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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on May 5, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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JEV//ed

1 give up your right to warrant the searches. You give up  
2 your right to having someone come in, search through all  
3 your stuff, grab your phone, go through all your phones.  
4 You give up that right because you're on probation.

5           So, as a result, probation officers start to get  
6 sloppy when it comes to a situation like this where you  
7 have to articulate what you can do as a probation officer,  
8 based upon one person who gave up their right to  
9 expectation of privacy, versus another person who might be  
10 in the same general vicinity who has not given up that  
11 right, who is not under probation. And, as a result, what  
12 happens, like in this case, is that the cowboy comes along  
13 and what the cowboy does is: I'm just happy to be here.  
14 So, because we suspect that this guy over here might be  
15 doing something illegal, because of the fact that we're  
16 sloppy because we can be with the probationer, we're going  
17 to be equally as sloppy when it comes to the person who  
18 actually has legitimate Fourth Amendment rights. And that  
19 is in this case Mr. McCall, who is not on any type of  
20 supervision.

21           Now, you know, it -- a lot of this goes back to  
22 that letter and, just for the Court's reference, this is  
23 Defense Exhibit E. A letter that we just received  
24 yesterday. And the reason why it's a surprise to me, for  
25 instance, is that I did not receive this letter in

1 discovery, nor is this letter referenced in any of the  
2 discovery I have. It's not referenced in the Arrest  
3 Report. It's not referenced in anything. So, yesterday,  
4 this was a surprise to receive this. But what the State  
5 has now shown to the Court is that's the cornerstone as to  
6 why you -- Parole and Probation felt that they could  
7 intervene and violate Mr. McCall's Fourth Amendment right  
8 to privacy.

9           So, let's take a look at the letter because what  
10 they have said is we believe, based upon this anonymous  
11 letter, that Mr. McCall was doing all these things. My  
12 concern with the letter is, and the way it's written, is it  
13 says:

14           Ms. Colette is -- Winn is engaged in various  
15 illegal and illicit activities at the home of convicted  
16 felon, Charles McCall. Colette has a Ring doorbell  
17 installed to watch for any and all police activity.  
18 She has an app on her phone and is doing this to  
19 monitor her probation.

20           First of all, I don't know if we had evidence to  
21 show that that's actually true, which would have been nice.

22           She has made no attempt to move, as directed by  
23 her probation officer.

24           Once again, the two individuals that got up and  
25 testified yesterday on behalf of the State, do we have any

1 testimony to that? No, because it's not their probationer.  
2 But they verified this letter for some reason just by  
3 reading it.

4           She purchased two vehicles, a Mazda 323 and a BMW  
5       3 Series, with a suspended license and no job that are  
6       parked in front of her residence at 1209 Ingraham  
7       Street.

8           Here's the problem with that. What do we have to  
9       verify that, based upon the testimony provided in court  
10      from the State? You know who would have done a really good  
11      job at doing that? Officer Wilson, because no one else  
12      could verify to that.

13           Next sentence: She has three computers in her  
14      room with social security numbers, profiles, credit  
15      card information that she has been using to file  
16      unemployment claims, including her ex-boyfriend in  
17      prison, and collecting. She has his PayPal card in her  
18      purse. All these computers -- the red one is all the  
19      information need. Colette Winn is also slinging drugs  
20      out of the far back bedroom and has \$3,500 in cash in  
21      at all times. She is engaged in criminal activity with  
22      all ex-felons.

23           I guess maybe that's where Mr. McCall's -- the  
24      inference to Mr. McCall is because he's an ex-felon that  
25      somehow because he's an ex-felon he's engaged in criminal

1 activity with Colette Winn. Maybe that's what we're  
2 talking about here.

3           You need to be careful as she stays up nearly 24  
4 hours watching out for Probation. Her doors are  
5 barricaded and her side door leading outside the house  
6 is where she runs if she suspects Probation is coming.

7           Which, by the way, what side door are we talking  
8 about? What testimony do we have of a side door? We have  
9 a backdoor that leads out to the backyard, but what's this  
10 side door that they're talking about? How do we verify  
11 that? How do we, as Parole and Probation, say: This is  
12 verify -- this has been verified. This is verifiable.

13           I hope this information has been helpful. Ms.  
14 Colette Winn plans on living at this convicted felon's  
15 house, even after she gets a fake address. She has not  
16 attempted to work, move out, or become a model citizen.  
17 Weapons might be found, so please be careful and God  
18 bless you. I write with no name because I am a  
19 concerned citizen and I'm scared. She has credit cards  
20 and other names in her purses as well.

21           Please, I don't see where it says that Mr. McCall  
22 had all these things. I see Mr. McCall's name in the first  
23 full sentence of this letter and I see no further reference  
24 to anything to do with possession of drugs, guns, or  
25 anything else by Mr. McCall specifically. You see

1 everything in here addressed specifically with this  
2 concerned citizen about Colette Winn. But nothing in here  
3 says McCall is the guy with a gun. McCall is the guy with  
4 a shotgun [indiscernible] because then you would have said:  
5 Oh, shotgun shells, maybe there's a shotgun.

6           The concern is, over and over again, is when you  
7 are a probation officer, you are a cowboy, you are running  
8 [indiscernible] over the Fourth Amendment and you don't  
9 care because you're not -- that's not your experience.  
10 Your experience has always been: I can do whatever I want  
11 when I walk into this lady's house if she's the one that's  
12 on probation. Which is true, if it was her house. But the  
13 only thing in that house that was specifically hers was  
14 that bedroom.

15           And you know what we don't have here today? We  
16 don't have testimony from Officer Wilson about her  
17 understanding of how this situation was at that house  
18 because the other part of the interesting thing is,  
19 typically, you ask, as a probation officer: Where are you  
20 residing? Who are you residing with? I'm with my family.  
21 In this case, what she would have said is, my guess is:  
22 I'm renting a room from Charles McCall. At that point, you  
23 would think -- Probation says: Okay, we're narrowing  
24 everything down to the common areas and to things that are  
25 directly under her control. And the reason for that is,



1 under that search clause, again, that search clause  
2 articulates: Under your control. And, as a result of  
3 that, the question then becomes, that the State keeps  
4 talking about, is: Well, that bedroom that Mr. McCall is  
5 in is not subject to that right of privacy. So, here's  
6 what they say.

7           Officers announce themselves, wearing the tactical  
8 vests. They go into the home. It's not a pleasant visit.  
9 It's a -- it's what you would call a -- like if you're  
10 doing a traffic stop, this would be a felony traffic stop.  
11 This is not a polite, how are you doing today, sir? It's  
12 a: Get on the ground, get over here, get over there. Why?  
13 Because they say they're doing this for officer safety.  
14 The only information they have is that letter that doesn't  
15 say anything at all about Charles McCall being a threat.

16           So, what they do is they walk in. They need to  
17 control that situation. So, they're not saying: Mr.  
18 McCall, please take your dog and put the dog into your  
19 bedroom. They order him: Take that dog and put him into  
20 the bedroom right now. And guess what they do. They don't  
21 sit there and pleasantly watch Mr. McCall walk the dog over  
22 to his bedroom and put him in. They follow Mr. McCall.  
23 Why? Because, once again, officer safety. They're  
24 trained: You keep your eyes on the potential threat at all  
25 times.

1           The testimony of -- I think it was the second  
2 officer yesterday, officer -- or Conroy, was that when they  
3 went to that door, he breached the plane. It wasn't like  
4 a: Sir, as you're putting your dog away, do you mind if we  
5 check your room for potential other people that's in the  
6 room? If we had that conversation, then -- and Mr. McCall  
7 said, no problem, maybe at that point we could say they  
8 have consent to go into the room. But they don't. What  
9 they say is: We're going into your room and we're  
10 searching for things. And they immediately go in as Mr.  
11 McCall is bending down, taking the dog, and putting the dog  
12 into the bathroom, which is immediately to the right of the  
13 door to his bedroom. That's not consent.

14           Here's the funny thing. And this is maybe not so  
15 funny. The idea of consent. State, and maybe the  
16 officers, try to imply: Well, he didn't say no. That's a  
17 kind of consent argument that someone who does something to  
18 another person says. Well, she never said no, so I thought  
19 I could do whatever it is that I wanted to do to her.  
20 That's not consent. Or, in the alternative, here's another  
21 one: Well, you know, I've been on probation before, so I  
22 know how this is done. First of all, Mr. McCall says:  
23 I've been on probation before. So, as a result, he knew  
24 when he was on probation he didn't have a reasonable right  
25 to expectation of privacy. But by saying that, what

1 they're saying is it's the same thing as: Oh, well, you  
2 know, I'm a prostitute. Even though I don't want to have  
3 sex right now and we're not doing this for money, that's  
4 it. So, I guess, that means the dude can do whatever the  
5 dude wants because, yeah, I'm a prostitute. That's not how  
6 it works. You can still be a victim of something else, a  
7 nonconsensual encounter like that, with -- by declaring  
8 yourself a prostitute, it does not give someone a legal  
9 right to do something beyond -- just talking about it.

10           So, in essence, by saying, well, you know, I've  
11 been on probation before, or parole before, supervision  
12 before, I know how this works, it's taken out of context.  
13 And, quite honestly, is not a clear issue of consent. He  
14 is not saying: Please, I invite you into my bedroom. Look  
15 around. Enjoy yourselves. Do you want something to drink?  
16 It's very hot outside. That's not -- there's none of this.  
17 It's a hard, heavy thing going in there. And you know why?  
18 It's because they already knew they were going to do it.  
19 And that's the other part of the equation that we have a  
20 problem with this letter.

21           They walk in after having a meeting and say: This  
22 is what we're going to do. Because you know why? Colette  
23 Winn was with them. She wasn't in her bedroom. She was  
24 actually with them. They had brought her from the office  
25 to the house. She's outside with them. And then they come

1 in. Their target at this particular point is: Yeah, they  
2 want to search that bedroom. But their target, as well, is  
3 Charles McCall.

4           So, cowboys go in, guns blazing. Metro should  
5 have been notified before all this. Metro should have  
6 said: Hey, we got a guy, we got some intel here  
7 potentially, detective, can you take a look at this, and  
8 see if this is something you want to develop into a case?  
9 That's what should have happened. It should have gone to  
10 our problem solving unit detectives or whatever the name is  
11 they currently have for those types of detectives to  
12 birddog and say: Okay, keep your eyes on this house  
13 because we think there's some illegal activity going on.  
14 What they do instead is, they're going to say: Hey, we  
15 could do whatever we want because we're Probation. We  
16 don't have to respect the Fourth Amendment. And, as a  
17 result, if we go in there and find some crap, we're going  
18 to get a high-five and a kudo from the person who actually  
19 writes a report, which is not even them. That's what they  
20 did.

21           So, in essence, when they walked into that house,  
22 all they really wanted was Charles McCall. They saw his  
23 criminal history, they looked at this letter, it doesn't  
24 say anything about Charles McCall, but they make it about  
25 Charles McCall. And, as a result, what they do is they

1 turn around and they say: Okay, we can go into that  
2 bedroom.

3           So, I guess the question at the end of the day is:  
4 Do shotgun shells indicate a right to immediately arrest  
5 Charles McCall? Testimony by one of the officers is: As  
6 soon as I saw the gunshots -- the gun shell -- the gunshot  
7 shells, I notified the other officer that was in there,  
8 that I believe is Officer Crowe, and within seconds -- and  
9 I made sure that that was a point yesterday, within seconds  
10 Charles McCall is read his *Miranda* rights. When does that  
11 happen? Hey, I'm a police officer. I'm in your  
12 neighborhood. We're doing a proactive community policing.  
13 We just wanted to see how you guys are doing and before you  
14 do anything else, you have a right to remain silent. You  
15 have a right to an attorney if one is not -- you know, you  
16 cannot afford one, one will be provided to you.

17           Are they saying that every time they have to have  
18 that conversation with anybody, that, you know, you're not  
19 under -- you're not being detained? The *Miranda* is done  
20 when you are being detained. So, in essence, they see the  
21 gunshots -- gunshot shells and they're like: Oh, look what  
22 we've got here, boys. Exactly what we briefed for and, as  
23 a result, they immediately detain Mr. McCall.

24           At that particular point, I guess they do have the  
25 right to go through the rest of the room. Nothing's in

1 plain sight except for gunshot shells, that are not  
2 illegal. But what they could have done, and I think what  
3 the Metropolitan police officers would have done, because  
4 they are better trained and more acutely aware of the  
5 problems of the Fourth Amendment with the rights of  
6 privacy, is they would have looked at -- for those shells  
7 and they would have tried their best to look for a gun, an  
8 actual gun, or actual crime, like, you know, maybe some  
9 meth or, I don't know, something. An ID sticking out  
10 that's a woman's ID. They would have done that because, I  
11 think, just because there's gunshots -- or gunshot shell  
12 casings in the bedroom, they don't have enough because, at  
13 that point, they're limited intrusion into Mr. McCall's  
14 home and, specifically, into his bedroom, is for officer  
15 safety. Because the moment they go into the bathroom, and  
16 they looked into the closet, and they saw no one else, and  
17 all they have is gunshot shells, they needed to turn around  
18 and walk right back out of that bedroom. Because that's  
19 their limit and the scope of their limited right at that  
20 particular point for a search, unless they got a warrant,  
21 or, in this case, unless they got permission from Mr.  
22 McCall. They did not get either.

23           So, going back to the reason we filed this Motion,  
24 every once in a while in my career, I get a situation like  
25 this that I have to file this Motion. Sometimes there is -

1 - you know, there is certain types of expectation or  
2 practice where my client wants to file every motion on  
3 every case. And what I've learned over time is that when  
4 it's something that's blatantly, obviously, a problem, I  
5 have to file. There's no discussion with the State on this  
6 because the State, of course, is going to say: Well,  
7 there's nothing I can do. We're just going to have to  
8 bring it up before the Court and let the Court make a  
9 decision.

10           What does the Court look at to help the Court with  
11 this type of thing? You look at precedence. You look at,  
12 okay, what other question out there has been answered that  
13 would fit sort of the idea behind this particular case with  
14 other courts? We don't have U.S. Supreme Court direction.  
15 We don't even have Ninth Circuit Supreme Court -- or Ninth  
16 Circuit direction. We don't even have local, Nevada  
17 Supreme Court direction on this case. What we have is  
18 court references to other jurisdictions that -- and I don't  
19 know if you were able to shepardize but hasn't necessarily  
20 been followed. It's been identified. That's it.

21           So, in essence, what we're asking the Court to do  
22 is this. Based upon just the clear premise of what  
23 probation's all about, it's protecting the community with  
24 people who are currently on supervision. People who are on  
25 supervision give up their right to the Fourth Amendment,

1 specifically the right to privacy, for obvious reasons.  
2 Colette Winn, the reason she's not here today is because  
3 she doesn't -- she gave up that right because she was on  
4 probation. The reason why we have Mr. McCall here is  
5 because he did not give up that right. Their justification  
6 -- the reason I asked that question at the very beginning  
7 of my little tirade here today is because -- and I'll --  
8 in, essence, if you just listen to everything the State  
9 said, I still don't believe it's not -- enough.

10           That's the reason I was very comfortable just  
11 sitting in my chair if you just said: No, I'm -- I made a  
12 decision on it. Because, to me, everything they said still  
13 does not rise to the level of giving up that Fourth  
14 Amendment right. Even under safety, because, in essence,  
15 if they just saw the gunshot shells, what else are they  
16 going to do? They can look in the closet and look in the  
17 other bathroom and walk out. A gun, on the other hand, in  
18 plain view, like what they talked about in -- I think it's  
19 the Minnesota case in this case, it's in plain view. It's  
20 a different thing.

21           So, in essence, I don't believe the State has  
22 provided enough compelling reasons for the Court to deny my  
23 Motion to Suppress in this case. And, as a result, we  
24 believe that the search, their intrusion into Mr. McCall's  
25 right of privacy in this case, was not warranted. And, as



1 a result, by under -- the document -- the fruits of the  
2 poisonous tree, at this particular point, we're asking to  
3 suppress any and all evidence that was found inside of Mr.  
4 McCall's bedroom. Thank you.

5 THE COURT: Thank you, Mr. Sanft.

6 Mr. Beaumont?

7 MR. BEAUMONT: So, regarding the caselaw and  
8 having not much to go on in Nevada, that's not new.  
9 Criminal law is always changing, always evolving, and this  
10 *Bursch* case that I cited in my Opposition, I noted that it  
11 should be persuasive because it's not based on Minnesota  
12 law, it's based on Fourth Amendment law, as laid out by the  
13 U.S. Supreme Court on protective sweeps, under nearly  
14 identical facts, shockingly identical, actually, between  
15 this case and *Bursch*.

16 So, the protective sweep is everything up until  
17 the point that we get into the room. It's the articulable  
18 facts that indicated a threat to officers that justified  
19 the sweep of the room. All of the articulable facts in  
20 this case were known, identified, or suspected from either  
21 Ms. Winn's actions, or from the observations of Mr. Crowe,  
22 or that were based on certain information contained in the  
23 tip provided to Probation. Almost, again, exactly like  
24 *Bursch*.

25 And, as Officer Conroy stated, where there's

1 smoke, there's fire; but where there's shells, there's  
2 firearms. That's something that tipped him off to think:  
3 You know what? That tip about how there might be weapons  
4 in the house, might be something to that. That's a red  
5 flag. For our safety, we're going to put this guy in  
6 custody before we go any further. We're going to read him  
7 his *Miranda* rights. We're going to tell him that he has  
8 the right to remain silent. And, like Mr. McCall said,  
9 he's an ex-felon. He knows how this goes. He knows he has  
10 the right to remain silent. He was told this. He's been  
11 told many times before and immediately he says: I fucked  
12 up.

13           He knows what he's done. He knows that there's  
14 weapons in the house and he tells the officers. But that's  
15 past the point of where this protective sweep started. The  
16 protective sweep started based on Mr. McCall's action of  
17 walking out of a bedroom door with a barking dog in a house  
18 where officers had no prior knowledge of its occupants, no  
19 prior knowledge of its layout, and no knowledge whatsoever  
20 that it was or was not safe. And that's why they were  
21 conducting a protective sweep of this house, was to  
22 identify threats, e.g. outdoor man, ex-felons, Mr. McCall  
23 being an ex-felon. They were conducting a sweep for their  
24 own, personal safety.

25           And when they went into Mr. McCall's room, again,

1 at his behest, that goes to -- if not -- again, if not  
2 express consent, certainly implied consent. And, if not  
3 implied consent, then definitely establishing that he has  
4 no subjective expectation of privacy in that room from that  
5 point forward. Walks in, leaves the door open, takes the  
6 dog into the bathroom, leaves the officers there in the  
7 doorway. Everything in my room now is open for your  
8 inspection. And now we're at the plain view of these  
9 shotgun shells.

10           So, the notion about the P and P officers being  
11 sloppy cowboys, I'm not going to argue that. But what I am  
12 going to say is that, here, these specific officers were  
13 not sloppy. They were going by the book with specific  
14 articulable facts about potential threats that they could  
15 face in this house. They were acting on their own  
16 observations and, most importantly, they were there to  
17 check on Winn. They were supervising Winn. It wasn't  
18 necessary to verify Winn's car purchase because it wasn't  
19 relevant to McCall's bedroom search, as far as Mr. McCall  
20 goes.

21           But, more importantly, they weren't there to  
22 arrest Mr. McCall. They're Parole and Probation officers.  
23 They're not acting on some sort of tip that they're gotten  
24 a search warrant for to search Mr. McCall's house. They're  
25 there to specifically check on Ms. Winn, based on that

1 note.

2           They don't write reports. They don't submit  
3 charges. They're no Metro. They're only there to ensure  
4 officer safety while they're checking on Mrs. Winn. But  
5 they are also officers. They can't ignore criminal  
6 activity. So, if they're conducting this search and they  
7 see things that are obviously criminal activity, they have  
8 to report it as officers. If they had opened up -- I'm  
9 sorry, if Mr. McCall had opened up his door, exposing a  
10 meth lab, or an arsenal, or child pornography, any number  
11 of things whose incriminating nature was readily apparent,  
12 after that protective search, they can stop and seize that  
13 -- those items because they are officers and, again, they  
14 can't ignore criminal activity, especially criminal  
15 activity in this case which potentially threatens their  
16 safety.

17           So, when they tell Mr. McCall to put the dog in  
18 the room, it's because the dog itself is a threat. They  
19 have to secure the dog for their own personal safety. And,  
20 again, it's right off the main room. It's in an area  
21 immediately adjacent to the place of, effectively, arrest  
22 considering that Ms. Winn was there for a potential  
23 probation violation and, ultimately, was arrested for that  
24 probation violation. It's off of a main room. And, again,  
25 since it's right off of the main room that they all

1 immediately enter, it may contain threats. It may contain  
2 this -- the outdoor man. It may contain, quote, ex-felons,  
3 that were in the note.

4           These officers could not have already known what  
5 they were going to go into. They've never been there.  
6 They both testified that. It was an unfamiliar  
7 environment, completely unknown to them. But what they did  
8 know for sure, from Mr. Crowe's investigation, was that Mr.  
9 McCall was there, he was an ex-felon, and they encountered  
10 that immediately.

11           So, encountering the few things that you do expect  
12 to encounter that can potentially cause a threat to your  
13 personal safety, absolutely gives these officers  
14 articulable facts to perform a protective sweep of the  
15 residents, specifically and directly Mr. McCall's room.  
16 And, again, once they're in that room, because of the  
17 protective sweep and they see in plain view shotgun shells,  
18 where there's shells there's firearms. They didn't search.  
19 They didn't get -- they didn't rummage. They didn't start  
20 looking around. They didn't go off book. They said this  
21 is a problem. Put him in custody. Read him his *Miranda*  
22 rights for our safety.

23           And, at that point, after he confessed to  
24 everything, after he consented to the rest of the searches,  
25 they do exactly what they're supposed to do. They call

1 Metro, they get a search warrant, and the detectives come  
2 out. So, everything that's seized as a result of this  
3 search should not be suppressed. This protective sweep is  
4 absolutely justified under these facts and nothing  
5 whatsoever seized in this event should be suppressed for  
6 any sort of violation of Mr. McCall's rights. He is  
7 completely eviscerated of any subjective expectation of  
8 privacy in the room he has. And, even if he hasn't, this  
9 protective sweep was 100 percent justified, Your Honor.

10 THE COURT: Thank you, Mr. Beaumont.

11 So, I just want to run through my recollection of  
12 the testimony just so -- because I want to be clear here.  
13 I think we're all in agreement that the question is whether  
14 the protective sweep was lawful and, then, everything else  
15 kind of flows from that.

16 So, my recollection of the testimony was that both  
17 officers testified that Mr. McCall came out of the back  
18 bedroom, that he was compliant, that they directed him to  
19 put his dog away. They, in fact, cleared the bathroom and  
20 told him where to put it because it was visual to them. I  
21 think it was Officer Conroy that said he visually cleared  
22 the bathroom and directed him to put it there.

23 So, from what that testimony seems like is when  
24 they entered the home, even though it differed on the third  
25 person there, Officer Conroy testified that when they were

1 walking in yelling, that the third occupant, or second  
2 person in the house other than Winn, came out at the same  
3 time. I think Officer Crowe said he really wasn't sure.  
4 He just saw him on the couch. But my recollection is  
5 Officer testified -- Officer Conroy testified that both  
6 occupants came out of their respective rooms when they were  
7 entering the house and yelling out.

8           So, at that point, it appears that everyone was in  
9 the living space. And, again, it was the probation  
10 officers that directed him to go back into the bedroom and  
11 put the dog away into the bathroom.

12           I agree with Mr. Sanft that the letter really only  
13 reference Mr. McCall one time by saying that she lives at  
14 the house of a convicted felon named Charles McCall.  
15 Everything else appears to be directly on point with  
16 activity that she's doing. I mean, it consistently says  
17 she's made no attempt to move, she's purchased two  
18 vehicles, she has PayPal cards in her purse, she's engaged  
19 in criminal activity with all ex-felons. And, again, it  
20 doesn't say him by name.

21           There's no indication that there's another person  
22 lives in the home other than those two, although I  
23 understand that the probation officers testified that there  
24 was a third person living there and they got -- gathered  
25 that information from Ms. Winn.

1           The timeline seems to be that the Ms. Winn was at  
2 the Department of Parole and Probation, I guess,  
3 presumably, meeting with Officer Wilson about this letter  
4 and these officers testified that she was at the  
5 Department, that they spoke with her about the letter and  
6 the residents. She told them who she believed would be at  
7 the house and that indicated one other person other than  
8 McCall. Officer Crowe sat on the house for surveillance  
9 purposes where, I believe, he testified about an hour prior  
10 to the arrival of other officers. During that time, he  
11 looked up the information on McCall, including his priors.  
12 And he testified that, while he was sitting on the house,  
13 he saw a man who he was unable to identify enter the house,  
14 but no one else.

15           So, then we have, obviously, the protective sweep.  
16 And I totally agree that, you know, there are some facts  
17 here that could warrant a protective sweep. The problem is  
18 we can't -- we have to look at all of the facts and the  
19 facts that the letter don't include any other information  
20 about Mr. McCall. I think what's most concerning here is  
21 protective sweeps are typically done in exigent  
22 circumstances. Again, we don't even have an arrest here.  
23 Ms. Winn was with them at the Department. They returned  
24 her to her home for the purposes of executing a search  
25 clause, pursuant to the Probationary Agreement. So, that's



1 a problem because I'm not sure what the exigent  
2 circumstances were. There wasn't an arrest being  
3 effectuated at the house. And I'm not saying that  
4 protective sweeps can't happen in other circumstances. I'm  
5 saying, here, I don't feel like the facts rise to a  
6 specific and articulable facts that there's some type of  
7 danger posed, especially when they know that Mr. McCall  
8 lives in the house, and he was already in the living area,  
9 and a third person lives in the house because he was -- he  
10 came out, according to Officer Conroy's testimony.

11           What's further concerning is that all that time --  
12 in all that timeframe, if they were truly concerned with  
13 this letter, there was time to get a warrant. Obviously,  
14 the main concern here is the sanctity of the home and  
15 warrantless intrusion and, even though Mr. McCall is a  
16 convicted felon, he has rights. His home is protected.  
17 He's not on probation. He's not on parole. I don't  
18 believe he consented, but we're starting from the premise  
19 that I don't believe there was articulable and specific  
20 facts to warrant the protective sweep, again, where there  
21 was no issue of an arrest because she was already in the  
22 custody of the Department of Parole and Probation.

23           And while I understand that the officers say they  
24 generally -- that's their procedure to do protective  
25 sweeps, that doesn't make it right or justified under the

1 law. The Court finds there's no lawful basis for the  
2 protective sweeps because the officers failed to testify to  
3 a reasonable belief based on specific and articulable facts  
4 that the area to be swept harbored an individual posing a  
5 danger to those on the scene. Therefore, the items in  
6 plain view during an unlawful protective sweep must be  
7 suppressed. Furthermore, the evidence seized pursuant to  
8 the warrant must be suppressed because it was from the  
9 fruit of the poisonous tree of the unlawful protective  
10 speech -- sweep.

11 Mr. Sanft, will you please prepare the Order?

12 MR. SANFT: Yes, Your Honor.

13 THE COURT: Thank you.

14 Anything further?

15 MR. SANFT: Your Honor, just a point that if the  
16 Court has ruled with regard to the suppression issue, at  
17 this particular point, we're going to move to dismiss the  
18 case.

19 THE COURT: State? I don't have everything in  
20 front of me. Obviously, I only have this, so I'm not sure  
21 if there is --

22 MR. SANFT: Well, if you look at the charging  
23 document in this case, the Information, I believe it goes  
24 specifically to the issue of possession. Nothing further.  
25 Just wanted to let the Court know. So, at this point, we

1 would move to dismiss the case.

2 MR. BEAUMONT: I would object to the dismissal,  
3 Your Honor, but I understand your ruling.

4 THE COURT: You know what, Mr. Sanft? Right now,  
5 I'm going to prefer a written motion because, based on  
6 reading this right now, I don't recall testimony about all  
7 the specifics. So, --

8 MR. SANFT: Right. And I think there's some  
9 reference in there for credit cards and --

10 THE COURT: Correct.

11 MR. SANFT: -- forensics and I -- yeah, you're  
12 right. And I apologize for that, Your Honor.

13 THE COURT: So, -- no worries. I just -- so, I  
14 prefer a written motion and, obviously, I anticipate an  
15 Opposition.

16 MR. SANFT: Yes, Your Honor.

17 THE COURT: So, --

18 MR. SANFT: Thank you.

19 THE COURT: -- anything further from either party?

20 MR. SANFT: No, Your Honor.

21 THE COURT: Thank you.

22

23 PROCEEDING CONCLUDED AT 11:28 A.M.

24 \* \* \* \* \*

25

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

13

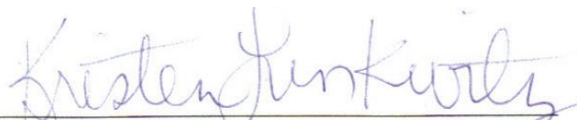
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20 KRISTEN LUNKWITZ

21 INDEPENDENT TRANSCRIBER

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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.

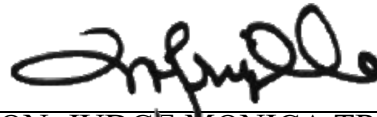
3 While the plain view doctrine allows objects not otherwise listed in a search warrant  
4 to be seized, the initial intrusion must still be lawful. *Luster v. State*, 115 Nev. 431, 434, 991  
5 P.2d 466, 468 (1999). Here, officers did not obtain a search warrant for the home until after  
6 the initial 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  
26 Dated this 28th day of April, 2021

27 

28 HON. JUDGE MONICA TRUJILLO

B2B FDD 4009 B191  
Monica Trujillo  
District Court Judge

RA 000277

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

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RA 000278