

1 CASE NO. CV-FR-17-687

2 DEPT. NO. 1

3 Affirmation: Pursuant to NRS 239B.030,
4 this document does not contain the social
5 security number of any person.

FILED

2021 JAN 28 PM 3:17

ELKO CO DISTRICT COURT

Electronically Filed
Feb 05 2021 10:54 a.m.

CLERK _____ ELIZABETH A. BROWN
Deputy Clerk of Supreme Court

6 **IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF ELKO**

8 ELKO COUNTY SHERIFF'S OFFICE,

9 Plaintiff,

NOTICE OF APPEAL

10 vs.

11 Real Property Located at 743 Devon Drive.,
12 Spring Creek, Nevada 89815,

13 Respondent,

14 EFREN AGUIRRE JR.,

15 Claimant.
_____ /

16 **NOTICE OF APPEAL**

17 Notice is hereby given that EFREN AGUIRRE JR., Claimant above named, hereby appeals
18 to the Supreme Court of Nevada from the Findings of Fact, Conclusions of Law and Judgment of
19 Forfeiture entered in this action on the 31st day of December, 2020.

20 DATED this 28th day of January, 2021

21 **GERBER LAW OFFICES, LLP**

22
23 BY:


TRAVIS W. GERBER, ESQ.

Nevada State Bar No. 8083

ZACHARY A. GERBER, ESQ.

Nevada State Bar No. 13128

491 4th Street

Elko, Nevada 89801

(775) 738-9258

twg@gerberlegal.com

zag@gerberlegal.com

ATTORNEYS FOR CLAIMANT

24
25
26
27
28 **GERBER LAW OFFICES, LLP**

491 4th Street

Elko, Nevada 89801


Ph. (775) 738-9258

Docket 82445 Document 2021-03538

1 **CERTIFICATE OF HAND DELIVERY**

2 Pursuant to NRCp 5(b), I hereby certify that I am an employee of GERBER LAW OFFICES,
3 LLP, and that on the 28 day of January, 2021, I hand-delivered, at Elko, Nevada, a true and correct
4 copy of the foregoing *Notice of Appeal* addressed as follows:

5 Rand J. Greenburg, Esq.
6 Deputy District Attorney
7 Elko County District Attorney's Office
8 Clerk's Box
9 540 Court Street, 2nd Floor
10 Elko, Nevada 89801

11 
12 _____
13 Employee of Gerber Law Offices, LLP
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 CASE NO. CV-FR-17-687

2 DEPT. NO. 1

3 Affirmation: Pursuant to NRS 239B.030,
4 this document does not contain the social
5 security number of any person.

FILED

2021 JAN 28 PM 3:22

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY AS

6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF ELKO

8 ELKO COUNTY SHERIFF'S OFFICE,

9 Plaintiff,

10 vs.

11 Real Property Located at 743 Devon Drive.,
12 Spring Creek, Nevada 89815,

CASE APPEAL STATEMENT

13 Respondent,

14 EFREN AGUIRRE JR.,

15 Claimant.

16 CASE APPEAL STATEMENT

17 Appellant, EFREN AGUIRRE JR., Claimant, hereby files his Case Appeal Statement pursuant
18 to Rule 3 of the Nevada Rules of Appellate Procedure, as follows:

19 1. Name of appellant filing this case appeal statement:

20 Claimant Efren Aguirre Jr.

21 2. Identify the judge issuing the decision, judgment, or order appealed from:

22 Honorable Nancy Porter, Fourth Judicial District Court, Department 1.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

3. Identify each appellant and the name and address of counsel for each appellant:

Claimant Efren Aguirre Jr. Counsel for appellant is as follows:

TRAVIS W. GERBER, ESQ.
Nevada State Bar No. 8083
ZACHARY A. GERBER, ESQ.
Nevada State Bar No. 13128
GERBER LAW OFFICES, LLP
491 4th Street
Elko, Nevada 89801
(775) 738-9258
twg@gerberlegal.com
zag@gerberlegal.com

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Plaintiff Elko County Sheriff's Office is the respondent in this case. Respondent's appellate counsel is unknown. Respondent's trial counsel is as follows:

RAND J. GREENBURG, ESQ.
Nevada State Bar No. 13881
Deputy District Attorney
Elko County District Attorney's Office
540 Court Street, 2nd Floor
Elko, Nevada 89801
(775) 738-3101
rgreenburg@elkocountynv.net

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

No. Appellant's and Respondent's counsel are licensed to practice law in the State of Nevada.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Appellant was represented by retained counsel in the district court.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellant is represented by retained counsel on appeal.

1 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date**
2 **of entry of the district court order granting such leave:**

3 No. Appellant is not proceeding in forma pauperis.

4 **9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,**
5 **indictment, information, or petition was filed):**

6 Plaintiff/Respondent filed its Complaint for Forfeiture and Motion for Stay of Proceedings
7 on November 2, 2017.

8 **10. Provide a brief description of the nature of the action and result in the district court,**
9 **including the type of judgment or order being appealed and the relief granted by the district**
10 **court:**

11 This is an action for the forfeiture of a home of a man and his twelve year old son by the Elko
12 County Sheriff. The homeowner recorded a Declaration of Homestead to protect his home pursuant
13 to the Constitution of the State of Nevada. The District Court ruled that the homeowner could not
14 assert his homestead right because the man is incarcerated until October of 2021. The District Court
15 also ruled that the forfeiture of the home was not excessive fine pursuant to the Constitutions of the
16 United States and State of Nevada despite the home's value being 2,980 times greater than the actual
17 fine imposed upon the homeowner and 3 times the statutory maximum fine that could have been
18 imposed upon the homeowner. The District Court entered its Findings of Fact, Conclusions of Law
19 and Judgment of Forfeiture on the 31st day of December, 2020.

20 **11. Indicate whether the case has previously been the subject of an appeal to or original writ**
21 **proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of**
22 **the prior proceeding:**

23 No, this case has not previously been the subject of an appeal to or original writ proceeding
24 in the Supreme Court.

25 **12. Indicate whether this appeal involves child custody or visitation:**

26 No.

27 **13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

28 No.

1 DATED this 28th day of January, 2021

2 **GERBER LAW OFFICES, LLP**

3
4 BY:



TRAVIS W. GERBER, ESQ.

Nevada State Bar No. 8083

ZACHARY A. GERBER, ESQ.

Nevada State Bar No. 13128

491 4th Street

Elko, Nevada 89801

(775) 738-9258

twg@gerberlegal.com

zag@gerberlegal.com


ATTORNEYS FOR CLAIMANT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I hereby certify that I am an employee of GERBER LAW OFFICES, LLP, and that on the 28th day of January, 2021, I hand-delivered, at Elko, Nevada, a true and correct copy of the foregoing *Case Appeal Statement* addressed as follows:

Rand J. Greenburg, Esq.
Deputy District Attorney
Elko County District Attorney's Office
Clerk's Box
540 Court Street, 2nd Floor
Elko, Nevada 89801



Employee of Gerber Law Offices, LLP

Case Summary

ECDC-CVFR-17-687 - ELKO COUNTY SHERIFF'S VS. REAL PROPERTY 74

Court: ECDC-CVFR-17-687

Agency: Elko County Clerk's Office

Type: Civil

CaseID: 17-3114

Status: Closed

Received Date: 11/2/2017

Status Date: 12/31/2020

Age: 1190 days Active Age: 1190 days

Involvements

HILL, KRISTON Judge -
PORTER, NANCY Judge, Inactive -
ELKO COUNTY SHERIFF'S OFFICE, Plaintiff, Inactive -
MOORE, CURTIS Attorney -
REAL PROPERTY AT 7 43 DEVON DR SPRING CREEK Respondent,
Inactive -
AGUIRRE JR, EFREN Claimant -
GERBER, TRAVIS Defense Attorney -
GREENBURG, RAND Prosecution Attorney -

Name Attributes

For: EFREN AGUIRRE JR
Name Record Source - Name Record Converted
from JALAN - Court
Nationality: US
Occupation: MECHANIC
Place of Birth: EL PASO TX
Skin Tone - Light Brown
For: ELKO COUNTY SHERIFF'S OFFICE
Name Record Source - Name Record Converted
from JALAN - Court
For: REAL PROPERTY AT 7 43 DEVON DR SPRING
CREEK
Name Record Source - Name Record Converted
from JALAN - Court

Issues

1. CVC49 ~ Other - Other Civil Matters Occurred: 1/1/1900

Other - Other Civil Matters

Notes: Code: CV

Charge Number: CVFR01

Description: FORFEITURE

Disposition: D40

Disposition Description: DEFAULT

Disposition Date: 11/07/2018

Case History

Date	Event Type Desc	Status
	Pending Re-Disposition - Case Status	
	Case Status Change	
	Motion Hearing - Event	For: 4/21/2020 11:00 AM
	Motion Hearing - Event	For: 9/24/2020 9:30 AM
	Forfeiture Trial	Hearing Held

Case Summary

Closed - Case Status

Case Status Change

11/2/2017	Proceedings (Converted) - Event Event Type Code: F17 Event Type Description: FILE OPENED - DC
11/2/2017	Proceedings (Converted) - Event Event Type Code: J25 Event Type Description: JUDGE ASSIGNED
11/2/2017	Proceedings (Converted) - Event Event Type Code: C24 Event Type Description: COMPLAINT Note: FOR FORFEITURE AND MOTION FOR STAY OF PROCEEDINGS
11/2/2017	Proceedings (Converted) - Event Event Type Code: S36 Event Type Description: SUMMONS ISSUED Note: FORFEITURE SUMMONS ISS FOR EFREN AGUIRRE JR
11/6/2017	Proceedings (Converted) - Event Event Type Code: NB0 Event Type Description: NOTICE OF PENDENCY Note: OF ACTION PER NRS 14.010
11/6/2017	Proceedings (Converted) - Event Event Type Code: C12 Event Type Description: CERTIFIED COPY ISSUE Note: OF NOTICE OF PENDENCY FILED 11/6/17
11/21/2017	Proceedings (Converted) - Event Event Type Code: R29 Event Type Description: REQUEST FOR REVIEW Note: OF MOTION FOR STAY OF PROCEEDINGS Action Date: 03/14/2018 Action Code: R99 Action Description: RESPONSE/ORDER Action Comment: Order Staying Proceedings
11/21/2017	Proceedings (Converted) - Event Event Type Code: F15 Event Type Description: FILE CHECKED OUT BY: Note: DC I for review/signature
11/21/2017	Proceedings (Converted) - Event

Case Summary

Event Type Code: A57
Event Type Description: AFFID OF
Note: SERVICE OF SUMMONS

11/22/2017 Proceedings (Converted) - Event

Event Type Code: A25
Event Type Description: ANSWER - CIVIL
Note: TO COMPLAINT FOR FORFEITURE AND MOTION FOR STAY OF PROCEEDINGS PLEADING
PLACED IN DC1 PICK UP BOX @10:09

2/14/2018 Proceedings (Converted) - Event

Event Type Code: F16
Event Type Description: FILE CHECKED IN BY:

2/15/2018 Proceedings (Converted) - Event

Event Type Code: S28
Event Type Description: SUBMISSION OF ORDER
Note: DA'S PROPOSED ORD STAYING PROCEEDINGS (DATE STAMPED REC'D2/15/18) PLACED IN
DC1 PICK UP BOX @2:47
Action Date: 03/14/2018
Action Code: R99
Action Description: RESPONSE/ORDER
Action Comment: ORDER STAYING FILED

2/15/2018 Proceedings (Converted) - Event

Event Type Code: F15
Event Type Description: FILE CHECKED OUT BY:
Note: DC I for review/signature

3/14/2018 Proceedings (Converted) - Event

Event Type Code: F16
Event Type Description: FILE CHECKED IN BY:

3/14/2018 Proceedings (Converted) - Event

Event Type Code: O12
Event Type Description: ORDER
Note: STAYING PROCEEDINGS - COPIES PLACED IN DA'S BOX

3/20/2018 Proceedings (Converted) - Event

Event Type Code: N50
Event Type Description: NOTICE OF ENTRY ORDR
Note: STAYING PROCEEDINGS

3/28/2018 Proceedings (Converted) - Event

Event Type Code: A57
Event Type Description: AFFID OF
Note: FILED COPY OF NOTICE OF ENTRY OF ORDER AND ORDER STAYING PROCEEDINGS

Case Summary

11/7/2018 Proceedings (Converted) - Event
 Event Type Code: D40
 Event Type Description: DEFAULT
 Note: JUDGMENT ENTERED AGAINST EFREN AGUIRRE JR CLAIMANT OF RESPONDENT PROPERTY
 LOCATED AT743 DEVON DR, SPRING CREEK NV 89815.

11/7/2018 Proceedings (Converted) - Event
 Event Type Code: F18
 Event Type Description: FILE CLOSED

11/8/2018 Proceedings (Converted) - Event
 Event Type Code: A36
 Event Type Description: APPLICATION
 Note: FOR DEFAULT

11/8/2018 Proceedings (Converted) - Event
 Event Type Code: A60
 Event Type Description: AFFIDAVIT

11/8/2018 Proceedings (Converted) - Event
 Event Type Code: F15
 Event Type Description: FILE CHECKED OUT BY:
 Note: DC I for review/signature

12/7/2018 Proceedings (Converted) - Event
 Event Type Code: M33
 Event Type Description: MOT FOR SUMMARY JUDG
 Note: (FILE CHECKED OUT SENT PLEADING TO DC 1)

12/21/2018 Proceedings (Converted) - Event
 Event Type Code: O11
 Event Type Description: OPPOSITION TO MOTION
 Note: FOR SUMMARY JUDGEMENT PURSUANT TO NRCP56 (FILE CHECKED OUT SENT PLEADING
 TO DC 1)

1/2/2019 Proceedings (Converted) - Event
 Event Type Code: R19
 Event Type Description: REPLY TO OPPOSITION
 Note: FOR STATE OF NV'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO NRCP56 PLEADING
 PLACED IN DC1 PICK UP BOX @2:53

1/3/2019 Proceedings (Converted) - Event

Case Summary

Event Type Code: R29
Event Type Description: REQUEST FOR REVIEW
Note: OF MOTION FOR SUMMARY JUDGMENT (FILE CHECKED OUT SENT PLEADING TO DC 1)
Action Date: 04/02/2019
Action Code: R99
Action Description: RESPONSE/ORDER
Action Comment: Hearing set for 6/27/19

3/7/2019 Proceedings (Converted) - Event
Event Type Code: O12
Event Type Description: ORDER
Note: LIFTING STAY OF PROCEEDINGS GAVE BACK TO DQ RUNNER

3/7/2019 Proceedings (Converted) - Event
Event Type Code: Z23
Event Type Description: ORD SETTING ASIDE
Note: CLERK'S DEFAULT GAVE BACK TO DQ RUNNER

3/14/2019 Proceedings (Converted) - Event
Event Type Code: S38
Event Type Description: SUPPLEMENTAL
Note: BRIEF TO OPPOSITION TO STATE OF NEVADA'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO NRCP 56 PLACED IN DC1 BOX

3/18/2019 Proceedings (Converted) - Event
Event Type Code: R17
Event Type Description: REPLY BRIEF
Note: (FILE CHECKED OUT SENT PLEADING TO DC 1)

4/2/2019 Calendared Event (Converted) - Event For: 6/27/2019 10:00 AM
Event Date: 06/27/2019 10:00
Event Type Code: HM
Event Type Description: HEARING ON MOTION
Note: HEARING ON MOTION
Action Comment: MOTION FOR SUMMARY JUDGMENT

4/2/2019 Proceedings (Converted) - Event
Event Type Code: F16
Event Type Description: FILE CHECKED IN BY:

4/2/2019 Proceedings (Converted) - Event
Event Type Code: Z29
Event Type Description: ORD SETTING HEARING

4/3/2019 Proceedings (Converted) - Event

Case Summary

Event Type Code: F30
Event Type Description: FILE CHECK ACCURACY
Note: FILE CHECKED FOR ACCURACY

5/15/2019 Proceedings (Converted) - Event

Event Type Code: S38
Event Type Description: SUPPLEMENTAL
Note: BRIEF TO MOTION FOR SUMMARY JUDGMENT

5/29/2019 Proceedings (Converted) - Event

Event Type Code: R29
Event Type Description: REQUEST FOR REVIEW
Note: SUPPLEMENTAL BRIEF TO MOTION FOR SUMMARY JUDGMENT
Action Date: 08/09/2019
Action Code: R99
Action Description: RESPONSE/ORDER
Action Comment: HRG HELD 6/27/19, UNDR ADVSNMT

5/29/2019 Proceedings (Converted) - Event

Event Type Code: F15
Event Type Description: FILE CHECKED OUT BY:
Note: DC I for review/signature

5/31/2019 Proceedings (Converted) - Event

Event Type Code: O10
Event Type Description: OPPOSITION
Note: TO STATE OF NEVADA'S SUPPLEMENTAL BRIEF TO MOTION FOR SUMMARY JUDGMENT
PLACED IN DC1 BOX

6/5/2019 Proceedings (Converted) - Event

Event Type Code: R19
Event Type Description: REPLY TO OPPOSITION
Note: TO STATE OF NEVADA'S SUPPLEMENTAL BRIEF TO MOTION FOR SUMMARY JUDGMENT
PLACED IN DC1 BOX

6/27/2019 Proceedings (Converted) - Event

Event Type Code: H37
Event Type Description: HRG - DC1 CVHRG
Note: MOTION FOR SUMMARY JUDGMENT

2/7/2020 Open - Case Status

Case status change.

2/7/2020 Closed - Case Status

Case status change.

2/8/2020 Payment Record (Converted) - Case
Notes

Case Summary

PAYMENT Name: GERBER LAW OFFICES,
Payment Date: 11/22/2017
Amount: 198.00
Receipt #: 283416
Fine Type: CLK CIVIL ANSWER
Payment Type: CHECK
Entry Person: RODRIGUEZ
Check#: 5277
Status: CL
Note: EFREN'S ANSWER TO CMPL

2/11/2020 ORDER DENYING MOTION FOR SUMMARY
JUDGMENT - Document

3/6/2020 ScSECOND MOTION FOR SUMMARY
JUDGEMENT PURSUANT TO NRCP
56annedDocument - Document

3/16/2020 CLAIMANT'S MOTION FOR SUMMARY
JUDGMENT - Document

3/16/2020 OPPOSITION TO SECOND MOTION FOR
SUMMARY JUDGMENT PURSUANT TO NRCP
56 - Document

3/16/2020 Check - Payment

Payer

GERBER LAW OFFICES

Payment Amount

\$200.00

3/20/2020 OPPOSITION TO CLAIMANT'S MOTION FOR
SUMMARY JUDGMENT - Document

3/20/2020 REPLY TO OPPOSITION TO SECOND MOTION
FOR SUMMARY JUDGMENT PURSUANT TO
NRCP 56 - Document

4/2/2020 REQUEST FOR REVIEW OF PENDING
MOTIONS - Document

Hearing Date Set

4/17/2020 ORDER SETTING HEARING - Document
(FILE CHECKED OUT SENT PLEADING TO DC 1)

4/20/2020 CLAIMANT'S REPLY IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT - Document
PLACED IN DC1 P/U BOX @ 4:11PM.

4/21/2020 DC1 Civil Hearing Minutes - Document

Case Summary

5/19/2020	ORIGINAL RECORDED AMENDED DECLARATION OF HOMESTEAD - Document	
7/20/2020	ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT - Document	
8/18/2020	PLAINTIFF'S REQUEST FOR PRODUCTION - Document	
9/3/2020	SUBMISSION OF ORDER FOR THE PRODUCTION OF PRISONER - Document NO COPIES PROVIDED BY THE DA	Order Filed
9/3/2020	CLAIMANT'S MOTION FOR LEAVE TO RECONSIDER ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT - Document	
9/9/2020	OPPOSITION TO CLAIMANT'S MOTION FOR LEAVE TO RECONSIDER ORDER DENYING MOTIONS FOR SUMMAY - Document (FILE CHECKED OUT SENT PLEADING TO DC 1)	
9/11/2020	REPLY IN SUPPORT OF CLAIMANT'S MOTION FOR LEAVE TO RECONSIDER ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT - Document (FILE CHECKED OUT SENT PLEADING TO DC 1)	
9/11/2020	REQUEST FOR REVIEW OF THE OPPOSITION - Document (FILE CHECKED OUT SENT PLEADING TO DC 1)	Order Filed
9/11/2020	SUBMITTED ORDER GRANTING CLAIMANT'S MOTION FOR LEAVE TO RECONSIDER ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT - Document (SUBMITTED BY GERBER COPIES WERE PROVIDED)	Order Filed
9/22/2020	SUBMITTED BY ORDER FOR THE PRODUCTION OF PRISONER TELEPHONICALLY - Document (SUBMITTED BY THE DA NO COPIES PROVIED UNSIGNED CERTIFICATE ATTACHED) (FILE CHECKED OUT SENT PLEADING TO DC 1)	Order Filed
9/22/2020	SUBPOENA DUCES TECUM - Document CLERK BR SPOKE TO DC1 STATING THIS WAS A DQ CASE AND A PSI REPORT WAS NEVER FILED IN THIS CASE. WAITING ON DIRECTIONS FROM DC2. FILE CHECKED OUT PLACED IN DC1 P/U BOX	

Case Summary

9/23/2020	ORDER FOR THE PRODUCTION OF PRISONER TELEPHONICALLY - Document (FILE CHECKED OUT SENT PLEADING TO DC 1)	
9/23/2020	ORDER GRANTING, IN PART, CLAIMANT'S MOTION FOR LEAVE TO RECONSIDER ORDER DENYING MOTIONS FOR SUMMARY JUDGEMENT - Document FILE CHECKED OUT PLACED IN DC1 P/U BOX @ 4:08PM.	
9/24/2020	9.24.20 DC1 Civil Hearing Minutes (2) - Document	
10/1/2020	SHERIFF'S CLOSING ARGUMENT - Document (FILE CHECKED OUT SENT PLEADING TO DC 1)	
10/15/2020	CLAIMANT'S CLOSING RESPONSE - Document PLACED IN DC1 BOX	
10/22/2020	SHERIFF'S REBUTTAL TO CLAIMANT'S CLOSING ARGUMENT - Document (FILE CHECKED OUT SENT PLEADING TO DC 1)	
10/23/2020	REQUEST FOR REVIEW OF CLOSING ARGUMENTS - Document FILE CHECKED OUT PLACED IN DC1 P/U BOX	Order Filed
12/31/2020	DENIED ORDER GRANTING CLAIMANT'S MOTION FOR SUMMARY JUDGMENT - Document AND AMENDING ORDER DENYING MOTINS FOR SUMMARY JUDGMENT	
12/31/2020	FINDINGS OF FACT CONCLUSIONS OF LAW AND JUDGEMENT OR - Document	
1/4/2021	NOTICE OF ENTRY OF ORDER - Document FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT OF FORFEITURE	
1/28/2021	Cash Bond - District Court - BOND For: AGUIRRE JR, EFREN Amount \$500.00 GERBER LAW OFFICE	Posted
1/28/2021	NOTICE OF APPEAL - Document	
1/28/2021	CASE APPEAL STATEMENT- Document	
1/28/2021	COST BOND - Document	

Case Summary

1/28/2021 Check - Payment
Payer **Payment Amount**
EFREN AGUIRRE JR \$24.00
 NOTICE OF APPEAL FEE

2/4/2021 CLERK'S CERTIFICATION - Document
 ELECTRONICALLY FILED WITH THE SUPREME COURT. CHECKED #7511 MAILED TO THE SUPREME COURT

2/4/2021 NOTE ADDED TO FILE - Case Notes
 CHECK # 7511 MAILED TO THE SUPREME COURT

Bonds

For	Bond Dt	Bond Type	Bond Status	Modified DT	Amount	Amt Paid	Paid By
3 - EFREN AGUIRRE JR	1/28/2021	Cash Bond - District Court	Posted	1/28/2021	\$500.00	\$500.00	GERBER LAW OFFICES LLP on 1/28/2021

Case Obligations

Obligation	Pay By	Due Date	Obligation Amount	Amount Paid	Balance Due
DC Mtn Sum Judg Court Facility NRS 19.0302 \$200	2--AGUIRRE JR, EFREN-MOTION FOR SUMMARY JUDGMENT \$200	3/16/2020	\$200.00	\$200.00	\$0.00
DC Supreme Court Appeal NRS 19.013 \$24	3--AGUIRRE JR, EFREN-APPEAL TO SUPREME COURT	1/28/2021	\$24.00	\$24.00	\$0.00
Total Personal Obligation(s):			\$224.00	\$224.00	\$0.00
Total Case Obligation(s):			\$224.00	\$224.00	\$0.00

1 Case No. CV-FR-17-687

2 Dept. No. 1

FILED

2020 DEC 31 PM 1:05

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY _____

3
4
5
6 IN THE FOURTH JUDICIAL DISTRICT COURT
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO
8

9 ELKO COUNTY SHERIFF'S OFFICE,

10 Plaintiff,

11 V.

12 REAL PROPERTY LOCATED AT 743
13 DEVON DRIVE, SPRING CREEK,
NEVADA 89815,

14 Respondent,

15 EFREN AGUIRRE JR.,

16 Claimant.
17 _____ /

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT OF FORFEITURE**

18 On November 2, 2017, Plaintiff (hereinafter "Sheriff") filed his Complaint for Forfeiture
19 and Motion for Stay of Proceedings. On November 22, 2017, Claimant (hereinafter "Aguirre")
20 filed his Answer to Complaint for Forfeiture and Motion for Stay of Proceedings. On March 14,
21 2018 this Court issued its Order Staying Proceedings, effectively staying this action pending the
22 conclusion of Aguirre's underlying criminal case.

23 After the conclusion of the criminal case, Sheriff filed a Motion for Summary Judgment
24 Pursuant to NRCp 56. Aguirre opposed. In the meantime, this Court set aside the Clerk's
25 Default, which Plaintiff had requested, because Aguirre had in fact answered the complaint. The
26 parties filed supplements to the summary judgment documents. The Court heard oral argument

1 on Sheriff's motion on June 27, 2019. The Court denied Sheriff's motion; Sheriff did not comply
2 with NRC 56 and, thus, failed to meet his burden that no genuine issue of material fact existed.

3 On March 6, 2020, Sheriff filed his Second Motion for Summary Judgment pursuant to
4 NRC 56, without first seeking leave of court as required by DCR 13(7). On March 16, 2020,
5 Aguirre filed Claimant's Motion for Summary Judgment. Thereafter, the parties filed various
6 responsive documents. Oral argument was had on the competing motions via Zoom, due to the
7 Coronavirus pandemic, on April 21, 2020. The Court denied the motions but narrowed the
8 factual issues for trial. The factual issues concerned Aguirre's Amended Declaration of
9 Homestead and whether forfeiture of Aguirre's home would be an excessive fine. For further
10 clarification, *see Order Granting, in Part, Claimant's Motion for Leave to Reconsider Order*
11 *Denying Motions for Summary Judgment.*

12 The case proceeded to trial on September 24, 2020. Sheriff did not appear but was
13 represented by his attorney Rand J. Greenburg, Elko County Deputy District Attorney. Aguirre
14 appeared by phone from prison and was represented by Travis Gerber, Esq. and Zachary Gerber,
15 Esq. The Court took evidence, after which the parties were given the opportunity to file written
16 closing arguments.

17 On October 1, 2020, Sheriff filed Sheriff's Closing Argument. Thereafter, Aguirre filed
18 Claimant's Closing Response. In response, Sheriff then filed Sheriff's Rebuttal to Claimant's
19 Argument on October 22, 2020.

20 This case presents two distinct issues: (1) whether Aguirre's interest in the real property
21 located at 743 Devon Drive, Spring Creek, NV 89815 is a protected interest under Nevada's
22 homestead protection enumerated in NRS 115.010, and (2) whether the forfeiture of Aguirre's
23 property violates the Eighth Amendment's Excessive Fines Clause. This Court will address each
24 issue in turn.

25 //

26 //

1 **1. Aguirre's Homestead Declaration**

2 Constitutional and statutory provisions relating to homesteads "should be liberally
3 construed . . . only where there has been substantial compliance with those provisions." McGill
4 v. Lewis, 61 Nev. 28, 40. Claimant cites *Jackman v. Nance*, which states that, "The wealth of
5 case law concerning homesteads reflects a judicial tendency to construe homestead laws liberally
6 in favor of the persons for whose benefits they were enacted." 109 Nev. 716, 718, 857 P.2d 7, 8,
7 1993 Nev. LEXIS 119, *4. The Nevada Supreme Court has reiterated the "liberal favor"
8 construction more recently in *In re Nilsson*, stating "that statutory provisions relating to
9 homesteads should be liberally construed only where there has been substantial compliance with
10 the homestead statutory provisions." 129 Nev. 946, 949, 315 P.3d 966, ____ (2013).

11 The Nevada Supreme Court defines *householder* as "one who keeps house," further
12 stating that a householder "must be in actual possession of the house" and must be "the occupier
13 of a house." *Id.* at 969. Based on the language of NRS 115.020(2)(a), a single person declaring an
14 intention to claim a property as a homestead must be "in actual possession of the house." *Id.*; *see*
15 *also Goldfield Mohawk Mining Co. v. Frances-Mohawk Mining & Leasing Co.*, 31 Nev. 348,
16 354, 102 P. 963, 965 (1909). The court in *Nilsson* expressly rejected the concept of "constructive
17 occupancy," declaring that "[i]t is axiomatic there can not be a homestead absent residence[,] . . .
18 when a declaration of homestead is filed the declarant must be residing on the premises with the
19 intent to use and claim the property as a homestead." 129 Nev. at 951.

20 In *In re Ellis*, the Nevada Bankruptcy Court found that a person could not declare
21 homestead while residing in prison because the declarant was not physically residing in the
22 home. The Court held, "Despite the Debtor's unfortunate recent circumstances in the instant
23 case, the court concludes that her argument is the legal equivalent of asserting constructive
24 occupancy of the Residence that simply does not constitute bona fide residency as of the Petition
25 Date." 2019 Bankr. LEXIS 3694, *7.

26 In the case at hand, similar to the facts of *In Re Ellis*, Aguirre, an unmarried man, filed his

1 original and amended homestead declarations while incarcerated. Aguirre was not in actual
2 possession of the residence for purposes of the homestead declarations and thus asserts a
3 constructive possession claim, which the Nevada Supreme Court has expressly rejected. Because
4 Aguirre was not in actual possession of the property at the time of the homestead declaration, he
5 does not “substantially comply” with the homestead provisions. This Court will not liberally
6 construe the homestead provisions in his favor. His claim for homestead protection is denied.

7 **2. Eighth Amendment Violation**

8 “[A] punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional
9 to the gravity of a defendant's offense.” U.S. v. Bajakajian, 524 U.S. 321, 334, 141 L. Ed. 2d 314,
10 330-331 (1998). When examining the proportionality of a forfeiture to the gravity of the offense,
11 courts are not required to consider “any rigid set of factors.” United States v. Mackby, 339 F.3d
12 1013, 1017 (9th Cir. 2003). However, Courts primarily consider four factors when weighing the
13 gravity of an offense: “(a) the nature and extent of the crime, (b) whether the violation was
14 related to other illegal activities, (c) the other penalties that may be imposed for the violation, and
15 (d) the extent of the harm caused.” United States v. \$100,348.00 in U.S. Currency, 354 F.3d
16 1110, 1122 (9th Cir. 2004).

17 **a. Nature and Extent of the Crime**

18 In the case at hand, law enforcement seized 80.82 grams of heroin, as well as
19 methamphetamine, marijuana, hydrocodone pills, and several firearms from Aguirre’s home.
20 Thereafter, Aguirre pleaded guilty to trafficking in a Schedule I controlled substance, a category
21 B felony under NRS 453.3385(1)(b). It is unknown to this Court how long Aguirre had been
22 trafficking drugs.

23 Aguirre argues that the house was not an “instrumentality” to the crime, erroneously
24 analogizing this case to *Timbs v. Indiana*, 139 S. Ct. 682, 684, 203 L. Ed. 2d 11 (2019). Citing
25 the syllabus, Aguirre incorrectly contends that the Court in *Timbs* held that a “Range Rover was
26 not an instrumentality of a drug crime even though drugs were found in the vehicle.” In *Timbs*,

1 the United States Supreme Court answered the question of “whether the Eighth Amendment’s
2 Excessive Fines Clause is incorporated against the States under the Fourteenth Amendment,” and
3 never addressed the assertions now made by Aguirre in this matter. Id. at 690. In fact, on remand,
4 the Indiana Supreme Court found that “[Timbs] used the vehicle . . . to get himself and the drugs
5 to the location where the deal would take place. . . . The Land Rover was the actual means by
6 which the predicate crime was committed, making the vehicle an instrumentality.” State v.
7 Timbs, 134 N.E.3d 12, 31, 2019 Ind. LEXIS 835, *24, 2019 WL 5540987.

8 Aguirre acquired the home where the drugs and firearms were found in May of 2016,
9 later being arrested in October, 2017. Because a large quantity of drugs and numerous firearms
10 were located in the home, which is a hallmark of drug trafficking, it is clear to this Court that
11 Aguirre was using his home as part of his criminal activities. *See* United States v. Kennedy, 32
12 F.3d 876, 882-83 (4th Cir. 1994); United States v. Thomas, 913 F.2d 1111, 1115 (4th Cir. 1990);
13 United States v. Johnson, 26 Fed. Appx. 111, 119 (4th Cir. 2001). The nature and extent of
14 Aguirre’s crime is of the kind that the Nevada forfeiture statutes were designed to prevent.

15 **b. Whether the Violation was Related to Other Illegal Activities**

16 In this matter, the only related crime was possession of a firearm by a prohibited person,
17 pursuant to NRS 202.360. As stated above, possession of firearms, in addition to other factors,
18 such as large quantities of drugs being found in the home, is a hallmark of drug trafficking.
19 Kennedy, 32 F. 3d at 882-83.

20 **c. Other Penalties that may be Imposed for the Violation**

21 In considering an offense’s gravity, the other penalties that the legislature has authorized
22 are relevant evidence, as are the maximum penalties that could have been imposed under federal
23 sentencing guidelines. United States v. Riedl, 164 F. Supp. 2d 1196, 1199 (2001); *see* United
24 States v. 3814 NW Thurman St., Portland, Oreg., a Tract of Real Property, 164 F.3d at 1197. If
25 the value of forfeited property is within the range of fines prescribed by Congress, a strong
26 presumption arises that the forfeiture is constitutional. Riedl, 164 F. Supp. 2d at 1199.

1 Aguirre's original Criminal Information charged him with Trafficking in a Schedule 1
2 Controlled Substance, a Category A Felony, pursuant to NRS 453.3385(1)(c). On August 10,
3 2018, an Amended Criminal Information was filed pursuant to a plea agreement, charging
4 Aguirre with Trafficking in a Schedule 1 Controlled Substance, a Category B Felony, as defined
5 by NRS 453.3385(1)(b). A Judgment of Conviction was entered against Aguirre, sentencing him
6 to a minimum of 48 months and a maximum of 120 months for the trafficking charge. Aguirre
7 also received a nominal fine of \$100.00. The penalty for NRS 453.3386(1)(b) at the time of
8 Aguirre's conviction was 2 to 15 years imprisonment and a fine of not more than \$100,000. The
9 Nevada Division of Parole and Probation recommended that Aguirre be sentenced to 36 to 120
10 months with a fine of \$2,000.

11 Aguirre argues that if he were sentenced today under the dramatically revised Nevada
12 drug laws, he would face a maximum fine of \$20,000. However, Aguirre was not convicted
13 under the newly revised drug statutes, and these revised statutes are not retroactive.

14 Additionally, Aguirre contends that the Nevada Division of Parole and Probation
15 recommendations are comparable to the federal sentencing guidelines. In this case, Parole and
16 Probation recommended a maximum fine of \$2,000, which would be vastly disproportionate to
17 the value of Aguirre's home, which is worth approximately \$298,000. However, Parole and
18 Probation's recommendations and the federal sentencing guidelines are not the same, and there is
19 no applicable case law treating them as such. Thus, this Court will not consider Parole and
20 Probation recommendations when assessing the proportionality of Aguirre's forfeiture. Because
21 the \$2,000 Parole and Probation recommendation and the \$20,000 maximum fine under the
22 newly revised Nevada drug laws are not applicable to this case, this Court will consider the
23 \$100,000 maximum fine, which was the maximum fine imposed by NRS 453.3385(1)(b) at the
24 time of Aguirre's conviction, to determine the forfeiture's proportionality.

25 Aguirre's forfeiture of approximately \$298,000 is approximately three times the
26 maximum statutory fine. Forfeiture does not per se violate the Eighth Amendment simply

1 because the amount to be forfeited exceeds the maximum fine under the federal sentencing
2 guidelines. \$132,245 in U.S. Currency, 764 F.3d at 1060. *see United States v. Brandel*, 2019 U.S.
3 Dist. LEXIS 88245, *35-36, 2019 WL 2110504 (*citing United States v. Mackby*, 339 F.3d 1013,
4 1018 (9th Cir. 2003)) (holding that a fine 12.5 times greater than the maximum fine proscribed
5 by the federal sentencing guidelines was not excessive); *see also Riedl*, 82 F. App'x at 540
6 (holding that in a drug and money laundering case, a forfeiture order that was 12 to 13 times the
7 maximum sentencing guideline fine was not excessive).

8 Here, Aguirre's forfeiture is not "many orders of magnitude" larger than the maximum
9 fine. *United States v. Beecroft*, 825 F.3d 991, 1001-1002, 2016 U.S. App. LEXIS 10659, *24-25.
10 4. A forfeiture of three times greater than the statutory maximum does not per se make the fine
11 excessive under the Eighth Amendment Excessive Fines Clause. The proportionality of Aguirre's
12 forfeiture must be examined together with each *Bajakajian* factor, similar to *Riedl*, where the
13 Court found a forfeiture of 12 to 13 times greater than that proscribed in the federal sentencing
14 guidelines was not excessive when considering the link between defendant's illegal activity and
15 the forfeited property, the level of harm caused by the defendant, and the gravity of the offense
16 weighed against the size of the forfeiture. Thus, although Aguirre's forfeiture is three times
17 greater than the statutory maximum, this does not necessarily make the forfeiture excessive when
18 viewed together with the other *Bajakajian* factors.

19 **d. Extent of the Harm Caused**

20 The extent of the harm caused by Aguirre's crime is immeasurable. The heroin epidemic
21 is destroying lives across the country . . . not just those of heroin users. *State v. Parisi*, 2016 WI
22 10, P59, 367 Wis. 2d 1, 32, 875 N.W.2d 619, 634 (2016); *see Krystle Kacner, It's a Nightmare:*
23 *Menomonee Falls Father Wants to Help Others After Son Dies of Overdose.*

24 Drugs, specifically heroin and methamphetamine, have plagued communities in
25 Northeastern Nevada, resulting in family separation, death, and moral decay. Aguirre's
26 trafficking of heroin is a serious offense with likely irreversible repercussions.

1 Although the forfeiture of Aguirre's home is approximately three times greater than the
2 maximum fine proscribed by statute, this Court cannot conclude that the forfeiture is an
3 excessive fine. It is clear that the harm caused to the community by Aguirre's criminal activities is
4 vast and his home, which is the subject of this forfeiture, is inextricably linked to his illegal acts.
5 Taking the *Bajakjian* factors into consideration, this Court concludes, as a matter of law, that
6 the forfeiture of Aguirre's home is not an excessive fine in violation of the Eighth Amendment.

7 Therefore, Sheriff is hereby awarded a **JUDGMENT** of forfeiture against the real
8 property located at 743 Devon Dr., Spring Creek, NV 89815.

9 DATED this 31 day of December, 2020.


10 
11 NANCY PORTER
12 DISTRICT JUDGE - DEPT. 1
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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 31 day of December, 2020, I personally hand delivered a copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT OF FORFEITURE** addressed to:

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

Zachary A. Gerber, Esq.
GERBER LAW OFFICES, LLP
491 4TH Street
Elko Nevada 89801
[Box in Clerk's Office]



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

RECORD OF COURT PROCEEDINGS

Present - Honorable NANCY PORTER, District Judge,
and Officers of the Court.

ELKO COUNTY SHERIFF'S OFFICE,
Plaintiff,
VS.

Date: 06/27/19
Case No.: CV-FR-17-0687
Dept.: 1

REAL PROPERTY AT 743 DEVON DR
SPRING CREEK, NV 89815

Respondent,

EFREN AGUIRRE JR.,

Claimant.

Plaintiff not present and represented by
Rand J. Greenburg, Esq.

Respondent not present and Claimant Efren Aguirre Jr., present
and represented by Travis Gerber, Esq. and Zachary Gerber, Esq.
Court Clerk, Angelina DeMars, present.

HEARING ON MOTION

Court convened at 10:12 a.m.

This was the date and time set by the Court for a hearing regarding a Motion for Summary Judgment filed December 7, 2018.

The Court noted the presence of the parties and made a record of the case. The Court directed Mr. Greenburg to proceed.

Mr. Greenburg presented argument regarding the home being used to facilitate drug trafficking, and further argued that the claimant did not have title to the property at the time that he filed for the Homestead. Mr. Greenburg requested that the Court take into consideration the governing Amendment and made a further request that the Court grant a partial judgment and noted that a lien could be placed on the property.

The Court inquired as to who the correctly named Plaintiff was.

The State advised that it was the Elko County Sheriff's Office.

Mr. Z. Gerber addressed the Court and stated that the rights of Mr. Aguirre needed to be protected, he further argued that the property could not be forfeited due to the Homestead being in place. Mr. Z. Gerber expressed that the State had failed to prove its burden.

Mr. Greenburg further stated his argument.

The Court advised that it would take the matter under advisement.

The Court informed the parties that it had previous knowledge of a Party to the case.

The Parties had no objection to the Court presiding on the case.

Court adjourned at 10:45 a.m.

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

RECORD OF COURT PROCEEDINGS

Present - Honorable NANCY PORTER, District Judge,
and Officers of the Court.

ELKO COUNTY SHERIFF'S OFFICE,

Plaintiff,

VS.

Date: 04-21-2020

Case No.: CV-FR-17-0687

Dept.: 1

REAL PROPERTY AT 743 DEVON DR
SPRING CREEK, NV 89815

Respondent,

EFREN AGUIRRE JR.,

Claimant.

Plaintiff not present and represented by
Rand Greenberg, Esq. via CourtCall

Defendant not present and represented by
Zachary Gerber, Esq. via CourtCall
Court Clerk, Lani Broxson, present.

HEARING ON MOTION FOR SUMMARY JUDGEMENT

Court Convened at 11:10 a.m.

The Court noted the presence of the parties.

The matter was before the Court for a hearing on a motion for summary judgement.

Mr. Greenberg made a statement in regards to the amount of the fine, and a further statement in regards to a forfeiture.

The Court noted the first motion of summary judgement had been denied.

Mr. Greenberg advised his new motion had been supported with documentation.

Mr. Gerber gave a statement in regards to the motions before the Court.

The Court inquired in regards to the case law Mr. Gerber cited.

Mr. Gerber gave a statement in regards to the cited case law, and gave a further statement in regards to homestead law.

Mr. Greenberg gave a statement in regards to the standards for summary judgement, and a further statement in support of the Plaintiff's motion.

The Court inquired of Mr. Gerber in regards to the recorded homestead and forfeiture.

Mr. Gerber gave a statement in regards to real property, and argued in opposition of the Plaintiff's motion.

The Court advised it would make a decision on the motions.

Court adjourned at 11:59 p.m.

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

RECORD OF COURT PROCEEDINGS

Present - Honorable NANCY PORTER, District Judge,
and Officers of the Court.

ELKO COUNTY SHERIFF'S OFFICE,

Plaintiff,

VS.

Date: 09/24/2020

Case No.: CV-FR-17-0687

Dept.: 1

REAL PROPERTY AT 743 DEVON DR
SPRING CREEK, NV 89815

Respondent,

EFREN AGUIRRE JR.,

Claimant.

Plaintiff not present and represented by

Rand J. Greenburg, Esq.

Claimant Efren Aguirre Jr., present via CourtCall and represented by

Travis Gerber, Esq. and Zachary Gerber, Esq.

Court Clerk, Lani Broxson, present.

FORFEITURE TRIAL

Court Convened at 10:02 a.m.

The Court noted the presence of the parties.

The matter was before the Court for a forfeiture trial.

Mr. Greenburg advised counsel had stipulated to Exhibits #A- Document No. 711422, #B- Document No. 711639, #C- Document No. 733367, #D- Document No. 768665, #E- General and Durable Power of Attorney, #F- Property Taxes for Parcel No. 043-014-007, #G- Transaction History for Parcel No. 043-014-007, #H- Certificate of Insurance, #I- Letters of Guardianship, #J- Lease Agreement, #K- Tax Return, #L- Comparative Market Analysis, #M- Amended Criminal Information, #N- Guilty Plea Agreement, #O- Judgement of Conviction, #P- Report of David B. Lockie, Esq., #Q-

Deed, and Exhibit #1- Deed; the Court **ORDERED** the stipulated to Exhibits #A-Q and Exhibit #1 admitted.

Mr. Greenburg advised that counsel had stipulated to what the PSI recommendations from parole and probation had been.

Mr. T. Gerber advised that counsel had stipulated that the claimant's parents would not be called, and the fact that the claimant had been incarcerated when the homestead had been filed.

Mr. Greenburg advised he had no witnesses to call.

Mr. T. Gerber called his first Witness, Mr. Noel Aguirre.

The Witness, Mr. Aguirre was sworn.

Mr. T. Gerber examined the Witness on direct.

Mr. Greenburg examined the Witness on cross.

Mr. T. Gerber examined the Witness on re-direct.

Mr. T. Gerber called his next Witness, Mr. Efren Aguirre Jr.

The Witness, Mr. Aguirre Jr. was sworn.

Mr. T. Gerber examined the Witness on direct.

Mr. Greenburg examined the Witness on cross.

Mr. T. Gerber examined the Witness on re-direct.

Mr. Greenburg examined the Witness on re-cross.

Mr. T. Gerber called his next Witness Mr. James Winer.

Court recessed at 10:49 a.m.

Court reconvened at 11:07 a.m.

The Court disclosed that Mr. Winer sits on its campaign committee.

Mr. Z. Gerber advised that counsel had agreed to limited testimony by Mr. Winer.

The Witness, Mr. Winer was sworn.

Mr. Z. Gerber examined the Witness on direct, and moved to qualify Mr. Winer as an expert in real estate sales and as a real estate broker.

Mr. Greenburg had no objection.

The Court **GRANTED** the Witness to be qualified as an expert in real estate sales and as a real estate broker.

Mr. Z. Gerber continued the examination on direct.

The Witness was excused.

Mr. T. Gerber called his next Witness, Mr. David B. Lockie.

The Court disclosed that it knew Mr. Lockie.

Counsel had no objection.

The Witness Mr. Lockie was sworn.

Mr. T. Gerber examined the Witness on direct, and moved to qualify Mr. Lockie as an expert in criminal law and procedure.

Mr. Greenburg had no objection.

The Court **GRANTED** the Witness to be qualified as an expert in criminal law and procedure.

Mr. T. Gerber continued his examination on direct.

Mr. Greenburg examined the Witness on cross.

Mr. T. Gerber examined the Witness on re-direct.

Mr. Greenburg examined the Witness on re-cross.

The Witness was excused.

The Court **ORDERED** counsel to submit written closing arguments, Mr. Greenburg's closing argument would be due October 5, 2020; Mr. Gerber's response due October 15, 2020; Mr. Greenburg's rebuttal due by October 22, 2020.

Court adjourned at 12:10 p.m.

Number	Description	Location	Marked Dt	Admitted Dt
1	Deed	Elko County Clerk's Office	9/24/2020	9/24/2020
A	Document No. 711422	Elko County Clerk's Office	9/24/2020	9/24/2020
B	Document No. 711639	Elko County Clerk's Office	9/24/2020	9/24/2020
C	Document No. 733367	Elko County Clerk's Office	9/24/2020	9/24/2020
D	Document No. 768665	Elko County Clerk's Office	9/24/2020	9/24/2020
E	General and Durable Power of Attorney	Elko County Clerk's Office	9/24/2020	9/24/2020
F	Property Taxes for Parcel No. 043-014-007	Elko County Clerk's Office	9/24/2020	9/24/2020
G	Transaction History for Parcel No. 043-014-007	Elko County Clerk's Office	9/24/2020	9/24/2020
H	Certificate of Insurance	Elko County Clerk's Office	9/24/2020	9/24/2020
I	Letters of Guardianship	Elko County Clerk's Office	9/24/2020	9/24/2020
J	Lease Agreement,	Elko County Clerk's Office	9/24/2020	9/24/2020
K	Tax Return	Elko County Clerk's Office	9/24/2020	9/24/2020
L	Comparative Market Analysis	Elko County Clerk's Office	9/24/2020	9/24/2020
M	AMENDED CRIMINAL INFORMATION	Elko County Clerk's Office	9/24/2020	9/24/2020
N	Guilty Plea Agreement	Elko County Clerk's Office	9/24/2020	9/24/2020
O	Judgement of Conviction	Elko County Clerk's Office	9/24/2020	9/24/2020
P	Report of David B. Lockie, Esq.	Elko County Clerk's Office	9/24/2020	9/24/2020
Q	Deed	Elko County Clerk's Office	9/24/2020	9/24/2020

Case No. CV-FR-17-687

Dept. No. 1

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

EFREN AGUIRRE JR.,
Appellant,

vs.

ELKO COUNTY SHERIFF'S OFFICE,
Respondent,
_____ /


CLERK'S CERTIFICATION

I, KRISTINE JAKEMAN, the duly elected, acting and qualified County Clerk and Ex-Officio Clerk of the District Court of the Fourth Judicial District of the State of Nevada, in and for the County of Elko, do hereby certify that the annexed are true, full and correct copies of certain documents in Case No. CV-FR-17-687 Dept. 2, EFREN AGUIRRE JR., Appellant, vs. ELKO COUNTY SHERIFF'S OFFICE, Respondent, as appears on file and of record in my office.

WITNESS My Hand and Seal of said Court on February 4, 2021.

KRISTINE JAKEMAN, ELKO COUNTY CLERK

By



Annette Marshall, DEPUTY CLERK

CERTIFICATE OF SERVICE


I hereby certify that I caused to be sent electronically and/or mailed a certified copy of the annexed documents in Case No. CV-FR-17-687 Dept. 2, EFREN AGUIRRE JR., Appellant, vs. ELKO COUNTY SHERIFF'S OFFICE, Respondent, as appears on file and of record in this Court, to the following:

Rand J. Greenburg, Esq.
Deputy District Attorney
Elko county District Attorney's Office
640 Court Street, 2nd Floor
Elko, NV 89801

Travis W. Gerber, Esq.
Nevada State Bar No. 8083
Zachary A. Gerber
Nevada State Bar No. 13128
491 4th Street
Elko, NV 89801
twg@gerberlegal.com
zag@gerberlegal.com

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

DATED this 4th, day of February, 2021.



Annette Marshall, Deputy Clerk

GERBER LAW OFFICES, LLP

OPERATING ACCOUNT
491 FOURTH STREET
ELKO, NV 89801
(775) 738-9258

7511

NEVADA STATE BANK

THE DOOR TO YOUR FUTURE
P.O. Box 990, Las Vegas, NV 89125
www.nsdbank.com

94-77/1224

DATE January 28, 2021



Details on back.

TO
THE
ORDER
OF

PAY TWO HUNDRED FIFTY AND NO/100 * * * * *
Nevada Supreme Court

⑈00007511⑈ ⑆122400779⑆ 002033334⑈

[Signature]

MP

Security Features Included.

GERBER LAW OFFICES, LLP

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.
Deluxe Corporation 1-800-328-0304 or www.deluxe.com/shop
PRODUCT 55203N

7511

DATE	DESCRIPTION	AMOUNT
01/28/2021	Supreme Court Filing Fee - Aguirre Appeal	GLO/SM \$250.00