers within the bag.” P.H.T. 33.

14 16. Ortiz was requested to get the Stockmen’s video of the incident by the District
15 Attorney’s office after the Public Defender’s office [then appointed before conflicting out]
16 requested this. P.H.T. 36. He was told by Stockmen’s that they would get it but at the time of
17 the preliminary hearing had not received it. P.H.T. 36-37.

18 17. Ms. Sally Woods testified that on March 21 she had just started training as an
19 executive on duty at Stockmen’s. P.H.T. 40. She indicated that the “86” form on Ms. Nye was
20 a permanent form but that she did not know Ms. Nye. P.H.T. 41. Woods indicated that the
21 notified by Jackie section of the form meant that Woods was notified by Jackie and since there
22 was no date for Nye being notified, Nye probably was not notified. P.H.T. 41-42. She noted
23 that because the general manager of Stockmen’s had not signed off on the form it could have but
24 had not necessarily been copied and distributed. P.H.T. 45.

25 18. Officer Bogdon testified that he was called to Stockmen’s at 3:00 in the morning
26 March 29 in regard to a disturbance. P.H.T. 47-48. He did not recall if any other officer
27 arrived before him. See P.H.T. 48. At Stockmen’s he spoke to Ms. Nye. He did not recall her
28 initial location in Stockmen’s but did recall she was sitting at a casino [gaming] machine when

1 he talked with her later on. See P.H.T. 48-49. He thought the call was because of two
2 individuals. P.H.T. 52. He did not know if the call was because Stockmen's wanted the
3 individuals removed but did know it concerned someone spilling a drink on another and people
4 being belligerent. P.H.T. 51. He did not know if he told Nye or any security people to leave.
5 P.H.T. 52.

6 19. Bogdon indicated that Nye had at least one bag on the floor next to her. P.H.T.
7 49.

8 20. Bogdon was there when Nye was placed in handcuffs. P.H.T. 50. He described
9 this process as "fairly routine" although "She was somewhat aggressive towards us." He also
10 noted that Nye was might in part be from intoxication. See P.H.T. 50. He did not know if the
11 backpack was still on the floor when Nye was being cuffed and did not recall seeing any officer
12 take it from her. P.H.T. 50. He did not know if Nye had the backpack when she was taken
13 outside or if it was taken by an officer. P.H.T. 51. He did not know if he ever picked up the
14 backpack. P.H.T. 52.

15 21. Sgt. Locuson testified that he was at Stockmen's on March 29 but did not recall
16 the order in which the officers arrived. See P.H.T. 57. He recalled that Nye was at a machine
17 near the front desk of the casino. P.H.T. 58. He did not recall whether she had a backpack on
18 her or sitting down by the machine. P.H.T. 58. He did not recall whether Nye had her backpack
19 with her when she was handcuffed. See P.H.T. 58-59. He talked to her very briefly and did not
20 recall if anyone asked her to leave the casino. P.H.T. 60.

21 22. He answered no when asked if he recalled "any extraneous issues or motion or
22 anything with regard to getting her in the handcuffs by the officers. Did they take anything from
23 her." P.H.T. 59.

24 23. He did not recall any other patron involved in the Nye matter but recalled being
25 called there because various individuals being belligerent to casino employees and patrons See
26 P.H.T. 59. As sergeant, Locuson was in charge but apparently had Ortiz take the lead because
27 the casino was part of Ortiz' beat. P.H.T. 60-61.

28 24. Mr. Marcellino Torres testified that he worked security for stockmen's on March

1 29 but on the 8:00 A.M. morning shift. P.H.T. 63. His duties did not include taking care of the
2 casino videotapes; this is the duty of whoever is the executive on duty. See P.H.T. 63-64. They
3 are normally viewed, if applicable, by a person working on the applicable shift. See P.H.T. 64.
4 He indicated that the videotaping area covers the front desk area. P.H.T. 64. He indicated it
5 was normal practice for security guards to ask a person to leave when the person “is pretty drunk
6 or is insulting people.” P.H.T. 66. Alternatively the security person might ask the EOD
7 [executive on duty] for approval or to tell the person to leave. See P.H.T. 66. He did not know
8 who the executive on duty was for the night of Nye’s arrest. See P.H.T. 66.

9 ARGUMENT

10 Whether Ortiz search of Nye’s backpack was a valid inventory search.

11 a. The inventory by Ortiz was improper.

12 The case most on point on this issue is *Rice v. State*, 113 Nev. 425, 430-31, 936 P.2d
13 319 (1997). In *Rice*, the officer told the defendant to remove a backpack which appeared to have
14 a heavy object in it from his back and properly patted down the backpack. As the officer was
15 doing so he saw the outline of a Derringer in the defendant’s pocket and grabbed the defendant’s
16 hand, handcuffed him, and took the gun. The officer arrested the defendant for operating a
17 bicycle without a light and for carrying a concealed weapon. The officer then “walked over, got
18 the backpack, [and] opened it to check to make sure there was no further contraband.” 113 Nev.
19 at 427. The Nevada Supreme Court found that the search was not valid as an inventory search
20 since the officer admitted he was looking for contraband and because there was no indication
21 that a formal inventory was prepared at the time of Rice’s arrest. 113 Nev. at 430-31.

22 Also on point is *Bailey v. State* 2016 Nev. Unpub. LEXIS 801. In *Bailey*, the Nevada
23 Supreme Court has ruled that an item may not be part of an inventory search when it is not on
24 the arrestee at the time of arrest—as appears to be the case here--and the arrestee did not ask for
25 the item. *Bailey* at 1.

26 Likewise, here as in *Rice*, Ortiz did no formal inventory of what he characterized as an
27 inventory search and admitted that he was in part looking for contraband. Indeed, even when an
28 inventory record lacks specific entries to show it is for the protection of property contraband

1 found will be suppressed. *State v. Greenwald*, 109 Nev. 808, 858 P.2d 36 (1993)(inventory was
2 ruse and contraband suppressed when found hidden in a zippered toiletry case and quantities of
3 non-contraband items found were not listed); e.g., *Weintraub v. State*, 110 Nev. 287, 871 P.2d
4 339 (1994)(listing only 8 items and not listing over a hundred was improper inventory); *accord*
5 *United States v. Taylor*, 636 F.3d 461, 464-66 (8th Cir 2011)(“misc. tools” for hundreds of them
6 plus testimony that would not have arrested and impounded but for belief that narcotics crime
7 evidence would be found improper); *United States v. Reed*, 2018 U.S. Dist. LEXIS 94483 at 19-
8 20 (need to comply with inventory procedures; failure to document inventory made search
9 invalid); *State v. Stauder*, 264 S.W.3d 360, 361-65 (Tex. App. 2008)(failure to comply with
10 inventory procedures by failing to prepare inventory list rendered search of vehicle improper);
11 *See United States v. Vernon*, 511 Fed. Appx. 318, 322-23 (5th Cir. 2013)(failure to show
12 compliance with inventory policy led to suppression); *United States v. Verno*, 511 Fed. Appx.
13 318, 322-23 (5th Cir. 2013)(failure to comply with inventory policy meant evidence should be
14 suppressed); *United States v. Hope*, 102 F.3d 114, 116-17(5th Cir. 1996)(Texas officer saying
15 Memphis police did inventory insufficient to prove Memphis procedure followed); *United States*
16 *v. Monclavo-Cruz*, 662 F.2d 1285, 1286-89 (9th Cir. 1981)(search of purse with arrested defendant
17 being questioned an hour afterward at station house not search incident to arrest or justified as
18 inventory); *State v. Hamilton*, 67 P.3d 871, 876-79 (Mont. 2003)(where lost wallet apparently
19 contained identification and check book clearly visible opening coin purse and taking inventory
20 though none was recorded was invalid search)(state const.); *See Also United States v. Caskey*, 2013
21 U.S. Dist. LEXIS 1167 at 4-14 (failure to show that search complied with inventory policy when
22 list did not comply with noting valuables but rather with evidence likely valuable to kidnapping
23 investigation); *State v. Baylor*, 2014 Iowa App. 1237 at 9-13 (inventory search must comply with
24 procedures); *See Also*, e.g., *United States v. Bullock*, 71 F.3d 171, 178 (5th Cir. 1995)(officer's
25 un rebutted testimony that he followed standardized procedure sufficed to show proper inventory);
26 *United States v. Judge*, 846 F.2d 274, 276 (5th Cir. 1988)(DEA inventory must comply with their
27 procedure in regard to closed containers; remanded to determine compliance).

28

1 **b. The failure to do a search incident to arrest does not justify an improper inventory.**

2 Likewise when items are taken from the defendant are not subject to a search incident to
3 arrest they are also not searchable as an inventory later. *State v. Padilla*, 728 A.2d 279 (N.J. Super.
4 1999). In *Padilla*, police received a tip that a man in a hotel room had a gun. After knocking and
5 getting permission to enter they properly seized drug contraband and a firearm in plain view.
6 However, other items found during the subsequent inventory of defendants' possessions taken from
7 the room and brought to the police station with them were suppressed because the defendants were
8 not given the opportunity to consent to search or make other arrangements for disposing of their
9 property. 728 A.2d at 283-87. *See Also State V. Hummel*, 2016 N.J. Super. Unpub. LEXIS 2085.
10 In *Hummel*, the warrant less search a purse taken away during an interview of a person "secured to
11 a bar in the room" was not valid as an inventory since the officer wanted to check for weapons and
12 when told there was \$500 in the purse proceeded to go through all its items. 2016 LEXIS 2085 at
13 17-18.

14 **c. Nye should have been permitted to give the backpack to her friend.**

15 Moreover, when Nye sought to give the backpack to a friend, Ortiz was wrong to seize it
16 then take it to the jail and claim to be inventorying it. *See United States v. Maddox*, 614 F.3d
17 1046, 1048-50 (9th Cir. 2010)(search of laptop back in vehicle as inventory invalid when officer not
18 permit alternative of defendant's friend moving vehicle); *See Also State V. Olendorff*, 341 P.3d 779
19 Or. App. 2014)(state const.). In *Olendorff*, a defendant about to be taken to jail asked that her
20 purse—which she had declined to give permission to search—be given to her boyfriend who had
21 arrived while the purse was on the trunk of a patrol car and defendant was handcuffed in the patrol
22 car for driving when license suspended. 341 P.3d at 780. The court suppressed the evidence found
23 in the purse noting "once the defendant gave the officers another option—releasing the purse . . . [to
24 the boyfriend] pursuant to the defendant's request—their original justification for taking the purse
25 from the defendant dissipated." 341 P.3d at 784. This ruling occurred under an Oregon constitution
26 which allows search incident to an arrest (1) to protect the officer's safety; (2) to prevent the
27 destruction of evidence; and to discover evidence of the crime of arrest.

1 **d. The inventory followed an illegal seizure of the backpack.**

2 Furthermore, the illegal inventory on the heels of what appears to have been an illegal
3 seizure seems wrong. In the following cases a subsequent search even following a legal search or
4 seizure were deemed improper. *See United States v. Khoury*, 901 F.2d 948, 958-60 (11th Cir. 1990)
5 (subsequent examination of diary after already leafing through it for inventory improper); *United*
6 *States v. Rosas*, 2011 U.S. Dist. LEXIS 151622 at 19-30 (can't subsequently search as inventory
7 when have already searched with probable cause); *See Also United States V. Davis*, 430 F.3d 345
8 (6th Cir. 2005)(second sniff by second drug dog after first drug dog failed to alert did not provide
9 probable cause); *United States v. Esparza*, 2007 U.S. Dist. LEXIS 66455 at 1-10 (sniff by
10 explosives dog did not provide probable cause to search after drug sniffing dog failed to alert);
11 *Robinson v. City of San Diego*, 954 F. Supp. 2d 1010, 1021 (S.D. Cal. 2013)(rechecking license
12 plate improper when cause for stop vitiated); *State v. Smith*, 345. Md. 460, 469-70 693 A.2d 749
13 (1997)(double checking waistband in *Terry* pat down exceeded scope).

14 **e. Even a proper inventory following an illegal one would not justify the illegal one.**

15 Similarly, even if a proper inventory search were performed after Ortiz illegal inventory
16 search this would also be improper. *Barnato v. State*, 88 Nev. 508, 512-15, 501 P.2d 643
17 (1972)(officer could not attempt to return by ostensibly legal means to make a second seizure from
18 marijuana plant when his first seizure from the same plant was illegal).

19 **f. Whether opaque items should have been opened in a proper inventory.**

20 Last, even if the property had been ostensibly inventoried properly, there would still be the
21 question of whether the [apparently first] searched black case and the white or clear should have
22 been opened as part of the inventory. *State v. Ridderbush*, 692 P.2d 667, 671-72 (Or. App.
23 1984)(basic principal that "no closed, opaque container may be opened to determine what, if
24 anything is inside it so the contents may be inventoried in turn")(state const. based on principle s
25 that inventories of impounded personal property are for "(1) the protection of the person's
26 property while in police custody; (2) the reduction or elimination of false claims against the
27 police for lost or stolen property; and (3) the protection against possible injury to persons or
28 property from impounded but un-inventoried property")(state const.); *See Also State V. Hite*,

1 338 P.3d 803, 805-812 (Or. App. 2014)(state const.)(inventory policy requiring officers to look
2 for broad range of items, such as food or alcohol, and hence open all closed containers meant
3 search of backpack violated state constitution as overbroad).

4 In any event, the violations noted above indicate that the “inventory” search of Nye’s
5 backpack was improper and the evidence found therein should be suppressed.

6 **2. Whether the search of Nye’s backpack at the jail was a proper search incident to**
7 **arrest.**

8 **a. Ortiz’ conduct cannot be justified as a valid search incident to arrest.**

9 Ortiz’ rationale for the search appears in part based on the notion that it should be allowed
10 since he was unable to search the backpack incident to arrest. Again *Rice* seems right on point. To
11 repeat the facts: In *Rice*, the officer told the defendant to remove a backpack which appeared to
12 have a heavy object in it from his back and properly patted down the backpack. As the officer was
13 doing so he saw the outline of a Derringer in the defendant’s pocket and grabbed the defendant’s
14 hand, handcuffed him and took the gun. The officer arrested the defendant for operating a bicycle
15 without a light and for carrying a concealed weapon. The officer then “walked over, got the
16 backpack, [and] opened it to check to make sure there was no further contraband.” 113 Nev. at 427.

17 In *Rice*, our Supreme Court then also found that this was not a valid search incident to arrest
18 since Rice was placed in the patrol car before the backpack was searched. 113 Nev. at 430. Since
19 Ortiz apparently took the backpack away from Nye likely from a position of the floor as Bogdon’s
20 testimony suggests, but regardless if he instead took it from her much like the officer in *Rice*--Ortiz
21 could not search it incident to arrest since he had taken the handcuffed Nye to his police car and to
22 the jail since seizing the backpack.

23 **b. The backpack was apparently out of Nye’s control both before and after Ortiz**
24 **apparently seized it.**

25 Either case suffices to negate a search incident to arrest analysis. *See State v. Carrawell*,
26 481 S.W.2d 833 (Mo. 2016). In *Carrawell*, an officer was arresting a man carrying a plastic bag
27 for his gestures and swearing disturbing the peace of those around him. The man attempted to enter
28 a door and the policeman grabbed hold of him, telling him to drop the bag as he attempted to

1 handcuff him. Eventually when the policeman ripped the bag from Carrawell's hands it fell to the
2 ground with a breaking sound. The officer secured the arrestee in his car then went back and
3 searched the bag, finding a broken plate and a smaller plastic bag containing heroin. The court ruled
4 that since the bag was not within the area of the arrestee's control this was not a valid search
5 incident to arrest but that since there was precedent that supported allowing this search at the time it
6 occurred the search occurred in good faith. 481 S.W.3d at 838-46. In finding the search not
7 incident to arrest, the court noted that the *United States v. Edwards*, 415 U.S. 800, 803 (1974)
8 "exception to the general rule allowing the item to be within the immediate control applies only to
9 items that are so entwined with the arrestee's person that they cannot be separated from the person at
10 the time of arrest." 481 S.W.3d at 840. Obviously, the backpack was separated from Ms. Nye at
11 the time of arrest and quite likely before it and even if taken from her, Ortiz could not search it then
12 nor take it with him then much later perform a search not incident to arrest. *See People v. Wilcox*,
13 22 N.Y.S.3d 717, 718-20 (A.D. 2015)(even where pill bottle containing suspected heroin fell from
14 jacket while arresting defendant, subsequent search after arrest, removal of cuffs to get jacket off,
15 recuffing, and securing jacket in another room not search incident); *People v. Morales*, 2 N.Y.S.3d
16 472, 473-76 (A.D. 2015) (when defendant arrested and his jacket under control of police and on a
17 vehicle's trunk, search of jacket was not search incident); *People v. Julio*, 666 N.Y.S.2d 171, 172
18 (A.D. 1997)(search of bag not incident to arrest where bag in possession of officer, and defendant
19 who had abandoned ammunition clip was handcuffed).

20 Nor could Ortiz leave the backpack somewhere and return to search it incident to arrest.
21 *United States v. Maddox*, 614 F.3d 1046, 1048-50 (9th Cir. 2010)(returning for items on defendant's
22 seat and searching them not valid when defendant already arrested and in patrol car); *Carrawell*;
23 *State v. Lamay*, 103 P.3d 448, 449-52 (Idaho 2004)(where defendant was taken from hotel room
24 and arrested officers could not go back in room and search backpack incident to arrest).

25 **c. Search incident to arrest does not apply when it is the officer who places the item**
26 **near the arrestee's control.**

27 Even assuming Ortiz placed the backpack in the interior compartment of Ortiz' police car
28 with Ms. Nye] the bag was only near Ms. Nye's control because control Ortiz insisted it be so—a

1 circumstance which does not permit search incident to arrest. *See United States v. Perea*, 986 F.2d
2 633, 636, 643 (2d Cir. 1993)(placing bag in police vehicle near arrested defendant did not make its
3 search incident to arrest); *United States v. Rothman*, 492 F.2d 1260, 1265 (bringing baggage to
4 arrested defendant did not make its search incident to arrest); *United States v. Rigales*, 630 F.2d
5 364, 366-67 (5th Cir. 1980)(police could not open heavy zippered bag found in automobile incident
6 to a warrant arrest of a person who had bullets in his jacket); *See Also United States V. Monclavo-*
7 *cruz*, 662 F.2d 1285, 1286-88 (9th Cir. 1981)(search of purse with arrested defendant being
8 questioned an hour afterward at station house not search incident to arrest).

9 d. **Search incident analysis also supports allowing Nye to give the backpack to her**
10 **friend.**

11 Under search incident analysis, much like the inventory analysis in issue 1, Ortiz was wrong
12 to prevent Nye from giving the backpack to her friend. *See State v. Graham*, 898 P.2d 1206, 1207-
13 08 (Mont. 1995). In *Graham*, the defendant, who was passenger in vehicle stopped and arrested on
14 a warrant, asked to leave her purse in the vehicle--which neighbor was retrieving-- because the purse
15 contained food stamps her children would need. Police took the purse to the police station anyway
16 and inventoried it finding drugs. The drugs were not admissible as a search incident to arrest
17 because the search was not relevant to the warrants, would not have prevented an escape, and did
18 not protect the arresting officer. *See also United States v. Goodrich*, 183 F. Supp. 2d 135, 137, 140-
19 45 (D. Mass 2001)(whether an appropriate person is available to move vehicle factor in decision to
20 tow; wife of defendant who would take car from parking lot constituted an appropriate situation to
21 release vehicle rather than tow it; towing policy should be written).

22 Thus the search of the backpack by Ortiz cannot be justified under search incident to arrest
23 analysis.

24 CONCLUSION

25 In view of the above authorities, the illegally obtained evidence should be suppressed.
26
27
28

1 DATED this 13th day of December 2018.

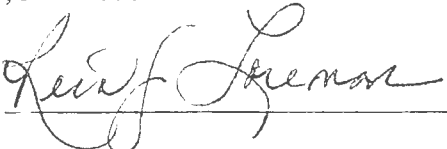
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7 By 
8 DAVID D. LOREMAN, ESQ.
9 State Bar No. 3867
10 Attorney for Kimberly Marie Nye

11 **CERTIFICATE OF MAILING**

12 Pursuant to *NRC*P 5(b), I hereby certify that I am an employee of **DAVID D.**
13 **LOREMAN, CHTD.**, and that on the 13th day of December 2018, I deposited for mailing,
14 postage prepaid, at Elko, Nevada, a true and correct copy of the within document addressed
15 to:

16 Chad Thompson, Esq.
17 Elko District Attorney's Office
18 540 Court Street
19 Elko, NV 89801

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DA

1 CASE NO. CR-FP-18-2614

2 DEPT. NO. 2

FILED

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CLERK OF DISTRICT COURT

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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 Plaintiff,

OPPOSITION TO MOTION TO SUPPRESS

10 vs.

11 KIMBERLY MARIE NYE,


12 Defendant.

13
14 COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, TYLER J.
15 INGRAM, District Attorney for the County of Elko, and CHAD B. THOMPSON, Chief Criminal
16 Deputy District Attorney, and submits the following Points and Authorities in support of this
17 Opposition together with all pleadings and papers on file herein

18 Dated this 3 day of January, 2019.

19 TYLER J. INGRAM
20 Elko County District Attorney

21
22 By


23 CHAD B. THOMPSON
24 Chief Criminal Deputy District Attorney
25 State Bar Number: 10248
26
27
28

Affirmation Pursuant to NRS 239B.030
SSN Does Appear
SSN Does Not Appear 9W

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POINTS AND AUTHORITIES

ARGUMENT:

Issue: The Admissibility of the Evidence Discovered in the Backpack.

A) Search Incident to Arrest.

The 9th Circuit has recently summed up the law surrounding searches incident to arrest in the following manner:

A search incident to a lawful arrest is an exception to the general rule that warrantless searches violate the Fourth Amendment. The exception allows a police officer making a lawful arrest to conduct a search of the area within the arrestee's "immediate control," that is, "the area from within which [an arrestee] might gain possession of a weapon or destructible evidence." Chimel v. California, 395 U.S. 752, 763, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969) (internal quotation marks omitted), *abrogated on other grounds by* Arizona v. Gant, 556 U.S. 332, 344, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009).

The first requirement of a search incident to arrest is that the search be limited to the arrestee's person or areas in the arrestee's "immediate control" at the time of arrest. Gant, 556 U.S. at 339, Chimel, 395 U.S. at 763; United States v. Turner, 926 F.2d 883, 887 (9th Cir. 1991). The "immediate control" requirement ensures that a search incident to arrest will not exceed the rule's two original purposes of protecting arresting officers and preventing the arrestee from destroying evidence: "If there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest exception are absent and the rule does not apply." Gant, 556 U.S. at 339.

The second requirement of a search incident to arrest is that the search be spatially and temporally incident to the arrest. See United States v. Chadwick, 433 U.S. 1, 15, 97 S. Ct. 2476, 53 L. Ed. 2d 538 (1977), *abrogated on other grounds by* California v. Acevedo, 500 U.S. 565, 580, 111 S. Ct. 1982, 114 L. Ed. 2d 619 (1991); United States v. Hudson, 100 F.3d 1409, 1419 (9th Cir. 1996). The Supreme Court has held that "warrantless searches of luggage or other property seized at the time of an arrest cannot be justified as

1 incident to that arrest . . . *if the search is remote in time or place*
2 *from the arrest . . .*" Chadwick, 433 U.S. at 15 (emphasis added).
3 We have interpreted the temporal requirement to mean that the
4 search must be "roughly contemporaneous with the arrest." United
5 States v. Smith, 389 F.3d 944, 951 (9th Cir. 2004) (per curiam).

6 We have summed up the two general requirements of a valid
7 search incident to arrest as follows: "The determination of the
8 validity of a search incident to arrest in this circuit is a two-fold
9 inquiry: (1) was the searched item 'within the arrestee's immediate
10 control when he was arrested'; (2) did 'events occurring after the
11 arrest but before the search make the search unreasonable?'"
12 United States v. Maddox, 614 F.3d 1046, 1048 (9th Cir. 2010)
13 (quoting United States v. Turner, 926 F.2d 883, 887 (9th Cir.
14 1992)).

15 United States v. Camou, 773 F.3d 932, 937-938 (9th Cir. 2014).

16 Nevada has followed the above, when it cited the same Chimel decision and stated:
17 "...the authority to search incident to arrest derives from the need to disarm and prevent any
18 evidence from being concealed or destroyed." State v. Greenwald, 109 Nev. 808, 810
19 (1993).

20 The 4th Circuit also gives an excellent account of Supreme Court law, although it is
21 prior to the Gant decision, but Gant dealt with the search of a car, stating:

22 To protect the safety of arresting officers and to avoid the destruction of
23 evidence, the Supreme Court has long recognized an exception to the Fourth
24 Amendment warrant requirement for searches incident to arrest. See United
25 States v. Edwards, 415 U.S. 800, 807-09, 39 L. Ed. 2d 771, 94 S. Ct. 1234
26 (1974). Although the "incident to arrest" justification for warrantless searches
27 does not permit an indefinite delay in a search, see United States v. Chadwick,
28 433 U.S. 1, 14-15, 53 L. Ed. 2d 538, 97 S. Ct. 2476 (1977) (holding that a search
more than one hour after arrest and at a police station was not within the
exception), the justification does last for a reasonable time after the officers
obtain exclusive control of the container that is to be searched, see Edwards, 415
U.S. at 805, 807-09 (upholding a ten-hour delay in search and seizure of clothing
where overnight delay was necessary to purchase replacement clothing for
incarcerated defendant); New York v. Belton, 453 U.S. 454, 462-63, 69 L. Ed. 2d
768, 101 S. Ct. 2860 (1981) (approving admission of cocaine found in a jacket in
the back seat of a car even though officers had removed the suspect from the car
before searching the jacket). Indeed, in a case remarkably similar to that before
us, we held specifically that "when a container is within the immediate control of a
suspect at the beginning of an encounter with law enforcement officers," the

1 officers can search the container incident to an arrest if (1) the search is
2 conducted at the scene of the arrest and (2) any delay in the search is a
3 "reasonable" one. United States v. Han, 74 F.3d 537, 543 (4th Cir.), cert. denied,
4 135 L. Ed. 2d 184, 116 S. Ct. 1890 (1996); see also United States v. Litman, 739
F.2d 137, 139 (4th Cir. 1984) (en banc) (upholding search of a bag immediately
after arrest when the bag was no longer under the suspect's control).

5 United States v. Nelson, 102 F.3d 1344, 1346-47 (4th Cir. 1996)

6
7 The search in this case is 'roughly contemporaneous' and any delay was 'reasonable'
8 due to the Defendant's conduct. While the State is still not in possession of the dispatch
9 logs, the booking time on the booking sheet according to Discovery page 21 is 03:15 hours
10 and the report time, Discovery page 6, regarding when Officer Ortiz was dispatched to the
11 Stockmen's is 02:50 hours. EXHIBITS 1 AND 2. From the time he was dispatched to the
12 time she was booked at the jail is 25 minutes. It is important to note the Officer Ortiz was the
13 last officer to arrive making it likely that from the time of actual arrest to the time she was
14 booked even less than the 25 minutes. PHT p. 10. The jail is located a scant .7 miles from
15 the place of arrest. EXHIBIT 3. According to the preliminary hearing transcript the
16 Defendant was described as being very confrontational and for lack of a better term, difficult
17 at the place of arrest and throughout her entire interaction with Officer Ortiz to include during
18 the car ride to the jail. PHT p.11-13, 15-19. Officer Ortiz specifically stated that he normally
19 searches the person at the place and time of the arrest, but he did not do so in this case
20 because of "how she was acting" and further explaining: "I didn't feel safe to do it on-scene,
21 how she was acting. I felt that I needed to get her – remove her from the scene and take her
22 straight to jail." Id. at 18-19. These are reasonable actions taken within a short period of
23 time.

24 Just because an officer removes a bag from a person does not mean that the search
25 is still not incident to arrest. The Nevada Supreme Court has cited approvingly a Colorado
26 case, "Following the defendant's arrest, she was taken immediately to police headquarters,
27 where a search of her purse revealed five hand-rolled marijuana cigarettes. The warrantless
28 search of the defendant's purse and the seizure of the marijuana cigarettes may be upheld

1 either as a search incident to arrest or as an inventory procedure conducted prior to
2 incarceration." Wright v. State, 88 Nev. 460, 476 (1972) quoting Avalos v. People, 498 P.2d
3 1141 (Co. 1972).

4 Furthermore, Belton cited above addressed the defense theory that once the bag is
5 removed from one's shoulder then the search is unnecessary stating, "Under this fallacious
6 theory no search or seizure incident to a lawful custodial arrest would ever be valid; by
7 seizing an article even on the arrestee's person, an officer may be said to have reduced that
8 article to his 'exclusive control.'" Belton at 462 n. 5. This is clearly not the law, the officers
9 shouldn't be required to place themselves in an unsafe situation, searching the person with
10 the container still in their possession makes no sense and it's dangerous for all involved.
11 The officer doesn't have to determine whether the defendant actually has a gun or actually
12 intends to destroy evidence. Chimel at 763. "Officers may separate the suspect from the
13 container to be searched, thereby alleviating their safety concerns, before they conduct the
14 search." United States v. Han, 74 F.3d 537, 542 (4th Cir. 1996). These cases are clearly
15 contradictory to the Nevada case Rice v. State cited by the Defendant. Rice makes no sense
16 as it requires the officer to search the Defendant's bag while it is on their person or within
17 their reach in order to be able to search it incident to arrest. What the Supreme Court of the
18 United States has deemed "fallacious" in Belton the Nevada Supreme Court has made the
19 law under Rice. State v. Greenwald quoted in Rice, and Arizona v. Gant are distinguishable
20 as they are rulings regarding the place, an automobile or motorcycle, which is permissible to
21 be searched as a search incident to arrest, which is not the case here. Clearly the Defendant
22 does not have access to those places once placed in the patrol vehicle and removed from
23 the scene.

24 However, a backpack or purse will be carried with the officer in his vehicle to the jail
25 with the Defendant. There are a myriad of scenarios where for officer safety reasons an
26 officer ought to be allowed to search the bag before taking it to the jail in his car, which would
27 overrule Rice or before leaving the bag with the jail staff which is the case here. An item
28 belonging to the Defendant is clearly distinguishable from a place occupied by a defendant.

1 Rice needs to be re-examined and the Nevada Supreme Court should adopt the "roughly
2 contemporaneous" standard which takes into account the "reasonable" standard which is the
3 touchstone of 4th amendment case law. Rice, otherwise, requires the officers in the field to
4 do the unreasonable, which is to search the bag on their person or while at their feet as in
5 this case and therefore to accomplish this there must always be multiple officers on scene
6 and instead of focusing on the Defendant one of them will have to focus on the bag. This is
7 not a reasonable requirement for police.

8 Defendant Nye was lawfully arrested, and as such she and the backpack she had in
9 her actual possession at the time of the arrest are subject to search. Her wishes, that
10 someone else might take the backpack with them, do not exempt the backpack from being
11 subject to search. Were it so, all defendants would try and divest themselves of contraband
12 at the instant an officer said they were under arrest. It makes perfect sense and it is within
13 the law that the officer could first search the defendant's person to include containers (purses
14 and backpacks) in the immediate control or possession of the defendant at the scene of the
15 arrest. Then, if the officer finds nothing and the defendant wants the items on their person to
16 go to another person for safekeeping rather than being taken with the defendant to be placed
17 in her jail property, that could be accommodated.

18 However, the "wish" of the Defendant does not supersede the lawful search of the
19 defendant's person. One can imagine the danger an officer might be placed in if a person
20 were able to 'pass off' a weapon in a purse or jacket to another person without the officer first
21 being able to search the purse or jacket under the guise that the defendant merely didn't
22 want the jail to hold his property. An officer could play a role in the crime of concealing
23 evidence of a felony or arming another person if he gives the bag or item to someone else
24 prior to searching it. In this particular case, there was no person to whom the officer could
25 give the backpack. PHT p. 17. The Officers are under no obligation to go about searching
26 for the Defendant's 'friend' so that she might be able to pass the backpack off to them. The
27 United States Supreme Court, which the Nevada Supreme Court has followed, has stated
28 that 4th amendment analysis "...is not about what 'could have been achieved,' but whether

1 the Fourth Amendment requires such steps." Illinois v. Lafayette, 462 U.S. 640, 647 (1983)
2 see also Collins v. State 113 Nev. 1177, 1181 (1997) citing Colorado v. Bertine, 479 U.S.
3 367, 374 (1987) (The reasonableness of any particular government action does not
4 necessarily or invariably turn on the existence of alternative or 'less intrusive means.'").

5 The search of the backpack which she had with her person was only delayed due to
6 her belligerent behavior and was roughly contemporaneous with the arrest as well as being
7 done only .7 miles from the place of arrest. The evidence should not be suppressed as it
8 was found due to a lawful search incident to arrest.

9 10 **B) Inevitable Discovery**

11 The Defendant was taken to the jail and booked. As part of that process her personal
12 items were inventoried. EXHIBIT 4 (Discovery p. 28-29). That was done in this case. It is
13 anticipated that the jail staff will testify that had Officer Ortiz not searched the backpack they
14 would have and inventoried it pursuant to policy. EXHIBIT 5 (Discovery p. 30-37). That they,
15 the jail staff, routinely do so and in that action have on occasion found the same evidence
16 Officer Ortiz found here. What happens after that is that the jail staff will then call back the
17 arresting officer, if they have left the jail having deposited the person, and have the officer
18 take possession of the evidence. Through this process the evidence would have been
19 inevitably discovered by the State.

20 Nevada has long recognized the inevitable discovery doctrine which provides that,
21 "evidence obtained in violation of the Constitution can still be admitted at trial if the
22 government can prove by a "preponderance of the evidence that the information ultimately or
23 inevitably would have been discovered by lawful means." Camacho v. State, 119 Nev. 395,
24 401-03 (2003). In Camacho the Nevada Supreme Court found that while the initial search of
25 the vehicle without a warrant was not appropriate, they nevertheless did not suppress the
26 evidence as: the evidence would have been inevitably discovered during a valid inventory
27 search of the car that was going to be towed anyway. Id. see also Carlisle v. State 98 Nev.
28 128 (1982) (The police had arranged to tow appellant's vehicle and would have been justified

1 in conducting an inventory. During this inventory, the police inevitably would have found the
2 shotgun and marijuana.) The same can be said in this case. If Officer Ortiz doesn't search
3 the bag while the jail staff are searching the Defendant, then the jail staff surely would have
4 done so after taking care of the defendant pursuant to their policy. They would have surely
5 opened the eyeglasses case expecting an item that needed to be inventoried and instead
6 they would have found the drugs and other items of paraphernalia.

7 Searches by jail staff have long been held to be constitutional. Illinois v. Lafayette,
8 462 U.S. 640 (1983) (...we hold that it is not "unreasonable" for police, as part of the routine
9 procedure incident to incarcerating an arrested person, to search any container or article in
10 his possession, in accordance with established inventory procedures.) "The government
11 interests underlying a station-house search of the arrestee's person, and possessions may in
12 some circumstances be even greater than those supporting a search immediately following
13 arrest. Consequently, the scope of a station-house search will often vary from that made at
14 the time of arrest." Id. at 645.

15 The Defendant's backpack would have been inevitably searched by the jail staff as
16 part of the booking procedure and property intake procedure. Officer Ortiz's actions were
17 reasonable, but even if they weren't the evidence, stored within the backpack which was
18 inventoried and stored by the jail, would have been discovered. The evidence should not be
19 suppressed.

20
21 **C) Application of the exclusionary rule is unwarranted.**

22 The United States Supreme Court has deemed the exclusionary rule applicable only
23 "...to deter deliberate, reckless, or grossly negligent conduct, or in some cases recurring or
24 systemic negligence." Herring v. United States, 129 S. Ct. 695, 702 (2009) In this case
25 Officer Ortiz acted reasonably in removing the Defendant from Stockmen's to prevent further
26 disturbances of the peace. He chose to forego the search of the backpack at that time for
27 safety and for the public good. He then traveled the short .7 miles to the jail and there
28 searched the backpack incident to arrest. None of this is unreasonable behavior that an

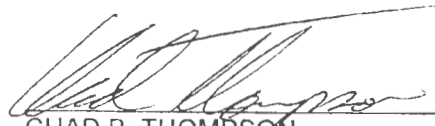
1 average officer would have recognized as violating the 4th amendment. He acted reasonably
2 and even if a violation of the 4th amendment, the exclusionary rule should not be applied
3 which would in effect reward the Defendant Nye for her vulgar, disrespectful and atrocious
4 conduct towards officers. The motion should be denied based on the reasoning in Herring.

5
6 Conclusion: For all of the above reasons the Motion to suppress should be denied.

7
8 Dated this 3 day of January, 2019.

9 TYLER J. INGRAM
10 Elko County District Attorney

11
12 By:

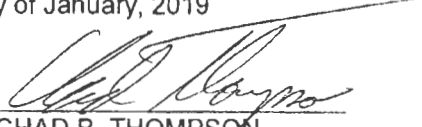

13 CHAD B. THOMPSON
14 Chief Criminal Deputy District Attorney
15 State Bar Number: 10248
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Unsworn Declaration In Support Of Opposition
Pursuant to NRS 53.045

Comes now CHAD B. THOMPSON, who declares the following to the above-entitled Court:

1. That the Declarant is presently serving as a Deputy District Attorney of the Elko County District Attorney's Office.
2. That I have read the assertions of fact set forth in this pleading and cited to the record or the accompanying attachments and incorporate them into this Declaration.
3. I declare under penalty of perjury that the foregoing is true and correct.


Dated this 3 day of January, 2019


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

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By delivering to:

By mailing to:


ERIKA WEBER
CASEWORKER

DA# F-18-00921

Exhibit 1
STATE OF NEVADA
VS.
KIMBERLY MARIE NYE



Elko County Sheriff's Office

Booking Sheet for Inmate # 18EL00752

Name #: 111565
Name: NYE, KIMBERLY MARIE
Address: 454 MERINO DR
SPRING CREEK, NV 89815
Born: BAKERSFIELD, CA



Personal Identification

Drivers Lic: 0602274448 State: NV
Home Phone: (775)397-0769 Local ID:
Work Phone: () :
Soc. Sec.: [REDACTED] :

Physical Description

DOB: 03/11/89 (29 yrs) Eyes: BLU Complexn:
Race: W Glasses: Y Build:
Sex: F Hair: BRN Ethnic:
Hgt: 5'04" Hair Style:
Wgt: 108 Beard:

2018 MAR 29 AM 8:06
RECEIVED
ELKO COUNTY DISTRICT ATTORNEY

Assigned Housing: 6 Dressing A
Current Location: 6 Dressing A
Property Bag: ELB22

Booking Date: 03/15/00 03/29/18
Booked By: Edmond MD

No Active Holds Located

Ref #	Case #	Description	Att Agency	CRF	Bail Amt	Bail Type	DSP	PCN	Counts
Meth		51127 453.336 2nd POSS SCH I, II, III, IV C/S, (1ST/2ND) (F)	ELSO	ELJC	\$5000.00	BNCA			1
		51339 453.566 USE/POSS DRUG-PARA (M)	ELSO	ELJC	\$640.00	BNCA			1
		53166 207.200 TRESPASS, ELSO NOT AMOUNTING TO BURGLARY (M)	ELSO	ELJC	\$195.00	BNCA			1



NYE, KIMBERLY
Name #111565 DOB: 03/11/89



21

Exhibit 2
STATE OF NEVADA
VS.
KIMBERLY MARIE NYE

Initial Report/B.Ortiz

Initial Report: Officer B. Ortiz
Case #2018-6159
March 29, 2018

On March 29, 2018, at approximately 0250 hrs, officers were dispatched to the Stockmen's Casino located at 340 Commercial Street in reference to a male and two females who were being belligerent to the casino employees and the security guard wanted them removed off the property.

Upon my arrival, I saw Officer Bogdon, Cpl. Daz, and Sgt. Locuson had arrived on scene and had located one of the females involved gambling at a slot machine near the front reception desk area. The female identified herself to us Kimberly Nye DOB 3/11/89. The casino security guard later identified as Nicholas Hurlburt DOB 7/27/90 advised Nye was one of the females involved who was being belligerent to casino employees.

Hurlburt stated that Nye was intoxicated and had been "cut-off" and asked to leave due to her level of intoxication and for causing problems with another female and male who were together. Hurlburt told me that he wanted Nye off all Stockmen's Casino properties. I had dispatch conduct a records check on Nye. While I waited for dispatch to return with Nye's records check, Hurlburt stated that Nye had recently been permanently trespassed from all Stockmen's Casino properties. Hurlburt went to the office to retrieve the permanent trespass notification.

Hurlburt returned with the copy of the permanent trespass notification, which showed Nye's picture and additional information along with the reason for the permanent trespass. I confirmed Nye had been permanently trespassed on March 20, 2018. Hurlburt told me since Nye was refusing to leaving he wanted to place her under citizen's arrest for trespassing. I was present when Hurlburt advised Nye she was under citizen's arrest for trespassing. I had Hurlburt complete a citizen's arrest form.

I took custody of Hurlburt's completed citizen's arrest form and obtained a copy of the permanent trespass form from Hurlburt. I later attached the citizen's arrest form and permanent trespass form to my initial report. I advised Nye she was under citizen's arrest for trespassing.

Nye became aggressive to officers by attempting to get up and yell at officers on scene. Nye stated that she had never been formally trespassed and continued to yell. I had to tell Nye numerous times to calm down and Cpl. Daz assisted me by placing Nye in handcuffs that were checked for tightness and double locked. Nye asked if her black backpack could go with her friend who was inside the casino. I advised Nye all property on her person would go to jail with her.

I escorted Nye out the casino along with her black backpack to my patrol car. I conducted a search incident to arrest on Nye's person prior to placing her in the backseat of my patrol car without further incident. I transported Nye to jail. I arrived at the jail and had deputies take custody of Nye and commence the booking process.

I conducted an inventory of Nye's black backpack prior to having it placed in her property bin at the jail. While conducting the inventory on Nye's black backpack, I located a black eyeglass case in the main compartment of the backpack. The black eyeglass case contained a burnt glass pipe and a small black case that contained a white crystal substance. I also located a small clear case in the side pocket of the main compartment of the backpack that contained a white crystal substance.

I know through my training and experience the burnt glass pipe is used to smoke illegal narcotics, the white crystal substance located in the small black case and the small clear case to be methamphetamines. I conducted a narcotics identification kit (NIK) test on both white crystal substance located in the small black case and the small clear case. The white crystal substance located in both small cases presumptively tested positive for methamphetamines. I advised Nye she would also be charged and booked into jail for possession of a controlled substance and possession of drug paraphernalia. I had Nye booked into jail for possession of a controlled substance, possession of drug paraphernalia, and trespassing.

I left the jail and arrived at the Elko Police Department. I took pictures of the black eyeglass case, burnt glass pipe, small black case with methamphetamines, and small clear case with methamphetamines. The pictures taken were later entered into the Veripic system located at the Elko Police Department. I then weighed the methamphetamines and properly packaged all evidence recovered from Nye's person. The total gross weight of the methamphetamines located in the small black case was 2.28 grams (gross weight) and methamphetamines located in the small clear case was 10.08 grams (gross weight). The methamphetamines and burnt glass pipe were entered into evidence locker #12. I concluded my investigation.

I request this report be forward to the District Attorney's Office for review and prosecution.

End of Report

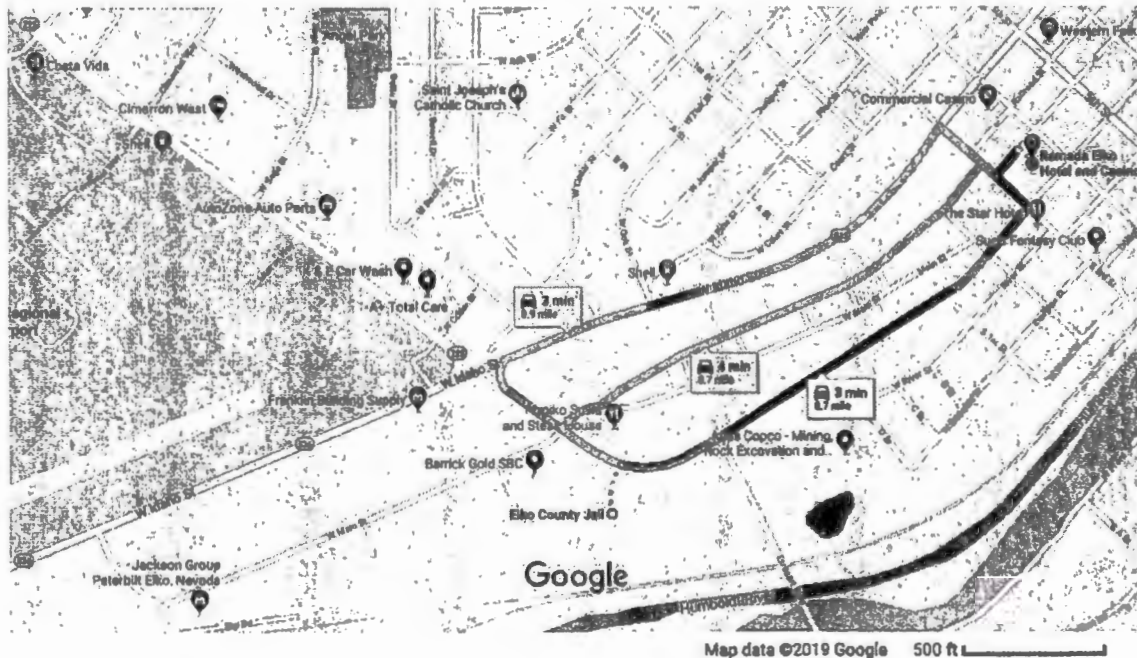
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Exhibit 3
STATE OF NEVADA
VS.
KIMBERLY MARIE NYE

Google Maps

Elko County Jail to Ramada Elko Hotel and Casino

Drive 0.7 mile, 3 min



via W Silver St
Fastest route, the usual traffic
3 min
0.7 mile

via W Idaho St
3 min
0.9 mile

via W Commercial St
4 min
0.7 mile

<https://www.google.com/maps/dir/Elko+County+Jail,+West+Silver+Street,+Elko,+NV/Stoc...> 1/3/2019

Exhibit 4
STATE OF NEVADA
VS.
KIMBERLY MARIE NYE

12/22/2018

Attached is a copy of the personal items Kimberly Marie Nye had on her when entering the Elko County Jail in Elko Nevada. The items are stored in the personal property room behind the booking desk inside the jail. If there is anything else needed, please contact us and we will do our best to assist.

Sincerely,

Deputy Will Wolf D72

29





Elko County Sheriff's Office

Receipt for Property Stored

Receipt Number: 46333

Date: 12/21/2018 10:02:04

Property stored for: 111565

Booking Number: 18EL03173

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
ID	NV DL	N	1	BAG 12/
Socks	PNK	N	1	BAG 12/
Pants	GRY	N	1	BAG 12/
Shirt	PURPLE	N	1	BAG 12/
JACKET	BLU FLANEL	N	1	BAG 12/
Shoes	BLK	N	1	BAG 12/
FLASHLIG	BLK	N	1	BAG 12/
HT				
CHANGE	LOOSE	N	1	BAG 12/
QTIP	PLAIN	N	1	BAG 12/
HAIRTIE	BLK	N	1	BAG 12/
HAIRTIE	GRY	N	1	BAG 12/
Bracelet	WHT BEADS	N	1	BAG 12/
Bracelet	S/C / BLK	N	1	BAG 12/
EARRINGS	WITH PNK STONE X2	N	1	BAG 12/
Ear Ring	WITH WHITE STONE X1	N	1	BAG 12/
Ring	BAND S/C WITH BLUE STONE	N	1	BAG 12/
CASE	PHONE CASE NO PHONE	N	1	BAG 12/

Property Stored For:

Property Received By:

KIMBERLY NYE

Oldham J N

Report Includes:

7:02 AM 12/22/2018

28

Exhibit 5
STATE OF NEVADA
VS.
KIMBERLY MARIE NYE

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.

DA

CASE NO. CR-FP-18-2614
DEPT. NO. 2

FILED
2019 JAN -4 PM 2:53
CLERK OF DISTRICT COURT
CLERK DEPUTY

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

THE STATE OF NEVADA,

Plaintiff,

SUPPLEMENTAL OPPOSITION TO
MOTION TO SUPPRESS

vs.

KIMBERLY MARIE NYE,

Defendant.

COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, TYLER J. INGRAM, District Attorney for the County of Elko, and submits the following Points and Authorities in support of this Supplemental Opposition to Motion to Suppress together with all pleadings and papers on file herein.

Dated this 4 day of January, 2019.

TYLER J. INGRAM
Elko County District Attorney

By:



TYLER INGRAM
District Attorney
State Bar Number: 11819

Registration pursuant to NRS 209B.030
SON Case Appraiser
JOD Case Appraiser



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POINTS AND AUTHORITIES

The purpose of this supplement is to replace the previously attached Exhibit 4 with the Exhibit attached to this supplemental. The previously attached Exhibit 4 was mistakenly included.

Dated this 4 day of January, 2019.

TYLER J. INGRAM
Elko County District Attorney

By: 

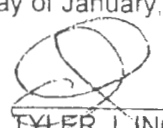
TYLER J. INGRAM
District Attorney
State Bar Number: 11819

Unsworn Declaration In Support Of Opposition
Pursuant to NRS 53.045

Comes now TYLER J. INGRAM, who declares the following to the above-entitled Court:

1. That the Declarant is presently serving as District Attorney of the Elko County District Attorney's Office.
2. That I have read the assertions of fact set forth in this pleading and incorporate them into this Declaration.
3. This Motion is made in good faith, and not merely for the purposes of delay.
4. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 4 day of January, 2019


TYLER J. INGRAM
District Attorney
State Bar Number: 11819

1 CERTIFICATE OF SERVICE

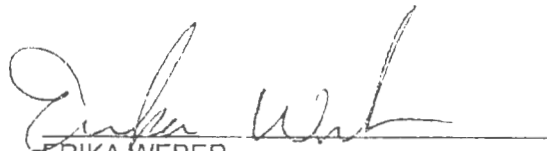
2 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the
3 Elko County District Attorney's Office, and that on the 4th day of January, 2019, I served
4 the foregoing Opposition, by delivering, mailing or by facsimile transmission or causing to be
5 delivered, mailed or transmitted by facsimile transmission, a copy of said document to the
6 following:

7 By delivering to:

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

12 By mailing to:

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

16
17 
18 ERIKA WEBER
19 CASEWORKER

20 DA# F-18-00921
21
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Exhibit 4
STATE OF NEVADA
VS.
KIMBERLY MARIE NYE



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

Date: 03/31/2018 21:31:44

Property returned for: 111565

Booking Number: 181L00752

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:

Property Received By

Alexander G M

KIMBERLY NYE

38

Report Includes:

9:31 PM 3/31/2018

1 Case No. CR-FP-18-3614

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. :

12 KIMBERLY MARIE NYE, :

13 Defendant. :

HEARING ON MOTION

TO SUPPRESS

EXCERPT - TESTIMONY ONLY

14 _____ /
15
16 TRANSCRIPT OF PROCEEDINGS
17

18 BE IT REMEMBERED that the above-entitled matter
19 came on for hearing on February 14, 2019, at the hour of
20 3:42 p.m. of said day, in Elko, Nevada, before the
21 HONORABLE ALVIN R. KACIN, District Judge.
22

23
24
25 Reported by Lisa M. Manley, CCR #271



CERTIFIED
COPY

1 Case No. CR-FP-18-3614

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, : HEARING ON MOTION

11 v. : TO SUPPRESS

12 KIMBERLY MARIE NYE, :

13 Defendant. : EXCERPT - TESTIMONY ONLY

14 _____/

15

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22

23

24

25 Reported by Lisa M. Manley, CCR #271

1

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

2

3 For the Plaintiff: CHAD B. THOMPSON, ESQ.
4 Deputy District Attorney
5 540 Court Street
6 Second Floor
7 Elko, Nevada 89801

8

9 For the Defendant: DAVID D. LOREMAN, ESQ.
10 445 Fifth Street
11 Suite 210
12 Elko, Nevada 89801

13

14 I N D E X

15

16 WITNESSES CALLED FOR THE STATE: PAGE

17 MELONIE EDMOND

18 Direct Examination by Mr. Thompson 3
19 Cross-Examination by Mr. Loreman 15
20 Redirect Examination by Mr. Thompson 18

21 BARTOLO CRIZ

22 Direct Examination by Mr. Thompson 20
23 Cross-Examination by Mr. Loreman 37

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1 officer, of sorts?
2 A. Yes.
3 Q. Okay. So anybody who comes in, that's your
4 job, to book them in?
5 A. Yes.
6 Q. Could you describe that procedure for us.
7 What do you normally do?
8 A. During booking procedure?
9 Q. Yes.
10 A. Usually after they have been patted down and
11 they are cooperative and we are able to book them in, we
12 bring them out to the main desk where we ask them a series
13 of questions based off the Spillman program, beginning with
14 the series like 1 through 8. There's a bunch of different
15 ones. And we just go through a series of questions until
16 they are done.
17 Q. Okay. With regards to -- you talked about
18 searching them, of a sort?
19 A. Yes.
20 Q. Could you describe that process for us?
21 A. First process is a patdown in the patdown
22 area, which is immediately when they are brought in the
23 back door. They will stand in a red box, they'll face the
24 wall, we will go through their clothing and so forth, have
25 them remove their shoes.

5

1 Q. When you say go through their clothing, do you
2 go into their pockets --
3 A. Yes.
4 Q. -- at that point while they are wearing them?
5 A. Yes. Remove belts, jewelry and shoes. And
6 then, from that point, we will direct them down to a
7 dressing room where we will conduct a strip search.
8 Q. Okay. And if somebody, when they come to the
9 jail, if they had any items with them, like a bag or a
10 purse or something like that, what do you do with those?
11 A. If the officer has already gone through the
12 bag, they typically will put that property inside a bucket
13 that we have next to them where we put their clothing and
14 items.
15 Q. And what do you do to those items?
16 A. Those go immediately behind the booking desk
17 to be prepared to be -- immediately when they sit down to
18 be booked in.
19 Q. Okay. And if the officer has not gone through
20 the bag -- when you say officer, are you referring to the
21 arresting officer?
22 A. Yes, sir.
23 Q. Okay. So if the officer hasn't gone through
24 the bag, then what do you do?
25 A. The officer will typically take the bag, which

6

1 is directly behind us, and go through it where it's camera
2 view, and go through the bag right there.
3 Q. With you guys all there?
4 A. Yes.
5 Q. Okay. And why does he do it there, I guess?
6 A. Because in most cases, when they do it right
7 there, it's because they haven't had a chance to be able to
8 do it out on the street. Either the person is combative or
9 it's -- the weather doesn't allow them to be able to really
10 search.
11 So the minute they bring them in the back
12 door, they'll go straight to search while -- do the patdown
13 when we're all there together.
14 Q. Okay. Is there ever a time where they don't
15 search it? What do you guys do with the bag then?
16 A. We search it ourselves. It gets a second
17 search.
18 Q. Okay. So you search it even after the officer
19 does?
20 A. Absolutely.
21 Q. Okay. And what is the purpose of your second
22 search and what you do after the officer --
23 A. In case the first officer missed something.
24 Q. Okay. And what are you doing with those items
25 then?

7

1 A. The items that we go through, if it's in a
2 bag we'll pull them out and go through them, make sure
3 they're allowed to have them.
4 Sometimes they have knives, that kind of
5 thing, and those things need to be locked up. Or if it's
6 marijuana, under an ounce, they can have that, that stuff
7 needs to go up front for them to be stored to pick up
8 later.
9 Q. So okay. And so what do you do with an
10 inmate's items?
11 A. We go through them. If it's in the bag, we'll
12 go through the bag, make sure there is no drugs in there.
13 And then you'll put it all back in the bag and it goes into
14 a -- it's a large bag that it goes into, a holding bag.
15 Q. And you put it in there for what purpose?
16 A. For them, for their release.
17 Q. So when they get released, they get their
18 items back?
19 A. Yes.
20 Q. Okay. Do you inventory it in any way or make
21 a list of these items?
22 A. We do.
23 Q. Okay. Did you do that in this particular
24 case?
25 A. Yes, sir.

8

1 Q. I'm going to show you Exhibit 2. Do you
2 recognize what's -- what the first page is there?
3 A. Yes, sir.
4 Q. What is that?
5 A. This is a description. This is an inventory
6 of the items that were booked in on that day.
7 Q. For Kimberly Nye?
8 A. Yes, sir.
9 Q. Is your signature on there?
10 A. It is.
11 Q. Where is that at?
12 A. On the right-hand side bottom.
13 Q. So this is a -- is this a list that you
14 created as far as the description here?
15 A. Yes, sir.
16 Q. These aren't the words of Kimberly Nye. It's
17 what you saw?
18 A. Yes. These are the items that I went through
19 personally and entered them in the system.
20 Q. Okay. And the second page, what are we
21 looking at here?
22 A. Now, the second page would be a release of
23 those items back to the person as they were being released.
24 Q. Okay. And --
25 A. So that is a release of property.

9

1 Q. So when was the release date then?
2 A. I'm not sure. Oh, 3/31/2018.
3 Q. Okay. And is it signed by Ms. Nye?
4 A. It is.
5 Q. And who is the other signature on the left?
6 A. That would be Sergeant Alexander.
7 Q. Who is that?
8 A. Matt Alexander, our sergeant.
9 Q. Who's -- okay. He's your sergeant at the
10 jail. Okay.
11 Now, all these policies and procedures that
12 you have talked about, you have been at the detention
13 center of the jail for how many years? Thirteen?
14 A. Thirteen.
15 Q. Have these been the policies and procedures
16 for the whole time you've been there?
17 A. Yes, sir.
18 Q. And are they now currently documented in a
19 policy manual?
20 A. Yes, they are.
21 Q. Okay. I'm going to show you Exhibit 1. I
22 showed you that earlier in the day.
23 A. Yes.
24 Q. Have you seen that before?
25 A. Yes, sir.

10

1 Q. What is that?
2 A. This one is a -- it's a revised procedure
3 manual for taking in property.
4 Q. Okay. Does it show an effective date on it
5 there on the front?
6 A. It does.
7 Q. What does it show?
8 A. 12/7/18.
9 Q. This was recently signed or went into effect?
10 A. Yes.
11 Q. Were these same policies in effect before?
12 A. Yes.
13 Q. Okay. Can you describe the discrepancy in the
14 date, as far as --
15 A. The reason why the date is so soon is because
16 Ron Supp, our previous undersheriff, wanted to update all
17 the policies that he could before leaving. So what he
18 would do is he would go through all of them, and if we made
19 changes on them, the changes would be conducted and it
20 would be implemented. It was implemented at that time.
21 Q. Okay. So you have had policy manuals like
22 this in place for the full 13 years you have been there?
23 A. Yes.
24 Q. Can you see any changes from this current one
25 from the previous one --

11

1 A. No.
2 Q. -- that would have been in effect when you
3 arrested Ms. Nye?
4 A. No, it's the same.
5 Q. It's the same. And is there a particular
6 portion of the policy manual that directs you to do the
7 inventory that you have described?
8 A. Yes, there is.
9 Q. Could you find that for me?
10 A. Page -- on the second page, under procedure,
11 it has the procedures on inventorying all property.
12 Q. Okay. And receipted, what does "receipted"
13 mean?
14 A. That means that we -- after we list it, they
15 actually look at the property receipt and they sign it off
16 that they acknowledge that everything in their property is
17 accurate.
18 Q. Now --
19 THE COURT: Meaning the inmate?
20 THE WITNESS: Yes, sir.
21 THE COURT: Thank you.
22 MR. THOMPSON: Thank you for clarifying.
23 Q. So in your experience over the 13 years, have
24 there been times where you guys searched the bags and find
25 things --

12

1 A. Yes.
2 Q. -- that are evidence or seized as evidence by
3 the other officers?
4 A. Yes.
5 Q. Do you guys try, as the booking officers, to
6 not become basically a witness in the case? Do you prefer
7 to have the officers --
8 A. Yes.
9 Q. -- do the search?
10 A. Um-hmm.
11 Q. Is that why you have them do a search before
12 they leave?
13 A. Yes.
14 Q. If they didn't do that search, would you still
15 do your search?
16 A. Yes.
17 Q. And even if they do their search, do you still
18 do your search?
19 A. Yes.
20 Q. And if you find something during your second
21 search, what do you do at that point? What's your
22 procedure?
23 A. Usually we'll notify the officer, if the
24 officer is still there, of our findings so that they can
25 add it on their charges. Or if the officer's already left,

13

1 we will charge it ourself as introduction jail contraband
2 or possession of drugs.
3 Q. Whatever it is, the item?
4 A. Yeah.
5 Q. Okay. Do you have a specific memory about
6 this particular case and the arresting officer, Officer
7 Ortiz?
8 A. I do not, no. I can tell you that the
9 arresting officer at that time, I believe that on that
10 sheet right there, because it has Sergeant Alexander -- I
11 was working an opposite shift, so I believe that he did the
12 booking, we changed shifts, and I completed the rest of the
13 booking.
14 Q. Sergeant Alexander?
15 A. Yes, sir.
16 Q. because he did the release? Because the
17 release is --
18 A. Or, no. I did the booking; he did the
19 release. That's right. So he did -- the release sheet
20 would be his. So there was two -- two different officers
21 doing one -- one -- the procedures.
22 Q. On the inventory sheet, you're talking about?
23 A. Yes, sir. I'm sorry. I'm confusing you.
24 Q. I'm just talking about on -- on the date -- I
25 believe you said it was the 19th. Where are we at? The

14

1 29th, sorry.
2 A. March 29.
3 Q. March 29. You were the one who booked Ms.
4 Nye?
5 A. Yes, um-hmm.
6 Q. Okay. Did you search her belongings then and
7 create the inventory?
8 A. Yes, I did.
9 Q. Okay. But Sergeant Alexander wasn't there for
10 that?
11 A. No.
12 Q. His stuff was all on the 31st?
13 A. Yes.
14 Q. Okay.
15 MR. THOMPSON: I don't have anything else for
16 Deputy Edmond.
17 THE COURT: Cross-examination.
18 MR. LOREMAN: Thank you, Your Honor.
19 CROSS-EXAMINATION
20 BY MR. LOREMAN:
21 Q. Deputy, I'm going to hand you what has been
22 marked as Plaintiff's 2. And this is the inventory sheet,
23 correct?
24 A. Yes, sir.
25 Q. Okay. And that -- you said that you created

15

1 that based on items that you had checked through, correct?
2 A. Yes, sir.
3 Q. And those were items of clothing and wearing
4 apparel, correct?
5 A. Yeah. And a bag. And usually, if there is
6 items in the bag, we don't inventory every single item in
7 the bag. Sometimes there is just too much stuff to list.
8 So we'll just put "bag."
9 Q. So you didn't inventory the bag?
10 A. Well --
11 Q. You didn't put anything on the --
12 A. I didn't. I just put "bag." I don't --
13 sometimes I don't put what the contents -- it just depends.
14 Q. And from the standpoint of that inventory, how
15 do you know that was Ms. Nye's bag?
16 A. I don't. All I know is that it was brought in
17 with the officer and it was given to us. And the only way
18 that I can confirm that that is their property is when I
19 give them this inventory sheet and they look it over and
20 they acknowledge it does belong to them.
21 Q. Okay. And as far as the items that you stated
22 were about -- about looking into the bags, you're looking
23 for weapons and contraband, aren't you?
24 A. Absolutely.
25 Q. You understand that this case was a

16

1 trespassing case?
2 A. Okay. I have no idea what the case was on.
3 Q. Well, when they are coming in and booked, you
4 have a basis for why they are booked, correct?
5 A. Yeah, yeah. But it doesn't matter what the
6 case is. We're going to do it all the same.
7 Q. And with regard to Plaintiff's 1, that's the
8 policy manual?
9 A. Yes.
10 Q. Okay. That's the Elko County Sheriff's
11 manual, correct?
12 A. Yes.
13 Q. It has nothing to do with the Elko Police
14 Department?
15 A. No.
16 Q. Are you aware of any policies the Elko Police
17 Department has?
18 A. I am not.
19 Q. And just for the record, on this inventory,
20 there is no designation of any drugs on this inventory,
21 correct?
22 A. No. And if there were drugs, it wouldn't be
23 inventoried.
24 Q. Is there a reason why you don't put that down
25 on the inventory?

17

1 A. Because they would be - if it was narcotics
2 or something they are not supposed to have, they would just
3 be charged with it. If it is any sort of prescription
4 medication that goes in the bag, it does get inventoried.
5 Q. But based on this document that has been
6 produced by the State, there is no way of telling if there
7 is any items that are on that list were actually inside
8 that bag, correct?
9 A. No.
10 Q. And do you have any independent recollection
11 of anything?
12 A. I do not.
13 Q. And you are not aware in this situation -- I
14 think Mr. Thompson asked you if you had any specific memory
15 about this incident or about the search.
16 And you don't have any specific memory about
17 the knowledge as to where that bag came from or how it got
18 to your post, correct?
19 A. Correct.
20 Q. Okay.
21 MR. LOREMAN: I have nothing further.
22 THE COURT: Thank you, Mr. Loreman.
23 Any redirect?
24 REDIRECT EXAMINATION
25 BY MR. THOMPSON:

18

1 Q. Your inventory that you created, was that
2 based on your search of the bag?
3 A. Yes, sir.
4 Q. It's not based on what Officer Ortiz told you
5 or anything like that?
6 A. No, sir.
7 Q. And so if he did remove an item or seize it as
8 evidence, you --
9 A. I would never have seen it.
10 Q. You would have never seen it. Okay.
11 MR. THOMPSON: I don't think I have anything else
12 for the deputy.
13 THE COURT: All right. Give me a moment.
14 Thank you. Any recross?
15 MR. LOREMAN: No, Your Honor.
16 THE COURT: All right. May we excuse Deputy
17 Edgmond?
18 MR. LOREMAN: Yes, Your Honor.
19 THE COURT: Thank you, Deputy.
20 THE WITNESS: You're welcome.
21 MR. THOMPSON: Officer Ortiz would be our next
22 witness.
23 THE COURT: Come on up, please, Officer Ortiz.
24 Please raise your right hand and our clerk can
25 swear you in.

19

1 (WHEREUPON, the witness was sworn)
2 THE COURT: Officer Ortiz, please have a seat at
3 the witness stand. Docr comes out to you. Watch your
4 step.
5 Thank you. Mr. Thompson.
6 BARTOLO ORTIZ
7 called as a witness in said case, having been first
8 duly sworn, testified as follows:
9 DIRECT EXAMINATION
10 BY MR. THOMPSON:
11 Q. Would you state your full name and spell both
12 your first and last names, please.
13 A. Bartolo Ortiz. Last name is spelled O-r-t-i-z.
14 First name is spelled B-a-r-t-o-l-o.
15 THE COURT: If you want, you can pull that
16 microphone up to your chest. I think we can hear you just
17 fine without you speaking in there. So you don't have to
18 lean forward like that, if you don't want to. You looked
19 kind of uncomfortable.
20 THE WITNESS: I am good, sir.
21 Q. Officer Ortiz, you previously testified in
22 this matter at the preliminary hearing?
23 A. Yes, I did.
24 Q. Okay. We've already incorporated that record,
25 so we are not going to rehash the whole incident. We just

20

1 have some further clarifying questions for you at this
2 juncture.

3 I wanted to ask you -- we have first Exhibit
4 4, which is a -- the dispatch log. It details calls for
5 service.

6 Are you familiar with these? Have you seen
7 these before? Do you see these much?

8 A. I see these when we request them from our
9 central dispatch.

10 Q. Okay. And so when you look at these, are you
11 guys identified by name on them?

12 A. Should be identified by our call number.

13 Q. Okay. What was your call number back in March
14 of 2018?

15 A. My call number is still 158.

16 Q. How long has that been your call number?

17 A. For 12 years now.

18 Q. Okay. Do you recognize the call number 121?

19 A. Yes.

20 Q. Who is that?

21 A. That right now is Corporal Daz.

22 Q. Okay. Was -- I suppose they put names here.
23 So you are -- Ortiz is 158, Daz is 121?

24 A. Yes.

25 Q. Okay. And then 117?

21

1 A. Sergeant Locuson.

2 Q. 131?

3 A. Officer Bogdon.

4 Q. Okay. I think that's everybody here. Now,
5 you responded -- according to this dispatch log, can you
6 tell what the times were that you responded to the call
7 first when you got the call for service?

8 A. Call for service was on March 29, 2018, at
9 2:50 in the morning is when the initial call came up.

10 Q. Okay. Where were you going to be dispatched
11 to or headed to?

12 A. The Stockmen's Casino at 340 Commercial.

13 Q. And the Stockmen's, now, is there a hotel
14 associated with that, a bigger chain?

15 A. Yes.

16 Q. What's that?

17 A. They added the Ramada hotel or motel.

18 Q. Okay. And then the next time that we see your
19 call number on here, what is the next entry for the next
20 time your call number comes up?

21 A. At -- on March 29, 2018, at 2:51 I received a
22 call.

23 Q. Okay. So which one are you referring to?

24 What is the next one after that one that your 158 comes up?

25 A. March 29, 2018, at 3:15 I had a J 3 X which

22

1 means -- in our terminology is a female prisoner for
2 trespass, and it's last of Nye.

3 Q. Okay. And then the next entry that has your
4 number 158 attached to?

5 A. 3:19 a.m., I advised that -- our central
6 dispatch, which is to let station 8, which is the jail,
7 know that we have an uncooperative female going down to the
8 jail.

9 Q. Okay. Is that something you would have
10 reported to dispatch?

11 A. Yes.

12 Q. Okay. And next one that has to do with your
13 158?

14 A. 3:19. The previous one was 3:19 and 13
15 seconds, and the other one is 3 -- the one I'm speaking
16 about now is 3:19:34. Dispatch advised the jail that I had
17 an uncooperative female.

18 Q. Okay. The next 158 entry?

19 A. It's at 3:20:51 in the morning. I gave --

20 Q. Same date?

21 A. Same date March 29, 2018, I gave my
22 beginning miles to central dispatch that I was en route to
23 the jail.

24 Q. And what's the purpose of that?

25 A. Just to a male -- a male officer with a female

23

1 prisoner, just so we go from point A to point B and we
2 don't go anywhere else, and no inappropriate stuff happens.

3 Q. What's your beginning miles?

4 A. At 027, .7 miles.

5 Q. Okay. Then the next entry that has your name?

6 A. It's 3:26 on March 29, 2018. At 3:26:32 it
7 looks like we are already at the jail and I advised of the
8 possession of controlled substance and paraphernalia.

9 Q. Okay. And did you give your mileage there
10 again?

11 A. Negative.

12 Q. You did not. Okay. Did you see where you
13 might have in a later entry? Can you look through that?

14 A. I didn't -- I just advised 23 -- I was -- I
15 was at the jail.

16 Q. Okay. How far is it from the jail to the
17 Ramada or the Stockmen's?

18 A. It's got to be less than a half mile.

19 Q. Okay. Showing you Exhibit 6. Do you
20 recognize what that is?

21 A. It's a Google maps of -- it looks like of
22 downtown Elko.

23 Q. Okay. Does it show basically a route from the
24 Ramada to the jail?

25 A. Yes, it does.

24

1 Q. Okay. What does it show for the mileage there
2 for the -- for the three different routes that they are
3 showing?

4 A. The three different routes, 3 minutes via west
5 Silver, .7 miles; via East Idaho, 3 minutes, .9 miles; and
6 via west Commercial street, 4 minutes, .7 miles.

7 Q. And based on your training and experience in
8 patrolling the area here in Elko, are those mileages
9 accurate, do you think?

10 A. That's about right, yes.

11 Q. And which route did you take on this
12 particular night when taking Ms. Nye to the jail?

13 A. From the front --

14 Q. If you want to point it out?

15 A. I would have taken -- I was parked at the
16 front entrance. I would have gone east on west Commercial,
17 south on South -- on Fourth Street, and then west on Silver
18 Street.

19 Q. To the jail?

20 A. To the jail, yes.

21 Q. Now, I wanted to ask you a little bit about
22 back at the Ramada. You made the arrest based on a
23 Stockmen's employee telling you -- for trespassing; is that
24 right?

25 A. Correct.

25

1 Q. Okay. And when you encountered Ms. Nye, were
2 there any other -- other than the Stockmen's employee, were
3 there any other civilians around her?

4 A. No.

5 Q. Okay. And did you see that she had any
6 luggage or baggage with her?

7 A. Yes.

8 Q. Okay. What did she have?

9 A. She had like a -- if I remember correct, it
10 was like a backpack.

11 Q. Okay. Where was that at?

12 A. It was on her -- on her side while she
13 gambled. It was on the side.

14 Q. When you say "on her side," like --

15 A. On the floor.

16 Q. On the floor?

17 A. On the floor.

18 Q. Okay. There was nobody else next to her or
19 anything like that?

20 A. No.

21 Q. Okay. When you arrested her, did she make
22 some sort of a request of what to be done with that bag?

23 A. Yes, she did.

24 Q. What was that request?

25 A. To hand it off to her friend or the

26

1 individuals that were with her.

2 Q. Okay. And were there any individuals with
3 her?

4 A. No.

5 Q. Did you see anybody?

6 A. No.

7 Q. Did she tell you where they were?

8 A. No.

9 Q. So what did you make of that request at that
10 time?

11 A. The backpack was going with her to jail.

12 Q. Okay. Is that typical? Is that what you
13 normally do?

14 A. Yes.

15 Q. And when you arrest somebody, do you normally
16 do a search incident to arrest?

17 A. Yes.

18 Q. Does that normally include any baggage or
19 items they have with them?

20 A. That includes everything on their person.

21 Q. Okay. To include a bag or purse or something
22 like that?

23 A. Yes.

24 Q. Okay. Do you normally do it right then and
25 there?

27

1 A. Yes, I do.

2 Q. Okay. And in this particular case, did you?

3 A. No.

4 Q. And what did you do in this case as far as the
5 search goes?

6 A. I didn't search the backpack until I got to
7 the jail.

8 Q. Okay. What about a search of her person?

9 A. Just a quick search, just because of the being
10 uncooperative.

11 Q. Okay. So you adjusted your searching
12 policies -- or at least your searching procedures that you
13 are usually accustomed to on this particular day?

14 A. Yes, I did.

15 Q. And you tailored them to the situation that
16 you had?

17 A. Yes.

18 Q. Explain that situation to us?

19 A. She was -- Ms. Nye was intoxicated. Handcuffs
20 went on. She became belligerent to officers, causing
21 workers from the Stockmen's and just other people that were
22 gambling to lookie-loo, come over, check it out.

23 She was telling Officer Bogdon to bend over
24 and -- to bend over and fuck her. We took her out. She
25 continued the same -- we took her out to the patrol car.

28

1 She continued the same behavior.
2 And at that time just made a decision that
3 search her real quick, her person, waist band, put the
4 backpack in the back trunk, and get her out of there and
5 take her to jail.
6 Q. Okay. So how many officers were present?
7 A. It was -- there were four officers to include
8 myself: Sergeant Locuson, Corporal Daz, Officer Bogdon and
9 myself.
10 Q. Okay. Any particular reason why you didn't
11 have one of the other officers present search the bag at
12 that point in time?
13 A. No, no particular reason.
14 Q. Is that an option, or have you done that in
15 the past where you had somebody do that for you?
16 A. That's an option. That's an option, but I --
17 I didn't -- I didn't do it.
18 Q. Can you think of a reason why not, or you just
19 didn't do it?
20 A. Just wanted to get her out of there in a
21 hurry.
22 Q. Okay. And what did you do with the bag as far
23 as her transportation? Where did you put it?
24 A. Usually put it in the back trunk, in the trunk
25 of my patrol car.

29

1 Q. And your patrol car was what on that night?
2 What kind of car?
3 A. It was a -- should have been a twenty
4 twenty-six, a crown -- a caprice.
5 Q. Which is a 4-door sedan?
6 A. Four doors, yes.
7 Q. Okay. So you placed her where?
8 A. In the back.
9 Q. And the backpack just goes in the trunk?
10 A. Yes.
11 Q. Do you have a specific container for it or
12 anything?
13 A. No.
14 Q. Any particular reason that you put it in the
15 back? Or in the trunk?
16 A. I always put people's property that go with
17 them in the jail in the back.
18 Q. Is that what you do?
19 A. Yes.
20 Q. Is that part of your training?
21 A. Now that you mention it, I don't know that's
22 part of the training
23 I just -- I see it securer in the back trunk
24 than up front on the passenger side, just in case something
25 happens, or I need to pull over, somebody breaks in the

30

1 car, something like that. I just always put it in the
2 trunk.
3 Q. Okay. So then you went .7 miles to the jail.
4 Can you describe Ms. Nye's behavior while you were driving?
5 A. Same behavior. Yelling, saying that her dad
6 or stepdad is going to get her off this. Just kept on
7 yelling, calling me every name in the book.
8 Q. Terribly unusual for you to be treated like
9 that?
10 A. Happens all the time.
11 Q. Okay. And so then, when you get to the jail,
12 what did you do at that point there with the bag?
13 A. I went --
14 Q. I'm sorry, I need to ask that a little better.
15 As far as when you get to the jail, what do you do with her
16 and the bag as far as the procedure? Which one goes in
17 first? How did you do that?
18 A. I get the deputies -- the deputies come out
19 and get Ms. Nye, they take her in. I grab her backpack and
20 go inside with her.
21 Q. Okay. And you go where with the backpack?
22 A. Where -- where they commence their booking
23 process, where they start uncuffing her and searching her,
24 they usually have a -- they always have a plastic container
25 where the property goes, and I began to search the backpack

31

1 right there.
2 Q. So you put it in the plastic container and
3 start searching it?
4 A. Yes.
5 Q. Okay. And where is Ms. Nye while you are
6 searching it? How far away?
7 A. She is -- she is from me to Judge Kacin
8 Q. That close?
9 A. Yes.
10 Q. Okay.
11 MR. THOMPSON: So I would say six feet?
12 THE COURT: I think that's -- yeah, five feet
13 maybe.
14 MR. THOMPSON: Okay.
15 THE COURT: I will accept that. Does that sound
16 right to you?
17 THE WITNESS: Five feet, yeah.
18 MR. THOMPSON: Okay.
19 THE COURT: Sound right to you, Mr. Loreman?
20 MR. LOREMAN: I'm good with six feet.
21 THE COURT: Five to six feet, all right.
22 A. Just to give you a visual, I'm pretty sure you
23 guys been down to the booking area at the jail, where they
24 have the red footprints, put your hands up against the
25 wall. Then they got the probable cause work sheet room

32

1 where you type up your probable cause. That's now far we
2 were.

3 Q. You assume too much. I have never been
4 arrested, Mr. Ortiz.

5 So you are within six feet of her while you
6 are searching the backpack. And the deputies are searching
7 her at the same time that you are searching the backpack?

8 A. Correct.

9 Q. And when you say searching her, what were --
10 what are they doing actually?

11 A. Uncuffing her, searching her to make sure
12 there is no illegal contraband, weapons, anything get in
13 the jail per their policy.

14 Q. So into her pockets?

15 A. Into her pockets, searching everything. Then
16 they eventually take her into a holding cell to search --
17 change her out from her regular clothes to the jail
18 clothes.

19 Q. Okay. And as far as your search of the
20 backpack and search of her at the jail, did one or the
21 other take longer? Or about the same?

22 A. They are about the same.

23 Q. Okay. How long did it take you before you
24 found anything of note in the backpack?

25 A. I'm not sure, I don't recall.

33

1 Q. Okay. And what did you actually find?

2 A. The -- like a black glass case, little bit of
3 a white powder and a pipe.

4 Q. Okay. Showing you Exhibit 5. Is that what
5 you found?

6 A. Yes.

7 Q. So what is the black case you are referring
8 to?

9 A. This item.

10 Q. And inside that case?

11 A. Was the film-type looking thing and the pipe.

12 Q. Okay. This pipe, do you recognize it as what?

13 A. Used to smoke illegal narcotics.

14 Q. Any particular type of illegal narcotics?

15 A. Yes.

16 Q. What type?

17 A. Methamphetamines.

18 Q. Just based on your training and experience
19 over 12 years?

20 A. Yes.

21 Q. Have you ever seen it used for anything else
22 or heard of it used for anything else other than that?

23 A. No.

24 Q. Okay. So once you found these items, what did
25 you do with them?

34

1 A. I collected the items, and I -- I charged
2 accordingly.

3 Q. Okay. As far as the inventory of her items
4 and her personal items that the jail then does, are you a
5 part of that, or was this process a part of that?

6 A. No, that's the jail.

7 Q. And were you still around when they did that?

8 A. No. They do that after -- after I complete or
9 any officer completes their probable cause work sheet and
10 hands it off to them, advises them of the charges.

11 And then depending how busy they are, if they
12 have a few people, if they got a book-and-release prior to
13 whoever we just brought in, that's when they start doing
14 it.

15 Q. So you then -- you then, after you finished
16 your probable cause sheet, you left?

17 A. Yes.

18 Q. And you took these items with you?

19 A. Yes.

20 Q. Did you ever think about getting a warrant for
21 the backpack?

22 A. No.

23 Q. Okay. Have you ever sought a warrant for
24 anybody's personal property that you take down to the jail?

25 A. To take -- for property

35

1 Q. So you take somebody down to the jail and they
2 have personal property with them. Have you ever sought a
3 warrant for any of that personal property before?

4 A. No.

5 Q. In the 12 years you have been doing this?

6 A. Not for property on their person, no.

7 Q. Okay. Are you aware of any other officers
8 doing that?

9 A. No.

10 Q. Have you ever been trained that you ought to
11 do that?

12 A. Yes.

13 Q. That you ought to get a warrant?

14 A. On certain -- certain cases, I guess there are
15 certain -- trying to figure the word out -- circumstances.

16 Q. Like what?

17 A. If I would have left the backpack at the
18 Stockmen's and I had transported to jail, then Stockmen's
19 called me half hour, hour later, time-frame wise,
20 probably -- I would probably want to apply for a search
21 warrant because it's not really search incident to arrest
22 because I already arrested her, time frame been a half hour
23 or longer, probably should apply for a search warrant.

24 Q. Okay. Any other circumstances?

25 A. Just the time frame, I guess.

36

1 Q. Okay. As far as your training and how things
2 go for you officers, I mean, what is paramount as far as
3 priority? Searching someone, or searching a backpack of
4 someone, or getting them under control?

5 A. Getting them under control. It's for their
6 safety and ours. Get them out of there. Be a priority.

7 MR. THOMPSON: I don't have anything else.

8 THE COURT: Any cross-examination?

9 MR. LOREMAN: Yes, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. LOREMAN:

12 Q. Officer Ortiz, you weren't the first officer
13 on scene, correct?

14 A. No.

15 Q. And, in fact, were you the last officer on
16 scene?

17 A. Yes.

18 Q. And so that would mean that there were at
19 least three other officers that were there for a bit more
20 length of time than you?

21 A. Yes.

22 Q. And as I look at the time schedule on here,
23 you basically were there about four minutes?

24 A. If that's what it says on the call log, how
25 you got your time frame, yeah.

37

1 Q. It's what you testified to?

2 A. Yes.

3 Q. So I haven't looked at the call log. I am
4 just going from what you had said when you read the call
5 log.

6 A. Yes.

7 Q. And that had to do with your call at 2:51,
8 then your next number was 3:15?

9 A. Correct.

10 Q. And so the other officers, of course, had much
11 more time there?

12 A. Yes.

13 Q. And you were aware that this call actually
14 dealt with a -- not just one person when the call came in.
15 It was for other people there, correct?

16 A. Correct. They wanted us to do a security
17 check of numerous people inside.

18 Q. Okay. And Ms. Nye was just one of that group,
19 correct?

20 A. Yes.

21 Q. And you didn't do anything about any of the
22 other people that the call came in on, correct? You made
23 no contacts with anybody else?

24 A. No.

25 Q. And with regard to the backpack and Ms. Nye's

38

1 request that you leave it with someone, you didn't make any
2 attempt to find that person in the Stockmen's, did you?

3 A. No.

4 Q. And when you did search the backpack, you
5 didn't draft up an inventory of your search?

6 A. I don't do an inventory.

7 Q. What was that?

8 A. I don't do an inventory. Search incident to
9 arrest.

10 Q. Now, the -- when you do the search, isn't part
11 of that search so that you would not be accused of
12 stealing?

13 A. Yes.

14 Q. So you're saying to this Court that in doing
15 that search you would not inventory items that could be
16 considered valuable that you might be accused of taking if
17 you did not?

18 A. I was at the jail searching the backpack, and
19 they do the -- they have their own inventory list.

20 Q. And the inventory list that was created by the
21 jail says "bag." Not anything in it. So you were the one
22 that searched the bag, correct?

23 A. Yes.

24 Q. That was the first search?

25 A. That was the first search, yes.

39

1 Q. And you were the one that brought the bag,
2 correct?

3 A. Yes.

4 Q. In fact, that was something that was taken
5 from the floor by the police over -- into the -- and put in
6 the trunk of the car -- your car, correct?

7 A. Yes.

8 Q. It was not on my client's person?

9 A. She claimed it was hers, it was right next to
10 her.

11 Q. I asked you if it was on her person.

12 A. Not on her person, no.

13 Q. As far as you know, did any of the other
14 officers involved in this matter make any effort to find
15 the person that she -- Ms. Nye wanted to leave her bag
16 with?

17 A. Yeah, I believe we just looked around and no
18 one was really around.

19 Q. I mean, just from your knowledge, you don't
20 know if they --

21 A. No.

22 Q. -- went around --

23 A. No, no.

24 Q. -- and searched?

25 A. No.

40

1 Q. And one of the things that you do in your
2 search is, isn't it true, that you search so that you can
3 determine if there is any weapons or anything that might be
4 of danger to you in the situation, correct?

5 A. Danger to me or illegal, yes. Yes.

6 Q. And at the point of being at the sheriff
7 station and coming out of your car, my client had no
8 ability to contact that bag; is that correct?

9 A. Can you --

10 Q. Well, my client couldn't have any contact with
11 that bag since you put it in the trunk of your car,
12 correct?

13 A. Correct.

14 Q. In fact, she didn't have any contact with that
15 bag since it was picked up from the floor at the Stockmen's
16 all the way through the search, correct?

17 A. Correct.

18 Q. And there were no weapons in that bag,
19 correct?

20 A. No.

21 Q. And you opened the glass case that was in the
22 bag, correct?

23 A. The what case?

24 Q. The glass case or the black -- the black case?

25 A. Correct.

41

1 Q. And that's where you found these items that
2 were shown in picture that -- that was in Exhibit 5, I
3 believe?

4 A. Yes.

5 Q. Okay. So there was nothing that was loose in
6 the bag itself?

7 A. I don't recall all the contents inside the
8 bag.

9 Q. But, I mean, of these items that were in this
10 picture, those were not loose in the bag, correct?

11 A. No, they were in it.

12 Q. In the case?

13 A. Yes.

14 Q. So you opened the bag, you searched the bag,
15 you found the case, and then you opened the case?

16 A. Yes.

17 Q. So you actually opened two things?

18 A. Yes.

19 Q. Okay.

20 MR. LORFMAN: I have no further questions, Your
21 Honor.

22 THE COURT: Anything else, Mr. Thompson?

23 MR. THOMPSON: I don't have anything else.

24 oo000

25

42


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 KIMBERLY MARIE NYE, defendant, heard at Elko, Nevada, on
10 February 14, 2019, and took verbatim stenotype notes
11 thereof; and that the foregoing 42 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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1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
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5 Judicial District Court, Dept. II, of the State of Nevada,
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14 had.

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ELKO COUNTY SHERIFF'S OFFICE
DETENTION DIVISION POLICY
CHAPTER 600

SECTION : 625 INMATE PERSONAL PROPERTY, CONTROL SYSTEM FOR INMATE MONEY	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:

- 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.

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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



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
KIMBERLY NYE

Date: 03/31/2018 21:31:44
Booking Number: 181L00752

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:

9:31 PM 3/31/2018

PLAINTIFF EXHIBIT NO. 2
CASE NO.: CR-FP-18-2614
DISTRICT COURT: JUDGE ALVIN R. KACIN
DATE MARKED: 02/14/19
DATE 02/14/19
CLERK: DM



Elko County Sheriff's Office

Booking Sheet for Inmate # 18EL00752

Name #: 111565

Name: NYE, KIMBERLY MARIE

Address: 454 MERINO DR

SPRING CREEK, NV 89815

Born: BAKERSFIELD, CA



Personal Identification

Drivers Lic: 0602274448

State: NV

Home Phone: (775)397-0769

Local ID:

Work Phone: ()-

Soc. Sec: [REDACTED]

Physical Description

DOB: 03-11-89 (29 YRS)

Eyes: BLA

Complexn:

Race: I

Glasses: Y

Build:

Sex: F

Hair: BRO

Ethnic:

Hgt: 5'04"

Hair Style:

Wgt: 108

Beard:

2018 MAR 29 AM 8:06
FILED
ELKO COUNTY DISTRICT ATTORNEY

Assigned Housing: 6 Dressing A

Booking Date: 03-15-00 03:29:18

Current Location: 6 Dressing A

Booked By: Edmond M D

Property Bag: ELB22

No Active Holds Located

Ref #	Case #	Description	Att Agency	CR1	Bail Amt	Bail Type	DSP	PCN	Counts
Meth	51127 453.336 2a. POSS	SCH I, II, III, IV C.S.	ELSO	ELJC	\$5000.00	BNCA			1
	(1ST/2ND) (F)								
	51339 453.566. USE/POSS	DRUG-PARA (M)	ELSO	ELJC	\$640.00	BNCA			1
	53106 207.200 TRESPASS.ELSO	NOT AMOUNTING TO		ELJC	\$195.00	BNCA			1
		BURGLARY (M)							

	NYE, KIMBERLY
	Name #111565 DOB: 03/11/89

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PLAINTIFF EXHIBIT NO. _____
CASE NO.: CR-FP-18-2014-3
DISTRICT COURT: JUDGE ALVIN R. KACIN
DATE MARKED: 02/14/19
DATE: 02/14/19
CLERK: DM

UNSWORN DECLARATION OF CUSTODIAN OF RECORDS**PURSUANT TO NRS 52.252 AND NRS 53.045**

COMES NOW, Heime Hinton, who first being duly sworn, deposes and says:

1. That Declarant is the custodian of records with Elko Dispatch and in this capacity is a custodian of the records of said employer.
2. That on the 21st day of December, 2018 your Declarant was requested by an employee of the Elko County District Attorney's Office to produce a recording of a call for service, specifically the call for service identified as CFS number 15503, with a call date and time of 3/21/18 3:50pm, and identified by incident number 18-6159 which recording is now, or was formerly maintained at this institution.
3. That your Declarant has examined the original recording and has made or caused to be made a true and exact copy of the recording, and that the copy of the reproduction of the recording attached hereto is true and complete.
4. That the original recording was made at or near the time of the telephone call, by or from information transmitted by a person with knowledge, and was made in the course of a regularly conducted activity of your Declarant or the stated employer.

I certify and declare, under the penalties of perjury, that the foregoing is true and correct.

Further your Declarant sayeth not.

Dated this 6th day of January, 2019.

Heime Hinton
Custodian of Records
Elko Central Dispatch

Detail Call For Service Report

Login ID: jgonzales

Print Date/Time: 12/21/2018 15.24

From CFS:	15503	From Date:	03/29/2018 02:50	CFS Type:	All
To CFS:	15503	To Date:	03/29/2018 02:50	Agency Type:	
Layer:	All	Areas:	All		

CFS Number: 15503 Call Date/Time: 03/29/2018 02 50 08 Primary Incident: 2018-00006159

Location:	340 COMMERCIAL ST Elko NV 89801 Elko	Dispatch Time:	03/29/2018 02:51:09
Additnl Loc Info:		Arrive Time:	03/29/2018 02:53:08
Common Name:	STOCKMENS	Clear Date/Time:	03/29/2018 04:22:01
Phone:		Nature Of Call:	
Call Type:	Peace	Report Required:	No
Status:	In Progress	Priority:	1
Police ORI:	NV0040100	EMS ORI:	
		Created By:	dbeachel
		Canceled:	No
		Source:	Telephone
		Fire ORI:	

Person Information

Name	Person Type	Address	Phone	Race	Sex	DOB	Age	SSN
allison, brian	Informational	.		American Indian/Alaskan Native	Male			
desk, heather-front	E911 Caller	<UNKNOWN>	738-5141					
nye kimberly	Informational	.				03/11/1989	29	609-24-0269

Narrative, Questionnaire Responses, TDD Text

Create Time	Created By	Narrative
03/29/2018 02:50:31	dbeachel	req walk thru/lots of 10-56 people in the casino
03/29/2018 02:50:49	dbeachel	two females were fighting earlier/verbal/nothing physical
03/29/2018 02:51:05	dbeachei	male at the front desk also 10-56 belligerent
03/29/2018 02:51:10	sdaz	Dispatch received by unit 121
03/29/2018 02:51:11	bortiz	Dispatch received by unit 158
03/29/2018 02:51:16	dbeachel	male/unknown descrip
03/29/2018 02:51:42	dbeachel	females were last in the bar
03/29/2018 02:51:59	mlocuson	Dispatch received by unit 117
03/29/2018 02:52:11	dbeachel	rp was at the front desk/not ab'le to provide a descrip of the females
03/29/2018 02:52:25	jbogdon	Dispatch received by unit 131
03/29/2018 03:15:28	calvarezz	117/c4
03/29/2018 03:15:46	calvarezz	158/nye j3x trespass
03/29/2018 03:19:13	calvarezz	158/adv sta 8 uncooperative fem
03/29/2018 03:19:34	dbeachel	sta 8 advised/uncooperative female
03/29/2018 03:20:51	dbeachel	158/em 027 et 320 23 8
03/29/2018 03:26:32	calvarezz	158/add charges possession of controlled substance and paraph

and correct copy of the original on file at the Elko Central Dispatch Administrative Authority, Elko, Nevada.

PV

Page 1 of 5

Detail Call For Service Report

Login ID: jgonzales

Print Date/Time: 12/21/2018 15:24

From CFS: 15503 From Date: 03/29/2018 02:50 CFS Type: A'
 To CFS: 15503 To Date: 03/29/2018 02:50 Agency Type:
 Layer: All Areas: All

CFS Number: None Call Date/Time: None Primary Incident: None

Dispositions

Disposition	Disposition Count
Cleared Call	2
AM2	1
AM	1
AF	1

Associated Areas

Area Type Code	Description
Quadrant	City of Elko Station 1
Station	Station 1
Beat	Beat 3
District	
Police ORI	NV0040100
EMS ORI	
Fire ORI	

Incident Number(s)

Incident Number	ORI Number	Primary Unit	Department Name	Agency Type
2018-00006159	NV0040100	Yes	Elko Police Department	Police

Unit(s)

Unit	Primary Unit	Radio Number	Personnel
131	No	131	0249 Bogdon
158	Yes	158	0174 Ortiz
121	No	121	0154 Daz
117	No	117	0083 Locuson

Call Log

Log Date/Time	Entered By	Action	Description
03/29/2018 02:50:08	dbeachel	Call Created	New call created. Call Type: >New Call<. Location: Phone Number: Name:
03/29/2018 02:50:08	dbeachel	Person Added	Name:
03/29/2018 02:50:12	dbeachel	Person Updated	Name: heather Location: <UNKNOWN>
03/29/2018 02:50:16	dbeachel	Location	Location: STOCKMENS Venue: Elko
03/29/2018 02:50:16	dbeachel	Reset Alarm Level	Fire Alarm Level Reset
03/29/2018 02:50:31	dbeachel	Narrative Added	req walk thru/lots of 10-56 people in the casino
03/29/2018 02:50:49	dbeachel	Narrative Added	two females were fighting earlier/verbal/nothing physical
03/29/2018 02:51:05	dbeachel	Narrative Added	male at the front desk also 10-56 belligerent
03/29/2018 02:51:09		Call Timer Expired	Call Timer Expired
03/29/2018 02:51:09	calvarex	Incident Created	Added Incident Number: ORI: NV0040100. Number: 2018-00006159
03/29/2018 02:51:09	calvarex	Unit Status Action	Unit 158 Dispatched
03/29/2018 02:51:09	calvarex	Unit Status Action	Unit 121 Dispatched
03/29/2018 02:51:10	sdaz	Narrative Added	Dispatch received by unit 121

Detail Call For Service Report

Login ID: jgonzales

Print Date/Time: 12/21/2018 15:24

From CFS: 15503 From Date: 03/29/2018 02:50 CFS Type: A
 To CFS: 15503 To Date: 03/29/2018 02:50 Agency Type:
 Layer: All Areas: All

CFS Number: None Call Date/Time: None Primary Incident: None

Call Log

Log Date/Time	Entered By	Action	Description
03/29/2018 02:51:11	bortiz	Narrative Added	Dispatch received by unit 158
03/29/2018 02:51:16	dbeachel	Narrative Added	male/unknown descrip
03/29/2018 02:51:22	dbeachel	Call Type	NewCall type Peace Status In Progress Priority 1
03/29/2018 02:51:22	dbeachel	Call Updated	Dispositions Changed
03/29/2018 02:51:26	dbeachel	Person Updated	Name: heather, Location <UNKNOWN> Contact Phone
03/29/2018 02:51:31	bortiz	Unit Status Action	Unit 158 Enroute
03/29/2018 02:51:32	dbeachel	Person Updated	Name: heather, Location <UNKNOWN>, Contact Phone 738-5141
03/29/2018 02:51:42	dbeachel	Narrative Added	females were last in the bar
03/29/2018 02:51:50	dbeachel	Person Updated	Name: desk heather -front Location <UNKNOWN> Contact Phone 738-5141
03/29/2018 02:51:58	mlucuson	Unit Status Action	Unit 117 Dispatched
03/29/2018 02:51:59	mlucuson	Narrative Added	Dispatch received by unit 117
03/29/2018 02:52:03	mlucuson	Unit Status Action	Unit 117 Enroute
03/29/2018 02:52:11	dbeachel	Narrative Added	rp was at the front desk/not able to provide a descrip of the females
03/29/2018 02:52:24	calvarez	Unit Status Action	Unit 131 Dispatched
03/29/2018 02:52:25	jbogdon	Narrative Added	Dispatch received by unit 131
03/29/2018 02:53:08	sdaz	Unit Status Action	Unit 121 At Scene
03/29/2018 02:53:11	mlucuson	Unit Status Action	Unit 117 At Scene
03/29/2018 02:53:26	bortiz	Unit Status Action	Unit 158 At Scene
03/29/2018 02:53:27	jbogdon	Unit Status Action	Unit 131 At Scene
03/29/2018 02:56:10	calvarez	Person Added	Name: alison brian,
03/29/2018 02:56:42	calvarez	Person Updated	Name: desk heather-front Location <UNKNOWN> Contact Phone 738-5141
03/29/2018 02:58:14	calvarez	Person Added	Name: nye kimberly,
03/29/2018 03:03:16		Unit Timer Expired	Unit 121 At Scene
03/29/2018 03:03:19		Unit Timer Expired	Unit 117 At Scene
03/29/2018 03:03:34		Unit Timer Expired	Unit 158 At Scene
03/29/2018 03:03:35		Unit Timer Expired	Unit 131 At Scene
03/29/2018 03:15:28	calvarez	Narrative Added	117/c4
03/29/2018 03:15:46	calvarez	Narrative Added	158/nye j3x trespass
03/29/2018 03:18:32	sdaz	Unit Status Action	Unit 121 cleared from call
03/29/2018 03:18:47	calvarez	Unit Status Action	76 8 bm026bt0318
03/29/2018 03:19:03	calvarez	Unit Status Action	76 8
03/29/2018 03:19:13	calvarez	Narrative Added	158/adv sta 8 uncooperative fem
03/29/2018 03:19:20	mlucuson	Unit Status Action	Unit 117 cleared from call
03/29/2018 03:19:34	dbeachel	Narrative Added	sta 8 advised/uncooperative female
03/29/2018 03:20:51	dbeachel	Narrative Added	158/crm 027 et 320 23 8
03/29/2018 03:26:32	calvarez	Narrative Added	158/add charges possession of controlled substance and paraph

Detail Call For Service Report

Login ID: jgonzales

Print Date/Time: 12/21/2018 15:24

From CFS:	15503	From Date:	03/29/2018 02:50	CFS Type:	All
To CFS:	15503	To Date:	03/29/2018 02:50	Agency Type:	
Layer:	All	Areas:	All		

CFS Number:	None	Call Date/Time:	None	Primary Incident:	None
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Call Log

Log Date/Time	Entered By	Action	Description
03/29/2018 03:31:43	jbogdon	Unit Status Action	Unit 131 cleared from call
03/29/2018 04:22:01	bortiz	Unit Status Action	Unit 158 cleared from call
03/29/2018 04:22:01	bortiz	Call Cleared	

Unit Log

Log Date/Time	Entered By	Unit	Status	Action	Description	Location
03/29/2018 02:51:09	calvareiz	158	Dispatched	Unit Status Change		340 COMMERCIAL ST, Elko
03/29/2018 02:51:09	calvareiz	121	Dispatched	Unit Status Change		340 COMMERCIAL ST, Elko
03/29/2018 02:51:31	bortiz	158	Enroute	Unit Status Change		
03/29/2018 02:51:58	mlocuson	117	Dispatched	Unit Status Change		340 COMMERCIAL ST, Elko
03/29/2018 02:52:03	mlocuson	117	Enroute	Unit Status Change		
03/29/2018 02:52:24	calvareiz	131	Dispatched	Unit Status Change		STOCKMENS, 340 COMMERCIAL ST, Elko
03/29/2018 02:53:08	sdaz	121	At Scene	Unit Status Change		
03/29/2018 02:53:11	mlocuson	117	At Scene	Unit Status Change		
03/29/2018 02:53:26	bortiz	158	At Scene	Unit Status Change		
03/29/2018 02:53:27	jbogdon	131	At Scene	Unit Status Change		
03/29/2018 03:03:16	default_nws - default_nws	121	At Scene	Unit Timer Expired		340 COMMERCIAL ST, Elko
03/29/2018 03:03:19	default_nws - default_nws	117	At Scene	Unit Timer Expired		340 COMMERCIAL ST, Elko
03/29/2018 03:03:34	default_nws - default_nws	158	At Scene	Unit Timer Expired		340 COMMERCIAL ST, Elko
03/29/2018 03:03:35	default_nws - default_nws	131	At Scene	Unit Timer Expired		STOCKMENS, 340 COMMERCIAL ST, Elko
03/29/2018 03:18:32	sdaz	121	At Scene	Disposition Added	Cleared Call	340 COMMERCIAL ST, Elko
03/29/2018 03:18:32	sdaz	121	Available for calls	Unit Cleared	Unit cleared from call	
03/29/2018 03:18:32	sdaz	121	Available for calls	Unit Status Change		

Detail Call For Service Report

Login ID: jgonzales

Print Date/Time: 12/21/2018 15:24

From CFS: 15503 **From Date:** 03/29/2018 02:50 **CFS Type:** All
To CFS: 15503 **To Date:** 03/29/2018 02:50 **Agency Type:**
Layer: All **Areas:** All

CFS Number: None **Call Date/Time:** None **Primary Incident:** None

Unit Log

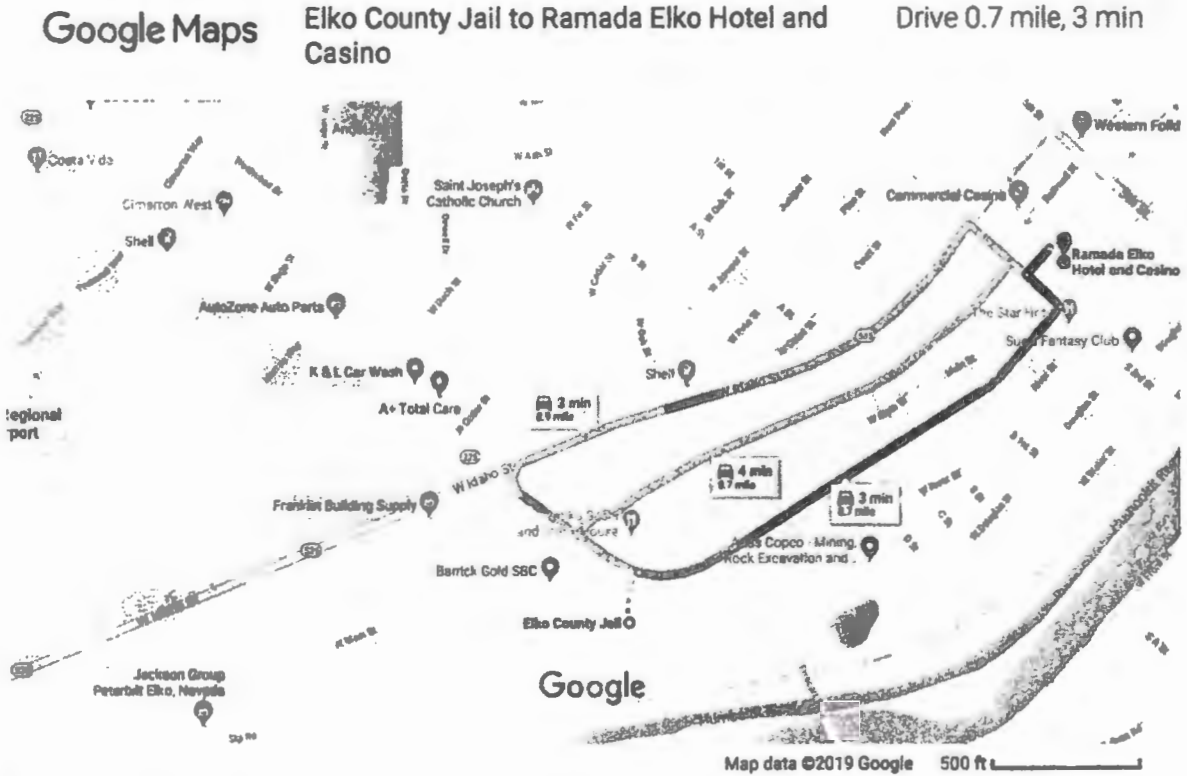
Log Date/Time	Entered By	Unit	Status	Action	Description	Location
03/29/2018 03:18:47	calvarex	158	At Scene	Unit Location	76 8 bm026bt0318	76 8 bm026bt0318
03/29/2018 03:19:03	calvarex	131	At Scene	Unit Location	76 8	76 8
03/29/2018 03:19:20	mlocuson	117	At Scene	Disposition Added	AM	340 COMMERCIAL ST. Eiko
03/29/2018 03:19:20	mlocuson	117	Available for calls	Unit Cleared	Unit cleared from call	
03/29/2018 03:19:20	mlocuson	117	Available for calls	Unit Status Change		
03/29/2018 03:31:43	jbogdon	131	Available for calls	Unit Cleared	Unit cleared from call	
03/29/2018 03:31:43	jbogdon	131	Available for calls	Unit Status Change		
03/29/2018 04:22:01	bortiz	158	At Scene	Disposition Added	AM2	76 8 bm026bt0318
03/29/2018 04:22:01	bortiz	158	At Scene	Disposition Added	AF	76 8 bm026bt0318
03/29/2018 04:22:01	bortiz	158	Available for calls	Unit Cleared	Unit cleared from call	
03/29/2018 04:22:01	bortiz	158	Available for calls	Unit Status Change		

PLAINTIFF EXHIBIT NO: 4
CASE NO.: CR. EP. 18-2614
DISTRICT COURT: JUDGE ALVIN R. KACIN
DATE MARKED: 02/14/19
DATE ADMITTED: 02/14/19
CLERK: DM

03/29/2018



PLAINTIFF EXHIBIT NO: 5
CASE NO.: CR-FP-18-2619
DISTRICT COURT: JUDGE ALVIN R. KAUIN
DATE MARKED: 02/14/19
DATE ADMITTED: 2/14/19
CLERK: DM



via W Silver St	3 min
Fastest route, the usual traffic	0.7 mile
via W Idaho St	3 min
	0.9 mile
via W Commercial St	4 min
	0.7 mile

PLAINTIFF EXHIBIT NO: 6
CASE NO.: CR FP 18 2614
DISTRICT COURT: JUDGE ALVIN R. KACIN
DATE MARKED: 02/14/19
DATE ADMITTED: 02/14/19
CLERK: DM

F-18-00921-EW

Case No. CR-FP-18-2614

Dept. No. 2

2019 FEB 25 PM 3:26

ELKO CO. DISTRICT ATTORNEY

2019 FEB 25 PM 12:43
ELKO CO DISTRICT COURT

CLERK _____ DEPUTY B

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

STATE OF NEVADA,

Plaintiff,

vs.

**ORDER GRANTING MOTION TO
SUPPRESS**

KIMBERLY MARIE NYE,

Defendant.

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

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

The court held an evidentiary hearing on the motion on February 14, 2019. Ortiz and Melonie Edgmond, the deputy who booked Nye, testified at the hearing. The court has since reviewed the transcript of Nye's preliminary hearing at the request of the parties. Having carefully 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, Edgmond “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, Edmond 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, Edmond 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.¹ 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 ¹ 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.
28

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
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14 DATED this 22 day of February, 2019.

15
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17 

18 The Honorable Alvin R. Kacin
19 District Judge/Department 2
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Alvin R. Kacin, District Judge, Fourth Judicial District Court, Department 2, and that on this 25th day of February, 2019, served by the following method of service:

- | | |
|---|---|
| <input type="checkbox"/> Regular US Mail | <input type="checkbox"/> Overnight UPS |
| <input type="checkbox"/> Certified US Mail | <input type="checkbox"/> Overnight Federal Express |
| <input type="checkbox"/> Registered US Mail | <input type="checkbox"/> Fax to # _____ |
| <input type="checkbox"/> Overnight US Mail | <input type="checkbox"/> Hand Delivery |
| <input type="checkbox"/> Personal Service | <input checked="" type="checkbox"/> Box in Clerk's Office |

a true copy of the foregoing document addressed to:

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

David Loreman, Esq.
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Philip J. Tacason

Exhibit 1

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ELKO COUNTY SHERIFF'S OFFICE
DETENTION DIVISION POLICY
CHAPTER 600

SECTION : 625 INMATE PERSONAL PROPERTY, CONTROL SYSTEM FOR INMATE MONEY	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 used 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-EP-18-2019
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: 18FL00732

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/
capris	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:

03/29/2018



Elko County Sheriff's Office

Receipt for Property Returned

Receipt Number: 41742

Date: 03/31/2018 21:31:44

Property returned for: 111565

Booking Number: 181L00752

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:

Property Received By:


Alexander G M


KIMBERLY NYE

Report Includes:

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9:31 PM 3/31/2018