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2 IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Nov 26 2019 08:08 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

3 THE STATE OF NEVADA,

4 Petitioner,

5 vs.

6 THE FOURTH JUDICIAL  
DISTRICT COURT OF THE  
STATE OF NEVADA IN AND  
7 FOR THE COUNTY OF ELKO;  
AND THE HONORABLE  
NANCY PORTER, DISTRICT  
8 JUDGE,

Respondent,

9 and

10 ANTHONY CHRIS ROBERT  
MARTINEZ,

11 Real Party in Interest.

12 **APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR**  
13 **MANDAMUS**

14 TYLER J. INGRAM  
Elko County District Attorney  
State Bar Number 11819  
540 Court Street, 2<sup>nd</sup> Floor  
15 Elko, NV 89801

KRISTON N. HILL  
Elko County Public Defender  
State Bar Number 11883  
569 Court Street  
Elko, NV 89801

16 ATTORNEYS FOR PETITIONER

ATTORNEY FOR REAL PARTY  
IN IN INTEREST

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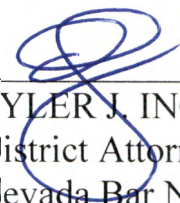
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Dated this 25 day of November, 2019.

By:   
\_\_\_\_\_  
TYLER J. INGRAM  
District Attorney  
Nevada Bar Number: 11819

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CERTIFICATE OF SERVICE

I certify that this document was filed electronically with the Nevada Supreme Court on the \_\_\_\_\_ day of November, 2019, Electronic Service of the APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS shall be made in accordance with the Master Service List as follows:

- Honorable Aaron D. Ford  
Nevada Attorney General
- Honorable Nancy Porter  
Fourth Judicial District Court
- Kriston N. Hill  
Elko County Public Defender

\_\_\_\_\_  
CARISA ANCHONDO  
CASEWORKER

DA#: HC-19-02957

Dalenka

FILED  
2018 DEC 21 AM 10:03  
4th CO DISTRICT

CLERK 

1 CASE NO. CR-FP-16-9651  
2 DEPT. NO. 1  
3  
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5 IN THE FOURTH JUDICIAL DISTRICT COURT  
6 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO  
7

8 THE STATE OF NEVADA, CRIMINAL  
9 Plaintiff, INFORMATION  
10 vs.  
11 ANTHONY CHRIS ROBERT MARTINEZ.  
12 Defendant.

13 COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by  
14 and through its Counsel of Record, the Elko County District Attorney's Office, and informs the  
15 above-entitled Court that Defendant above-named, on or about the 17th day of November,  
16 2016, at or near the location of West Wendover, and/or the Southern X-Posure club located  
17 at or near West Wendover, within the County of Elko, and the State of Nevada, committed a  
18 crime or crimes described as follows:

19 COUNT 1  
20

21 **ATTEMPTED MURDER WITH THE USE OF A DEADLY WEAPON, A**  
22 **CATEGORY B FELONY AS DEFINED BY NRS 193.330, 200.010,**  
**200.020, 200.030 AND 193.165. (NOC 50031)**

23 That the Defendant willfully and unlawfully and with the specific intent  
24 to commit the crime of Murder with the Use of a Deadly Weapon, a  
25 Category A Felony as defined by NRS 193.165, NRS 200.010, NRS  
26 200.020, AND NRS 200.030, did an act or acts which tended to but  
27 failed to result in the commission of the completed offense of Murder in  
28 the following manner: that the Defendant, with the specific intent to  
unlawfully take away the life of another human being, one Miguel  
Pantelakis, shot at and/or otherwise discharged a firearm, a deadly



1 weapon as defined by NRS 193.165, at the said Miguel Pantelakis.

2 COUNT 2

3 **ATTEMPTED MURDER WITH THE USE OF A DEADLY WEAPON, A**  
4 **CATEGORY B FELONY AS DEFINED BY NRS 193.330, 200.010,**  
5 **200.020, 200.030 AND 193.165. (NOC 50031)**

6 That the Defendant willfully and unlawfully and with the specific intent  
7 to commit the crime of Murder with the Use of a Deadly Weapon, a  
8 Category A Felony as defined by NRS 193.165, NRS 200.010, NRS  
9 200.020, AND NRS 200.030, did an act or acts which tended to but  
10 failed to result in the commission of the completed offense of Murder in  
11 the following manner: that the Defendant, with the specific intent to  
12 unlawfully take away the life of another human being, one Alejandro  
13 Sanchez, shot at and/or otherwise discharged a firearm, a deadly  
14 weapon as defined by NRS 193.165, at the said Alejandro Sanchez.

15 COUNT 3

16 **POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE IN OR**  
17 **NEAR CERTAIN PUBLIC OR PRIVATE AREAS, A CATEGORY D**  
18 **FELONY AS DEFINED BY NRS 202.262. (NOC 51430)**

19 That the Defendant upon or near a public conveyance; and/or in or  
20 near any private habitation, public place or any place open to the  
21 public; and/or in or upon any public street or highway within the State,  
22 described as follows: at or near West Wendover Boulevard and/or  
23 within the City of West Wendover, possessed an explosive, and/or an  
24 incendiary device; and/or possessed explosive and/or incendiary  
25 material(s), substance(s), or component(s) which may be readily  
26 converted to an explosive or incendiary device described as follows:  
27 aerosol can(s) and/or a wick and/or bullets and/or metallic objects  
28 and/or black powder and/or similar explosive material.

COUNT 4

**BATTERY WITH A DEADLY WEAPON, A CATEGORY B FELONY**  
**AS DEFINED BY NRS 200.481(2)(e). (NOC 50223)**

That the Defendant did willfully and unlawfully use force or violence  
upon the person of Rosendo Herrera, with the use of a deadly weapon,  
to-wit: a handgun, in the following manner: by striking Rosendo  
Herrera with said handgun one or more times.

COUNT 5

**ASSAULT WITH A DEADLY WEAPON, A CATEGORY B FELONY  
AS DEFINED BY NRS 200.471.1, AND .2(b). (NOC 50201)**

That the Defendant did willfully and/or intentionally and unlawfully place another person, one Manuel Ruiz, in reasonable apprehension of immediate bodily harm.

Further, the Defendant committed said offense with the use of a deadly weapon or at a time when the Defendant had the present ability to use a deadly weapon, to wit: a handgun, and in the following manner: by pointing said handgun at Manuel Ruiz Barbosa.

COUNT 6

**ASSAULT WITH A DEADLY WEAPON, A CATEGORY B FELONY  
AS DEFINED BY NRS 200.471.1, AND .2(b). (NOC 50201)**

That the Defendant did willfully and/or intentionally and unlawfully place another person, one Ruta Murphy, in reasonable apprehension of immediate bodily harm. Further, the Defendant committed said offense with the use of a deadly weapon or at a time when the Defendant had the present ability to use a deadly weapon, to wit: a handgun, and in the following manner: by pointing said handgun at Rita (Ruta) Murphy.

COUNT 7

**ATTEMPTED ROBBERY WITH THE USE OF A DEADLY WEAPON,  
A CATEGORY B FELONY AS DEFINED BY NRS 200.380, NRS  
193.165 AND NRS 193.330. (NOC 50145)**

That the Defendant willfully and unlawfully and with the specific intent to commit the crime of Robbery did an act or acts which tended to, but failed to, result in the commission of the completed offense of Robbery in the following manner: by unlawfully attempting to take the personal from the person of another, or in the person's presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person or property, or the person or property of a member of his or her family, or of anyone in his or her company at the time of the robbery. More specifically, while pointing a handgun (firearm) at Rosendo Herrera, Defendant demanded money.

///



COUNT 8

**DISCHARGING A FIREARM WITHIN A STRUCTURE IN A POPULATED AREA, A CATEGORY B FELONY AS DEFINED BY NRS 202.287 (NOC 51444)**

That the Defendant, while in a structure, the Southern Exposure located in West Wendover, Nevada, Elko County, a populated area, did maliciously or wantonly cause to be discharged a firearm within the structure.

COUNT 9

**ELUDING A POLICE OFFICER IN A MANNER POSING DANGER TO PERSONS OR PROPERTY, A CATEGORY B FELONY AS DEFINED BY NRS 484B.550. (NOC 53833)**

That the Defendant operated a motor vehicle in a manner which endangered or was likely to endanger any person other than the Defendant and/or the property of any person other than the Defendant's while willfully failing and/or refusing to bring the motor vehicle to a stop and/or otherwise fleeing or attempting to elude a peace officer to wit: Officer Sanchez and/or Officer Pantelakis, and/or another member of law enforcement, at a time when the peace officer was in a readily identifiable vehicle of a police department or regulatory agency and gave a signal to stop, to wit: a flashing red lamp and siren.

COUNT 10

**POSSESSION OF A FIREARM BY A PERSON PREVIOUSLY CONVICTED OF A FELONY OFFENSE, A CATEGORY B FELONY AS DEFINED BY NRS 202.360.1. (NOC 51460)**

The Defendant owned; and/or possessed, actually or constructively; and/or had custody of and/or control of the following described firearm: a Glock handgun.

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

///

COUNT 11

**POSSESSION OF A FIREARM BY A PERSON PREVIOUSLY  
CONVICTED OF A FELONY OFFENSE, A CATEGORY B FELONY  
AS DEFINED BY NRS 202.360.1. (NOC 51460)**

The Defendant owned; and/or possessed, actually or constructively;  
and/or had custody of and/or control of the following described firearm:  
Jiminez Arms rifle or similar firearm.

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

COUNT 12

**POSSESSION OF A FIREARM BY A PERSON PREVIOUSLY  
CONVICTED OF A FELONY OFFENSE, A CATEGORY B FELONY  
AS DEFINED BY NRS 202.360.1. (NOC 51460)**

The Defendant owned; and/or possessed, actually or constructively;  
and/or had custody of and/or control of the following described firearm:  
a Masterpiece Arms handgun or similar firearm.

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

COUNT 13

**POSSESSION OF A FIREARM BY A PERSON PREVIOUSLY  
CONVICTED OF A FELONY OFFENSE, A CATEGORY B FELONY  
AS DEFINED BY NRS 202.360.1. (NOC 51460)**

The Defendant owned; and/or possessed, actually or constructively;  
and/or had custody of and/or control of the following described firearm:  
a Romanian AK-47 or similar firearm.

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

///

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1  
2 COUNT 14

3 **POSSESSION OF A FIREARM BY A PERSON PREVIOUSLY**  
4 **CONVICTED OF A FELONY OFFENSE, A CATEGORY B FELONY**  
5 **AS DEFINED BY NRS 202.360.1. (NOC 51460)**

6 The Defendant owned; and/or possessed, actually or constructively;  
7 and/or had custody of and/or control of the following described firearm:  
8 a Hawk, model 981, or similar firearm.

9 Further the Defendant, at the time he owned, and/or possessed, and/or  
10 had custody and/or control of said firearm had been previously  
11 convicted of committing a felony criminal offense or offenses

12 COUNT 15

13 **KIDNAPPING, FIRST DEGREE, WITH THE USE OF A DEADLY**  
14 **WEAPON, A CATEGORY A FELONY AS DEFINED BY NRS**  
15 **200.310, NRS 200.320, AND NRS 193.165. (NOC 50055)**

16 The Defendant willfully and unlawfully seized, confined, inveigled,  
17 enticed, decoyed, abducted, concealed, kidnapped, and/or carried  
18 away a person, to wit: Rosendo Herrera, by any means whatsoever,  
19 with the intent to hold or detain Rosendo Herrera, and/or held or  
20 detained, Rosendo Herrera for the purpose of committing extortion or  
21 robbery upon or from Rosendo Herrera, or for the purpose of killing  
22 Rosendo Herrera or inflicting substantial bodily harm upon Rosendo  
23 Herrera, or to exact from relatives, friends, or any other person any  
24 money or valuable thing for the return or disposition of the kidnapped  
25 Rosendo Herrera, by pointing a handgun (firearm) at or near Rosendo  
26 Herrera and forcing him to move from the inside of the Southern X-  
27 Posure club to the outside of the Southern X-Posure club, which was  
28 *not* incidental to the attempted robbery with the use of a deadly  
weapon, or any other alleged count in this complaint.<sup>1</sup>

23 ///

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27 \_\_\_\_\_  
28 <sup>1</sup> Mendoza v. State, 122 Nev. 267 (2006)


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

3 Dated: December 13, 2018.

4  
5  
6   
7 TYLER J. INGRAM  
8 Elko County District Attorney  
9 State Bar Number: 11819

10 **Declaration By State's Counsel Estimating**  
11 **The Number Of Days Needed For Trial**

12 **COMES NOW THE STATE OF NEVADA**, by and through its Counsel of Record the  
13 Elko County District Attorney's Office and, specifically by the Deputy District Attorney  
14 assigned the above-entitled matter, who, by his signature hereunder, would declare to the  
15 above-entitled Court that it is State's Counsel's estimate that four (4) days, including jury  
16 selection, should be set aside for the trial of this matter.

17  
18   
19 TYLER J. INGRAM  
20 Elko County District Attorney  
21 State Bar Number: 11819

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

24 JASON ABRAMS: 775 WEST SILVER STREET ELKO, NV 89801

25 BRENT ANDERSON: 541 WEST 400 NORTH #204 SALT LAKE CITY, UT 84116

26 MANUEL RUIZ BARBOSA: PO BOX 2218 WEST WENDOVER, NV 89883

27 JOHN CESSFORD: 1202 AVE E ELY NV 89301 ELY, NV 89315  
28

1 ROSENDO HERRERA-QUINTERO: Address Redacted  
2 BRAD HILLAKER: 1111 N GENE L JONES WENDOVER, NV 89883  
3 BILLY HOOD: 775 WEST SILVER STREET ELKO, NV 89801  
4 MICHAEL MARSHOWSKY: 1448 SILVER STREET ELKO, NV 89801-3924  
5 KEVIN MCKINNEY: 775 WEST SILVER STREET ELKO, NV 89801  
6 JONATHAN MOORE: 1448 SILVER STREET ELKO, NV 89801-3924  
7 RUTA MURPHY: 375 E WENDOVER BLVD #41 WENDOVER, UT 84083  
8 MIGUEL PANTELAKIS: Address Redacted  
9 CATHERINE PETRO: 1111 N GENE L JONES WENDOVER, NV 89883  
10 LISSET RUIZ: 1945 GOLD STREET WEST WENDOVER, NV 89883  
11 ALEJANDRO SANCHEZ: Address Redacted  
12 ANDREW SCHUMAKER: PO BOX 1651 BUENA VISTA, CO 81211  
13 DAVID SERAFINI: RED GARTER CASINO, WEST WENDOVER, NV 89883  
14 NICK STAKE: 775 WEST SILVER STREET ELKO, NV 89801  
15 PETE TURNER: 602 TWIN VIEW RD. JEROME, ID 83338  
16 FERNANDO URIBE JR.: 1111 N GENE L JONES WENDOVER, NV 89883  
17 JUAN CARLOS VILLEGAS: 552 E. HASKILL ST APT A WINNEMUCCA, NV 89445  
18 CRAIG WARD: UTAH HIGHWAY PATROL 1929 NORTH AARON DRIVE, SUITE J  
19 TOOELE, UT 84074  
20  
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1 CERTIFICATE OF SERVICE

2 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the  
3 Elko County District Attorney's Office, and that on the 21<sup>st</sup> day of December, 2018, I  
4 hereby served a copy of the CRIMINAL INFORMATION, by delivering, mailing, faxing, or  
5 causing to be delivered, faxed, or mailed, a copy of said document to the following:

6 By delivering to:

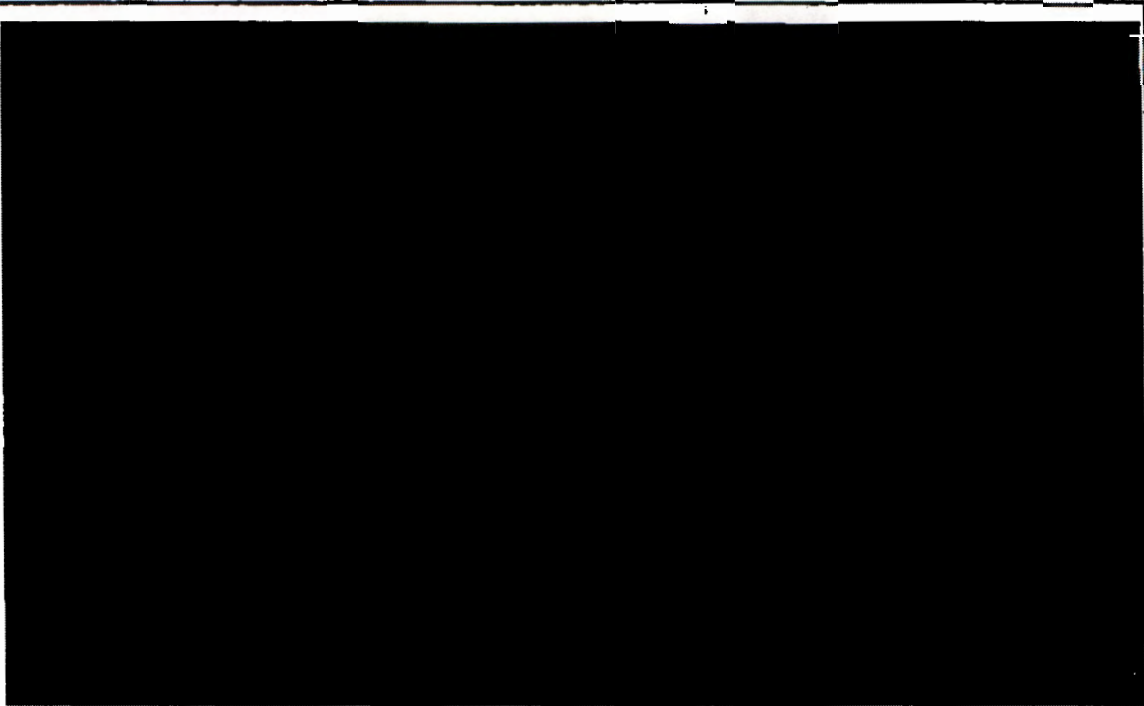
7 HONORABLE NANCY PORTER  
8 FOURTH JUDICIAL DISTRICT COURT  
9 ELKO COUNTY COURTHOUSE  
10 ELKO, NV 89801

11 KRISTON HILL  
12 ATTORNEY AT LAW  
13 569 COURT STREET  
14 ELKO, NV 89801

15   
16 CARISA ANCHONDO  
17 CASEWORKER

18 DA # F-16-05218  
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JOHN CESSFORD

(Sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. INGRAM:

Q. Can you please say your full name for us.

A. John Cessford.

Q. How are you employed, sir?

A. I'm employed as a detective with the Nevada  
Department of Public Safety Investigation Division.

Q. And were you called in to assist with an  
investigation regarding an officer-involved shooting in  
West Wendover?

A. Yes, I was.

Q. And did that occur sometime around November 17th,  
2016?

1 A. Yes.

2 Q. What was your role in the investigation?

3 A. I was assigned to take photographs of the crime  
4 scene or one of the crime scenes.

5 Q. Okay. And what's the one crime scene that you were  
6 assigned to?

7 A. I was assigned to the street in front of the casino  
8 there all the way covering the patrol cars and the  
9 suspect vehicle.

10 Q. Okay. Did you take photographs of the scene?

11 A. Yes, I did.

12 Q. I'm going to show you what's been marked as State's  
13 Exhibit 73.

14 Do you recognize that?

15 A. Yes, I do.

16 Q. What do you recognize that to be?

17 A. That's the -- what I was told was the suspect  
18 vehicle with green evidence markers that were already  
19 placed in front of the casino on that main street of  
20 West Wendover there.

21 Q. Okay. Is that a fair and accurate picture?

22 A. Yes, it is.

23 MR. INGRAM: I'd move for the admission of  
24 73.

25 MS. HILL: No objection.



1 THE COURT: Exhibit 73 is entered.

2 (Whereupon, Plaintiff's Exhibit 73 admitted)

3 BY MR. INGRAM:

4 Q. I'm going to show you what's been marked as  
5 State's 91.

6 Do you recognize that picture?

7 A. Yes, I do.

8 Q. What is that picture of?

9 A. That's evidence placard 13, and it was a pistol that  
10 was on the floorboard of the suspect vehicle.

11 Q. Okay. Fair and accurate picture?

12 A. Yes.

13 MR. INGRAM: Move for the admission of 91.

14 MS. HILL: No objection.

15 THE COURT: 91 is entered.

16 (Whereupon, Plaintiff's Exhibit 91 admitted)

17 BY MR. INGRAM:

18 Q. Is 86 a close-up of the last exhibit?

19 A. Yes, it is.

20 Q. And fair and accurate?

21 A. Yes.

22 MR. INGRAM: I'd move for the admission of  
23 86.

24 MS. HILL: No objection.

25 THE COURT: 86 is entered.

1                   (Whereupon, Plaintiff's Exhibit 86 admitted)

2 BY MR. INGRAM:

3 Q. I'll show you what's been marked as 80. Do you

4 recognize that?

5 A. Yes, I do.

6 Q. What do you recognize that to be?

7 A. It was a MAC-10 type of firearm that was in a

8 backpack in the back trunk of the suspect vehicle.

9 Q. Okay. And is that a semi-automatic handgun of

10 sorts?

11 A. I believe it is a semiautomatic, yes.

12                   MR. INGRAM: Move for the admission of --

13 BY MR. INGRAM:

14 Q. Well, excuse me, is that a fair and accurate

15 picture?

16 A. Yes.

17                   MR. INGRAM: Move for the admission of 80.

18                   MS. HILL: No objection.

19                   THE COURT: 80 is entered.

20                   (Whereupon, Plaintiff's Exhibit 80 admitted)

21 BY MR. INGRAM:

22 Q. Is 84 a close-up of the last exhibit?

23 A. Yes, without the magazine clip in it.

24 Q. Fair and accurate picture?

25 A. Yes.

1 MS. HILL: No objection.

2 THE COURT: 84 is entered.

3 (Whereupon, Plaintiff's Exhibit 84 admitted)

4 MR. INGRAM: Thank you.

5 BY MR. INGRAM:

6 Q. Also, 83, is that another close-up of that same  
7 firearm?

8 A. Yes.

9 Q. Okay. Fair and accurate picture?

10 A. Yes.

11 MR. INGRAM: Move for the admission of 83.

12 MS. HILL: No objection.

13 THE COURT: 83 is entered.

14 (Whereupon, Plaintiff's Exhibit 83 admitted)

15 BY MR. INGRAM:

16 Q. Showing you 79, do you recognize that?

17 A. Yes, I do.

18 Q. What do you recognize that to be?

19 A. That was an AK-47 or SKS type rifle that was also in  
20 the trunk of the suspect vehicle.

21 Q. Okay. What else?

22 A. And a black shotgun, pump.

23 Q. Located in the same area?

24 A. Same, in the trunk, yes.

25 Q. Fair and accurate picture?

1 A. Yes, it is.

2 MR. INGRAM: Move for the admission --

3 THE COURT: If you could slow down just a  
4 little bit, Mr. Ingram. Since each of the firearms are  
5 listed separately under separate counts, I want to make  
6 sure I...

7 MR. INGRAM: Okay.

8 THE COURT: Okay, so AK-47 in the trunk of  
9 the vehicle, black shotgun where?

10 THE WITNESS: Also in the trunk of the  
11 vehicle, ma'am.

12 THE COURT: Trunk, okay, thank you.

13 MR. INGRAM: Move for the admission of 79.

14 MS. HILL: No objection.

15 THE COURT: 79 is entered.

16 (Whereupon, Plaintiff's Exhibit 79 admitted)

17 BY MR. INGRAM:

18 Q. Showing you 75, do you recognize that?

19 A. Yes, I do.

20 Q. What do you recognize that to be?

21 A. Evidence placard 12 was a pistol marked, and it was  
22 in front of the suspect vehicle in the gravelly area.

23 Q. Okay. Fair and accurate picture?

24 A. Yes, it is.

25 MR. INGRAM: I'll move for the admission of

1 State's 75.

2 MS. HILL: No objection.

3 THE COURT: Exhibit 75 is entered.

4 (Whereupon, Plaintiff's Exhibit 75 admitted)

5 BY MR. INGRAM:

6 Q. Showing you 76, is that a close-up, of the last  
7 exhibit?

8 A. Yes, it is, with scale.

9 MR. INGRAM: Move for the admission of  
10 State's 76.

11 MS. HILL: No objection.

12 THE COURT: 76 is entered.

13 (Whereupon, Plaintiff's Exhibit 76 admitted)

14 BY MR. INGRAM:

15 Q. Showing you 82, do you recognize that photograph?

16 A. Yes, I do.

17 Q. What is that?

18 A. That's the same but just a close-up picture of the  
19 AK-47 type rifle that was in the trunk of the suspect  
20 vehicle.

21 Q. Fair and accurate picture?

22 A. Yes.

23 MR. INGRAM: Move for the admission of 82.

24 MS. HILL: No objection.

25 THE COURT: 82 is entered.

1 (Whereupon, Plaintiff's Exhibit 82 admitted)

2 BY MR. INGRAM:

3 Q. Showing you 81, what do you recognize that to be?

4 A. That's the black shotgun that was also in the trunk  
5 of the suspect vehicle, just a close-up picture.

6 Q. Fair and accurate?

7 A. Yes, it is.

8 THE COURT: I'm sorry, the number again.

9 MR. INGRAM: 81. Move for the admission of  
10 81.

11 MS. HILL: No objection.

12 THE COURT: 81 is entered.

13 (Whereupon, Plaintiff's Exhibit 81 admitted)

14 BY MR. INGRAM:

15 Q. Showing you 77, recognize that?

16 A. Yes.

17 Q. What do you recognize that to be?

18 A. That's the black pistol. I believe it was evidence  
19 marker 12 that was in front of the car, just a close-up  
20 picture.

21 Q. Okay. Fair and accurate picture?

22 A. Yes.

23 MR. INGRAM: Move for the admission of 77.

24 MS. HILL: No objection.

25 THE COURT: 77 is entered.



1 (Whereupon, Plaintiff's Exhibit 77 admitted)

2 BY MR. INGRAM:

3 Q. Show you State's 87, do you recognize that?

4 A. Yes.

5 Q. What do you recognize that to be?

6 A. Just identification, paperwork that was indicia that  
7 was on the scene.

8 Q. Okay. Do you know where that was located?

9 A. I don't recall where it was located.

10 Q. Okay. Do you know whether it was located within the  
11 vehicle?

12 A. I don't. I don't recall.

13 Q. Okay. And showing you State's 88, do you recognize  
14 that?

15 A. Yes.

16 Q. And same thing, do you know where that was located?

17 A. I don't know where it was located, no.

18 Q. Okay. And I'll show you State's 89. Do you  
19 recognize that?

20 A. Yes.

21 Q. And do you know where this was located?

22 A. I do not.

23 Q. Okay, thank you. Showing you State's 74 finally, do  
24 you recognize that?

25 A. Yes.

1 Q. And what is it?

2 A. That's the suspect vehicle.

3 Q. Okay. Just a closer-up?

4 A. Yeah, just a front profile type of shot -- or side  
5 front profile.

6 Q. Fair and accurate picture?

7 A. Yes, it is.

8 MR. INGRAM: We'd move for the admission of  
9 74, please.

10 MS. HILL: No objection.

11 THE COURT: 74 is entered.

12 (Whereupon, Plaintiff's Exhibit 74 admitted)

13 BY MR. INGRAM:

14 Q. And show you 93, do you recognize that?

15 A. Yes.

16 Q. What do you recognize that to be?

17 A. That's like a makeup type bag. It was in the back  
18 seat of the suspect vehicle. It had an improvised  
19 explosive device in it.

20 Q. Okay. And is that a fair and accurate picture?

21 A. Yes.

22 Q. All right.

23 MR. INGRAM: Move for the admission of 93.

24 MS. HILL: No objection.

25 THE COURT: 93 is entered.

1 (Whereupon, Plaintiff's Exhibit 93 admitted)

2 BY MR. INGRAM:

3 Q. Showing you 92.

4 A. That's just a close-up of the inside of the same  
5 bag.

6 Q. Fair and accurate?

7 A. Yes, it is.

8 MR. INGRAM: Move for the admission of those  
9 -- excuse me, 92.

10 MS. HILL: No objection.

11 THE COURT: So 92 is entered.

12 (Whereupon, Plaintiff's Exhibit 92 admitted)

13 MR. INGRAM: No further questions.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MS. HILL:

17 Q. Detective Cessford, were you tasked with the search  
18 of the vehicle or just the photographing of the vehicle  
19 after the search had been conducted?

20 A. Just photographing essentially while the search was  
21 being conducted.

22 Q. Okay. So you're photographing contemporaneous with  
23 the search?

24 A. Some of the photographs of the vehicles were -- the  
25 evidence -- all the evidence markers that are out were

1 already placed when I arrived on-scene or was assigned  
2 the task. So I just started photographing all the  
3 evidence markers and all the scene area overall and then  
4 trying to take pictures to scale and close-ups when  
5 available.

6 Q. Approximately what time did you arrive on-scene?

7 A. It was just very shortly after midnight. We  
8 responded from Ely, so.

9 Q. Okay.

10 MS. HILL: I don't think I have anything  
11 else, Judge.

12 THE COURT: Redirect.

13 MR. INGRAM: No, thank you.

14 THE COURT: May the witness be excused?

15 MR. INGRAM: Yes.

16 THE COURT: You are excused, thank you.

17 MR. CESSFORD: Thank you, ma'am.

18 THE COURT: You are still ordered, however,  
19 not to discuss the case or your testimony with any of  
20 the remaining witnesses, thank you.

21 MR. CESSFORD: Yes, ma'am, thank you.

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FILED

2019 JUL 15 PM 3:37

ELKO COUNTY DISTRICT COURT

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

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

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTHONY CHRIS ROBERT MARTINEZ,

Defendant.

**MOTION TO  
CONSOLIDATE**

COMES NOW the Defendant, ANTHONY CHRIS ROBERT MARTINEZ, by  
and through his attorney, KRISTON N. HILL, Elko County Public Defender, and moves  
the Court for an order consolidating Counts 10, 11, 12, 13, and 14 into a single count. This  
Motion is based on the pleadings and papers on file herein, the Points and Authorities, and  
the Affidavit attached hereto.

DATED this 15<sup>th</sup> day of July, 2019.

KRISTON N. HILL  
ELKO COUNTY PUBLIC DEFENDER  
569 Court Street  
Elko, NV 89801

By

KRISTON N. HILL  
Elko County Public Defender  
Nevada State Bar No. 11883

Elko County  
Public Defender



## POINTS AND AUTHORITIES

### **I. FACTS**

In the Criminal Information filed in this matter, the Defendant is charged with multiple counts, but those pertinent to the motion are counts 10-14 wherein Defendant is charged with Possession of a Firearm by Person Previously convicted of a Felony Offense pursuant to NRS 202.360(1). The offense is alleged to have happened on or about the 17<sup>th</sup> day of November, 2016, at or near the location of West Wendover, Nevada.

All five counts are based on a single incident which occurred in the city of West Wendover, Nevada on the same date and time. All of the firearms were located within the same motor vehicle which the State purports was driven by Mr. Martinez.

### **II. ARGUMENT**

To determine the appropriate unit of prosecution, the court must consider the statutory interpretation and substantive law. *Jackson v. State*, 128 Nev. 598, 612 (2012). The starting point is that statute's text. *Andrews v. State*, 134 Nev. Adv. Rep. 12, \_\_\_\_ (2018). Martinez is charged with Possession of a Firearm by Person Previously convicted of a Felony Offense pursuant to NRS 202.360(1).

NRS 202.360(1), in relevant parts, provides:

Ownership or possession of firearm by certain persons prohibited: penalties.

1. A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person:

...  
(b) Has been convicted of a felony in this State or any other state, or in any political subdivision thereof, or of a felony in violation of the laws of the United States of America, unless the person has received a pardon and the pardon does not restrict his or her right to bear arms;

///

///



1 NRS 202.360(3)(b) defines firearm as "any firearm that is loaded or unloaded and operable  
2 or inoperable." It is the defenses position that "any" is not clearly defined by statute and is  
3 therefore ambiguous.

4  
5 If the court finds that the plain language of the statute is ambiguous then it can  
6 "look beyond the statute's language to legislative history or other sources to determine  
7 the intent of the statute." *Cassinelli v. State*, 357 P.3d 349, 354 (2015). NRS 202.360  
8 was changed at least 12 times since its inception, but at no point in time (at least since  
9 1991) was the word "any" discussed. Several Nevada Revised Statutes contain the work  
10 "firearm", i.e. NRS 33.031, NRS 176.337, NRS 200.485, NRS 200.575, NRS 200.485,  
11 NRS 200.575, NRS 202.253, NRS 202.350, NRS 202.3657, and NRS 202.362, but none  
12 of them are helpful in understanding the appropriate unit of prosecution with respect to  
13 NRS 202.360.

14  
15  
16 Though not having anything to do with firearms, the Nevada Supreme Court has  
17 recently determined what was meant by "any" in the child pornography context. *See*  
18 *Custaneda v. State*, 373 P.3d 108 (2016). NRS 200.730 makes it unlawful to possess "any  
19 film, photograph or other visual presentation depicting a person under the age of 16 years  
20 as the subject of a sexual portrayal . . . ." The Court noted that *Webster's Third New*  
21 *International Dictionary 97 (1976)* contains many definitions of the word "any," including  
22 "(1) one; (2) one, some, or all regardless of quantity; (3) great, unmeasured, or unlimited in  
23 amount; (4) one or more; and (5) all." *Id.*, 373 P.3d at 111.

24  
25 In *Firestone v. State*, 120 Nev. 13 (2004), the appellant had been convicted of three  
26 counts (one count for each victim) of leaving the scene of an accident. The Nevada  
27 Supreme Court determined that the issue of whether the appellant committed one or three

1 offenses when he left the scene of the accident was one "of statutory interpretation." *Id.* at  
2 16, and held that "since there is only one accident, and one leaving, the statute allows only  
3 one charge for leaving the scene of an accident, regardless of the number of people  
4 involved." *Id.* at 18. "[A] court should normally presume that a legislature did not intend  
5 multiple punishments for the same offense absent a clear expression of legislative intent to  
6 the contrary." (Footnoted citation omitted.) Criminal statutes must be "strictly construed  
7 and resolved in favor of the defendant." (Footnoted citation omitted.) *Id.* at 16.

8  
9  
10 In *Wilson v. State*, 121 Nev. 345 (2005), the Court held that Wilson could not be  
11 convicted of four counts of use of a minor in the performance of a sexual act or sexual  
12 portrayal in violation of NRS 200.710 for taking four separate photographs of a child  
13 during one continuous incident. The Court determined that the purpose of the statute is "to  
14 criminalize the use of children in the production of child pornography, not to punish a  
15 defendant for multiple counts of production dictated by the number of images taken of one  
16 child, on one day, all at the same time. (Footnote omitted.) *Id.* at 358.

17  
18  
19 In conducting an inquiry into the legislative intent and purpose behind particular  
20 statutes, numerous courts have focused on the distinction between statutes making it  
21 unlawful to possess or commit "any" as opposed to those making it unlawful to possess or  
22 commit "a" particular item or act, often finding that use of the word "any" creates an  
23 ambiguity, and then applying the rule of lenity to resolve the case in favor of the criminal  
24 defendant. (See *Acey v. Commonwealth*, 511 S.E.2d 429 (Va. App. 1999), holding that an  
25 appellant that possessed more than one firearm can only be convicted of one offense under  
26 the Virginia statute making it unlawful for "any person who has been convicted of a felony  
27 . . . to knowingly and intentionally possess or transport any firearm;" *State v. Garriss*, 663  
28

1 S.E.2d 340 (N.C. App. 2008), finding North Carolina's statute making it unlawful for  
2 certain persons "to purchase, own, possess, or have in his custody, care, or control any  
3 firearm or any weapon of mass death and destruction" is ambiguous because "it could be  
4 construed as referring to a single firearm or multiple firearms" and, therefore, reducing  
5 multiple convictions for violation of that statute to a single conviction even though more  
6 than one firearm was possessed; *People v. Carter*, 821 N.E. 2d 233 (Ill. 2004) holding  
7 that Carter could only be convicted of one offense for possession of more than one firearm  
8 under the Illinois statute which used the word "any," (decision superseded by statute);  
9 *United States v. Dunford*, 148 F.3d 385 (4<sup>th</sup> Cir. 1998) and *United States v. Buckmeier*, 255  
10 F.3d 415 (7<sup>th</sup> Cir. 2001), finding that the "any" language of 18 U.S.C. 922(g) limits  
11 conviction to one offense under the statute even when more than one firearm possessed;  
12 *Bell v. United States*, 349 U.S. 81 (1952), holding that the simultaneous transportation of  
13 more than one woman is only one violation of the *Mann Act*, which prohibits the interstate  
14 or international transportation of "any woman or girl" for immoral purposes; *Amrein v.*  
15 *State*, 836 P.2d 862 (Wyoming 1992), holding that the appellant, who had been charged  
16 with nine counts of cruelty to animals for failure to feed "any animal" (six horses and three  
17 cows) and convicted of eight of those counts by the trial court, could be convicted of only  
18 one count under the statute.)

### 24 III. CONCLUSION

25 The Court in this case should follow the reasoning of *Castaneda* and other cases  
26 cited above, and find that the use of the word "any" in NRS 202.360(1) creates an  
27 ambiguity which must be resolved in favor of the defendant. The court should apply the  
28 rule of lenity in this case.

1 WHEREFORE, IT IS RESPECTFULLY PRAYED that the Court enter an order  
2 consolidating Counts 10-14 into a single count.

3 DATED this 15<sup>th</sup> day of July, 2019.

4  
5 KRISTON N. HILL,  
6 ELKO COUNTY PUBLIC DEFENDER  
7 569 Court Street  
8 Elko, NV 89801

9 By: 

10 KRISTON N. HILL  
11 Elko County Public Defender  
12 Nevada State Bar No. 11883  
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KRISTON N. HILL, being first duly sworn, deposes and says:

- KRISTON N. HILL

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**NOTICE OF MOTION**

A hearing on Defendant's **Motion to Consolidate Counts** is requested and a court reporter is requested. It is estimated that one half (1/2) hour should be set aside for hearing on this Motion.

DATED this 15<sup>th</sup> day of July, 2019.

KRISTON N. HILL  
ELKO COUNTY PUBLIC DEFENDER  
569 Court Street  
Elko, NV 89801

By: 

KRISTON N. HILL  
Elko County Public Defender  
Nevada State Bar No. 11883

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**CERTIFICATE OF SERVICE**

I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko County Public Defender's Office, and that on the 15<sup>th</sup> day of July, 2019, I served the foregoing document, by delivering or causing to be delivered a copy of said document, to the following:

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

HONORABLE NANCY PORTER  
DISTRICT COURT JUDGE  
571 Idaho Street  
Elko, NV 89801





DA

FILE

CASE NO. CR-FP-16-9651  
DEPT. NO. 1

2019 JUL 22 PM 3:08  
ELKO CO DISTRICT COURT  
CLERK \_\_\_\_\_ DEPUTY ll

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

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTHONY CHRIS ROBERT MARTINEZ,

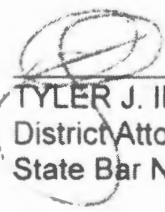
Defendant.

OPPOSITION TO  
MOTION TO CONSOLIDATE

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

Dated this 19 day of July, 2019.

By:



TYLER J. INGRAM  
District Attorney  
State Bar Number: 11819

1 POINTS AND AUTHORITIES

2 Understanding a statute's meaning starts with the statutory language, and  
3 interpretation does not go beyond that language unless there is an ambiguity. *State v.*  
4 *Lucerio*, 127 Nev. 92, 94, 249 P.3d 1226, 1228 (2011). Statutes should be given their plain  
5 meaning and must be construed as a whole and not be read in a way that would render  
6 words or phrases superfluous or make a provision nugatory. *Mangarella v. State*, 117 Nev.  
7 130, 133, 17 P.3d 989, 991 (2001).

8 NRS 202.360(1) provides that:

9 1. A person shall not own or have in his or her possession or under his or her  
10 custody or control any firearm if the person:

11 (b) Has been convicted of a felony in this State or any other State, or in any  
12 political subdivision thereof, or of a felony in violation of the laws of the United  
13 States of America, unless the person has received a pardon and the pardon  
14 does not restrict his or her right to bear arms.

15 A person who violates the provisions of this subsection is guilty of a Category B  
16 Felony and shall be punished by imprisonment in the state prison for a minimum term  
17 of not less than 1 year and a maximum term of not more than 6 years, and may be  
further punished by a fine of not more than \$5,000.

18 "Firearm" is defined as including "any firearm that is loaded or unloaded and operable  
19 or inoperable." NRS 202.360(3)(b).

20 The language of NRS 202.360 simply does not suggest that the Legislature intended  
21 that the State could only charge one count for all of the firearms in the felon's possession.  
22 The statute uses the singular language "any firearm" instead of the plural language any  
23 "firearms." This language is plain and unambiguous.

24 Here, five different firearms were seized during the same incident and all except one  
25 firearm was seized from inside the same motor vehicle. The other firearm was seized from  
26 outside of the vehicle and is the one that the State alleges the Defendant used to shoot at the  
27 officers. Defendant was charged with one felon-in-possession count for each firearm.

28 In Washington v. State, 132 Nev. Adv. Rep. 65 (2016), the Supreme Court of Nevada

1 upheld separate convictions for discharging a firearm at or into a structure for each bullet that  
2 was fired from the firearm. In analyzing the validity of those separate convictions, the Court  
3 said that it was not an issue of double jeopardy as Washington argued, but rather an issue of  
4 redundancy, which also includes "unit of prosecution." The Court wrote:

5 [A] claim that convictions are redundant stems from the legislation itself and the  
6 conclusion that it was not the legislative intent to separately punish multiple acts  
7 that occur close in time and make up one course of criminal conduct." *Wilson v.*  
8 *State*, 121 Nev. 345, 355, 114 P.3d 285, 292 (2005). Determining the unit of  
9 prosecution under a criminal statute thus involves a matter of statutory  
10 interpretation. *Jackson*, 128 Nev. at 612, 291 P.3d at 1273. "Statutory  
11 interpretation is a question of law subject to de novo review." *State v. Hupp*,  
12 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004). "We must attribute the plain  
13 meaning to a statute that is not ambiguous." *Id.* "An ambiguity arises where the  
14 statutory language lends itself to two or more reasonable interpretations." *Id.*

15 The legislation at issue here is NRS 202.285(1), which provides that "[a] person  
16 who willfully and maliciously discharges a firearm at or [into] any house,  
17 room, [or] apartment" is guilty of either a misdemeanor [807] or felony  
18 depending on whether the structure is abandoned or occupied. The unit of  
19 prosecution in NRS 202.285 does not turn on the word "firearm" but instead on  
20 the meaning of the verb "discharges." See *State v. Rasabout*, 2015 UT 12, 356  
21 P.3d 1258, 1263 (Utah 2015) (determining that the unit of prosecution for Utah's  
22 statute that prohibits the "discharge [of] any kind of dangerous weapon or  
23 firearm" is the term "discharge"). NRS Chapter 202 does not define the term  
24 discharge. However, the commonly understood meaning, in the context of a  
25 firearm, is the act of the bullet leaving the weapon. See *Discharge*, Merriam-  
26 Webster's Collegiate Dictionary (11th ed. 2011) (defining "discharge" as "go off,  
27 fire").

28 Our conclusion that the unit of prosecution is the act of the bullet leaving the  
weapon is supported by a similar statute, NRS 476.070(1), and by the statutory  
definition of a "firearm." NRS 476.070(1) provides that "[a]ny person who  
discharges any bullet, projectile or ammunition of any kind which is tracer or  
incendiary in nature on any grass, brush, forest or crop-covered land is guilty of a  
misdemeanor." Similarly, NRS 202.253(2) defines "[f]irearm" as "any device  
designed to be used as a weapon from which a projectile may be expelled  
through the barrel [by] the force of any explosion or other form of  
combustion." The use of single nouns—"bullet," "projectile," and "ammunition" in  
NRS 476.070(1) and "a projectile" in NRS 202.253(2)—demonstrates the fact  
that "discharges," as used in NRS 202.285(1), "contemplates a discrete shot or  
explosion." *Rasabout*, 356 P.3d at 1263-64 (examining Utah's statutory definition  
of a firearm and a handgun, which are defined, respectively, as "any device ...  
from which is expelled a projectile by action of an explosive" and "a firearm of  
any description ... from which any shot, bullet, or other missile can be

1 discharged" (alterations in original) (internal quotation marks omitted))

2 Id. at 806-807.

3 The Court in Washington, as quoted above, focused its attention on the verb  
4 discharges, rather than firearm. The State respectfully suggests that an analysis similar to  
5 the one used in Washington, and the plain meaning of the statute, should lead to the same  
6 conclusion that multiple counts of possession of a firearm as a felon for each firearm  
7 possessed is not redundant. The State requests that this Court interpret NRS 202 360 in that  
8 manner.

9 Dated this 11 day of July, 2019.

10 By: 

11 TYLER J. INGRAM  
12 District Attorney  
13 State Bar Number: 11819

14 **Unsworn Declaration In Support Of Opposition**  
15 **Pursuant to NRS 53.045**

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

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

24  
25 Dated this 11 day of July, 2019.

26 By: 

27 TYLER J. INGRAM  
28 District Attorney  
State Bar Number: 11819

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By delivering to:

KRISTON N HILL  
ATTORNEY AT LAW  
569 COURT STREET  
ELKO, NV 89801

DA# F-16-05218



FILED

Case No. CR-FP-16-9651

Dept. No. 1

2019 NOV 13 AM 10:26

2019 NOV 12 PM 4:20

RECEIVED  
ELKO CO. DISTRICT ATTORNEY

ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY jl

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

THE STATE OF NEVADA,

Plaintiff,

V.

ANTHONY CHRIS ROBERT MARTINEZ,

Defendant.

**ORDER GRANTING MOTION TO  
CONSOLIDATE COUNTS 10  
THROUGH 14**

On July 15, 2019, Anthony Chris Robert Martinez (hereinafter "Defendant") filed his Motion to Consolidate. On July 22, 2019, the State filed its Opposition to Motion to Consolidate. The motion was heard on August 7, 2019. The State of Nevada was represented by Tyler J. Ingram, Elko County District Attorney. Defendant was present and represented by Kriston N. Hill, Elko County Public Defender. Counsel argued the motion; no evidence was presented on the Motion to Consolidate.

Defendant was charged by Criminal Information on November 6, 2018, with, *inter alia*, five counts of possession of a firearm by a person previously convicted of a felony offense, a category B felony as defined by NRS 202.360(1). The State alleged that, "on or about the 17<sup>th</sup> day of November, 2016, at or near the location of West Wendover, within the County of Elko, and the State of Nevada...Defendant owned; and/or possessed, actually or constructively; and/or had custody of and/or control of a Glock handgun (Count 10), a Jiminez Arms rifle (Count 11), a Masterpiece Arms handgun (Count 12), a Romanian AK-47 (Count 13), and a Hawk, model 981 [shotgun]." The State further

Reviewed  
By TJJ  
Pgs 30

1 alleged that Defendant had previously been convicted of at least one felony criminal offense.

2 In Defendant's Motion to Consolidate, he argues that the five counts in the original Criminal  
3 Information should be consolidated into a single count because the word "any," as it refers to  
4 "firearm," makes NRS 202.360(1) ambiguous. Under these circumstances, Defendant argues, this  
5 Court should apply the rule of lenity by construing the statute in favor of Defendant and finding that  
6 possession of "any firearm," no matter how many, is a single unit of prosecution.

7 The State's Opposition to Motion to Consolidate argues that the singular language "any  
8 firearm," as opposed to "any firearms," is plain and unambiguous. The use of the singular form of the  
9 word "firearm" ensures that the legislature intended that the State charge offenders with one count per  
10 firearm. In support of its position, the State analogizes this case to the Nevada Supreme Court's  
11 decision in Washington v. State, 376 P.3d 802 (Nev. 2016), wherein the Court upheld the defendant's  
12 ten separate convictions for discharging a firearm at or into a structure for each bullet that was fired  
13 from the firearm. The analysis in Washington focused on the verb "discharge," which is found in NRS  
14 202.285(1), a statute entitled: "Discharging firearm at or into structure, vehicle, aircraft or watercraft."  
15 The Nevada Supreme Court harmonized this statute with NRS 476.070(1) "Discharge of tracer or  
16 incendiary ammunition within certain areas," NRS 202.253(2) Nevada's statutory definition of firearm,  
17 and Utah's statutory definition of firearm to conclude that "discharges a firearm" means the expulsion  
18 of a single bullet or projectile, for which an offender may be punished separately for each time a bullet  
19 leaves the firearm. Washington, 376 P.3d at 807.

20 To determine the appropriate unit of prosecution, the court must consider statutory interpretation  
21 and substantive law. Jackson v. State, 128 Nev. 598, 612, 291 P.3d 1274, 1278 (2012). The starting point  
22 is the statute's text. Andrews v. State, 412 P.3d 37, 38 (Nev. 2018). Defendant is charged under NRS  
23 202.360(1)(b) which provides, in pertinent part, "A person shall not own or have in his or her possession  
24 or under his or her custody or control *any firearm* if the person . . . (b) [h]as been convicted of a felony in  
25 this State or any other state . . ." (Italics added.) NRS 202.360(3)(b) states, "Firearm includes *any firearm*  
26 that is loaded or unloaded and operable or inoperable." (Italics added.)

1 NRS 202.360(1)(d)(1) prohibits possession of *any firearm* by a person who is subject to an  
2 extended order for protection against domestic violence. NRS 202.360(1)(f) prohibits possession of *any*  
3 *firearm* by a person who is otherwise prohibited by federal law from “having a *firearm*.” The inconsistent  
4 use of the words “any” and “a” within NRS 202.360(1) only adds to the confusion. Surely the legislature  
5 did not mean only in the circumstance of a person “otherwise prohibited by federal law” would the unit  
6 of prosecution be each firearm, while possession of “any firearm” would be treated differently (or not).

7 It is this Court’s conclusion that the plain text of NRS 202.360(1)(b) is ambiguous. Therefore,  
8 this Court must look to “related statutes, relevant legislative history, and prior judicial interpretations of  
9 related or comparable statutes by [Nevada appellate courts] or other courts.” If those tools of statutory  
10 interpretation don’t resolve the ambiguity, the rule of lenity must be applied. Castaneda v. State, 373  
11 P.3d 108, 111 (Nev. 2016). Several Nevada Revised Statutes, in addition to NRS 202.360, use the  
12 word “firearm” or “firearms:” NRS 33.031 (“any firearm,” “the firearm,” and “a firearm”); NRS  
13 176.337 (“a firearm”); NRS 200.485 (“any firearm” and “a firearm”); NRS 200.575 (“any firearm” and  
14 “a firearm”); NRS 202.253 (“Firearm means any device designed to be used as a weapon from which a  
15 projectile may be expelled through the barrel by the force of any explosion or other form of  
16 combustion.”); NRS 202.350 (“any . . . [p]istol, revolver or other firearm” and “a pistol, revolver or  
17 other firearm”); NRS 202.3657 (“a firearm,”); NRS 202.361 (“a firearm,” “any firearm,” “each  
18 firearm,” and “any such firearm”); and, NRS 202.362 (“any firearm,” “a firearm,” “the firearm,” and  
19 “firearms”). The use of “firearm” with so many descriptors is not helpful in determining the unit of  
20 prosecution of NRS 202.360(1)(b).

21 Legislative history is of no help either. NRS 202.360(1)(b) has changed several times over the  
22 years, but there is no explanation for the use of the word “any” that would help in determining the unit  
23 of prosecution.

24 No published opinion in Nevada has interpreted the phrase “any firearm.” An unpublished  
25 opinion, from 2014, interpreted the phrase “any firearm” in NRS 202.360(1)(a), which was then the  
26 statute prohibiting possession of “any firearm” by a convicted felon. However, because it was



1 unpublished, it cannot be cited as precedent. NRAP 36(c)(3). Two years later, in a published opinion,  
2 the Nevada Supreme Court decided Castaneda v. State. It has a thorough analysis of the word “any.”

3 In Castaneda, the Nevada Supreme Court analyzed the language of NRS 200.730 to determine  
4 the appropriate unit of prosecution. NRS 200.730 states that a person who “knowingly and willfully  
5 has in his or her possession . . . *any film, photograph or other visual presentation* depicting a person  
6 under the age of 16 years as the subject of a sexual portrayal” is guilty of a felony. (Italics added.) The  
7 Nevada Supreme Court found the word “any” to be ambiguous. Castaneda 373 P.3d at 111. The word  
8 “any” in NRS 202.360(1) proscribes possession of “any firearm,” the noun “firearm” written in the  
9 singular, just as the nouns “film, photograph or other visual presentation” are written in the singular in  
10 NRS 200.730.

11 In another unpublished opinion, which *can* be cited and has persuasive value, the Nevada  
12 Supreme Court considered the unit of prosecution of NRS 200.710(2), which makes it a felony to use  
13 “a minor [as] the subject of a sexual portrayal in a performance.” The Nevada Supreme Court held that  
14 the statute “plainly defines the proper unit of prosecution as each distinct minor who is the subject of a  
15 sexual portrayal in a performance.” The Court explained, “In contrast to the word ‘any,’ the term ‘a  
16 minor’ under NRS 200.710(2) plainly denotes the object of the offense in singular terms and  
17 necessarily precludes any contemplation of the plural.” Shue v. State, 407 P.3d 332, 336 (Nev. 2017).

18 In Andrews v. State, the Nevada Supreme Court further explained its decision in Castaneda:

19 *Castaneda* does not broadly hold that a statute’s use of the word ‘any’  
20 mandates that simultaneous acts of proscribed conduct can only result in  
21 one charge and conviction under the statute. Rather, this court narrowly  
22 tailored its holding in *Castaneda* such that the rule of lenity was applied to  
interpret NRS 200.730’s unit of prosecution favorably for the appellant  
after this court had concluded that other tools of statutory interpretation  
failed to resolve the ambiguities within NRS 200.730’s plain text.

23 Andrews, 412 P.3d 37, 39 (Nev. 2018). In Andrews, the Nevada Supreme Court did not apply the rule  
24 of lenity but found, after applying tools of statutory interpretation, including case law from other  
25 jurisdictions, that the Nevada Legislature intended in its use of the word “any” in NRS 453.3385, “to  
26 create a separate offense for each controlled substance simultaneously possessed by a person.”

1 Andrews, 412 P.3d at 42.

2 Because the Nevada Supreme Court has not resolved the ambiguity of NRS 202.360(1)(b),  
3 decisions from other jurisdictions must be considered. In Bell v. United States, 349 U.S. 81 (1955), the  
4 defendant pled guilty to two counts of violation of the Mann Act for transporting two women in  
5 interstate commerce for the purpose of prostitution. The Mann Act prohibited a person from  
6 knowingly transporting *any woman or girl* across state lines for prostitution, debauchery, or other  
7 immoral purpose. Bell, 349 U.S. at 82. The United States Supreme Court stated, "When Congress  
8 leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be  
9 resolved in favor of lenity." Id. at 83. The Court went on to hold that the transportation of two women  
10 was one criminal act. Id. at 84.

11 In People v. Kirk, 211 Cal. App. 3d 58, 259 Cal. Rptr. 44 (1989), the Court of Appeal of  
12 California for the Third Appellate District considered the unit of prosecution for a violation of a statute  
13 prohibiting possession of "*any instrument or weapon of the kind commonly known as a . . . sawed-off*  
14 *shotgun . . .*" Kirk, 211 Cal. App. 3d at 60. (Italics in original.) The appellate court considered other  
15 California cases, as well as cases from other jurisdictions, in its analysis of the use of the words "any"  
16 or "a" as modifiers. It concluded that the use of the article "any," as opposed to "a," does not  
17 necessarily define the unit of prosecution in singular terms. The defendant was given "the benefit of  
18 the statutory ambiguity." Id. at 65.

19 In People v. Carter, 213 Ill. 2d 295, 821 N.E. 2d 233 (2004), the Illinois Supreme Court  
20 considered the unit of prosecution of a statute that prohibited possession of "any firearm" by a  
21 convicted felon. The Court, citing Bell, found the language to be ambiguous and resolved the  
22 ambiguity in favor of the defendant by holding that the simultaneous possession of multiple firearms  
23 was a single offense. Carter, 821 N.E. 2d at 238-39. The statute was later changed by the Illinois  
24 Legislature to reflect the legislature's intent that each firearm is a single unit of prosecution.

25 In its analysis of the unit of prosecution issue, the Illinois Supreme Court cited United States v.  
26 Verrechia, 196 F.3d 294 (1<sup>st</sup> Cir. 1999). The Verrechia court considered the unit of prosecution in a

1 federal statute prohibiting the possession of "any firearm" by a felon. Verrechia, 196 F.3d at 297. The  
2 court found that it was the only federal circuit that had not determined the unit of prosecution under  
3 that statute or its predecessors. Id. It cited cases from all other federal circuits that had "all agreed that  
4 the simultaneous possession of multiple firearms . . . constitutes only one crime." Id. at 297-98  
5 (citations omitted). The court went on to rule that "simultaneous possession of multiple firearms in one  
6 place at one time, is only one violation" of the statute. Id. at 298.

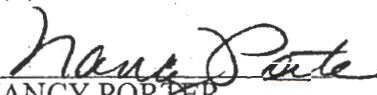
7 One of the cases cited in Verrechia is United States v. Wiga, 662 F.2d 1325 (9<sup>th</sup> Cir. 1981).  
8 Wiga involved two trials in the United States District Court for the District of Nevada for violations of  
9 two federal firearms statutes. The Wiga court restated "the general rule of only one unit of prosecution  
10 for simultaneous [firearms] possession . . . ." Wiga, 662 F.2d at 1336. However, that general rule  
11 applies only "absent a showing that the firearms were stored or acquired at different times and places."  
12 Id. (citations omitted). The undisputed evidence was that the two firearms were received and possessed  
13 in two different states on two different dates. Id. at 1337. Therefore, two charges i.e. two units of  
14 prosecution, were appropriate. Id.

15 This reference to time and place appears in the holding in Castaneda as well. In that case, the  
16 Nevada Supreme Court held that, consistent with the reasoning in two cases from other states "and the  
17 rule of lenity long established in our law, Castaneda's simultaneous possession at one time and place of  
18 15 images depicting child pornography constituted a single violation of NRS 200.730." Castaneda, 373  
19 P.3d at 115. The persuasive authority from all federal circuits and from the state cases cited above  
20 weighs in favor of applying the rule of lenity in this case. Therefore, the rule of lenity is applied in  
21 favor of Defendant.

22 The State's argument that the use of the singular form of "any firearm," as opposed to "any  
23 firearms," draws a distinction without a difference. The issue herein is the meaning of the word "any."  
24 The State's reliance on Washington does not resolve the ambiguity this Court, and many other courts,  
25 find in the words "any firearm." The phrase at issue in Washington was "discharges a firearm," which  
26 was determined to be unambiguous. Thus, the rule of lenity was not applicable.

1 Therefore, **IT IS HEREBY ORDERED** that the Motion to Consolidate is **GRANTED**.

2 DATED this 12 day of <sup>Nov.</sup>~~October~~, 2019.

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5 NANCY PORTER  
6 District Judge - Department 1  
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CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court,  
Department 1, and that on this 12<sup>th</sup> day of ~~October~~ <sup>November</sup>, 2019, I personally hand delivered a true file-  
stamped copy of the foregoing **ORDER GRANTING MOTION TO CONSOLIDATE COUNTS 10**  
**THROUGH 14** addressed to:

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