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Electronically
CR18-1731
2018-10-29 04:14:56 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6951634 : pmsewell

EXHIBIT 2

EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID CHARLES RADONSKI,
Petitioner,
vs.
THE JUSTICE COURT OF SPARKS
TOWNSHIP, IN AND FOR THE
COUNTY OF WASHOE; AND THE
HONORABLE JESSICA L. LONGLEY,
JUSTICE OF THE PEACE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 76866

FILED

OCT 17 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION

This petition for a writ of mandamus challenges the amount of bail set in the justice court. The records before this court indicate that a preliminary hearing was scheduled for October 8, 2018. The publicly available docket entries for the Second Judicial District Court indicate that petitioner has been bound over to the district court and is scheduled to be arraigned on October 23, 2018. See <https://www.washoecourts.com/Query/CaseInformation/CR18-1731>. Because the matter of bail may be reconsidered in the district court, we deny the petition as moot. See *Martinez-Hernandez v. State*, 132 Nev., Op. 61, 380 P.3d 861 (2016) ("Cases presenting real controversies at the time of their institution may become moot by the happening of subsequent events."); see also *Binegar v. Eighth Judicial Dist. Court*, 112 Nev. 544, 548-49, 915 P.2d 889, 892 (1996)

(recognizing that an exception to the mootness doctrine for cases which are capable of repetition, yet evading review).¹ Accordingly, we

ORDER the petition DENIED.

Pickering J.
Pickering

Gibbons J.
Gibbons

Hardesty J.
Hardesty

cc: Hon. Jessica Longley, Justice of the Peace
Hon. Kathleen Drakulich, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Sparks Justice Court Clerk
Second District Court Clerk

¹If the information in the publicly available domain is in error, petitioner may inform this court of this fact in a petition seeking rehearing. See NRAP 40(c).

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EXHIBIT 3

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July 22, 2016

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RE: Pretrial Risk Assessment Tool Training

Counsel:

As you know, the Judicial Council of the State of Nevada created the Committee to Study Evidence-Based Pretrial Release in June 2015 following a review of a Policy Paper on the subject prepared by the Conference of State Court Administrators and approved by the Conference of Chief Justices of the United States. I am enclosing a copy of the Policy Paper for your reference. As Chief Justice, I appointed the Committee whose membership includes: four district court judges; eighteen limited jurisdiction court judges; the district attorney and the public

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RE: Pretrial Risk Assessment Tool Training
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defender in Clark and Washoe Counties; Assistant County Managers from Clark and Washoe Counties; pretrial services officers from Clark County and the City of Las Vegas, Carson City and Washoe County; and the Deputy Director of NACO.

Since its first meeting in September 2015, the Committee has conducted seven meetings studying best practices for evidence-based, pretrial release throughout the country. In January 2016, the Committee unanimously voted to recommend the use of these practices in Nevada and adopted a set of outcome and performance measurements to use in evaluating the various impacts of this new approach to pretrial release. At its February meeting, the Committee considered and unanimously approved the use of a Nevada-specific risk assessment tool, proposed by consultants from the Department of Justice, OJP Diagnostic Center, to assist judges in making pretrial release decisions.

For the next two months, the consultants to the Department of Justice, working with pretrial service officers in Clark and Washoe Counties and Las Vegas Municipal and Ely Justice Courts, tested 1,057 cases from 2014 to validate the risk assessment tool as an instrument that provides appropriate predictors on whether a person charged with a crime will make future court appearances or presents a risk to reoffend. The report of this study was presented to the Committee at its July meeting, and the Committee voted unanimously to accept the report and its recommendations.


Since at least January of this year, the Committee has discussed a pilot program to test the use of the risk assessment tool in making pretrial release decisions. The District Courts in Clark and Washoe Counties, the Las Vegas Justice Court, Reno and Sparks Justice Courts, Ely Justice Court, and the Las Vegas Municipal Court agreed to participate in the pilot program. The Committee's intent is to begin the pilot program on September 1, 2016.

As such, it is important to conduct a training program for the judges, prosecutors, public defenders, private criminal defense counsel, and pretrial release staff in August. We are fortunate to have the assistance of the National Institute of Corrections, the Urban Institute, and a consultant from the Department of Justice to provide the training sessions, which will be presented to each of the different professionals in four separate, three-hour sessions. Pursuant to our earlier conversations concerning the scheduling of these training sessions, I would like to invite the lawyers in your offices and private defense counsel to participate in the lawyers' training session on Thursday, August 18, 2016, from 1:30 to 4:30 p.m., or Friday, August 19, 2016, from 9:00 a.m. to noon. These sessions will provide background context and will serve to educate and train lawyers on the proper use of the risk assessment tool in judges' pretrial release decisions after September 1, 2016. All sessions will be presented via a virtual remote connection enabling pilot court participants throughout the state to receive the education and training at the same time. We have scheduled two training sites—the Clark County Commission Chambers in the south and the Washoe County District Attorney's classroom in the north.

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RE: Pretrial Risk Assessment Tool Training
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Please feel free to share this letter and the Policy Paper with your colleagues in your office and profession, and please express my thanks to them for their cooperation and participation in this important program shift.

Sincerely,


James W. Hardesty
Associate Chief Justice

JWH/mms

Enclosure

cc: All Justices (without enclosure)
Jamie Gradick (without enclosure)
David Gordon (without enclosure)
Committee Members (without enclosure)

2012-2013 Policy Paper Evidence-Based Pretrial Release

Final Paper



Conference of State Court Administrators

Author

Arthur W. Pepin, Director
New Mexico Administrative Office of the Courts

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Glossary of Terms

Bail – Bail refers to a deposit or pledge to the court of money or property in order to obtain the release from jail of a person accused of a crime. It is understood that when the person returns to court for adjudication of the case, the bail will be returned in exchange. If the person fails to appear, the deposit or pledge is forfeited. There is no inherent federal Constitutional right to bail; a statutory right was first created in the 1960s.

Bond – A term that is used synonymously with the term "bail" and "bail bond." (*See above*).

Citation release – a form of nonfinancial pretrial release in which the defendant is issued a written citation, usually at the time of arrest, and signs the citation pledging to appear in court when required.

Commercial bail agent/bondsman – a third party business or person who acts as a surety on behalf of a person accused of a crime by pledging money or property to guarantee the appearance of the accused in court when required.

Compensated surety – a bond for which a defendant pays a fee to a commercial bail agent, which is nonrefundable.

Conditional release – a form of nonfinancial pretrial release in which the defendant agrees to comply with specific kinds of supervision (e.g., drug testing, regular in-person reporting) in exchange for release from jail).

Deposit bond – a bond that requires a defendant to post a deposit with the court (usually 10% of the bail amount), which is typically refunded upon disposition of the case.

Full cash bond – a bond deposited with the court, the amount of which is 100% of the bail amount. The bond can be paid by anyone, including the defendant.

Pretrial – The term "pretrial" is used throughout this paper to refer to a period of time in the life of a criminal case before it is disposed. The term is a longstanding convention in the justice field, even though the vast majority of criminal cases are ultimately disposed through plea agreement and not trial.

Property bond – a bond that requires the defendant to pledge the title of real property valued at least as high as the full bail amount.

Release on recognizance – a form of nonfinancial pretrial release in which the defendant signs a written agreement to appear in court when required and is released from jail.

Surety – a person who is liable for paying another's debt or obligation.

Surety bond – a bond that requires the defendant to pay a fee (usually 10% of the bail amount) plus collateral if required, to a commercial bail agent, who assumes responsibility for the full bail amount should the defendant fail to appear. If the defendant does appear, the fee is retained by the commercial bail agent.

I. Introduction

Pretrial judicial decisions about release or detention of defendants before disposition of criminal charges have a significant, and sometimes determinative, impact on thousands of defendants every day while also adding great financial stress to publicly funded jails holding defendants who are unable to meet financial conditions of release. Many of those incarcerated pretrial do not present a substantial risk of failure to appear or a threat to public safety, but do lack the financial means to be released.¹ Conversely, some with financial means are released despite a risk of flight or threat to public safety, as when a bond schedule permits release upon payment of a pre-set amount without any individual determination by a judge of a defendant's flight risk or danger to the community. Finally, there are individuals who, although presumed innocent, warrant pretrial detention because of the risks of flight and threat to public safety if released.

Evidence-based assessment of the risk a defendant will fail to appear or will endanger others if released can increase successful pretrial release without financial conditions that many defendants are unable to meet. Imposing conditions on a defendant that are appropriate for that individual following a valid pretrial assessment substantially reduces pretrial detention without impairing the judicial process or threatening public safety. The Conference of State Court Administrators advocates that court leaders promote,

collaborate toward, and accomplish the adoption of evidence-based assessment of risk in setting pretrial release conditions. COSCA further advocates the presumptive use of non-financial release conditions to the greatest degree consistent with evidence-based assessment of flight risk and threat to public safety and to victims of crimes.

II. The Law

The Supreme Court of the United States has said, "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law."² The right to bail has been a part of American history in varying degrees from the beginning -- 1641 in Massachusetts and 1682 in Pennsylvania. Other state constitutions adopted the Pennsylvania provision as a model.³ Nine states and Guam follow the pattern of the United States Constitution by prohibiting "excessive bail" without explicitly guaranteeing the right to bail.⁴ Forty state constitutions, as well as the Puerto Rico Constitution and the District of Columbia Bill of Rights, expressly prohibit excessive bail.⁵ One state, Maine, had a constitutional provision prior to 1838 that expressly provided the right to bail, but by amendment that year the Maine Constitution now only prohibits bail in capital cases, without otherwise addressing the matter.⁶ However, the Maine Supreme Judicial Court held that the current language continues the guarantee of the right to bail that was express prior to 1838.⁷ The Federal

Judiciary Act of 1789 provided for the absolute right to bail in non-capital cases. The Eighth Amendment prohibition on excessive bail was adopted in 1791 as part of the Bill of Rights.⁸

Freedom before conviction permits unhampered preparation of a defense and prevents infliction of punishment before conviction. Without the right to bail, the presumption of innocence would lose its meaning.⁹ The purpose of bail is to ensure the accused will stand trial and submit to sentencing if found guilty.¹⁰ Another legitimate purpose is reasonably to assure the safety of the community and of crime victims.¹¹

Twelve states, the District of Columbia, and the federal government have enacted a statutory presumption that defendants charged with bailable offenses should be released on personal recognizance or unsecured bond unless a judicial officer makes an individual determination that the defendant poses a risk that requires more restrictive conditions or detention.¹² Six other states have adopted this presumption by court rule.¹³ However, it is common in many states to have bail schedules, adopted statewide or locally, that establish a pre-set amount of money that must be deposited at the jail in order for a defendant to obtain immediate release, without any individual assessment of risk of flight or danger to the community. In a 2009 nationwide survey of the 150 largest counties, among the 112 counties that responded, 64 percent reported using bond schedules.¹⁴

Despite the common use of bond schedules (also commonly termed "bail schedules"), they seem to contradict the notion that pretrial release conditions should reflect an assessment of an individual defendant's risk of failure to appear and threat to public safety. Two state high courts have rejected the practice of imposing non-discretionary bail amounts based solely on the charge, as in a bail schedule. The Hawai'i Supreme Court found an abuse of discretion for a trial court to apply a bail schedule promulgated by the senior judge that ignored risk factors specific to the defendant.¹⁵ The Oklahoma Court of Criminal Appeals overturned a statutory mandate for a particular bail amount attached to a specific crime: "[The statute] sets bail at a predetermined, nondiscretionary amount and disallows oral recognizance bonds under any circumstances. We find the statute is unconstitutional because it violates the due process rights of citizens of this State to an individualized determination to bail."¹⁶

In the United States in the twenty-first century, it is common to require the posting of a financial bond as the means to obtain pretrial release, often through procuring the services of a commercial bond company, or bail bondsman. Bonding companies typically require a non-refundable premium payment from the defendant, usually 10 percent of the bail set by the court. Many companies also require collateral sufficient to cover the full bond amount.¹⁷ In 2007 the DOJ Bureau of Justice Statistics reported that an estimated 14,000 bail agents nationwide secured the release of more than 2 million defendants annually.¹⁸ The United

States and the Philippines are the only countries that permit the widespread practice of commercial bail bonds.¹⁹ In countries other than these two, "[b]ail that is compensated in whole or in part is seen as perverting the course of justice."²⁰

III. The Consequences of Pretrial Release versus Incarceration

From the perspective of the defendant, who is presumed innocent, pretrial release mitigates the collateral consequences of spending weeks or months awaiting trial or a plea agreement. Jail time can result in job loss, home loss, and disintegrated social relationships, which in turn increase the likelihood of re-offending upon release.²¹

In 2010 the United States had the world's highest total number of pretrial detainees (approximately 476,000) and the fourth-highest rate of pretrial detention (158 per 100,000).²² A study of felony defendants in America's 75 largest urban counties showed that in 1990, release on recognizance accounted for 42% of releases, compared to 25% released on surety bond. By 2006, the proportions had been reversed: surety bonds were used for 43% of releases, compared to 25% for release on recognizance.²³ Taking into account all types of financial bail (surety bond, deposit bail, unsecured bond, and full cash bond), it is clear that the majority of pretrial release requires posting of financial bail.

The same study of felony defendants showed that 42% were detained until disposition of their case.²⁴ Pretrial

incarceration imposes significant costs on taxpayer-funded jails, primarily at the local government level. In 2010, "taxpayers spent \$9 billion on pre-trial detainees."²⁵ The increased practice of requiring financial bonds has contributed to increased jail populations, which has produced an extraordinary increase in costs to counties and municipalities from housing pretrial detainees. The most recent national data indicates that 61% of jail inmates are in an un-convicted status, up from just over half in 1996.²⁶

In addition to the financial costs from increased pretrial detention, the cost in unequal access to justice also appears to be high. The movement to financial bonds as a requirement for pretrial release, often requiring a surety bond from a commercial bond seller, makes economic status a significant factor in determining whether a defendant is released pending trial, instead of such factors as risk of flight and threat to public safety. A study of all nonfelony cases in New York City in 2008 found that for cases in which bail was set at less than \$1,000 (19,617 cases), in 87% of those cases defendants were unable to post bail at arraignment and spent an average of 15.7 days in pretrial detention, even though 71.1% of these defendants were charged with nonviolent, non-weapons-related crimes.²⁷ In short, "for the poor, bail means jail."²⁸ The impact of financial release conditions on minority defendants reflects disparate rates of poverty among different ethnic groups. A study that sampled felony cases in 40 of the 75 largest counties nationwide found that, between 1990 and

1996, 27% of white defendants were held in jail throughout the pretrial period because they could not post bond, compared to 36% of African-American defendants and 44% of Hispanic defendants.²⁹

The practice of conditioning release on the ability to obtain a surety bond has so troubled the National Association of Pretrial Services Agencies (NAPSA) that, in its Third Edition of Standards on Pretrial Release (and in previous editions beginning in 1968), Standard 1.4(f) provides that "[c]onsistent with the processes provided in these Standards, compensated sureties should be abolished." According to NAPSA, compensated sureties should be abolished because the ability to pay a bondsman is unrelated to the risk of flight or danger to the community; a surety bond system transfers the release decision from a judge to private party making unreviewable decisions on unknown factors; and the surety system unfairly discriminates against defendants who are unable to afford non-refundable fees required by the bondsman as a condition of posting the bond.³⁰ The American Bar Association also recommends that "compensated sureties should be abolished."³¹ The Commonwealth of Kentucky and the State of Wisconsin have prohibited the use of compensated sureties.³² In addition, Illinois and Oregon do not allow release on surety bonds (but do permit deposit bail).³³

The ability of a defendant to obtain pretrial release has a significant correlation to criminal justice outcomes. Numerous research projects conducted over the past

half century have shown that defendants who are held in pretrial detention have less favorable outcomes than those who are not detained—regardless of charge or criminal history. In these studies, the less favorable outcomes include a greater tendency to plead guilty to secure release (a significant issue in misdemeanor cases), a greater likelihood of conviction, a greater likelihood of being sentenced to terms of incarceration, and a greater likelihood of receiving longer prison terms.³⁴ Data support the common sense proposition that pretrial detention has a coercive impact on a defendant's amenability to a plea bargain offer and inhibits a defendant's ability to participate in preparation for a defense. In summarizing decades of research, the federal Bureau of Justice Assistance noted that "research has demonstrated that detained defendants receive more severe sentences, are offered less attractive plea bargains and are more likely to become 'reentry' clients because of their pretrial detention—regardless of charge or criminal history."³⁵

IV. Evidence-Based Risk Assessment: The Lesson of *Moneyball* and the Challenge of Adopting New Practices

Michael Lewis's book *Moneyball* documents how Oakland A's general manager Billy Beane used statistics and an evidence-based approach to baseball that yielded winning seasons despite severe budgetary constraints.³⁶ His approach attracted considerable antagonism in the baseball community because it deviated from long-held practices based on intuition and gut feelings, tradition, and ideology. As

persuasively set forth more recently in *Supercrunchers*, the cost of ignoring data and evidence in a broad variety of human endeavors is suboptimal decision-making.³⁷ This realization and the commensurate movement toward evidence-based practice, by now firmly ensconced in medicine and other disciplines, have finally emerged in the fields of sentencing, corrections, and pretrial release (but not without resistance, as in baseball).

In 1961, the New York City Court and the Vera Institute of Justice organized the Manhattan Bail Project, an effort to demonstrate that non-financial factors could be used to make cost-effective release decisions.³⁸ Decades later, the movement away from financial conditions and toward use of an evidence-based risk assessment in setting pretrial release conditions appears to be gathering momentum. The 2009 Survey of Pretrial Services Programs found that the majority of 112 counties responding to a survey of the 150 largest counties use a combination of objective and subjective criteria in risk assessment. Eighty-five percent of those responding counties reported having a pretrial services program to assess and screen defendants and present that information at the first court appearance.³⁹ The ongoing development of evidence-based decision-making in pretrial release decisions is demonstrated by the release in August 2011 of a monograph by the National Institute of Corrections recommending outcome and performance measures for evaluating pretrial release programs.⁴⁰ Looking forward to the type of assessments that would support evidence-

based pretrial decisions, an accumulation of empirical research strongly suggests the following points:

- Actuarial risk assessments have higher predictive validity than clinical or professional judgment alone.⁴¹
- Post-conviction risk factors (relating to recidivism) should not be applied in a pretrial setting.⁴²
- Several measures commonly gathered for pretrial were not significantly associated with pretrial failure: residency, injury to victim, weapon, and alcohol.⁴³
- The six most common validated pretrial risk factors are prior failure to appear; prior convictions; current charge a felony; being unemployed; history of drug abuse; and having a pending case.⁴⁴
- Defendants in counties that use quantitative and mixed risk assessments are less likely to fail to appear than defendants in counties that use qualitative risk assessments.⁴⁵
- Not only are subjective screening devices prone to demographic disparities, but these devices produce poor results from a public safety perspective.⁴⁶
- The statewide pretrial services program in Kentucky, begun in 1968, now uses a uniform assessment protocol that results in a failure to appear rate of only 10 percent and a re-arrest rate of only 8 percent.⁴⁷

- Pretrial programs that use quantitative and mixed quantitative-qualitative risk assessments experience lower re-arrest rates than programs that only use qualitative risk assessments.
- The number of sanctions a pretrial program can impose in response to non-compliance with supervision conditions further lowers the likelihood of a defendant's pretrial re-arrest.⁴⁸

The use of a validated pretrial risk assessment tool when making a judicial decision to release or not, and the attendant conditions on release based on that assessment, fits within a well-functioning case management regimen. While different instruments have been used with success in different jurisdictions, in general, research on pretrial assessment conducted over decades has identified these common factors as good predictors of court appearance and/or danger to the community:

- Current charges;
- Outstanding warrants at the time of arrest;
- Pending charges at the time of arrest;
- Active community supervision at the time of arrest;
- History of criminal convictions;
- History of failure to appear;
- History of violence;
- Residence stability over time;
- Employment stability;
- Community ties; and
- History of substance abuse.⁴⁹

A comprehensive guide to implementing successful evidence-based pretrial services into the pretrial release determination, with step-by-step instructions on the process from formation of a Pretrial Services Committee through program implementation, is available from the Pretrial Justice Institute.⁵⁰

Perhaps the best-known use of evidence-based risk assessment to reduce reliance on financial release conditions exists in the District of Columbia's Pretrial Services Agency (PSA).⁵¹ Paradoxically, the DC pretrial Code requires detention if no combination of conditions will reasonably assure that a defendant does not flee or pose a risk to public safety.⁵² If the prosecutor demonstrates by clear and convincing evidence that a defendant presents a serious flight risk or threat to the victim or to public safety, the defendant is detained without the option for pretrial release. However, the DC Code also provides that a judge may not impose a financial condition as a means of preventative detention.⁵³ PSA conducts a risk assessment (flight and danger) through an interview with the defendant within 24 hours of arrest that assesses points on a 38-factor instrument, assigning a defendant into a category as high risk, medium risk, and low risk.⁵⁴ In 1965, only 11% of defendants were released without a money bond, but by 2008, 80% of all defendants were released without a money bond, 15% were held without bail, and 5% were held with financial bail (none on surety bond), while at the same time 88% of released defendants made all court appearances and 88% completed pretrial release without any new arrests.⁵⁵

Another example of the impact of evidence-based pretrial risk assessment is found in the Harris County (Houston), Texas, "direct filing" system.⁵⁶ As charges are being accepted and filed, the defendant is transferred to the central jail for intake. At the jail, the pretrial screening department interviews the defendant and collects data such as family composition, employment status, housing, indigency status, education level, health problems and medications, and potential mental health issues. This process culminates in a risk classification, identifying defendants who are appropriate for release on personal recognizance bond. The process continues through appearance before a magistrate (typically within 12 hours of arrest), where defendants granted personal bond and those able to post cash or surety bonds are released from jail.⁵⁷ An estimate of net savings and revenue for Fiscal Year 2010 showed that Harris County gained \$4,420,976 in avoided detention costs and pretrial services fees collected after deducting for the costs of pretrial services.⁵⁸

Kentucky abolished commercial bail bondsmen in 1976 and implemented the statewide Pretrial Services Agency that today relies on interviews and investigations of all persons arrested on bailable offenses within 12 hours of his or her arrest. Pretrial Officers conduct a thorough criminal history check and utilize a validated risk assessment that measures flight risk and anticipated conduct to make appropriate recommendations to the court for pretrial release. Furthermore, Pretrial Services

provides supervision services for pretrial defendants, misdemeanor diversion participants and defendants in deferred prosecution programs.

In 2011 Pretrial Services processed 249,545 cases in which a full investigation was conducted on 88% of all incarcerated defendants.⁵⁹ Using a validated risk assessment tool, Pretrial Services identifies defendants as being either low, moderate, or high risk for pretrial misconduct, (i.e. failing to appear for court hearings or committing a new criminal offense while on pretrial release). Ideally, low risk defendants (those most likely to return to court and not commit a new offense) are recommended for release either on their recognizance or a non-financial bond. Statistically, about 70% of pretrial defendants are released in Kentucky; 90% of those make all future court appearances and 92% do not get re-arrested while on pretrial release.⁶⁰ When looking at release rates by risk level, the data shows that judges follow the recommendations of Pretrial Services. In 2011, judges ordered pretrial release of 81% of low risk defendants, 65% of moderate risk defendants, and 52% of high risk defendants.⁶¹

In 2011, Kentucky adopted House Bill 463, a major overhaul of the Commonwealth's criminal laws that intended to reduce the cost of housing inmates while maintaining public safety.⁶² Since adoption of HB 463, Pretrial Services data shows a 10% decrease in the number of defendants arrested and a 5% increase in the overall release rate, with a substantial increase in non-financial

releases and in releases for low and moderate risk defendants. The non-financial release rate increased from 50% to 66%, the low risk release rate increased from 76% to 85%, and the moderate risk release rate increased from 59% to 67%. In addition, pretrial jail populations have decreased by 279 defendants, while appearance and public safety rates have remained consistent.⁶³

There are other, similar examples of successful implementation of evidence-based pretrial assessments that deliver on the promise of pretrial release without financial conditions.⁶⁴ Evidence-based pretrial risk assessment in the context of skillful and collaborative case management and data sharing should be embraced as the best practice by judges, court administrators, and court leaders. Reliance on a validated, evidence-based pretrial risk assessment in setting non-financial release conditions balances the interests of courts in both protecting public safety and safeguarding individual liberty.

V. The Way Forward

"The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference. . . . The law favors release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support."

ABA Criminal Justice Standards on Pretrial Release, Third Edition
Standard 10-1.1.

By adopting this paper, COSCA is not leading a parade, but joining in some very good and credible company. As noted in 2011 by a leading official of the United States Department of Justice, "Within the last year, a number of organizations have publicly highlighted the need to reform our often antiquated and sometimes dangerous pretrial practices and replace them with empirically supported, risk-based decision-making."⁶⁵ Not surprisingly pretrial services agencies themselves support this effort,⁶⁶ but so do a wide variety of other justice-oriented interest groups: the National Association of Counties,⁶⁷ the American Jail Association,⁶⁸ the International Association of Chiefs of Police,⁶⁹ the American Council of Chief Defenders,⁷⁰ the American Bar Association,⁷¹ the Association of Prosecuting Attorneys,⁷² and the American Association of Probation and Parole.⁷³

Following the 2011 National Symposium on Pretrial Justice hosted by the U.S. Department of Justice (DOJ), the DOJ's Office of Justice Programs collaborated with the Pretrial Justice Institute to convene in October 2011 the first meeting of the Pretrial Working Group. Information about the continuing work of the Pretrial Working Group subcommittees can be found at the Web site published by the Office of Justice Programs in association with the Pretrial Justice Institute. The stated goals of this effort are to exchange information on pretrial justice issues, develop a website to disseminate information on the work of the subcommittees, and inform evidence-based pretrial justice policy making.⁷⁴

There are two major obstacles to reform. First, there is resistance to changing the status quo from those who are comfortable with or profit from the existing system. This resistance can be overcome by a well-

executed, evidence-based protocol, as has been demonstrated in the District of Columbia and in Kentucky. Second, courts tend to be deliberate in adopting change and to require persistent presentation of well-documented advantages to new approaches, such as evidence-based practices in the pretrial release setting. In this regard, familiarity with evidence-based decision making in drug courts, at sentencing, and in evaluating court programs should help gain acceptance for evidence-based practices in the pretrial setting. Part of this shift in practice might include elimination of or decreased reliance on bail schedules, which are in use in at least two-thirds of counties across the country.⁷⁵ State court leaders should closely follow and make a topic of discussion the efforts of the Department of Justice and its Pretrial Justice Working Group discussed above, as well as continuing efforts by the American Bar Association which is supporting transition toward evidence-based pretrial practices through its Pretrial Justice Task Force.⁷⁶

State court leaders must take several steps to leverage the emerging national consensus on this issue:

- Analyze state law and work with law enforcement agencies and criminal justice partners to propose revisions that are necessary to
 - support risk-based release decisions of those arrested;
 - ensure that non-financial release alternatives are available and that financial release options are available without the requirement for a surety.
- Collaborate with experts and professionals in pretrial justice at the national and state levels.
- Take the message to additional groups and support dialogue on the issue.
- Use data to promote the use of data; determine what state and local data exist that would demonstrate the growing problem of jail expense represented by the pretrial population, and that show the risk factors presented by that population may justify broader pretrial release.
- Reduce reliance on bail schedules in favor of evidence-based assessment of pretrial risk of flight and threat to public safety.

References

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EXHIBIT 4

EXHIBIT 4

ORIGINAL

1

Case No. 18-SCR-01187

Department 3

IN THE SPARKS JUSTICE COURT OF SPARKS TOWNSHIP
IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

-oOo-

STATE OF NEVADA,

Plaintiff,

V.

BAIL HEARING

DAVID CHARLES RADONSKI,

Defendant.

TRANSCRIPT OF PROCEEDING

Wednesday, August 15, 2018
Sparks, Nevada

APPEARANCES:

For the State of Nevada: Matthew D. Lee, Esq.
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WITNESSES ON BEHALF OF THE DEFENSE:

None

EXHIBITS:

None

1 THE COURT: This is 18-SCR-1187, the State of
2 Nevada versus David Charles Radonski. He's present, in
3 custody, with his attorney, Mr. Davis. Mr. Lee is here
4 on behalf of the State. It's set for a mandatory status
5 conference, however, it's my understanding that the
6 parties have agreed to do the bail hearing today.

7 MR. DAVIS: That's correct, Your Honor.

8 THE COURT: Okay. Is this your motion,
9 Mr. Davis?

10 MR. DAVIS: It is.

11 THE COURT: Okay, go ahead.

12 MR. DAVIS: Your Honor, at this time, we're
13 going to ask that Mr. Radonski's bail be set at \$10,000
14 with 10 percent cash. I'd like to note that the Nevada
15 Constitution guaranties the people of Nevada the right
16 to bail in non-capital offenses and prohibits the Court
17 from imposing excessive bail.

18 In this case, the bail is currently set at
19 \$50,000 cash only. That was set, I believe, prior to
20 the criminal complaint being filed in this case when
21 Mr. Radonski was looking at 43 counts of arson. That
22 complaint has now been filed. He's currently looking at
23 two first degree arson charges, as well as two third
24 degree arson charges.

25 At this point, I'd like to go through the

1 factors that the Court would and should consider, and I
2 do have some witnesses that I will be calling today.

3 THE COURT: Okay.

4 MR. DAVIS: Your Honor, Mr. Radonski has been
5 in this community for the past five years. He was
6 actually born in Fallon so he's a Northern Nevada
7 native. He moved to Oregon for a short period of time
8 to be with his father. Him and his father did go there,
9 and then he came back here.

10 He is a graduate of TMCC. He graduated with
11 an associate's degree in fine arts. He was currently
12 working at the time of his arrest as a sandblaster. He
13 had been working there since October of 2017 full-time.
14 His father is deceased. He was a firefighter. His
15 sister is present and in support of her brother, Kim.

16 THE COURT: Quick question, you said his
17 father was deceased, and he's a firefighter. Was the
18 father a firefighter or Mr. Radonski?

19 MR. DAVIS: The father was a firefighter.

20 THE COURT: Okay.

21 MR. DAVIS: His mother, Laticia (phonetic),
22 lives in Alaska. Kim is his sister, and she's here
23 today. I'm going to be calling her as a witness. She
24 works in Fallon at the Sheriff's Office there.
25 Mr. Radonski also has a brother named Jason, who also

1 lives in Fallon. So he has ties to this Northern Nevada
2 community.

3 Mr. Radonski doesn't have any mental health
4 issues, but he does have certain physical issues. Those
5 include fibromyalgia, nerve damage, and arthritis. If
6 you look at his criminal history, you're not going to
7 see anything. He has no prior felonies, no prior gross
8 misdemeanors, no prior misdemeanors, and no failures to
9 appear.

10 The responsible members of the community who
11 could vouch for him will be his sister and his landlord,
12 Joey Jennings, who's here. The nature of the offense,
13 as I mentioned, he has -- he's facing two counts of
14 first degree arson and two counts of third degree arson.
15 I will note that the investigation is ongoing. At least
16 at this point, in my review of the case, I don't think
17 that they have the requisite intent to support those
18 charges, but that investigation is still ongoing.

19 Your Honor, his risk assessment is a five in
20 the Nevada Pretrial Risk Assessment, and I think that
21 when we get done with today's hearing, you'll see that
22 that risk is actually a one. The only number that
23 should be allocated to that risk is a one because his --
24 the age at his first arrest is actually this arrest on
25 July 31st, 2018.

1 And something else I want the Court to be
2 aware of is Mr. Radonski's compliance with this case.
3 Within hours of this fire starting, he had gone and met
4 with a couple individuals in this case. One of them was
5 Deputy Fire Chief Lisa Beaver from the Truckee Meadows
6 Fire Protection District, and another was BLM Special
7 Agent Adam Sully, and that was within a few hours of
8 this fire starting. A few days later, he was asked to
9 go to the Sheriff's Office, and he voluntarily showed up
10 there. He showed up there. He was interrogated, and he
11 was arrested at that point, and he's remained in custody
12 since that time.

13 At this point, I would ask to call Kim Cecil
14 to the stand, who is my client's sister.

15 THE COURT: Okay. Ms. Cecil, come on over
16 this way, come around, and then I'll swear you in. Will
17 you raise your right hand.

18 Do you solemnly affirm that the evidence and
19 testimony you're about to give will be the truth, the
20 whole truth, and nothing but the truth, under the pains
21 and penalties of perjury?

22 MS. CECIL: Yes.

23 THE COURT: Okay. Go ahead and have a seat.
24 That black thing with the red on it is the microphone --

25 THE WITNESS: Okay.

1 THE COURT: -- so make sure you -- everything
2 is yes, no, and not uh-huh's and huh-huh's, or head
3 nods, okay.

4 KIM CECIL

5 (Sworn as a witness, testified as follows)

6 DIRECT EXAMINATION

7 BY MR. DAVIS:

8 Q. Good afternoon, ma'am.

9 A. Good morning.

10 Q. Can you please state your name and spell your last
11 name for the record.

12 A. Kim Cecil, C-E-C-I-L.

13 Q. Ms. Cecil, are you currently employed?

14 A. Yes.

15 Q. And how are you employed?

16 A. I dispatch at the Churchill County Sheriff's Office
17 in Fallon.

18 Q. And how long have you been there?

19 A. Twelve years.

20 Q. Ma'am, do you know an individual by the name of
21 David Radonski?

22 A. Yes.

23 Q. And how do you know him?

24 A. He's my brother.

25 Q. And did you grow up in Fallon?

1 A. Born and raised.

2 Q. Okay. And are you aware if that's where he grew up?

3 A. Yes.

4 Q. Okay. Now, have you had an opportunity to speak
5 with Mr. Radonski since he's been in custody?

6 A. Yes. He calls me almost every day, sometimes a
7 couple times a day.

8 Q. And are you aware if he was employed at the time of
9 his arrest?

10 A. Yes, he was.

11 Q. And have you been in contact with his employer?

12 A. I have. I have reached out to HR. I've asked if he
13 would be able to continue to have a job if he gets
14 released. I have not heard back yet.

15 Q. And so you're still waiting to hear back?

16 A. I'm still waiting -- I'm still waiting to hear back.

17 Q. So if Mr. Radonski is not taken back to work at that
18 place, is there an opportunity that he can work for the
19 family business?

20 A. Yes.

21 Q. And what is that family business?

22 A. My husband owns a mechanic shop in Fallon named
23 C & L Auto.

24 Q. Okay. And so if he doesn't get that job where he
25 was working as a sandblaster, then he can work for --

1 A. Yes.

2 Q. -- you and your husband?

3 Are you aware if Mr. Radonski has a cell phone?

4 A. Yes.

5 Q. And how are you aware of that?

6 A. I have it in my possession.

7 Q. And is that phone turned on?

8 A. Yes.

9 MR. DAVIS: All right, those are the
10 questions that I have for you, thank you.

11 THE WITNESS: Thank you.

12 THE COURT: Mr. Lee.

13 MR. LEE: Just briefly.

14 CROSS-EXAMINATION

15 BY MR. LEE:

16 Q. Ma'am, what is his job right now?

17 A. He was working as a sandblaster at Legacy Sports.

18 Q. What kind of stuff do they sandblast?

19 A. Gun parts.

20 Q. So they kind of manufacture guns, right?

21 A. I know that they prepare parts for guns. I don't
22 know anything further than that.

23 Q. Okay. But that's what their whole business is

24 dealing with the guns?

25 A. Is dealing with guns, yes.

1 Q. Okay.

2 MR. LEE: Thank you, that's all I have.

3 THE COURT: Anything --

4 MR. DAVIS: No questions based upon that.

5 THE COURT: Ms. Cecil, you may step down.

6 MS. CECIL: Thank you.

7 MR. DAVIS: Your Honor, my next witness is
8 Joey Jennings. That's the landlord where Mr. Radonski
9 was staying.

10 THE COURT: Okay. Mr. Jennings come on
11 around, and I'll swear you in.

12 MR. JENNINGS: Okay.

13 THE COURT: Please raise your right hand. Do
14 you solemnly affirm that the evidence and testimony
15 you're about to give will be the truth, the whole truth,
16 and nothing but the truth, under the pains and penalties
17 of perjury?

18 MR. JENNINGS: Yes.

19 THE COURT: Okay, go ahead and have a seat,
20 sir.

21 JOEY JENNINGS

22 (Sworn as a witness, testified as follows)

23 DIRECT EXAMINATION

24 BY MR. DAVIS:

25 Q. Good afternoon, Mr. Jennings. Can you please state

11

1 your name and spell your last name for the record.

2 A. Yeah, my name is Joey Jennings, J-E-N-N-I-N-G-S.

3 Q. And, Mr. Jennings, are you currently employed?

4 A. Yes.

5 Q. How are you employed?

6 A. I'm a licensed real estate agent and property

7 manager.

8 Q. And do you know an individual by the name of

9 David Radonski?

10 A. I do.

11 Q. And how do you know him?

12 A. I met David in 2013. He was a resident of a

13 building that I managed, and he was actually one of the

14 two residents that we kept with us while everyone else

15 was evicted.

16 Q. And since 2013, have you been his landlord?

17 A. Yes.

18 Q. And during that time, has he consistently made his

19 monthly payments?

20 A. He does. He comes into my office monthly. We chat

21 for five or ten minutes, and then he leaves.

22 Q. And that's approximately since 2013?

23 A. Every month he's on time.

24 Q. Okay. And so that's for the past five years then,

25 right?

1 A. That's correct.

2 Q. Okay. Are you aware if he's made his August 2018

3 payment?

4 A. He did. His sister paid that for him from his bank

5 account.

6 Q. So he's current on his rent; is that right?

7 A. He is.

8 Q. Do you have any issue with him coming back to his

9 apartment and staying there?

10 A. I don't. We welcome him back.

11 Q. And isn't it true that you were considering him for

12 a property management position?

13 A. That's correct, yeah, as a resident manager.

14 Q. And why was that?

15 A. I got to know David pretty good, got to know him as

16 an individual that got along with others and

17 communicated well with me. So I trusted him with not

18 only the money that he would have collected, but the

19 personalities that he would have had to deal with at

20 that building.

21 MR. DAVIS: That's all I have for you,

22 Mr. Jennings. Thank you for being here.

23 THE WITNESS: Okay, thank you.

24 THE COURT: Mr. Lee.

25 MR. LEE: I don't have any questions for

1 Mr. Jennings, thank you.

2 THE COURT: Okay. Quick question, is
3 Jennings J-E-N-N-I-N-G-S?

4 THE WITNESS: Yes.

5 THE COURT: Okay. Okay, you may step down,
6 sir.

7 MR. JENNINGS: All right, thank you.

8 MR. DAVIS: Your Honor, in looking back now
9 through the Nevada Pretrial Risk Assessment, I believe
10 that we've put some evidence on regarding his employment
11 status at the time of his arrest. His sister did
12 testify to that. With respect to his residential
13 status, we heard testimony today that he's been here or
14 at least he's been renting a place since 2013. So that
15 would be longer than six months. And we also learned
16 from his sister that he does have a cell phone.

17 So given those things, that drops his
18 pretrial risk assessment down to a one. I would
19 normally be asking for an OR release with pretrial
20 supervision in this case, but I think that if the
21 Court's not inclined to do that, I think it's then
22 appropriate to do a \$10,000 bail with 10 percent cash.

23 And the reason why I ask for that amount and
24 ask for it to be a cash bail is because in the event
25 that he is found guilty of either these offenses or

1 another offense, that money can be used to pay back the
2 restitution of the victims in this case. If it was made
3 bondable, that money would be gone.

4 That is what Mr. Radonski could afford to
5 pay, and he right now is entitled to that presumption of
6 innocence. And so based upon all of those factors, we
7 think that that bail is appropriate, and we would submit
8 on that.

9 THE COURT: Okay. Mr. Lee.

10 MR. LEE: Judge, a couple of points I'd like
11 to make early on. First of all, the risk factors in the
12 NPRA are certainly not dispositive by any means. Our
13 office has located and found several instances of
14 individuals who have committed what our community would
15 call a more heinous crime, such as murder and rape, who
16 score a zero on that.

17 So the fact that Mr. Radonski scores a one or
18 a five, I'd urge this Court not to let it sway your
19 decision because of this. Mr. Radonski's damage already
20 done to the community is so high that he represents a
21 great danger, ongoing danger to the community. I'll
22 cite a few statistics for Your Honor.

23 The fire he started burned 51,400 acres. I
24 had an opportunity to fly over the area last week. It's
25 huge. It spans from an area by the shooting range clear

1 down to almost Wadsworth and then everywhere in between.
2 The cost of suppression efforts to this community so
3 far, which would be -- it's recoverable by restitution
4 under 205.067, are already at \$4.885 million, and that's
5 not any cost to any of the houses that burned up,
6 property, livestock, anything like that. So that is
7 just the firefighting efforts paid for by our tax
8 dollars. Again, the damage done is so vast and so great
9 that, yes, Mr. Radonski is an ongoing danger to the
10 community.

11 There were some issues with this case that
12 caused the State some pause and concern. One, Mr. Davis
13 rightly pointed out that he made contact right away with
14 officers. He did. However, what he did was he started
15 the fire in one area, again this is kind of -- as
16 Pyramid Highway turns east toward the lake, inside that
17 area is where he started it.

18 He started the fire, drives off across the
19 highway at Pyramid. There he dumps two large barrels
20 that were used to hold acetone. Those were obtained
21 from his work. The barrels, as we understand so far in
22 our investigation, were not properly washed out.
23 Acetone is a flammable substance.

24 But from that area, he then shot the barrels
25 10 to 20 times. We've recovered -- we found where the

1 barrels are. We've found shotgun shells that match the
2 description. And from that area, approximately a mile
3 or two, it's uphill and across -- and across a large
4 valley to the fire is a great vantage point.
5 Mr. Radonski sat there and watched his work for a little
6 while.

7 And then before -- still not notifying
8 anybody, he drives all the way home to Reno. Downtown
9 Reno off Kuenzli Street is where he lives. He passes a
10 couple fire stations, especially one out there,
11 La Posada and Pyramid, and still makes no effort to
12 call. He stops even at the AutoZone and picks up some
13 fuses. And then he parks his SUV there, and then comes
14 back on his motorcycle because he wants to, in his
15 words, make sure there's a chief on-scene, a battalion
16 chief on-scene.

17 And then he tells them some story. He's
18 deceptive. He tells them a story about some other
19 individuals on bikes who may have started it, and he
20 chased after them on his motorcycle but couldn't get to
21 them. And then ultimately, investigators go by his
22 house, and they find an SUV that matches what the
23 reporting person said was there at the scene driving
24 from the fire.

25 Two days later, the lead detective goes out

1 to his residence and finds that that SUV had been
2 painted, at least the fenders were colored silver
3 before. Those were now painted black. It looks like a
4 -- no offense to anybody but like a cheap spray paint
5 job, Your Honor. Just something to mask the identity of
6 his truck.

7 He then hung around the fire. He didn't just
8 report anything and leave. After telling his deceptive
9 story, he then watched. As the command post would move,
10 so would Mr. Radonski move with it, again, a trait that
11 we see often in these types of issues where someone
12 wants to watch their handiwork. The detective left at
13 approximately 3:00 in the morning after the fire
14 started, and Mr. Radonski was still there watching what
15 was going on.

16 He didn't make any efforts to suppress.
17 There's no evidence of that on-scene, contrary to what
18 he later told investigators, he tried to put the fire
19 out by scraping dirt onto that. There is no scraped
20 dirt anywhere in that area of origin. He didn't make
21 those efforts.

22 And then, again, going back to -- circling
23 back now to victims. We are still, as you can imagine,
24 Your Honor, trying to assess the damage. It's huge.
25 Just a flyover reveals so many structures and, again,

1 two residences, several other possible residences.
2 Still trying to figure out actually if those were
3 liveable residences but that were totally consumed.

4 Fire stated there were 40 structures. These
5 are well houses. These are what they'll call electrical
6 houses, right, where they either store their electricity
7 on batteries and/or through other means, solar or
8 whatnot, sheds. Certainly, there was livestock out
9 there. We know of two animals that have -- were
10 deceased in the fire. We know -- I think it is five
11 cattle that are still missing. Don't know if they were
12 consumed by the fire or simply escaped from the fire.

13 And the search warrant reveals in
14 Mr. Radonski's vehicle and house multiple fireworks,
15 including Roman candles, which are kind of flaming balls
16 of fire that he admits to shooting those out. He also
17 told investigators at the scene that they may find one
18 of his cigarette lighters out close to the scene, one of
19 the car cigarette lighters that you push in, and they
20 pop out hot. And that was, one of those was found at
21 the scene, in his house and car. Four to five other of
22 those cigarette lighters were found just separated from
23 any device that would charge them.

24 And his house was -- well, besides the
25 multiple firearms, again, his work is dealing with

1 firearms. They apparently put coating on these -- on
2 these firearms but somewhat -- as I could tell, it
3 seemed like custom and high-end weapons that they are
4 doing. But he also had exploding targets. There were
5 --

6 THE COURT: Let me ask you a question. What
7 do you mean by exploding targets?

8 MR. LEE: That's a good question. They're
9 called binary exploding targets. It's a -- oftentimes
10 we may know them as Tannerite, I believe it's called,
11 but something that you can shoot with a little pressure,
12 and it explodes. And there's certain chemicals and
13 whatnot that go into that. As I'm told by the
14 detective, without doing my own research, those are not
15 allowed in Nevada right now, the way those are
16 manufactured or made.

17 Again, the fireworks certainly are illegal to
18 possess and have here, and especially knowing the
19 dangerousness of those burning, but he had multiple, he
20 said, boxes of fireworks. Also, in his vehicle was a
21 lot of sod or sawdust, which the detective and the fire
22 investigator felt like is a great catalyst to start a
23 fire, perhaps some experimentation out there.

24 Nonetheless, there may be more charges. I
25 can't confirm that yet. Things are still coming along.

1 Your Honor can see how I charged it right now, one
2 charge for each of the residences that we know are
3 primary residences and that were consumed. I charged
4 one count based on the wildland fire, again, for the
5 51,000 acres, and I charged one count because the count
6 is still going on about structures, just for all the
7 structures lumped into one count.

8 So it's not a matter of how many counts the
9 State finally charged. We could charge a lot more than
10 we have, and again, we're still -- it's still a process
11 that's ongoing, but it's not one structure that was
12 damaged by any means. This was huge.

13 So given all that, Your Honor, Mr. Radonski
14 is a great danger, ongoing danger, to the community
15 based on what he had possession of, what he did, and
16 then his lack of doing things that could have perhaps
17 prevented this fire from going any further. And we'll
18 rest at that.

19 I'm sorry, I should ask for what I'm seeking.
20 I think the bail is appropriately set at 50,000. To
21 have this be \$1,000 cash seems an absolute travesty,
22 especially -- it's not protecting the community by any
23 means. And then to say that goes toward the 5.8 million
24 -- or excuse me, 4.8 million restitution, plus whatever
25 million in restitution for properties, is nothing. It's

1 a drop in the bucket. It's meaningless to the State.

2 MR. DAVIS: Your Honor, what a travesty is is
3 a \$50,000 cash bail when somebody has a Nevada Pretrial
4 Risk Assessment of a one. I think Justice Hardesty made
5 it clear that that's -- that was the unit that he wanted
6 the courts to utilize when assessing bail.

7 And I believe that we've established not only
8 his low risk using that tool, but also we've gone
9 through the factors so that the Court can consider those
10 other things like was he employed, does he have family,
11 does he have support. I want -- I want to point out
12 that punishment should follow conviction and not precede
13 it, and the right to bail is consonant with the
14 presumption of innocence that attaches to all Defendants
15 prior to conviction.

16 Mr. -- the State had pointed out that there's
17 51,000 acres that were burned, there's a \$4.885 million
18 kind of price tag on this. All of that stuff is going
19 to come out in discovery. We're going to access that
20 and review it. The fact that he may have painted his
21 car, I think what's important about that is that if he
22 did that, then afterwards, he voluntarily went to the
23 Sheriff's Office and met with the authorities in this
24 case.

25 I know that Mr. Lee made some conjectures

1 about my client watching the fire and what that might
2 mean. Well, a person could watch something for a number
3 of reasons. They could say things that they were
4 scared, if they were afraid. And so the discovery that
5 I have, I haven't been provided any discovery that says
6 that there was acetone barrels.

7 And then there is a number of other discovery
8 that Mr. Lee did inform me about that is coming that
9 should be here Friday, but I don't know if anybody's
10 actually investigated to see if there was dirt or to see
11 if Mr. Radonski attempted to put that fire out. I think
12 that that's something that an expert is going to have to
13 testify to, and that's something that happens later on.

14 But I believe that in terms of bail, we have
15 established what should be an appropriate bail. I think
16 it would be a travesty to keep this at a 50,000 cash
17 only bail. That is such an excessive bail with an
18 individual like this, whose a Northern Nevada native who
19 has literally no criminal history, who went and met with
20 authorities very shortly after this happened.

21 So we would respectfully request that the
22 Court lower the bail. We would submit on that, Your
23 Honor.

24 THE COURT: One thing I'd like to point out
25 is the NPRA, the Nevada Pretrial Risk Assessment, even

1 if it is a one is only a tool to be considered. It is
2 not a requirement. It is not a guideline. And people
3 who commit heinous offenses later in life will end up
4 with a zero or a one, and they are not people that we
5 think should be out in the public due to their
6 dangerousness.

7 And in this -- this is one of those cases.
8 I'm going to leave the bail as-is. I know he has the
9 family contacts, he has the job, and the place to live.
10 I'm more concerned about -- I'm actually very concerned
11 about the dangerousness to society. We're lucky that
12 none of these fires -- nobody died in any of these
13 fires.

14 But fires are extremely dangerous. They, as
15 we just heard, consume acres and acres and people's
16 lives and their property and their homes, and I think
17 this case is one of those that he is just too dangerous
18 to lower the bail to something that I would consider
19 maybe a possession of a controlled substance charge. So
20 I'm going to leave the bail as-is.

21 MR. DAVIS: Would the Court be inclined to
22 make that -- the cash bail bondable or 10 percent cash?

23 THE COURT: Not at this time, no.

24 MR. DAVIS: Okay. All right.

25 MR. LEE: Thank you for your time, Your

1 Honor.

2 MR. DAVIS: Thank you, Your Honor.

3 THE COURT: Do we need to set this for
4 another mandatory status conference or a prelim, or do
5 you need to go out and talk about this case before we
6 figure out --

7 MR. DAVIS: I think a mandatory status
8 conference in two weeks would be appropriate.

9 MR. LEE: That's fine.

10 THE CLERK: August 29th at 1:30.

11 MR. DAVIS: Thank you, Your Honor.

12 (Whereupon, proceeding concluded)

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STATE OF NEVADA)
) ss.
COUNTY OF CARSON)

I, Julie Rowan, Transcriptionist for the Sparks Justice Court, in and for the County of Washoe, State of Nevada, have transcribed the proceedings held in Department 3 of the above-entitled Court on August 15, 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 29th day of August, 2018.


Julie Rowan

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EXHIBIT 5

EXHIBIT 5

Truckee Meadows Community College

Has conferred upon

David C. Radonski

the degree of

Associate of Arts

Fine Arts

with all the rights and privileges granted.

In witness thereof this diploma duly signed and issued.

Approved by the Board of Regents upon recommendation
of the College in the month of May, 2015.



Alfred Delf
Acting President

[Signature]
Chairman of the Board of Regents

David J. Klein
Chairman of the Nevada System of Higher Education

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EXHIBIT 6

EXHIBIT 6

10-21-8

The honorable Judge Drakulich

My name is Shelby Cecil. I live in Fallon NV, where I was born and raised. Last year I took over ownership of Camels Auto, a auto mechanic shop that my father and brother started in 1954. I have worked there most of my life. I have been married to my high school sweetheart Kim for just over 19 years. We have 5 children together. Dicky is 18, Shelly is 14, Brad is 12, Heje is 7 and Ember is 3.

I first met David Palanski when Kim and I started dating in 1986. Over the years I have grown very close to David. I consider him more of my own brother instead of an in-law. He also treats me like a brother and will do things for my family without being asked.

David always shows up to family functions and loves spending time with my kids. The kids enjoy reading, video games and just hanging out in general as David can be a big kid at heart.

When I first met David his dad was living in another state. A few years later his dad moved back to Fallon and David began living with him. His dad's health began to decline and soon David was the one caring for his dad. He gave up his teenage and early adult years to care for him.

After his father passed away he moved to Reno. He loves art so he decided to pursue this by getting his associates degree in art from Truckee Meadows Community College. He lives simple in order to be independent.

David has been working full time so he only comes to visit every so often. When he is not in Fallon visiting family he likes to spend time in the outdoors and nature.

As owner of Camels Auto, I can say David will always have a job available working for me. And as a brother, David can live with me and my family if the need should arise.

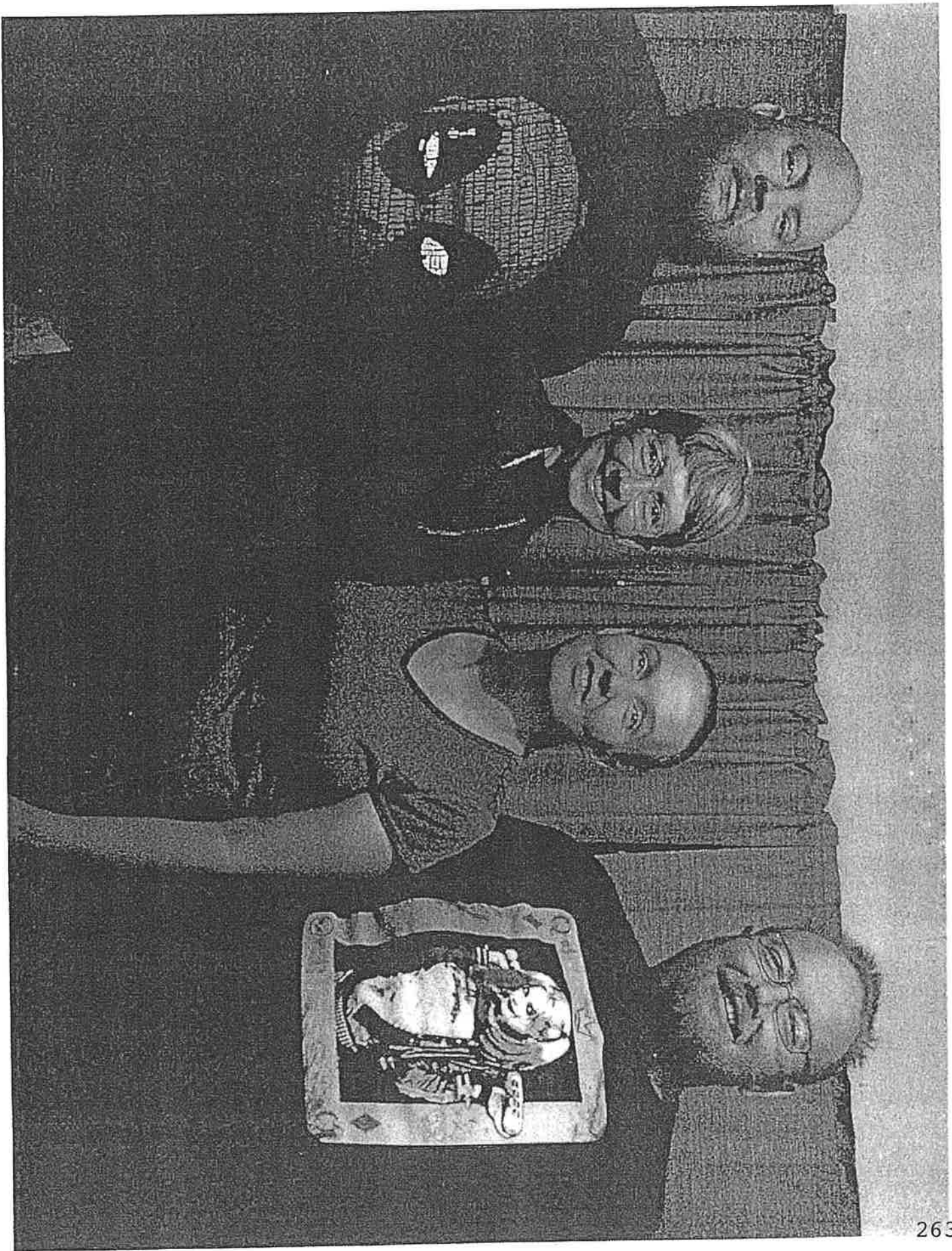
Thank you for your time,



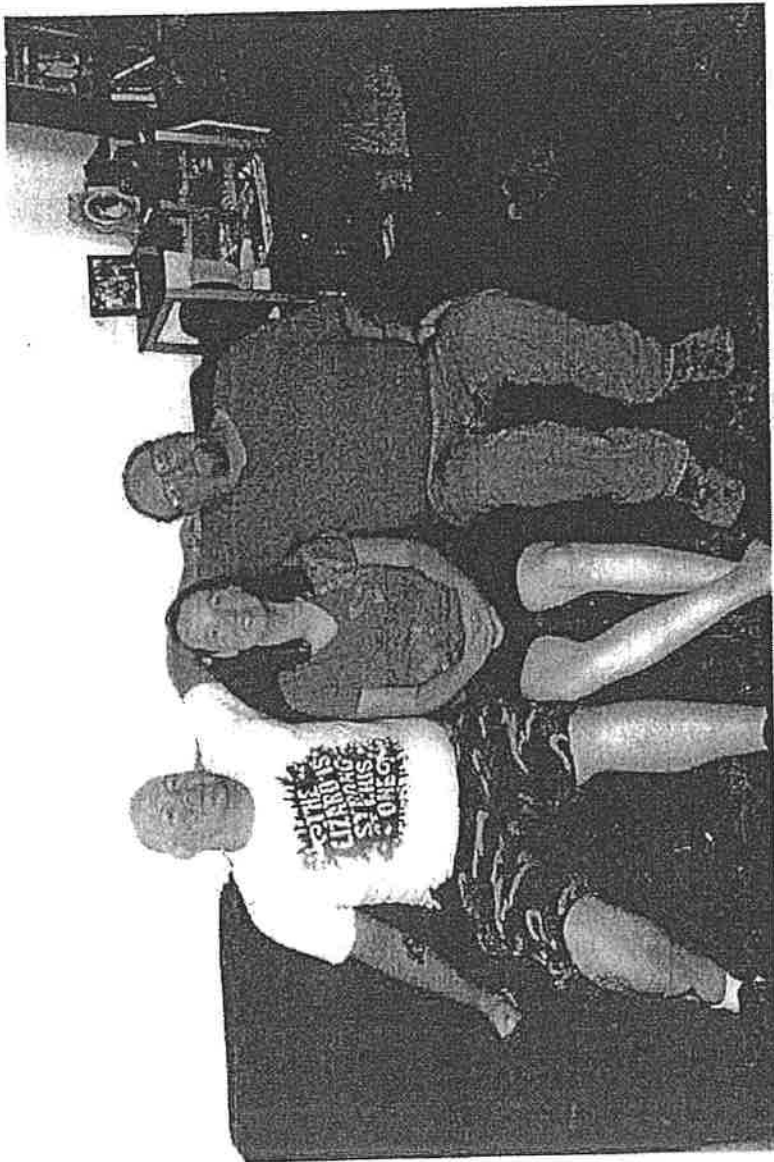
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EXHIBIT 7

EXHIBIT 7







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EXHIBIT 8

EXHIBIT 8

10/21/2018

The Honorable Judge Drakulich
Nevada Second Judicial District Court, Department 1
County of Washoe
Reno, NV

Dear Honorable Judge Drakulich,

My name is Letitia Joy Buoy. I was born and raised in Fallon, NV. I am currently a resident of Alaska and have been for 19½ years since I married in 1998.

David Radonski is the youngest of my three children. I have another son, Jaysen, and a daughter, Kim.

David's father and I divorced in 1996. David then stayed with me while he grew and matured. His father unfortunately grew ill and David left to help take care of him. Later, they moved to Oregon, but his father's health steadily grew worse needing more of David's time for caregiving which David gladly provided. When his father passed away in 2010, David handled his father's estate.

In caring full time for his father, David was unable to build a strong work resume when he sought employment again. David did not give up. He has commendably sought a higher education and achieved an Associates Degree in Art. He has a desire to continue his education and expressed an interest in teaching.

David is very creative and artistic. While in community college, some of his artwork was displayed on an outside wall in Reno as a class project.

Honorable Judge Drakulich (Cont.)

David is a gentleman; he worries about the safety and feelings of others. David has given his time unselfishly to help others, especially his family during times when young nieces and nephews needed responsible babysitting care, or by providing house-sitting and pet care. Being reliable and trustworthy, David has been a valuable asset to his friends and family.

David has shown good integrity in paying his bills. For example, when David wasn't employed full time he had to borrow money from me, but he was very responsible in paying it back.

David's love of outdoor recreational activities came from enjoying them with his father.

David responsibly had a full time job and was trying to live below his means, saving for his future.

Respectfully,

Letitia Jay Buoy

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EXHIBIT 9

EXHIBIT 9

The Honorable Judge Drakulich,

10-21-18

My name is Kim Cecil. My brother is David Radonski. We were born and raised in Fallon, NV, along with our older brother, Jaysen. I have lived in Fallon my entire life and could not imagine living elsewhere. I have been married to my husband, Shelby, for over 19 years and we have 5 wonderful children ages 3 to 18.

I have worked as a dispatcher for the Churchill County Sheriff's Office for the last 12 years. I worked for Walmart for 10 years before that. I hope to retire from my current job.

I have always been very close with David. We talk on the phone at least once a week. He would come to Fallon to visit as often as he could, usually every 6 weeks. David is one I could share my ups and downs with and know that he will take the time to listen.

Our parents got divorced when David was about 11 years old. It was hard because they got divorced, remarried and then divorced again. Then a few months later, my Dad left. There was a time we had no contact with him, we did not even know where he was. But eventually, we re-made contact and after a few years, our dad moved back to Fallon. David and I lived with him from then on.

Shortly after moving in with our dad, his health started to decline. By then, I was married and moved out. This left David to care for him. David sacrificed his teenage and early adult years to care for our dad. He handled making the final arrangements after our dad passed away in 2010.

My kids enjoy spending time with David. I asked each one what they love most about him. They all said David is fun and goofy. They all get excited when David shows up and can usually talk him into staying longer than he expected.

David is usually the first person I call when I need someone to watch my house and care for my animals. Depending on his work schedule, he would not hesitate to help out. David tags along on our family trips when he is able to, especially if they include outdoor activities.

David has a passion for art. He followed this passion into getting his Associates in Arts Degree from TMCC. He gave a lot of his course projects away because he liked to share his passion and let others enjoy it. Even after graduating, he continues his art and has several projects in progress. His work had been on display in Reno during a school's final art project.

David is an important part of our family. My kids ask about him every weekend he doesn't come visit. He is their favorite babysitter (besides Grandma). They can't wait to see him again. I miss his hugs.

Thank you for taking the time to read my letter.

Sincerely,

blair

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EXHIBIT 10

EXHIBIT 10

October 22, 2018

To: The Honorable Judge Drakulich

Nevada Second Judicial District Court, Department 1

County of Washoe Reno, NV

From: Joey Jennings, Rylexa Property Management

RE: David Radonski

Your Honor;

I would like to share with you my position on Mr. David Radonski as I have been his landlord now for five years or more. I met David when we took over management on a building he had tenancy in.

David has always been an outstanding Resident. Every single month he has come into my office to personally hand me his rent. He could have just as easily just dropped it off to our secretary but he would always want to say hello and update me on certain needs the apartment building might have. I was going to hire David as a 'live in Manager' for one of our properties when the position became available.


David has always been a kind hearted man with no underlying intention to harm anyone. Other residents have often been assisted by David in efforts they've needed help with. David is a good man. He has a big heart and speaks his mind. I've been grateful to have him as a Resident for this long and look forward to having him return at some point to rent with us again.

I've spoken with David on multiple occasions over the years about his personal life and personal interests. It was very clear that David enjoyed conversation, socializing with friends, he also enjoys playing video games and riding his motorcycle. Never have I known David to use drugs or even drink alcohol which made me favor him more. I got to know him pretty good. He would sometimes share his dating stories with me and tell me about a young lady he took out and whether he liked her or not as if he was in pursuit of the right gal to settle down with. We spoke openly and I shared advice whenever I was able.

My staff and other neighboring Residents have written to him wishing him well.

He is welcome back as a Resident with us at anytime.

Thank you,


Joey Jennings, Rylexa Property Management

P: 775 771 8088

Joey@Rylexa.com

1 2645
CHRISTOPHER J. HICKS
2 #007747
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3 Reno, NV 89520-3083
(775) 328-3200
4 Attorney for Plaintiff

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR18-1731

11 v.

Dept. No. 1

12 DAVID CHARLES RADONSKI,

13 Defendant.

14 _____ /
15 OPPOSITION TO DEFENDANT'S MOTION TO MODIFY BAIL

16 COMES NOW, the State of Nevada, by and through CHRISTOPHER J.
17 HICKS, District Attorney of Washoe County, and MATTHEW LEE, Deputy
18 District Attorney, and hereby opposes the defendant's motion to modify
19 bail, requesting a release without bail, which was filed October 29,
20 2018. This opposition is made and based upon the following Points and
21 Authorities.

22 ///

23 ///

24 ///

25 ///

26 ///

POINTS AND AUTHORITIES

I. PROCEDURAL POSTURE AND BRIEF SUMMARY OF FACTS¹

The defendant is charged by Information with two counts of First-Degree Arson (Category B, 2-15), two counts of Third-Degree Arson (Cat. D, 1-4), and one count of Destruction of Timber, Crops or Vegetation by Fire (Cat. C, 1-5). Trial is scheduled to commence on April 1, 2018.

On the afternoon and evening of July 27, 2018, the defendant started a fire off a dirt road south of Pyramid Highway, near Appian Way. The fire quickly spread and for several days burned through brush, shrubs, trees, vehicles, buildings, and even consumed two homes. In total, the fire burned over 51,000 acres just west of Pyramid Lake at a suppression cost of over \$4.8 million.² So far, 13 victim properties have been identified as being affected by damage from the fire.

The fire was first observed by two individuals in the area who reported it to authorities. They also snapped a photograph of a blue SUV with silver fenders driving from the fire's area of origin. Then, while suppression efforts were underway, Mr. Radonski arrived on scene in a motorcycle and gave deceptive statements to investigators. He stated that he had observed two vehicles fleeing from the fire's area of origin. After giving chase unsuccessfully

¹ As of November 6, 2018, no transcript has been produced from the Preliminary Examination. Thus, this Summary of Facts is derived from reports provided to the State by the Washoe County Sheriff's Office.

² This figure does not represent costs associated with loss of property to victims.

1 while on his motorcycle, Mr. Radonski returned to his home in Reno to
2 obtain his phone, and then drove all the way back to Pyramid. Never
3 did he call 911. He also told investigators that they may find his
4 vehicle cigarette lighter in the area. The defendant stayed at the
5 scene watching suppression efforts until approximately 3:00 in the
6 morning.

7 Given the suspicious circumstances, investigators later located
8 a blue Dodge Durango with silver fenders registered to the defendant
9 parked at his residence, which matched the description given by the
10 reporting parties. Two days later, the same vehicle had been spray-
11 painted to change its appearance.

12 Investigators then reached out to the defendant for an interview
13 to which he agreed. The defendant gave contradicting statements but
14 maintained his original story until he was confronted more intently
15 by the evidence. At that point, the defendant conceded that he was
16 in the area shooting fireworks, which caused the fire. The defendant
17 stated that he tried to then put the fire out by using a water bottle
18 which he left at the scene and by scraping dirt on the fire, but that
19 it got out of hand. After starting the fire, the defendant also
20 admitted to driving to another location to go target shooting.

21 Investigators subsequently located that area and found it to have an
22 excellent vantage point from which to watch and observe the fire.
23 Further, investigators found no evidence of any suppression efforts:
24 no water bottle as described and no scraping of the dirt at the area
25 of origin.
26

1 A subsequent search warrant of the defendant's vehicle and
2 residence revealed multiple boxes of fireworks and multiple vehicle
3 cigarette lighters (more than his vehicle could accommodate with
4 electrical slots). Another vehicle cigarette lighter was found near
5 the area of the fire's origin.

6 At a bail hearing on August 15, 2018, the defendant made the
7 same contentions that he makes herein and also presented witness
8 testimony. The court considered arguments and denied the defendant's
9 motion. The defendant now brings the same motion before this Court.

10 **II. THE DEFENDANT SHOULD NOT BE RELEASED WITHOUT BAIL**

11 A Court is statutorily obligated in Nevada to not release a
12 defendant without bail unless it can "impose conditions on the person
13 that will adequately protect the health, safety and welfare of the
14 community" and ensure the appearance of the defendant. NRS 178.4851.
15 Here, the State asserts that no conditions imposed would be adequate
16 to protect the community; therefore, the defendant's request for a
17 release without bail should be denied.

18 First, the NPRA assessment tool is just that, a tool to be used
19 in evaluating bail matters. Judge Longley of the Justice Court when
20 hearing these same arguments aptly noted that the assessment "is only
21 a tool to be considered. It is not a requirement. It is not a
22 guideline." Bail Hearing Transcript ("BHT") 23:1-2 (Aug. 15, 2018).
23 The defendant's assertion that he should be released without bail
24 simply because his assessment score is either a "5" or a "1" is
25 without merit. The assessment cannot substitute for judicial
26 discretion.

1 Second, given the defendant's deception, his actions both in
2 starting the fire and subsequent thereto, without having regard for
3 the safety and welfare of others and their property, make him a grave
4 and ongoing risk to the community. His actions herein were so
5 callous and reckless to render no condition adequate to ensure the
6 safety of the community. The defendant presents as a man with a
7 great interest in fires, who deceives, and who then watches his work
8 from a vantage point. Had he mistakenly set the fire, a reasonable
9 person would seek to notify authorities rather than go target
10 shooting in a location with an exceptional view of the fire, all
11 without calling or attempting to call emergency fire personnel. His
12 actions allowed the fire to scream out of control, consuming
13 approximately 51,000 acres and wildland and multiple homes, vehicles,
14 and other buildings. This Court could certainly order the defendant
15 to house arrest, to GPS monitoring, and even to refraining from the
16 use of any fire-starting device, but these conditions, and any others
17 like them, would be inadequate to prevent further destruction.

18 Third, although admittedly not the strongest reason given, the
19 State would be remiss if it failed to reference the vast penalties
20 the defendant faces for convictions under the current charges. The
21 maximum penalties include 43 years in prison, restitution for
22 suppression efforts at approximately \$4.8 million and currently
23 unknown, but likely massive, restitution costs relating to personal
24 property loss. While the defendant certainly appears to have ties to
25 the community, the challenges he faces from conviction create a risk
26 that he will not appear. The State is confident in the evidence and

1 a court has already determined probable cause after a preliminary
2 examination.

3 Lastly, no new evidence has been presented different from that
4 which was previously presented and heard in the Sparks Justice Court.
5 A second bite-at-the-apple is therefore unwarranted here. See
6 generally Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1055, 194
7 P.3d 709, 713-14 (2008) (recognizing that the doctrine of issue
8 preclusion prevents parties from re-litigating a specific issue that
9 has already been decided).

10 **III. CONCLUSION**

11 For the foregoing reasons, the State respectfully requests that
12 this Court deny the defendant's motion to release him without bail.
13 No adequate conditions would ensure the safety of the community in
14 this particular case, given the facts of starting the fire and the
15 defendant's deceptive, callous actions thereafter. The bail should
16 remain as currently set.

17 AFFIRMATION PURSUANT TO NRS 239B.030

18 The undersigned does hereby affirm that the preceding document
19 does not contain the social security number of any person.

20 Dated this 7th day of November, 2018.

21 CHRISTOPHER J. HICKS
22 District Attorney
23 Washoe County, Nevada

24 By /s/ Matthew Lee
25 MATTHEW LEE
26 10654
Deputy District Attorney

1 CERTIFICATE OF SERVICE BY E-FILING

2 I certify that I am an employee of the Washoe County
3 District Attorney's Office and that, on this date, I electronically
4 filed the foregoing with the Clerk of the Court by using the ECF
5 system which will send a notice of electronic filing to the
6 following:

7
8 JORDAN DAVIS, D.P.D.
9 350 S. CENTER STREET
10 RENO, NEVADA 89501

11 DATED this 7th day of November, 2018.

12 /S/TERRI NORRIS
13 TERRI NORRIS
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1 CODE 3790
2 WASHOE COUNTY PUBLIC DEFENDER
3 JORDAN A. DAVIS, BAR# 12196
4 P.O. BOX 11130
5 RENO, NV 89520-0027
6 ATTORNEY FOR DEFENDANT

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
8
9 IN AND FOR THE COUNTY OF WASHOE.

10 THE STATE OF NEVADA, Case No. CR18-1731
11 Plaintiff, Dept. No. 1
12 vs.

13 DAVID CHARLES RADONSKI,
14 Defendant.

15 REPLY TO STATE'S OPPOSITION TO MOTION TO MODIFY BAIL

16 DAVID CHARLES RADONSKI (the "Defendant") by and through the
17 Washoe County Public Defender, JOHN L. ARRASCADA, and Deputy Public
18 Defender, JORDAN A. DAVIS, hereby files his Reply to the State's Opposition to
19 his Motion to Modify Bail. This Reply is made and based upon the points and
20 authorities submitted in support hereof, and any oral argument which may be
21 heard in this matter.

22 MEMORANDUM OF POINTS AND AUTHORITIES

23 INTRODUCTION

24 The State argues that Mr. Radonski's bail should not be modified because no
25 conditions would be adequate to protect the community. Opposition to Defendant's
26 Motion to Modify Bail ("Opposition") at 4. Certainly, the State does not believe

1 that this type of case warrants a no bail hold. Ironically, if Mr. Radonski had
2 \$50,000 to pay the cash bail amount he could be released from custody no matter
3 his alleged danger to the community.

4 LEGAL ARGUMENT

5 In its Opposition, the State argues that Mr. Radonski should not be released
6 without bail based upon: (1) his NPRA score; (2) the facts of the case; (3) the
7 potential prison penalty; and (4) issue preclusion. Opposition at 4-6. Each
8 argument will be addressed in turn.

9 *First*, the State concedes that the NPRA is “a tool to be used in evaluating
10 bail matters,” but then argues that Mr. Radonski should not be released based
11 upon his NPRA score. Opposition at 4. This argument is nonsensical given that
12 Mr. Radonski has demonstrated that he is the lowest risk to reoffend based upon a
13 properly applied objective NPRA score. *See* Motion to Modify Bail (“Motion”) at 3-
14 4. In addition, Mr. Radonski has also demonstrated that he should be released on
15 his own recognizance in accordance with the bail factors set forth in NRS 178.4853.
16 *Id.* at 4-9.

17 *Second*, the State makes a number of inflammatory statements regarding
18 Mr. Radonski and any proclaimed danger he poses to the community including
19 allegations that Mr. Radonski “. . . presents as a man with a great interest in fires .
20 . . .” who if released would be “. . . a grave and ongoing risk to the community.”
21 Opposition at 5. Nothing could be further from the truth. Mr. Radonski invites the
22 Court to review the Preliminary Hearing transcript to see the evidence presented
23 at the Preliminary Hearing indicating that this fire was started by accident as a
24 result of a firework in a remote area and spread extremely quickly despite the fact
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1 that authorities were notified within fifteen (15) minutes. See Supplemental
2 Proceedings E-Filed on October 23, 2018.¹

3 *Third*, the State concedes that Mr. Radonski “certainly appears to have ties
4 to the community,” but then argues that the possibility of a conviction with a
5 potential prison sentence creates a risk that he will not appear. Opposition at 5.
6 This argument is belied by the fact that all of the offenses charged are probation
7 eligible, Mr. Radonski has no criminal history and no history of failures to appear.
8 Any claim that he will fail to appear is meritless.

9 *Finally*, the State argues that Mr. Radonski should be precluded from
10 addressing his custody status in the district court because his custody status was
11 already addressed in the Sparks Justice Court. Opposition at 6. The State
12 apparently disregards the fact that Mr. Radonski previously challenged the lower
13 court’s decision via a writ to the Nevada Supreme Court and received a ruling from
14 the Nevada Supreme Court noting that Mr. Radonski’s petition was moot because
15 his case had been bound over to district court where his bail could once again
16 be addressed. See Exhibits 1 & 2 attached to Mr. Radonski’s Motion.

17 CONCLUSION

18 Currently, bail is set at \$50,000 cash only. Mr. Radonski does not have the
19 financial resources or ability to pay the current bail as structured. Good cause
20 exists to release Mr. Radonski on his own recognizance in light of the fact that he
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26 ¹ The State notes that, “[a]s of November 6, 2018, no transcript has been produced from the Preliminary Examination. Opposition at 2 fn 1. This is factually incorrect since the transcript of the preliminary hearing was filed with the District Court on October 23, 2018.

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represents the lowest risk to reoffend under the NPRA, poses no danger to the community and is not a flight risk.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 9th day of November, 2018.

JOHN L. ARRASCADA
Washoe County Public Defender

/s/ Jordan A. Davis
JORDAN A. DAVIS
Deputy Public Defender

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date I deposited in the office court run, a true copy of the attached document, addressed to:

MATT LEE
Deputy District Attorney
Inter-Office Mail

By: /s/ Jessica Haro
JESSICA HARO

1 CODE: 3370

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF
7 THE STATE OF NEVADA IN AND FOR THE
8 COUNTY OF WASHOE

9 STATE OF NEVADA,

10 Plaintiff,

CASE NO.: CR18-1731

11 vs.

DEPT. NO.: 1

12 DAVID CHARLES RADONSKI,

13 Defendant.
14

15
16 **ORDER DENYING MOTION TO MODIFY BAIL**

17 Presently before the Court is Defendant David Charles Radonski's ("Mr. Radonski") *Motion*
18 *to Modify Bail* filed on October 29, 2018. On November 7, 2018, the State filed an *Opposition*.
19 Thereafter, Mr. Radonski filed a *Reply* and submitted the matter to the Court for decision.

20 Within the present motion, Mr. Radonski petitions the Court to modify his bail, presently set
21 at \$50,000 cash only and release him on his own recognizance with pretrial supervision, on the basis
22 that Mr. Radonski should pose the lowest risk using a properly applied Nevada Pretrial Risk
23 Assessment ("NPRA") score, as well as the fact that he has no criminal history, no failures to appear,
24 poses no danger to our community, and has strong ties to the community. However, the State
25 opposes Mr. Radonski's request on the basis that Mr. Radonski has been deceptive throughout the
26 investigation of the underlying charges. Additionally, the State argues that due to the nature of the
27 charges against Mr. Radonski as well as the maximum statutory penalties for such charges, there is a
28 higher risk that he will not appear in Court if he is released from custody.

1 Pursuant to NRS 178.4853, the Court must consider the following factors in determining
2 whether good cause exists to release a person without bail: (1) the length of residence in the
3 community; (2) the status and history of employment; (3) relationships with the person's spouse and
4 children, parents or other family members and with close friends; (4) reputation, character and
5 mental condition; (5) prior criminal record; (6) the identity of responsible members of the
6 community who would vouch for the reliability of the person; (7) the nature of the offense with
7 which the person is charged, the apparent probability of conviction and the likely sentence, insofar
8 as these factors relate to the risk of not appearing; (8) the nature and seriousness of the danger to the
9 alleged victim, any other person or the community that would be posed by the person's release; (9)
10 the likelihood of more criminal activity by the person after release; and (10) any other factors
11 concerning the person's ties to the community or bearing on the risk that person may willfully fail to
12 appear.

13 Upon careful review of the pleadings, the record, and the factors listed under NRS 178.4853,
14 this Court finds that good cause exists to deny an own recognizance release with pretrial supervision
15 for Mr. Radonski. Both Mr. Radonski and the State have addressed the criteria set forth in NRS
16 178.4853. However, on balance, the factors that weigh against Mr. Radonski outweigh the factors in
17 his favor. In particular, this Court is most concerned with NRS 178.4853(8), which addresses the
18 "nature and seriousness of the danger to the alleged victim, any other person or the community that
19 would be posed by the person's release." That the fire allegedly started by Mr. Radonski burned
20 51,000 acres, including 13 victim's properties and two homes; and that he subsequently made a
21 statement that he started the fire but did not report it, causes this Court to have serious concerns for
22 community safety as addressed in NRS 178.4853(8). Given the severity of the charges against Mr.
23 Radonski, as result of over 51,000 acres of the community being burned, resulting in estimated
24 damages exceeding \$4.8 million, and the possible maximum sentence for these charges, the Court
25 denies the request to release him on his own recognizance with pretrial supervision.

26 ///

27 ///

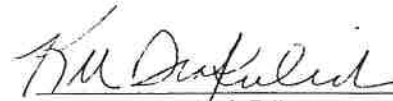
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Based on the foregoing and good cause appearing,

IT IS HEREBY ORDERED that Defendant David Charles Radonski's *Motion to Modify Bail*
is DENIED.

DATED this 2nd day of January 2019.


KATHLEEN M. DRAKULICH
District Judge

CERTIFICATE OF SERVICE

CASE NO. CR18-1731

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 2nd day of January, 2019, I electronically filed the **ORDER DENYING MOTION TO MODIFY BAIL** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

LYNN BRANZELL, ESQ. for DAVID CHARLES RADONSKI (TN)

DIV. OF PAROLE & PROBATION


MATTHEW LEE, ESQ. for STATE OF NEVADA

JORDAN DAVIS, ESQ. for DAVID CHARLES RADONSKI (TN)

JOSEPH GOODNIGHT, ESQ. for DAVID CHARLES RADONSKI (TN)

Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:

NONE


DANIELLE KENT
Department 1 Judicial Assistant

1 voluntarily met with you.

2 A Yes.

3 Q He then voluntarily met with you again for over
4 four hours to help assist with this investigation when he
5 came into the sheriff's office.

6 A Correct.

7 Q He was there voluntarily.

8 A Yes.

9 Q And he apologized for this incident.

10 A Yes.

11 Q He was extremely sorry. Right?

12 A I'd have to find those words in -- in --

13 Q And -- and if -- if you can't remember, it's in
14 the transcript at page 59, if you want to take a minute to
15 look.

16 A Okay.

17 Okay.

18 Q He was extremely sorry; right?

19 A Yes.

20 Q He also offered to take you to collect the
21 barrels that he shot at in the desert?

22 A Yes.

23 Q And he signed a search warrant to allow police to
24 search his phone?

1 A Correct.

2 Q And prior to signing that form, David wanted to
3 know when he would get his phone back?

4 A Yes.

5 Q And you told him he would get his phone back that
6 same day. And this is on page -- if you can't recall,
7 this is on page 75 of the transcript.

8 A Okay.

9 Okay, I see that.

10 Q So you told him he would get his phone back that
11 same day?

12 A Yes.

13 Q That if he didn't want to wait for it, he could
14 actually come back and get it; is that correct?

15 A Correct.

16 Q You told David he could come back in and get his
17 phone multiple times; right?

18 A Correct.

19 Q And based upon what you told him, he gave you
20 consent to search his phone; right?

21 A Yes.

22 Q And prior to that, David had showed you the one
23 single photo he took of the fire that was on his phone?

24 A Yes.

1 Q And after admitting to accidentally starting the
2 fire, he even offered to take you to his house to collect
3 the remaining fireworks, didn't he?

4 A Yes.

5 Q He -- he said he would voluntarily give them up,
6 didn't he?

7 A Yes.

8 Q But he did not agree to sign a search warrant for
9 his house; right?

10 A Correct.

11 Q So you left David in that small room by himself
12 for almost two hours after that; is that correct?

13 A I'd have to look at the time, but, yes, he was in
14 there.

15 Q Would it refresh your recollection to see a copy
16 of the video and the time that you left him in that room?
17 Would that refresh your recollection?

18 A Yes.

19 THE COURT: Mr. Davis, there's been no video
20 marked.

21 MR. DAVIS: Your Honor, may I approach and have
22 this marked?

23 THE COURT: Yes.

24 (Defense Exhibit 1 marked.)

1 BY MR. DAVIS:

2 Q Before I go further, is this the room where you
3 interviewed Mr. Radonski?

4 A Yes, it is.

5 Q Do you recognize that room?

6 A Yes, I do.

7 Q How do you recognize that?

8 A From being in there with Mr. Radonski when I did
9 the interview.

10 Q Is that you in the video?

11 A Yes.

12 Q Is that Mr. Radonski in the video?

13 A Yes, it is.

14 Q And is this the interview that we've been
15 discussing?

16 A Yes, it is.

17 Q Okay.

18 So this is the time where you're discussing
19 whether or not he's going to consent to the search of his
20 house; right?

21 A Okay.

22 Q It's about two hours and 15 minutes in.

23 A Mm-hmm.

24 Q And then at two hours and 17 minutes, you leave

1 the room. And the next time you return it's when you're
2 with Detective Atkinson; right?

3 A Yes.

4 Q Now I'm going to fast-forward the video. And can
5 you see that timestamp --

6 A Yes, I do.

7 Q -- in the corner?

8 Is Mr. Radonski in that room still by himself?

9 A Yes.

10 Q Now, at about four hours and 14 minutes into the
11 video, you see that you're in the room; right?

12 A That's correct.

13 Q And Detective Atkinson is there. So my question
14 to you was: You left David in that small room by himself
15 for almost two hours. Is that correct?

16 A Correct.

17 Q Now, I believe you testified that you weren't
18 aware that the door was locked.

19 A Right.

20 Q Now, on August 3rd you went back to the general
21 origin area of the Perry Fire; right?

22 A Yes.

23 Q And you found a plywood board in that area?

24 A Yes.

1 Q You also found a smaller water bottle.
2 A Yes.
3 Q And that was approximately one week after the
4 fire had started?
5 A Correct.
6 Q Agent Sully, isn't it true that the origin area
7 of the Perry Fire is in a remote, rural location?
8 A Yes, it is.
9 Q Far from any schools; correct?
10 A Correct.
11 Q Far from any parks?
12 A Correct.
13 Q Any playgrounds?
14 A Correct.
15 Q Any areas frequented by children? Right? It's
16 far from that.
17 A The origin is, yes.
18 Q And isn't it a fact that the origin of the fire
19 is far from any residential homes?
20 A Yes.
21 Q Now, there were two houses that burned in this
22 fire; right?
23 A Yes.
24 Q Can you tell me how far were those houses from

1 the origin of the fire?

2 A I cannot.

3 Q I believe they were both located on Piute Creek
4 Road. Right?

5 A I believe so.

6 Q Agent Sully, you went out on the scene of the
7 fire; correct?

8 A Correct.

9 Q And you were there at the area of the origin
10 multiple times?

11 A Yes, I was.

12 Q And isn't it true that you couldn't see any homes
13 from that location?

14 A I could not, no.

15 Q And during your investigation, you didn't find
16 any evidence that Mr. Radonski intentionally set either of
17 those two houses on fire, did you?

18 A No.

19 Q Isn't it a fact that he didn't travel from the
20 spot where he was to that house and set it on fire, did
21 he?

22 A No.

23 Q He didn't aim a firework at that house and set it
24 on fire, did he?

1 A No.

2 Q So you don't feel like he was intentionally
3 trying to burn down those houses; right?

4 MR. LEE: Objection. It's a legal answer or
5 conclusion.

6 MR. DAVIS: Your Honor, my response is that for a
7 first-degree arson charge, he has to show that he
8 intentionally and maliciously started this fire and burned
9 down these two homes.

10 Agent Sully drafted a report. He made certain
11 findings, and those findings go directly towards whether
12 or not the State can prove their case.

13 If -- if Agent Sully in his investigation as a
14 firefighter believes that these fires were intentionally
15 set, he's going to put that in his report, and he can
16 testify to that. If he doesn't believe that that is
17 actually accurate, I believe he can testify that --
18 testify to that, too.

19 THE COURT: Well, I agree it is a legal
20 conclusion that is saved for the trier of fact and not for
21 a witness. Not everything in a report is admissible.

22 BY MR. DAVIS:

23 Q Let me ask you this: Did you find any evidence
24 that he was trying to burn down those two homes?

1 A No.

2 Q You ultimately determined that this fire was
3 possibly started by fireworks; correct?

4 A That's correct.

5 Q Fireworks that ignited dry grass and sagebrush?

6 A Yes.

7 Q Now, as you sit here today, isn't it true that
8 there's absolutely no evidence, zero evidence, that
9 Mr. Radonski used any accelerants to start this fire?

10 A That's correct.

11 Q No gasoline?

12 A Not that we found.

13 Q No acetone?

14 A No.

15 Q No Tannerite?

16 A No.

17 Q And is it your best guess that this fire was
18 started exactly how Mr. Radonski told you it was?

19 A Yes.

20 Q By shooting off Roman candles?

21 A Yes.

22 MR. DAVIS: Nothing further.

23 THE COURT: Mr. Lee, any redirect?

24 MR. LEE: Very briefly.

REDIRECT EXAMINATION

BY MR. LEE:

Q I'll actually show you -- actually, Exhibit 14,
do you recognize Exhibit 14 here?

A Yes.

Q What does that show?

A The area of the fire as it burned.

Q Is that the extent of it?

A Yes.

Q And so in this -- did it start there somewhere
towards the top left corner?

A Yes.

Q Of the coloring, the dark --

A Correct.

Q -- dark green color?

A Yes.

Q Did that fire start by Mr. Radonski, by his own
words?

A Yes, it did.

Q He stated he lit the Roman candle; right?

A Yes, he did.

Q He stated he threw the Roman candle; right?

A Yes.

Q And that fire caused those two houses to be

1 burned?

2 A Yes, it did.

3 Q And all the other property at different locations
4 within what we see here on Exhibit 14?

5 A Yes.

6 MR. LEE: That's all the questions I have.

7 MR. DAVIS: Nothing in response to that, Your
8 Honor.

9 THE COURT: May he be excused for today?

10 MR. DAVIS: Yes.

11 MR. LEE: Please.

12 THE COURT: Agent Sully, you may step down, and
13 you are excused --

14 THE WITNESS: Thank you.

15 THE COURT: -- for today.

16 MR. LEE: Your Honor, State's last witness, and
17 that will be Detective Atkinson.

18 THE COURT: Mr. Lee, we're going to take a brief
19 five-minute break. Does Mr. Radonski need to go use the
20 restroom or anything?

21 MR. DAVIS: I think he's all right, Your Honor.

22 THE COURT: All right. So it will be five
23 minutes. It is -- looks like 4:17, so we'll be back about
24 4:22.

1 MR. LEE: Thank you, Your Honor.

2 (Recess from 4:16 p.m. to 4:21 p.m.)

3 THE COURT: So we're back on the record with 18
4 SCR 1187. All parties are present. The State has called
5 Detective Atkinson, who is at the -- witness on the chair.

6 So I'm going to swear you in.

7 (Witness sworn.)

8 THE COURT: Okay. Go ahead and have a seat.

9 THE WITNESS: Thank you.

10 THE COURT: Mr. Lee, the ones that you're not
11 using for this witness, could you let the clerk have them
12 so she can scan them?

13 MR. LEE: Yes.

14 THE COURT: Okay.

15 MR. LEE: And if you can give me a moment, I'll
16 even put them in order.

17 THE COURT: Oh, that's not necessary.

18 MR. LEE: Okay.

19
20 WILLIAM ATKINSON

21 Called as a witness on behalf of the State,
22 was previously sworn and testified as follows:

23 ///

24 ///

DIRECT EXAMINATION

BY MR. LEE:

Q All right, Detective, if you could please state your first and last name and spell your last name for us.

A William Brian Atkinson, A-t-k-i-n-s-o-n.

Q And, sir, how are you employed?

A I'm a detective with the Washoe County Sheriff's Office.

Q How long have you been in law enforcement?

A Working on my 20th year.

Q All with the sheriff's office?

A Yes.

Q And what's -- what are you currently assigned to?

A I'm currently assigned to the criminal investigations unit, specifically the property division as well as an ancillary assignment of arson investigations.

Q So did you investigate the arson -- or the case known as the Perry Fire?

A I did.

Q Did you ultimately determine it to be arson?

A I did.

Q I'm going to bounce around just a little bit, but starting off first: Were you at the -- at the scene or at the command post, let's say, of the Perry Fire on Friday,

1 February -- excuse me, July 27th?

2 A Yes, I was.

3 Q Did you come in contact with an individual named
4 David Radonski?

5 A I did not.

6 Q Did you see him there?

7 A I did not.

8 Q I'm sorry?

9 A I did not.

10 Q Okay. At any time that night did you see him
11 there?

12 A I did not. I was told he was there.

13 Q Okay. When you -- what time did you leave that
14 scene?

15 A Approximately 3 a.m.

16 Q Did you at some point come into contact with
17 Mr. Radonski?

18 A I did not. I'd spoke with Special Agent Sully,
19 Chief Beaver and other individuals who had --

20 Q Well, and I'm talking about in general. Did you
21 meet him, say, on even a Tuesday?

22 A Oh, yes.

23 Q Okay.

24 A Excuse me.

1 Q Do you recognize Mr. Radonski if you see him?

2 A I do. Yes.

3 Q Is he in the courtroom today?

4 A Yes, he is.

5 Q Where is he located?

6 A He's seated at the defense table.

7 Q Okay. What color shirt?

8 A Gray.

9 Q And is that based on your recognition of him from
10 meeting him on that Tuesday?

11 A Yes.

12 MR. LEE: Can the record reflect this witness's
13 identification of Mr. Radonski?

14 THE COURT: The record will so reflect.

15 BY MR. LEE:

16 Q Are you familiar, Detective Atkinson, with a
17 Roman candle?

18 A Yes, I am.

19 Q What is that?

20 A It's a type of firework.

21 Q Have you -- what -- what does it do?

22 A You light the fuse end, and it essentially will
23 emit like a flaming ball that will potentially explode,
24 or, depending upon the style of Roman candle, may explode

1 or just burn, like a -- what's called a star, emitting a
2 light.

3 Q Does each Roman candle just light one of those
4 balls?

5 A There's ten of them. So it kind of goes in
6 succession, and it just keeps going until the fuse has
7 burned its way through the end of the Roman candle.

8 Q Did you -- were you participating in the search
9 warrant of Mr. Radonski's residence?

10 A Yes, I was.

11 Q What street is that on?

12 A Kuenzli.

13 Q Is that downtown Reno area?

14 A Yes.

15 Q Did you also search his vehicle, a blue Dodge
16 Durango?

17 A Yes.

18 Q Inside his residence -- we'll start there
19 first -- what, if anything, did you find that was relevant
20 to your investigation on this case?

21 A Multiple fireworks; ammunition, those consistent
22 with ammunition from the fire scene, as well as ammunition
23 that was consistent from his vehicle.

24 Q How many fireworks?

1 A Approximately two boxes. Approximately the legal
2 paper box size, like reams of paper would fit in it.

3 Q Okay. So two of those boxes worth?

4 A Yes.

5 Q Were they your boxes that you put them into?

6 A Yes.

7 Q Okay. And then how about in his vehicle, what
8 did you find?

9 A Multiple cigarette lighters, the ones that would
10 push into a car that you would light a cigarette -- or
11 they're officially called a cigar lighter.

12 Q Is it similar to the one that was -- you were
13 aware that was found quarter mile to a half mile from the
14 area of origin?

15 A Yes.

16 Q How many were there?

17 A I'd say approximately three additional were
18 found.

19 Q Was that more than there were slots in the
20 vehicle for?

21 A Yes.

22 Q Going back to the fireworks that were found in
23 the residence, any Roman candles found there?

24 A Yes.

1 Q And how many? Do you recall?

2 A I believe there was nine additional Roman candles
3 found.

4 Q Were you aware that there were -- that
5 Mr. Radonski in his interview had mentioned something
6 about barrels that he was shooting?

7 A Yes.

8 Q What -- what were those? What were you looking
9 for?

10 A I was looking for steel barrels, steel drums,
11 approximately the size of the 55-gallon drums.

12 Q Did you do some research into where that might
13 have -- those might have come from?

14 A I did.

15 Q Where did you determine they came from?

16 A I determined they came from Legacy International,
17 his employer. He was given permission to take a barrel
18 from work, which was subsequently located later.

19 Q Okay. What were the barrels? Were they empty?

20 A To my knowledge, they were supposed to have been
21 emptied. They contained an acetone that Legacy
22 International uses for their cleansing /stripping of
23 metals, and they use it in their -- their process. But
24 they were supposed to be empty, yes.

1 Q Okay. And then did you eventually find these
2 barrels?

3 A I did.

4 Q Where?

5 A Just to the outside of the Perry Fire on the --
6 I'm going to say it's the north -- kind of northwest side
7 of Pyramid Highway, deep in a canyon.

8 Q Both? Two barrels found?

9 A Two barrels found.

10 Q Did those barrels match the ones that were taken
11 from his work?

12 A Yes, they did.

13 Q Or, I'm sorry, I shouldn't say that. Let me
14 clarify.

15 Did they match the type of barrels that his work
16 had?

17 A Yes.

18 Q That area that the barrels were found, what could
19 you see from there?

20 A Looking back from the ravine where they were
21 found, you could see the northern portion of the fire and
22 where the fire was progressing through.

23 Q So if -- if I had been there on the evening or
24 afternoon of the 27th after the fire had started in that

1 location, could I have seen and watched the fire?

2 A Yes.

3 Q This whole area, the area of origin and
4 everywhere where the fire burned, was that within Washoe
5 County?

6 A Yes, it was.

7 Q Did you also go inside the area that had burned
8 to -- well, as part of your investigation?

9 A Yes, I did.

10 Q For any other reason?

11 A No.

12 Q Were you looking for anybody for their safety or
13 anything?

14 A I was.

15 Q What was that?

16 A We'd received reports there was an elderly
17 gentleman who had been contacted by -- or family members
18 had been contacted by fire, who they were unable to
19 confirm as to whether or not he had been spoken to or seen
20 of.

21 So after the fire, we went -- or once containment
22 was established, we went into the fire scene looking for
23 him and trying to establish whether or not he was alive
24 and his well-being.

1 Q Okay. Did you also take some pictures while you
2 were out there?

3 A Yes, I did.

4 Q As well, did you -- did you go -- before
5 searching the vehicle -- and when did you search the
6 vehicle?

7 A The same day, Tuesday -- I don't know the exact
8 date, but Tuesday.

9 Q When he was interviewed?

10 A Yes.

11 Q Did you -- had you gone out to his residence to
12 see the vehicle first before that?

13 A I had.

14 Q Okay. I'm going to first show you what's been
15 marked as -- right there -- Exhibit 4. And then I'm also
16 going to show you Exhibit 18.

17 Do you recognize those?

18 A Yes, I do.

19 Q How do you recognize those?

20 A These are the vehicles identified from
21 Mr. Radonski's residence, his Durango that was registered
22 to him.

23 MR. LEE: Your Honor, I move to admit Exhibit 4
24 and 18.

1 MR. DAVIS: No objection.

2 THE COURT: They will be admitted.

3 (State Exhibits 4 & 18 admitted.)

4 BY MR. LEE:

5 Q First looking at Exhibit 4 here.

6 A Mm-hmm.

7 Q What color -- may not show up as well in these
8 lights. What color was that fender?

9 A Silver/gray.

10 Q When you went back out, was it the next day after
11 that picture was taken?

12 A No, that picture was taken late Friday/early
13 Saturday morning. And I went back out the following
14 Monday.

15 Q Okay. So you went back out the following Monday.
16 Is this Exhibit 18 what you saw?

17 A Yes, it is.

18 Q What was the difference?

19 A The front fender had been changed from the
20 silver/gray color to a black.

21 Q Okay. And then with regard to your going out in
22 the area of the scene, showing you first Exhibit 17.

23 Do you recognize that?

24 A Yes, I do.

1 Q What is that?

2 A It was an overall damage assessment map that was
3 given to me showing properties and areas of damage within
4 the fire boundaries.

5 Q Okay. Then I'm also going to show you Exhibits
6 21, 22, and 23. Lay those all out here in front of you.

7 Generally speaking, what -- what are we looking
8 at there?

9 A A damaged vehicle, second damaged vehicle with
10 contents, and then kind of a damaged property area with
11 like stairs and some barrels.

12 Q Did you take these pictures?

13 A I did.

14 Q Is that at 2355 Piute Creek?

15 A Yes.

16 Q I'm going to show you more exhibits -- 24, 25,
17 26, 27, and 28. Go ahead and take a look at these too.
18 Thumb through them, and look up when you're done.

19 Do you recognize all those?

20 A I do.

21 Q Did you take those photos?

22 A Yes, I did.

23 Q And are those from 2400 Piute Creek?

24 A Yes, they are.

1 MR. LEE: I would move to admit -- excuse me --
2 21 through 28.

3 MR. DAVIS: No objection.

4 THE COURT: They will be admitted.

5 (State Exhibits 21 - 28 admitted.)

6 BY MR. LEE:

7 Q And then going back to 17, you mentioned this is
8 a printout of the area of the fire; correct?

9 A Correct.

10 Q Those blue dots, what are those showing?

11 A Those were damage assessed that different teams
12 within the fire suppression efforts would document, damage
13 to different structures, residences, outbuildings, as they
14 would go through with their suppression efforts.

15 Q Okay. Detective, were you aware, was there
16 damage located at the address of 300 Microwave Road?

17 A Yes.

18 Q 1800 Wrangler Road?

19 A Yes.

20 Q 455 Wrangler Road?

21 A Yes.

22 Q 1955 Piute Creek?

23 A Yes.

24 Q 2055 Piute Creek?

1 A Yes.

2 Q 2155 Piute Creek?

3 A Yes.

4 Q 2000 Piute Creek?

5 A Yes.

6 Q 2355 Piute?

7 A Yes.

8 Q 2400 Piute Creek?

9 A Yes.

10 Q 5100 Wayside?

11 A Yes.

12 Q 3600 Right Hand Canyon?

13 A Yes.

14 Q 3700 Right Hand Canyon?

15 A Yes.

16 Q And -- and/or 1200 Whiskey Springs?

17 A Yes.

18 Q Looking at these exhibits here, first Exhibit 28,

19 that 2355 [sic] Piute Creek, what are we looking at there?

20 A That was a -- essentially on the right-hand side

21 of the picture from my -- my angle of it, you have a

22 trailer that was there and there's no longer the tires on

23 it and it's just basically the steel frame of that

24 trailer.

1 Q Okay. Exhibit 27, still at the same address,
2 what are we looking at there?

3 A That was a bus that was in kind of the middle of
4 that property that has been converted, had a couple rows
5 of seats and then some additional cleared-out seats.
6 Wheels were gone.

7 Q Exhibit 26, what is that?

8 A That was an outbuilding. You can see the cinder
9 blocks down kind of running from the left to the kind of
10 more of the center of the screen of an outbuilding that
11 was there. So kind of like the foundations or footings
12 that they had set up for this outbuilding.

13 And then on the right edge of the white, closer
14 to the tree, is -- there's actually some shingles. You
15 can see some of those.

16 Q (Inaudible) to Exhibit 25?

17 A This was another trailer that was built into the
18 property. You can see the footings where they'd taken the
19 tires off of it. At the foreground of the picture on the
20 right-hand side of the steel frame that's left is one of
21 the footings for it.

22 Q And then Exhibit 24, is that just more of an
23 overall of what you just described?

24 A Yes.

1 Q I'm sorry, I think I got that backwards. Is that
2 at 2400?

3 A That's 2400; correct.

4 Q So now looking at 2300 [sic], Exhibit 21, what do
5 we see there?

6 A These were barrels when we first walked into the
7 property. It kind of surrounded a trench that goes down
8 behind the barrels.

9 Q Exhibit 23?

10 A This was a truck of some sort. We don't know
11 what it was used for. Had tires on it and is completely
12 flattened, and it's just left of the -- the frame and
13 steel left of it.

14 Q And then Exhibit 22. It's kind of dark, but can
15 you tell what we're looking at?

16 A Yes. This was another truck that was facing the
17 road on the property at 2355. In the back it had like
18 paint can size of like old MRE or C-Rations.

19 MR. LEE: One moment, Your Honor. I think I'm
20 almost done.

21 BY MR. LEE:

22 Q And then just to be clear, that area of where the
23 origin is near, is there a road, a dirt road going by
24 there named Appian Way?

1 A Yes, sir, it's just to the -- should be to the
2 north of it.

3 MR. LEE: That's all I have, Your Honor.

4 THE COURT: Mr. Davis?

5 CROSS-EXAMINATION

6 BY MR. DAVIS:

7 Q Good afternoon, Detective Atkinson.

8 A Good afternoon.

9 Q Now, you seized a number of items from
10 Mr. Radonski's residence; is that right?

11 A Yes.

12 Q I'd like to take a few moments to go through
13 that.

14 You found a number of firearms in his residence;
15 correct?

16 A Yes.

17 Q And you seized those firearms? Is that accurate?

18 A Yes.

19 Q None of those firearms are believed to have been
20 used or involved in the Perry Fire; correct?

21 A In the ignition of the fire or --

22 Q In the ignition of fire.

23 A Correct.

24 Q And Mr. Radonski is a U.S. citizen, isn't he?

1 A Yes.

2 Q He has no prior felonies?

3 A No.

4 Q No convictions of any kind; right?

5 A No.

6 Q And he's able to lawfully possess firearms?

7 A Correct.

8 Q He's able to lawfully possess ammunition?

9 A Correct.

10 Q Now, you found a box of shooting supplies and
11 targets at his residence; right?

12 A Correct.

13 Q He's able to lawfully possess those as well? Is
14 that accurate?

15 A Some, yes.

16 Q Now, during your search you found a tub of binary
17 exploding target material. Right?

18 A Correct.

19 Q That's also known as Tannerite?

20 A Correct.

21 Q Tannerite is a brand of an exploding target, and
22 that's used for firearm practice?

23 A Correct.

24 Q It's not illegal, is it?

1 A In certain aspects, it is.

2 Q It's sold at Scheels --

3 A In the city --

4 Q -- right?

5 A -- of Sparks.

6 Q In the city of Sparks?

7 A Correct.

8 Q Is Sparks in Washoe County?

9 A Yes, it is.

10 Q Okay. So he could lawfully be in possession of
11 something he purchased at Scheels, couldn't he?

12 A He lives in the city of Reno.

13 Q So -- so let me get this straight. So in the
14 city of Reno, Tannerite is not legal?

15 A Correct.

16 Q But in Sparks it is?

17 A Correct.

18 Q Let me ask you this. During the course of your
19 investigation, did you determine that this fire was
20 started using Tannerite?

21 A Initially, I didn't do the origin and cause, so I
22 couldn't ascertain how it started.

23 Q During the course of your investigation, did you
24 ever learn that Tannerite was involved in the ignition of

1 this fire?

2 A I did not.

3 Q During your investigation, did you ever learn
4 that any accelerants were used in the starting of this
5 fire?

6 A I did not.

7 Q Did you find -- I think you testified to this.
8 You found a box of fireworks at Mr. Radonski's house?

9 A Yes.

10 Q And you found some Roman candles there?

11 A Yes.

12 Q Now, isn't it true that when you met with -- when
13 you met with Special Agent Sully -- or, excuse me, when
14 Mr. Radonski met with Special Agent Sully at the Washoe
15 County Sheriff's Office, you were there?

16 A Yes.

17 Q You were actually outside of the room, weren't
18 you?

19 A Yes.

20 Q And you were -- you were looking in. I mean,
21 you -- you were watching a video of what was happening;
22 right?

23 A Yes.

24 Q Okay. And didn't he voluntarily come in there?

1 A Yes, he did.

2 Q And so you're aware that Mr. Radonski told Agent
3 Sully that he had fireworks at his house; right?

4 A Yes.

5 Q And you're also aware that he agreed to go there
6 with the police and give them the fireworks; right?

7 A Yes.

8 Q He volunteered to do this, didn't he?

9 A Yes.

10 Q You also know, then, that he claimed to have
11 purchased the fireworks from a store in Wadsworth?

12 A I didn't hear that.

13 Q You didn't hear that?

14 A I did not.

15 Q Were you watching the testimony?

16 A I had stepped out at one point to use the
17 restroom, and that may have been when that happened. But
18 I didn't hear that he had purchased -- where he had
19 purchased the fireworks from.

20 Q Is Wadsworth in Washoe County?

21 A Yes, it is.

22 Q Is it legal for certain stores in Wadsworth to
23 sell fireworks?

24 A I believe so.

1 Q So if it's legal for them to sell them in
2 Wadsworth, is it legal, then, to purchase those in
3 Wadsworth?

4 A I would have to assume. I don't know how they
5 sell them on tribal land.

6 Q Okay. Now, when you searched Mr. Radonski's
7 house, you confiscated two laptops?

8 A Yes.

9 Q One was a Toshiba laptop; right?

10 A Yes.

11 Q And one was a Dell laptop?

12 A Yes.

13 Q And you were the officer that applied for the
14 search warrant of the house?

15 A Yes.

16 Q When you applied for the search warrant of the
17 house, you didn't put down that you were trying to seek
18 out any computers; right?

19 A We did not.

20 Q Despite that, you confiscated two computers.

21 A Yes.

22 Q And you only listed one of those computers on the
23 return of service?

24 A Should have been both listed.

1 Q Do you believe that you put down both computers
2 on that return?

3 A I thought I had, yes. It should have been both.

4 Q Can you recall -- would it refresh your
5 recollection to see a copy of the return of service?

6 A It would help, yes.

7 MR. DAVIS: Your Honor, can I have this marked?

8 THE COURT: Yes. Is it just one exhibit?

9 MR. DAVIS: Yeah.

10 (Defense Exhibit 2 marked.)

11 BY MR. DAVIS:

12 Q Sir, can you take a moment and look at this
13 return of service?

14 A Absolutely.

15 Q Are you done reviewing it?

16 A Yes.

17 Q And do you see that you didn't list two computers
18 on that? Correct?

19 A Correct.

20 Q There's only one computer that's listed; right?

21 A Correct.

22 Q Now, did you look through those computers?

23 A No.

24 Q So you never obtained a search warrant to go

1 through them?

2 A No.

3 Q Now, there were two houses that burned down in
4 this fire; correct?

5 A Yes.

6 Q And do you know how far the origin of the fire
7 was to the location where the houses were burned?

8 A Several miles.

9 Q Several miles. And they were both on Piute Creek
10 Road?

11 A Yes.

12 Q Are you aware of the days that those houses
13 burned down?

14 A Off the top of my head, no, I'm not.

15 Q Now, on July 27th, you were notified of a
16 suspicious fire; right?

17 A Yes.

18 Q And you were notified at approximately 2341
19 hours?

20 A Yes.

21 Q And the fire was first reported around 5 p.m.
22 that day?

23 A Yes.

24 Q And Mr. Radonski was listed as a person of

1 interest?

2 A Yes.

3 Q Just so I can nail down a timeline, at 5:10 is
4 when a call comes in about the fire; right?

5 A Correct.

6 Q It's believed to have started at 5:00.

7 A Okay.

8 Q And you first respond to the scene when?

9 A Approximately 2341 was when I was notified. I
10 got there maybe a half hour after that.

11 Q And so nobody contacted you from around five
12 o'clock to around 11:00; is that right?

13 A Correct.

14 Q Special Agent Sully did a lot of investigative
15 work for this case, didn't he?

16 A He did.

17 Q And he determined that the fire started just east
18 of the abandoned mine?

19 A Yes.

20 Q And that appeared to have been a target shooting
21 area?

22 A Yes.

23 Q And he had that area protected, didn't he?

24 A He did.

1 Q But prior to having it taped off, you're not sure
2 if any firefighters disturbed that area, are you?

3 A I couldn't...

4 Q You wouldn't know; right?

5 A Yeah.

6 Q Isn't it true that within hours of the fire
7 starting Mr. Radonski came forward and spoke with
8 authorities?

9 A To my knowledge, yes.

10 Q And he did that voluntarily?

11 A Yes.

12 Q On his own free will?

13 A Yes.

14 Q Just hours after the fire started; right?

15 A I don't know an exact time frame, but, yes, he
16 did come Friday and speak to authorities.

17 Q He then provided a voluntary statement?

18 A Yes.

19 Q And he also provided you with his home address?

20 A Yes.

21 Q And on July 30th, you decided you wanted
22 Mr. Radonski to come in for an interview the following
23 day?

24 A Yes.

1 Q And so Agent Sully contacted Mr. Radonski and set
2 that up?

3 A Correct.

4 Q And then came in. And he was interrogated by
5 Agent Sully, wasn't he?

6 A He was interviewed.

7 Q He was interviewed?

8 A Mm-hmm.

9 Q He was interviewed for more than four hours,
10 wasn't he?

11 A He was there for several hours, yes.

12 Q Okay. And during the time that he was there, was
13 he free to go?

14 A Yes, he was, initially.

15 Q Was he told that the door was unlocked?

16 A Yes, he was.

17 Q And isn't it true that the door was, in fact,
18 locked?

19 A No. It was unlocked.

20 Q It was unlocked?

21 A Mm-hmm.

22 Q Did you ever lock the door?

23 A I locked it when Mr. Radonski was Mirandized and
24 the determination was that we were going to arrest him

1 that day. Then it was locked at that point.

2 Q So after he was Mirandized, you then locked the
3 door?

4 A After the interview was concluded and we were
5 done and the PC -- as I was typing the PC up, yes, it was
6 locked at that point.

7 Q And he wasn't free to go at that point?

8 A Correct.

9 Q During his interview, Mr. Radonski admitted that
10 he shot off some Roman candles; right?

11 A Yes.

12 Q And he shot them in the direction of an empty
13 55-gallon steel drum --

14 A Yes.

15 Q -- correct?

16 But that one of those candles had malfunctioned?

17 A He had said it was an accident.

18 Q He said it was an accident?

19 A Yes.

20 Q Would it refresh your recollection to see a copy
21 of that transcript?

22 A It would.

23 Q All right.

24 MR. DAVIS: Your Honor, may I approach the

1 witness?

2 THE COURT: Yeah.

3 BY MR. DAVIS:

4 Q So after you take a minute to review that page,
5 I'm going to ask -- I'm going to ask you my question.

6 A Go ahead.

7 Q So isn't it true that he said that one of the
8 Roman candles malfunctioned?

9 A Yes.

10 Q And it struck some vegetation?

11 A He said it went up or around something and landed
12 in the bush.

13 Q And that started a fire; right?

14 A Can I go to the next page? Because just based on
15 that, it doesn't say anything about starting the fire. It
16 just says it went in the bush.

17 Q Let me ask you this. During the time that you
18 watched the interview, did Mr. Radonski admit that he
19 started the fire?

20 A Yes.

21 Q And he admitted that the fire started because he
22 shot a Roman candle --

23 A Yes.

24 Q -- right? All right.

1 He admitted that he tried to put the fire out,
2 didn't he?

3 A He stated he tried to put the fire out, yes.

4 Q But he couldn't get it under control?

5 A Yes.

6 Q And so he left that area?

7 A Correct.

8 Q Went shooting at another place?

9 A Correct.

10 Q And he didn't call the police because he was
11 scared?

12 A Correct.

13 Q And even though he didn't call the police, he
14 came and he met with investigators; right?

15 A Yes.

16 Q And even after he spray painted his car, he met
17 with investigators; right?

18 A Yes.

19 Q It's not illegal to paint your car, is it?

20 A No.

21 Q Okay. He admitted to accidentally starting this
22 fire; right?

23 A Yes.

24 Q And he offered to take you to the house to

1 collect the fireworks; right?

2 A Yes.

3 Q And, despite that, you arrested him for two
4 counts of first degree arson; right?

5 A Yes.

6 Q You based that upon two residential homes that
7 were burned?

8 A Yes.

9 Q Now, you went out to the scene of this -- of this
10 fire; right?

11 A Yes.

12 Q When you looked around, did you see any homes?

13 A I did.

14 Q You did?

15 A I did.

16 Q Is that "I did"?

17 A Yes, I did see a home. It was destroyed.

18 Q Okay. So from the -- from the origin of where
19 the fire started, you could see houses?

20 A Not from the origin, but you said "the scene."

21 So to me the scene is the entire --

22 Q I apologize.

23 A -- fire scene, the entire encompassing fire.

24 Q From the origin of fire.

1 A Correct.

2 Q You looked around. Could you see any houses?

3 A I could not.

4 Q And you determined, based upon what you heard,
5 that he intentionally started these fires?

6 A Yes.

7 Q Now, in executing your search warrant, the
8 regional Bomb Squad was called out, weren't they?

9 A They were.

10 Q And they found certain exploding materials;
11 right?

12 A Yes.

13 Q That those were used for target practice; right?

14 A Correct.

15 Q They determined that that material was stable?

16 A Yes.

17 Q And you then went to Mr. Radonski's work.

18 A Yes.

19 Q And you met with his HR supervisor.

20 A Yes.

21 Q Confirmed he was employed there?

22 A Yes.

23 Q And confirmed that he had taken two empty
24 barrels; right?

1 A Correct.

2 Q And those barrels, they weren't filled with
3 acetone, were they?

4 A They were not vented and they were not the ones
5 that he was told by the shop foreman that he could take.
6 He took barrels from within the building that have been
7 not dried or vented. So they still had some remnants of
8 acetone in them.

9 Q Are you aware if any acetone was used to start
10 this fire?

11 A There was not.

12 Q Okay. You also found a water bottle on the scene
13 of where the fire started; right?

14 A Yes.

15 Q And you found boards that were shot up and
16 flimsy?

17 A Yes.

18 Q On August 8th you went back to the scene and
19 photographed the area while flying in the RAVEN?

20 A Yes.

21 Q Did -- who was with you when you were flying in
22 the RAVEN?

23 A Myself -- I don't remember the crew chief. I
24 want to say it was Deputy Coffindaffer. The pilot.

1 Sergeant Russell. And one time I had the DA there. And
2 then one time I had Mike Lucido there, our videographer
3 from the sheriff's office.

4 Q So you brought the DA with you to view this
5 evidence?

6 A One of the times, yes.

7 Q And did -- did he go up with you?

8 A Yes.

9 Q Did you ever reach out to our office to see if we
10 wanted to go see the evidence?

11 A I did not.

12 Q Okay. On August 8th you located two black,
13 empty, 55-gallon barrels in the desert; right?

14 A Yes.

15 Q And you don't believe that those were involved in
16 the setting of the fire at all?

17 A Correct.

18 Q Now, on July 27th, when the fire started, the
19 temperature was a hundred degrees out?

20 A Approximately, yes.

21 Q And the wind gusts were up to 19 miles per hour?

22 A Yes.

23 Q The humidity was 12 percent?

24 A Correct.

1 Q Now, you conducted a test in this case; right?
2 A We did, yes.
3 Q And on the day of the test, the temperature was
4 97 degrees?
5 A Yes.
6 Q The wind was 3 to 8 miles an hour?
7 A Correct.
8 Q And the humidity was 22 percent.
9 A Correct.
10 Q The test you conducted was three hours earlier in
11 the day than the actual fire that happened; right?
12 A Correct.
13 Q So is it fair to say that, in the test you
14 conducted, the temperature, humidity and wind conditions
15 were all different than on the day of the incident?
16 A Correct.
17 Q And, in fact, they were all better than on the
18 day of the incident?
19 A Better --
20 Q More humidity, less hot, and the wind wasn't as
21 strong. Right?
22 A Correct.
23 Q Despite that difference in conditions, you lit a
24 Roman candle, you shot it at sagebrush, and within a

1 minute there was a huge fire?

2 A Correct.

3 Q And within 60 seconds it spread to approximately
4 five feet by five feet?

5 A Yes.

6 Q And fire crews on scene had to extinguish that?

7 A Correct.

8 Q And in your test, was there any way that you
9 could have put out that fire with a water bottle?

10 A No.

11 Q Was there any way that you could have put it out
12 with a flimsy piece of wood?

13 A No.

14 Q Would it have been possible to put the fire out
15 without the assistance of firefighters?

16 A It would not.

17 Q So on that date of the fire, if it happened the
18 way David told you it happened, would you agree with me
19 that it would be nearly impossible for him to put the fire
20 out without firefighters?

21 A Yes.

22 Q And the area where the fire started, that was a
23 common target practice area?

24 A I don't know if it's common or not.

1 Q Did it appear to be a popular area for target
2 shooters?

3 A There was shell casings there. Whether it's
4 popular or not, I -- I can't speak to that. But target
5 shooting had occurred there in the past.

6 Q And David told you he liked to go there and shoot
7 guns; right?

8 A He said he liked to go to the area and shoot
9 guns.

10 Q And he actually planned to do that on that
11 particular day; right?

12 A Yes.

13 Q Now, after conducting this entire investigation,
14 is it your opinion that David went out to that spot with
15 some guns and fireworks to intentionally start a fire?

16 A Yes.

17 Q You believe that he intentionally meant to set
18 two residences that he couldn't see on fire?

19 A I believe he intended to start the fire, and I
20 think the subsequent consequence of those residence
21 burning was a result of that fire getting out of control.

22 Q Do you believe that he intentionally meant to
23 start 51,000 acres on fire?

24 A Again, I believe he went with the intent to start

1 a fire, but I believe the intent was not necessarily to
2 burn 51,000 acres. I think it got out of control and it
3 burned beyond what he had initially planned or had thought
4 would happen.

5 Q So you thought he intended to start a fire at a
6 place where he loved to go shooting?

7 A Yes.

8 Q Where he loved to go camping? Yes?

9 A Yes.

10 Q Where he loved to stargaze?

11 A Yes.

12 Q During your investigation, isn't it true that you
13 didn't find any evidence linking Mr. Radonski to any other
14 fire?

15 A Correct.

16 Q You didn't locate any evidence at his house where
17 he was planning on setting a fire?

18 A Correct.

19 Q (Inaudible) planning on setting a fire; right?

20 A Correct.

21 Q And when you searched his phone, you didn't find
22 any articles about setting fires?

23 A Correct.

24 Q About arson?

1 A Correct.

2 Q You didn't locate any evidence at his work that
3 he was planning on setting a fire, did you?

4 A I did not.

5 Q He's never been arrested for arson or for setting
6 fires, has he?

7 A No.

8 Q And when you searched his cell phone, you didn't
9 locate any evidence about him wanting to set fires, did
10 you?

11 A No.

12 Q No evidence that, "Oh, I want to burn Pyramid
13 Lake down"; right?

14 A No.

15 Q So, in reality, you believe that he acted
16 maliciously after the fire started; right?

17 A I believe there was an intent and a maliciousness
18 behind it by not reporting it to the fire department.

19 Q Okay. But that was after the fire started,
20 wasn't it?

21 A Yes.

22 Q Okay. And you believe that because he didn't
23 call 911?

24 A Yes.

1 Q Because he told investigators a different story
2 at first?

3 A Yes.

4 Q And because he painted his bumper?

5 A Correct.

6 Q Even though he met with investigators right after
7 or shortly after the fire started.

8 A Correct.

9 Q And even though he met with investigators for
10 over four hours. Right?

11 A Mm-hmm.

12 Q And even though he said, "Hey, I'll turn over my
13 fireworks"? Yes?

14 A Yes.

15 Q The lighters that you found in Mr. Radonski's
16 car, did you believe that those were used in the ignition
17 of this fire?

18 A I do.

19 Q You do?

20 A Yes.

21 Q Did you have them tested?

22 A I did not have them tested, but I believe they
23 were used to start the fuse for the Roman candle.

24 Q You believe that --

1 A Well, not the ones that we found in his car, the
2 one that we found on the scene.

3 Let me rephrase that for you. The one we found
4 on scene I believe was used for that. The ones we found
5 in his car I do not believe were used for this fire.

6 Q Okay. Now, the one that you found on scene, did
7 you have that one fingerprinted?

8 A We did not.

9 Q And that one was located in the center of the
10 road?

11 A Correct.

12 Q It wasn't located near any bush; right?

13 A No.

14 MR. DAVIS: I have nothing further. Thank you.

15 THE COURT: Any redirect?

16 MR. LEE: No, Your Honor. Thank you.

17 THE COURT: Can we have the exhibits returned?
18 There's some that still need to be scanned.

19 MR. LEE: Judge, can I just confirm with you, I
20 believe from the State's side every exhibit has been
21 admitted. 1 and 2 were demonstrative, so I didn't ask
22 accept. And then 17, 19, and 20 I did not ask. Is that
23 accurate?

24 THE COURT: That's what I have as well.

1 MR. LEE: Okay. Then I'll follow -- if I can,
2 Your Honor, I'll tend to the Court every single exhibit
3 the State has.

4 THE COURT: Including the ones that have not
5 been --

6 MR. LEE: Including the ones that have not
7 been --

8 THE COURT: Okay.

9 MR. LEE: -- admitted. I'll just leave on the
10 clerk's table.

11 THE COURT: Perfect.

12 MR. LEE: And then the rest that have been
13 admitted are in a separate pile.

14 THE COURT: Detective Atkinson, you may step
15 down.

16 THE WITNESS: Thank you.

17 THE COURT: Kind of jumped the gun, and I
18 apologize.

19 MR. LEE: I meant to do that even before he was
20 released, so just in case. So thank you, Your Honor.

21 Your Honor, that's the State's case for today.

22 THE COURT: Mr. Davis?

23 MR. DAVIS: Your Honor, I have conferred with my
24 client, and he will not be testifying today, and we don't

1 have any witnesses to call at this time.

2 THE COURT: And you advised him of his right to
3 testify?

4 MR. DAVIS: I did, Your Honor.

5 THE COURT: Any argument, Mr. Lee?

6 MR. LEE: Briefly, Your Honor, if I could.

7 Your Honor, lighting off Roman candles under
8 these conditions -- hot, dry -- as -- as Ranger Fischer
9 said, extremely dangerous conditions, he knew fireworks
10 were illegal, he even had knowledge of dry and dangerous
11 conditions being a hazard, because he says in his
12 interview that he tries to be careful when he's shooting,
13 so he shoots away from dry brush, talking about previous
14 times using a firearm.

15 Despite knowing that, he still decides to go up
16 to this area on a perfect-condition day for a fire,
17 bringing Roman candles with him, and he shoots one. Each
18 of those candles contains within it multiple balls of
19 fire, if you will, that he fires off.

20 What happened is his act, which was willful, he
21 admitted to willingly lighting this Roman candle -- wasn't
22 lit on accident by any means -- what happens is a
23 51,000-acre fire burning numerous buildings, structures,
24 vehicles, other personal property items, certainly

1 resulting in the destruction of two homes, and then a lot
2 of areas of wildland were destroyed as well. I'll touch
3 on this, these things, just because it's important.

4 With regard to Count V, the State has to show to
5 make this a Category C felony that these items had a value
6 of 5,000 or more. Your Honor heard testimony from the two
7 homeowners as to the values of their properties and the
8 barn and vehicles and other items of personal property
9 well exceeded the \$5,000 there.

10 So the State has to show willfully. And, again,
11 he admitted to doing the act that would set this in
12 motion; again, lighting the Roman candles. That is
13 willfully.

14 As far as maliciously, Your Honor, the statute,
15 193.0175, states that maliciousness can be inferred from
16 an act done in willful disregard; 2, an act wrongfully
17 done without just cause or excuse; or an act betraying
18 willful disregard of social duty.

19 There's a Ninth Circuit case, *U.S. v. Doe*, that
20 states it's "an intentional act creating an obvious fire
21 hazard," is malicious.

22 And then we -- so not only did what he do count
23 as willful and malicious, but what he does afterwards is
24 also interesting.

1 One, he states he tried to put this fire out,
2 saying, "It's an accident; therefore, I tried to put it
3 out." There's no evidence of suppression at the scene.
4 No scraped dirt. That water bottle he said he left there
5 was not there.

6 And then he doesn't call 911. Instead, he goes
7 across the highway to an area with a great vantage point
8 after the fire started and takes time to unload two
9 barrels and shoot them up. And then he -- then he leaves
10 and goes back home.

11 He tells twice a fake story to investigators --
12 once at the scene and then initially at his interview on
13 that next Tuesday -- that some other guys did it. He's
14 trying to put the blame elsewhere.

15 He tries to limit his exposure, worried that,
16 perhaps, there's a truck similar to his that was seen, and
17 he says, "Hey, it might have been a similar truck. You
18 might find a lighter there that I left previously." And
19 it's not until he's actually caught, until he's shown that
20 picture of his truck leaving the scene, that his story
21 changes.

22 And then as far as Count V, Your Honor, gross
23 negligence, there's this definition from *Hart v. Kline*, 61
24 Nev. 96: Gross negligence is a manifestly smaller amount

1 of watchfulness and circumspection than the circumstances
2 require of a prudent man.

3 Gross negligence is manifested by the absence of
4 even slight diligence or want of even scant care or
5 heedless and palpable violation of a legal duty respecting
6 the rights of others.

7 Your Honor, what happened here is Mr. Radonski
8 set a fire in one location just south of Pyramid Highway.
9 What happened then is that fire took off, caused a lot of
10 vegetation to burn, caused a lot of -- or two
11 structures -- two houses and then multiple structures.

12 He is liable on each -- each of those counts.
13 And it's simply because of the statute itself prescribes
14 or prohibits either the setting of fire, burning and/or
15 causing to be burned. By starting a fire in one location,
16 he certainly caused that he burned a house even miles
17 away.

18 And certainly (inaudible) of arson is not setting
19 the fire, which might cause certain damage, it prescribes
20 the acts of burning that results in different structures
21 or lands. Each separate structure therefore represents a
22 distinct injury and a different count, and that's what the
23 arson statute prescribes.

24 Given all that, Your Honor, for purposes of this

1 hearing, I believe probable cause is sufficiently proven.

2 THE COURT: Mr. Davis?

3 MR. DAVIS: Your Honor, with respect to the first
4 two counts, Mr. Radonski is charged with first degree
5 arson, and that does require that he acted willfully and
6 unlawfully and maliciously to set a fire.

7 The State's correct in that "malice" is defined
8 in NRS 193.0175, and they define it as: Importing an evil
9 intent, wish or design to vex, annoy or injure another
10 person.

11 That's how malice is defined in NRS 193.0175.

12 In *Batt v. State* -- this is 111 Nev. 1127 --
13 that's a Nevada Supreme Court case that discusses -- that
14 discusses intent, and they provide that for a defendant to
15 be guilty of malicious arson, fire must be caused
16 intentionally or by design, rather than accidentally or
17 carelessly, as willful act is done intentionally and not
18 accidentally.

19 So that's our backdrop for both the first degree
20 arson and for the third degree arson counts, because they
21 both require that he acted willfully and maliciously.

22 Now, you heard testimony today from a number of
23 people. Ms. Barnett was the first witness, and she told
24 you that she didn't see anybody start the fire. She saw a

1 vehicle that matched Mr. Radonski's, but, again, she
2 didn't have a description of that individual.

3 And she called I think authorities as soon as she
4 could, from the very beginning, within 10 minutes, and
5 that's when she was able to.

6 And there was no cell phone service in that
7 location, and I thought that that was important because
8 there was no way for Mr. Radonski to make any phone call
9 during that time because that location was so remote,
10 which we heard from a number of witnesses.

11 You also heard from Andrew Chizek. He doesn't
12 know Mr. Radonski. He's never met him. He stated that he
13 didn't have any reason to believe that he wanted to burn
14 down his home. And he testified that the fire burned his
15 home, I believe, on Monday night, and that was a few days
16 after.

17 I think it's important to realize that -- that
18 this origin of fire -- and I asked a number of these
19 witnesses this: Could you see any residence from where
20 the fire started? And all of them said no.

21 And the only thing that I was shocked at was our
22 last witness when -- when he said: Well, at the scene I
23 could see some -- some houses. But at the origin, he
24 couldn't see any.

1 And I just believe that when you're looking at
2 first degree arson charges, you have to have this
3 intentional malice to light that house on fire, to light
4 that piece of property on fire. And from what we've heard
5 today, I just don't think that the State could meet that
6 burden.

7 I think that there's testimony that Mr. Radonski
8 accidentally lit the fire; that he felt sorry about it;
9 that he offered to turn over his fireworks; that he met
10 with police; that he voluntarily met with police, he spoke
11 with them.

12 There was also testimony I believe from our last
13 witness that didn't find anything. There was no text
14 messages about starting fires, there was nothing leading
15 up to the fire.

16 I think that the malice that everybody is trying
17 to put into this case is what occurred after the fire,
18 but -- but my argument is, at the point where the fire
19 started, there was nothing leading up to that point
20 showing that he had this malice and willful, evil intent
21 to start a fire and burn down two houses that you couldn't
22 even see and burn down anything, really, for that matter.

23 You know, I'll concede that some of the actions
24 that he did after the fire started were probably not the

1 best things that he could have done, but they still don't
2 make him guilty of first degree or third degree arson.

3 D- -- in D- -- I think it's Diedre Erwin also
4 testified that her house is miles away from the fire.
5 Again, you couldn't even see the house from -- from where
6 this fire had started.

7 You heard from Ranger Fischer. He didn't
8 determine how the fire was started. He never even drafted
9 a report in this case. And he I think importantly said it
10 wouldn't have been -- it would have been impossible to put
11 out this fire with a bottle of water or with a board.

12 Agent Sully did draft a report about the fire,
13 noting that -- that Mr. Radonski voluntarily came in, he
14 apologized, and he consented to a search of his phone.

15 Those are not actions of somebody that goes and
16 just tries to light things on fire. He has no history of
17 that.

18 I think that for purposes of those four charges,
19 based upon the fact that they have to show some type of
20 evil intent, I don't think that they can bind over on
21 those.

22 With respect to the last charge, that charge was
23 just amended today, and that deals with gross negligence.
24 I will submit that to the Court based upon what you've

1 heard about the fire starting.

2 And that's what I have, Your Honor.

3 THE COURT: As we know, all inferences are drawn
4 in favor of the State. And so it appears to me from the
5 complaint on file herein and from the testimony adduced at
6 the preliminary examination that the crimes of first
7 degree arson, Count I; first degree arson, Count II; third
8 degree arson, Count III; third degree arson, Count IV; and
9 destruction of timber, crops or vegetation by fire, Count
10 V, have been committed and there is sufficient evidence to
11 believe that the defendant, David Charles Radonski,
12 committed said crimes.

13 I hereby order that the defendant be bound over
14 to the Second Judicial District Court to answer to the
15 charges.

16 We will return all exhibits.

17 We need to have one of your exhibits so we can
18 scan it in.

19 MR. DAVIS: I never admitted it, Your Honor,
20 so...

21 THE COURT: Well, and that's the video. That was
22 already -- that was --

23 THE CLERK: But wasn't there an affidavit marked
24 to be --

1 THE COURT: We still scan them in if they're
2 marked.

3 MR. LEE: (Inaudible) warrant returned?

4 THE COURT: Have the warrant returned?

5 MR. DAVIS: Oh, okay, yeah.

6 THE COURT: Yeah, we still scan them in. I
7 didn't view them.

8 (Proceedings concluded at 5:14 p.m.)

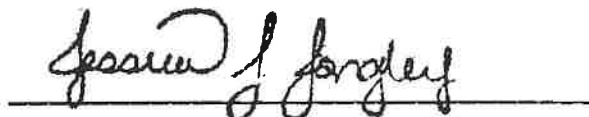
9 -o0o-

1 I, JESSICA LONGLEY, Justice of the Peace of
2 Washoe County, sitting as Committing Magistrate in Sparks,
3 Washoe County, Nevada, hereby certify:

4 That Darby Talbott transcribed the proceedings
5 had in the preliminary examination in the matter of THE
6 STATE OF NEVADA, Plaintiff, vs. DAVID CHARLES RADONSKI,
7 Defendant.

8 That when the examination of the witnesses and
9 the presentation of evidence was closed, it appearing from
10 the evidence adduced at said preliminary hearing that
11 there was reasonable cause and sufficient grounds to
12 believe that said defendant probably committed such crime
13 as charged.

14 That said defendant was then bound over to the
15 Second Judicial District Court.

16 
17

18 Justice of the Peace

19 Sparks Township, sitting as Committing
20 Magistrate in Sparks, Washoe County,
21 Nevada
22
23
24

1 STATE OF NEVADA)

2)

3 COUNTY OF WASHOE)

4
5
6 I, DARBY TALBOTT, hereby state:

7 That I transcribed from a CD the proceedings
8 entitled herein into typewriting as herein appears;

9 That the foregoing transcript is a full, true
10 and correct transcription to the best of my ability of
11 said proceedings.

12 That the foregoing transcript, consisting of
13 pages 1 through 164, contains a full, true and complete
14 transcript of said transcription,
15

16 DATED: At Sparks, Nevada, this 22nd day of
17 October, 2018.

18
19 

20 DARBY TALBOTT
21
22
23
24

DA #18-8562

WCSO WC18-003578

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No.: CR18-1116

v.

Dept. No.: D01

DAVID CHARLES RADONSKI,

Defendant.

INFORMATION

CHRISTOPHER J. HICKS, District Attorney within and for the
County of Washoe, State of Nevada, in the name and by the authority
of the State of Nevada, informs the above entitled Court that DAVID
CHARLES RADONSKI, the defendant above-named, has committed the
crime(s) of:

COUNT I. FIRST DEGREE ARSON, a violation of NRS 205.010, a
category B felony, (50414) in the manner following, to wit:

That the said defendant, DAVID CHARLES RADONSKI, on or
about July 27th, 2018, within the County of Washoe, State of Nevada,
did willfully, unlawfully, and maliciously set fire to, burn and/or

///

1 cause to be burned a dwelling house located at or near 1955 Piute
2 Creek Road, Washoe County, Nevada.

3 COUNT II. FIRST DEGREE ARSON, a violation of NRS 205.010, a
4 category B felony, (50414) in the manner following, to wit:

5 That the said defendant, DAVID CHARLES RADONSKI, on or
6 about July 27th, 2018, within the County of Washoe, State of Nevada,
7 did willfully, unlawfully, and maliciously set fire to, burn and/or
8 cause to be burned a dwelling house located at or near 2055 Piute
9 Creek Road, Washoe County, Nevada.

10 COUNT III. THIRD DEGREE ARSON, a violation of NRS 205.020,
11 a category D felony, (50416) in the manner following, to wit:

12 That the said defendant, DAVID CHARLES RADONSKI,
13 on or about July 27th, 2018, within the County of Washoe, State of
14 Nevada, did willfully, unlawfully, and maliciously set fire to, burn
15 and/or cause to be burned unoccupied personal property of another
16 having a value of \$25.00 or more, to wit: outbuildings, vehicles
17 and/or other property located at or near 300 Microwave Road, 1800
18 Wrangler Road, 455 Wrangler Road, 1955 Piute Creek Road, 2055 Piute
19 Creek Road, 2155 Piute Creek Road, 2000 Piute Creek Road, 2355 Piute
20 Creek Road, 2400 Piute Creek Road, 5100 Wayside Road, 3600 Right Hand
21 Canyon Road, 3700 Right Hand Canyon Road and/or 1200 Whiskey Springs
22 Road, Washoe County, Nevada.

23 COUNT IV. THIRD DEGREE ARSON, a violation of NRS 205.020, a
24 category D felony, (50416) in the manner following, to wit:

25 That the said defendant, DAVID CHARLES RADONSKI,
26 on or about July 27th, 2018, within the County of Washoe, State of

1 Nevada, did willfully, unlawfully, and maliciously set fire to, burn
2 and/or cause to be burned timber, forest, shrubbery, crops, grass,
3 vegetation or other flammable material not his own, originating at or
4 near a dirt road south of Pyramid Highway, near Appian Way, and
5 spreading across a large area of land, in Washoe County, Nevada.

6 COUNT V. DESTRUCTION OF TIMBER, CROPS OR VEGETATION BY
7 FIRE, a violation of NRS 475.040, a category C felony, (51827) in the
8 manner following, to wit:

9 That the said defendant, DAVID CHARLES RADONSKI, on or
10 about July 27th, 2018, within the County of Washoe, State of Nevada,
11 did, with gross negligence, light a fire for any purpose at any place
12 in the open and thereby, or by any other means, set fire to any
13 growing timber or forest, shrubbery, crops, grass or vegetation, and
14 thereby cause the destruction of any timber, forest, crops, grass,
15 vegetation or property not his own, said loss resulting therefrom
16 being \$5,000.00 or more, to wit: the said defendant did start a fire
17 at or near a dirt road south of Pyramid Highway, near Appian Way, and
18 spreading across a large area of land, in Washoe County, Nevada.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

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

4
5 CHRISTOPHER J. HICKS
6 District Attorney
7 Washoe County, Nevada

8 By: /s/ Matthew Lee
9 MATTHEW LEE
10 10654
11 DEPUTY DISTRICT ATTORNEY
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1 CODE 2380
2 WASHOE COUNTY PUBLIC DEFENDER
3 JORDAN A. DAVIS, BAR# 12196
4 P.O. BOX 11130
5 RENO, NV 89520-0027
6 ATTORNEY FOR DEFENDANT

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
8
9 IN AND FOR THE COUNTY OF WASHOE.

10 THE STATE OF NEVADA,

11 Plaintiff,

Case No. CR18-1731

12 vs.

Dept. No. 1

13 DAVID CHARLES RADONSKI,

14 Defendant.
15 _____/

16 MOTION TO MODIFY BAIL

17 COMES NOW, DAVID CHARLES RADONSKI (the "Defendant") by and
18 through the Washoe County Public Defender, JOHN L. ARRASCADA, and Deputy
19 Public Defender, JORDAN A. DAVIS, hereby moves this Court for an Order
20 Modifying Bail. This Motion is made and based upon the points and authorities
21 submitted in support hereof, and any oral argument which may be heard in this
22 matter. Oral argument requested.

23 MEMORANDUM OF POINTS AND AUTHORITIES

24 INTRODUCTION

25 Mr. Radonski has been languishing in custody for the past ninety one (91)
26 days without judicial relief. He has been deprived of his liberty for the past 2,184
hours even though he is categorized as the lowest risk based upon a properly

1 applied Nevada Pretrial Risk Assessment ("NPRA") score, has no criminal
2 history, no failures to appear ("FTA's") and poses no danger to our community.
3 Mr. Radonski does not have the financial means to pay the excessive \$50,000 cash
4 only bail. Good cause exists to modify Mr. Radonski's bail and release him on his
5 own recognizance with pretrial supervision based upon his NPRA score and the
6 bail factors set forth in NRS 178.4853.

7 PROCEDURAL HISTORY

8 Mr. Radonski was arrested by the Washoe County Sheriff's Office on July
9 31, 2018, as part of an investigation into what became known as "The Perry Fire."¹
10 The State ultimately charged Mr. Radonski with two counts of first degree arson,
11 violations of NRS 205.010, a category B felony, two counts of third degree arson,
12 violations of NRS 205.020, a category D felony and one count of destruction of
13 timber, crops or vegetation by fire, a violation of NRS 475.040, a category C felony.
14 Bail is currently set at \$50,000.00 "cash only."

15 On August 15, 2018, Mr. Radonski asked the Sparks Justice Court to
16 modify his bail after establishing that he was a low risk to reoffend based upon the
17 objective factors set forth in the NPRA, but the Court denied his request. That
18 decision was subsequently appealed to the Nevada Supreme Court Docket No.
19 76866 on September 6, 2018. *See Exhibit 1.* On October 17, 2018, the Nevada
20 Supreme Court denied Mr. Radonski's petition as moot because Mr. Radonski's
21 case had been bound over to district court where his bail could be once again
22 addressed. *See Exhibit 2.* On October 23, 2018, Mr. Radonski entered not guilty
-23

24
25
26 ¹ The Perry Fire, which began on July 27, 2018, burned approximately
51,400 acres southwest of Pyramid Lake, damaging some homes and other
structures.

1 pleas to each count alleged in the Information. A jury trial set to begin on April 1,
2 2019 at 9:00 a.m.

3 LEGAL ARGUMENT

4 The Nevada Constitution, Article 1, § 7, states all persons, other than those
5 charged with capital murder, shall be “bailable by sufficient sureties....” The
6 United States Constitution, Amendment VIII, prohibits the requirement of
7 excessive bail. “Punishment should follow conviction, not precede it.” Application
8 of Knast, 96 Nev. 597, 598, 614 P.2d 2, 3 (1980)(citing Ex Parte Wheeler, 81 Nev.
9 495, 406 P.2d 713 (1965)). The right to bail is consonant with the presumption of
10 innocence that attaches to all defendants prior to conviction. Id. Mr. Radonski
11 should be released on his own recognizance based upon his low NPRA score and
12 the bail factors set forth in NRS 178.4853.

13 **A. MR. RADONSKI SHOULD BE RELEASED ON HIS OWN RECOGNIZANCE**
14 **BASED UPON HIS NPRA SCORE.**

15 Like many states, Nevada has started to recognize the fundamental
16 unfairness of cash bail. In June 2015, the Judicial Council of the State of Nevada
17 created a committee to Study Evidence-Based Pretrial Release. *See Exhibit 3.*
18 Nevada Supreme Court Justice James W. Hardesty appointed a committee to
19 study best practices for evidence-based, pretrial release throughout the country.
20 Id. at 1-2. In January 2016, that committee unanimously voted to recommend the
21 use of these practices in Nevada and adopted a set of outcome and performance
22 measurements to use in evaluating the various impacts of this new approach to
23 pretrial release. Id. at 2. This tool is known as the NPRA and is currently being
24 used in Washoe County.

25 The benefit of utilizing the NPRA as an assessment tool is that it provides
26 objective information to aid in the release of in-custody defendants without posting

1 bail—cash or bond—pending resolution of their criminal cases. A validated risk
2 assessment instrument is a data-guided, researched-informed, and objective-aid to
3 decision making. It is not a mechanical, deterministic, or replacement for judicial
4 discretion. It is an innovative approach to pretrial release as an alternative to bail.
5 When properly applying this tool, Mr. Radonski represents the lowest risk at
6 either failing to appear or engaging in new criminal activity.

7 Mr. Radonski's original NPRA score was a 5; however, at the initial bail
8 hearing in Sparks Justice Court, Mr. Radonski demonstrated that his score should
9 be a 1. See Transcript of Proceedings attached as *Exhibit 4* at 5-13. At that
10 hearing, Mr. Radonski provided evidence of: (1) a verified cell phone number; (2)
11 employment at the time of his arrest; and (3) that he had been a Nevada resident
12 longer than six months. Based upon this additional information, Mr. Radonski
13 represents the lowest risk at either failing to appear or engaging in new criminal
14 activity and should therefore be released on his own recognizance. This is further
15 supported by NRS 178.4853.

16 **B. MR. RADONSKI SHOULD BE RELEASED ON HIS OWN RECOGNIZANCE**
17 **PURSUANT TO NRS 178.4853.**

18 The bail factors set forth in NRS 178.4853 support Mr. Radonski's release
19 on his own recognizance, as well. NRS 178.484 mandates that every person
20 arrested for an offense other than a capital offense or first degree murder must be
21 admitted to bail. Accordingly, NRS 178.498 directs the Court to set bail at an
22 amount which, in the judgment of the Court, will reasonably ensure the
23 appearance of the defendant and the safety of other persons and of the community.
24 The Court should pay particular attention to the following: (1) the nature and
25 circumstances of the offense charged; (2) the financial ability of the defendant to
26

1 give bail; (3) the character of the defendant; and (4) the factors which must be
2 considered before release without bail, as listed in NRS 178.4853.

3 The Court, in determining the form of bail, may authorize an acceptance of
4 cash, bonds or notes. NRS 178.502. The Court may also, upon showing of good
5 cause, release without bail any person entitled to bail if it appears that it can
6 impose conditions on release to protect the community to ensure the defendant's
7 appearance at future proceedings. NRS 178.4851.

8 When making a decision as to whether there is good cause to release a
9 person without bail, the Court is required to consider at a minimum, a number of
10 factors set forth in NRS 178.4853. These same factors should be considered in
11 determining the amount of bail and in determining whether a set bail must be in
12 the form of cash only or may be bondable. These factors, along with their
13 application to this case, are enumerated below.

14 **I. The length of residence in the community.**

15 Mr. Radonski was born and raised in Fallon and is a native Northern
16 Nevadan. He moved to Oregon for a short period of time, but returned back to
17 Reno where he has resided for the past five (5) years.

18 **II. The status and history of employment.**

19 Mr. Radonski is a graduate of Truckee Meadows Community College where
20 he earned his Associate's Degree in Fine Arts. *See Exhibit 5.* At the time of his
21 arrest, Mr. Radonski was employed full time as a sandblaster at Legacy Sports
22 International and is eager to get back to work. If he cannot return to Legacy
23 Sports International, Mr. Radonski can work for his brother-in-law at C & L Auto,
24 a mechanic shop in Fallon, Nevada. *See Letter from Mr. Radonski's brother,*
25 *Shelby Cecil, attached as Exhibit 6.*

1 **III. Relationship with family members and close friends.**

2 Mr. Radonski maintains a close relationship with his family. *See* Family
3 Photos attached as *Exhibit 7*. Mr. Radonski served as his father's caretaker before
4 he passed away. Mr. Radonski's mother, Letitia Buoy, describes her son as
5 follows, "David has given his time unselfishly to help others, especially his family
6 during times when young nieces and nephews needed responsible babysitting care,
7 or by providing house sitting and pet care. Being reliable and trustworthy, David
8 has been a valuable asset to his friends and family." *See* Letter from Letitia Buoy
9 attached as *Exhibit 8*. Mr. Radonski is also very close with his sister, Kim Cecil,
10 who lives in Fallon and works at the Churchill County Sheriff's Office where she
11 has been employed for the past twelve (12) years. *See* Letter from Kim Cecil
12 attached as *Exhibit 9*. Ms. Cecil notes in her letter that her "kids enjoy spending
13 time with David . . . [because he is] . . . fun and goofy." *See Id.* Mr. Radonski's
14 brother, Jaysen Radonski, also lives in Fallon.

15 **IV. Reputation, character, and mental condition.**

16 Mr. Radonski has been a productive member of the community and has
17 never been diagnosed with any mental health issues.

18 **V. Prior criminal record, including any records of failures to**
19 **appear after release on bail or without bail.**

20 Mr. Radonski has no criminal history. He has no prior felonies, gross
21 misdemeanors, misdemeanors or FTA's.

22 **VI. The identity of responsible members of the community who**
23 **would vouch for the reliability.**

24 Ms. Buoy, Mr. & Mrs. Cecil and Joey Jennings, Mr. Radonski's landlord, can
25 all vouch for Mr. Radonski's reliability. *See Exhibits 6, 8, 9 & 10*. Mr. Jennings
26

describes Mr. Radonski, whom he has known for the past five (5) years, as a "kind hearted man with no underlying intention to harm anyone." See *Exhibit 10*.

VII. The nature of the offense, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of not appearing for court.

Mr. Radonski is charged with two counts of first degree arson, two counts of third degree arson and destruction of timber, crops or vegetation by fire. Mr. Radonski has pleaded not guilty on each count and is presumed innocent.

With respect to the strength of the State's cases, the State will have a difficult time proving both the first degree and/or third degree arson charges since there is no evidence that Mr. Radonski "willfully" and "maliciously" set the two residences and/or personal property on fire, as alleged in Counts I-IV of the Information filed on October 16, 2018.² To be found guilty of malicious arson, a fire must be caused intentionally or by design, rather than accidentally or carelessly. See *Batt v. State*, 111 Nev. 1127, 1131, 901 P.2d 664, 666 (1995). A "willful" act is an act done intentionally, not accidentally. *Id.* Here, there is no evidence that Mr. Radonski had any intent to set any structure and/or personal property on fire.³

Mr. Radonski will appear at all court proceedings. He has no prior FTA's. Mr. Radonski has shown by example that he will appear since it is undisputed that within days of the fire, Mr. Radonski voluntarily met with Special Agent

² NRS 193.0175 defines "maliciously" in relevant part as an "evil intent, wish or design to vex, annoy or injure another person." Malice may also be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

³ It is important to note that the area of origin of the fire was approximately one foot in diameter and is believed to have been started by a firework. No evidence has been provided that aside from this single

1 Adam Sully at the Washoe County Sheriff's Office for over four (4) hours to assist
2 with their investigation. During that time, Mr. Radonski explained what had
3 happened with respect to the fire accidentally starting, consented to a search of his
4 cell phone and voluntarily agreed to turn over the additional fireworks he had
5 legally purchased in Wadsworth.

6 With respect to a likely sentence, if Mr. Radonski were convicted on all five
7 (5) counts, Mr. Radonski would still be eligible for probation for each of the
8 offenses and given his non-existent criminal history, probation would be an
9 appropriate argument at the time of sentencing.

10 **VIII. The nature and seriousness of the danger to the alleged**
11 **victim, any other person or the community that would be**
12 **posed by the release, and the likelihood of further criminal**
activity.

13 Mr. Radonski's background and track record demonstrate that he does not
14 pose any risk of further criminal activity. There is absolutely no danger to any
15 alleged victim or anybody within the community posed by Mr. Radonski's release.
16 The evidence at the preliminary hearing showed that this fire was started by
17 accident in a remote area far away from any residences and/or structures by a
18 firework. There is no evidence that any accelerants were used to start this fire or
19 that Mr. Radonski intentionally set the fire. Although this fire resulted in
20 thousands of acres of damage, no one was injured or killed.

21 **IX. Any other factors concerning ties to the community or**
22 **bearing on the risk that a person may willfully fail to appear.**

23 Mr. Radonksi represents the lowest risk to reoffend based upon his NPRA
24 score. Mr. Radonski has ties to our community. If released, Mr. Radonski will
25

26 ignition that any additional fires were set which leads to the inference
that this appears to be more accidental in nature rather than intentional.

1 have a place to live, a place to work and will show up at all court appearances. Mr.
2 Radonski further understands that if released, he will be ordered to comply with
3 specific conditions of release. He therefore acknowledges the consequence of
4 violating a condition of release, including the issuance of a warrant for his arrest
5 and remand, increasing his bail, requiring him to pay the costs of returning him to
6 the jurisdiction, and contempt of court. NRS 178.484 (12).

7 CONCLUSION

8 Mr. Radonski has been deprived his liberty since July 31, 2018. Currently,
9 bail is set at \$50,000 cash only. Mr. Radonski does not have the financial
10 resources or ability to pay the current bail as structured. Good cause exists to
11 modify the bail for Mr. Radonski to release him on his own recognizance with
12 pretrial supervision based upon his low risk score under the NPRA and after
13 considering the bail factors set forth in NRS 178.4853.

14 AFFIRMATION PURSUANT TO NRS 239B.030

15 The undersigned does hereby affirm that the preceding document does not
16 contain the social security number of any person.

17 Dated this 29th day of October, 2018.

18 JOHN L. ARRASCADA
19 Washoe County Public Defender

20 /s/ Jordan A. Davis
21 JORDAN A. DAVIS
22 Deputy Public Defender
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date I deposited in the office court run, a true copy of the attached document, addressed to:

Deputy District Attorney
Inter-Office Mail

By: /s/ Jessica Haro
JESSICA HARO

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EXHIBIT 1

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Sep 06 2018 01:58 p.m.
Elizabeth A. Brown

Docket No. Clerk of Supreme Court

DAVID CHARLES RADONSKI,
Petitioner,

vs.

THE JUSTICE COURT OF SPARKS
TOWNSHIP, IN AND FOR THE
COUNTY OF WASHOE; THE
HONORABLE JESSICA LONGLEY,
JUSTICE OF THE PEACE,

Respondents,

and,

THE STATE OF NEVADA,
Real Party In Interest.

ORIGINAL PETITION FOR WRIT OF MANDAMUS

JOHN L. ARRASCADA
Washoe County Public Defender
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JOHN REESE PETTY
Chief Deputy
Nevada State Bar Number 10
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PETITION

TO: THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF
THE NEVADA SUPREME COURT:

Petitioner, David Charles Radonski (Mr. Radonski), petitions this Court for a writ of mandamus directing Jessica Longley, a Justice of the Peace for the Sparks Township, to either release him from the custody of the Washoe County Sheriff on his own but supervised recognizance, or to reduce his current bail, which is set at \$50,000.00, cash only, to \$10,000.00, bondable, in Sparks Justice Court Case 18-SCR-01187.

Petitioner requires this Court's intervention because Judge Longley arbitrarily denied his release from custody even though a properly applied Nevada Pretrial Risk Assessment (NPRA) in his case—as demonstrated to her at a bail hearing—results in a total score of 1 point, placing Mr. Radonski in the low risk category. Judge Longley manifestly abused her discretion by maintaining the \$50,000.00 cash only bail previously set despite this showing.

ROUTING STATEMENT

This petition involves the application of the NPRA. The NPRA is an assessment tool currently being tested in Washoe County (and

elsewhere in Nevada) that provides objective information to aid in the release of in-custody defendants without posting bail—cash or bond—pending resolution of their criminal cases. It is an innovative approach to pretrial release as an alternative to bail. This appears to be a question of first impression in Nevada and as such the Nevada Supreme Court should retain and decide this petition.

BACKGROUND

Mr. Radonski was arrested by the Washoe County Sheriff's Office on July 31, 2018, as part of an investigation into what became known as "The Perry Fire."¹ The State ultimately charged Mr. Radonski with two counts of first degree arson, violations of NRS 205.010, a category B felony, and with two counts of third degree arson, violations of NRS 205.020, a category D felony. PA 4-6 (Criminal Complaint).² Bail in this case was set at \$50,000.00 "cash only." PA 3 (Pretrial Release Form).

The NPRA contains ten scoring items designed to determine a defendant's risk level for release from custody. Significantly, under the NPRA the pretrial release decision is based on assessed risk, not just

¹ The Perry Fire, which began on July 27, 2018, burned approximately 51,400 acres southwest of Pyramid Lake, damaging some homes and other structures. PA 20-21 (Transcript of Proceedings).

² "PA" stands for Petitioner's Appendix.

the charge(s). Mr. Radonski's NPRA is reproduced in the appendix. PA 1 (Nevada Pretrial Risk (NPRA) Assessment). Mr. Radonski's NPRA produced a total score of 5 points. There was no override. These five points were located in four of the ten scoring items, and were calculated as follows:

- Age of first arrest—1 point;
- Employment status at arrest—1 point;
- Residential address—2 points; and
- Verified cell phone—1 point.

Mr. Radonski received zero points in the other six scoring items of the assessment. *Id.* This placed him in the medium risk category. *Id.*

At a bail hearing held on August 15, 2018, Mr. Radonski's counsel, Deputy Public Defender Jordan A. Davis, contested the NPRA total score of 5 points, contending that the total score should be 1 point. Specifically, as to employment status at the time of the offense, Mr. Davis produced evidence that Mr. Radonski was employed as a sandblaster, and had been employed full-time since October 2017. PA 10, 14, 15 (Transcript of Proceedings). As for residential address, Mr. Davis provided testimony from his landlord, Joey Jennings, that Mr.

Radonski has been a tenant of his since 2013 in Nevada. *Id.* at 16-18. Finally, the fact that Mr. Radonski had a cell phone at the time of his arrest was verified through the testimony of his sister, Kim Cecil a dispatch operator for the Churchill County Sheriff's Office. *Id.* at 13-15.³

Mr. Davis argued that because the evidence presented to the court established residential status longer than 6 months, employment, at the time of his arrest, and the possession of a working cell phone, those scoring items should be listed as zero, which "drops his pretrial risk assessment down to a one." *Id.* at 19. He stated that he would "normally be asking for an OR release with pretrial supervision in this case, but ... if the Court's not inclined to do that ... to do a \$10,000 bail with 10 percent cash." *Id.*

In contrast the prosecutor, Mr. Matthew D. Lee, argued that "the risk factors in the NPRA are certainly not dispositive by any means. So the fact that Mr. Radonski scores a one or a five, I'd urge this Court not to let it sway your decision because of this." *Id.* at 20. Mr. Lee argued that because the fire damage "is so high" Mr. Radonski

³ Ms. Cecil also testified that if Mr. Radonski lost his job at Legacy Sports as a result of his arrest, he could work for her husband at his business, C & L Auto, a mechanic shop in Fallon, Nevada. PA 14-15.

“represents a great danger, [an] ongoing danger to the community.” *Id.* Mr. Lee argued that the current bail was appropriate, and “[t]o have this be \$1,000 cash seems an absolute travesty[.]” *Id.* at 26.

Mr. Davis responded that the real travesty was the fact that there was “a \$50,000 cash bail when somebody has a Nevada Pretrial Risk Assessment of a one.” *Id.* at 27.

Judge Longley denied Mr. Davis’s requests stating that the NPRA

is only a tool to be considered. It is not a requirement. It is not a guideline. And people who commit heinous offenses later in life will end up with a zero or a one, and they are not people that we think should be out in the public due to their dangerousness.

And in this – this is one of those cases. I’m going to leave the bail as-is. I know he has family contacts, he has a job, and the place to live. I’m more concerned about – I’m actually very concerned about the dangerousness to society. We’re lucky that none of these fires – nobody died in any of these fires.

But fires are extremely dangerous. They, as we just heard, consume acres and acres and people lives⁴ and their property and their homes, and I think this case is one of those that he is just too dangerous to lower the bail to something I would consider maybe a possession of

⁴ There was no loss of human life as a result of this fire.

a controlled substance charge. So I am going to leave the bail as-is.

Id. at 29 (footnote added).

Ironically, if Mr. Radonski had \$50,000 to pay the cash bail amount he could be released from custody no matter his alleged “dangerousness.” But he remains in custody even though his NPRA total score as presented at the hearing was a 1 (low risk); a freedom-loss result based solely on the charged offenses.

RELIEF SOUGHT

As noted in the attached Declaration, Mr. Radonski remains in custody, his next scheduled court date is a preliminary hearing set for October 8, 2018, at 1:30 p.m., and he has no other plain, speedy, or adequate remedy at law. Mr. Radonski requests this Court to grant him a writ of mandamus directing the Honorable Judge Jessica Longley to either release him from the custody of the Washoe County Sheriff on his own but supervised recognizance, or to reduce his current bail, currently set at \$50,000.00, cash only, to \$10,000.00, bondable, in Sparks Justice Court Case 18-SCR-01187.

///

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DECLARATION OF JORDAN A. DAVIS

I declare under penalty of perjury that the following assertions are true and correct.

1. I am an attorney, duly licensed to practice law in the State of Nevada. I am a deputy public defender in the Washoe County Public Defender's Office, and counsel of record for David Charles Radonski (Mr. Radonski), the Petitioner herein.

2. Mr. Radonski is currently charged in a Criminal Complaint filed in Sparks Justice Court case number 18-SCR-01187, with two counts of first degree arson and two counts of third degree arson. Bail is set at \$50,000.00, "cash only."

3. Mr. Radonski is currently in the custody of the Washoe County Sheriff because he cannot pay the \$50,000.00 cash only bail. He initially scored a 5 on the Nevada Pretrial Risk Assessment (NPRA), but when corrected to include true facts regarding his employment status at the time of his arrest, residential status and cell phone information, Mr. Radonski's total score is 1. Notwithstanding his low risk score on the NPRA, Judge Jessica Longley refused to release Mr. Radonski from custody with pretrial supervision or consider a bail reduction solely on

the basis of the dangerousness of the charged offenses. Judge Longley manifestly abused her discretion.

4. Mr. Radonski's next scheduled court appearance is set for October 8, 2018 at 1:30 p.m., which is his preliminary hearing. There are no pending negotiations in his case.

5. Mr. Radonski has no other plain, speedy and adequate remedy at law. There is no statutory right to appeal from an order denying a request for release from custody or for a bail reduction.

6. This Petition is brought in good faith and not for delay or any other improper purpose.

DATED this 6th day of September 2018.



JORDAN A. DAVIS

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION

Standards for Writ Relief

“Whether to grant extraordinary relief is solely within this court’s discretion.” *MDC Restaurants, LCC v. Eighth Judicial Dist. Court*, 134 Nev. Adv. Op. 41, 419 P.3d 148, 151 (2018) (citing *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 647, 677, 818 P.2d 849, 851 (1991)). A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from the office, trust or station; or to control a manifest abuse of discretion or which has been exercised in an arbitrary or capricious manner. *Stromberg v. Dist. Ct.*, 125 Nev. 1, 4, 200 P.3d 509, 511 (2009) (“This court may issue a writ of mandamus to compel the performance of an act which the law requires as a duty resulting from an office or where discretion has been manifestly abused or exercised arbitrarily or capriciously.”) (internal quotation marks and citations omitted); *Sonia F. v. Dist. Ct.*, 125 Nev. 495, 498, 215 P.3d 705, 707 (2009) (same); *Cote H. v. Dist. Ct.*, 124 Nev. 36, 39, 175 P.3d 906 (2008) (same); *Walker v. Dist. Ct.*, 120 Nev. 815, 819, 101 P.3d 787 (2004) (same).

The writ “will issue where the petitioner has no plain, speedy and adequate remedy in the ordinary course of the law.” *Stromberg v. Dist. Ct.*, 125 Nev. at 4, 200 P.3d at 511 (internal quotation marks and citations omitted). And this Court can entertain a mandamus petition when (1) “judicial economy and sound judicial administration militate” for the writ; or (2) “where an important issue of law requires clarification.” *Ibid.* (internal quotation marks and citations omitted).

Reasons for Granting the Writ

A validated risk assessment instrument is a data-guided, researched-informed, and objective-aid to decision making. It is not mechanical, deterministic, or a replacement for judicial discretion. In the custody context, it is a tool to give judges information about an individual defendant’s risk of failing to appear or engaging in new criminal activity while on pretrial release. It is an alternative to setting determined bail—cash or bond—in order to secure pretrial release.

A risk assessment instrument contains a list of objective scoring factors or items designed to aid in placing an individual defendant into one of three risk categories: low, medium, or high. A defendant’s scored result can assist the judge in deciding who should stay in jail and who

should be released, and in some instances where release is granted, what release supervising conditions should be imposed in order to manage any perceived risk. Notably, under a validated pretrial risk assessment instrument, an individual defendant's pretrial release is based on *measured* risk, not just on the charge(s). And supervision can be designed to match any risk level, reserving resources for those who most need them.

Washoe County uses the Nevada Pretrial Risk (NPRA) Assessment. It contains ten scoring items. As noted above, Mr. Radonski initially scored a 5 or medium risk on the instrument. But based on additional information provided on three scoring items: employment, residence, and cell phone possession at the time of his arrest, he actually scored a 1 or low risk. Notwithstanding these objective scores, Judge Longley refused to release Mr. Radonski from custody or even consider the possibility of supervised release. Instead, she rejected the NPRA outright—PA 29 (stating that the NPRA “is only a tool to be considered. It is not a requirement. It is not a guideline.”)—and focused on the charged offenses to support her decision to maintain bail “as-is”—*Id.* (“I know he has family contacts, he has a job, and a

place to live. I'm more concerned about – I'm actually very concerned about the dangerousness to society.”). There was no independent information or evidence presented to the court on the likelihood of Mr. Radonski's failure to appear at any scheduled court hearing, or engaging in any new criminal activity during his pretrial release.

Judge Longley's failure to even consider Mr. Radonski's corrected NPRA score in reaching a decision was an abuse of discretion. See *Patterson v. State*, 129 Nev. 168, 176, 298 P.3d 433, 439 (2013) (“This court has previously noted that an abuse of discretion occurs whenever a court fails to give due consideration to the issues at hand.”) (citations omitted). This manifest abuse of discretion is prejudicial as it arbitrarily and capriciously prevents Mr. Radonski's pretrial release. *Cf. State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011) (“An arbitrary or capricious exercise of discretion is one “founded on prejudice or preference rather than on reason,” or “contrary to the evidence or established rules of law.” A manifest abuse of discretion is “[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule.”) (citations omitted).

Similarly, Judge Longley's failure to even consider a bail reduction to an obtainable amount in light of Mr. Radonski's low NPRA risk score was an abuse of discretion. *Cf.* NRS 178.498 (purpose of bail is to ensure community safety and to ensure the accused will appear at all future proceedings). "Punishment should follow conviction, not precede it." *Application of Knast*, 96 Nev. 597, 598, 614 P.2d 1, 3 (1980) (citation omitted).

CONCLUSION

For the reasons stated in the foregoing petition, this Court should issue the requested writ of mandamus.

Respectfully submitted this 6th day of September 2018.

JOHN L. ARRASCADA
Washoe County Public Defender

By: 

JOHN REESE PETTY
Chief Deputy Public Defender

By:  Fw

JORDAN A. DAVIS
Deputy Public Defender

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This petition has been prepared in a proportionally spaced typeface using Century in 14-point font.

2. I further certify that this petition complies with the page- or type-volume limitations of NRAP 32(a)(7) because, even including the parts though exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains a total of 2,836 words. NRAP 32(a)(7)(A)(i), (ii).

3. Finally, I hereby certify that I have read this petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied upon is to be found. I understand that I may be subject to sanctions in the event that the

accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 6th day of September 2018.

/s/ John Reese Petty

JOHN REESE PETTY

Chief Deputy, Nevada State Bar No.10

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 6th day of September 2018.

Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows: Jennifer P. Noble, Chief Appellate Deputy, Washoe County District Attorney's Office.

I further certify that I served a copy of this document by e-mail addressed to: Matthew D. Lee, Deputy District Attorney, Washoe County District Attorney's Office.

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

Hon. Jessica Longley
Sparks Justice Court, Dept. 3
1675 E. Prater Way, Suite 107
Sparks, Nevada 89434

John Reese Petty
Washoe County Public Defender's Office

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID CHARLES RADONSKI,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; THE HONORABLE
KATHLEEN DRAKULICH, DISTRICT
JUDGE,

Respondents,

and,

THE STATE OF NEVADA,
Real Party In Interest.

Electronically Filed
Mar 26 2019 08:23 a.m.
Elizabeth A. Brown
Docket No. Clerk of Supreme Court

PETITIONER'S APPENDIX

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Attorneys for Petitioner

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Washoe County Pretrial Services Assessment Report

Case Filing

Filed Name RADONSKI, DAVID CHARLES

Arrest

Booked Name RADONSKI, DAVID CHARLES	Arresting Agency WASHOE COUNTY SHERIFFS OFFICE	Booking Number 18-12221	Arrest Date 07/31/2018
--	---	----------------------------	---------------------------

Case Number	NOC	Type	Description	Counts	Court	Bail Amt/Type
WC18-3578	50414	F	ARSON, 1ST DEGREE	2	SJC	50,000 C
WC18-3578	50416	F	ARSON, 3RD DEGREE	41	SJC	0

Defendant Information

Sex M	Race WHITE	Birthdate 04/04/1984	Age 34	Height 6' 02"	Weight 270	SS Number On File
Address 617 KUENZLI ST. #24 RENO, NV 895052 Telephone (775) 842-1746 Lives With				Residence County: 05 Yr 00 Mo Born FALLON, NV, UNITED STATES ID Number		Primary Language ENGLISH Interpreter? N
Time at Current Address 05 Yr 00 Mo Relationship ALONE				Type		Expiration Date
Marital Status MARRIED		How Long		Military Service NONE		Discharge
Employment/Support Status Employed		Employer RENO CERAKOTE AND		How Long 01/00		Employer Telephone (775) -
Occupation SANBLASTER						

Defendant Justice Identifier Codes/Criminal History

FBI Number	SID Number							
Arrests	Violent Fels	Felonies	Violent Misd	Misdemeanors	MMSD	Traffic	DUI	Pending

Comments

THE DEFENDANT STATED HE HAS BEEN IN THE AREA FOR 5 YEARS AND HAS BEEN AT HIS CURRENT ADDRESS FOR THE SAME. HE STATED HE HAS BEEN EMPLOYED FULL-TIME FOR THE LAST YEAR. THE DEFENDANT'S CRIMINAL HISTORY WAS VERIFIED, HOWEVER, I WAS UNABLE TO CONFIRM HIS PERSONAL INFORMATION. HIS CHARGE IS IN THE SERIOUS FELONY CATEGORY AND HE SCORED MODERATE (5) ON THE NPRA. THE DEFENDANT REMAINS IN CUSTODY FOR MANDATORY JUDICIAL REVIEW. KXS

Assessment Status

Risk Score 5	Risk Level MEDIUM RISK	Assessment FELONY NR	Initials CMEREDIT
-----------------	---------------------------	-------------------------	----------------------

NEVADA PRETRIAL RISK (NPRA) ASSESSMENT

Assessment Date: 07/31/2018 Assessor: CMEREDIT

County: WASHOE

Defendant's Name: RADONSKI, DAVID CHARLES

DOB: 04/04/1984

Address: 617 KUENZLI ST. #24

Case/Booking #: 18-12221

RENO, NV 895052

Contact Phone #: 775

Most Serious Charge: _____

Initial Total Bail Set: \$ _____

of Current Charges: _____

SCORING ITEMS

SCORE

1. Does the defendant have a pending pretrial case? If Yes, list Case # & Jurisdiction:

0

a. Yes

b. No

2. Age at first arrest (include juvenile arrests) First Arrest Date: 07/31/2018

1

a. 20 yrs & under

b. 21-35 yrs

c. 36 yrs and over

3. Prior Misd. Convictions (past 10 yrs)

0

a. None

b. One to five

c. Six or more

4. Prior Felony/Gross Misd. Convictions (past 10 yrs)

0

a. None

b. One or more

5. Prior Violent Crime Convictions (past 10 yrs)

0

a. None

b. One

c. Two or more

6. Prior FTAs (past 24 months)

0

a. None

b. One FTA warrant

c. Two or more FTA warrants

7. Employment Status at Arrest

1

a. Verifiable Full/Part time

b. Unemployed

8. Residential status Date of Residency: / /

2

a. NV resident 6 months plus

b. NV resident less than 6 months

c. Homeless or non NV resident

9. Substance abuse

0

a. Other

b. Prior arrests for drug/alcohol (multiple)

10. Verified Cell and/or Landline Phone If yes, List the Number:

1

a. Yes If yes, List the Number: 0

b. No

TOTAL SCORE: 5

RISK LEVEL: MEDIUM RISK

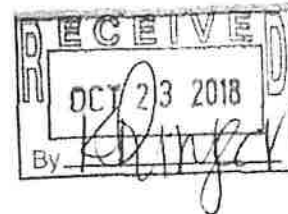
OVERRIDE? No

Supervisor/Designee Signature: _____ Date: _____

No. 18 SCR 01187

IN THE JUSTICE'S COURT OF SPARKS TOWNSHIP
IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA
THE HONORABLE JESSICA LONGLEY, JUSTICE OF THE PEACE

-o0o-



STATE OF NEVADA,
Plaintiff,
vs.
DAVID CHARLES RADONSKI,
Defendant.

PRELIMINARY EXAMINATION

TRANSCRIPT OF PROCEEDINGS

Monday, October 8, 2018

Sparks, Nevada

Transcribed By: Darby Talbott

ORIGINAL

APPEARANCES:

For the Plaintiff:

MATT LEE

Deputy District Attorney

Reno, Nevada

For the Defendant:

JORDAN DAVIS

Deputy Public Defender

Reno, Nevada

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
VICTORIA BARNETT	7	12	--	--
ANDREW CHIZEK	20	27	--	--
DEIDRE ERWIN	31	39	--	--
SCOTT FISCHER	42	57	--	--
ADAM SULLY	70	87	109	--
WILLIAM ATKINSON	112	127	--	--

STATE EXHIBIT	DESCRIPTION	MARK	ADMIT
1	Photo - fire origin	5	--
2	Photo - fire origin	5	--
3	Photo - fire origin, vehicle	5	10
4	Photo - Dodge Durango	5	121
5	Photo - aerial, 1955 Piute Creek Rd	5	24
6	Photo - aerial, 2055 Piute Creek Rd	5	34
7	Photo - 2055 Piute Creek Rd	5	34
8	Photo - 2055 Piute Creek Rd	5	34
9	Photo - 2055 Piute Creek Rd	5	34
10	Photo - 2055 Piute Creek Rd	5	34
11	Photo - 2055 Piute Creek Rd	5	34
12	Photo - 2055 Piute Creek Rd	5	34

1	13	Photo - 2055 Piute Creek Rd	5	34
2	14	Fire progression map	5	54
3	15	Sketch of fire scene	5	50
4	16	Photo - vehicle cigarette lighter	5	53
5	17	Damage assessment map	5	--
6	18	Photo - Dodge Durango	5	121
7	19	Not identified	5	--
8	20	Not identified	5	--
9	21	Photo - 2355 Piute Creek Rd	5	123
10	22	Photo - 2355 Piute Creek Rd	5	123
11	23	Photo - 2355 Piute Creek Rd	5	123
12	24	Photo - 2400 Piute Creek Rd	5	123
13	25	Photo - 2400 Piute Creek Rd	5	123
14	26	Photo - 2400 Piute Creek Rd	5	123
15	27	Photo - 2400 Piute Creek Rd	5	123
16	28	Photo - 2400 Piute Creek Rd	5	123

	DEFENSE EXHIBIT	DESCRIPTION	MARK	ADMIT
17				
18				
19				
20	1	Video of interview	102	--
21	2	Return of service	133	--
22				
23				
24				

1 SPARKS, NEVADA, MONDAY, OCTOBER 8, 2018, 2:26 P.M.

2 -oOo-

3
4 (State Exhibits 1 through 28 marked.)

5 THE COURT: This is 18 SCR 1187, State of Nevada,
6 versus David Charles Radonski. Mr. Radonski is present
7 with his attorney, Mr. Davis. Mr. Lee is here on behalf
8 of the State.

9 I have an amended criminal complaint. Mr. Davis,
10 do you have a copy of that amended criminal complaint?

11 MR. DAVIS: Your Honor, we do have a copy of the
12 amended criminal complaint. Mr. Radonski's name is
13 spelled correctly on line 7. He's familiar with the
14 contents of that criminal complaint, of that amended
15 criminal complaint, and waives a formal reading.

16 THE COURT: It's the time set for a preliminary
17 hearing. Are we going forward with the preliminary
18 hearing?

19 MR. DAVIS: We are.

20 MR. LEE: Yes, Your Honor.

21 THE COURT: Any preliminary motions?

22 MR. DAVIS: Your Honor, I would just invoke the
23 rule of exclusion.

24 THE COURT: Okay. Mr. Lee, do you have any

1 preliminary motions?

2 MR. LEE: I'm sorry, Your Honor?

3 THE COURT: Do you have any preliminary motions?

4 MR. LEE: No, I do not.

5 THE COURT: How many witnesses do you have,

6 Mr. Lee?

7 MR. LEE: Seven.

8 THE COURT: And do you have any witnesses today,

9 Mr. Davis?

10 MR. DAVIS: No, Your Honor.

11 THE COURT: Could you please have all the
12 witnesses who are here on behalf of the State please rise.

13 The defense has invoked the rule of exclusion.
14 What that means is that you're going to need to wait
15 outside. You cannot discuss the case with anybody,
16 including each other, even after you've testified, until
17 this case has concluded.

18 And so what we're going to do is I'm going to
19 have the first witness remain in the courtroom and the
20 rest go ahead and go out there and sit. You can talk to
21 each other, just not about this case.

22 And we will come and -- either my bailiff or
23 Mr. Lee will come and get you when it's your turn to
24 testify. All right?

1 Who's going to be your first witness?

2 MR. LEE: State will first call Ms. Victoria
3 Barnett.

4 THE COURT: Will you please raise your right
5 hand.

6 (Witness sworn.)

7 THE COURT: Okay. Go ahead and have a seat.

8
9 VICTORIA BARNETT

10 Called as a witness on behalf of the State,
11 was previously sworn and testified as follows:

12
13 DIRECT EXAMINATION

14 BY MR. LEE:

15 Q Ma'am, could you please state your full name and
16 spell your last name for us.

17 A Victoria Barnett. Last name B, as in boy,
18 a-r-n-e-t-t.

19 Q Ms. Barnett, back on July 27th of this year,
20 2018, did you see something that brings you here today?

21 A Yes.

22 Q Generally speaking, what was that that you saw?

23 A The Perry Fire.

24 Q Okay. You named it by a colloquial name, Perry

1 Fire; right?

2 A Mm-hmm. That's what the newsman's calling it,
3 so...

4 Q Okay. Well, what was that? What did you see
5 just initially?

6 A My boyfriend and I got there, and we saw someone
7 in a car kind of far away as we were approaching on the
8 left, and that car had moved to the right. And the person
9 had got out, circled around his car, got back in. And we
10 eventually pulled to where we were going, and then we
11 didn't see the car again until later when the fire
12 started.

13 Q So when you first saw this person, was there
14 anything that drew your attention to this?

15 A We just thought maybe there was just another
16 person there to use it for recreational use --

17 Q Okay.

18 A -- at first.

19 Q So you didn't see the fire initially; right?

20 A No, we didn't see the, like, initial spark of it.
21 but we saw the blaze on the mountain as we were trying to
22 leave.

23 Q Did you actually take a picture of that?

24 A Yes.

1 Q And at this area where you're talking about this,
2 what general area are we talking about?

3 A If you're going Pyramid Highway north, there's
4 a -- it's before the lake but after like that horse corral
5 type of thing.

6 Q Okay.

7 A But there's like an abandoned mailbox that you
8 take a right on, and there's a dirt path that you go up.

9 Q So at some point does Pyramid Highway turn east
10 towards the lake?

11 A Yes.

12 Q Is it in that general area?

13 A Yeah, like it's the east side of the road, if
14 that's what you're asking.

15 Q Okay. Is that -- test your geography here,
16 Ms. Barnett. Is that within Washoe County?

17 A Yes? Sorry, I'm not from -- originally from
18 Washoe County.

19 Q That's fine. That's fine.

20 MR. LEE: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 BY MR. LEE:

23 Q Going to show you what's been marked as State's
24 Exhibit 3. Do you recognize what that exhibit shows?

1 A Yes.

2 Q What is that?

3 A It's the picture that I took.

4 Q And what's it showing, generally speaking?

5 A It shows the fire, its initial stages of the fire
6 in the background. And when we were trying to leave to
7 call 911, that was the car that was coming from that area.

8 Q Okay.

9 MR. LEE: Your Honor, I move to admit Exhibit 3.

10 MR. DAVIS: No objection.

11 THE COURT: Exhibit 3 will be admitted.

12 (State Exhibit 3 admitted.)

13 MR. LEE: Judge, on all these, when I move to
14 admit, may I also be understood to be moving to publish?

15 THE COURT: Yes.

16 MR. LEE: Thank you.

17 BY MR. LEE:

18 Q So showing, Ms. Barnett -- can you see it on the
19 screen in front of you?

20 A Mm-hmm.

21 Q Okay. Showing you first Exhibit 3, which has
22 just been admitted. Is this the picture you took?

23 A Yes.

24 Q Looking at the center towards the right here that

1 I'm circling with my finger, what is what?

2 A That's the fire.

3 Q And did you see any other fire at any other
4 location, or was it all right there?

5 A No, it was right there.

6 Q And then looking just to the left on this photo,
7 towards the bottom left, I'm circling here, what is that?

8 A That's the initial car that we saw there by
9 themselves coming out where the fire happened to be.

10 Q Okay. So you saw that car there without any fire
11 at first?

12 A Yeah.

13 Q And then when you took this photo, which
14 direction was that car coming from?

15 A Uh...

16 Q Bad question. Let me ask it this way.

17 Was he coming toward you, away from the fire, or
18 was he was going --

19 A He's --

20 Q -- towards the fire?

21 A He's coming away from the fire.

22 Q Okay. How would you describe that vehicle?

23 A I would describe it as a really bright blue Dodge
24 Durango with metallic bumpers.

1 Q Okay. Were the bumpers a different color than
2 the rest of it?

3 A Yeah. And there was no front license plate.

4 Q Okay.

5 MR. LEE: May I approach, Your Honor?

6 THE COURT: Yes.

7 BY MR. LEE:

8 Q Showing Exhibit 4. I'm just going to ask you in
9 general terms. What's -- that which is depicted in
10 Exhibit 4, does that generally resemble the vehicle you
11 saw?

12 A Yes.

13 MR. LEE: Your Honor, that's all the questions I
14 have for Ms. Barnett.

15 CROSS-EXAMINATION

16 BY MR. DAVIS:

17 Q Good afternoon, Ms. Barnett.

18 A Good afternoon.

19 Q On July 27th, you and your boyfriend went to go
20 target shooting.

21 A Mm-hmm.

22 Q At an open area near Pyramid Lake; right?

23 A Yes.

24 Q Had you been to that area before?

1 A Myself, no.

2 Q Now, on July 27th when you drove to that
3 location, you saw a blue SUV; is that right?

4 A Yes.

5 Q And the driver of the SUV get out of the car?

6 A They did after they made the right towards --
7 there's like a backdrop over there at Pyramid, that area.
8 When they -- they got out of the car then and then did a
9 circle around the car but didn't get anything out of the
10 vehicle.

11 Q And from where you were looking, that individual
12 was possibly a white male?

13 A Yeah. He wasn't tan at all. I --

14 Q But you couldn't be sure.

15 A No, I guess not.

16 Q Because you were too far away; right?

17 A Yeah. But I would be -- in my mind I'd think it
18 was a white guy.

19 Q Okay. And -- and you couldn't make out any other
20 identifying features for this individual; is that right?

21 A No. Just like a white guy in a T-shirt and
22 shorts.

23 Q Okay. And so you set up your target to begin
24 target shooting; right?

1 A Mm-hmm.

2 Q And from where you were set up shooting, did you
3 see any houses around you?

4 A No. It was like abandoned -- there was like
5 nothing there. The only thing that was there in the
6 distance, like an abandoned watercooler of some sort, like
7 maybe someone wanted to shoot it and they brought it
8 there, but that's it.

9 Q So was it a pretty desolate area?

10 A As in empty? Yes.

11 Q Yeah. And did you fire any guns that afternoon?

12 A No.

13 Q Did your boyfriend fire any guns that afternoon?

14 A No.

15 Q And as soon as you set up the targets, I believe
16 you looked to your left --

17 A Yeah.

18 Q -- and you see a fire?

19 A Yep.

20 Q You then packed up your stuff?

21 A Yeah.

22 Q And drove out of the area quickly to call 911;
23 right?

24 A Yes, sir.

1 Q Because you had no cell phone service where you
2 were located?

3 A Mm-hmm.

4 Q Because it's fairly remote.

5 A Yes.

6 Q How long did it take you to get from the target
7 shooting location to where you could call 911?

8 A I'd say probably a good like 15, 20 minutes down
9 the road over there. Because we had to go down south on
10 Pyramid to get the signal.

11 Q And so how long after you initially saw the fire
12 did you call 911?

13 A Well, I was trying to call 911 right when we saw
14 it, but we had no signal, so it was -- I was like on my
15 phone, my boyfriend's phone, calling, calling, calling,
16 but there was no signal until it finally rang as we were
17 going south on Pyramid.

18 Q Okay. So you called 911 as fast as you could?

19 A Yeah.

20 Q And you attempted to call them multiple times?

21 A Yeah.

22 Q And it didn't go through because there was no
23 service?

24 A Mm-hmm.

1 Q Okay. And you left the area because of the
2 fire --

3 A Yes.

4 Q -- is that right?

5 You didn't -- you weren't concerned about the
6 weather conditions that day, were you?

7 A No.

8 Q And just to be clear, you don't know how the fire
9 started?

10 A No.

11 Q And you didn't see anyone start the fire?

12 A No.

13 Q And you met with police in this case; right?

14 A I believe I met with investigators, yes.

15 Q And you provided the police with an email
16 outlining what you had observed on July 27th; right?

17 A Yes.

18 Q And you sent them that email?

19 A Yes, I did.

20 Q But you never filled out a written statement to
21 police aside from that email, did you?

22 A In person with the police?

23 Q Correct.

24 A I don't think so.

1 Q So -- so is the email the only written document
2 that you provided to the police?

3 A I'm not sure. Because I know we met with
4 investigators several times, so I don't know if that
5 counts as any written documentation that they had.

6 Q Okay. And at the time you drafted that email,
7 you wrote down everything you remembered.

8 A Mm-hmm.

9 Q Everything that seemed important to you.

10 A Yes.

11 Q And prior to sending it, you reviewed it?

12 A Yes.

13 Q Made sure it was accurate?

14 A Mm-hmm.

15 Q Truthful?

16 A Yes.

17 Q And complete; right?

18 A Yes.

19 Q And is it your testimony today that everything
20 you put in that email is a hundred percent accurate?

21 A Correct.

22 Q Did you have a fire extinguisher with you?

23 A Yes, we did.

24 Q You did?

1 A Yes.

2 Q And did you make any attempt to put out the fire?

3 A We were way too far away at that point.

4 Q And I believe the DA asked you if you knew if you
5 were in Washoe County, but you're not sure if that was in
6 Washoe County?

7 A Yes.

8 Q Okay. And -- and the -- the DA showed you a
9 picture. And is this the picture that you took as --

10 A Yes, sir.

11 Q And is that -- and -- and that accurately depicts
12 what you took on that particular day; is that right?

13 A Yes.

14 Q And -- and is that what that SUV looked like?

15 A Yes.

16 Q And that -- and that looks bright blue to you?

17 A Yes.

18 Q Okay. I have nothing further. Thank you.

19 A Thank you.

20 THE COURT: Any redirect?

21 MR. LEE: I have no further questions, Your

22 Honor.

23 THE COURT: Okay. May she be excused for the
24 day, or do you want her to remain outside?

1 MR. LEE: I'd ask that she be excused at this
2 point.

3 MR. DAVIS: And I have no objection to that.

4 THE COURT: So, ma'am, you are actually free to
5 go today.

6 THE WITNESS: Okay.

7 THE COURT: You don't have to stay out there. If
8 you would like to, you are more than welcome to.

9 THE WITNESS: Okay. Thank you so much.

10 MR. LEE: Your Honor, our next witness will be
11 Mr. Andrew Chizek.

12 THE COURT: Good afternoon, sir.

13 THE WITNESS: Hello.

14 THE COURT: Will you please raise your right
15 hand.

16 (Witness sworn.)

17 THE COURT: Go ahead and have a seat.

18
19 ANDREW CHIZEK

20 Called as a witness on behalf of the State,
21 was previously sworn and testified as follows:

22 ///

23 ///

24 ///

DIRECT EXAMINATION

BY MR. LEE:

Q Thank you, sir. Could you please state your full name and spell your last name for us.

A Andrew Paulus Chizek, C-h-i-z-e-k, Jr.

Q Sir, do you own property in Washoe County?

A Yes, I do.

Q Where is that located at?

A 1955 Piute Creek Road.

Q And Piute is spelled P-i-u-t-e?

A Correct.

Q What general area of the county is that in?

A Palomino Valley.

Q And that's -- that is within Washoe County; correct?

A Yes, it is.

Q At that property that you own there, do you reside there?

A I do. That is my home.

Q And who resides there with you?

A My wife and our stepson and his girlfriend currently.

Q Okay. What's on this property?

A Single-family dwelling, two-story, some

1 outbuildings, including a barn that we use to store ATVs
2 and a boat and things like that.

3 Q Okay. How big is this barn?

4 A 30-by-50.

5 Q Feet?

6 A Yes, sir.

7 Q And you mentioned boat, ATV. Were there multiple
8 boats or ATVs?

9 A There were two ATVs and a -- and a bass boat.

10 Q And then anything else inside this barn?

11 A We did have a -- it started off as a tack room
12 for horses and horse tack. Over the years became storage
13 for heirlooms and things handed down as family members
14 passed away.

15 Q Okay. No horses were kept in there at the time?

16 A No.

17 Q Or "at the time" meaning on -- let's say July
18 27th --

19 A No, sir.

20 Q So you mentioned the house, the barn, things that
21 are in the barn. Any other buildings on that property?

22 A There was a feed barn she shed so we didn't -- we
23 could bring the hay down closer to the house when we fed
24 animals and livestock. We had a shed, a she shed as well.

1 Q Okay. And then let's bring it to July 27th or --
2 or within a few days of that. Were you in town on that
3 day, July 27th?

4 A Is that the day the fire started?

5 Q Well, it's kind of -- I -- so let me ask you the
6 questions here.

7 Was that in late July that you remember the fire
8 starting?

9 A Yes.

10 Q Do you remember being evacuated ever?

11 A Yes. On Saturday.

12 Q Okay. And was that late July on Saturday?

13 A Yes.

14 Q Do -- when you evacuated, what did you bring with
15 you?

16 A What we could grab. The HAZE (phonetic) team
17 came up, told us we had about 30 minutes. If we had any
18 livestock, they would take care of it. And basically we
19 got about two suitcases of some clothing items, documents
20 like birth certificates, stuff like that.

21 Q Okay. And then how soon, approximately, sir,
22 were you able to go back to your property?

23 A We went in Monday morning, escorted with the fire
24 department, and were able to grab some other various

1 items, comfort items, things like that. But we weren't
2 given much time.

3 Q Okay. What did you find when you went back
4 Monday morning?

5 A The fire had gotten really close, but our house
6 was still standing.

7 Q Okay. And then you had to leave again?

8 A Yes.

9 Q You went back at a later time?

10 A Tuesday morning.

11 Q What did you find Tuesday morning?

12 A Everything was gone.

13 Q Okay. The house?

14 A The house.

15 Q The -- the -- the 30-by-50-foot barn you
16 described?

17 A Yes.

18 Q The items within the barn?

19 A Everything was gone.

20 Q Okay.

21 A There was nothing left.

22 Q Sir, did you have also trees and other vegetation
23 on that property?

24 A Yes. Quite a bit of landscaping. A lot of it

1 was there when we bought the home, but it was -- it was
2 well done.

3 Q Okay. And was that damaged, destroyed?

4 A Yes, destroyed. There are a couple of trees
5 still along the driveway, but that's it.

6 Q Okay. And how big -- how many acres do you have?

7 A It's 136-acre lot.

8 MR. LEE: May I approach, Your Honor?

9 THE COURT: Yes.

10 BY MR. LEE:

11 Q I'm going to show you what's been marked as
12 Exhibit 5. Just let me turn that around. Do you
13 recognize what that is?

14 A That would be an aerial view of my property.

15 MR. LEE: Your Honor, I move to admit Exhibit 5.

16 MR. DAVIS: No objection, Your Honor.

17 THE COURT: Exhibit 5 will be admitted.

18 (State Exhibit 5 admitted.)

19 BY MR. LEE:

20 Q Sir, on the screen in front of you, showing you
21 the same Exhibit 5. Can you see that okay in front of
22 you?

23 A I can.

24 Q So is that Piute Creek that's running east -- or

1 left and right here in this picture?

2 A That is correct.

3 Q And tell us what we're looking at here just south
4 of Piute Creek.

5 How about this: What's the -- what's the
6 light-colored building?

7 A That would be the -- the barn I spoke of.

8 Q Okay. Just to the left of that in this picture I
9 see something that's reddish colored. What's that?

10 A That's the feed barn and the she shed.

11 Q And then to the left of that, a dark colored --

12 A That would be our dwelling, our home.

13 Q Okay. Sir, when did you buy the house?

14 A 2006.

15 Q Do you recall -- I'm sorry, did you build it?
16 Did you buy it?

17 A We were the second -- we bought it from the
18 original owner.

19 Q And how much did you buy it for?

20 A 380.

21 Q Have you received, generally speaking, any
22 estimates from insurance regarding the loss to the home?

23 A We have.

24 Q What was that estimate for?

1 A It's broken down into three numbers. It's
2 actually what it would cost to rebuild the house minus
3 depreciation, but it's a recoverable value of 340,000
4 estimated to be needed to rebuild.

5 Q Okay. Did you also -- are you taking note,
6 anyways, of personal possession items that are --

7 A We were also asked to itemize all of our personal
8 property, and the -- what we submitted to the insurance
9 company is in the neighborhood of 170,000 personal
10 property.

11 Q And does that include things such as your boat,
12 the ATVs?

13 A It does not include the boat and ATVs. We had
14 separate insurance for those items.

15 Q Okay. And those items, have you received any
16 estimate for that?

17 A Yes. We've already -- they've already given us a
18 payout on all the loss.

19 Q Do you know how much for the said boat?

20 A It's going to be about 10,000, 12,000 total
21 payout.

22 Q Mr. Chizek, thanks for being here today.

23 MR. LEE: Your Honor, that's all the questions I
24 have.

1 THE COURT: All right.

2 CROSS-EXAMINATION

3 BY MR. DAVIS:

4 Q Good afternoon, sir. So your house was located
5 at 1955 Piute Creek Road?

6 A Correct.

7 Q Your house burned down between a Monday and a
8 Tuesday?

9 A Monday night, yes.

10 Q Monday night. And the fire started on a Friday?

11 A Correct.

12 Q And so your house was there on Saturday; right?

13 A Correct.

14 Q Was there on Sunday?

15 A Correct.

16 Q It was there on Monday up until Monday night?
17 Right?

18 A That is correct.

19 Q And you had -- you didn't have that much time to
20 gather your belongings; is that right?

21 A The HAZE team gave us about 30 minutes on
22 Saturday afternoon.

23 Q Do you know what, if anything, firefighters did
24 to protect your house?

1 A When we went in on Monday morning -- most of what
2 I would know is what people are telling you; that you're
3 in an evacuation center, a lot of people are talking.

4 What we heard on Saturday --

5 MR. LEE: Objection. I'm going to object for
6 hearsay.

7 BY MR. DAVIS:

8 Q Yeah, so I -- I'm -- you can't tell -- you can't
9 tell me what you heard, because that's objectionable.

10 A Understood.

11 Q But -- but I just wanted to know: Do you know
12 what the firefighters particularly did in your case to
13 protect your house?

14 A No, I don't.

15 Q Do you know an individual by the name of David
16 Radonski?

17 A No, I do not.

18 Q Have you ever met Mr. Radonski?

19 A No, I have not.

20 Q Do you have any reason to believe that he wanted
21 to burn down your house?

22 A No, I do not.

23 Q Did you call 911 to inform them that your house
24 was -- the fire was approaching your house?

1 A No, I did not.

2 Q Did you receive a call from 911 or any fire
3 personnel about evacuating?

4 A Just the arrival of -- on our property.

5 Q And just to be thorough, you don't know how the
6 fire started; right?

7 A I do not.

8 Q And you didn't see anyone set the fire?

9 A I did not.

10 Q And nobody from your family was injured; is that
11 right?

12 A That is correct.

13 Q And you met with police in this case?

14 A I have not.

15 Q You don't know?

16 A I have not.

17 Q Oh, okay. So have you ever filled out a written
18 statement?

19 A I have not.

20 Q I have no further questions. Thanks for being
21 here.

22 THE COURT: Mr. Lee?

23 MR. LEE: Nothing further, Your Honor. And may
24 Mr. Chizek be excused?

1 THE COURT: May he be excused for the remainder
2 of the day?

3 MR. LEE: I'm sorry?

4 THE COURT: Can he be excused --

5 MR. LEE: Yes, that's what I would ask.

6 THE COURT: Okay. So, sir, you have been
7 excused. You are free to go about your business today, or
8 you can remain at the courthouse. It will be your choice.

9 THE WITNESS: Thank you.

10 MR. LEE: Next witness will be Ms. Deidre Erwin.

11 It will be just a brief minute.

12 THE COURT: Good afternoon, ma'am.

13 THE WITNESS: Good afternoon.

14 THE COURT: If you could please raise your right
15 hand.

16 (Witness sworn.)

17 THE COURT: Go ahead and have a seat.

18
19 DEIDRE ERWIN

20 Called as a witness on behalf of the State,
21 was previously sworn and testified as follows:

22 ///

23 ///

24 ///

DIRECT EXAMINATION

BY MR. LEE:

Q Good afternoon, ma'am. Could you please state your first and last name and spell them both for us, if you could.

A Deidre, D-e-i-d-r-e, Erwin, E-r-w-i-n.

Q Ms. Erwin, do you -- do you own property within Washoe County?

A Yes.

Q Where's that, at?

A It's at 2055 Piute Creek Road in Palomino Valley.

Q Palomino Valley area?

A Yes.

Q Do you have neighbors I believe on your west side who were here today?

A Yes.

Q Who's that?

A That'd be Sherry and Andy.

Q Okay. Back at the end of -- of July of this year, were you evacuated from your home?

A Yes.

Q For what purpose?

A A fire had started out towards the highway, quite a ways away.

1 Q Okay. Describe your residence for us, then.
2 What's -- what's there on that property?

3 A We have a main residence and a mother-in-law's
4 residence, is the way they described it, a smaller home.

5 Q Okay. How far apart were those, roughly
6 speaking?

7 A About 400 yards.

8 Q Okay. Let me --

9 MR. LEE: Your Honor, may I approach?

10 THE COURT: Yes.

11 BY MR. LEE:

12 Q I'm going to show you first what's been marked as
13 Exhibit 6 here. Do you recognize what's depicted there?

14 A Yes.

15 Q What is that? What are we looking at?

16 A It's an aerial photograph of the main home and
17 the rental home -- or what we call the cabin.

18 Q Okay. Were you getting it -- at the time, were
19 you getting it ready for someone to live there?

20 A Yes.

21 Q Who was that?

22 A My daughter.

23 Q Okay. And then when you -- excuse me. At some
24 point after the evacuation, were you able to go back into

1 the home?

2 A Never.

3 Q Never? Have you been back to the property,
4 though?

5 A Yes.

6 Q What did you see when you returned after the
7 fire?

8 A Nothing but ashes.

9 Q I'm going to show you, Ms. Erwin, a series of
10 photographs here, starting with Exhibit 7 and ending with
11 Exhibit 13. Make sure I'm getting these the right way.

12 Go ahead and take a look at all of these. Take
13 your time. Just look through them all, and then look up
14 when you're done. I'll have a few questions for you.

15 Thank you. Do you recognize what's depicted in
16 those, 7 through 13?

17 A Yeah.

18 Q What are we looking at?

19 A What's left of the home my parents built, the
20 first home that was in that canyon.

21 Q And do these pictures all -- are they all
22 pictures of that home, or what's left of it, as you
23 described it?

24 A Yes.

1 Q And do they all show parts -- or property that
2 you own on that property?

3 A Yes.

4 Q Okay.

5 MR. LEE: Your Honor, I'd move to admit 7 through
6 13 and then also Exhibit 6. So 6 through 13.

7 MR. DAVIS: No objection.

8 THE COURT: Exhibits 6 through 13 will be
9 admitted.

10 (State Exhibits 6 - 13 admitted.)

11 BY MR. LEE:

12 Q So we're going to just go in order here. Exhibit
13 7 first. Can you see it there on your screen?

14 A Yes.

15 Q Okay. What are we looking at here?

16 A This is looking from what would have been the
17 front of the house. This corner would be the master
18 bedroom.

19 Q The corner to the right of the photo?

20 A Yes.

21 Q Okay.

22 A And then further back would be the kids' bedroom,
23 and then there was -- there's a tank sitting there that
24 was our pump house. And --

1 Q What's that? What's the pump house?

2 A It's where our well puts water into a tank and
3 either puts it into this home and the lower home.

4 Q Was that house as well, the pump house, destroyed
5 as well?

6 A Yes. We are still currently without power to the
7 well.

8 Q Okay. Looking at Exhibit 8, what are we looking
9 at here?

10 A My granddaughter's quad.

11 Q Exhibit 9, draw your attention to the upper
12 right-hand portion -- whoops -- upper right-hand portion
13 just above this red flag. What is that?

14 A It's a Scout. I'm not sure of the year.

15 Q Let me be -- let me make it easier for you. Is
16 it a motor vehicle?

17 A Yes.

18 Q Okay.

19 A It was.

20 Q One that you owned?

21 A Yes.

22 Q Okay. And did it get burned by the fire -- is
23 that -- anyways, is that damage I see there from the fire?

24 A Yes.

1 Q And Exhibit 10, what are we looking at here?

2 A This is from the driveway area looking across

3 through the trees at what would have been the patio area

4 of the home.

5 Q Okay. And is that -- what structure I see back

6 there, is that the home?

7 A That is what was added onto by my father. It was

8 more of a workshop area.

9 Q Okay. Is that destroyed --

10 A It's all steel.

11 Q Made of steel?

12 A Yeah.

13 Q Okay.

14 A It's made of steel.

15 Q Is it --

16 A That's why it's still standing.

17 Q Is it operable or usable right now?

18 A No.

19 Q And, again, Exhibit 11 now, does this motor

20 vehicle in the middle here belong to you?

21 A It belonged to my son. I guess you'd say it's

22 ours now.

23 Q Destroyed, though, by this fire?

24 A Yes.

1 Q Exhibit 12, is this as well a motor vehicle that
2 was yours and on your property?

3 A Yes, sir.

4 Q And also damaged by the fire?

5 A Yes. The tires burnt right off of it.

6 Q Okay. And then Exhibit 13, the last one I'll put
7 up for you, Ms. Erwin, what are we looking at here?

8 A This was a two-stall horse house, barn.

9 Q And before the fire, was it fully functional?

10 A Yes.

11 Q Were there any animals within that structure?

12 A Not in this structure, but in the main structure,
13 yes.

14 Q In the main -- in the -- that residence that was
15 burnt?

16 A Yes.

17 Q And what animals were they?

18 A They were two house cats.

19 Q And what happened to the two house cats?

20 A We weren't able to get -- to get them out.

21 Q Okay. Ms. Erwin, just so we can see, since we --
22 I asked you questions about this Exhibit 6 here, is this
23 an overhead view of your property that we largely just
24 described in these other --

1 A Yes.

2 Q -- exhibits?

3 A To the left is the main home, and where the
4 cluster of trees are in the middle of the page is the --
5 just behind it you can see a squared-out structure. That
6 was the home that was destroyed.

7 Q Okay. Have you at this point, Ms. Erwin, been
8 working with insurance?

9 A Yes.

10 Q Have you had any value estimate on your home
11 done?

12 A It was definitely underinsured. The insurance
13 was for 65,000. They did just under that.

14 Q Okay.

15 A But with everything else included, there's a lot
16 of damage down around the main home, and it's just
17 destroyed so much around there that was sitting. I mean,
18 we raised five grandchildren. Every single bike they
19 owned was burnt. The quads. The cattle fencing.

20 Q Okay. One moment, please.

21 Ms. Erwin, thanks for being here. That's all the
22 questions I have.

23 A Thank you.

24 MR. LEE: Ms. Erwin, I'm sorry, one more.

1 THE WITNESS: I'm sorry.

2 MR. LEE: Mr. Davis will question you.

3 CROSS-EXAMINATION

4 BY MR. DAVIS:

5 Q Good afternoon, Ms. Erwin. So your house was
6 located at 2055 Piute Creek Road?

7 A Yes, sir.

8 Q And did you say that that was either the first
9 house in that area or one of the first houses?

10 A It was the first house in that canyon.

11 Q And what year was that built?

12 A I was a teenager, so I -- I know it was built in
13 the very latter part of the '70s or the first of the '80s.

14 Q And your father built it?

15 A Yes.

16 Q Are you aware that the fire started on a Friday
17 night?

18 A Yes.

19 Q And when were you first notified --

20 A I --

21 Q -- about the fire?

22 A We saw the smoke lighting up -- or the flames
23 lighting up the sky. And me and my daughter drove down to
24 the highway where we could see the flames.

1 Q And when you drove down there, you were able to
2 see the flames?

3 A Yes, sir.

4 Q And were you allowed to go back to your property?

5 A Yes. At that point in time, it was miles away
6 from our home.

7 Q Okay. So it was miles away from your home. And
8 were you ever advised to exit or evacuate your house?

9 A Yes. On Saturday morning.

10 Q Okay. So really you had an evening to only
11 gather your things; is that right?

12 A Yes, sir.

13 Q Do you know if the firefighters built a perimeter
14 around your house? No?

15 A No.

16 Q Do you know if they did anything to protect your
17 house?

18 A I honestly don't know if the firefighters were
19 even in the vicinity during the time that it burned.

20 Q Okay. And do you know an individual by the name
21 of David Radonski?

22 A No.

23 Q Have you ever met him?

24 A No.

1 Q Do you have any reason to believe that he wanted
2 to burn down your house?

3 A I don't know.

4 Q You never met him; right?

5 A Right. I don't know the man.

6 Q And just to be clear, you don't know how the fire
7 started.

8 A No.

9 Q You didn't see anyone set a fire.

10 A No.

11 Q Did you have an opportunity to meet with the
12 police in this case?

13 A Yes.

14 Q Did you provide them with a written statement?

15 A No.

16 Q Did they ask you for a written statement?

17 A No.

18 Q Thank you for being here.

19 MR. LEE: No further questions, Your Honor. May
20 she be excused?

21 MR. DAVIS: No objection.

22 THE COURT: Ma'am, you're excused for the day.
23 You can remain at the courthouse or go about your --
24 whatever you want to do today. Okay?

1 THE WITNESS: Thank you.

2 MR. LEE: State's next witness, Your Honor, will
3 be Scott Fischer.

4 THE COURT: Good afternoon.

5 THE WITNESS: Hello.

6 THE COURT: Please raise your right hand.

7 (Witness sworn.)

8 THE COURT: Go ahead and have a seat.

9
10 SCOTT FISCHER

11 Called as a witness on behalf of the State,
12 was previously sworn and testified as follows:

13
14 DIRECT EXAMINATION

15 BY MR. LEE:

16 Q Good afternoon, sir.

17 A Hello.

18 Q Would you please state your first and last name
19 and spell your last name for the record.

20 A Scott Fischer, F-i-s-c-h-e-r.

21 Q How are you employed?

22 A I work for the United States Bureau of Land
23 Management. I'm a --

24 Q In what capacity?

1 A Field staff ranger is my title.

2 Q So would people refer to you as Ranger Fischer?

3 A They would. They can.

4 Q How should we refer to you.

5 A Scott, Fischer...

6 Q How about in a professional capacity, how should
7 we refer to you?

8 A Mist- -- or Ranger Fischer is fine.

9 Q How long have you been with BLM?

10 A I've worked for them -- in two days it will be
11 nine years.

12 Q And prior law enforcement experience before that?

13 A I worked for the National Park Service as a
14 federal officer starting in 2000 -- I'm sorry, 1999.

15 Q Okay. And then have you any expertise with
16 regard to investigating wildland fires?

17 A I do. I have training through the Bureau of Land
18 Management for what we call the FI-210, which is their
19 course for origin and cause investigator. I went through
20 that course in 2011. Since then I've investigated
21 approximately 65 -- or been involved in investigating
22 approximately 65 wildland fires.

23 Q Have you testified with regard to these
24 investigations before?

1 A I've never testified before.

2 Q And are you a member of any fire investigation
3 groups?

4 A I'm not.

5 Q Sir, on -- on -- in late July of 2018, were you
6 called to assist an investigation of -- of what was known
7 as the Perry Fire?

8 A I was.

9 Q When did you begin assisting in that fire
10 investigation?

11 A I was notified of the fire on the evening of the
12 27th, which I believe was a Friday, and requested to come
13 out and assist with it on Saturday morning, the 28th.

14 Q And who did you work with primarily?

15 A Primarily would've been Special Agent Adam Sully
16 with the Bureau of Land Management.

17 Q Did you work in conjunction in the investigation?

18 A Yes.

19 MR. LEE: One moment, Your Honor.

20 Your Honor, I have two demonstrative exhibits
21 I'll present at this point, just so no one gets scared if
22 I'm presenting it. First of all, Exhibit 1.

23 BY MR. LEE:

24 Q Do you recognize what's depicted here?

1 A Yes.

2 Q What are we looking at, generally speaking?

3 A The rectangular is land owned by the -- I believe
4 it's University of Nevada, Reno. And outside that is
5 Bureau of Land Management land. There's a -- a bump
6 left -- kind of upper left corner, that square, that's
7 some type of old mine shaft or something. I'm not exactly
8 sure what it is. And that's the area where the fire
9 started.

10 Q So is that just pretty much right square in the
11 middle of the photograph?

12 A Roughly, yeah.

13 Q So zooming in. Does that show the area you were
14 talking about a little better?

15 A It does.

16 Q And then just to give context with regard to
17 Exhibit 2 here, on the bottom right I see a square, at
18 least that appears on this photograph. Is that the
19 University's square plot of land that you just spoke of?

20 A That's correct.

21 Q And then that brighter color towards the top left
22 of that square, is that the area you mention as the mine
23 or something like that?

24 A That's correct.

1 Q And then at the top cutting across from left to
2 right -- or actually right to left, whichever it is, what
3 is that that we're looking at? And it's in red.

4 A That's Pyramid Highway.

5 Q Okay. So if I were to take Pyramid Highway
6 further to the right of this photo, would I run into
7 Pyramid Lake?

8 A You would.

9 Q Okay. And then to the left of this photo, would
10 that be where roughly the shooting area -- Washoe County
11 shooting range is?

12 A Yeah, it's not far from there.

13 Q So going back to Exhibit 1 here and zooming into
14 this spot that you reference, did you have in your
15 investigation reason to believe that this area was of
16 interest to you?

17 A I did.

18 Q What's that?

19 A Witnesses provided a photograph, and they showed
20 us from the location of where they took that photograph,
21 and it was shoot -- pointed in this general direction
22 towards this possibly mine shaft.

23 And so we utilized that photograph to kind of
24 narrow in the area. And the photograph was -- we were

1 told was taken minutes after the fire had started.

2 Q So I'll show an Exhibit 3 which has previously
3 been admitted. Is that the photograph you speak of?

4 A That's correct.

5 Q And so are those flames close to where that --
6 we'll call it the concrete shaft is?

7 A Correct.

8 Q Now, that only gives you the general broad area;
9 correct?

10 A Yep.

11 Q Were you able to narrow down a more direct area
12 of where the fire started?

13 A We were.

14 Q How'd you do that?

15 A Adam -- Special Agent Adam Sully, he was there
16 the previous evening, and he determined what we call a
17 general origin area. It's one of the three areas we look
18 for as fire investigators. Second would be a specific
19 origin area, and finally the ignition area.

20 I examined his -- the area that he determined as
21 the general origin area by walking around it and through
22 it, and I looked for fire progression indicators, or fire
23 pattern indicators, which are small things that we see
24 that we're taught in our training. As fire progresses

1 through an area, it leaves distinct indicators to show the
2 direction the fire burned.

3 So using those indicators -- there's a variety of
4 different ones -- I concurred with his assessment of the
5 general origin area. And then we worked from the
6 advancing side of the fire in towards eventually the
7 ignition area.

8 Q And let me stop you there real fast. And what do
9 you mean by there's a number of "indicators," you said,
10 correct?

11 A There's 11 different indicators, fire pattern or
12 progression indicators that we use.

13 Q And how about with regard to this specific
14 investigation, did you -- were some more relevant than
15 others?

16 A Absolutely. The main ones that we used for this
17 were protection, is one. We also used cupping white ash.
18 And there was some foliage freeze, which is when a plant
19 is exposed to fire, it causes the -- the leaves to freeze
20 in a certain pattern.

21 Primarily, the -- as we determined these
22 indicators, they all kind of pointed back to this --
23 eventually what we determined to be the ignition area.

24 Q So using these indicators, it helps you narrow

1 down the scope?

2 A Yes.

3 Q Okay. And then with regard to the ignition area,
4 where did it point to? Where did you -- where did it lead
5 you to?

6 A We determined a specific origin area. There is a
7 small -- I call it an island. It had two points of
8 escape. There was a small berm. So on the -- if you're
9 looking at the current map we're looking at, so it'd be on
10 the right side of that concrete structure, right on the
11 corner, to the north side of it, there was a small berm.

12 And the fire progressed out of that berm in two
13 locations. And they are very small. And we basically --
14 after we determined that was our specific origin area, I
15 confirmed that the fire could've only progressed beyond
16 those two -- through those two pieces out. So we
17 determined that area to be our specific origin area.

18 We then worked that area, again, starting on the
19 advancing side down to -- using similar indicators into an
20 area which we called the ignition area, which is
21 approximately a foot, foot and a half in diameter.

22 MR. LEE: May I approach, Your Honor?

23 THE COURT: Yes.

24 ///

1 BY MR. LEE:

2 Q Some more exhibits I'm going to show you.
3 Specifically, Exhibit 15. Do you recognize what's
4 depicted there?

5 A Yes.

6 Q What is that?

7 A That's a sketch. As part of a fire
8 investigation, we do a sketch of the fire scene to
9 indicate how the fire progressed out of the ignition area.

10 In this case, this was a sketch done by Adam,
11 Special Agent Sully.

12 Q And this sketch, does it concur with the
13 testimony you just gave?

14 A It does.

15 MR. LEE: I move to admit Exhibit 15, Your Honor.

16 MR. DAVIS: No objection.

17 THE COURT: It will be admitted.

18 (State Exhibit 15 admitted.)

19 BY MR. LEE:

20 Q So this area that's labeled "old mine tunnel," is
21 that that concrete form that we saw --

22 A Yes, it is.

23 Q -- on the photograph?

24 And then I see a red star with a blue circle and

1 other arrows, and I see also three blue -- looks like
2 humps.

3 Could you describe what we're looking at?

4 A Those are actually U's.

5 Q U's?

6 A So when we do sketches, we use symbols to
7 indicate -- so red arrows would be advancing fire
8 indicators, yellow triangles would be lateral fire
9 indicators, and then a U would be a backing indicator.

10 Q And so what is a lateral fire?

11 A So as the fire progresses, there's a predominant
12 head to the fire. So the fire -- the wind pushes the
13 fire, typically, or the terrain causes the fire to
14 advance. As the fire advances, it also burns sideways.
15 And that would be our lateral fire.

16 Q And so in this case the fire initially advanced
17 southeast?

18 A That's correct.

19 Q And then explain the U's again.

20 A The U's would be backing. So in addition to as
21 the fire moves forward, it also will burn backwards. It
22 burns backwards at a very slow rate compared to advancing.
23 Especially when there's wind pushing it. But you will
24 have that backward burn.

1 Q And this -- what you're testifying to today, when
2 was primarily this investigation done?

3 A So that would have been Saturday midday. So
4 the -- I believe that's the 28th.

5 Q So the 28th?

6 A Yeah.

7 Q And at that point were you aware of whether
8 Mr. Radonski had been interviewed by Agent Sully or not?

9 A I had not heard of any interviews being done.

10 Q I'm going to show you next what's been marked as
11 Exhibit 16. What are we looking at there?

12 A It's a cigarette lighter from an automobile.

13 Q And where was that located?

14 A That was -- I don't remember the exact distance,
15 maybe a half mile from the area we investigated for the
16 origin of fire. It was near where the witnesses had
17 viewed the fire initially and taken that picture. It was
18 in the middle of the main road.

19 Q Okay.

20 A The main dirt road that kind of went up there.

21 Q And was that of interest to you?

22 A It was.

23 Q How come?

24 A I had been told that Mr. Radonski had --

1 MR. DAVIS: Objection, Your Honor. Hearsay.
2 Calls for hearsay.

3 MR. LEE: Your Honor, here it's just giving his
4 state of mind as to why it was important to him. It's not
5 offered for the truth of the matter asserted.

6 THE COURT: Okay. I'll allow it for state of
7 mind.

8 THE WITNESS: Special Agent Sully had spoken with
9 the defendant, and there was discussion about a cigarette
10 lighter that may have been missing.

11 MR. LEE: Your Honor, move to admit Exhibit 16.

12 MR. DAVIS: No objection.

13 THE COURT: 16 will be admitted.

14 (State Exhibit 16 admitted.)

15 BY MR. LEE:

16 Q I'm going to hang on to that. I'll ask you about
17 Exhibit 14 in just a moment.

18 So with regard to Exhibit 16, that's what we're
19 looking at, that cigarette lighter?

20 A Yes.

21 Q And is that a -- is that a possible source as
22 well, ignition source?

23 A You can start fires with a cigarette lighter.

24 Q Okay. In Exhibit -- what's in front of you

1 there, 14?

2 A Yes.

3 Q What are we looking at there in Exhibit 14?

4 A That's a map of the fire. It's actually a
5 progression map, so it shows the -- how the fire
6 progressed over multiple days.

7 Q And is that put out by the agency you're employed
8 with?

9 A It is -- it's put out by the Great Basin
10 Management -- Incident Management Group, which is a
11 combination of federal land management agencies that fight
12 wildland fires.

13 Q How big was that fire?

14 A According to the map here, it's 51,400 acres.

15 Q And looking at that map, is that generally the
16 areas you understand of where the fire burned?

17 A It is.

18 MR. LEE: Your Honor, move to admit Exhibit 14.

19 MR. DAVIS: No objection.

20 THE COURT: 14 will be admitted.

21 (State Exhibit 14 admitted.)

22 BY MR. LEE:

23 Q So what we're looking at here at Exhibit 14 of
24 what's titled at the bottom as the Perry Fire, different

1 colors represent different progressions each day of the
2 fire?

3 A That's what I believe.

4 Q And then is that Pyramid Lake there to the top
5 middle?

6 A It would be.

7 Q Okay.

8 MR. LEE: One moment, please, Your Honor.

9 BY MR. LEE:

10 Q This whole area you've spoken of, and
11 specifically the area of the origin, is that within Washoe
12 County?

13 A Yes, sir.

14 Q What was the weather like on Friday evening of
15 the -- or afternoon or evening of the 27th?

16 A As I recall, it was hot, dry. I believe the
17 temperature was in the 80s or 90s and low relative
18 humidity, and there was some wind.

19 Q Is that important to you in your investigation?

20 A Absolutely.

21 Q How come?

22 A Weather will tell us how the fire progresses. So
23 wind and wind direction will help us assess how and where
24 the fire advanced to. In addition, the fire behavior

1 is -- weather condition is really important in how fire
2 behaves and how it moves and how quickly it moves.

3 Q Were the conditions there also dry?

4 A Very dry.

5 Q At the scene, did you ever see a -- a water
6 bottle, approximately 1 1/2 half liter or so --

7 A I did not see one that large.

8 Q Did you see any evidence of scraping let's say on
9 the ground of any dirt or anything?

10 A I did not.

11 Q And any evidence of any suppression efforts of
12 that area of origin?

13 A There was nothing that I would call suppression
14 activity there.

15 Q And then also did you do some type of
16 experimentation with a Roman candle?

17 A We did.

18 Q What did you do?

19 A We went to the regional training facility in --
20 the Washoe County regional training facility. We had fire
21 crews on hand, and we used it -- a Roman candle to
22 simulate and see if -- how it would start a fire. And we
23 were able to successfully start a fire at the training
24 facility.

1 Q And tell us about that, if you could. What did
2 you do?

3 A Detective Atkinson was the one that was actually
4 holding the -- the Roman candle, and it was pointed -- due
5 to the safety considerations and not wanting to get the
6 fire to get out of hand or anything, he was probably less
7 than 10 feet from a bush that had dried cheatgrass at the
8 base of it, and he pointed the Roman candle at that bush.

9 Q And what happened with that bush?

10 A After several projectiles came out of the Roman
11 candle, fires were started.

12 We also tested the cigarette lighter to see if we
13 could get cheatgrass to ignite, and we were able to get a
14 cheatgrass to smoke and to smolder.

15 Q So the cheatgrass smoldered?

16 A That's correct.

17 Q Did you happen to do any tests with regard to
18 lighting the Roman candle with the cigarette lighter?

19 A I don't recall.

20 MR. LEE: Thank you, Your Honor. That's all the
21 questions I have.

22 CROSS-EXAMINATION

23 BY MR. DAVIS:

24 Q Good afternoon, Ranger Fischer.

1 A Hello.

2 Q So you've been a ranger almost nine years; is
3 that right?

4 A With the Bureau of Land Management. I've
5 actually been a park ranger with the National Park
6 Service. I started in 1995. I started in law enforcement
7 with them in 1999.

8 Q Okay. And so you've been trained on how to
9 investigate a crime?

10 A That's correct.

11 Q You've also been trained on how to write a report
12 about your investigation?

13 A That's correct.

14 Q And you know it's important to include in your
15 report all the steps you took during your investigation?

16 A Yes.

17 Q Who you talked to?
18 Is that a yes?

19 A Yes, sir.

20 Q What they said?
21 What -- yes?

22 A Yes.

23 Q What you saw?

24 A Correct. I'm sorry.

1 Q I apologize. So they're recording this, so you
2 have to --
3 A Oh.
4 Q -- answer out loud.
5 A Got it.
6 Q Any physical evidence?
7 A Yes.
8 Q Anything that stands out to you as relevant
9 during that investigation?
10 A Yes.
11 Q And you put all that in your report; right?
12 A That's correct.
13 Q And you try to write your report as -- as soon as
14 possible after your investigation?
15 A That's correct.
16 Q Because you know that it could be months before
17 the State comes back and charges a case; right?
18 A Yes.
19 Q And you might be called to testify at trial?
20 A That's correct.
21 Q And you might have to review the report before
22 trial?
23 A That's correct.
24 Q And your memory is better at the time you write

1 your report than it is several months later.

2 A Absolutely.

3 Q And it's fair to say that for all those reasons
4 that your report is complete?

5 A Yes.

6 Q Accurate?

7 A Yes.

8 Q Truthful?

9 A Yes.

10 Q In this case you didn't prepare a report.

11 A No, sir.

12 Q Now, you met with Victoria Barnett on July 28th;
13 right?

14 A That's correct.

15 Q And isn't it true you didn't obtain any written
16 statement from that?

17 A I did not.

18 Q And on July 28th you went to the scene of the
19 fire; is that right?

20 A That's correct.

21 Q And you were able to identify the ignition area
22 as approximately one square foot in size?

23 A That's correct.

24 Q But you did not find an ignition source or

1 collect any evidence from the ignition area on that day?

2 A That's correct.

3 Q And you took a photograph of a vehicle tire
4 print?

5 A That's correct.

6 Q Did you ever check to confirm that that tire
7 print matched Mr. Radonski's vehicle?

8 A I did not.

9 Q And on August 3rd you went back to the general
10 area of origin for the Perry Fire; right?

11 A On -- I'm sorry, what date?

12 Q On August 3rd.

13 A I -- I did go back. I don't know the specific
14 date, so if that's...

15 Q And from that area of origin, isn't it true that
16 you couldn't see either of the two houses that were burned
17 down from where you were standing?

18 A That's correct.

19 Q Did you see any houses from where you were
20 standing --

21 A There are no houses or structures, other than the
22 mine shaft-type thing there.

23 Q Okay. And during your investigation, you didn't
24 find any evidence that Mr. Radonski intentionally set two

1 houses on fire. did you?

2 A I did not.

3 Q He didn't travel from the spot where the fire
4 initially started to the house and set that on fire, did
5 he?

6 A I have no idea what he did.

7 Q Okay. Did your investigation show that he shot
8 any fireworks at either of those houses?

9 A No, sir.

10 Q Was that no?

11 A No, sir.

12 Q Okay. Are you aware that Mr. Radonski was
13 arrested for third degree arson charges?

14 A I am aware of that.

15 Q Because the fire destroyed sheds, outbuildings,
16 and pump houses? Are you aware of that?

17 A Yes, sir.

18 Q During your investigation, did you find that
19 Mr. Radonski had shot fireworks at any of those
20 structures?

21 A No, sir.

22 Q On August 3rd, you and Agent Sully finally
23 identified the specific point of origin; correct?

24 A I'm sorry, what date?

1 Q On August 3rd.

2 A August 28th.

3 Q So --

4 A I'm sorry, July 28th is when we did the origin
5 and cause investigation.

6 Q So on July 28th, you're -- you're testifying
7 today that you identified the specific point of origin?

8 A I identified the ignition area on August 28th --

9 Q On July --

10 A I believe that's July 28th, the Saturday.

11 Q Was the specific point of origin where David had
12 told Mr. Sully it would be?

13 A I didn't -- I wasn't privy to that conversation.
14 I mean, that would be something that Adam -- Special Agent
15 Sully would have to speak to.

16 Q Now, you did find a water bottle at that scene;
17 correct?

18 A That's correct.

19 Q You determined that that water bottle was not the
20 same bottle that you were looking for?

21 A It was a small -- like a pint size.

22 Q And you also saw boards that were shot up and
23 flimsy?

24 A That's correct.

1 Q And this was approximately one week after the
2 fire had started?

3 A No, this was the next day after the fire started,
4 when we did the origin cause investigation.

5 Q So it's your testimony today that on July 28th
6 you went out to the scene -- yes?

7 A Yes.

8 Q That you saw a water bottle?

9 A Yes, sir.

10 Q That you saw boards that were shot up and flimsy?

11 A That's correct.

12 Q And that was the very next day?

13 A That's correct.

14 Q You know you're under oath; right?

15 A Yes, sir.

16 Q And you determined that the dirt near the area
17 was not disturbed?

18 A There was no indication that anyone had done any
19 fire suppression.

20 Q So there was no signs that firefighters were --
21 put out a fire there?

22 A On the -- the specific origin area, no.

23 Q So how did the fire go out?

24 A Fire burns out. It doesn't necessarily have to

1 be put out by water or firefighting activity.

2 Q Now, on August 16th, I believe the State asked
3 you about a test that you conducted.

4 A Yes, sir.

5 Q Now, on July 27th, when the fire started, it was
6 a hundred degrees out; right?

7 A Approximately. I don't recall the specific
8 temperature.

9 Q The wind gusts were 19 miles per hour?

10 A Again, I don't recall the specific...

11 Q Is this important information?

12 A Oh, absolutely.

13 Q Would it refresh your recollection to see a copy
14 of a report --

15 A The origin and cause investigation that Special
16 Agent Sully prepared would have the weather at the -- on
17 the first page near the kind of top.

18 Q And just to be clear, you were there, you were
19 present during that test; right?

20 A That's correct. We did take weather for that,
21 that test. I did not -- I was there as a participant of
22 the test. It was the county Detective Atkinson who was
23 the one that was conducting the test.

24 Q Okay. So you didn't determine the humidity that

1 day, the temperature?

2 A We did.

3 Q You did -- they did, but you didn't?

4 A The -- I -- I actually have a weather -- a device
5 where we measure weather, and I used that and I gave them
6 the readings off of it.

7 Q Okay. And so on that day can you tell me if the
8 humidity was 22 percent?

9 A On the day that we conducted the test, is that --

10 Q Correct.

11 A -- what you're asking?

12 As I recall, it was probably within that -- that
13 same -- again, I didn't -- I don't -- I did not prepare a
14 report for that. That was something that I was there to
15 assist them with, and I gave them that information.

16 Q Are you aware that the wind gusts were 3 to 8
17 miles per hour during that test?

18 A That -- again, I don't recall the exact wind
19 measurements, but I did measure them and I did provide
20 that information to Detective Atkinson.

21 Q All right. Let's talk about the tests for a
22 minute. So you shoot a Roman candle at some brush.

23 A Mm-hmm.

24 Q Is that right?

1 A That's correct.

2 Q And it started a fire?

3 A That is correct.

4 Q And within 60 seconds that fire had spread to an
5 approximate size of 5 feet by 5 feet?

6 A That's correct.

7 Q That's correct. And fire crews on scene had to
8 extinguish that fire?

9 A That's correct.

10 Q Can you tell me how they extinguished that fire?

11 A Used water.

12 Q And in your test, was there any way that you
13 could have put out that fire with a bottle of water?

14 A No, sir.

15 Q Was there any way that you could have put that
16 fire out with a flimsy piece of wood?

17 A Doubtful.

18 Q And on the date of your test, the humidity was
19 higher -- and I'll move on because I will ask Detective
20 Atkinson those questions.

21 So on the date of -- of this fire, would you say
22 that it would be nearly impossible, if the conditions were
23 the same as the test day, to put the fire out with a
24 bottle of water?

1 A From my experience, I would say it would be
2 impossible.

3 Q Impossible. And impossible to -- to put it out
4 with a piece of wood; right?

5 A That's correct.

6 Q The only way you could put this out would be
7 with?

8 With what?

9 A Well, you could either do water or, as a
10 firefighting technique that we use -- I'm also a wildland
11 firefighter -- where you build a line, scratch a line in
12 the -- in the ground, and it prevents the fire from
13 progressing past where you've scratched that line.

14 So really the two techniques that you would
15 either do, you'd need a shovel in order to do that, or you
16 could use water.

17 Q Okay. But when a fire is spreading this quickly,
18 that would be difficult to do?

19 A It would be very difficult, especially if you
20 were by yourself.

21 Q Now, you had testified that this was the lighter
22 that you had found during your investigation?

23 A That is correct.

24 Q Are you aware if this lighter was fingerprinted?

1 A I don't know that. I collected it as evidence.
2 I turned it over to Detective -- I'm sorry, Special Agent
3 Sully, and I believe he turned it over to Detective
4 Atkinson.

5 Q And is this lighter -- is this -- does this photo
6 depict where it was found?

7 A That is correct.

8 Q And there's no brush around that; right?

9 A No, it was in the middle of a road.

10 Q Okay. And did you ever determine that the
11 cigarette lighter started this fire?

12 A No, sir.

13 Q Did you make any determination as to how this
14 fire started?

15 A No, sir.

16 Q All right. I have no further questions. Thank
17 you.

18 A Thank you.

19 MR. LEE: Nothing to follow up, Your Honor.

20 THE COURT: Okay. Did you want him to remain, or
21 can he go about his duties?

22 MR. LEE: He can be excused, please.

23 MR. DAVIS: He can be excused.

24 THE WITNESS: Thank you.

1 THE COURT: So you are free to go about your
2 duties, or you can wait out there.

3 THE WITNESS: Thank you.

4 MR. LEE: Your Honor, State's next witness will
5 be Adam Sully.

6 THE COURT: Good afternoon. Please raise your
7 right hand.

8 (Witness sworn.)

9 THE COURT: Go ahead and have a seat.

10 THE WITNESS: Thank you.

11
12 ADAM SULLY

13 Called as a witness on behalf of the State,
14 was previously sworn and testified as follows:

15
16 DIRECT EXAMINATION

17 BY MR. LEE:

18 Q Sir, could you please state your name and spell
19 your last name for us.

20 A Adam Sully.

21 Q And how are you employed?

22 A Spelled S-u-l-l-y.

23 I'm a special agent with the Bureau of Land
24 Management.

1 Q And sorry I didn't give you time to spell your
2 name. Appreciate that.

3 So what are your duties in that capacity?

4 A I'm a -- I'm a criminal investigator with the
5 U.S. Department of Interior, Bureau of -- Bureau of Land
6 Management.

7 So we investigate crimes that occur either on
8 BLM-administered land or -- there's a nexus. So it --
9 like for in this instance, if a fire burns on the BLM that
10 starts somewhere else, then there's that nexus. So we'll
11 do property crimes, natural resource crimes.

12 Q Where's -- where's your home base?

13 A In Salem, Oregon.

14 Q So how did you get involved in -- in
15 investigation of the Perry Fire?

16 A So I'm a fire investigator, and part of that
17 detail -- part of those responsibilities, I'll go on
18 details in different areas if they're shorthanded for
19 investigators. And so I was down here for two weeks to
20 conduct fire investigations for the BLM.

21 Q And did you just happen to be here when this fire
22 started?

23 A Yes, I was.

24 Q Okay. Did you -- and so were you at the -- at

1 the fire scene out by Pyramid Highway, in that general
2 area of the Perry Fire, on the night of Friday, July 27th
3 of this year?

4 A Yes, I was.

5 Q And at some point while there -- and, I'm sorry,
6 were there suppression efforts going on that night?

7 A When I got out there, there were suppression
8 efforts going on.

9 Q Later you and -- and Scott Fischer determined an
10 area of origin; is that correct?

11 A Correct.

12 Q Was there any suppression efforts specifically at
13 that area, meaning firefighters or anything, or did the
14 fire already move past that area?

15 A There was a fire truck out there. It had moved
16 past -- it already burned that area and had burned to the
17 southeast when I had got there.

18 Q That night, on July 27th, out there at the scene,
19 did you come into contact with an individual identified to
20 you as David Radonski?

21 A Yes.

22 Q Do you see that individual in the courtroom
23 today?

24 A Yes, I do.

1 Q Could you please point out where he's located
2 and, say, color of shirt he's wearing?

3 A Yeah. He's sitting at the table in front just to
4 your left in the gray shirt.

5 MR. LEE: And may the record reflect
6 identification of Mr. Radonski by this witness?

7 THE COURT: The record will so reflect.

8 BY MR. LEE:

9 Q What was your contact with Mr. Radonski on that
10 Friday night?

11 A So I had secured what -- where the fire had
12 started and was heading back out. I was contacted by one
13 of the firefighters who said that there was someone kind
14 of -- at that point it was called a staging area, just off
15 the Pyramid Highway, who had said that they had something
16 to report regarding the fire.

17 Q And that was of interest to you?

18 A Correct.

19 Q So did you respond to that location?

20 A I did.

21 Q Is that when you were introduced to Mr. Radonski?

22 A Yes, it is.

23 Q Did you converse with him?

24 A Yes, I did.

1 Q What did he tell you that was of interest to you
2 with regard to the fire?

3 A He told me that he was out there earlier in the
4 day on his motorcycle, and when he was traveling on the
5 highway, he saw the fire. At that time he said he saw two
6 vehicles leaving the area at a high rate of speed. He
7 described them as desert racing or leaving the area,
8 kicking up a lot of dust as they were leaving.

9 And then he gave a description of two vehicles he
10 saw that he thought were related to the fire. He tried --
11 he said he tried to catch up to the vehicles to get a
12 better description, but his motorcycle couldn't keep up
13 with the vehicles.

14 Q That night did he tell you anything as well about
15 a lighter?

16 A Yes.

17 Q What did he say?

18 A He said that he had dropped a lighter out there
19 either on Saturday -- sometime before that, before Friday,
20 last week, and that he said we might find a silver lighter
21 out there.

22 Q Did he tell you what kind of lighter it was?

23 A He said it was a push button-type lighter.

24 Q Okay. So I'm going to show you what's been

1 previously admitted as Exhibit 16. Does -- does
2 Exhibit 16 look familiar to you?

3 A Yes.

4 Q And is that something that was found by you and
5 Scott Fischer out near the area of origin?

6 A Yes, it is.

7 Q How close approximately from that area of origin
8 did you find this?

9 A It was down the road, I would say probably --
10 estimate maybe a quarter mile.

11 Q Okay. But just -- was it in the road?

12 A Yes.

13 Q And does that -- does that, as depicted in
14 Exhibit 16, match what Mr. Radonski was telling you that
15 he left behind?

16 A Yes.

17 Q Was that comment that he made Friday night of
18 interest to you?

19 A Yes, it was.

20 Q Why?

21 A It -- that and some other comments were just out
22 of the ordinary that he would mention that he was afraid
23 that there's evidence that we would find or things that --
24 he didn't say "evidence," he didn't describe that, but

1 things that we might find that -- that were his in that
2 area.

3 Q You said "that and some other" things. Do you
4 have any examples of any other things he said?

5 A When he was describing the vehicle that he saw
6 leaving the area, I asked him if -- if there was anything
7 out of the ordinary of the vehicle that would stand out,
8 and he said, well -- he said he has a blue Durango and
9 that it looked similar to that. And he said he was
10 concerned about coming back out to the area; that someone
11 might think it was him that started the fire.

12 Q But when you contacted him, he had a motorcycle;
13 is that right?

14 A That's correct.

15 Q About how long were you out there at the staging
16 area?

17 A I probably --

18 Q Let me -- I'm sorry, let me ask it a different
19 way.

20 About what time did you leave? Not necessarily
21 how long were you there.

22 A It would have been about 3:30 the next morning.

23 Q So on Saturday morning?

24 A Saturday morning, yes.

1 Q Did Mr. Radonski -- had he already taken off by
2 then?

3 A Yes.

4 Q About when did he leave?

5 A I spoke with him about 9:00. I know there was
6 some other people that saw him in the area. I'm not sure
7 exactly what time, but probably around 10:30 or 11:00 he
8 had left the area that we were at.

9 Q Okay. That's when you last saw him?

10 A Mm-hmm.

11 Q And then did you have -- was that the last
12 contact you had with him for a few days?

13 A Yes.

14 Q Did you then have another contact with
15 Mr. Radonski on Tuesday, July 31st?

16 A I did.

17 Q And what was the purpose of that?

18 A I asked -- previously on the 30th of July I
19 asked -- called Mr. Radonski and asked if he was willing
20 to come in and do an interview, kind of give us that story
21 again. And he was willing to do that.

22 Initially he said he was not available on the
23 31st, but then he called me that morning and said that
24 he -- that he got off of work early and that he was

1 available to come in on the 31st.

2 Q So did you, in fact, interview him?

3 A Yes.

4 Q Where did that take place?

5 A At the Washoe County Sheriff's Office.

6 Q In the interview room, was anyone else present?

7 A No.

8 Q Just you and Mr. Radonski?

9 A Yes.

10 Q At that interview, was he free to go?

11 A Yes.

12 Q Initially?

13 A Yes.

14 Q Was he told that?

15 A Yes.

16 Q How about were any doors locked, anything like

17 that?

18 A No.

19 Q Was he shown that as well?

20 A I showed him that the door was open.

21 Q Was he -- anything to make him comfortable? Was

22 he given water or anything like that?

23 A I gave him a cup of water. Yeah, I asked -- I'm

24 sorry, a bottle of water and asked if there was anything

1 else he needed.

2 Q Did he say he did?

3 A No.

4 Q And then with regard to the initial conversation,
5 was it free-flowing?

6 A Yes.

7 Q And you'd ask a question; he'd give an answer?
8 Any problems?

9 A No.

10 Q What was the story he gave you initially?

11 A Initially it was the same as he had gave me that
12 night out there; that he was out there in the area on his
13 motorcycle.

14 And then changed it to that he had his Dodge
15 Durango out there and then went back to get his
16 motorcycle.

17 Q And went back where? Do you know?

18 A Went back to his house, to his apartment.

19 Q Okay. So was that largely the only difference
20 really from his initial story on Friday to then?

21 A Yes.

22 Q Did his story at some point change?

23 A Yes.

24 Q How so? How'd that come about?

1 A I had a -- the reporting party had taken a
2 photograph of a blue SUV that matched his. I had that
3 photograph. And I showed him that, and then at that time
4 I asked him is -- I said, "This is your vehicle; right?"
5 And that's when he said yes. And then his story changed.

6 Q At some point during this interview, did you then
7 provide a Miranda admonishment?

8 A Yes.

9 Q Did Mr. Radonski indicate to you that he
10 understood his rights?

11 A Yes, he did.

12 Q And did he continue talking to you?

13 A Yes, he did.

14 Q And answering questions?

15 A Yes.

16 Q And was the conversation after that point
17 still -- I'll say free-flowing?

18 A Yes.

19 Q I'm going to show you what's been admitted
20 already as Exhibit 3. Is this the photo that you just
21 described that you had showed him?

22 A Yes, it is.

23 Q On the bottom right here, I see something. What
24 is that handwriting?

1 A I asked him to initial the photograph when I had
2 shown it to him, showing his vehicle.

3 Q So is that, then, his initials?

4 A Yes.

5 Q Did he -- what did he say about that vehicle as
6 depicted there in that exhibit?

7 A He said that was his vehicle.

8 Q Did you ask him regarding the look of the
9 vehicle, whether it had changed?

10 A Yes.

11 Q Explain that, if you could.

12 A That night of Friday the 28th, it had a silver --
13 it was blue color with a silver after-market bumper on it.

14 And then later that week it had been painted
15 black, the silver had been painted black, and one of
16 the -- or two of the fenders had been painted black as
17 well. And he said that he had painted that, those, after
18 the fact, after the fire had started.

19 Q So then after -- after -- when his story began to
20 change, what did he say then of how this all happened?

21 A He said that he went out there to do some
22 shooting. He went up to this location where the fire had
23 started. He unloaded two 55-gallon drums that were in the
24 back of his vehicle.

1 He had one Roman candle firework. And he lit the
2 firework, aimed the firework in the direction of the
3 barrels, and then the firework started the brush on fire.

4 Q One moment.

5 Did he state he -- he shot any more than just the
6 one Roman candle?

7 A I don't believe so.

8 Q Did -- did he state anything with regard to a
9 lighter?

10 A He said he started it with the push-button -- the
11 vehicle lighter.

12 Q Did he say it was that one that was located,
13 or -- or did he say that type of ignition source?

14 A I don't recall if he described that one.

15 Q What did he state with regard to -- did he say
16 anything about, after the fire had started, what he tried
17 to do?

18 A He said the fire had started. He tried to dump
19 some water on it, and that didn't put it out. He said he
20 picked up a board, and he said he wasn't fanning it, the
21 fire, he said he was trying to scoop dirt onto it, but
22 that didn't put it out.

23 Q Did he tell you anything about the size of the
24 water bottle?

1 A He said it was -- because the -- the water bottle
2 I gave him to drink during the interview was a small --
3 like a 12-ounce bottle. And I asked if it was that size,
4 and he said no, it was a larger size water bottle, like
5 a...

6 Q Was there anything like that size that he
7 described out on the scene when you got there?

8 A No.

9 Q And he -- did he indicate whether he left it
10 behind or whether he took it with him?

11 A He left it -- he said he left it behind.

12 Q And then with regard to the shoveling dirt on it
13 that he told you, when you were out at the scene, did you
14 see any evidence of that?

15 A No.

16 Q With regard to the Roman candle, what did he
17 state as far as how he was shooting it?

18 A He said he was -- described it as aiming it in a
19 horizontal position towards the barrels and then standing
20 back kind of -- there's an old abandoned mine there, so he
21 was away from that, but kind of in that direction towards
22 the barrels.

23 Q And were the barrels inside the mine or outside
24 the mine that he told you?

1 A Outside.

2 Q In this area, then, that he described, what's
3 around that's, say, a possible -- that could ignite?

4 A There's -- there's dry grasses, sagebrush,
5 juniper bushes.

6 Q In your experience -- you said you're a fire
7 investigator?

8 A Correct.

9 Q -- are those all things that can light up pretty
10 fast?

11 A Yes, they are. Especially with the conditions
12 that were out there on those days.

13 Q Like what?

14 A The hot, dry, with multiple days that are in --
15 you know, above 90s. So -- and then the -- the wind at
16 that time makes those conditions where they'll ignite very
17 rapidly.

18 Q Did he say anything with regard to knowing the
19 legality of fireworks?

20 A Yes.

21 Q What was that?

22 A He said that he knew it was illegal to shoot the
23 Roman candle fireworks in that area.

24 Q And then how about with regard to dangerousness?

1 In the context of when he said he was shooting or having
2 shot in the past, what did he say about that?

3 A He said that he only -- I had asked if a fire had
4 ever started when he was out shooting, and he said he only
5 shoots at paper targets. He said he had one steel target,
6 but he only puts it in like a dirt area, away from dry
7 brush or ignitable material.

8 Q Did you ask him whether he had tried to call 911?

9 A I did.

10 Q What did he say?

11 A He did not.

12 Q Did he give a reason?

13 A I don't recall his reason.

14 Q So going back here -- correct me if I'm wrong --
15 he said he was -- he admitted that was his vehicle leaving
16 the fire area. Where did he state he went after that?

17 A So he was driving out. He said he initially
18 headed south on Pyramid Highway, which would be away --
19 turning away from heading back towards town, and then
20 turned back around. He went to the -- I guess that would
21 be on the west side of the -- of the freeway there to
22 another area where he unloaded the barrels and shot at the
23 barrels.

24 Q And this is after the fire?

1 A That's after the fire started, yes.

2 Q Did he tell you about how long he did that?

3 A I don't recall the exact time that -- yeah, that
4 he said, but...

5 Q Where did he say he went after shooting those
6 barrels?

7 A After that, he went back into town. I know he
8 made one stop and then went to his apartment where he got
9 the motorcycle and came back out.

10 Q And is that when you met him?

11 A Correct.

12 Q Did he tell you what stop he made?

13 A I don't recall.

14 Q And then are you aware of the total cost of
15 that -- of the suppression efforts so far?

16 A At this time, yeah, the -- the approximate cost,
17 yes.

18 Q How much?

19 A It's right around \$4.8 million right now.

20 Q And that's just -- again, just to be clear,
21 that's just suppression; that's not property damage?

22 A Correct.

23 MR. LEE: Can I have a quick moment, Your Honor.

24 Thank you. I'll pass the witness.

CROSS-EXAMINATION

BY MR. DAVIS:

Q Good afternoon, Agent Sully.

A Good afternoon.

Q You've been a special agent for how many years?

A Since 2009.

Q Trained on how to investigate a crime?

A Correct.

Q And trained on how to write a report about an investigation?

A Yes.

Q And in this case, you prepared a report; right?

A Yes.

Q And it's accurate?

A Yes, it is.

Q Complete?

A Yes.

Q And truthful?

A Yes.

Q And your report was based upon the origin and cause of the fire; right?

A Correct.

Q And you estimated that the time of ignition was 5 p.m. on July 27th?

1 A Yes.

2 Q And it was first reported at 5:10 p.m. on July
3 27th; right?

4 A Yes, I believe so, just going from memory, yeah,
5 without having the report in front of me.

6 Q And is it your recollection that Ms. Barnett was
7 the individual that first reported the fire?

8 A Yes.

9 Q Right when she had cell phone service; right?

10 A Yes.

11 Q And you arrived on scene on July 27th at 7 p.m.?

12 A Yes, that sounds about right.

13 Q And you contacted BLM firefighters and I believe
14 it was Engine B3903?

15 A Yes.

16 Q And during your investigation, did you learn what
17 time that first fire engine responded to the fire?

18 A I don't recall.

19 Q Now, you determined that the fire originated just
20 east of an abandoned mine.

21 A Correct.

22 Q Is that right?

23 A Yes.

24 Q And at 8:35 p.m. you protected the general origin

1 area of the fire with green tape?

2 A Yes.

3 Q And let the incident commander know to keep
4 firefighters out of that area? Is that right?

5 A That's correct.

6 Q And that was more than three hours after the fire
7 had initially started; right?

8 A Yes.

9 Q So during that three-hour time frame, you're not
10 aware of how many fire fire -- firefighters walked through
11 that area, are you?

12 A No.

13 Q You're not aware if any of that landscape had
14 been altered --

15 A No, I'm not --

16 Q -- are you?

17 A No.

18 Q Or disturbed?

19 A No.

20 Q And at about 8:45 p.m. you met with Mr. Radonski
21 who had voluntarily arrived on scene; right?

22 A That's correct.

23 Q He provided you with a written statement?

24 A Yes.

1 Q And at the time you met with Mr. Radonski, was
2 David Wheeler present?

3 A I believe so.

4 Q Did Mr. Wheeler provide a written statement?

5 A He did not.

6 Q Did you obtain Mr. Wheeler's contact information?

7 A I know we -- I can't remember if we got it that
8 night. I know we made contact with him. But I don't
9 recall if it was that night or not.

10 Q Did -- did you make an effort to interview him?

11 A Yes, we did.

12 Q When you met with Mr. Radonski, you learned that
13 he frequents the area where the fire started; right?

14 A Yes.

15 Q He camps there; correct?

16 A Yes.

17 Q He looks up at stars?

18 A Correct.

19 Q And he shoots there as well?

20 A Yes.

21 Q Was your conversation with Mr. Radonski on that
22 first instance recorded in any way?

23 A No, it was not.

24 Q And you also met with Victoria Barnett in this

1 case?

2 A Yes.

3 Q Did you have her fill out a written statement?

4 A I did not.

5 Q And you met with Sanche (phonetic), and I'm going
6 to pronounce this last name probably incorrectly, but
7 Khongkhatiham, and that's spelled
8 K-h-o-n-g-k-h-a-t-i-h-a-m. You met with him as well;
9 right?

10 A That's correct.

11 Q And did you ever have him fill out a written
12 statement?

13 A No, I did not.

14 Q You were able to identify the ignition area as
15 approximately one square foot in size; right?

16 A That's correct.

17 Q But when you first went out there on July 28th,
18 you didn't find an ignition source or collect any evidence
19 on that first July 28th day, did you?

20 A No, I did not.

21 Q On July 30th you then contacted Mr. Radonski to
22 set up an interview?

23 A Correct.

24 Q And you wanted him to come in on July 31st?

1 A Yes.

2 Q And he did voluntarily come in and he met with
3 you at the Washoe County Sheriff's Office?

4 A Correct.

5 Q In fact, he showed up early; right?

6 A I believe so.

7 Q I think he was there 30 minutes early.
8 Now, you interrogated Mr. --
9 MR. LEE: Objection. There's not a question
10 there.
11 BY MR. DAVIS:

12 Q Did you -- did he show up 30 minutes early?

13 A Yes, I believe so.

14 Q Thank you, Agent Sully.
15 Now, you interrogated him in this case; right?
16 Or you interviewed him.

17 A Inter -- yes.

18 Q And he remained in that interview room for more
19 than four hours; is that accurate?

20 A I don't know the exact time, but...

21 Q Now, during that period when he was in there, you
22 would get up and leave the room to go and meet with
23 Detective Atkinson; correct?

24 A Correct.

1 Q And you did that multiple times during this
2 four-hour period?

3 A Yes.

4 Q In fact, during that four-hour time frame, you
5 got up and left the room approximately eight times;
6 correct?

7 A I'd have to look at the video.

8 Q That's fair. I can withdraw that question.

9 And during the time when you were leaving the
10 room and meeting with Detective Atkinson, Mr. Radonski
11 remained in that room; correct?

12 A That's correct.

13 Q That door was shut; right?

14 A Yes, it was.

15 Q Now, you gave Mr. Radonski a Beheler
16 admonishment; right?

17 A Yes, I did.

18 Q Then you obtained a confession from him,
19 statement from him; right?

20 A Yes.

21 Q And after you did this, you then read him his
22 Miranda warnings?

23 A Yes, I did.

24 Q And then had him repeat his statement; right?

1 A Yes.

2 Q You told Mr. Radonski that that door was
3 unlocked, didn't you?

4 A I did.

5 Q But when he got up to leave the room, the door
6 was, in fact, locked, wasn't it?

7 A That I don't know.

8 Q Sir, did you ever lock that door?

9 A I did not lock it, no.

10 Q Are you aware if anybody locked that door?

11 A It was locked after Detective Atkinson said that
12 they were going to go forward with making an arrest and
13 that he wasn't free to leave at that point, after the
14 admission.

15 Q And so he couldn't leave?

16 A After that point, no.

17 Q During the interrogation, you thanked
18 Mr. Radonski for coming in voluntarily?

19 A Yes.

20 Q You thanked him for his willingness to help with
21 the investigation?

22 A That's correct.

23 Q Told him he was free to go at any time?

24 A Yes.

1 Q That he was not under arrest?
2 A That's correct.
3 Q You told him to be honest?
4 A Yes.
5 Q Told him to be honest multiple times. Right?
6 A Yes, I did.
7 Q David asked you what the legal standing would be,
8 didn't he?
9 A He did.
10 Q But you didn't end your interview at that point,
11 did you?
12 A I did not.
13 Q You didn't end it for him to consult with a
14 lawyer; right?
15 A No.
16 Q Instead, you continued asking him questions;
17 correct?
18 A Correct.
19 Q In fact, you told him it would look a lot better
20 if he told you what happened; right?
21 A Yes.
22 Q And Mr. Radonski asked you if he would be under
23 arrest, didn't he?
24 A I'd have to look at the report. Yes.

1 Q Do you not remember if -- if he asked you that?
2 A I don't remember if he asked me that.
3 Q Would it refresh your recollection to see a copy
4 of the transcript?

5 A Yes.

6 Q One second.

7 MR. DAVIS: Your Honor, may I approach?

8 THE COURT: Yes.

9 MR. DAVIS: (Inaudible) 53.

10 BY MR. DAVIS:

11 Q So, sir, I'm going to ask that you look at that
12 transcript. And when you're done looking at it, on page
13 53, I'm going to just ask that you look up.

14 A Okay. I -- I...

15 Q Mr. Radonski asked you if he would be under
16 arrest?

17 A Yes.

18 Q And you told him that was not your call?

19 A That's correct.

20 Q And he ultimately then told you what happened;
21 right? Right?

22 A I'd have to look and see if it was -- if he had
23 said before that or not. But -- but, yes, he told me
24 that.

1 Q Even though he was scared? Do you remember him
2 telling you that he was scared?

3 A Yes.

4 Q And he told you it was just a complete accident;
5 right?

6 A Yes.

7 Q He admitted that he went there to go shooting;
8 correct?

9 A Yes.

10 Q He previously told you that he worked in the gun
11 industry?

12 A Yes.

13 Q That he sandblasted guns?

14 A Yes, he did.

15 Q That he had shot off some Roman candles?

16 A Yes.

17 Q That he had lit that with his vehicle cigarette
18 lighter?

19 A Yes.

20 Q That he had shot them in the direction of an
21 empty 55-gallon steel drum that was placed in front of an
22 abandoned mine; right?

23 A Yes.

24 Q But that one of the Roman candles had

1 malfunctioned. He told you that; right?

2 A Yes.

3 Q And that Roman candle had struck some vegetation?

4 A Yes.

5 Q And that was near the corner of the cave; right?

6 A It was outside the cave. It was to the east of

7 it.

8 Q All right. And that started the fire?

9 A Yes.

10 Q David admitted to you that he tried to put the

11 fire out?

12 A Yes.

13 Q With a water bottle. Yes?

14 A Yes.

15 Q And with one piece of wood that was nearby?

16 A Yes.

17 Q He told you he couldn't get it under control?

18 A Correct.

19 Q So he left that area?

20 A Correct.

21 Q And he went shooting in another area; correct?

22 A That's correct.

23 Q David told you that this was a hundred percent

24 complete accident, didn't he?

1 A Yes.

2 Q That he had no intention of setting the valley on
3 fire?

4 A Correct.

5 Q And he didn't call the police because he was
6 scared. Right?

7 A Correct.

8 Q And even though he didn't call the police, he did
9 voluntarily meet with you within hours of this fire
10 starting. He did; right?

11 A He met with me, but the story was --

12 Q Story was different.

13 A Yeah.

14 Q But he met with you?

15 A Yes.

16 Q He showed up, and he talked to you and told you
17 that that was -- you might find his cigarette lighter out
18 there?

19 A Correct.

20 Q He described two vehicles that were in that
21 location. He described one of the vehicles as looking
22 like his own. Right?

23 A That's correct.

24 Q And that was at that first time that he