



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

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Elizabeth A. Brown
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Steven D. Grierson
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Anntoinette Naumec-Miller
Court Division Administrator

April 28, 2021

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: STATE OF NEVADA vs. CHARLES MCCALL
S.C. CASE: 82640
D.C. CASE: C-20-350999-2

Dear Ms. Brown:

Pursuant to your Order Directing Entry and Transmission of Written Order, dated April 7, 2021, enclosed is a certified copy of the Order Granting Defendant's Motion to Suppress filed April 28, 2021 in the above referenced case. If you have any questions regarding this matter, please do not hesitate to contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "Heather Ungermann", is written over a horizontal line.

Heather Ungermann, Deputy Clerk

1 **ORDG**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 CHARLES McCALL

9 Defendant.

CASE NO: C-20-350999-2

DEPT NO: III

10
11 **ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS**

12 THE COURT, having reviewed Defendant Charles McCall's Motion to Suppress,
13 and the State's Opposition, and having heard testimony and argument from both sides
14 regarding the same,

15 **HEREBY FINDS THAT:**

16 There was no lawful basis for the protective sweep of the home because the
17 Department of Parole & Probation officers did not make an arrest at the home and they
18 failed to testify to a reasonable belief based on specific and articulable facts that the area to
19 be swept harbored an individual posing a danger to those on the scene. *Maryland v. Buie*,
20 494 U.S. 325, 334 (1990). Because the entry was unlawful, the items in plain view must be
21 suppressed. Furthermore, the evidence derived from other evidence obtained in violation of
22 the Fourth Amendment, must also be suppressed as the "fruit of the poisonous tree." *Wong*
23 *Sun v U.S.*, 371 U.S. 471 (1963). In this case, officers relied on the "plain view" evidence as
24 well as statements made after the arrest as a basis for the subsequent search warrant.

25 "A 'protective sweep' is a quick and limited search of premises, incident to an arrest
26 and conducted to protect the safety of police officers or others." *Maryland v. Buie*, 494 U.S.
27 at 327. Here, no arrest took place at the home until after the unlawful intrusion. Officers
28 arrested Winn at the Department of Parole & Probation and then returned her to the home

1 for the purpose of invoking her probation search clause, which is limited to areas under her
2 control. There were no other exigent circumstances to warrant a protective sweep.

3 While the plain view doctrine allows objects not otherwise listed in a search warrant
4 to be seized, the initial intrusion must still be lawful. *Luster v. State*, 115 Nev. 431, 434, 991
5 P.2d 466, 468 (1999). Here, officers did not obtain a search warrant for the home until after
6 the initial violation occurred.

7 If officers were concerned with the allegations referenced in the letter, there was
8 sufficient time to obtain a warrant, especially since Officer Crowe testified that he sat and
9 surveilled the house for about an hour prior to the arrival of other officers. To be clear, the
10 letter only referenced McCall to say Winn lived with him and that he was an ex-felon.

11 The matter at issue in this case is the sanctity of the home and warrantless intrusion
12 of the same. Even though McCall is a convicted felon, he has the constitutional right to
13 protection of his home from warrantless intrusion. He was not on probation or on parole at
14 the time of the intrusion and officers were not at his home to arrest him. Aside from the fact
15 that there was no arrest at the home, officers also failed to establish a reasonable belief that
16 the area to be swept harbored an individual that posed a threat of danger to them. Upon
17 entry into the home, both officers testified that McCall came out of the back bedroom and
18 he was complaint. While there is differing testimony as to when the third occupant in the
19 home became visible, Officer Conroy testified that both occupants came out of their
20 respective rooms when they entered the home and yelled out.

21 THEREFORE, the items discovered in “plain view” during the unlawful protective
22 sweep must be suppressed. Furthermore, the evidence seized pursuant to the search warrant
23 must also be suppressed because it was fruit of the poisonous tree resulting from the
24 unlawful protective sweep.

25 April 28, 2021



CERTIFIED COPY
ELECTRONIC SEAL (NRS 1.190(3))

Dated this 28th day of April, 2021

HON. JUDGE MONICA TRUJILLO

B2B FDD 4009 B191
Monica Trujillo
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-20-350999-2

7 vs

DEPT. NO. Department 3

8 Charles McCall
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Granting was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/28/2021

15 Michael Sanft

michael@sanftlaw.com

16 Austin Beaumont

austin.beaumont@clarkcountyda.com