

Electronically Filed
Nov 30 2020 11:34 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Judgment of Conviction
Fourth Judicial District Court, Elko, Nevada
The Honorable Porter, District Judge

JEFF KUMP, PLLC
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Elko, NV 89801
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Volume 1

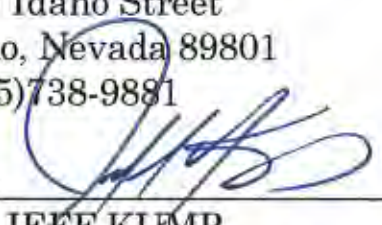
TABLE OF CONTENTS FOR
JOINT APPENDIX DOCKET NO. 81545

1. Amended Criminal Information (Pursuant to Plea Agreement)	
(filed Feb. 28, 2020).....	Vol. 1 page 119
2. Amended Plea Agreement (filed November 19, 2019). Vol. 1 page 108	
3. Case Appeal Statement (filed August 4, 2020).....	Vol. 1 page 130
4. Criminal Information (filed July 23, 2018).....	Vol. 1 page 4
5. Declaration of Probable Cause (filed July 19, 2018).....	Vol. 1 page 1
6. Judgment of Conviction (filed July 2, 2020).....	Vol. 1 page 124
7. Motion to Suppress (filed October 9, 2019).....	Vol. 1 page 67
8. Notice of Appeal (filed July 22, 2020).....	Vol. 1 page 128
9. Opposition to Motion to Suppress	
(filed October 29, 2019).....	Vol. 1 page 87
10. Order Denying Motion to Suppress (filed February 4,	
2020).....	Vol. 1 page 114
11. Plea Agreement (filed October, 9, 2020).....	Vol. 1 page 81
12. Transcript of Proceeding for Motion Hearing	
(filed October 15, 2020).....	Vol. 2 page 133

A. Exhibits.....	Vol. 2 page 207
13. Transcript of Proceeding for Preliminary Hearing	
(filed August 29, 2018).....	Vol. 1 page 12
A. Exhibits.....	Vol. 1 page 38

RESPECTFULLY SUBMITTED this 24th day of November 2020.

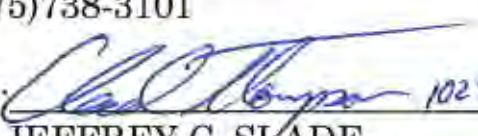
JEFF KUMP, PLLC
217 Idaho Street
Elko, Nevada 89801
(775)738-9881

By: 

JEFF KUMP
Nevada Bar Number 5691
kump.jjk@gmail.com

RESPECTFULLY SUBMITTED this 24th day of November 2020.

TYLER INGRAM
ELKO COUNTY
DISTRICT ATTORNEY
540 Idaho St.
Elko, Nevada 89801
(775)738-3101

By:  10248 For

JEFFREY C. SLADE
Deputy District Attorney
Nevada Bar Number 13249

AFFIDAVIT OF SERVICE

STATE OF NEVADA)
 : ss.
COUNTY OF ELKO)

I, JEFF KUMP, being first duly sworn, deposes and says that on the 25th day of November 2020, I served a copy of the foregoing JOINT APPENDIX by:

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

(b) mailing, postage paid at Elko, Nevada, one (1) copy to JAY LESLIE JIM, NDOC # 75570, Lovelock Correctional Center, 1200 Prison Rd, Lovelock, Nevada 89419.

DATED this 24th day of November 2020.



JEFF KUMP

DECLARATION OF PROBABLE CAUSE

FILED

ARRESTEE'S NAME: Jim, Jay Leslie

DOB:08/07/1983

SSN:

2010 JUL 19 PM 3:12

DATE OF ARREST:09/02/2017

TIME OF ARREST:1038 hours

LOCATION OF ARREST: 1002 W. Sage

ELKO CO DISTRICT COURT

TYPE OF ARREST: ☒ Without Arrest Warrant ☐ With Arrest Warrant ☐ Citizen's Arrest

If Domestic Violence is charged, indicate date and time that the battery occurred: Date: Time:

If DUI is charged, indicate the ARREST and CONVICTION dates for each prior DUI offense within 7 years:

Prior Arrest Date:

Prior Conviction Date:

NOC/NRS/ CITY/COUNTY	CHARGE	COUNTS	M/GM/F	BAIL	COURT
1. 453.338	Trafficking C/S	1	F	250,000	J
2. 453.336	Possession of C/S	1	F	20,000	J
3. 453.337	Possession of C/S for Sale	1	F	10,000	J
4. 202.360	Ex Felon in possession of a Firearm	1	F	20,000	J
5. 202.275	Possession of a stolen firearm	1	F	20,000	J
6. 482.545	Suspended/Revoked plate	1	M	355	J
7. 483.560	Driving while suspended	1	M	355	J
8. 485.187	Evidence of current insurance	1	M	740	J
9. 484D.495	Safety Belt	1	M	75	J

I, Officer Chandler, MADE THE ARREST OF THE ABOVE NAMED ARRESTEE AND HEREBY DECLARE, UNDER PENALTY OF PERJURY, THAT I HAVE KNOWLEDGE OF OR HAVE BEEN INFORMED OF THE FOLLOWING FACTS AND CIRCUMSTANCES WHICH SUPPORT THAT A CRIME OR CRIMES HAS OR WERE COMMITTED:

On September 1, 2017 I had responded to a call involving a silver Chevrolet Impala bearing Nevada license plate 474 MJP. The license was run through dispatch and found to be expired as of 07/19/2017 and suspended as of 12/28/2016. The person in possession of the vehicle was identified as Jay Jim. Jim stated he was in the process of purchasing the vehicle but was not driving it. Jay was informed of the registration status and again stated he was not intending to drive the vehicle.

On September 2, 2017 I was traveling east on West Sage street when I saw a silver Chevrolet Impala traveling in the same direction in front of me. I confirmed the plate to be Nevada 474 MJP. I initiated a traffic stop and the driver of the vehicle pulled into the Sage West Apartments, dispatch confirmed the registration to be suspended. I could see a bald male subject (later identified as Jay Jim) in the driver seat not wearing a seatbelt. When approached I explained to Jay that the registration was expired/suspended. He told me that he was just getting it home so that he could park it.

*FOR JUDGE'S USE ONLY

PROBABLE CAUSE FOR FURTHER DETENTION: ☐ FOUND ☐ NOT FOUND

DATED THIS _____ DAY OF _____ TIME: _____

(MAGISTRATE)

DECLARATION OF PROBABLE CAUSE

Jay was asked to provide his driver license, registration, and proof of insurance. Jay stated that he did not have a license, the registration or proof of insurance. Jay provided me with his name, date of birth, and social security number. Jay's information was run through central dispatch along with a request to look at his history for failure to appear. Jay showed multiple FTA's and his license in a pending status. Jay was then told he was being placed under arrest, he was placed in handcuffs that were checked for proper fit and double locked by me. Jay was searched incident to arrest and no further contraband was found on his person.

During an inventory of the Impala prior to it being towed two baggies containing a white crystalline substance were discovered between the driver seat and center console along with a Glock 9mm. the Glock serial number was run through dispatch and found to be stolen. The crystalline substance was taken to Elko Police Department by Sgt. Shelley where it was weighed and Narcotic Identification Kit tested. The crystalline substance tested presumptively positive for methamphetamine. The bags weighed 42.37 grams and 4.20 grams. A criminal history was conducted on Jay Jim and he was found to have at least one prior felony.

Due to the discoveries in the Impala it was sealed and transported to the Elko Police Department Secured Lot pending submission for a search warrant. Jay was transported to jail without further incident and booked on the above charges.

*FOR JUDGE'S USE ONLY

PROBABLE CAUSE FOR FURTHER DETENTION: ☐ FOUND ☐ NOT FOUND

DATED THIS _____ DAY OF _____ TIME: _____

(MAGISTRATE)

DECLARATION OF PROBABLE CAUSE

08-02-17

DATE:

DEPT: ID NO: 139

(PEACE OFFICER OR CITIZEN)

 #139

*FOR JUDGE'S USE ONLY

PROBABLE CAUSE FOR FURTHER DETENTION: ☐ FOUND ☐ NOT FOUND

DATED THIS _____ DAY OF _____ TIME: _____

(MAGISTRATE)

0003

1 CASE NO. CR-RP-17-6723

2 DEPT. NO. 1

FILED

2018 JUL 23 AM 10:06

CLERK DEPUTY COURT

CLERK DEPUTY RP

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

8 THE STATE OF NEVADA,

9 Plaintiff,

CRIMINAL

INFORMATION

10 vs.

11 JAY LESLIE JIM,

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 2nd day of September,
16 2017, at or near the location of Elko, within the County of Elko, and the State of Nevada,
17 committed a crime or crimes described as follows:

18 COUNT 1

19 **TRAFFICKING IN A SCHEDULE I CONTROLLED SUBSTANCE, A**
20 **CATEGORY A FELONY AS DEFINED BY NRS 453.3385.1(c). (NOC 51160)**

21 That the Defendant did knowingly or intentionally have in his actual or
22 constructive possession twenty-eight (28) grams or more of a controlled
23 substance, or a mixture containing a controlled substance, to-wit:
24 methamphetamine, a Schedule I Controlled Substance.
25
26
27
28

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

Page 1 of 8

0004

COUNT 2

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

That the Defendant willfully and unlawfully owned; and/or possessed, actually or constructively; and/or had custody and/or control of the following described firearm: Glock 9 millimeter.

Furthermore, that the Defendant, at the time of the ownership, possession, custody or control, of said firearm had been previously convicted of committing a felony criminal offense or offenses or had been previously convicted of domestic violence, as follows:

DATE CONVICTED/OFFENSE	COURT/STATE/CASE NUMBER
1-17-2003 / Battery with a Deadly Weapon, a Category B Felony	4 th Judicial District / Nevada / CR-FP-02-824
And/or	
5-14-2010 / Domestic Battery, a Misdemeanor	Elko Justice Court / Nevada / CR-2009-1910
And/or	
9-24-2010 / Uttering of a Forged Instrument a Category D Felony and Possession of a Controlled Substance a Category E Felony	4 th Judicial District / Nevada / CR-FO-10-0454
And/or	

3-02-2011 / Attempted Ex-felon in Possession of a Firearm, a Category C Felony	4 th Judicial District / Nevada / CR-FP-10-37
And/or	
3-02-2011 / Possession of a Controlled Substance, a Category E Felony	4 th Judicial District / Nevada / CR-FP-10-861
And/or	
11-05-2014 / Possession of a Controlled Substance, a Category E Felony	4 th Judicial District / Nevada / CR-FP-13-941

COUNT 3

**HABITUAL CRIMINAL, A CATEGORY A FELONY AS DEFINED BY NRS
207.010(1)(b). (NOC 53139)**

That said Defendant is accused of being an habitual criminal under NRS 207.010(1)(b), having been previously three times convicted of felonies in the State of Nevada and/or in a sister state, as follows:

DATE CONVICTED/OFFENSE	COURT/STATE/CASE NUMBER
1-17-2003 / Battery with a Deadly Weapon, a Category B Felony	4 th Judicial District / Nevada / CR-FP-02-824
And/or	

9-24-2010 / Uttering of a Forged Instrument a Category D Felony and Possession of a Controlled Substance a Category E Felony	4 th Judicial District / Nevada / CR-FO-10-0454
And/or	
3-02-2011 / Attempted Ex-felon in Possession of a Firearm, a Category C Felony	4 th Judicial District / Nevada / CR-FP-10-37
And/or	
3-02-2011 / Possession of a Controlled Substance, a Category E Felony	4 th Judicial District / Nevada / CR-FP-10-861
And/or	
11-05-2014 / Possession of a Controlled Substance, a Category E Felony	4 th Judicial District / Nevada / CR-FP-13-941

OR IN THE ALTERNATIVE TO COUNT 3

COUNT 4

**HABITUAL CRIMINAL, A CATEGORY B FELONY AS DEFINED BY NRS
207.010(1)(a). (NOC 53138)**

That said Defendant is accused of being an habitual criminal under NRS
207.010(1)(a), having been previously twice convicted of felonies in the State
of Nevada and/or a sister state, as follows:

DATE CONVICTED/OFFENSE	COURT/STATE/CASE NUMBER
1-17-2003 / Battery with a Deadly Weapon, a Category B Felony	4 th Judicial District / Nevada / CR-FP-02-824
And/or	
9-24-2010 / Uttering of a Forged Instrument a Category D Felony and Possession of a Controlled Substance a Category E Felony	4 th Judicial District / Nevada / CR-FO-10-0454
And/or	
3-02-2011 / Attempted Ex-felon in Possession of a Firearm, a Category C Felony	4 th Judicial District / Nevada / CR-FP-10-37
And/or	
3-02-2011 / Possession of a Controlled Substance, a Category E Felony	4 th Judicial District / Nevada / CR-FP-10-861
And/or	
11-05-2014 / Possession of a Controlled Substance, a Category E Felony	4 th Judicial District / Nevada / CR-FP-13-941

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

3
4 Dated: July 18, 2018.

5
6 TYLER J. INGRAM
7 Elko County District Attorney

8 
9 JEFFREY C. SLADE
10 Deputy District Attorney
11 State Bar Number: 13249

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

14
15 COMES NOW THE STATE OF NEVADA, by and through its Counsel of Record the
16 Elko County District Attorney's Office and, specifically by the Deputy District Attorney
17 assigned the above-entitled matter, who, by his signature hereunder, would declare to the
18 above-entitled Court that it is State's Counsel's estimate that 3 days, including jury selection,
19 should be set aside for the trial of this matter.

20
21 
22 JEFFREY C. SLADE
23 Deputy District Attorney
24 State Bar Number: 13249
25
26
27
28

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

3 JOSHUA CHANDLER: 1448 SILVER STREET ELKO, NV 89801-3924

4 JEREMY SHELLEY: 1448 SILVER STREET ELKO, NV 89801-3924

5 MICHAEL MARTIN SILVA: 775 WEST SILVER STREET ELKO, NV 89801

6 WASHOE COUNTY CRIME LAB - ANALYST: 911 PARR BLVD RENO, NV 89512

7 ZACHARY KEITH WASSOM: 665 BULLION RD # 35 ELKO, NV 89801
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By delivering to:

DIANA J. HILLEWAERT
ATTORNEY AT LAW
575 5TH STREET
ELKO, NV 89801


TESSA DEML
CASEWORKER

Page 8 of 8

Case No. EL-JC-CR-F-17-6723

2018 AUG 29 AM 10:10

IN THE ELKO TOWNSHIP JUSTICE COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO,
THE HONORABLE MASON E. SIMONS, JUSTICE OF THE PEACE

-oOo-

STATE OF NEVADA,

Plaintiff,

V.

PRELIMINARY HEARING

JAY LESLIE JIM,

Defendant.

COPY

TRANSCRIPT OF PROCEEDINGS

Tuesday, July 17, 2018
Elko, Nevada

APPEARANCES:

For the Plaintiff: Jeffrey Slade, Esq.
Elko County District Attorney's
Office
540 Court Street, 2nd Floor
Elko, NV 89801

For the Defendant: Diana Hillewaert, Esq.
Attorney at Law
575 5th Street
Elko, NV 89801

Transcription Service: Julie Rowan
Nevada Dictation
P.O. Box 4332
Carson City, NV 89702

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INDEX

WITNESSES ON BEHALF OF THE STATE OF NEVADA:	<u>Page</u>
JEREMY SHELLEY	
Direct by Mr. Slade.....	5
Cross by Ms. Hillewaert.....	12
Witness excused.....	18

WITNESSES ON BEHALF OF THE DEFENSE:

None

EXHIBITS:	<u>Marked</u>	<u>Admitted</u>
PX-1 Photo-Handgun/Baggie	3	8
PX-2 Photo-Handgun/Suspected Meth	3	10
PX-3 Judgement of Conviction	3	12
PX-4 Judgement of Conviction	3	12
PX-5 Judgement of Conviction	3	12
PX-6 Judgement of Conviction	3	12
PX-7 Judgement of Conviction	3	12

1 THE COURT: If the Clerk will place us on the
2 record then. The time is 1:47 p.m., the date,
3 July 17th, 2018. We're on Case No. EL-JC-CR-F-17-6723.
4 This is a Justice Court matter, State of Nevada versus
5 Jay Leslie Jim.

6 We're here on a complaint filed
7 September 12th, 2017, which charges the following counts
8 as it relates to Mr. Jim: Count 1, trafficking in a
9 Schedule I controlled substance; Count 2, possession of
10 a firearm by a person previously convicted of a felony
11 offense; Count 3, habitual criminal; or in the
12 alternative to Count 3, Count 4, habitual criminal.

13 We do have the Defendant, Mr. Jim, here in
14 the courtroom, he's in custody, along with his counsel,
15 Ms. Hillewaert. We do have Mr. Slade here from the
16 District Attorney's Office. This is the time set for a
17 preliminary hearing on the aforementioned complaint.

18 Are the parties ready to proceed?

19 MR. SLADE: Your Honor, the State does have a
20 couple exhibits to mark and to make a photocopy of a
21 report for Defense counsel.

22 THE COURT: Okay.

23 MR. SLADE: Thank you.

24 THE COURT: Go ahead.

25 (Whereupon, Plaintiff's Exhibits 1, 2, 3, 4,

1 5, 6, and 7 marked)

2 THE COURT: Are we now ready to proceed,
3 Mr. Slade?

4 MR. SLADE: The State is, Your Honor.

5 THE COURT: Ms. Hillewaert, are you ready to
6 proceed?

7 MS. HILLEWAERT: We are.

8 THE COURT: Okay. Any witnesses to name then
9 at this time, Mr. Slade?

10 MR. SLADE: Just one witness, Your Honor,
11 Sergeant Jeremy Shelley, S-H-E-L-L-E-Y.

12 THE COURT: Any additional witnesses to name
13 from the Defense?

14 MS. HILLEWAERT: Not at this point, Your
15 Honor.

16 THE COURT: Okay. Officer Shelley, if I can
17 get you to come up to the stand then at this time. Step
18 over here, face me, raise your right hand to be sworn.

19 Do you solemnly swear the testimony you'll
20 provide to this Court is the truth, the whole truth, and
21 nothing but the truth, so help you God?

22 MR. SHELLEY: Yes.

23 THE COURT: Go ahead and have a seat there if
24 you would. Please scoot up as close as you can to that
25 microphone there. Please state your full name and then

1 spell both your first and your last name for the record,
2 please.

3 THE WITNESS: Jeremy Robert Shelley;
4 J-E-R-E-M-Y, S-H-E-L-L-E-Y.

5 THE COURT: Thank you. Go ahead, Mr. Slade.

6 JEREMY SHELLEY

7 (Sworn as a witness, testified as follows)

8 DIRECT EXAMINATION

9 BY MR. SLADE:

10 Q. Sergeant, I'd like to draw your attention to
11 September 2nd of 2017. In relation to this case, what
12 were you doing?

13 A. I responded to back up Officer Chandler on a traffic
14 stop.

15 Q. In what county and what state was that in?

16 A. Elko County, State of Nevada.

17 Q. Did you discover who the object of the stop was?

18 A. Yes.

19 Q. Who was that?

20 A. Jay Jim.

21 Q. Do you see that person in court today?

22 A. Yes.

23 Q. Will you identify where he is seated and an item of
24 clothing he is wearing.

25 A. A red over white shirt seated next to

1 Ms. Hillewaert.

2 MR. SLADE: May the record reflect the
3 witness has identified the Defendant.

4 THE COURT: The record will so reflect.

5 BY MR. SLADE:

6 Q. For state of mind purposes, you said this was a
7 traffic stop?

8 A. Yes.

9 Q. What was going on?

10 A. The previous day we had had contact with Mr. Jim at
11 the Red Lion where somebody reported that they believed
12 a car was being stolen or attempted to be stolen. At
13 that time, we had contact with him in regards to that
14 vehicle, which ultimately was the vehicle Officer
15 Chandler stopped. At that time, the vehicle wasn't
16 reported stolen. Mr. Jim claimed that he was purchasing
17 the vehicle. He was warned at that time that the plates
18 were suspended and that if he drove the vehicle, then
19 enforcement action would be taken. And we left at that
20 point, and that was the previous day.

21 Q. Okay. So bring us forward to the 2nd of September
22 now.

23 A. Based on the fact that Mr. Jim was around the
24 vehicle the previous day, when Officer Chandler made the
25 stop, I responded to back him up, which is common to

1 back up another officer on a traffic stop.

2 Q. You've identified the Defendant as being the subject
3 of this stop on the 2nd.

4 Was he the driver?

5 A. Yes, he was.

6 Q. How many other occupants did you observe?

7 A. None.

8 Q. What happened after you arrived on-scene?

9 A. Officer Chandler discussed the reasons for the stop,
10 made the decision to arrest Mr. Jim for the traffic
11 violations based on the previous warning and his failure
12 to appear history.

13 Q. And what was your part of the stop?

14 A. At that point, I called for a tow truck and began an
15 impound inventory of the vehicle.

16 Q. Did you discover anything during your inventory?

17 A. I did.

18 Q. What was that?

19 A. As I leaned in the driver's side, I don't recall if
20 I was turning the vehicle off or getting the keys, I saw
21 between the driver's seat and the center console the
22 handle of a Glock handgun.

23 Q. Did you notice anything else within proximity of
24 that gun?

25 A. Ultimately, there was two baggies that contained a

1 crystal substance located right next to the handgun.

2 Q. Was anything done to preserve the way these objects
3 appeared at the location in which they were found?

4 A. Yes, I had Officer Chandler get his camera, take
5 some photographs in place, as well as after they had
6 been moved.

7 MR. SLADE: Permission to approach the
8 witness, Your Honor.

9 THE COURT: Go ahead.

10 MR. SLADE: May the record reflect I'm
11 showing to Defense counsel what has been marked, but not
12 yet admitted, as State's Exhibit 1. And may the record
13 reflect I'm handing to the witness what has been marked,
14 but not yet admitted, as State's Exhibit 1.

15 BY MR. SLADE:

16 Q. Sergeant, what is that?

17 A. That is a picture of the Glock handgun and the
18 plastic baggie in place between the driver's side --
19 driver's seat and the center console.

20 MR. SLADE: At this time, the State moves for
21 the admission of State's Exhibit 1.

22 THE COURT: Any objection?

23 MS. HILLEWAERT: No.

24 THE COURT: State's Exhibit 1 will be
25 admitted at this time then without objection.

1 (Whereupon, Plaintiff's Exhibit 1 admitted)

2 BY MR. SLADE:

3 Q. Were those items removed from where you found them?

4 A. Yes.

5 Q. What was done with these items?

6 A. Ultimately -- well, they were removed, photographed
7 again, and then I secured them in my patrol vehicle to
8 later process them at the Police Department evidence
9 lab.

10 Q. You testified to some baggies and a gun.

11 A. Yes.

12 Q. What was in the baggies?

13 A. I NIK tested both baggies that contained -- it was
14 presumptively positive for methamphetamine.

15 Q. Other than NIK testing the substances, did you do
16 anything else with these substances?

17 A. I weighed them.

18 Q. What is the difference between gross and net weight?

19 A. A gross weight would be including the packaging
20 material. A net weight would be just the substance
21 within the baggie.

22 Q. Did you obtain the net weight of these substances?

23 A. Yes, I did.

24 Q. Do you recall what the net weight was?

25 A. The larger baggie was 42 point something grams. The

1 smaller baggie was just over 4 grams. I don't recall
2 the exact numbers at this time.

3 MR. SLADE: Permission to approach?

4 THE COURT: Go ahead.

5 MR. SLADE: May the record reflect I'm
6 showing to Defense counsel what has not yet been
7 admitted, but marked, as State's Exhibit 2. May the
8 record reflect I'm handing to the witness what has been
9 marked, but not yet admitted, as State's Exhibit 2.

10 BY MR. SLADE:

11 Q. Sergeant, would you please tell us what these are,

12 A. The top picture is the two baggies on the seat of
13 the car after they had been removed. The bottom picture
14 is the baggies, as well as the gun that would be in our
15 evidence processing room.

16 Q. Are these fair and accurate depictions of the
17 evidence you seized that day?

18 A. Yes.

19 MR. SLADE: The State now moves for the
20 admission of State's Exhibit 2.

21 THE COURT: Any objection to the admission of
22 State's Exhibit No. 2?

23 MS. HILLEWAERT: No objection.

24 THE COURT: Hearing none, State's 2 will be
25 admitted at this time.

1 (Whereupon, Plaintiff's Exhibit 2 admitted)

2 MR. SLADE: Sergeant, would you hand those
3 exhibits to the Court, please.

4 THE COURT: Thank you.

5 BY MR. SLADE:

6 Q. What type of gun was it you said that you
7 discovered?

8 A. It was a Glock. I believe it was a Model 19, but
9 I'm not positive on that.

10 MR. SLADE: At this time, Your Honor, the
11 State has one, two, three, four, five certified copies
12 of Judgment of Convictions of felony convictions.

13 THE COURT: Okay.

14 MR. SLADE: Permission to show these to
15 Defense counsel.

16 THE COURT: Go ahead.

17 MR. SLADE: Thank you.

18 Permission to approach?

19 THE COURT: Go ahead.

20 MR. SLADE: Your Honor, at this time, the
21 State moves for the admission of these exhibits. I
22 believe they're 3, 4, 5, 6, and 7, which should all
23 reflect certified copies of Judgment of Convictions of
24 the Defendant.

25 THE COURT: Okay. Did you wish to be heard,

1 Ms. Hillewaert?

2 MS. HILLEWAERT: No, Your Honor, I don't
3 object.

4 THE COURT: Okay. So those five exhibits,
5 which are numbered 3 through 7, will be admitted at this
6 time without objection.

7 (Whereupon, Plaintiff's Exhibits 3, 4, 5, 6,
8 and 7 admitted)

9 MR. SLADE: Thank you, Your Honor. At this
10 time, the State has no further questions for the
11 witness.

12 THE COURT: Okay. Cross-examination,
13 Ms. Hillewaert.

14 MS. HILLEWAERT: Thank you.

15 CROSS-EXAMINATION

16 BY MS. HILLEWAERT:

17 Q. So how long have you been a police officer?

18 A. Almost 14 years.

19 Q. In Elko?

20 A. And with the City and some time with the County as
21 well.

22 Q. Okay. In those 14 years, have you had other
23 occasion to come across Mr. Jim?

24 A. I believe I have,

25 Q. Did you know -- on the 1st of September, when you

1 said you saw him the first time, the day before you
2 arrested him, did you know that was Mr. Jim at that
3 time, Jay Jim?

4 A. Yes, I did.

5 Q. And how did you know that?

6 A. I recognized him. I don't recall if he was ID'd by
7 the other officers on-scene or not.

8 Q. When you see Mr. Jim, do you recognize him as a past
9 criminal when you -- does that come to mind when you see
10 him?

11 A. His past history does come to mind, yes.

12 Q. Okay. And what do you know his past history to be?

13 A. I knew that he'd just been released from prison.

14 Q. For what?

15 A. I'm not aware of exactly what the charges were.

16 Q. Okay. And so you said something about you arrested
17 him partly because of his FTA history?

18 A. The other officer made the decision to arrest him
19 based on that, yes, as part of that.

20 Q. And why would that be an arrestable offense?

21 A. Well, that's not an arrestable offense, but a
22 traffic violation for somebody that has a history of not
23 paying citations, is one that we often arrest on.

24 Q. And is that what you found out was that Mr. Jim had
25 a history of not paying citations?

1 A. That's what the officer found, yes.

2 Q. But you didn't find that?

3 A. I wasn't the arresting officer.

4 Q. Did you verify that at any point?

5 A. The other officer verified that through dispatch.

6 Q. You originally said that you were called on the

7 September 1st because of a possible stolen vehicle?

8 A. Somebody reported -- I believe it appeared that

9 Mr. Jim was attempting to hot-wire the vehicle. There

10 was something with trying to start it, and somebody, and

11 I don't know who it was, called that in.

12 Q. And was Mr. Jim arrested for attempting to steal a

13 vehicle?

14 A. No.

15 Q. Why not?

16 A. Because the vehicle was not reported stolen.

17 Q. Okay. But was he arrested for attempting to steal a

18 vehicle by hot-wiring?

19 A. No.

20 Q. Okay. Did you not think that that was happening at

21 that time?

22 A. Mr. Jim claimed that he was purchasing the vehicle.

23 We attempted to contact the registered owner and were

24 unable to confirm whether the vehicle had been stolen or

25 not. At that point, there was nothing that we could do

1 any further.

2 Q. Okay. Who was the first person -- which officer,
3 you or the arresting officer, was the person who saw the
4 vehicle first on the 2nd, for the first time on the 2nd?

5 A. Officer Chandler is who made the traffic stop.

6 Q. And he recognized that vehicle from the previous
7 day?

8 A. Yes.

9 Q. So he was also on the stop the previous day?

10 A. Yes.

11 Q. Both of you?

12 A. Yes.

13 Q. Okay. And where were you located when you got the
14 call on the 2nd?

15 A. I have no idea.

16 Q. You came from somebody to get -- somewhere to get
17 there, right?

18 A. I was in the City of Elko somewhere.

19 Q. Okay. And where was the car located when you
20 arrived on-scene?

21 A. It was parked -- well, pulled into the 1002 West
22 Sage apartment complex.

23 Q. And what was happening at the time you arrived
24 on-scene?

25 A. I believe Officer Chandler was -- honestly, I can't

1 recall.

2 Q. You don't know what was happening?

3 A. Not when I arrived on-scene. I don't know exactly
4 what was happening.

5 Q. Do you know where Mr. Jim was?

6 A. Not offhand, I don't.

7 Q. So you don't know if he had already been arrested?

8 A. He had not been arrested when I arrived --

9 Q. Was he in a police vehicle?

10 A. -- but I don't know where he was.

11 No, he was not.

12 Q. So he was standing outside the vehicle?

13 A. I don't know where he was.

14 Q. He wasn't running?

15 A. Well, no, he wasn't running.

16 Q. Okay. Do you know if there's a written policy on
17 tow inventories with the Police Department for the City
18 of Elko?

19 A. I don't know exactly what the policy on that is.

20 Q. Have you read it?

21 A. I have in the past, but I couldn't recite it for
22 you.

23 Q. When's the last time you read it?

24 A. I don't know.

25 Q. But that policy would be fairly easy to find if

1 asked for?

2 A. I would imagine.

3 Q. And do you know if you read that while you were with
4 the Police Department or you read that while you were
5 with the Sheriff's Department?

6 A. Well, the Police Department has a very different
7 policy on towing vehicles than the Sheriff's Office
8 does.

9 Q. Meaning? That didn't quite answer my question.

10 A. I have read both policies.

11 Q. Okay. Did you ask Mr. Jim if the drugs you found in
12 the car belonged to him?

13 A. No, I didn't.

14 Q. Did you ask him if the gun you found in the car
15 belonged to him?

16 A. No.

17 Q. But you knew that car did not belong to him.

18 A. He was the driver of the vehicle.

19 Q. But you knew the car did not belong to him, correct?

20 A. Correct.

21 Q. So I need to go back to the tow inventory for a
22 second, when you were doing the tow inventory.

23 Who began the tow inventory?

24 A. I did.

25 Q. Okay. So when's the last time you read the

1 inventory policy?

2 A. I don't recall.

3 Q. And so if you haven't read it recently, are you sure
4 it hasn't changed, that there isn't -- that you're doing
5 it correctly?

6 A. Yes, I'm sure.

7 Q. Okay.

8 MS. HILLEWAERT: I have no more questions.

9 THE COURT: Redirect, Mr. Slade.

10 MR. SLADE: I have nothing based on that,
11 Your Honor.

12 THE COURT: Okay. You can step down, sir,
13 thank you.

14 Anything else to present from the State at
15 this time?

16 MR. SLADE: No, Your Honor.

17 THE COURT: The State rests then?

18 MR. SLADE: Yes.

19 THE COURT: Okay. Anything to present from
20 the Defense?

21 MS. HILLEWAERT: No, Your Honor.

22 THE COURT: Okay. Move on to argument,
23 Mr. Slade.

24 MR. SLADE: The State would submit on initial
25 argument, Your Honor.

1 THE COURT: Any argument, Ms. Hillewaert?

2 MS. HILLEWAERT: No, we'd submit, Your Honor.

3 THE COURT: Okay. Okay, based on the
4 testimony and evidence that was adduced at this
5 preliminary examination, it's the finding of this Court
6 that there has been a showing of at least slight or
7 marginal evidence, the evidentiary standard at this
8 particular juncture, that on or about the 2nd day of
9 September, 2017, at or near the location of Elko, here
10 in the County of Elko, State of Nevada, excuse me, that
11 the Defendant, Jay Leslie Jim, committed the following
12 described criminal offenses:

13 Count 1, trafficking in a Schedule I
14 controlled substance, a category A felony, as defined by
15 NRS 453.3385.1(c); Count 2, possession of a firearm by a
16 person previously convicted of a felony offense, a
17 category B felony, as defined by NRS 202.360.1; Count 3,
18 habitual criminal, a category A felony, as defined by
19 NRS 207.010, subsection (1)(b); or in the alternative to
20 Count 3, Count 4, habitual criminal, a category B
21 felony, as defined by NRS 207.010, subsection (1)(a).

22 Before I order this matter bound over to the
23 Fourth Judicial District Court for further proceedings,
24 is there anything further to be addressed by this Court
25 at this time, Mr. Slade?

1 MR. SLADE: Not for the State, Your Honor.

2 THE COURT: Anything else to be addressed by
3 this Court, Ms. Hillewaert?

4 MS. HILLEWAERT: Actually, Your Honor, there
5 is. I was under the impression, and correct me if I'm
6 wrong, but I believe the habitual is an enhancement
7 that's made upstairs. I don't know that it has to be
8 run through a preliminary hearing.

9 THE COURT: Did you want to be heard on that,
10 Mr. Slade?

11 MR. SLADE: Your Honor, the State can add
12 this charge at any point before sentencing. In this
13 case, to ensure ample notice, the State charged it from
14 the get-go, so.

15 THE COURT: Okay. Any other questions about
16 that, Ms. Hillewaert?

17 MS. HILLEWAERT: No.

18 THE COURT: Anything else we need to address
19 before we adjourn?

20 MR. SLADE: Not for the State.

21 THE COURT: Anything else, Ms. Hillewaert?

22 MS. HILLEWAERT: No.

23 THE COURT: Okay. If there's nothing further
24 then, this matter will be bound over to the Fourth
25 Judicial District Court for further proceedings. The

1 Defendant is remanded back into the custody of the Elko
2 County Sheriff's Office pending the possible posting of
3 bail, and this matter stands adjourned.

4 Good luck to you, Mr. Jim.

5 (Whereupon, proceeding concluded)
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STATE OF NEVADA)
) ss.
COUNTY OF CARSON)

I, Julie Rowan, Transcriptionist for the Elko Township Justice Court of the State of Nevada, in and for the County of Elko, have transcribed the proceedings held in the above-entitled Court on July 17, 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 16th day of August, 2018.


Julie Rowan

1 1 [a] - 3:8, 3:25, 8:12, 8:14, 8:21, 8:24, 9:1, 19:13 1)(a) [i] - 19:21 1)(b) [i] - 19:19 10 [i] - 2:10 1002 [i] - 15:21 12 [a] - 2:4, 2:10, 2:11, 2:11, 2:12, 2:12 12th [i] - 3:7 14 [a] - 12:18, 12:22 17 [i] - 1:14 17th [i] - 3:3 18 [i] - 2:4 19 [i] - 11:8 1:47 [i] - 3:2 1st [a] - 12:25, 14:7	7 7 [a] - 4:1, 11:22, 12:5, 12:8 8 8 [i] - 2:9 89702 [i] - 1:24 89801 [a] - 1:19, 1:21 A accurate [i] - 10:16 action [i] - 6:19 add [i] - 20:11 additional [i] - 4:12 address [i] - 20:18 addressed [a] - 19:24, 20:2 adduced [i] - 19:4 adjourn [i] - 20:19 adjourned [i] - 21:3 admission [a] - 8:21, 10:20, 10:21, 11:21 Admitted [i] - 2:8 admitted [i] - 8:12, 8:14, 8:25, 9:1, 10:7, 10:9, 10:25, 11:1, 12:5, 12:8 aftermentioned [i] - 3:17 ahead [i] - 3:24, 4:23, 5:5, 8:9, 10:4, 11:16, 11:19 almost [i] - 12:18 alternative [a] - 3:12, 19:19 ample [i] - 20:13 AND [i] - 1:4 answer [i] - 17:9 apartment [i] - 15:22 appear [i] - 7:12 APPEARANCES [i] - 1:16 appeared [a] - 8:3, 14:8 approach [a] - 8:7, 10:3, 11:18 argument [a] - 18:22, 18:25, 19:1 arrest [a] - 7:10, 13:18, 13:23 arrestable [a] - 13:20, 13:21 arrested [a] - 13:2, 13:16, 14:12, 14:17, 16:7, 16:8 arresting [a] - 14:3, 15:3 arrived [a] - 7:8,	15:20, 15:23, 16:3, 16:8 attempted [a] - 6:12, 14:23 attempting [a] - 14:9, 14:12, 14:17 attention [i] - 5:10 Attorney [i] - 1:20 Attorney's [a] - 1:17, 3:18 aware [i] - 13:15 B baggie [a] - 8:18, 9:21, 9:25, 10:1 baggies [a] - 7:25, 9:10, 9:12, 9:13, 10:12, 10:14 ball [i] - 21:3 based [a] - 6:23, 7:11, 13:19, 18:10, 19:3 began [a] - 7:14, 17:23 BEHALF [a] - 2:2, 2:6 belong [a] - 17:17, 17:19 belonged [a] - 17:12, 17:15 between [a] - 7:21, 8:18, 9:18 bottom [i] - 10:13 bound [a] - 19:22, 20:24 Box [i] - 1:23 bring [i] - 6:21 BY [a] - 5:9, 6:5, 8:15, 9:2, 10:10, 11:5, 12:16	13:15 citations [a] - 13:23, 13:25 City [a] - 1:24, 12:20, 15:18, 16:17 claimed [a] - 6:16, 14:22 Clerk [i] - 3:1 close [i] - 4:24 clothing [i] - 5:24 committed [i] - 19:11 common [i] - 6:25 complaint [a] - 3:6, 3:17 complex [i] - 15:22 concluded [i] - 21:5 confirm [i] - 14:24 console [a] - 7:21, 8:19 contact [a] - 6:10, 6:13, 14:23 contained [a] - 7:25, 9:13 controlled [a] - 3:9, 19:14 convicted [a] - 3:10, 19:16 Conviction [a] - 2:10, 2:11, 2:11, 2:12, 2:12 Convictions [a] - 11:12, 11:23 convictions [i] - 11:12 copies [a] - 11:11, 11:23 correct [a] - 17:19, 17:20, 20:5 correctly [i] - 18:5 counsel [a] - 3:14, 3:21, 8:11, 10:6, 11:15 Count [i] - 3:8, 3:9, 3:11, 3:12, 19:13, 19:15, 19:17, 19:20 counts [i] - 3:7 COUNTY [i] - 1:4 county [i] - 5:15 County [a] - 1:17, 5:16, 12:20, 19:10, 21:2 couple [i] - 3:20 court [a] - 4:20, 5:21, 19:5, 19:24, 20:3 COURT [a] - 1:3, 3:1, 3:22, 3:24, 4:2, 4:5, 4:8, 4:12, 4:16, 4:23, 5:5, 6:4, 8:9, 8:22, 8:24, 10:4, 10:21, 10:24, 11:4, 11:13,	11:16, 11:19, 11:25, 12:4, 12:12, 18:9, 18:12, 18:17, 16:19, 18:22, 19:1, 19:3, 20:2, 20:9, 20:15, 20:18, 20:21, 20:23 Court [a] - 1:18, 3:4, 11:3, 19:23, 20:25 courtroom [i] - 3:14 criminal [a] - 3:11, 3:12, 13:9, 19:12, 19:18, 19:20 cross [i] - 12:12 Cross [i] - 2:4 CROSS [i] - 12:15 cross-examination [i] - 12:12 CROSS-EXAMINATION [i] - 12:15 crystal [i] - 8:1 custody [a] - 3:14, 21:1
2 2 [a] - 3:9, 3:25, 10:7, 10:9, 10:20, 10:22, 10:24, 11:1, 19:15 2017 [a] - 3:7, 5:11, 19:9 2018 [a] - 1:14, 3:3 202.360.1 [i] - 19:17 207.010 [a] - 19:19, 19:21 2nd [a] - 1:18, 5:11, 6:21, 7:3, 15:4, 15:14, 19:8				
3 3 [i] - 2:9, 2:10, 2:10, 2:11, 2:11, 2:12, 2:12, 3:11, 3:12, 3:25, 11:22, 12:5, 12:7, 19:17, 19:20				
4 4 [a] - 3:12, 3:25, 10:1, 11:22, 12:7, 19:20 42 [i] - 9:25 4332 [i] - 1:23 453.3385.1(c) [i] - 19:15		C camera [i] - 8:4 car [a] - 6:12, 10:13, 15:19, 17:12, 17:14, 17:17, 17:19 Carson [i] - 1:24 Case [a] - 1:1, 3:3 case [a] - 5:11, 20:13 category [a] - 19:14, 19:17, 19:18, 19:20 center [a] - 7:21, 8:19 certified [a] - 11:11, 11:23 Chandler [a] - 5:13, 6:15, 6:24, 7:9, 8:4, 15:5, 15:25 changed [i] - 18:4 charge [i] - 20:12 charged [a] - 20:13 charges [a] - 3:7,		
5 5 [a] - 2:3, 4:1, 11:22, 12:7 540 [i] - 1:18 575 [i] - 1:21 5th [i] - 1:21				
6 6 [a] - 4:1, 11:22, 12:7				D date [i] - 3:2 decision [a] - 7:10, 13:18 Defendant [a] - 1:11, 1:20, 3:13, 6:3, 7:2, 11:24, 19:11, 21:1 DEFENSE [i] - 2:6 Defense [a] - 3:21, 4:13, 8:11, 10:6, 11:15, 18:20 defined [a] - 19:14, 19:17, 19:18, 19:21 Department [a] - 9:8, 16:17, 17:4, 17:5, 17:6 depictions [i] - 10:16 described [i] - 19:12 Diana [i] - 1:20 Dictation [i] - 1:23 difference [i] - 9:18 different [i] - 17:6 DIRECT [i] - 5:8 direct [i] - 2:3 discover [a] - 5:17, 7:16 discovered [i] - 11:7 discussed [i] - 7:9 dispatch [i] - 14:5 District [i] - 1:17, 3:16, 19:23, 20:25 done [a] - 8:2, 9:5 down [i] - 18:12 draw [i] - 5:10 driver [a] - 7:4, 17:18

driver's [4] - 7:19, 7:21, 8:18, 8:19 drove [1] - 6:18 drugs [1] - 17:11 during [1] - 7:16 E easy [1] - 16:25 EL-JC-CR-F-17-6723 [2] - 1:1, 3:3 ELKO [2] - 1:3, 1:4 Elko [1] - 1:14, 1:17, 1:19, 1:21, 5:16, 12:19, 15:18, 16:18, 19:9, 19:10, 21:1 enforcement [1] - 6:19 enhancement [1] - 20:6 ensure [1] - 20:13 Esq [2] - 1:17, 1:20 evidence [5] - 9:8, 10:15, 10:17, 19:4, 19:7 evidentiary [1] - 19:7 exact [1] - 10:2 exactly [3] - 13:15, 16:3, 16:19 EXAMINATION [2] - 5:8, 12:15 examination [2] - 12:12, 19:5 excuse [1] - 19:10 excused..... .. [1] - 2:4 Exhibit [10] - 8:12, 8:14, 8:21, 8:24, 9:1, 10:7, 10:9, 10:20, 10:22, 11:1 exhibits [4] - 3:20, 11:3, 11:21, 12:4 EXHIBITS [1] - 2:8 Exhibits [2] - 3:25, 12:7 F face [1] - 4:18 fact [1] - 6:23 failure [1] - 7:11 fair [1] - 10:16 fairly [1] - 16:25 felony [7] - 3:10, 11:12, 19:14, 19:16, 19:17, 19:18, 19:21 filed [1] - 3:6 firearm [2] - 3:10, 19:15 first [5] - 5:1, 13:1, 15:2, 15:4 five [2] - 11:11, 12:4	Floor [1] - 1:18 following [2] - 3:7, 19:11 follows [1] - 5:7 FOR [1] - 1:4 forward [1] - 6:21 four [1] - 11:11 Fourth [2] - 19:23, 20:24 FTA [1] - 13:17 full [1] - 4:25 G get-go [1] - 20:14 Glock [3] - 7:22, 8:17, 11:8 God [1] - 4:21 grams [2] - 9:25, 10:1 gross [2] - 9:18, 9:19 gun [5] - 7:24, 9:10, 10:14, 11:6, 17:14 H habitual [5] - 3:11, 3:12, 19:18, 19:20, 20:6 hand [2] - 4:18, 11:2 handgun [3] - 7:22, 8:1, 8:17 Handgun/Baggie [1] - 2:9 Handgun/Suspected [1] - 2:10 handing [2] - 8:13, 10:8 handle [1] - 7:22 heard [2] - 11:25, 20:9 hearing [3] - 3:17, 10:24, 20:8 HEARING [1] - 1:9 help [1] - 4:21 HILLEWAERT [13] - 4:7, 4:14, 8:23, 10:23, 12:2, 12:14, 12:16, 18:8, 18:21, 19:2, 20:4, 20:17, 20:22 Hillewaert [10] - 1:20, 3:15, 4:5, 6:1, 12:1, 12:13, 19:1, 20:3, 20:16, 20:21 Hillewaert..... [1] - 2:4 history [6] - 7:12, 13:11, 13:12, 13:17, 13:22, 13:25 honestly [1] - 15:25 Honor [1] - 3:19, 4:4, 4:10, 4:15, 8:8,	11:10, 11:20, 12:2, 12:9, 18:11, 18:16, 18:21, 18:25, 19:2, 20:1, 20:4, 20:11 HONORABLE [1] - 1:5 hot [2] - 14:9, 14:18 hot-wire [1] - 14:9 hot-wiring [1] - 14:18 I ID'd [1] - 13:6 idea [1] - 15:15 identified [2] - 6:3, 7:2 identify [1] - 5:23 imagine [1] - 17:2 impound [1] - 7:15 impression [1] - 20:5 IN [2] - 1:3, 1:4 including [1] - 9:19 INDEX [1] - 2:1 Initial [1] - 18:24 inventories [1] - 16:17 inventory [1] - 7:15, 7:16, 17:21, 17:22, 17:23, 18:1 item [1] - 5:23 items [2] - 9:3, 9:5 J JAY [1] - 1:10 Jay [4] - 3:5, 5:20, 13:3, 19:11 Jeffrey [1] - 1:17 Jeremy [2] - 4:11, 5:3 JEREMY [3] - 2:3, 5:4, 5:6 JIM [1] - 1:10 Jim [20] - 3:5, 3:8, 3:13, 5:20, 6:10, 6:16, 6:23, 7:10, 12:23, 13:2, 13:3, 13:8, 13:24, 14:9, 14:12, 14:22, 16:5, 17:11, 19:11, 21:4 Judgement [5] - 2:10, 2:11, 2:11, 2:12, 2:12 Judgment [2] - 11:12, 11:23 Judicial [2] - 19:23, 20:25 Julie [1] - 1:22 July [2] - 1:14, 3:3 junction [1] - 19:8 Justice [1] - 3:4 JUSTICE [2] - 1:3, 1:5	K keys [1] - 7:20 L lab [1] - 9:9 larger [1] - 9:25 last [3] - 5:1, 18:23, 17:25 Law [1] - 1:20 leaned [1] - 7:19 least [1] - 19:6 left [1] - 6:19 LESLIE [1] - 1:10 Leslie [2] - 3:5, 19:11 Lion [1] - 6:11 located [3] - 8:1, 15:13, 15:19 location [2] - 8:3, 19:9 luck [1] - 21:4 M marginal [1] - 19:7 mark [1] - 3:20 Marked [1] - 2:8 marked [5] - 4:1, 8:11, 8:13, 10:7, 10:9 MASON [1] - 1:5 material [1] - 9:20 matter [4] - 3:4, 19:22, 20:24, 21:3 meaning [1] - 17:9 Meth [1] - 2:10 methamphetamine [1] - 9:14 microphone [1] - 4:25 mind [3] - 6:6, 13:9, 13:11 Model [1] - 11:8 move [1] - 18:22 moved [1] - 8:6 moves [3] - 8:20, 10:19, 11:21 MR [3] - 3:19, 3:23, 4:4, 4:10, 4:22, 5:9, 6:2, 6:5, 6:7, 8:10, 8:15, 8:20, 9:2, 10:3, 10:5, 10:10, 10:19, 11:2, 11:5, 11:10, 11:14, 11:17, 11:20, 12:9, 18:10, 18:16, 18:18, 18:24, 20:1, 20:11, 20:20 MS [13] - 4:7, 4:14, 8:23, 10:23, 12:2, 12:14, 12:16, 18:8, 18:21, 19:2, 20:4, 20:17, 20:22	N name [4] - 4:8, 4:12, 4:25, 5:1 near [1] - 19:9 need [2] - 17:21, 20:18 net [4] - 9:18, 9:20, 9:22, 9:24 NEVADA [3] - 1:4, 1:7, 2:2 Nevada [5] - 1:14, 1:23, 3:4, 5:16, 19:10 next [2] - 5:25, 8:1 NIK [2] - 9:13, 9:15 None [1] - 2:7 none [2] - 7:7, 10:24 nothing [4] - 4:21, 14:25, 18:10, 20:23 notice [2] - 7:23, 20:13 NRS [4] - 19:15, 19:17, 19:19, 19:21 numbered [1] - 12:5 numbers [1] - 10:2 NV [3] - 1:19, 1:21, 1:24 O object [2] - 5:17, 12:3 objection [5] - 8:22, 8:25, 10:21, 10:23, 12:6 objects [1] - 8:2 observe [1] - 7:6 obtain [1] - 9:22 occasion [1] - 12:23 occupants [1] - 7:6 OF [9] - 1:4, 1:5, 1:7, 1:13, 2:2, 2:6 offense [4] - 3:11, 13:20, 13:21, 19:16 offenses [1] - 19:12 offhand [1] - 16:6 Office [4] - 1:18, 3:16, 17:7, 21:2 officer [8] - 7:1, 12:17, 13:18, 14:1, 14:3, 14:5, 15:2, 15:3 Officer [8] - 4:16, 5:13, 6:14, 6:24, 7:9, 8:4, 15:5, 15:25 officers [1] - 13:7 often [1] - 13:23 ON [2] - 2:2, 2:6 on-scene [5] - 7:8, 13:7, 15:20, 15:24, 16:3 one [3] - 4:10, 11:11, 13:23
--	--	--	---	---

oOo [1] - 1:6 order [1] - 19:22 originally [1] - 14:6 outside [1] - 16:12 owner [1] - 14:23	possession [2] - 3:9, 19:15 possible [2] - 14:7, 21:2 posting [1] - 21:2 PRELIMINARY [1] - 1:9 preliminary [3] - 3:17, 19:5, 20:8 present [2] - 18:14, 18:19 preserve [1] - 8:2 presumptively [1] - 9:14 previous [3] - 6:10, 6:20, 6:24, 7:11, 15:6, 15:9 previously [2] - 3:10, 19:16 prison [1] - 13:13 proceed [3] - 3:18, 4:2, 4:6 proceeding [1] - 21:5 PROCEEDINGS [1] - 1:13 proceedings [2] - 19:23, 20:25 process [1] - 9:8 processing [1] - 10:15 provide [1] - 4:20 proximity [1] - 7:23 pulled [1] - 15:21 purchasing [2] - 6:16, 14:22 purposes [1] - 6:6 PX-1 [1] - 2:9 PX-2 [1] - 2:10 PX-3 [1] - 2:10 PX-4 [1] - 2:11 PX-5 [1] - 2:11 PX-6 [1] - 2:12 PX-7 [1] - 2:12	recognized [2] - 13:6, 15:6 record [3] - 3:2, 5:1, 6:2, 6:4, 8:10, 8:12, 10:5, 10:8 red [1] - 5:25 Red [1] - 6:11 redirect [1] - 16:9 reflect [7] - 6:2, 6:4, 8:10, 8:13, 10:5, 10:8, 11:23 regards [1] - 6:13 registered [1] - 14:23 relates [1] - 3:8 relation [1] - 5:11 released [1] - 13:13 remanded [1] - 21:1 removed [3] - 9:3, 9:6, 10:13 report [1] - 3:21 reported [4] - 6:11, 6:16, 14:8, 14:16 responded [2] - 5:13, 6:25 rests [1] - 18:17 Robert [1] - 5:3 room [1] - 10:15 Rowan [1] - 1:22 run [1] - 20:8 running [2] - 16:14, 16:15	set [1] - 3:16 SHELLEY [2] - 2:3, 4:22, 5:6 Shelley [3] - 4:11, 4:16, 5:3 Sheriff's [3] - 17:5, 17:7, 21:2 shirt [1] - 5:25 show [1] - 11:14 showing [3] - 6:11, 10:6, 19:6 side [2] - 7:19, 8:18 SIMONS [1] - 1:5 SLADE [30] - 3:19, 3:23, 4:4, 4:10, 5:9, 6:2, 6:5, 6:7, 8:10, 8:15, 8:20, 9:2, 10:3, 10:5, 10:10, 10:19, 11:2, 11:5, 11:10, 11:14, 11:17, 11:20, 12:9, 18:10, 18:16, 18:18, 18:24, 20:1, 20:11, 20:20 Slade [2] - 1:17, 3:15, 4:3, 4:9, 5:5, 18:9, 18:23, 19:25, 20:10 Slade..... [1] - 2:3 slight [1] - 19:6 smaller [1] - 10:1 solemnly [1] - 4:10 somewhere [2] - 15:16, 15:18 spell [1] - 5:1 stand [1] - 4:17 standard [1] - 19:7 standing [1] - 16:12 stands [1] - 21:3 start [1] - 14:10 State [17] - 3:4, 3:19, 4:4, 5:16, 5:20, 10:19, 11:11, 11:21, 12:10, 18:14, 18:17, 18:24, 19:10, 20:1, 20:11, 20:13, 20:20 STATE [2] - 1:4, 2:2 state [4] - 1:7, 4:25, 5:15, 6:6 State's [2] - 8:12, 8:14, 8:21, 8:24, 10:7, 10:9, 10:20, 10:22, 10:24 steal [2] - 14:12, 14:17 step [2] - 4:17, 18:12 stolen [2] - 6:12, 6:16, 14:7, 14:16, 14:24 stop [10] - 5:14, 5:17, 6:7, 6:25, 7:1, 7:3, 7:9, 7:13, 15:5, 15:9 stopped [1] - 6:15	Street [2] - 1:18, 1:21 subject [1] - 7:2 submit [2] - 18:24, 19:2 subsection [2] - 19:19, 19:21 substance [4] - 3:9, 8:1, 9:20, 19:14 substances [3] - 9:15, 9:16, 9:22 suspended [1] - 6:18 swear [1] - 4:19 sworn [1] - 4:18 Sworn [1] - 5:7
P p.m [1] - 3:2 P.O [1] - 1:23 packaging [1] - 9:19 Page [1] - 2:2 parked [1] - 15:21 part [2] - 7:13, 13:19 particular [1] - 19:8 parties [1] - 3:18 partly [1] - 13:17 past [4] - 13:8, 13:11, 13:12, 16:21 patrol [1] - 9:7 paying [2] - 13:23, 13:25 PEACE [1] - 1:5 pending [1] - 21:2 permission [4] - 8:7, 10:3, 11:14, 11:18 person [5] - 3:10, 5:21, 15:2, 15:3, 19:16 Photo [2] - 2:9, 2:10 Photo-Handgun/Baggie [1] - 2:9 Photo-Handgun/Suspected [1] - 2:10 photocopy [1] - 3:20 photographed [1] - 9:6 photographs [1] - 8:5 picture [3] - 8:17, 10:12, 10:13 place [3] - 3:1, 8:5, 8:18 plaintiff [1] - 1:8 Plaintiff [1] - 1:17 Plaintiffs [4] - 3:25, 9:1, 11:1, 12:7 plastic [1] - 8:18 plates [1] - 6:17 point [7] - 4:14, 6:20, 7:14, 9:25, 14:4, 14:25, 20:12 police [2] - 12:17, 16:9 Police [4] - 9:8, 16:17, 17:4, 17:6 polices [1] - 17:10 policy [5] - 16:16, 16:19, 16:25, 17:7, 18:1 positive [2] - 9:14, 11:9	Q questions [3] - 12:10, 18:8, 20:15 quite [1] - 17:9	S S-H-E-L-L-E-Y [2] - 4:11, 5:4 Sage [1] - 15:22 saw [3] - 7:20, 13:1, 15:3 scene [5] - 7:8, 13:7, 15:20, 15:24, 16:3 Schedule [2] - 3:9, 19:13 scoot [1] - 4:24 seat [4] - 4:23, 7:21, 8:19, 10:12 seated [2] - 5:23, 5:25 second [1] - 17:22 secured [1] - 9:7 see [3] - 5:21, 13:8, 13:9 seized [1] - 10:17 sentencing [1] - 20:12 September [2] - 3:7, 5:11, 6:21, 12:25, 14:7, 19:9 Sergeant [1] - 4:11 sergeant [1] - 5:10, 8:16, 10:11, 11:2 Service [1] - 1:22	T tested [1] - 9:13 testified [2] - 5:7, 9:10 testimony [2] - 4:19, 19:4 testing [1] - 9:15 THE [45] - 1:3, 1:4, 1:5, 2:2, 2:6, 3:1, 3:22, 3:24, 4:2, 4:5, 4:8, 4:12, 4:16, 4:23, 5:3, 5:5, 6:4, 8:9, 8:22, 8:24, 10:4, 10:21, 10:24, 11:4, 11:13, 11:16, 11:19, 11:25, 12:4, 12:12, 18:9, 18:12, 18:17, 18:19, 18:22, 19:1, 19:3, 20:2, 20:9, 20:15, 20:18, 20:21, 20:23 three [1] - 11:11 today [1] - 5:21 top [1] - 10:12 tow [5] - 7:14, 16:17, 17:21, 17:22, 17:23 towing [1] - 17:7 TOWNSHIP [1] - 1:3 traffic [2] - 5:13, 6:7, 7:1, 7:10, 13:22, 15:5 trafficking [2] - 3:8, 19:13 TRANSCRIPT [1] - 1:13 Transcription [1] - 1:22 truck [1] - 7:14 truth [2] - 4:20, 4:21 trying [1] - 14:10 Tuesday [1] - 1:14 turning [1] - 7:20 two [2] - 7:25, 10:12, 11:11 type [1] - 11:6	

U
ultimately [3] - 6:14, 7:25, 9:6 unable [1] - 14:24 under [1] - 20:5 up [5] - 4:17, 4:24, 5:13, 6:25, 7:1 upstairs [1] - 20:7
V
vehicle [21] - 6:14, 6:15, 6:17, 6:18, 6:24, 7:15, 7:20, 9:7, 14:7, 14:9, 14:13, 14:16, 14:18, 14:22, 14:24, 15:4, 15:6, 16:9, 16:12, 17:18 vehicles [1] - 17:7 verified [1] - 14:5 verify [1] - 14:4 versus [1] - 3:4 violation [1] - 13:22 violations [1] - 7:11
W
warned [1] - 6:17 warning [1] - 7:11 wearing [1] - 5:24 weighed [1] - 9:17 weight [5] - 9:18, 9:19, 9:20, 9:22, 9:24 West [1] - 15:21 white [1] - 5:25 whole [1] - 4:20 wire [1] - 14:9 wiring [1] - 14:18 wish [1] - 11:25 witness [7] - 4:10, 5:7, 6:3, 8:8, 8:13, 10:8, 12:11 Witness [1] - 2:4 WITNESS [1] - 5:3 witnesses [2] - 4:8, 4:12 WITNESSES [2] - 2:2, 2:6 written [1] - 16:16
Y
years [2] - 12:18, 12:22

ELKO JUSTICE COURT

STATE OF NEVADA EXHIBIT #:

MARKED FOR IDENTIFICATION: ✓

ADMITTED IN EVIDENCE: ✓

CASE #: F-17-0723



ELKO JUSTICE COURT

STATE OF NEVADA EXHIBIT #: 2

MARKED FOR IDENTIFICATION: ✓

ADMITTED IN EVIDENCE: ✓

CASE #:

F-17 - 0723



ELKO JUSTICE COURT

STATE OF NEVADA EXHIBIT #: 3

MARKED FOR IDENTIFICATION: ✓

ADMITTED IN EVIDENCE: ✓

CASE #: F-17-6723

1 Case No.: CR-FP-02-824

2 Dept. No.: 2

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ELKO CO. CLERK: 
CLERK: _____

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

8 * * * * *

9
10 THE STATE OF NEVADA,

11 Plaintiff,

12 vs.

JUDGMENT OF CONVICTION
(Incarceration / Guilty Plea)

13 JAY LESLIE JIM,

14 Defendant.

15
16 On October 31, 2002, the above-named Defendant, JAY LESLIE JIM, (Social
17 Security Number: 530-02-7155; Date of Birth: August 7, 1983; Place of Birth: Elko,
18 Nevada), entered a plea of guilty to the crime of BATTERY WITH A DEADLY
19 WEAPON, A FELONY AS DEFINED BY NRS 200.481(2)(e), which crime occurred
20 on or about the 15th day of May, 2002.

21 At the time said Defendant entered his plea of guilty, this Court informed him
22 of the privilege against compulsory self-incrimination, his right to a speedy trial, his right to
23 a trial by jury, and his right to confront his accusers. At said time Defendant was also advised
24 of the maximum penalty for the crime to which he would plead guilty and the elements of that
25 crime. After being so advised, the Defendant stated that he understood these rights and that
26 he still desired this Court to accept his plea of guilty.

1 As a result of the foregoing, this Court on January 13, 2003, finds the above-
2 named Defendant guilty of the crime, **BATTERY WITH A DEADLY WEAPON, A**
3 **FELONY AS DEFINED BY NRS 200.481(2)(e)**, for which he was found guilty and
4 hereby sentences said Defendant on this 13th day of January, 2003, as follows:

5 The Defendant is sentenced to serve a maximum term of one hundred twenty
6 (120) months in the Nevada Department of Corrections with a minimum parole
7 eligibility after forty-eight (48) months. Further, the Defendant shall receive
8 credit for eighty (80) days as of January 13, 2003.

9 The Defendant is FURTHER ORDERED to pay the One Hundred Fifty Dollar
10 (\$150.00) genetic testing fee as required by NRS 176.0915 and submit to testing
11 to determine his genetic markers as required by NRS 176.0913.

12 The Defendant is FURTHER ORDERED to pay restitution to the victims
13 jointly and severally with the Co-defendant, Tyrell Holley, in the amount of Two
14 Thousand Twenty-five Dollars and Sixty-two Cents (\$2,025.62). Said victims
15 and the amounts of restitution are as follows:

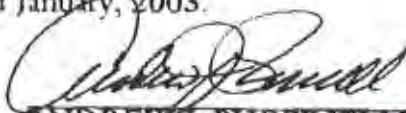
<u>Victim</u>	<u>Restitution Amount</u>
Jesus Vasquez	\$ 1,189.24
Antonio Robles.	836.38
TOTAL	\$ 2,025.62

16 IT IS FURTHER ORDERED, in accordance with the provisions of NRS
17 176.062, that the Defendant shall forthwith pay to the Elko County Clerk, the sum of Twenty-
18 five Dollars (\$25.00), as an administrative assessment fee, and judgment therefore is hereby
19 entered against the Defendant.

20 At the time said Defendant entered his plea of guilty, and at the time he was
21 sentenced, he was represented by his attorney, Matthew J. Stermitz, Esq.

22 THEREFORE, the Clerk of the above-entitled Court is hereby directed to enter
23 this Judgment of Conviction as part of the record in the above-entitled matter.

24 DATED this 16 day of January, 2003.

25 
26 ANDREW J. PUCCINELLI
27 District Judge, Department II

28 CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

-2-

5th day of Sept. 20 17



CLERK

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of Andrew J. Puccinelli,
3 District Judge, Fourth Judicial District Court, Department II, and that on this 17th day of
4 January, 2003, I served by hand delivery by placing a copy of said document in the agency box
located in the Elko County Clerk's Office, a true copy of the foregoing document to:

5 Elko County District Attorney's Office

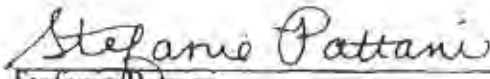
6 Matthew J. Stermitz, Esq.

7 State of Nevada, Division of Parole & Probation

8 Elko County Sheriff/Jail

9 Director, Nevada Department of Corrections

{one certified copy to accompany Defendant at time of transport}

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11 
12 Stefanie Pattani
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ELKO JUSTICE COURT

STATE OF NEVADA EXHIBIT #:

MARKED FOR IDENTIFICATION:

ADMITTED IN EVIDENCE:

CASE #:

4
✓
F-17-6723

1 CASE NO. CR-FO-10-0454

2 DEPT. NO. 2

FILED

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CLERK OF DISTRICT COURT

CLERK DEPUTY *[Signature]*

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

8
9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12
13 JAY LESLIE JIM,
14 AKA JAY LEE JIM,

15 Defendant.

JUDGMENT OF CONVICTION

(Incarceration / Guilty)

16
17 On July 12, 2010, the above-named Defendant, JAY LESLIE JIM, AKA JAY LEE JIM,
18 (date of birth: 08/07/1983 {age: 27}, place of birth: Elko, Nevada) entered a plea of guilty to
19 the crimes of **COUNT 1: UTTERING OF A FORGED INSTRUMENT, A FELONY AS**
20 **DEFINED BY NRS 205.110, and COUNT 2: POSSESSION OF A CONTROLLED**
21 **SUBSTANCE, A FELONY AS DEFINED BY NRS 453.336, which crimes occurred on or**
22 about the 27th day of February, 2010

23 At the time said Defendant entered his plea of guilty, this Court informed him of the
24 privilege against compulsory self-incrimination, his right to a speedy trial, his right to a trial by
25 jury, and his right to confront his accusers. At said time Defendant was also advised of the
26 maximum penalty for the crime to which he would plead guilty and the elements of that
27 crime. After being so advised, the Defendant stated that he understood these rights and that
28 he still desired this Court to accept his plea of guilty.

1 As a result of the foregoing, this Court on September 13, 2010, finds the above-
2 named Defendant guilty of the crimes of **COUNT 1: UTTERING OF A FORGED**
3 **INSTRUMENT, A FELONY AS DEFINED BY NRS 205.110, and COUNT 2: POSSESSION**
4 **OF A CONTROLLED SUBSTANCE, A FELONY AS DEFINED BY NRS 453.336,** for which
5 he was found guilty and hereby sentences said Defendant on this 13th day of September,
6 2010, as follows:

7
8
9 **IT IS HEREBY ORDERED** that the Defendant shall submit to testing
10 to determine his genetic markers in accordance with the provisions
11 of NRS 176.0913, and shall pay the One Hundred Fifty Dollar
12 (\$150.00) genetic testing fee in accordance with the provisions of
13 NRS 176.0915.

14 **IT IS FURTHER ORDERED** that in accordance with the provisions of
15 NRS 453.575, the Defendant shall pay the Sixty Dollar (\$60.00)
16 forensic fee.

17 **For Count 1, the Defendant is hereby sentenced to serve a maximum**
18 **term of forty-eight (48) months in the Nevada Department of**
19 **Corrections with a minimum parole eligibility after nineteen (19)**
20 **months. The Defendant shall receive credit for one (1) day heretofore**
21 **served as of September 13, 2010. This sentence shall run**
22 **consecutive to the sentences in Case Number CR-FP-10-0037 and**
23 **CR-FP-10-0861.**

24 **For Count 2, the Defendant is hereby sentenced to serve a maximum**
25 **term of thirty-four (34) months in the Nevada Department of**
26 **Corrections with a minimum parole eligibility after twelve (12)**
27 **months. The Defendant shall receive credit for one (1) day heretofore**
28 **served as of September 13, 2010. This sentence shall run concurrent**
to Count 1.

That the Defendant shall pay restitution to the victim, Gold Country
Inn, in the amount of One Hundred Dollars and No Cents (\$100.00)

IT IS FURTHER ORDERED in accordance with the provisions of NRS 176.062, that
the Defendant shall forthwith pay to the Elko County Clerk, the sum of Twenty-five Dollars

1 (\$25.00), as an administrative assessment fee, and judgment therefore is hereby entered
2 against the Defendant.

3 **IT IS FURTHER ORDERED** that the Bail Bond posted in the amount of Ten Thousand
4 Dollars and No Cents (\$10,000.00), is hereby exonerated.

5
6 At the time said Defendant entered his plea of guilty, and at the time he was
7 sentenced, he was represented by Steffanie Foster, Esq.

8 THEREFORE, the Clerk of the above-entitled Court is hereby directed to enter this
9 Judgment of Conviction as part of the record in the above-entitled matter.

10
11 DATED this 23 day of September, 2010.

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14
15 ANDREW J. PUCCINELLI
16 District Court Judge / Department 2

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20 CERTIFIED COPY
21 DOCUMENT ATTACHED IS A
22 TRUE AND CORRECT COPY
23 OF THE ORIGINAL ON FILE

24 31st day of Sept., 2017

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27 CLERK
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Andrew J. Puccinelli, District Judge, Fourth Judicial District Court, Department 2, and that on this 24 day of September, 2010, I served by hand delivery by placing a copy of said document in the agency box located in the Elko County Clerk's Office, a true copy of the foregoing document to:

Elko County District Attorney (2)

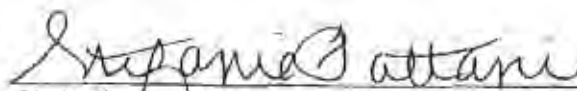
Steffanie Foster, Esq.

State of Nevada, Division of Parole & Probation

Elko County Sheriff

Director, Nevada Department of Corrections
(copy to accompany Defendant at time of transport)

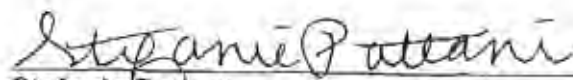
Elko Bail Bonds


Stefanie Pattani

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Andrew J. Puccinelli, District Judge, Fourth Judicial District Court, Department 2, and that on this 24 day of September, 2010, I served by regular U.S. Mail, a true copy of the foregoing document to:

Nevada Department of Corrections
Offender Management Division,
Sentence Management
PO Box 7011
Carson City, NV 89702


Stefanie Pattani

ELKO JUSTICE COURT

STATE OF NEVADA EXHIBIT #:

5

MARKED FOR IDENTIFICATION:

✓

ADMITTED IN EVIDENCE:

✓

CASE #: F-17-0723

1 CASE NO. CR-FP-10-37

2 DEPT. NO. 1

FILED

2011 MAR -2 A 11:27

ELKO COUNTY CLERK

CLERK _____

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

9 THE STATE OF NEVADA,

10 PLAINTIFF,

11 V.

JUDGMENT OF CONVICTION
(Guilty Plea - Incarceration)

12 JAY LESLIE JIM,

13 DEFENDANT.
14

15 On the 21st day of June, 2010, the above-named defendant, JAY LESLIE JIM, AKA JAY JIM, AKA
16 LITTLE JAY, AKA JAY LEE JIM [who is further described as follows: Date of birth: 08/07/1983; (age 27);
17 Place of birth: Elko, Nevada] was arraigned and entered a plea of guilty to the crime(s) described below and
18 as more fully set forth in the criminal information filed herein. Legal counsel present at the defendant's
19 arraignment were Steffanie Foster, Elko County Deputy Public Defender, representing the Defendant, and
20 Robert J. Lowe, Elko County Deputy District Attorney, representing the state. At the time the above-named
21 defendant entered his/her plea of guilty, this Court informed him/her of all applicable constitutional rights,
22 the elements of the crime(s) charged, and the maximum possible penalty for said crime(s). After being so
23 informed, the above-named defendant stated that he/she understood all of the applicable constitutional rights,
24 the elements of the crime(s) charged and the maximum possible penalty for said crime(s). This Court then
25 made a finding that the defendant had entered his/her plea freely and voluntarily, and with full understanding
26 of his/her constitutional rights, the nature of the charges and the consequences of his/her plea.

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DESCRIPTION OF CONVICTIONS

COUNT 1: ATTEMPTED EX-FELON IN POSSESSION OF A FIREARM, A FELONY AS
DEFINED BY NRS 202.360 AND NRS 193.330

On the 3rd day of January, 2011, the above-named defendant appeared before this Court for the purpose of sentencing and entry of a final judgment of conviction in this matter. This Court, the state and the defense counsel had previously received a Pre-Sentence Report which had been prepared by the Division of Parole and Probation. The above-named defendant was personally present at the sentencing. Legal counsel present at the defendant's sentencing were Steffanie Foster, Elko County Deputy Public Defender, representing the Defendant, and Mark S. Mills, Elko County Deputy District Attorney, representing the state. Also present was Janet Grigg, representing the Division of Parole and Probation.

After hearing from all parties and allowing the defendant an opportunity to personally address the Court, this Court finds that the appropriate judgment in this case is and shall be as follows:

SENTENCE TERMS

For the conviction of Count 1, the defendant is sentenced to a maximum term of 32 months in the Nevada Department of Corrections with minimum parole eligibility after 12 months. Said sentence to run consecutive to Case No. CR-FP-10-861 and Case No. CR-FO-10-454. The defendant is credited with 186 days heretofore served as computed to and including the date of this sentencing (the 3rd day of January, 2011).

FINANCIAL AND RESTITUTION REQUIREMENTS

The defendant is ordered to pay the administrative fee in the amount of \$25.00 as required by NRS 176.062. Said amount shall be deducted from any cash bail monies posted by the defendant before any remainder is returned upon the exoneration of bail. It is further ordered that if the defendant has any monies in the possession of the Elko County Jail, that said monies shall be delivered directly to the Elko County Clerk and applied to this fee.

Any cash bail or monies in the possession of the Elko County Jail which belong to the defendant shall be confiscated and applied to this debt.

BAIL

IT IS HEREBY ORDERED that any bail bond previously posted for said defendant shall be exonerated. Any cash bail posted for said defendant shall be applied first to fines and/or costs due pursuant

1 to this judgment and, unless otherwise agreed to by the parties, any amount remaining shall be returned by
2 the clerk to the person who posted said cash bail.

3 **ENTRY OF JUDGMENT**

4 IT IS FURTHER ORDERED that the clerk of the above-entitled Court enter this JUDGMENT OF
5 CONVICTION as part of the record in the above-entitled matter.

6 SO ORDERED this 2 day of March, 2011.

7
8
9 J. MICHAEL MEMEO
DISTRICT JUDGE - DEPARTMENT 1
10
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14

15 CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

16 8th day of SEP, 20 17

17 Coral J. Jarama

18 CLERK
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20

21 CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

22 8 day of Aug, 20 17

23 Coral J. Jarama

24 CLERK
25
26

CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I certify that I am the secretary to J. MICHAEL MEMEO, District Judge, Fourth Judicial District Court, Department I, and that on this the 2nd day of March, 2011, I personally hand delivered a file stamped copy of the foregoing document to:

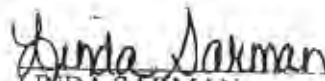
Dept. of Parole and Probation
3920 E. Idaho Street
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Elko County Sheriff's Office
775 West Silver Street
Elko, NV 89801
{1 Certified Copy and 1 File Stamped Copy}
[Box in Clerk's Office]

Mark D. Torvinen, Esq.
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Steffanie Foster, Esq.
Elko County Deputy Public Defender
571 Idaho Street
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Dated this 2nd day of March, 2011.


LINDA SARKMAN

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am the secretary to J. MICHAEL MEMEO, District Judge, Fourth Judicial District Court, Department I, and that on this 2nd day of March, 2011, I deposited for mailing in the U.S. mail at Elko, Nevada, postage prepaid, a file stamped copy of the foregoing document to:

Nevada Department of Corrections
Offender Management Division, Sentence Management
P.O. Box 7011
Carson City, NV 89702

Dated this 2nd day of March, 2011.


LINDA SARKMAN

ELKO JUSTICE COURT

STATE OF NEVADA EXHIBIT #: 6

MARKED FOR IDENTIFICATION: ✓

ADMITTED IN EVIDENCE: ✓

CASE #: F-17-6723

1 CASE NO. CR-FP-10-861

2 DEPT. NO. 1

FILED

2011 MAR -2 A H 29

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY BL

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

8
9 THE STATE OF NEVADA,

10 PLAINTIFF,

11 V.

JUDGMENT OF CONVICTION

(Guilty Plea - Incarceration)

12 JAY LESLIE JIM,

13 DEFENDANT.

14 _____ /
15 On the 21st day of June, 2010, the above-named defendant, JAY LESLIE JIM, AKA JAY JIM, AKA
16 LITTLE JAY, AKA JAY LEE JIM [who is further described as follows: Date of birth: 08/07/1983; (age 27);
17 Place of birth: Elko, Nevada] was arraigned and entered a plea of guilty to the crime(s) described below and
18 as more fully set forth in the criminal information filed herein. Legal counsel present at the defendant's
19 arraignment were Steffanie Foster, Elko County Deputy Public Defender, representing the Defendant, and
20 Robert J. Lowe, Elko County Deputy District Attorney, representing the state. At the time the above-named
21 defendant entered his/her plea of guilty, this Court informed him/her of all applicable constitutional rights,
22 the elements of the crime(s) charged, and the maximum possible penalty for said crime(s). After being so
23 informed, the above-named defendant stated that he/she understood all of the applicable constitutional rights,
24 the elements of the crime(s) charged and the maximum possible penalty for said crime(s). This Court then
25 made a finding that the defendant had entered his/her plea freely and voluntarily, and with full understanding
26 of his/her constitutional rights, the nature of the charges and the consequences of his/her plea

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DESCRIPTION OF CONVICTIONS

COUNT 1: POSSESSION OF A CONTROLLED SUBSTANCE, A FELONY AS DEFINED BY NRS 453.336

On the 3rd day of January, 2011, the above-named defendant appeared before this Court for the purpose of sentencing and entry of a final judgment of conviction in this matter. This Court, the state and the defense counsel had previously received a Pre-Sentence Report which had been prepared by the Division of Parole and Probation. The above-named defendant was personally present at the sentencing. Legal counsel present at the defendant's sentencing were Steffanie Foster, Elko County Deputy Public Defender, representing the Defendant, and Mark S. Mills, Elko County Deputy District Attorney, representing the state. Also present was Janet Grigg, representing the Division of Parole and Probation.

After hearing from all parties and allowing the defendant an opportunity to personally address the Court, this Court finds that the appropriate judgment in this case is and shall be as follows:

SENTENCE TERMS

For the conviction of Count 1, the defendant is sentenced to a maximum term of 34 months in the Nevada Department of Corrections with minimum parole eligibility after 12 months. Said sentence shall run consecutive to Case No. CR-FP-10-37 and Case No. CR-FO-10-454. The defendant is credited with 186 days heretofore served as computed to and including the date of this sentencing (the 3rd day of January, 2011).

FINANCIAL AND RESTITUTION REQUIREMENTS

The defendant is ordered to pay the administrative fee in the amount of \$25.00 as required by NRS 176.062. Said amount shall be deducted from any cash bail monies posted by the defendant before any remainder is returned upon the exoneration of bail. It is further ordered that if the defendant has any monies in the possession of the Elko County Jail, that said monies shall be delivered directly to the Elko County Clerk and applied to this fee.

The defendant is ordered to pay the forensic fee in the amount of \$60.00 as required by NRS 453.575. Said amount shall be deducted from any cash bail monies posted by the defendant before any remainder is returned upon the exoneration of bail. It is further ordered that if the defendant has any monies in the possession of the Elko County Jail, that said monies shall be delivered directly to the Elko County Clerk and applied to this fee.

Any cash bail or monies in the possession of the Elko County Jail which belong to the defendant shall be confiscated and applied to this debt.

1 **BAIL**

2 IT IS HEREBY ORDERED that any bail bond previously posted for said defendant shall be
3 exonerated. Any cash bail posted for said defendant shall be applied first to fines and/or costs due pursuant
4 to this judgment and, unless otherwise agreed to by the parties, any amount remaining shall be returned by
5 the clerk to the person who posted said cash bail.

6 **ENTRY OF JUDGMENT**

7 IT IS FURTHER ORDERED that the clerk of the above-entitled Court enter this JUDGMENT OF
8 CONVICTION as part of the record in the above-entitled matter.

9 SO ORDERED this 2 day of March, 2011.

10
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12 J. MICHAEL MEMEO
DISTRICT JUDGE - DEPARTMENT I
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16

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18 CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

19 On day of Sept. 2017

20 Carol Jacobs

21 CLERK
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CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I certify that I am the secretary to J. MICHAEL MEMEO, District Judge, Fourth Judicial District Court, Department I, and that on this the 2nd day of March, 2011, I personally hand delivered a file stamped copy of the foregoing document to:

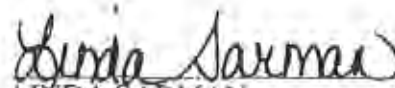
Dept. of Parole and Probation
3920 E. Idaho Street
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Elko County Sheriff's Office
775 West Silver Street
Elko, NV 89801
{1 Certified Copy and 1 File Stamped Copy}
[Box in Clerk's Office]

Mark D. Torvinen, Esq.
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Steffanie Foster, Esq.
Elko County Deputy Public Defender
571 Idaho Street
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Dated this 2nd day of March, 2011.

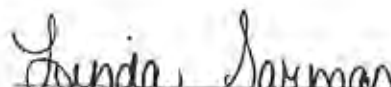

LINDA SARMAN

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am the secretary to J. MICHAEL MEMEO, District Judge, Fourth Judicial District Court, Department I, and that on this 2nd day of March, 2011, I deposited for mailing in the U.S. mail at Elko, Nevada, postage prepaid, a file stamped copy of the foregoing document to:

Nevada Department of Corrections
Offender Management Division, Sentence Management
P.O. Box 7011
Carson City, NV 89702

Dated this 2nd day of March, 2011,


LINDA SARMAN

ELKO JUSTICE COURT

STATE OF NEVADA EXHIBIT #:

MARKED FOR IDENTIFICATION:

ADMITTED IN EVIDENCE:

CASE #:

F-17-0723

1 CASE NO. CR-FP-13-941

2 DEPT. NO. 1

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

9 THE STATE OF NEVADA,

JUDGMENT OF CONVICTION
(Guilty Plea-Probation)

10 Plaintiff,

11 V.

12 JAY LESLIE JIM,

13 Defendant.
14

15 On June 26, 2014, above-named Defendant, JAY LESLIE JIM, AKA JAY LEE JIM, AKA
16 "LITTLE JAY" [who is further described as follows: Date of birth: 8/7/1983 (age 31); Place of
17 birth: Elko, Nevada] was arraigned and entered a plea of guilty to the crime described below and as
18 more fully set forth in the criminal information filed herein. Legal counsel present at Defendant's
19 arraignment were Frederick B. Lee, Jr., Elko County Public Defender, representing Defendant, and
20 Chad B. Thompson, Elko County Deputy District Attorney, representing the State. At the time
21 above-named Defendant entered his plea of guilty, this Court informed him of all applicable
22 constitutional rights, the elements of the crime charged, and the maximum possible penalty for said
23 crime. After being so informed, above-named Defendant stated that he understood all of the
24 applicable constitutional rights, the elements of the crime charged and the maximum possible penalty
25 for said crime. This Court then made a finding that Defendant had entered his plea freely and
26 voluntarily, and with full understanding of his constitutional rights, the nature of the charges and the

1 consequences of his plea.

2 **DESCRIPTION OF CONVICTIONS**

3 **COUNT 1: POSSESSION OF A CONTROLLED SUBSTANCE, A FELONY AS**
4 **DEFINED BY NRS 453.336**

5 On October 20, 2014, above-named Defendant appeared before this Court for the purpose
6 of sentencing and entry of a final judgment of conviction in this matter. This Court, the State, and
7 defense counsel had previously received a Pre-Sentence Report which had been prepared by the
8 Division of Parole and Probation. Above-named Defendant was personally present at the sentencing.
9 Legal counsel present at Defendant's sentencing were Benjamin C. Gaumond, Elko County Deputy
10 Public Defender, representing Defendant, and Mark S. Mills, Elko County Deputy District Attorney,
11 representing the State. Also present was Lisa Elliott, representing the Division of Parole and
12 Probation.

13 After hearing from all parties and allowing Defendant an opportunity to personally address
14 the Court, this Court finds that the appropriate judgment in this case is and shall be as follows:

15 **SENTENCE TERMS**

16 For the conviction of Count 1, Defendant is sentenced to a maximum term of 48
17 months in the Nevada Department of Corrections with minimum parole eligibility
18 after 19 months. Defendant is credited with 13 days heretofore served as computed
to and including the date of this sentencing (October 20, 2014).

19 Said sentence is hereby suspended and Defendant is placed on probation for a period
of 60 months under the following special conditions:

20 **STANDARD PROBATION REQUIREMENTS**

- 21 1. Defendant is ordered to pay the administrative fee in the amount of \$25.00
22 as required by NRS 176.062. Said amount shall be deducted from any cash
23 bail monies posted by Defendant before any remainder is returned upon the
24 exoneration of bail. It is further ordered that if Defendant has any monies in
the possession of the Elko County Jail, that said monies shall be delivered
directly to the Elko County Clerk and applied to this fee.
- 25 2. Defendant is ordered pay the \$3.00 administrative assessment on each count
26 for purposes of obtaining a biological specimen and conducting a genetic
marker analysis; a judgment is awarded against Defendant for \$3.00. It is
further ordered that if Defendant has any monies in the possession of the Elko

County Jail, that said monies shall be delivered directly to the Elko County Clerk and applied to this fee.

3. Defendant is ordered to pay the forensic fee in the amount of \$60.00 as required by NRS 453.575. Said amount shall be deducted from any cash bail monies posted by Defendant before any remainder is returned upon the exoneration of bail. It is further ordered that if Defendant has any monies in the possession of the Elko County Jail, that said monies shall be delivered directly to the Elko County Clerk and applied to this fee.
4. Defendant shall pay the Justice Court all amounts due as a result of the prosecution of this case.
5. Defendant is ordered to comply fully with the Division of Parole and Probation's Standard Probation Agreement, and the Rules and the conditions described therein and shall pay those "supervision fees" as required by NRS 213.1076 and NAC 213.230.
6. Defendant shall submit to an intensive supervision program, to include electronic monitoring, whenever deemed appropriate by the Division of Parole and Probation.
7. Defendant shall answer truthfully and fully all reasonable inquiries of the probation officer. If requested by his probation officer, Defendant shall submit to a polygraph examination concerning compliance with these rules or Defendant's knowledge of any criminal activity.
8. Defendant shall submit his person, property, place of residence, vehicle or areas under his control to search at any time, with or without a search warrant or warrant of arrest, for evidence of a crime or violation of probation by the Division of Parole and Probation or its agent.

DRUG, ALCOHOL AND COUNSELING REQUIREMENTS

9. Defendant shall completely abstain from the use, possession or consumption of any alcoholic beverages. Further that Defendant completely abstain from being present in any cocktail lounge, bar or similar establishment operated for the primary purpose of serving alcoholic beverages, unless required to be so present during actual employment.
10. Defendant shall completely abstain from gambling, or from being present in a gambling establishment except for employment purposes.
11. Defendant shall enter and successfully complete the Salvation Army Northern Nevada Treatment Program. Defendant shall check-in to the program no later than the morning of Wednesday, October 22, 2014. Defendant shall stay with his mother upon release until entry into the program. Defendant shall only be transported to the program by his mother or father.

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OTHER REQUIREMENTS

12. Defendant's attorney shall notify the Court and the District Attorney's office whether Defendant checked into the program by Wednesday, October 22, 2014.

CONSTRUCTION

All financial requirements set forth herein are terms of the sentence as well as terms of probation. If Defendant's probation is revoked, Defendant will not be relieved of the financial requirements set forth in this Judgment of Conviction.

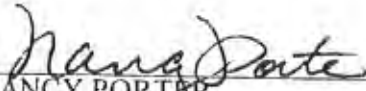
BAIL

IT IS HEREBY ORDERED that any bail bond previously posted for said Defendant shall be exonerated. Any cash bail posted for said Defendant shall be applied first to fines and/or costs due pursuant to this judgment and, unless otherwise agreed to by the parties, any amount remaining shall be returned by the clerk to the person who posted said cash bail.

ENTRY OF JUDGMENT

IT IS FURTHER ORDERED that the clerk of the above-entitled Court enter this JUDGMENT OF CONVICTION as part of the record in the above-entitled matter.

SO ORDERED this 4 day of November, 2014.


NANCY PORTER
DISTRICT JUDGE - DEPARTMENT 1

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

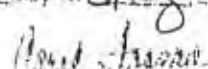
27 day of May, 2017



CLERK

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

9 day of Aug, 2017



CLERK

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CERTIFICATE OF HAND DELIVERY

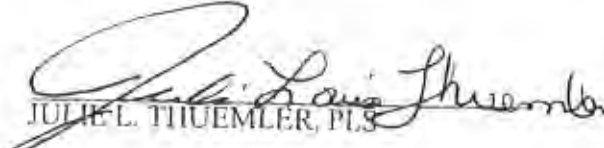
Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court,
Department 1, and that on this 5th day of November, 2014, I personally hand delivered a file
stamped copy of the foregoing **JUDGMENT OF CONVICTION** (Guilty Plea - Probation)
addressed to:

Dept. of Parole and Probation
3920 E. Idaho Street
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Mark D. Torvinen, Esq.
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Elko County Sheriff's Office
775 W. Silver Street
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Frederick B. Lee, Jr., Esq.
Elko County Public Defender
571 Idaho Street
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]


JULIE L. THIEMLER, PLS

1 CASE NO. CR-FP-17-6723

2 DEPT. NO. 1

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6
7 **IN THE FOURTH JUDICIAL DISTRICT COURT OF THE,**
8 **STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO**
9

10 THE STATE OF NEVADA,

11 Plaintiff,

12 vs.

MOTION TO SUPPRESS

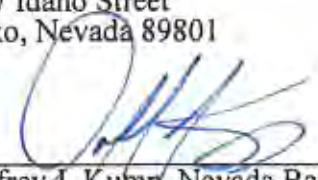
13
14 JAY LESLIE JIM,

15 Defendant.
16

17 COMES NOW, defendant, above named, by and through his attorney, Jeff Kump, and moves
18 this court for an order, under the Fourth, and Fourteenth Amendments to the United States
19 Constitution, and the Nevada Constitution, suppressing all obtained evidence and dismissing the
20 information filed July 23, 2018. This motion is based upon the points and authorities attached
21 hereto, affidavit of counsel, all documents and pleadings on file herein, and all relevant rules of law.

22 DATED this 9th day of October, 2019.

23
24 JEFF KUMP, PLLC
25 217 Idaho Street
26 Elko, Nevada 89801

27 
28 Jeffrey J. Kump, Nevada Bar No. 5694
Attorney for Defendant

FACTS

On September 2nd, 2017, at approximately 10:20 a.m., Officer Chandler made a traffic stop. Mr. Jim was the driver and he had been warned the day before that the vehicle had suspended plates and if he drove it enforcement action would be taken. (Preliminary Hearing Transcript pages 5-6). Officer Chandler made the decision to arrest Mr. Jim for traffic violations and Mr. Jim's failure to appear history. (Preliminary Hearing Transcript page 7). At that point Officer Shelley called for a tow truck and began an impound inventory of the vehicle. (Preliminary Hearing Transcript page 7). During the search Officer Shelley discovered a Glock handgun and two baggies that contained a crystal substance. (Preliminary Hearing Transcript pages 7-8). An NIK test was presumptively positive for methamphetamine. (Preliminary Hearing Transcript pages 9). The weight of the larger baggie was 42 point something grams; the smaller baggie was just over 4 grams. (Preliminary Hearing Transcript pages 9-10). (Preliminary Hearing Transcript pages 5-10 are attached hereto as Exh. A).

No actual inventory was produced as a result of Mr. Jim's traffic stop and arrest.

ANALYSIS

The legal question is the constitutionality of the search. In Weintraub v. State of Nevada, 110 Nev.287 (2011) the Supreme Court of Nevada explained:

Police officers need not comply with the Fourth Amendment's probable cause and warrant requirements when they are conducting an inventory search of an automobile in order to further some legitimate care-taking function, however the search must be carried out pursuant to standardized official department procedures and must be administered in good faith in order to pass constitutional muster. Weintraub, at 288, (citing Colorado v. Bertine, 479 U.S. 367, 374 (1987)).

The Nevada Supreme Court has held that police must produce an actual inventory when she or he conducts an inventory search. Weintraub, at 289 (citing State v. Greenwald, 109 Nev. 808, 858 P.2nd 36 (1993)).

Officer Chandler observed Mr. Jim working on the vehicle the day prior to the stop and discovered at that time that the license plates were suspended. Officer Chandler had warned Mr. Jim that if he drove the vehicle, "enforcement action would be taken." (Preliminary Hearing Transcript

pages 6). When Mr. Jim was seen driving the next day he was stopped and the decision to arrest was made. There is never a mention, in the officer's reports or their preliminary hearing testimony, that officer safety was ever an issue. Mr. Jim complied with every command, the background checks came back as having FTA's. The subsequent arrest of Mr. Jim, for traffic violation and prior FTA's was purely for exploratory purposes. Mr. Jim was removed from the vehicle, placed in handcuffs, searched and placed in the back seat of a patrol car.

At this point, Sergeant Shelley began an impound inventory search of the vehicle. In the two plus years since Mr. Jim's arrest on September 2nd, 2017, no inventory has ever been produced. The search of the vehicle yielded no inventory and was both without consent and/or warrant. Once Mr. Jim was arrested and placed in restraints, any potential exigent circumstances ceased to exist. With Mr. Jim "safely locked away in a police car, there was no conceivable 'need' to disarm him or prevent him from concealing or destroying evidence." State v. Greenwald, 109 Nev. 808, 810 (1993). "Quite obviously the officer in this case was not making a search incident to arrest." *Id.*, at 809.

In State v. Greenwald, 109 Nev. 808, 858 P.2d 36 (1993) the Court quoted pertinent language from the U.S. Supreme Court in Florida v. Wells, 495 U.S. 1, 4 (1990): "[A]n inventory search must not be a ruse for general rummaging in order to discover incriminating evidence." Greenwald, at 810. "[T]he policy or practice governing inventory searches should be designed to produce an inventory. The individual officer must not be allowed so much latitude that inventory searches are turned into 'a purposeful and general means of discovering evidence of a crime.'" (quoting Colorado v. Bertine, 479 U.S. 367, 376 (1987) Blackmun, J. Concurring))." *Id.*

Searches without warrants are presumed to be unlawful and the state must demonstrate that some exception applies. As explained in the Greenwald case, once Mr. Jim was locked away the search incident to arrest exception is gone. No inventory was produced and therefore that exception must also not apply. Greenwald, at 811.

CONCLUSION

NRS 48.025 provides that evidence obtained in violation of the Constitution is inadmissible. Mapp v. Ohio, 367 U.S. 643 (1961) applies the exclusionary rule to the states for purposes of Fourth

1 Amendment violation. The exclusionary rule is applied to those cases involving the violation of
2 fundamental constitutional rights. "[The exclusionary rule's] purpose is to deter--to compel respect
3 for the constitutional guaranty in the only effectively available way--by removing the incentive to
4 disregard it." Elkins v. United States, 364 U.S. 206, 217 (1960). Evidence obtained by means of an
5 unlawful search and seizure is not admissible against an accused in a criminal prosecution. This
6 includes the "fruit" of such illegal conduct. Wong Sun v. U.S., 371 U.S. 471, 487-88 (1963).

7 In view of the above authorities, all evidence obtained or derived from the unlawful search
8 must be excluded. The drugs and gun found in the car must be excluded.

9 DATED this 9th day of October, 2019.

10 JEFF KUMP, PLLC
11 217 Idaho Street
12 Elko, Nevada 89801

13 
14 Jeffrey J. Kump, Nevada Bar No. 5694
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AFFIDAVIT OF COUNSEL

STATE OF NEVADA)
COUNTY OF NEVADA) ss

Jeffrey J. Kump, being first duly sworn, deposes and states as follows:

1. I am appointed by the State of Nevada to represent the defendant in the above entitled case.

2. I have reviewed the documents produced by the state as a result of Mr. Jim's arrest on September 2nd, 2017.

3. It is my understanding that as a consequence of Mr. Jim's arrest the vehicle he was driving was seized and an inventory search was performed.

4. In my review documents produced and the transcript of the preliminary hearing I have not seen an inventory return.

DATED this 9th day of October, 2019.



JEFFREY J. KUMP

1
2
3 **NOTICE OF MOTION**

4 Please take notice that a hearing on this Motion to Suppress is requested at a date and time
5 to be set by the Court.

6 DATED this 9th day of October, 2019.

7 JEFF KUMP, PLLC
8 217 Idaho Street
9 Elko, Nevada 89801

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11 Jeffrey J. Kump, Nevada Bar No. 5694
12 Attorney for Defendant
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CERTIFICATE OF HAND DELIVERY

Pursuant to N.R.C.P. 5(b), I hereby certify that on this 9th day of October, 2019, I delivered a true and correct copy of the above and foregoing Motion to Suppress by delivering the same to the following address:

Elko County District Attorney's Office
540 Court Street
Elko, NV 89801



Case No. EL-JC-CR-F-17-6723

IN THE ELKO TOWNSHIP JUSTICE COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO,
THE HONORABLE MASON E. SIMONS, JUSTICE OF THE PEACE

-oOo-

STATE OF NEVADA,

Plaintiff,

V.

PRELIMINARY HEARING

JAY LESLIE JIM,

Defendant.

COPY

TRANSCRIPT OF PROCEEDINGS

Tuesday, July 17, 2018
Elko, Nevada

APPEARANCES:

For the Plaintiff:

Jeffrey Slade, Esq.
Elko County District Attorney's
Office
540 Court Street, 2nd Floor
Elko, NV 89801

For the Defendant:

Diana Hillewaert, Esq.
Attorney at Law
575 5th Street
Elko, NV 89801

Transcription Service:

Julie Rowan
Nevada Dictation
P.O. Box 4332
Carson City, NV 89702

1 spell both your first and your last name for the record,
2 please.

3 THE WITNESS: Jeremy Robert Shelley;
4 J-E-R-E-M-Y, S-H-E-L-L-E-Y.

5 THE COURT: Thank you. Go ahead, Mr. Slade.

6 JEREMY SHELLEY

7 (Sworn as a witness, testified as follows)

8 DIRECT EXAMINATION

9 BY MR. SLADE:

10 Q. Sergeant, I'd like to draw your attention to
11 September 2nd of 2017. In relation to this case, what
12 were you doing?

13 A. I responded to back up Officer Chandler on a traffic
14 stop.

15 Q. In what county and what state was that in?

16 A. Elko County, State of Nevada.

17 Q. Did you discover who the object of the stop was?

18 A. Yes.

19 Q. Who was that?

20 A. Jay Jim.

21 Q. Do you see that person in court today?

22 A. Yes.

23 Q. Will you identify where he is seated and an item of
24 clothing he is wearing.

25 A. A red over white shirt seated next to

1 Ms. Hillewaert.

2 MR. SLADE: May the record reflect the
3 witness has identified the Defendant.

4 THE COURT: The record will so reflect.

5 BY MR. SLADE:

6 Q. For state of mind purposes, you said this was a
7 traffic stop?

8 A. Yes.

9 Q. What was going on?

10 A. The previous day we had had contact with Mr. Jim at
11 the Red Lion where somebody reported that they believed
12 a car was being stolen or attempted to be stolen. At
13 that time, we had contact with him in regards to that
14 vehicle, which ultimately was the vehicle Officer
15 Chandler stopped. At that time, the vehicle wasn't
16 reported stolen. Mr. Jim claimed that he was purchasing
17 the vehicle. He was warned at that time that the plates
18 were suspended and that if he drove the vehicle, then
19 enforcement action would be taken. And we left at that
20 point, and that was the previous day.

21 Q. Okay. So bring us forward to the 2nd of September
22 now.

23 A. Based on the fact that Mr. Jim was around the
24 vehicle the previous day, when Officer Chandler made the
25 stop, I responded to back him up, which is common to

1 back up another officer on a traffic stop.

2 Q. You've identified the Defendant as being the subject
3 of this stop on the 2nd.

4 Was he the driver?

5 A. Yes, he was.

6 Q. How many other occupants did you observe?

7 A. None.

8 Q. What happened after you arrived on-scene?

9 A. Officer Chandler discussed the reasons for the stop,
10 made the decision to arrest Mr. Jim for the traffic
11 violations based on the previous warning and his failure
12 to appear history.

13 Q. And what was your part of the stop?

14 A. At that point, I called for a tow truck and began an
15 impound inventory of the vehicle.

16 Q. Did you discover anything during your inventory?

17 A. I did.

18 Q. What was that?

19 A. As I leaned in the driver's side, I don't recall if
20 I was turning the vehicle off or getting the keys, I saw
21 between the driver's seat and the center console the
22 handle of a Glock handgun.

23 Q. Did you notice anything else within proximity of
24 that gun?

25 A. Ultimately, there was two baggies that contained a

1 crystal substance located right next to the handgun.

2 Q. Was anything done to preserve the way these objects
3 appeared at the location in which they were found?

4 A. Yes, I had Officer Chandler get his camera, take
5 some photographs in place, as well as after they had
6 been moved.

7 MR. SLADE: Permission to approach the
8 witness, Your Honor.

9 THE COURT: Go ahead.

10 MR. SLADE: May the record reflect I'm
11 showing to Defense counsel what has been marked, but not
12 yet admitted, as State's Exhibit 1. And may the record
13 reflect I'm handing to the witness what has been marked,
14 but not yet admitted, as State's Exhibit 1.

15 BY MR. SLADE:

16 Q. Sergeant, what is that?

17 A. That is a picture of the Glock handgun and the
18 plastic baggie in place between the driver's side --
19 driver's seat and the center console.

20 MR. SLADE: At this time, the State moves for
21 the admission of State's Exhibit 1.

22 THE COURT: Any objection?

23 MS. HILLEWAERT: No.

24 THE COURT: State's Exhibit 1 will be
25 admitted at this time then without objection.

1 (Whereupon, Plaintiff's Exhibit 1 admitted)

2 BY MR. SLADE:

3 Q. Were those items removed from where you found them?

4 A. Yes.

5 Q. What was done with these items?

6 A. Ultimately -- well, they were removed, photographed

7 again, and then I secured them in my patrol vehicle to

8 later process them at the Police Department evidence

9 lab.

10 Q. You testified to some baggies and a gun.

11 A. Yes.

12 Q. What was in the baggies?

13 A. I NIK tested both baggies that contained -- it was

14 presumptively positive for methamphetamine.

15 Q. Other than NIK testing the substances, did you do

16 anything else with these substances?

17 A. I weighed them.

18 Q. What is the difference between gross and net weight?

19 A. A gross weight would be including the packaging

20 material. A net weight would be just the substance

21 within the baggie.

22 Q. Did you obtain the net weight of these substances?

23 A. Yes, I did.

24 Q. Do you recall what the net weight was?

25 A. The larger baggie was 42 point something grams. The

1 smaller baggie was just over 4 grams. I don't recall
2 the exact numbers at this time.

3 MR. SLADE: Permission to approach?

4 THE COURT: Go ahead.

5 MR. SLADE: May the record reflect I'm
6 showing to Defense counsel what has not yet been
7 admitted, but marked, as State's Exhibit 2. May the
8 record reflect I'm handing to the witness what has been
9 marked, but not yet admitted, as State's Exhibit 2.

10 BY MR. SLADE:

11 Q. Sergeant, would you please tell us what these are.

12 A. The top picture is the two baggies on the seat of
13 the car after they had been removed. The bottom picture
14 is the baggies, as well as the gun that would be in our
15 evidence processing room.

16 Q. Are these fair and accurate depictions of the
17 evidence you seized that day?

18 A. Yes.

19 MR. SLADE: The State now moves for the
20 admission of State's Exhibit 2.

21 THE COURT: Any objection to the admission of
22 State's Exhibit No. 2?

23 MS. HILLEWAERT: No objection.

24 THE COURT: Hearing none, State's 2 will be
25 admitted at this time.

1 CASE NO, CR-FP-17-6723

2 DEPT. NO. 1

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

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

PLEA AGREEMENT

12 JAY LESLIE JIM,

13 Defendant.
14

15 I hereby agree to plead guilty to: one count of TRAFFICKING IN A SCHEDULE I
16 CONTROLLED SUBSTANCE, A CATEGORY B FELONY AS DEFINED BY NRS
17 453.3385(1)(b) and one count of POSSESSION OF A FIREARM BY A PROHIBITED PERSON,
18 A CATEGORY B FELONY AS DEFINED BY NRS 202.360.1, as more fully alleged in the
19 charging document.

20 My decision to plead guilty is based upon the plea agreement in this case which is as follows:

21 1. I agree to enter a plea of guilty to one count of TRAFFICKING IN A SCHEDULE
22 I CONTROLLED SUBSTANCE, A CATEGORY B FELONY AS DEFINED BY NRS
23 453.3385(1)(b) and one count of POSSESSION OF A FIREARM BY A PROHIBITED PERSON,
24 A CATEGORY B FELONY AS DEFINED BY NRS 202.360.1;

25 2. The State agrees to dismiss all other associated charges; shall not file any other
26 charges arising out of the facts of this case; and shall not pursue sentencing of defendant as a habitual
27 criminal;

28 3. At the time of sentencing the parties shall jointly recommend that defendant shall be
sentenced to not less than 24 months on the bottom end of each count and that they run consecutive
to F-17-5748;

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4. The parties further agree that defendant shall file a motion to suppress and said motion is dispositive and a jury trial is not necessary. If the court grants the motion, the State will dismiss this case with prejudice, and the court will not have to execute this plea agreement. If the court does not grant the motion to suppress at issue, then defendant agrees to accept and execute this agreement; each party also waives their respective right to appeal the court's decision on the motion to suppress.

5. The State agrees that upon the above-entitled court's acceptance of this plea, and the entry of judgment convicting the defendant of one count of TRAFFICKING IN A SCHEDULE I CONTROLLED SUBSTANCE, A CATEGORY B FELONY AS DEFINED BY NRS 453.3385(1)(b) and one count of POSSESSION OF A FIREARM BY A PROHIBITED PERSON, A CATEGORY B FELONY AS DEFINED BY NRS 202.360.1, it will be deemed a complete resolution of any and all criminal liability known at this time by the Elko County District Attorney's Office which the defendant may have had in connection with the events which gave rise to the prosecution now pending against the defendant in the above-entitled case.

6. The parties are otherwise free to argue.

CONSEQUENCES OF THE PLEA

I understand that by pleading guilty I admit the facts which support all the elements of the offenses to which I now plead as set forth in the charging document.

I understand that as a consequence of my plea of guilty to one count of **TRAFFICKING IN A SCHEDULE I CONTROLLED SUBSTANCE, A CATEGORY B FELONY AS DEFINED BY NRS 453.3385(1)(b)** I may be imprisoned for a period of not less than two (2) years and not more than fifteen (15) years and that I may be fined up to \$100,000.00.

I understand that as a consequence of my plea of guilty to one count of POSSESSION OF A FIREARM BY A PROHIBITED PERSON, A CATEGORY B FELONY AS DEFINED BY NRS 202.360.1 I may be imprisoned for a period of not less than one (1) year and not more than six (6) years and that I may be fined up to \$5,000.00.

I understand that, if appropriate, I will be ordered to make restitution to the victim of the offenses to which I am pleading guilty and to the victim of any related offense which is being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the State of Nevada for expenses related to my extradition, if any.

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1 I understand that I am not eligible for probation for the offense to which I am pleading guilty.
2 I understand that, except as otherwise provided by statute, the question of whether I receive
3 probation is in the discretion of the sentencing judge.

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

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

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

13 I understand that the division of parole and probation of the department of motor vehicles
14 and public safety may or will prepare a report for the sentencing judge before sentencing. This report
15 will include matters relevant the issue of sentencing, including my criminal history. I understand
16 that this report may contain hearsay information regarding my background and criminal history. My
17 attorney and I will each have the opportunity to comment on the information contained in the report
18 at the time of sentencing.

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

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

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WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I have waived the following rights and privileges:

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

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

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

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

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

6. The right to appeal the conviction, with the assistance of an attorney, either appointed or retained, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035.

VOLUNTARINESS OF PLEA

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

I understand that the state would have to prove each element of the charge against me at trial.

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

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

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

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(775) 738-9881

4

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

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

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

9 Dated this 9th day of October, 2019.

10
11 
12 JAY LESLIE JIM
13 Defendant

14 Dated this 8 day of October, 2019.

15
16 TYLER J. INGRAM
17 ELKO COUNTY DISTRICT ATTORNEY

18 
19 JEFFREY C. SLADE
20 Deputy District Attorney
21 State Bar No.: 13249

22 *CERTIFICATE OF COUNSEL*

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

- 25 1. I have fully explained to the defendant the allegations contained in the charges to which
26 guilty pleas are being entered.
27 2. I have advised the defendant of the penalties for each charge and the restitution that the
28 defendant may be ordered to pay.
3. All pleas of guilty offered by the defendant pursuant to this agreement are consistent with

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1 all the facts known to me and are made with my advice to the defendant and are in the best interest
2 of the defendant.

3 4. To the best of my knowledge and belief, the defendant:

4 (a) Is competent and understands the charges and the consequences of pleading guilty as
5 provided in this agreement.

6 (b) Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily.

7 (c) Was not under the influence of intoxicating liquor, a controlled substance or other drug
8 at the time of the execution of this agreement.

9
10 DATED this 8th day of October, 2019.

11
12 JEFF KUMP, PLLC
13 217 Idaho Street
14 Elko, NV 89801

15
16 
17 Jeffrey J. Kump, Nevada Bar No. 5694
18 Attorney for Defendant
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1 CASE NO. CR-FP-17-6723

2 DEPT. NO. 1

3 Affirmation Pursuant to NRS 239B.030

4 SSN Does Appear

SSN Does Not Appear: JD

FILED

2019 OCT 29 A 9:10

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

8
9 THE STATE OF NEVADA,

10 Plaintiff,

OPPOSITION TO MOTION TO SUPPRESS

11 vs.

12 JAY LESLIE JIM,

13 Defendant.

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

19 Dated this 29 day of October 2019.

20 TYLER J. INGRAM
Elko County District Attorney

21
22 By:

Jeffrey C. Slade
Deputy District Attorney
State Bar Number: 13249

POINTS AND AUTHORITIES

Facts

On September 1, 2017, Officer Chandler responded to a call involving a Chevrolet Impala. Exhibit 1. He discovered that the vehicle's registration was expired and the person in possession of the vehicle was Jay Jim (Defendant). *Id.* The Defendant told Chandler that he was in the process of purchasing the vehicle. *Id.* After confirming the sale over the phone with one of the registered owners, Officer Chandler warned the Defendant not to drive the vehicles given its registration status. *Id.*

On September 2, 2017, Officer Chandler saw the same Impala traveling east on West Sage Street and conducted a traffic stop based on his prior knowledge that the vehicle's registration was expired. *Id.* During the stop dispatch confirmed that the registration was still expired. *Id.* The Defendant was the driver and sole occupant. *Id.* He could not provide Officer Chandler with a driver's license, proof of insurance or registration and was not wearing a seat belt. *Id.*

Officer Chandler learned through dispatch that the Defendant's driving license was in a pending status and that he had prior failures to appear. *Id.* The Defendant was placed under arrest for the traffic related offense. *Id.* Sergeant Shelley responded to Chandler's stop. He was aware of Chandler's contact with the Defendant on the previous day. Exhibit 2. He also knew that the Defendant was involved in the illegal drug trade and was known to possess weapons. *Id.* Shelley further knew that the Defendant was a convicted person and had recently been released from prison. *Id.*

Sergeant Shelley had only begun the vehicle inventory when he saw, in plain view, the handle of a Glock handgun between the driver's seat and the center console of the vehicle. See Exhibit 2 see also PHT 7:14-22. A plastic bag with a clear crystal-like substance could also be seen crammed in next to the gun. *Id.* Sgt. Shelley ceased the inventory just as it had begun and had Officer Chandler photograph the Glock and plastic bag in place. *Id.* The photographs are attached as Exhibit 3. Once photographed, the contraband was secured. Exhibit 2.

1 The inventory search was never restarted. *Id.* Rather, it was decided that the vehicle
2 would be seized and a search warrant applied for due to the possibility that there may be
3 additional illegal drugs or stolen property in the vehicle. *Id.* Sergeant Shelley states in his
4 report that he followed the vehicle to the Elko Police Department impound garage where
5 Officer Checketts sealed the vehicle with evidence tape. *Id.* When Sergeant Shelley ran the
6 serial number of the handgun he was told by dispatch that the gun was listed as stolen. *Id.*
7 When he processed the suspected methamphetamine, he discovered it had a net weight in
8 excess of 40 grams. *Id.* A search warrant was later applied for and obtained.

9 On September 12, 2017, the Defendant was charged with trafficking 28 grams or more
10 of a controlled substance, possession of a firearm by a person previously convicted of a
11 felony and habitual criminal.

12 Argument

13 1. Burden of Proof

14 The U.S. Supreme Court has made clear that, in a suppression hearing, the State's
15 burden should be no greater than preponderance of the evidence. *See Nix v. Williams*, 467
16 U.S. 431, 444 n.5, 104 S. Ct. 2501, 2509 (1984). The Court further explained, "We are
17 unwilling to impose added burdens on the already difficult task of proving guilt in criminal
18 cases by enlarging the barrier to placing evidence of unquestioned truth before juries." *Id.* at
19 444 n.5.

20 2. Plain View

21 In order for evidence to be lawfully seized pursuant to the plain view exception, (a) the
22 officer viewing this evidence must have legal access to the area and (b) the incriminating
23 nature of the evidence must be immediately apparent. *Horton v. California*, 496 U.S. 128,
24 110 L. Ed. 2d 112(1990).

25 a. Legal Access to the Area

26 In this matter, Sergeant Shelley was beginning an inventory search of the vehicle by
27 getting the keys when he sees the handle of a Glock handgun between the driver's seat and
28

1 center console. PHT 7:19-22. The United States Supreme Court upheld inventory searches
2 in *South Dakota v. Opperman*, 428 U.S. 364, 96 S. Ct. 3092(1976).

3 Opperman had violated a local parking ordinance when he left his vehicle parked in a
4 certain area of downtown Vermillion, South Dakota which prohibited parking from 2 a.m. to 6
5 a.m. *Id.* He was issued a parking ticket and then a second one for overtime parking at 10
6 a.m. the same morning. *Id.* Pursuant to routine practice, the vehicle was eventually towed
7 and impounded. *Id.* From outside the vehicle, an officer saw a watch on the dashboard and
8 other personal items. *Id.* The car was unlocked and in compliance with standard police
9 procedures, an inventory was conducted using a standard inventory form. *Id.* During the
10 inventory marijuana was found in the glove compartment. *Id.* Opperman was later arrested
11 when he unwisely attempted to claim his property. *Id.*

12 The Supreme Court found the authority of police to seize and remove vehicles
13 impeding traffic or threatening public safety and convenience beyond challenge. *Id.* at 369. The
14 Supreme Court also acknowledged the policy reasons behind inventorying impounded
15 vehicles and pointed out the lower expectation of privacy that an automobile carries from a
16 Fourth Amendment prospective. *Id.* In upholding the inventory search, the high court pointed
17 out that there was no suggestion that the inventory search was a pretext to conceal an
18 investigatory police motive. *Id.*

19 The defense cites to *Weintraub v. State*, 110 Nev. 287(1994), to support its motion. In
20 *Weintraub* the Nevada Supreme Court cites to *Opperman* and *Colorado v. Bertine*, 479 U.S.
21 367, 107 S. Ct. 738(1987) to support its sternly worded assertion that an inventory search
22 must be carried out pursuant to standardized official department procedures and must be
23 administered in good faith in order to pass constitutional muster. *Id.* Interestingly, neither
24 *Opperman* nor *Bertine* characterize the inventory search exception in such scrutinizing
25 language.¹ Both opinions instead uphold the actions of law enforcement and point to a lack
26
27

28 ¹ The word "must" does not appear in any of the *Opperman* descriptions of

1 of evidence suggesting the searches were pre-textual. See *Opperman* at 376; see *Bertine* at
2 372.

3 The only time the word "must" is even used in *Opperman* is to demand that each case
4 be decided on its own facts rather than attempting to apply a fixed per se rule. *Opperman* at
5 373("The test of reasonableness cannot be fixed by *per se* rules; each case must be decided
6 on its own facts.") (emphasis added)(internal citation omitted). This fundamental principal is
7 embraced by the Nevada Supreme Court and important to keep in mind when deciding the
8 matter at hand. See e.g. *Byars v. State*, 336 P.3d 939, 944, 130 Nev. Adv. Rep.
9 85(2014)(reasonableness of a warrantless search should be answered on a case-by-case
10 basis considering the totality of the circumstances)(internal citation omitted); see also *Heffley*
11 *v. State*, 83 Nev. 100, 102, 423 P.2d 666, 667(1967)(distinguishing inventory from
12 exploration may prove to be ambitious and imprecise; each case must be determined upon
13 its own facts and circumstances).

14 What distinguishes the totality of the circumstances in this case from *Weintraub* is
15 when and where the handle of the Glock firearm is seen. In *Weintraub* law enforcement
16 discovered marijuana inside a cardboard box which was inside a See's candy bag which was
17 inside the vehicle's trunk. *Id* at 288. In contrast, Sergeant Shelley had done no more than
18 lean into the driver's side to get the vehicle's keys. Upon seeing the handle of the firearm he
19 ceased what had only begun and had the firearm photographed in place. It and the two
20 baggies of crystal methamphetamine which covered the barrel of the firearm were then
21 seized.

22 The defense also relies on *State v. Greenwald*, 109 Nev. 808, 858 P.2d 36(1993).
23 However, the facts are likewise distinguishable. The trooper in *Greenwald* found a firearm
24 and several hits of LSD after completing an, "exacting search of the entire vehicle." *Id* at 809.
25 He examined the contents of the gas and oil tanks, dismantled a flashlight and it was during
26 a search of the motorcycle's buckled saddlebags that he found the contraband. *Id*.

27 The significance of the factual distinctions between Sergeant Shelley's discovery of
28 the gun handle and the in-depth searches in *Weintraub* and *Greenwald* comes back to the

1 plan view exception. In *Collins v. State*, 113 Nev. 1177, 946 P.2d 1055(1997), the Nevada
2 Supreme Court pointed out that items found in an inventory search were lawfully seized
3 because the police were in a place where they have a right and obligation to be. *Id*
4 (*emphasis added*).

5 Sergeant Shelley was indisputably in a place where he had a right and obligation to be
6 when he initiated the inventory search. He had merely leaned into the driver's side of the
7 vehicle to obtain the keys when he saw the firearm. By contrast, the officers in *Weintraub*
8 and *Greenwald* were far beyond this initial step when their in-depth searches produced
9 contraband.

10 The central concern in both *Weintraub* and *Greenwald* was whether the inventory
11 search was carried out in good faith or instead used as a pretext to conduct an otherwise
12 impermissible search. *Weintraub* at 289; *see Greenwald* 809. Both focused on the
13 inadequacy of the written inventories provided to find that neither search was justified under
14 the inventory search exception. *Id*. Although an inventory was produced, *Greenwald*
15 suggested a *per se* standard by stating, "Without an inventory, we can have no inventory
16 search." *Id* at 811. *Weintraub* cited this language in yet another case in which an inventory
17 was produced but added that the inventory provided was not a "true" inventory. *Id* at 289.

18 The defense takes this appearance of a *per se* requirement beyond the Nevada
19 Supreme Court's juris prudence. As mentioned *supra*, in *Heffley*, the Nevada High Court has
20 stated, "Unfortunately, distinguishing inventory from exploration may prove to be ambitious
21 and unprecise. We can only say that each case must be determined upon its own facts and
22 circumstances." *Heffley v. State*, 83 Nev. 100, 102, 423 P.2d 666, 667 (1967). The
23 circumstances of this case serve as an example of why the U.S. Supreme Court cautioned
24 that the test of reasonableness cannot be fixed by *per se* rules but that each case must be
25 decided on its own facts. *See Opperman*, 428 U.S. 364, 373(1976). The question is not
26 whether Sergeant Shelley completed an inventory but rather, in light of the totality of the
27 circumstances, his warrantless search was reasonable. *See Byars v. State*, 336 P.3d 939,
28 944, 130 Nev. Adv. Rep. 85(2014).

1 Sergeant Shelley never completed an inventory but his decision was a rational one
2 under the circumstances. He had only begun the search and had the contraband
3 photographed in place before securing it. Before starting the inventory again, it was decided
4 that the vehicle would be seized for a search warrant. Sergeant Shelley followed the vehicle
5 to the Elko Police Department impound garage where it was sealed with evidence tape. At
6 that point, continuing an inventory search would have made little sense and arguably would
7 have even compromised the anticipated pursuit of a warrant. The defense argues that Jim's
8 arrest was for purely exploratory purposes. This allegation is contradicted by the fact that
9 Jim had been warned the day prior that if he drove the vehicle enforcement action would be
10 taken. The vehicle had suspended plates and Officer Chandler was informed by dispatch
11 that Jim had prior failures to appear.

12 Had Shelley found the gun after an exacting search of the entire vehicle or inside a
13 cardboard box which was inside a See's candy bag which was inside the vehicle's trunk, he
14 would have reasonably been expected to have completed an inventory sheet. These
15 however are not the facts and circumstances of this case. If Shelley had been using the
16 inventory search as a ruse for general rummaging for incriminating evidence as is alleged by
17 the defense, he would not have stopped his search to secure a search warrant. Shelley's
18 actions were clearly done in good faith given the circumstances thus he had legal access to
19 the area where he viewed the contraband.

20 b. Incriminating Nature Immediately Apparent

21 As made clear in *Arizona v. Hicks*, 480 U.S. 321, 107 S. Ct. 1149(1987), in order to
22 rely on the plain view exception to the warrant requirement, the incriminating nature of an
23 item must be clear without exceeding the scope of law enforcement's legal access to the
24 object. In *Hicks* the scope of law enforcement's legal access was restricted to the exigent
25 circumstances created by a bullet being fired through the floor of Hicks' apartment. As such,
26 law enforcement was justified to enter the apartment in search of the shooter, other victims
27 and for weapons. *Id.* Movement of radio equipment to see its serial numbers exceeded this
28 scope. *Id.*

1 Although several years prior to the watershed opinion of *State v. Lloyd*, even *Collins*
2 acknowledged that once an inventory search reveals contraband, the search may be properly
3 expanded without showing exigent circumstances, *Id* at 1182. Sergeant Shelley explains in
4 his report that he knew, prior to the stop, that Jay Jim was a convicted person and had
5 recently been released from prison. With this knowledge in mind, he recognized the handle
6 of a Glock handgun between the driver's seat and center console. He likewise noticed the
7 clear plastic bag next to the handle of the gun and suspected its white crystal-like substance
8 to be methamphetamine.

9 Sergeant Shelley's seizure of the gun and methamphetamine was justified given the
10 immediately apparent incriminating nature of the gun and methamphetamine.

11 3. Remedy of Last Resort

12 Suppression was created by the United States Supreme Court as a remedy to
13 unreasonable searches and seizures. *See Davis v. United States*, 131 S. Ct. 2419, 2423,
14 180 L. Ed. 2d 285, 290(2011). In *Davis v. United States*, the U.S. Supreme Court
15 acknowledged that prior precedent made exclusion of the evidence an automatic remedy to
16 search and seizure violations. *See Davis v. United States*, 131 S. Ct. 2419, 2427, 180 L. Ed.
17 2d 285, 294(2011). After characterizing suppression as a remedy of last resort, the United
18 States Supreme Court laid out an analysis that it now applies before deciding if suppression
19 is appropriate. *See Davis v. United States*, 131 S. Ct. 2419, 2426 - 2428, 180 L. Ed. 2d 285,
20 293 - 295(2011). Keeping in mind that the purpose of suppression is to deter future
21 violations, not remedy current injury, suppression must: 1. Have real deterrent value. *See id.*
22 The value of deterrence is measured by the level of culpability of the law enforcement
23 involved. *See id.* Where the actions of law enforcement are objectively reasonable, or done
24 in good faith, or amount to simple isolated negligence, the deterrent value is insufficient to
25 justify suppression. *See id.* 2. Suppression's deterrent value must outweigh its heavy social
26 costs. *See id.*

27 Even if this Court were to find that law enforcement's actions did not technically fall
28 within an exception to the warrant requirement, the firearm and more than 40 grams of

1 methamphetamine should not be suppressed. It was objectively reasonable for law
2 enforcement to begin an inventory search after Jim was lawfully arrested. Stopping the
3 inventory search to photograph and secure the firearm and suspected methamphetamine
4 was a reasonable way to ensure officer safety, preserve the appearance of the contraband
5 when first found and ensure the items would not be lost.

6 Unlike *Weintraub* and *Greenwald*, law enforcement's reason for not providing an
7 inventory is their good faith effort to pursue a warrant. Even if the Court sides with the
8 defense's argument that an inventory should have been created and provided, at most the
9 circumstances indicate law enforcement excusably misunderstood how to transition from an
10 inventory search to a warrant. Either way, any deferrent value is grossly outweighed by the
11 heavy social cost of offending the basic concepts of the criminal justice system by letting a
12 guilty and dangerous defendant escape conviction.

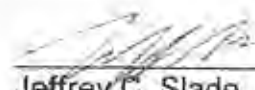
13 Conclusion

14 Sergeant Shelley's seizure of the gun and methamphetamine was a reasonable
15 seizure in light of the totality of the circumstances. Although he did not complete an
16 inventory, his actions are distinguishable from the cases cited by the defense regarding
17 inventory searches. The plain view doctrine justifies Shelley's actions because He lawfully
18 began an inventory search when he recognized the firearm and methamphetamine.
19 Alternative, the good faith efforts of law enforcement do not justify suppression of the
20 evidence.

21
22 Dated this 29 day of October 2019.

23 TYLER J. INGRAM
24 Elko County District Attorney

25 By:

26 
27 Jeffrey C. Slade
28 Deputy District Attorney
State Bar Number: 13249

1 **Unsworn Declaration In Support Of Opposition**

2 **Pursuant to NRS 53.045**

3 Comes now JEFFREY C. SLADE, who declares the following to the above-
4 entitled Court:

- 5 1. That the Declarant is presently serving as a Deputy District Attorney of the Elko
6 County District Attorney's Office.
- 7 2. That I have read the assertions of fact set forth in this pleading and incorporate them
8 into this Declaration.
- 9 3. This Opposition is made in good faith, and not merely for the purposes of delay.
- 10 4. I declare under penalty of perjury that it is my belief the foregoing is a true and correct
11 reflection of the facts as they appear in the sources cited to in the motion itself.

12 Dated this 29 day of October 2019

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15 JEFFREY C. SLADE
16 Deputy District Attorney
17 State Bar Number: 13249
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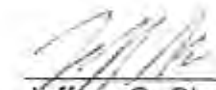
NOTICE

TO: JEFFREY J. KUMP, Attorney for the above-named Defendant and
The Clerk of the Fourth Judicial District Court.

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

Dated this 29 day of October 2019.

TYLER J. INGRAM
Elko County District Attorney

By: 
Jeffrey C. Slade
Deputy District Attorney
State Bar Number, 13249

CERTIFICATE OF SERVICE

I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko County District Attorney's Office, and that on the 20th day of October, 2019, I served the foregoing Opposition, by delivering, mailing or by facsimile transmission or causing to be delivered, mailed or transmitted by facsimile transmission, a copy of said document to the following:

By delivering to:

THE HONORABLE NANCY PORTER
FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

JEFFREY J. KUMP
ATTORNEY AT LAW
217 IDAHO STREET
ELKO, NV 89801


TESSA DEML
CASEWORKER

DA# F-17-02607

EXHIBIT 1

Initial Report J. Chandler

Initial Report J. Chandler
September 2, 2017
Case # 2017-18030

On September 1, 2017 I had responded to a call involving a silver Chevrolet Impala bearing Nevada license 474 MJP. The license was run through central dispatch and found to be expired as of 07/19/2017 and suspended as of 12/28/2016. The person in possession of the vehicle at the time was identified as Jay Jim.

I spoke with him at that time and Jay stated that he was in the process of purchasing the vehicle from "Brad" but could not recall his last name. I made contact via phone with Brad Bowman's ex-wife who was also on the registration and she confirmed the sale of the vehicle. Jay was informed of the registration status and he stated that he did not intend to drive the vehicle.

On September 2, 2017 at approximately 1020 hours I, Officer Chandler was on patrol in the area of West Sage when I saw a silver Chevrolet Impala traveling east on West Sage Street, the vehicle was traveling in front of me. I confirmed the license plate on the vehicle to be Nevada 474 MJP. I knew from the day prior that that license was suspended so I initiated a traffic stop using only overhead lights. The vehicle pulled into the parking lot of the West Sage Apartments located at 1002 West Sage Street in the City of Elko, Nevada and stopped. Dispatch confirmed 474 MJP to be suspended.

I could see a bald male subject in the driver seat as I approached who was not wearing a seat belt; the male also placed both his hands out of the driver's window so as I could see he had nothing except a cell phone in his hand. The male subject I immediately recognized as being Jay Jim from the interaction with him the day prior. I made contact with Jay and informed him that the reason for the traffic stop was the registration on the vehicle was expired/suspended. Jay stated that he was just driving the vehicle back to 150 Laurel Drive so that he could park it.

I asked Jay to provide me with his driver license, vehicle registration, and proof of insurance. Jay stated that he did not have any of the documentation that I requested. Jay then provided me with his full name, date of birth, and his social security number. Jay's information was run through central dispatch along with a request to check for a history of failure to appear. Dispatch replied that Jay returned as having FTA's and his driver license was in a pending status.

Jay was told he was being placed under arrest for suspended/revoked plates, driving without a valid license, no evidence of current insurance, and safety belt. I placed Jay in handcuffs that were checked for proper fit and double locked. Jay was searched incident to arrest and no further contraband was found on his person.

Sgt. Shelley began an impound inventory of the vehicle (See Sgt. Shelley's supplemental Report). I was informed at this time that time that he could see a handle of a Glock handgun between the driver seat and the center console. I then took photographs of the handgun. Sgt. Shelley then stated that he could see plastic bags in the same location that he believed to contain a white crystalline substance that through his training and experience he believed to be methamphetamine. I photographed the items in place, they were then removed. There was two bags of crystalline substance one containing a larger amount than the other.

The serial number on the handgun (Glock 19 9mm, serial number BAVK267) was run through central dispatch and returned as being stolen through the Elko Police Department Case# 2017-14657. Sgt. Shelley took possession of all seized items. It was decided to seize and seal the vehicle and a search warrant would be applied for. A criminal history was conducted on Jay Jim and he was found to have at least one prior felony conviction.

I transported Jay Jim to jail, while at the jail Sgt. Shelley notified me that he had weighed and tested the substance using a Narcotic Identification Kit. The larger bag had a net weight of 42.37 grams and the smaller bag a net weight of 4.20 grams. Both bags of crystalline substance tested presumptively positive for methamphetamine.

Jay Jim was booked in on the above traffic infractions and trafficking a controlled substance over 28 grams, possession of a controlled substance, possession of a controlled substance for sale, ex-felon in possession of a firearm, and possession of a stolen firearm.

I respectfully request this report be forwarded to the District Attorney's Office for prosecution.

End Report

EXHIBIT 2

Supplement/Shelley

Supplemental Report

Case 2017-18030

Sergeant Jeremy Shelley

On 9/2/17 at approximately 1020 hours I, Sergeant Shelley, heard radio traffic from Officer Chandler regarding a traffic stop he was making. I recognized the vehicle and license plate (silver Chevy Impala NV 474MJP) as one related to a call from the previous day. I responded to Officer Chandler's location at 1002 W Sage Street due to my knowledge that Jim was involved in the illegal drug trade and was known to possess weapons. I also knew that Jim was a convicted person and had recently been released from prison.

The previous call was a report of a male subject, later identified as Jay Jim, who appeared to be attempting to steal the vehicle. Contact was made with Jim and he claimed to be purchasing the vehicle and was attempting to start the vehicle. Being the vehicle was not listed as stolen there was no action to be taken. Jim was advised that the vehicle had suspended license plates and that if he were to drive it he would be subject to enforcement action.

Officer Chandler chose to arrest Jim based on the traffic violations and the fact that Jim had a listed history of failure to appear. I stood by as Officer Chandler placed Jim in handcuffs, searched him and placed him in his patrol car.

I began an impound inventory of the vehicle and tucked between the driver's seat and the center console I saw the handle of a Glock handgun. I stopped and advised Officer Chandler who retrieved his camera to photograph the handgun in place. I pointed out the handgun and saw next to it a plastic bag containing a crystal substance I believed to be methamphetamine. The items were photographed in place and then removed. There were two bags of a crystal substance, one containing what I believed to be over one ounce and a smaller bag that appeared to be approximately four grams. Both bags of crystal substance were directly next to the handgun.

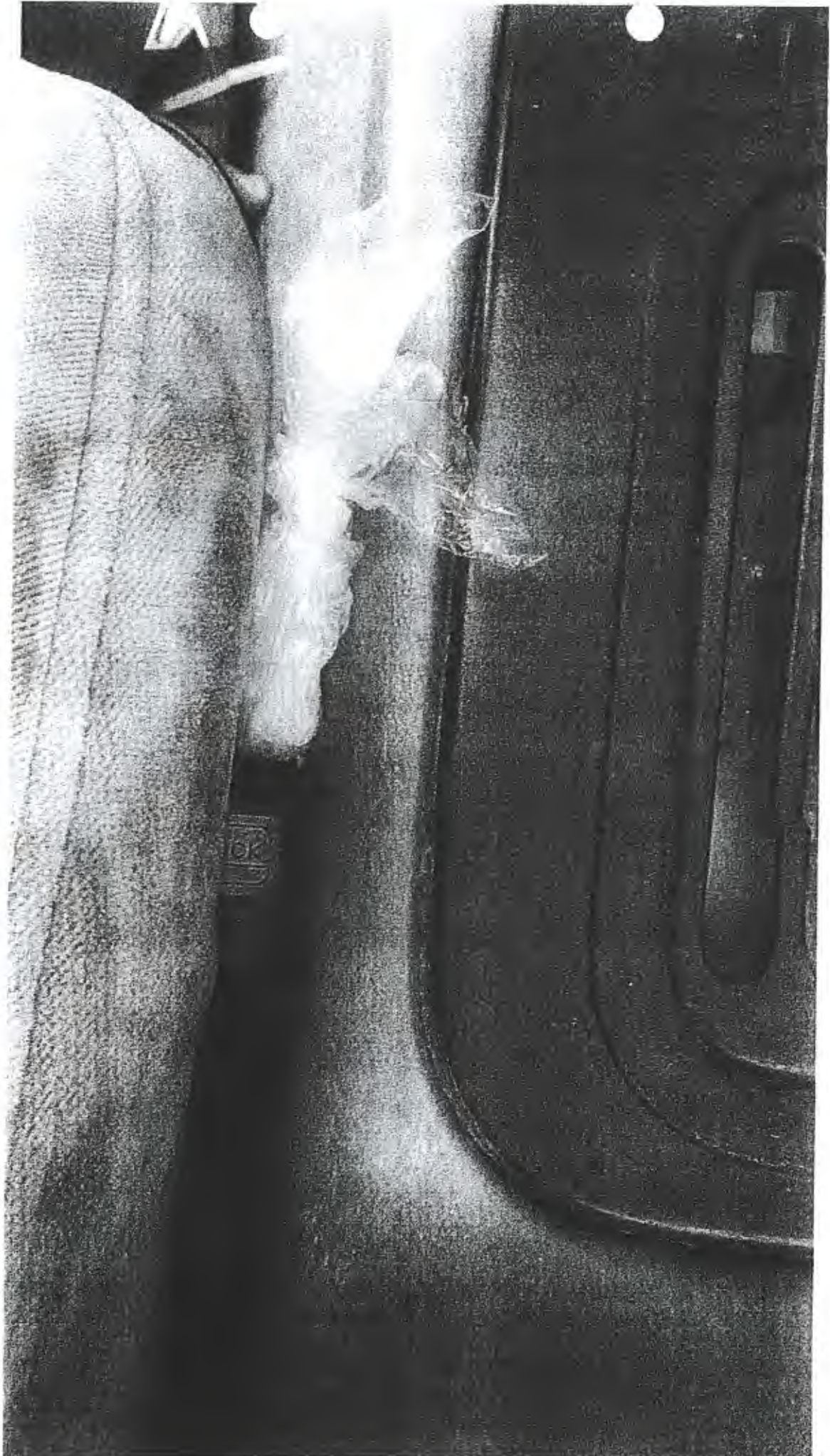
I ran the serial number of the handgun (Glock model 19 9mm, serial number BAVK267) through dispatch. I was told the handgun was listed as stolen through the Elko Police Department, case number 2017-14657. I placed all of the seized items in a bag and secured them in my patrol car. It was decided that the vehicle would be seized and a search warrant applied for due to the possibility that there may be additional illegal drugs or stolen property in the vehicle.

A&K Towing arrived and loaded the vehicle. I followed the vehicle to the Elko Police Department impound garage where Officer Checketts saw to the vehicle being unloaded and sealed with evidence tape.

I processed the seized items and weighed the suspected methamphetamine on the certified scale in the evidence processing area. The larger bag of suspected methamphetamine had a net weight of 42.37 grams. The smaller bag of suspected methamphetamine had a net weight of 4.20 grams. I conducted a NIK test on the suspected methamphetamine from both bags with a presumptive positive result. The suspected methamphetamine and handgun were packaged and placed into evidence. Photographs were taken and later entered into VeriPic.

Report to accompany initial report.

EXHIBIT 3









1 CASE NO. CR-FP-17-6723

2 DEPT. NO. 1

FOURTH JUDICIAL DISTRICT COURT
FILED IN OPEN COURT

Date: 11/19/19

Time: 9:59 A.M.

Clerk: DM

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

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 JAY LESLIE JIM,

13 Defendant.
14

AMENDED
PLEA AGREEMENT

15 I hereby agree to plead guilty to: one count of TRAFFICKING IN A SCHEDULE I
16 CONTROLLED SUBSTANCE, A CATEGORY B FELONY AS DEFINED BY NRS
17 453.3385(1)(b) and one count of POSSESSION OF A FIREARM BY A PROHIBITED PERSON,
18 A CATEGORY B FELONY AS DEFINED BY NRS 202.360.1, as more fully alleged in the
19 charging document.

20 My decision to plead guilty is based upon the plea agreement in this case which is as follows:

21 1. I agree to enter a plea of guilty to one count of TRAFFICKING IN A SCHEDULE
22 I CONTROLLED SUBSTANCE, A CATEGORY B FELONY AS DEFINED BY NRS
23 453.3385(1)(b) and one count of POSSESSION OF A FIREARM BY A PROHIBITED PERSON,
24 A CATEGORY B FELONY AS DEFINED BY NRS 202.360.1;

25 2. The State agrees to dismiss all other associated charges; shall not file any other
26 charges arising out of the facts of this case; and shall not pursue sentencing of defendant as a habitual
27 criminal;

28 3. At the time of sentencing the parties shall jointly recommend that defendant shall be
sentenced to not less than 24 months on the bottom end of each count and that they run consecutive
to F-17-5748;

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Attorney at Law
217 Idaho Street
Elko, Nevada 89801
(775) 738-9881

1 4. The parties further agree that defendant shall file a motion to suppress and said
2 motion is dispositive and a jury trial is not necessary. If the court grants the motion, the State will
3 dismiss this case with prejudice, and the court will not have to execute this plea agreement. If the
4 court does not grant the motion to suppress at issue, then defendant agrees to accept and execute this
5 agreement; each party shall retain their respective right to appeal the court's decision on the motion
6 to suppress.

7 5. The State agrees that upon the above-entitled court's acceptance of this plea, and the
8 entry of judgment convicting the defendant of one count of TRAFFICKING IN A SCHEDULE I
9 CONTROLLED SUBSTANCE, A CATEGORY B FELONY AS DEFINED BY NRS
10 453.3385(1)(b) and one count of POSSESSION OF A FIREARM BY A PROHIBITED PERSON,
11 A CATEGORY B FELONY AS DEFINED BY NRS 202.360.1, it will be deemed a complete
12 resolution of any and all criminal liability known at this time by the Elko County District Attorney's
13 Office which the defendant may have had in connection with the events which gave rise to the
14 prosecution now pending against the defendant in the above-entitled case.

15 6. The parties are otherwise free to argue.

16 *CONSEQUENCES OF THE PLEA*

17 I understand that by pleading guilty I admit the facts which support all the elements of the
18 offenses to which I now plead as set forth in the charging document.

19 I understand that as a consequence of my plea of guilty to one count of TRAFFICKING IN
20 A SCHEDULE I CONTROLLED SUBSTANCE, A CATEGORY B FELONY AS DEFINED BY
21 NRS 453.3385(1)(b) I may be imprisoned for a period of not less than two (2) years and not more
22 than fifteen (15) years and that I may be fined up to \$100,000.00.

23 I understand that as a consequence of my plea of guilty to one count of POSSESSION OF
24 A FIREARM BY A PROHIBITED PERSON, A CATEGORY B FELONY AS DEFINED BY NRS
25 202.360.1 I may be imprisoned for a period of not less than one (1) year and not more than six (6)
26 years and that I may be fined up to \$5,000.00.

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

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1 I understand that I am not eligible for probation for the offense to which I am pleading guilty.
2 I understand that, except as otherwise provided by statute, the question of whether I receive
3 probation is in the discretion of the sentencing judge.

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

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

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

13 I understand that the division of parole and probation of the department of motor vehicles
14 and public safety may or will prepare a report for the sentencing judge before sentencing. This report
15 will include matters relevant the issue of sentencing, including my criminal history. I understand
16 that this report may contain hearsay information regarding my background and criminal history. My
17 attorney and I will each have the opportunity to comment on the information contained in the report
18 at the time of sentencing.

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

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

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WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I have waived the following rights and privileges:

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

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

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

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

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

6. The right to appeal the conviction, with the assistance of an attorney, either appointed or retained, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035.

VOLUNTARINESS OF PLEA

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

I understand that the state would have to prove each element of the charge against me at trial.

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

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

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

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Attorney at Law
217 Idaho Street
Elko, Nevada 89801
(775) 738-9881

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

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

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

9 Dated this 19 day of November, 2019.

10
11 
12 JAY LESLIE JIM
13 Defendant

14 Dated this 19th day of November, 2019.

15
16 TYLER J. INGRAM
17 ELKO COUNTY DISTRICT ATTORNEY

18 
19 JEFFREY C. SLADE
20 Deputy District Attorney
State Bar No.: 13249

21 *CERTIFICATE OF COUNSEL*

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

24 1. I have fully explained to the defendant the allegations contained in the charges to which
25 guilty pleas are being entered.

26 2. I have advised the defendant of the penalties for each charge and the restitution that the
27 defendant may be ordered to pay.

28 3. All pleas of guilty offered by the defendant pursuant to this agreement are consistent with

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1 all the facts known to me and are made with my advice to the defendant and are in the best interest
2 of the defendant.

3 4. To the best of my knowledge and belief, the defendant:

4 (a) Is competent and understands the charges and the consequences of pleading guilty as
5 provided in this agreement.

6 (b) Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily.

7 (c) Was not under the influence of intoxicating liquor, a controlled substance or other drug
8 at the time of the execution of this agreement.

9
10 DATED this 19th day of November, 2019.

11
12 JEFF KUMP, PLLC
13 217 Idaho Street
14 Elko, NV 89801

15 
16 Jeffrey J. Kump, Nevada Bar No. 5694
17 Attorney for Defendant
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JEFF KUMP, PLLC
Attorney at Law
217 Idaho Street
Elko, Nevada 89801
(775) 738-9881

Case No. CR-FP-17-6723

Dept. No. 1

RECEIVED - 4 AM 10:07
CLERK OF DISTRICT COURT

CLERK _____ DEPUTY _____

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

THE STATE OF NEVADA,

Plaintiff,

V.

JAY LESLIE JIM,

Defendant.

**ORDER DENYING
MOTION TO SUPPRESS**

On November 18, 2019, this matter came before the Court for hearing on Defendant's Motion to Suppress which was filed October 9, 2019. The State filed its Opposition to Motion to Suppress on October 29, 2019. At the hearing, the State was represented by Deputy District Attorney Jeffrey C. Slade. Defendant was present, in custody, represented by his attorney Jeffrey J. Kump, Esq. Defendant has moved this Court to suppress evidence that was seized by the police after he was arrested.

On September 1, 2017, Officer Joshua Chandler of the Elko Police Department was called to a suspicious event at the Red Lion regarding a Chevrolet Impala. He discovered that the registration on the vehicle was expired and suspended. Defendant was in possession of the vehicle and said he was buying it. Officer Chandler called one of the registered owners who confirmed the sale. Chandler told Defendant that the registration was suspended and directed him not to drive the vehicle.

1 On September 2, 2017, Officer Chandler was on patrol. At approximately 10:00 a.m., he was
2 in the area of West Sage Street and saw the Impala. He confirmed the license plate and then stopped
3 the car. Defendant was the sole occupant. For state of mind purposes only, Chandler testified that
4 when he ran Defendant's name, date of birth, and social security number, he discovered that
5 Defendant did not have a valid driver's license and had a history of failing to appear in court. Exhibit
6 2 supported that Defendant's driver's license was "pending," which is the same information Chandler
7 had received from dispatch. Chandler then arrested Defendant. By that time, Sgt. Jeremy Shelley
8 had arrived as backup.

9 Sgt. Shelley had also been present on September 1st at the Red Lion. He testified that he and
10 Officer Chandler made contact with Defendant and a female. The police told Defendant that the
11 registration was suspended. The police told Defendant, who did not have a driver's license, not to
12 drive or "enforcement action would be taken." Shelley knew that Defendant was a convicted felon
13 and had recently been released from prison. He also knew that Defendant had been stopped a month
14 before and had been in possession of a firearm on that occasion.

15 When Shelley arrived as backup on September 2nd, Chandler arrested Defendant. Shelley
16 began an "inventory and impound of the vehicle." He entered the driver's door to turn off the car or
17 remove the keys. As he did so he saw the butt of a Glock firearm between the car seat and console.
18 Shelley is very familiar with Glock firearms because he has owned one for more than twenty years.
19 Chandler photographed the Glock in place. Baggies could be seen near the butt of the gun. Shelley
20 removed the gun from in between the car seat and console and placed it on the seat to be
21 photographed. The baggies had a crystalline substance which Shelley recognized as
22 methamphetamine based on his training and experience. He seized the gun and baggies, then
23 stopped any further search before obtaining a search warrant. He did not prepare an inventory. The
24 car was towed to the evidence garage; Shelley followed. When Officer Matthew Miller executed
25 the search warrant, he found more methamphetamine and two scales. He inventoried only those
26 items seized as evidence because he was not conducting an inventory search; he was searching

1 pursuant to the search warrant.

2 Defendant argues that the evidence should be suppressed because the items were not seized
3 pursuant to a lawful inventory search because the officers did not prepare an inventory. The State
4 argues that the evidence was in plain view, and even if it wasn't, the officers acted in good faith.

5 It is unnecessary for this Court to analyze whether this was a proper inventory search.
6 Although Sgt. Shelley intended to conduct an inventory search, he did not. The gun and baggies of
7 methamphetamine were in plain view. After he seized them, he stopped any further search until he
8 procured a search warrant. An object is in plain view, if the officer "is in a place where he had a
9 right and obligation to be." Collins v. State, 113 Nev. 1177, 1181, 946 P.2d 1055, 1059 (1997).
10 Although this was not an inventory search, this Court must determine whether Shelley was "in a
11 place where he had a right and obligation to be," which still implicates at least the initiation of an
12 inventory search.

13 "[A]n inventory search is per se reasonable, and accordingly constitutional, when it complies
14 with police department policies." Diamampo v. State, 124 Nev. 414, 432 185 P.3d 1031, 1042
15 (2008) (citing South Dakota v. Opperman, 428 U.S. 364, 376 (1976)). Elko Police Department
16 policy (Exhibit 4) dictates that a "vehicle will be impounded" when the driver is arrested and is not
17 the registered owner. "An impound inventory of the vehicle will be completed . . . (and) [a] copy of
18 the impound inventory will be given to the two (sic) truck driver." Shelley had a right to be where
19 he was. Defendant was under arrest for driving without a valid driver's license. See NRS
20 484A.710(1)(h). Furthermore, he was not the registered owner of the vehicle. Pursuant to Elko
21 Police Department policy, Sgt. Shelley impounded the vehicle. He entered the vehicle to turn off
22 the car or retrieve the keys so the vehicle could be inventoried. When he did so, he saw the gun and
23 baggies in plain view.

24 The next question is whether he lawfully seized the gun and drugs. In Arizona v. Hicks, the
25 United States Supreme Court held that the incriminating nature of an object found in plain view must
26 be clear without exceeding the scope of an officer's legal access to the object. 480 U.S. 321 (1987).

1 In the case at hand, the incriminating nature of the gun was readily apparent. Sgt. Shelley
2 immediately recognized the butt of a Glock firearm. He knew Defendant was a convicted felon
3 prohibited from possessing firearms. He also saw the baggies. When he moved the gun to take
4 possession of it, he discovered the baggies contained methamphetamine. He did not exceed the
5 scope of his legal access to the evidence.

6 Thereafter, the officers discontinued their search and obtained a search warrant. The Search
7 Warrant Return discloses that methamphetamine and two scales were found. Defendant has not
8 complained that the warrant was defective.

9 Finally, even if the search and seizure were unconstitutional, exclusion of the evidence is not
10 an appropriate remedy. *See Davis v. United States*, 564 U.S. 229 (2011). It was objectively
11 reasonable for the officers to begin an inventory search of Defendant's vehicle after they arrested him
12 and impounded the vehicle. Certainly, it is not reasonable to expect the officers to stop, leaving a
13 gun and drugs in the vehicle, which would have risked officer safety and the loss of evidence.

14 Therefore, **IT IS HEREBY ORDERED** that Defendant's Motion to Suppress is **DENIED**.
15 SO ORDERED this 3 day of February, 2020.

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17 
18 NANCY PORTER
19 DISTRICT JUDGE - DEPT. 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 4th day of February, 2020, I personally hand delivered a file-stamped copy of the foregoing **ORDER DENYING MOTION TO SUPPRESS** addressed to:

Tyler J. Ingram, Esq.
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
[Box in Clerk's Office]

Jeffrey J. Kump, Esq.
217 Idaho Street
Elko, NV 89801
[Box in Clerk's Office]



1 CASE NO. CR-FP-17-6723

2 DEPT. NO. 1

3 Affirmation Pursuant to NRS 239B.030

4 SSN Does Appear

5 SSN Does Not Appear

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

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs,

12 JAY LESLIE JIM,

13 Defendant.

AMENDED CRIMINAL

INFORMATION

(Pursuant to Plea

Agreement)

14
15 COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by
16 and through its Counsel of Record, the Elko County District Attorney's Office, and informs the
17 above-entitled Court that Defendant above-named, on or about the 2nd day of September,
18 2017, at or near the location of Elko, within the County of Elko, and the State of Nevada,
19 committed a crime or crimes described as follows:

COUNT 1

20 **TRAFFICKING IN A SCHEDULE I CONTROLLED SUBSTANCE, A**
21 **CATEGORY B FELONY AS DEFINED BY NRS 453.3385.1(b). (NOC**
22 **51158)**

23 That the Defendant did knowingly or intentionally possess a schedule I
24 controlled substance or a mixture containing a schedule I controlled
25 substance, to wit: Methamphetamine, and that the schedule I controlled
26 substance or mixture weighing fourteen (14) grams or more, but less than
27 twenty-eight (28) grams.
28

COUNT 2

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

That the Defendant willfully and unlawfully owned; and/or possessed, actually or constructively; and/or had custody and/or control of the following described firearm: Glock 9 millimeter.

Furthermore, that the Defendant, at the time of the ownership, possession, custody or control, of said firearm had been previously convicted of committing a felony criminal offense or offenses or had been previously convicted of domestic violence, as follows:

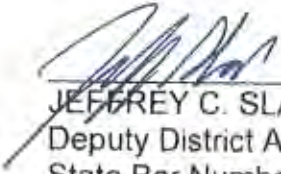
DATE CONVICTED/OFFENSE	COURT/STATE/CASE NUMBER
1-17-2003 / Battery with a Deadly Weapon, a Category B Felony	4 th Judicial District / Nevada / CR-FP-02-824
And/or	
5-14-2010 / Domestic Battery, a Misdemeanor	Elko Justice Court / Nevada / CR-2009-1910
And/or	
9-24-2010 / Uttering of a Forged Instrument a Category D Felony and Possession of a Controlled Substance a Category E Felony	4 th Judicial District / Nevada / CR-FO-10-0454
And/or	

3-02-2011 / Attempted Ex-felon in Possession of a Firearm, a Category C Felony	4 th Judicial District / Nevada / CR-FP-10-37
And/or	
3-02-2011 / Possession of a Controlled Substance, a Category E Felony	4 th Judicial District / Nevada / CR-FP-10-861
And/or	
11-05-2014 / Possession of a Controlled Substance, a Category E Felony	4 th Judicial District / Nevada / CR-FP-13-941

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

Dated: February 28, 2020.

TYLER J. INGRAM
Elko County District Attorney


JEFFREY C. SLADE
Deputy District Attorney
State Bar Number: 13249

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

JOSHUA CHANDLER: 1448 SILVER STREET ELKO, NV 89801-3924

BRYAN GEORGE DRAKE: 1448 SILVER STREET ELKO, NV 89801-3924

MATTHEW MILLER: ECNU, 3920 E. IDAHO ST ELKO, NV 89801

1 REBECCA NELSON: 911 PARR BLVD RENO, NV 89512

2 STEPHANIE SCHLESENER: 911 PARR BLVD RENO, NV 89512

3 JEREMY SHELLEY: 1448 SILVER STREET ELKO, NV 89801-3924

4 MICHAEL MARTIN SILVA: 775 WEST SILVER STREET ELKO, NV 89801

5 ZACHARY KEITH WASSOM: 665 BULLION RD # 35 ELKO, NV 89801

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 20th day of February, 2020, I hereby
4 served a copy of the CRIMINAL INFORMATION, by delivering, mailing, faxing, or causing to
5 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 JEFFREY J. KUMP
12 ATTORNEY AT LAW
13 217 IDAHO STREET
14 ELKO, NV 89801

15 
16 TESSA DEML
17 CASEWORKER

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27 DA # F-17-02607
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1 CASE NO. CR-FP-17-6723

2 DEPT. NO. 1

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

9 THE STATE OF NEVADA,

10 Plaintiff,

11 V.

12 JAY LESLIE JIM,

13 Defendant.
14 _____/

JUDGMENT OF CONVICTION
(Guilty Plea - Incarceration)

15 On the 2nd day of March, 2020, above-named Defendant, JAY LESLIE JIM, AKA JAY LEE JIM,
16 AKA "LITTLE JAY," AKA "LITTLE J" [who is further described as follows: Date of birth: 8/7/1983; (age
17 36); Place of birth: Elko, Nevada] was arraigned and entered a plea of guilty to the crime(s) described below
18 and as more fully set forth in the criminal information filed herein. Legal counsel present at Defendant's
19 arraignment were Jeffrey J. Kump, Esq., representing Defendant, and Tyler J. Ingram, Elko County District
20 Attorney, representing the State. At the time above-named Defendant entered his plea of guilty, this Court
21 informed him of all applicable constitutional rights, the elements of the crime(s) charged, and the maximum
22 possible penalty for said crime(s). After being so informed, above-named Defendant stated that he
23 understood all of the applicable constitutional rights, the elements of the crime(s) charged and the maximum
24 possible penalty for said crime(s). This Court then made a finding that Defendant had entered his plea freely
25 and voluntarily, and with full understanding of his constitutional rights, the nature of the charges and the
26 consequences of his plea.

[illegible]

COUNT 2: POSSESSION OF A FIREARM BY A PROHIBITED PERSON, A CATEGORY B FELONY AS DEFINED BY NRS 202.360.1. (NOC 51460)

After hearing from all parties and allowing Defendant an opportunity to personally address the Court, this Court finds that the appropriate judgment in this case is and shall be as follows:

For the conviction of Count 1, Defendant is sentenced to a maximum term of 120 months in the Nevada Department of Corrections with minimum parole eligibility after 48 months. Defendant is credited with 655 days heretofore served as computed to and including the date of this sentencing (the 8th day of June, 2020). Said sentence shall be served consecutively with the sentence imposed in Case No. CR-FP-17-5748.

FINANCIAL AND RESTITUTION REQUIREMENTS

- $$\begin{array}{c} H \\ H \end{array}$$

CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department I, and that on this 2nd day of July, 2020, I personally hand delivered a file stamped copy of the foregoing **JUDGMENT OF CONVICTION** (Guilty Plea - Incarceration) addressed to:

Dept. of Parole and Probation
3920 E. Idaho Street
Elko, NV 89801
[Box in Clerk's Office]

Elko County Sheriff's Office
775 W. Silver Street
Elko, NV 89801
{1 Certified Copy}
[Box in Clerk's Office]

Tyler J. Ingram, Esq.
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
[Box in Clerk's Office]

Jeffrey J. Kump, Esq.
217 Idaho Street
Elko, NV 89801
[Box in Clerk's Office]



CERTIFICATE OF ELECTRONIC SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Fourth Judicial District Court, Department I, Elko, Nevada, and that on this 2nd day of July, 2020, I caused to be delivered via electronic-mail, a file stamped copy of the foregoing **JUDGMENT OF CONVICTION** (Guilty Plea - Incarceration), along with a copy of Defendant's Pre-Sentence Investigation Report addressed to:

Nevada Department of Corrections
Offender Management Division, Sentence Management
Attn: Shelly Williams, Records Supervisor
E-mail: skwilliams@doc.nv.gov
Attn: Michael Johnson
E-mail: micjohnson@doc.nv.gov
Attn: Mary Gourlay
E-mail: mgourlay@doc.nv.gov



1 CASE NO. CR-FP-17-6723

2 DEPT. 1

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

9 JAY LESLIE JIM,

10 Appellant,

11 vs.

NOTICE OF APPEAL

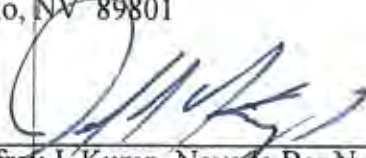
12 THE STATE OF NEVADA,

13 Respondent.
14

15 Notice is hereby given that JAY LESLIE JIM, Appellant above named, hereby appeals to the
16 Supreme Court of Nevada from the Judgment and Sentence entered in this action on the 1st day of
17 July, 2020, and Order Denying Motion to Suppress filed February 4th, 2020.

18 DATED this 22nd day of July, 2020.

19 JEFF KUMP, PLLC.
20 217 Idaho Street
21 Elko, NV 89801

22 
23 Jeffrey J. Kump, Nevada Bar No. 5694
24 Attorney for Appellant
25
26
27
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CERTIFICATE OF HAND DELIVERY

Pursuant to N.R.C.P. 5(b), I hereby certify that on July 22nd, 2020, I hand delivered a true and correct copy of the above and foregoing Notice of Appeal by personally delivering the same follows:

Tyler J. Ingram, Esq.
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
[Box in Clerk's Office]

CERTIFICATE OF MAILING

Pursuant to N.R.C.P. 5(b), I hereby certify that on July 22nd, 2020, I mailed a true and correct copy of the above and foregoing Notice of Appeal by placing the same, postage prepaid, in the United States mail at Elko, Nevada, addressed as follows:

Jay Leslie Jim #75570
P.O. Box 7000
Carson City, Nevada 89702



1 CASE NO. CR-FP-17-6723

2 DEPT. 1

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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
9 JAY LESLIE JIM,

10 Appellant,

11 vs.

CASE APPEAL STATEMENT

12 THE STATE OF NEVADA,

13 Respondent.
14

15
16 COMES NOW Jay Leslie Jim, appellant above named, by and through his attorney Jeff
17 Kump, PLLC, the appellant's appointed counsel of record, and pursuant to the provisions of NRAP
18 Rule 3(a)(1) and hereby makes the following case appeal statement.

19 1. The name of the appellant filing this case appeal statement is Jay Leslie Jim, who
20 was the petitioner in the proceedings undertaken in district court.

21 2. The Judge who presided over the jury trial and who signed the Judgment and
22 Sentence is the Honorable Nancy Porter of the Fourth Judicial District Court of the State of Nevada,
23 in and for the County of Elko, Department 1.

24 3. The parties to the proceedings undertaken in District Court in this matter are as
25 follows: State of Nevada, represented by the Elko County District Attorney's Office was the
26 plaintiff, represented by Jeff Slade, Esq. and Jay Leslie Jim is the defendant, represented by Jeff
27 Kump, Esq.

28 4. The parties to this appeal are as follows: State of Nevada, represented by the Elko
County District Attorney's Office is the respondent and Jay Leslie Jim is the appellant, who is
represented by court-appointed counsel, Jeffrey J. Kump, Esq., #5694.

1 5. Insofar as they are known to the appellant, the names, addresses and telephone
2 numbers of the parties respective counsel are as follows:

3 Tyler Ingram
4 Elko County District Attorney
5 540 Court Street
6 Elko, Nevada 89801
7 (775) 738-3101

8 Jeffrey J. Kump, PLLC
9 217 Idaho Street
10 Elko, Nevada 89801
11 (775) 738-9881

12 6. The appellant, Jay Leslie Jim, was represented by court-appointed counsel,
13 represented by Jeff Kump, Esq., in the Fourth Judicial District Court, in and for the County of Elko,
14 State of Nevada.

15 7. The original proceedings in District Court in this matter were commenced on July
16 23rd, 2018, when Criminal Information, charging the defendant with COUNT 1: TRAFFICKING
17 IN A SCHEDULE I CONTROLLED SUBSTANCE, A CATEGORY A FELONY AS DEFINED
18 BY NRS 453.3385.1(C); COUNT 2 POSSESSION OR A FIREARM BY A PROHIBITED
19 PERSON A CATEGORY B FELONY AS DEFINED BY NRS 202.360.1; COUNT 3 HABITUAL
20 CRIMINAL, A CATEGORY A FELONY AS DEFINED BY NRS 207.010(1)(b); OR IN THE
21 ALTERNATIVE TO COUNT 3 COUNT 4 HABITUAL CRIMINAL, A CATEGORY B FELONY
22 AS DEFINED BY NRS 207.010(1)(a), as filed in Case No. CR-FP-17-6723, Department 1, THE
23 STATE OF NEVADA vs. JAY LESLIE JIM.

24 8. An Amended Plea Agreement was reached on November 19th, 2019 each party
25 retaining their respective right to appeal from the district court's decision of Defendant's Motion to
26 Suppress. District Court filed its Order Denying Motion to Suppress on February 4th, 2020.

27 9. An Amended Criminal Information (Pursuant to Plea Agreement) was filed on
28 February 28th, 2020 charging the defendant with COUNT 1: TRAFFICKING IN A SCHEDULE I
CONTROLLED SUBSTANCE, A CATEGORY B FELONY AS DEFINED BY NRS
453.3385.1(b); COUNT 2 POSSESSION OR A FIREARM BY A PROHIBITED PERSON A
CATEGORY B FELONY AS DEFINED BY NRS 202.360.1.

///

///

1 10. A Judgment of Conviction (guilty plea - incarceration) was filed in this matter on July
2 2, 2020.

3 DATED this 4th day of August, 2020'.

4 JEFF KUMP, PLLC
5 217 Idaho Street
6 Elko, NV 89801

7 _____
8 Jeffrey J. Kump, Nevada Bar No. 5694
9 Attorney for Appellant
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