IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, Appellant, v. CHARLES WADE MCCALL Respondent.	Case No. 82640

APPELLANT'S APPENDIX
Volume 1

STEVEN B. WOLFSON
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Counsel for Respondent

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on October 14, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

MICHAEL W. SANFT, ESQ.
Counsel for Appellant

ALEXANDER CHEN
Chief Deputy District Attorney

BY */s/ E. Davis*
Employee, District Attorney's Office

AC/Elan Eldar/ed

INFM
STEVEN B. WOLFSON
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200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

I.A. 09/25/20
08:00 AM
SANFT, ESQ.

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CHARLES WADE MCCALL,
#0839616

Defendant.

CASE NO: C-20-350999-2

DEPT NO: XIX

INFORMATION

STATE OF NEVADA)
} ss.
COUNTY OF CLARK)

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That CHARLES WADE MCCALL, the Defendant(s) above named, having committed the crime of **ESTABLISHING OR POSSESSING A FINANCIAL FORGERY LABORATORY (Category B Felony - NRS 205.46513 - NOC 50724); OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony - NRS 202.360 - NOC 51460); and POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION (Category C Felony - NRS 205.465 - NOC 50696)**, on or about the 25th day of June, 2020, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

///

COUNT 1 - ESTABLISHING OR POSSESSING A FINANCIAL FORGERY LABORATORY

did then and there willfully, knowingly and feloniously establish or possess a financial forgery laboratory, to wit: computers, identification cards, check stock, an embosser and/or a reader/writer, with the intent to commit any unlawful act; the Defendant(s) being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendant and/or COLETTE RHEA WINN aiding or abetting and/or conspiring by Defendant and/or COLETTE RHEA WINN acting in concert throughout.

COUNT 2 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

did willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody or control, a firearm, to wit: a Ruger .380 caliber handgun, the Defendant being a convicted felon, having in 2018, been convicted of Trafficking in Controlled Substance, in Case No. C329329, in the Eighth Judicial District Court, Clark County, a felony under the laws of the State of Nevada.

COUNT 3 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

did willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody or control, a firearm, to wit: a Smith & Wesson .32 caliber handgun, the Defendant being a convicted felon, having in 2018, been convicted of Trafficking in Controlled Substance, in Case No. C329329, in the Eighth Judicial District Court, Clark County, a felony under the laws of the State of Nevada.

COUNT 4 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

did willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody or control, a firearm, to wit: a Mossberg 12 gauge shotgun, the Defendant being a convicted felon, having in 2018, been convicted of Trafficking in Controlled Substance, in

Case No. C329329, in the Eighth Judicial District Court, Clark County, a felony under the laws of the State of Nevada.

COUNT 5 - POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION

did willfully, knowingly, and feloniously possess any document or personal identifying information, to wit: a Nevada Driver's License in the name of MARIAH TOVES, for the purpose of establishing a false status, occupation, membership, license or identity for himself or herself or any other person, the Defendant(s) being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendant and/or COLETTE RHEA WINN aiding or abetting and/or conspiring by Defendant and/or COLETTE RHEA WINN acting in concert throughout.

COUNT 6 - POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION

did willfully, knowingly, and feloniously possess any document or personal identifying information, to wit: a Nevada Driver's License in the name of JAYAH ANDERSON, for the purpose of establishing a false status, occupation, membership, license or identity for himself or herself or any other person, the Defendant(s) being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendant and/or COLETTE RHEA WINN aiding or abetting and/or conspiring by Defendant and/or COLETTE RHEA WINN acting in concert throughout.

COUNT 7 - POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION

did willfully, knowingly, and feloniously possess any document or personal identifying information, to wit: a Nevada Driver's License in the name of DON JUDE, for the purpose of establishing a false status, occupation, membership, license or identity for himself or herself or any other person, the Defendant(s) being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendant and/or COLETTE RHEA WINN aiding or abetting and/or conspiring by Defendant and/or COLETTE RHEA WINN acting in concert throughout.

COUNT 8 - POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION

did willfully, knowingly, and feloniously possess any document or personal identifying information, to wit: a United States Uniformed Services Identification Card in the name of NATASHA GUERRERO, for the purpose of establishing a false status, occupation, membership, license or identity for himself or herself or any other person, the Defendant(s) being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendant and/or COLETTE RHEA WINN aiding or abetting and/or conspiring by Defendant and/or COLETTE RHEA WINN acting in concert throughout.

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COUNT 9 - POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION

did willfully, knowingly, and feloniously possess any document or personal identifying information, to wit: a US Treasury Economic Impact Payment Check in the name of AARON VIDAS, for the purpose of establishing a false status, occupation, membership, license or identity for himself or any other person, to commit any of the crimes set forth in NRS 205.085 through 205.217, inclusive, 205.473 through 205.513, inclusive or 205.610 through 205.810, inclusive, the Defendant(s) being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendant and/or COLETTE RHEA WINN aiding or abetting and/or conspiring by Defendant and/or COLETTE RHEA WINN acting in concert throughout.

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY _____
AUSTIN BEAUMONT
Deputy District Attorney
Nevada Bar #014167

Names of witnesses known to the District Attorney's Office at the time of filing this Information are as follows:

NAME	ADDRESS
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, 330 S. Casino Center Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Communications, 400 E. Stewart, Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Dispatch, 400 E. Stewart, Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Records, 400 E. Stewart, Las Vegas, NV
EDWARD DOUGHERTY and/or Designee	District Attorney Investigator

20CR009557-002/cg/L2
LVMPD EV#200600101918
(TK14)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor | **COURT MINUTES** | **September 25, 2020**

C-20-350999-2 State of Nevada
vs
Charles McCall

September 25, 2020 **08:00 AM** **Initial Arraignment**

HEARD BY: Miley, Stefany **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Packer, Nylasia

RECORDER: Garcia, Trisha

REPORTER:

PARTIES PRESENT:

Charles Wade McCall **Defendant**

Michael W. Sanft **Attorney for Defendant**

JOURNAL ENTRIES

D.A. Maggie Christiansen present on behalf of the State via Bluejeans.

DEFENDANT WINN ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial.

BOND/ELECTRONIC MONITORING

11/04/20 8:30 AM PRE TRIAL CONFERENCE (DEPT 19)

12/02/20 8:30 AM CALENDAR CALL (DEPT 19)

12/07/20 10:00 AM JURY TRIAL (DEPT 19)

Michael W. Sanft (8245)
MAYFIELD, GRUBER & SANFT
726 S. Casino Center Blvd, Ste. 211
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(702) 297-6582 (facsimile)
michael@mgslaw.vegas
Attorneys for Defendant Charles McCall

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff,

vs.

CHARLES McCALL,

Defendant.

Case No. C-20-350999-2

MOTION TO SUPPRESS
(Evidentiary Hearing Requested)

Dept: III
Date:
Time:

Defendant CHARLES McCALL, through his attorney Michael W. Sanft, Esq., respectfully moves this Honorable Court to suppress the fruits of an illegal search conducted by Parole and Probation on June 25, 2020.

This Motion is based upon the following Points and Authorities, in addition to any testimony and oral argument this Court may desire at the time of hearing.

DATED this 22th day of February, 2021.

MAYFIELD, GRUBER & SANFT

MICHAEL W. SANFT
Attorney for Defendant Charles McCall

MAYFIELD, GRUBER & SANFT
726 S. Casino Center Blvd, Las Vegas, NV 89101

NOTICE OF MOTION

PLEASE TAKE NOTICE, that the undersigned will bring the above and foregoing **MOTION TO SUPPRESS** on for hearing before the above-entitled Court on the ____ day of _____, 20___, at _____ __.m., of said day, or as soon thereafter as counsel can be heard.

DATED this 22th day of February, 2021.

MAYFIELD, GRUBER & SANFT

MICHAEL W. SANFT
Attorney for Defendant Charles McCall

POINTS AND AUTHORITIES

I. FACTS

Co-Defendant Colette Winn was placed on probation in C-19-342300-1 on April 13, 2020. Winn rented a bedroom from Defendant Charles McCall, who resided at 1209 Ingraham St., in Las Vegas, Nevada in a three bedroom house. Mr. McCall occupied the master bedroom with a separate bathroom located in the rear of the house. Another individual, Mahatuhi "Victor" Santos, rented the third bedroom, located right next to Ms. Winn's room.

Each bedroom was private to its occupant. Each was secured with individual locks and keys. The common areas of the house, accessible to all, was the living room, kitchen, family room, garage, and front and back yards.

On June 25, 2020, Parole and Probation ("P&P") conducted a status check for probationer Colette Winn. Upon knocking on the door, Mr. McCall's dog, Lilu, barked. When Mr. McCall opened the door, he saw at least four people standing there with Ms. Winn. With guns drawn, they ordered Mr. McCall to restrain Lilu. Two officers escorted Mr. McCall as he put Lilu into his bedroom and shut the bedroom door.

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726 S. Casino Center Blvd, Las Vegas, NV 89101

The same two officers walked Mr. McCall back to the living room to sit on the couch. Mr. Santos was ordered out of his bed and directed to the same couch. Ms. Winn, in handcuffs, was placed on a chair in the living room.

Officers began searching Ms. Winn's room. They then searched Mr. Santos' personal belongings in his room but did not ask Mr. Santos for permission. After they had searched the front area of the house, officers then told Mr. McCall that he needed to move Lilu from his bedroom to the guest bedroom so they could conduct a safety sweep. When Mr. McCall opened the door to get Lilu out, he closed the door behind him as he moved her into the guest bedroom.

Officers claimed they saw shot gun shells in plain view in Mr. McCall's bedroom, thereby justifying their warrantless search of his room and their discovery of various illegal items.

To date, defense counsel has not received any body cam footage to verify any of the officers' version of events.

II. ARGUMENT

A. P&P's Ability to Search is Not Without Bounds

A standard condition of probation is the ability of an officer to search a probationer without a search warrant. Probationers like Ms. Winn are told by their sentencing judges that "You shall submit your person. place of residence, vehicle or areas under your control to search including electronic surveillance or monitoring of your location. at any time, with or without a search warrant or warrant of arrest. for evidence of a crime or violation of probation by the Division of Parole and Probation or its agent." *See* Exhibit A, a true and correct copy of Colette Winn's probation agreement, dated June 22, 2020.

However, this ability to search without a warrant is not without limitation. It is limited to a probationer's "person, place of residence, vehicle, or areas under [their] control to search." *Id.* Officers are taught that they "may search any rooms under a probationer/parolee's control, including any areas controlled jointly with other occupants of the residence." *See* Exhibit B, a true and correct copy of the State of Nevada Commission on Peace Officer Standards and Training, Performance Objective Reference Material, last updated August, 2019, at page 34.

Clearly, the search clause of a probation does not allow P&P to violate a person's right to privacy who is NOT on probation. The probation agreement typically reviewed with a probationer establishes that limitation. Officer training establishes that limitation.

B. P&P's Search of Private Rooms Not Under the Control or Accessible by Ms. Winn Constitutes an Unreasonable Search and Seizure under the Fourth Amendment

Without belaboring the point, the Fourth Amendment of the U.S. Constitution protects all people in this country from illegal governmental breaches of a reasonable expectation of privacy. A probationer gives up that right when they are on probation. Mr. McCall was not on probation. He did not give up his Fourth Amendment right protecting him from unreasonable searches. Officers were permitted to search Ms. Winn's room, and any other common areas or areas under her control. Mr. McCall's room is not under Ms. Winn's control. It is also is not a common area.

C. The Fruit of the Poisonous Tree Doctrine is Ripe in This Case.

P&P illegally searched Mr. McCall's bedroom. Any items located as a result is inadmissible and must be suppressed. End of argument.

III. CONCLUSION

Mr. McCall respectfully requests that this Court grants his Motion to Suppress.

DATED this 22th day of February, 2021.

MAYFIELD, GRUBER & SANFT

MICHAEL W. SANFT
Attorney for Defendant Charles McCall

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EXHIBIT A

State of Nevada
DEPARTMENT OF PUBLIC SAFETY
Division of Parole and Probation
Carson City, NV 89706

File # [illegible]-1048

Required to pay $25 Administrative Assessment Fee and all other Court ordered Fees to the County Clerk's Office, 200 Lewis Ave., Las Vegas, NV, 89155.

Criminal Case No. C-19-342300-1

THE STATE OF NEVADA Plaintiff,
vs.
WINN, Colette ,
aka: Colette Rhea Winn
Defendant

PROBATION AGREEMENT AND RULES
ORDER ADMITTING DEFENDANT TO PROBATION
AND FIXING THE TERMS THEREOF

DEFENDANT is guilty of the Crime of **Possession Of Controlled Substance, a Category E Felony.**
DEFENDANT is sentenced to a term of imprisonment in **Nevada Department of Corrections for 12-36 Months.** Execution of that sentence is suspended and the **DEFENDANT** is hereby admitted to probation for an indeterminate period not to exceed **5 years** under the following conditions:

1. **Reporting:** You are to report in person to the Division of Parole and Probation as instructed by the Division or its agent. You are required to submit a written report each month on forms supplied by the Division. This report shall be true and correct in all respects.
2. **Residence:** You shall not change your place of residence without first obtaining permission from the Division of Parole and Probation, in each instance.
3. **Intoxicants:** You shall not consume any alcoholic beverages **whatsoever**. Upon order of the Division of Parole and Probation or its agent, you shall submit to a medically recognized test for blood/breath alcohol content. Test results of .08 blood alcohol content or higher shall be sufficient proof of excess.
4. **Controlled Substances:** You shall not use, purchase or possess any illegal drugs, or any prescription drugs, unless first prescribed by a licensed medical professional. You shall immediately notify the Division of Parole and Probation of any prescription received. You shall submit to drug testing as required by the Division or its agent.
5. **Weapons:** You shall not possess, have access to, or have under your control, any type of weapon.
6. **Search:** You shall submit your person, place of residence, vehicle or areas under your control to search including electronic surveillance or monitoring of your location, at any time, with or without a search warrant or warrant of arrest, for evidence of a crime or violation of probation by the Division of Parole and Probation or its agent.
7. **Associates:** You must have prior approval by the Division of Parole and Probation to associate with any person convicted of a felony, or any person on probation or parole supervision. You shall not have any contact with persons confined in a correctional institution unless specific written permission has been granted by the Division and the correctional institution.
8. **Directives and Conduct:** You shall follow the directives of the Division of Parole and Probation and your conduct shall justify the opportunity granted to you by this community supervision.
9. **Laws:** You shall comply with all municipal, county, state, and federal laws and ordinances.
10. **Out-of-State Travel:** You shall not leave the state without first obtaining written permission from the Division of Parole and Probation.
11. **Employment/Program:** You shall seek and maintain legal employment, or maintain a program approved by the Division of Parole and Probation and not change such employment or program without first obtaining permission. All terminations of employment or program shall be immediately reported to the Division.
12. **Financial Obligation:** You shall pay fees, fines, and restitution on a schedule approved by the Division of Parole and Probation. Any excess monies paid will be applied to any other outstanding fees, fines, and/or restitution, even if it is discovered after your discharge.
13. **Special Conditions:** SEE ATTACHED

The Court reserves the right to modify these terms of Probation at any time and as permitted by law. DATED this 22nd day of June, 2020, in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark.

District Judge: Kathleen E. Delaney Date 6/22/2020
mk

AGREEMENT BY PROBATIONER

I do hereby waive extradition to the State of Nevada from any State in the Union, and I will not contest any effort to return me to the State of Nevada. I have read, or have had read to me, the forgoing conditions of my probation, and fully understand them and I agree to abide by and strictly follow them. I fully understand the penalties involved should I in any manner violate the foregoing conditions. I have received a copy of this document and NRS 176A.850.

Probationer: Colette Winn/Date

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

APPROVED

06/16/2020
AA 0013

PROBATION AGREEMENT SPECIAL CONDITIONS ADDENDUM

File # V20-3048

Criminal Case No. C-19-342300-1

WINN, Colette ,
aka: Colette Rhea Winn

Defendant

Special Conditions of your probation:

1. Complete a Substance Abuse evaluation and any recommended counseling or case plan. COURT'S strongly RECOMMENDS Defendant complete outpatient treatment;
2. No use, possession, or control of illegal drugs, alcohol, and marijuana;
3. Obtain and maintain full time employment or schooling;
4. Abide by any curfew imposed;
5. Report to Parole and Probation (P&P) within 48 hours;
6. You shall submit your digital storage media or any digital storage media that you have access or use, including computers, handheld communication devices and any network applications associated with those devices, including social media and remote storage services to a search and shall provide all passwords, unlock codes and account information associated with those items, with or without a search warrant, by the Division of Parole and Probation or its agent;

AGREEMENT BY PROBATIONER

I do hereby waive extradition to the State of Nevada from any State in the Union and I also agree that I will not contest any effort to return me to the State of Nevada. I have read, or have had read to me, the foregoing conditions of my probation, and fully understand them and I agree to abide by and strictly follow them and I fully understand the penalties involved should I in any manner violate the foregoing conditions. I have received a copy of this document and NRS 176A.850.

Probationer: Colette Winn/Date

APPROVED:

MAYFIELD, GRUBER & SANFT
726 S. Casino Center Blvd, Las Vegas, NV 89101

EXHIBIT B

The Performance Objective Reference Material is designed to accompany the P.O.S.T. mandated Performance Objectives of each N.A.C. mandated course for Category I, II, III, and Reserve peace officers.

Thoroughly reviewing this document will help in your preparation to teach the related course.

An instructor will not be successful by reviewing the Performance Objective Material the night before or the day of instruction. Instructors are expected to spend time studying this reference material, researching supplemental material, and developing student activities which will in effect enhance the learning for students. DO NOT be an instructor who shows up unprepared and expects a "canned" presentation to be given based on this reference material.

The Performance Objective Reference Material is to be used for the purpose of understanding the Course Performance Objectives and to be used as a guide for lesson plan development.

P.O.S.T. would like to thank you for being a part of the training of new Peace Officers in the State of Nevada.

Significant changes or notable sections are outlined in red.
Updated: August, 2019

Title: Search and Seizure
Category: I, II, III, Reserve
NAC: 289.140, 150, 160, 170

Constitutional Protections of the Fourth Amendment (POA)

A priority of the authors of the United States Constitution was to avoid unlimited actions and intrusions by the government and to protect a person's:

- Privacy
- Liberty
- Possession of property

The Fourth Amendment to the United States Constitution (Article 4 of the Bill of Rights) states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

The Fourth Amendment does not give individuals an absolute right to privacy; neither does it prohibit all searches. It limits only those searches conducted by the government that are considered unreasonable by the courts.

To determine what is reasonable, the courts must look at the totality of circumstances and balance the individual's right to privacy against the government's need to gather evidence and apprehend criminals.

The Fourth Amendment, like the other Amendments in the Bill of Rights, limits the power of *the government* but does not apply to actions by private individuals. If a private individual violates someone else's expectation of privacy, the victim may be able to make a claim in the civil court system.

Definitions

To better understand the Fourth Amendment, peace officers need to understand the following terms.

A **search** occurs when an expectation of privacy that society is prepared to consider reasonable is infringed upon by the government.

A **seizure** of property occurs when there is some meaningful interference with an individual's possessory interest in that property by the government.

A **seizure** of a person occurs when:

- a peace officer physically applies force or
- a person voluntarily submits to a peace officer's authority

Reasonable Expectation of Privacy (PO B)

The Fourth Amendment is not violated unless a person's legitimate expectation of privacy is infringed upon by the government.

A reasonable expectation of privacy can exist almost anytime and anyplace as long as:

- individuals have indicated that they personally (subjectively) expect privacy in the object or area
- their expectation is one which society is prepared to recognize as legitimate

Definitions

To better understand the expectation of privacy, peace officers need to understand the following terms.

Subjective expectation of privacy is a person's state of mind demonstrated by affirmative action designed to protect their privacy (e.g., building a fence, closing window shades, locking a compartment, etc.).

Objective reasonableness refers to whether society is prepared to recognize the individual's expectation as reasonable.

Curtilage means the relatively small and usually well-defined area immediately around a residence to which the occupant has a reasonable expectation of privacy.

Expectation of Privacy beyond a Home or Person

Everyone can reasonably expect privacy in his or her own person and home. A peace officer must also consider the expectation of privacy in areas beyond, but close to, the home. The following table illustrates a number of situations and how the expectation of privacy can vary depending on the totality of the circumstances.

Area	If	Then	Expectation of privacy
A driveway	There are closed gates at the entrance of a driveway.	The occupants wish to block access to the driveway by the general public.	Higher
	The general public must use the driveway to gain access to the walkway that leads to the front door from the public street.	It can be assumed the driveway is part of the open access to the front door.	Lower
Windows	The window shades or curtains of a room are drawn.	The occupants wish to block any view of the area from the general public.	Higher
	The window shades or curtains are open or are constructed of material which is easily seen through.	The occupants do not care if the general public can see into the area from the outside.	Lower
Walls	A solid wall is so tall that the general public cannot see over it.	The occupants wish to block access and view to the area beyond the wall.	Higher
	A wall is only three feet tall.	The occupants are not trying to prevent the general public from viewing what is beyond the wall.	Lower
Fences	A fence is constructed so that it cannot be seen through without getting very close and peeking.	The occupants wish to block the view into the area beyond the fence.	Higher
	A fence is constructed of wire.	The occupants wish to block access but not	Lower

		the view into the area beyond the fence.	
Garbage	A garbage can is stored next to a side door to their house.	The residence.	Higher
	A homeowner's garbage is bagged and placed at curbside.	The trash is outside the curtilage of the residence within access to the general public.	Lower

Open field means outdoor real property, outside the curtilage of the residence.

Open fields are areas which are so open to public view that the owner or possessor is deemed to have implicitly invited the general public to view the area. Because of the lack of a reasonable expectation of privacy in open fields, the protections of the Fourth Amendment do not apply.

NOTE: Open fields do not have to be either open or real fields to qualify

An overflight is the flight of a plane or helicopter over a given area.

Because of the lack of a reasonable expectation of privacy in an area that can be viewed from an overflight, the protections of the Fourth Amendment do not apply, as long as the aircraft is:

- at an altitude permitted by FAA regulations
- being operated in a "physically nonintrusive manner"

Standing (PO B1)

Standing exists only if a subject has a reasonable expectation of privacy in the place or thing that is searched or seized. To challenge a particular search or seizure, a person must have a reasonable expectation of privacy in the place or thing that was searched or seized. Only a person with standing can challenge the search or seizure of property, based on Fourth Amendment protections.

Standing generally is established by:

- ownership
- lawful possession
- authority
- control of the area searched or the property seized

Examples

A live-in housekeeper gives consent for peace officers to enter and search for illegal weapons in the residence where she works. The homeowner has given the housekeeper authority over the residence; therefore, the housekeeper has standing to challenge the legality of the consent search later in court.

A male defendant contests the search of his tool box that he had locked and placed in a friend's garage. By locking the tool box, the owner demonstrated an expected level of privacy over its contents. Only the owner of the tool box, not the friend who owned the garage, would have standing to challenge the legality of the search of the tool box.

Probable Cause and Search and Seizure (PO C)

The Fourth Amendment states:

The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause…

There is no difference in the definition and application of probable cause whether in justification for a search or justification for an arrest (seizure). Probable cause to search differs in content, but not in degree of certainty, from probable cause to arrest.

Search	Arrest
Peace officers must articulate probable cause that: a crime has been committed, and evidence concerning the crime or the identity of the perpetrator is located at the place to be searched.	Peace officers must articulate probable cause that: a crime has been committed, and the individual to be arrested committed that crime.

Probable cause to search an area or object means having enough facts or information to provide a fair probability, or a substantial chance, that the item sought is located in the place to be searched.

Thus, probable cause requires something less than an absolute or even a near certainty, but something more than a mere hunch or suspicion.

Probable Cause to Search (PO C1)

Peace officers must demonstrate that probable cause exists to search a specific place for specific property or contraband which will be used as evidence. Even though the court will consider the totality of the circumstances, to meet the Fourth Amendment requirement, officers must have specific facts which can be articulated in court or in a sworn statement (affidavit).

To establish probable cause to search, peace officers must be able to articulate how and why they have a fair probability to believe:

- a crime has occurred or is about to occur
- evidence pertaining to the crime exists
- the evidence is at the location they wish to search

The Fourth Amendment, in general, requires a warrant supported by probable cause in order to search. However, the courts have carved out some exceptions to the requirement of a search warrant. But, whether it is in support of a search warrant or in support of a warrantless arrest, probable cause is required.

A peace officer's training and experience is relevant in establishing probable cause. Facts must be seen and weighed as understood by a reasonable officer with that particular officer's training and experience.

Exclusionary Rule (PO D)

If a court finds a search or seizure is not reasonable and a person's Fourth Amendment rights have been violated by the government, all items seized during the search could be ruled inadmissible or excluded as evidence at trial.

NOTE: This inadmissible or excluded evidence is often referred to as "The fruit of the poisonous tree."

NOTE: The exclusionary rule does not appear anywhere in the Constitution, but rather was created by the United States Supreme Court to encourage proper law enforcement conduct. Usually, the evidence is excluded as a penalty for the illegality of the search or seizure.

Search Warrant Service (PO E)

As a general rule, the courts have found searches and seizures to be reasonable and therefore lawful when authorized by a valid warrant.

The burden is on the defendant to prove the illegality of any search executed with a search warrant.

Before they can obtain a search warrant, peace officers must be able to provide a judge with specific facts that meet the Fourth Amendment's requirement of probable cause.

The Fourth Amendment of the U.S. Constitution clearly states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

In the search warrant context, probable cause to search means enough credible information to provide a fair probability that the object or person the peace officers seek will be found at the place they want to search.

It is possible for an activity which might otherwise appear innocent to the general public to amount to probable cause to a peace officer.

A peace officer's training and experience may enter the equation for determining probable cause. Facts must be seen and weighed as understood by a reasonable officer.

Probable cause may be based on the collective knowledge of all the officers involved in an investigation, and all the inferences which may reasonably be drawn from this information, with that particular officer's training and experience.

To establish probable cause, peace officers must directly or circumstantially show that certain required elements exist. The following table identifies the three required elements of probable cause to search.

To establish probable cause to search, there must be a fair probability that...	Rationale	Examples
a crime occurred.	There must be at least a fair probability that a crime has occurred or, in some cases, will occur.	Person sold drugs to an undercover officer or a person purchased a large amount of

		chemicals that could be used for a clandestine lab.
evidence pertaining to the crime exists, and	Officers must establish that evidence of a crime exists. This can be accomplished by direct evidence, circumstantial evidence, or by reasonable inference.	Information from a victim that a gun was displayed during a robbery. Stolen property. Existence of items commonly used to commit or facilitate a crime (e.g., drug paraphernalia).
the evidence is located at the place to be searched.	Officers must establish that the evidence was taken to, or produced at, the place to be searched. This can be accomplished by direct evidence, circumstantial evidence, or by reasonable inference.	A reliable source saw the evidence at the location. The person goes directly to a location after a crime has been committed. The location is one where a criminal might likely hide incriminating evidence.

Definitions

To better understand probable cause as it relates to searches and seizures, peace officers need to understand the following terms.

Reasonable inference is the act of drawing a conclusion from a fact; it is similar to making a presumption (e.g., seeing smoke and inferring there is a fire).

Direct evidence is evidence that proves a fact directly, without an inference or presumption (e.g., the sale of a controlled substance to an undercover officer).

Circumstantial evidence is evidence that proves a fact indirectly, that is, personal knowledge or observations from which deductions must be drawn by the jury or court (e.g., partial six-pack of beer found on the car seat supports inference that someone in the car has been drinking).

NOTE: Whether evidence is direct or circumstantial depends on the fact to be proven.

Securing Pending Issuance of Search Warrant (PO E1)

Even if sufficient probable cause has been established and a search warrant has been issued, evidence can still be excluded if the warrant itself is not executed within the law.

Under very limited circumstances peace officers may secure a residence while in the process of obtaining a search warrant. In addition to probable cause to search, they also need exigencies, that is, a belief, based on the surrounding circumstances or information at hand, that the evidence will likely be destroyed or removed before a search warrant can be obtained.

- An area may be secured pending issuance of a search warrant if the suspect has been arrested inside the location.
- An area may be secured pending issuance of a search warrant if companions of the suspect may destroy items sought upon learning of the arrest.

NOTE: Refusal of consent to enter, by itself, does not provide justification to secure the premises pending issuance of a search warrant.

Examples:

Undercover officers arranged to purchase a kilo of cocaine. The seller, after showing a sample and seeing the money, drove to his supplier's residence a few miles away, obtained the cocaine, returned to the officers, made the sale, and was arrested. Other officers, who followed the seller and kept the supplier's residence under surveillance, entered and secured the residence pending procurement of a search warrant.

A male suspect was working with a female suspect selling drugs from the woman's residence. A few blocks from the woman's house, in public and in front of onlookers, police stopped the male suspect and arrested him with drugs he had admittedly obtained from his female partner. The officers had reason to believe that the female partner might learn of the arrest or become suspicious when the male suspect did not return as scheduled. The circumstances were sufficient to justify entering and securing the residence while waiting for a search warrant.

Detaining Subjects Pending Issuance of Search Warrant

If the place being secured is occupied when peace officers enter, they will need probable cause to arrest if they take the suspect away or keep the suspect there for an unreasonable period while the warrant is obtained.

Without probable cause to arrest an individual, peace officers are only entitled to detain the suspect temporarily while they determine the person's involvement and connection to the place to be searched.

Time Limitation on execution of Warrant (PO# E2)

The warrant may be executed and returned only within 10 days after its date. NRS 179.075

The 10-day time limit means that peace officers have 10 days within which to execute the warrant, beginning with the day after the warrant is issued and running until midnight of the 10th day, with no exceptions for weekends or holidays.

If the 10-day period has expired, peace officers must either:

- obtain a new warrant
- resubmit the expired warrant so it may be reissued and revalidated
- Exceptions, collection of a biological specimen from a person, may be executed and returned within 6 months after its date. (for warrants issued on, or after, October 1, 2019)

The return of the warrant means returning the warrant and a written inventory of the property taken to the magistrate.

The rule for return of the warrant is slightly different than for execution. If the 10th day falls on a weekend or holiday, then peace officers are entitled to postpone returning the warrant until the next business day.

A late return will not normally invalidate the warrant or result in suppression, particularly if it happens unintentionally, unless the defendant can show prejudice.

The warrant must direct that it be served between the hours of 7 a.m. and 7 p.m., unless the magistrate, upon a showing of good cause therefor, inserts a direction that it be served at any time.

If peace officers can show good cause, the magistrate may, at the magistrate's discretion, insert a direction in a search warrant that it may be served at any time of day or night.

The main point of the good cause requirement is to ensure that the request for nighttime service is specifically brought to the attention of the magistrate so that the magistrate will have to make a conscious decision whether such a particularly abrasive intrusion is appropriate. Examples of good cause include situations where:

- nighttime service will decrease danger to the peace officers

- a drug sale occurred at the search location at night
- prompt execution might preclude murders
- the property sought will likely be gone, sold, or removed by dawn
- the stolen items are primarily perishable or easily disposable goods

As long as the search begins before 7:00 p.m., no nighttime authorization is necessary, even though the search may continue on well beyond that hour.

Knock and Notice Requirements (PO E3)

Before entering a private dwelling to execute a search warrant, officers must comply with the requirements of knock and notice.

Knock and notice simply means that before entering a dwelling to serve a search warrant, officers must give notice to persons inside through certain actions.

To complete the prescribed procedures for knock and notice, peace officers must:

- knock or otherwise announce their presence
- identify themselves as peace officers
- state their purpose
- demand entry
- wait a reasonable amount of time
- if necessary, forcibly enter the premises

Wait/refusal requirement

When executing a search warrant, there is a specific requirement that before forcing entry, peace officers must be refused admittance.

Refusal may be based on:

- a verbal statement
- individual conduct
- the passage of a reasonable amount of time

NOTE: The amount of time that is considered reasonable will depend on all the circumstances. Approximately one minute would be a safe period in most cases, but it can be less, especially if peace officers know that someone is inside and awake.

Inner Doors

While officers must comply with knock and notice at outer doors to a residence, there is no legal requirement to comply with knock and notice at inner doors.

NOTE: While there may be no legal requirement to comply with knock and notice at inner doors, there may be tactical reasons why it is appropriate.

Forcible entry

If the knock and notice requirements are met, including refusal, peace officers may legally break in or force entry into premises to execute a search warrant.

The purpose of the knock and notice requirements is to protect the privacy of occupants in their home and to minimize the possibility of a violent confrontation between peace officers and private individuals.

Exceptions to the knock and notice requirements

The U.S. Supreme Court has determined that a magistrate "pre authorizing" the officers to forgo the knock and notice requirement is unreasonable. A magistrate may not endorse a "no knock" provision within the search warrant.

The law allows peace officers to enter private property unannounced if they can demonstrate that compliance with the knock and notice requirements would be futile, or that compliance could result in:

- harm to the officers or other individuals (e.g., hostages
- the destruction of evidence

Only the officers serving the warrant can determine if the circumstances they face justify non-compliance with the knock and notice requirements of law. The issuing magistrate does not have the authority in the warrant to exempt officers from giving knock and notice and the legality of an officer's decision to omit knock and notice would likely be reviewed by a court to determine if it met a lawful exception.

Examples

Officers went to a motel room with a warrant to search the building for illegal drugs. After complying with initial knock and notice requirements and while waiting for a response from the occupants, officers heard muffled voices and the sound of a toilet flushing twice. Because the officers had reason to believe that suspects were attempting to destroy evidence, they could lawfully force entry.

Officers were sent to an apartment with a warrant to search for illegal weapons. The resident of the apartment had been arrested in the past by the same officers for armed

robbery. The officers had specific reasons to believe the suspect was currently armed and would flee if given the opportunity. For reasons of officer safety and to prevent escape, the officers announced their presence but entered without waiting for a response.

Execution of the Search Warrant

Peace officers may use a false identity, a ruse or trick to obtain consent to enter as long as they already have a judicially-authorized right to enter, i.e., a search warrant.

Example: Officers with a warrant set off firecrackers to simulate gunfire, then asked the occupants inside the fortress-like house to come outside to check their vehicles for damage. Once the barricades to the home were down, the officers announced their identity and authority to conduct a search.

Presenting the warrant upon entry

If the occupant is present, peace officers should show the occupant the original warrant and give the occupant a copy.

If no one is home, a copy of the warrant may be left in a conspicuous place. Likewise, officers must leave behind a detailed list of the property taken, whether anyone is home or not.

Scope of the search

During a search authorized by a search warrant, officers are limited by the information specified in the search warrant. (This is known as the scope of the search.)

Search warrants must include specific:

- statutory grounds for issuance
- identification of the area(s) or person(s) that may be searched
- identification of the item(s) to be seized

If an area is searched or an item is seized that is beyond the scope of the warrant, the evidence may be excluded later at trial.

Detaining Persons on the Premises

Peace officers may detain and frisk/pat search persons who are present and have demonstrated a connection with the premises. Examples of such a connection include a person who:

- is already inside the premises

- has a key to enter the premises freely
- enters the premises without knocking

Someone's mere arrival, by itself, at premises where a search is being conducted does not provide enough connection to justify a detention, let alone a cursory/frisk/pat search.

NOTE: If searching a commercial establishment, peace officers may not detain everyone who is present, but rather only those persons who appear connected to the suspected criminal activity.

Containers

When a warrant authorizes the search of a residence, vehicle, or person, it automatically authorizes the search of anything, place, or container inside that residence or vehicle, or on that person, where the object of the search might be located.

If, however, the warrant was not for a general area, but instead was for a particular container, that container would also have to be described as completely as possible in the warrant.

Examples

A search warrant authorized the search of a residence for heroin and indications of ownership and identification. Peace officers may search any place that might contain these items, including any closed containers.

A search warrant authorized the search for a particular suspect in the home of his ex-wife. Peace officers may search containers within the residence only if the containers are large enough for the suspect to hide in.

Nexus Rule

Under the nexus rule, officers may seize items not listed in the warrant when:

- the items are discovered while the officers are conducting a lawful search for the listed evidence, and
- they have probable cause to believe the item is contraband, evidence of criminal behavior, or would otherwise aid in the apprehension or conviction of the criminal

Nexus means a reasonable connection or link between two or more items.

Examples

During a warrant search for narcotics, officers found a sawed-off shotgun in the trunk of the suspect's car. Although the weapon was not named in the search warrant, it was seized by the officers as an illegal weapon.

While searching a suspect's residence on a murder case, officers seized a pair of shoes with a "waffle-like" pattern on the soles even though the shoes were not described in the search warrant. The seizure of the shoes was legal because one of the officers had personal knowledge that waffle-like shoeprints were left at the scene of the crime by the suspect

Plain View Seizures Do not Constitute a Search (PO F)

Peace officers do not have to blind themselves to what is in plain view if an item they see can be associated with a crime or criminal behavior, simply because they do not have a warrant.

In a constitutional sense, when an officer sees an item in plain view, from a place the officer has a lawful right to be, **no search** has taken place. The owner or possessor obviously has no reasonable expectation of privacy for items which are in plain view. Without an expectation of privacy, the owner or possessor has no Fourth Amendment protection.

Requirements (PO F1)

Peace officers must meet certain requirements before an item in plain view may be seized legally and used as evidence.

Peace officers must have:

- probable cause
- a lawful right to be in the location
- lawful access to the item

Probable Cause for seizure

Even though peace officers need not appear before a magistrate, they still must have enough facts to provide probable cause, that is, a fair probability that the item in plain view is contraband or evidence of a crime.

The incriminating character of the item must also be immediately apparent to the officer.

NOTE: Officers may use all of their senses, not just sight, to obtain probable cause. The plain view doctrine, therefore, can also include items they can smell, hear, or touch from a lawful position.

Observation from a lawful location

Peace officers must have a lawful right to be at the location from which they initially observe the item. That is, the observation must be made from a vantage point that does not violate an individual's reasonable expectation of privacy.

Any area the general public or some members of the public have been given either express or implied permission to be in is considered a public access area. Peace officers have the legal right to make observations from any public access area at any time.

Examples

Stereo speakers, matching the description of a stolen item, were left on the back seat of a vehicle that was parked in a lot open to general pedestrian traffic. The officer's observations were made from the public access area around the car.

Contraband was observed in a business that was open to the public. The officer's observations from the area were legal since the general public was free to be in the same area.

Surveillance

It is not a search for peace officers to conduct surveillance of private premises or to follow people who leave the premises, as long as the observations are made from a place where the officer has a right to be. Videotaping a suspect's activities is a form of surveillance.

Sensory aids

If officers are in a place where they have a lawful right to be, and if they use a device that is nonintrusive to aid or enhance their observations, their observations of items or areas in plain view are lawful, despite the enhancement. The chart below presents further information regarding sensory aids.

Device	Guideline
Flashlights Night vision devices	May be used as long as the officer is using them from a lawful observation point.
Binoculars	May be used to enhance only what can already be seen by the naked eye from a lawful observation point
Dogs	Contraband-sniffing dogs are considered nonintrusive when they are in a place they have a lawful right to be. If a specially trained dog reacts positively to an item, this normally provides the officer with probable cause to search or seize the article, although a search warrant may be required in some circumstances.

Abandoned property

If an item has been abandoned by the owner, the owner has relinquished any expectation of privacy over the item. The Fourth Amendment does not protect articles or an area that has been abandoned by its owner.

NOTE: Trash placed in a position for pick-up outside the curtilage of the residence is considered abandoned.

Lawful access

Simply because an officer can see an object in plain view from a lawful location does not automatically mean the officer may legally enter private property without a warrant to seize it, even if the object is obviously contraband or evidence of a crime. The officer also needs lawful access.

Lawful access to private property is most commonly obtained when:

- the officer's entry is based on consent
- the officer's entry is based on exigent circumstances, for example, a reasonable belief that the evidence will be destroyed if entry is delayed in order to obtain a warrant
- the officer has lawfully entered the area for some other purpose (e.g., to conduct a parole or probation search, or an administrative or regulatory search, etc.)

Examples

An officer responding to a burglary call talked to a neighbor who said two teenagers had just fled with a TV. While investigating, the officer found an open window on the property with a box on the ground beneath it containing a TV. The officer entered the property to see if any burglars or victims might still be inside. Once inside, the officer found a clandestine drug lab in plain view. Because the entry was lawful based on exigent circumstances, observation and seizure of the lab was also lawful.

Two officers conducting a valid, warrantless administrative inspection of an automobile repair shop came across evidence of drugs in plain view and through plain smell. The officers had legal authority to seize the evidence because they were conducting other legal business in that location.

Warrantless Searches in General (PO G)

Introduction

Under the Fourth Amendment, warrantless searches of private property are presumptively illegal.

However, case law has created some exceptions to the warrant requirement. Warrantless searches will be upheld if the peace officer's conduct came within one of these exceptions.

Fourth Amendment protection

The first clause of the Fourth Amendment states people have a right to be protected from unreasonable searches and seizures by government agents.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Case law exceptions

The Fourth Amendment does not give individuals an absolute right to privacy, and it does not prohibit all searches — only those that are unreasonable.

The courts have identified certain specific conditions and circumstances where warrantless searches and seizures are considered reasonable and, therefore, legal.

In addition to plain view seizures, these exceptions to the usual warrant requirement include:

- cursory/frisk/pat down
- consent searches
- searches pursuant to exigent circumstances
- searches incident to custodial arrest
- probation/parole searches

Establishing the basis for a warrantless search or seizure (PO G1)

In deciding whether a warrantless search or seizure was legal, courts will always consider the totality of the circumstances. However, peace officers must always have specific facts to demonstrate the search or seizure fell within one of the exceptions to the warrant requirement.

Cursory/Frisk/Pat Searches (PO G2i)

Introduction

Normally, non-consensual searches are not permitted during a detention. However, if an officer has a factual basis to suspect the person being detained poses a danger to the officer, or is carrying a concealed weapon or an object that could be used as a weapon, the officer is justified in conducting a limited search for the weapon without a warrant.

Definition

A cursory/frisk/pat search is a strictly limited search for weapons of the outer clothing of a person who has been lawfully detained. A cursory/frisk/pat search is a search for possible weapons only, not a search for contraband or other evidence.

Necessary conditions

Cursory/frisk/pat searches of detainees are allowed to prevent unexpected assault on peace officers. But a generalized, non-specific concern for officer safety is not sufficient reason to allow for the intrusion of a cursory/frisk/pat search.

For a cursory/frisk/pat search to be lawful:

- the person must be lawfully detained for an investigative purpose
- the searching officers must be able to articulate specific facts which caused them to reasonably believe the person is dangerous or may be carrying a weapon

Scope of the search

The scope of a cursory/frisk/pat search is limited to outer clothing for weapons or potential weapons only.

Once the officer conducting the search realizes an object is not a weapon, the officer cannot further manipulate the object; the officer must move on.

Any additional feeling, grabbing, or manipulating of the item is outside the scope of a cursory/frisk search and will be considered an illegal search.

Absolute certainty not required

An officer need not be absolutely certain that the person is armed or potentially dangerous. However, the officer's suspicion must be reasonable and based on specific facts.

The following table identifies factors that have been recognized as contributing to the suspicion that the person may be carrying a weapon or pose a danger.

Factor	Examples
Clothing	Bulge in clothing that is the size of a potential weapon Wearing a heavy coat when the weather is warm
Action	Trying to hide something Appearing overly nervous Acting in a threatening manner
Prior Knowledge	History of carrying weapons or violent behavior
Reason for Detention	Stopped in order to investigate a serious, violent, or armed offense
Companions	Lawful search of companions revealed a weapon or potential weapon
Location	Stopped in an area known for violence, or where the officer is unlikely to receive immediate aid if attacked
Time of day/Darkness	Stopped during nighttime Stopped in an area with little or no lighting
Ratio	Detainees outnumber officers

Contraband

If, during a lawful cursory/frisk/pat search for weapons, an item is discovered that is immediately recognized as contraband (based on plain sight, smell, or touch), the officer may seize it. If the person is placed under arrest, the officer may then conduct a full search incident to the custodial arrest.

If the item is not immediately recognized as contraband, the officer may not manipulate the suspected area or object further in order to establish its nature, unless the officer is still concerned it may be a weapon or potential weapon.

Containers

If the officer comes across a container on the person during a cursory/frisk/pat search, the officer is entitled to seize it and open it only if it is reasonable to believe it can be used as a weapon or that it might contain a weapon.

Detention alone does not give officers the right to search (open) the container, unless their knowledge and experience provide probable cause to believe that it contains contraband (i.e., they could easily feel that the object was small and resilient like a heroin-filled balloon), since with probable cause they could make an arrest. *(In general, common containers like cigarette packs and film containers are not searchable.)*

Reaching inside

During a cursory/frisk/pat search, an officer may reach inside a subject's clothing or pockets to inspect an object further only if:

- the object reasonably felt like a weapon or something that could be used as a weapon
- the subject's clothing is so rigid or heavy that the officer could not rule out the possibility of a weapon or potential weapon

NOTE: In addition to what officers may lawfully do as part of a cursory/frisk/pat search for weapons, they may also always seek voluntary consent to search. Such consent to search can be for any part of a suspect's clothing or belongings, and for any objects (such as drugs) the officer asks about.

Discovery

If an officer discovers an object during a cursory/frisk/pat search which the officer believes is a weapon or a dangerous instrument which could be used as a weapon, the officer has a right to seize it from the person.

The officer may hold the weapon or potential weapon until the detention is concluded. If there is no probable cause to make an arrest, then the item must be returned to the subject.

NOTE: A cursory/frisk/pat search does not end when an officer finds a single weapon or potential weapon. Officers must be aware subjects may be carrying more than one item at a time that could pose a potential danger.

Transporting a passenger

Peace officers may conduct a cursory/frisk/pat search of any person the officers have a duty or are obligated to transport before permitting the person to ride in a law enforcement vehicle.

If officers are not obligated to transport the person, a cursory/frisk/pat search is permitted only if the officer informs passengers that:

- they have the right to refuse the ride

- if they accept the ride, they must first consent to a cursory/frisk/pat search

Synopsis

Rules related to cursory/frisk/pat downs is derived directly from the *Terry v Ohio* Supreme Court case as codified under NRS 171.123. Detention criteria and reasonable suspicion is also covered under the state required topic "Probable Cause". Students should recall that detentions and cursory/frisk/pat downs require separate articulable facts to justify each. You must have reasonable articulable suspicion that criminal activity is afoot and the person to be detained is somehow connected to the criminal activity to lawfully detain someone. In addition you must have reasonable articulate facts to suspect the person lawfully detained is armed to conduct a cursory/frisk/pat down. Nevada adds the additional time constraint of 60 minutes to either confirm or deny your suspicions. If you cannot, the subject must be released.

Examples

An officer was in a hotel room questioning a female companion of a man who had been arrested for armed robbery earlier that day. In the course of the questioning, the woman grabbed her make-up bag from a nearby dresser. Because it was reasonable to suspect that the woman might be reaching for a weapon, the officer seized the bag. When the officer realized the bag was heavy and large enough to potentially contain a weapon, he opened the bag to search it.

An officer, responding to a complaint regarding a panhandler, noticed a large bulge in the front waistband of the man's trousers. Because of the size and location of the bulge, the officer believed the item could be a weapon and conducted a cursory/frisk/pat search of the man. When the item turned out to be a rolled up piece of clothing, the officer continued the frisk and found no other indications that the man was a potential danger.

While on routine patrol one morning, two officers spotted a young man looking into parked cars in an alley where there had been earlier complaints of vehicle tampering. As the officers drove by slowly, the man tried to hide behind a dumpster. When the officers approached him, the man became nervous, boisterous, and antagonistic. Because the young man's actions and behavior gave the officers reason to believe that he might pose a danger, they could lawfully frisk/pat search him for weapons or potential weapons.

Consent Searches (PO G2ii)

Introduction

Generally, the Fourth Amendment prohibits warrantless searches. However, peace officers may enter premises and/or conduct searches without a warrant if they have obtained valid consent.

Warrant searches vs. consent searches

If officers have probable cause to search but lack an exigent circumstance to justify a warrantless entry, they should always seek a warrant instead of seeking consent.

Without a warrant:

- the occupant of the property has the right to refuse entry and therefore refuse the search
- even if they enter with consent, officers may not detain persons who are on the premises unless they have reasonable suspicion of criminal activity

Seeking consent rather than obtaining a warrant can also serve to warn subjects of pending law enforcement action. The evidence may be destroyed or removed during the time that the warrant is obtained. Peace officers are not allowed to secure or freeze the premises in situations where they have created the exigency by their actions.

Necessary conditions

For consent to be valid, the consent must be:

- voluntary, and
- obtained from a person with apparent authority to give that consent

NOTE: If the consent is valid, the consenter has temporarily relinquished any expectation of privacy for the area or item to be searched.

NOTE: An unlawful detention invalidates a consent search.

Scope of a consent search

Peace officers may search those places and things they reasonably believe the consenting person authorized them to search. As long as the search remains within the scope given, officers may seize any crime-related evidence which they discover.

If the consenting person expressly or implicitly restricts the search to certain places or things, officers must honor those restrictions. If the officers tell the consenting person what type of evidence they are searching for, the scope of the search must be limited to those places and things in which such evidence may reasonably be found.

Example: Consent to search inside a suitcase includes consent to look inside all the compartments of the suitcase.

Example: Consent to search the living room includes consent to look into small containers sitting on shelves and on tables within the room but not to enter any other rooms of the residence.

Example: Consent to search for documents within an office includes consent to look into file drawers as well as through a desk.

Voluntary consent

Voluntary consent means an act of free will and not the result of duress or coercion. If consent is merely a submission to an assertion of authority or coercion, the consent is not voluntary. Any search under such conditions would be unlawful, and any item(s) seized would not be admitted as evidence at trial.

Peace officer conduct

Peace officers may inadvertently undermine the voluntariness of consent by their conduct. Officers who seek consent must make it clear that they are requesting permission to search -- not demanding it.

The table below offers examples of peace officer actions and their possible influence on the voluntariness of consent.

Action	Consent may be considered *involuntary* if peace officer…
Show of physical force	Exhibit force while seeking consent (e.g., rest their hands on, or draw weapons).
Misrepresentation of authority	State or imply they have a legal right to conduct an immediate search. Falsely state they have a warrant when they do not. Request entry for a purpose other than to conduct a search.
Illegal seizure	Illegally detain or arrest the subject.
Verbal coercion	Verbally demand consent rather than request it.
Intimidating demeanor	Appear in large numbers. Use a demanding tone of voice. Act in an overly authoritative manner, etc.
Impairment or limitation of consenter	fail to recognize or acknowledge the consenting person may be: Too young to understand the implications of the consent. Severely under the influence of alcohol or drugs.

	Mentally incapable of giving permission. Overly distraught or too emotional to understand.

Express vs. implied consent

Consent must be given in the form of some affirmative act, either as express consent or implied consent. The following table illustrates the differences between these two types of consent.

Express Consent…	Implied Consent…
Occurs when the consenting person clearly authorizes the search either orally or in writing.	Occurs when the consenting person authorizes the search by actions or behavior indicating that consent was given.
Requires no inference to supply the full meaning.	Must be reasonably inferred.
Examples: Verbal acknowledgment and approval (e.g., "Sure; go ahead") Signing a consent form	Examples: Nodding approval Stepping aside to allow entry

NOTE: Consent may not be inferred simply from a failure to object or from mere silence.

NOTE: Implied consent is usually more difficult to prove than express consent. Therefore, officers should make every effort to obtain express verbal or written consent before conducting a search.

NOTE: There is no legal mandate (Constitutionally or otherwise) requiring a written consent. However, some jurisdictions prefer a written consent as the "voluntariness" is easier to prove. Officer should become familiar with policy and preferences within their jurisdictions.

Right to refuse

The courts have ruled that it is not legally necessary for officers to advise potential consenters that they have a constitutional right to refuse consent of a warrantless search.

However, giving the consenting person such a warning is a strong positive factor indicating the voluntariness of the consent.

Searches Pursuant to Exigent Circumstances (PO G2iii)

Introduction

Peace officers may lawfully enter an area in which an individual has a reasonable expectation of privacy, when there is a compelling need for official action and no time to secure a warrant.

Necessary conditions

Exigent circumstances means an emergency situation requiring swift action to prevent:

- imminent danger to a person's life or safety
- serious damage to property
- imminent escape of a suspect
- imminent destruction or removal of evidence

NOTE: Once inside, peace officers may do whatever is necessary to resolve the emergency -- nothing more. Once the emergency has dissipated (no longer any imminent danger to life, property, etc.), a warrant may be needed for further searching.

Scope of a search

Under exigent circumstances, the primary purpose of the officer's entry is to attend to the emergency situation. After entering the premises, officers may conduct a search only if it is reasonable to believe a search is necessary to secure the emergency.

Officers who are conducting a lawful search based on exigent circumstances may seize any item in plain view if there is probable cause to believe the item is contraband or evidence of a crime.

Exception to knock and notice

When exigent circumstances exist, peace officers are normally not required to comply with knock and notice procedures before entering.

Imminent danger to life

If an officer reasonably believes a person (victim or other person), inside an area that would be considered private property, may be injured or ill and in immediate need of help, the officer may enter the property without a warrant.

The following table illustrates a number of situations where there may be an imminent danger to life.

Emergency	A peace officer may enter without a warrant if the officer reasonably believes that...
Sick or injured person	There is a medical emergency where a person may be incapacitated.
Child abuse	A child inside the premises is presently being physically abused, or a child is in immediate need of protection.
Violent assault	There are people inside the residence who constitute an imminent and serious threat to themselves or others.
Domestic violence	Entry is necessary to protect a victim by preventing ongoing or additional violence.

Imminent danger to property

If an officer reasonably believes there is a need to enter a private area in order to protect the property of the owner or occupant, the officer may enter without a warrant.

The following table illustrates situations where there may be an imminent danger to property.

Emergency	A peace officer may enter without a warrant if the officer reasonably believes that...
Burglary	The premises are presently being burglarized.
Other emergencies	The premises are on fire, or there are dangerous chemicals or explosives on the premises which pose a danger to people or property.

Imminent escape

It is lawful for peace officers to enter private property without a warrant in order to prevent the escape of a suspect, especially if the suspect is armed and dangerous or has just committed a violent felony.

The following table describes two types of exigent circumstance pursuits.

Type of Pursuit	A warrantless entry is permitted if...
Hot pursuit	Officers attempt to detain or arrest the suspect in a public place, **but** the suspect flees inside a private area.
Fresh pursuit	There is no physical chase, but officers are quickly responding to information concerning the suspect's whereabouts, **and** the officers reasonably believe the suspect's escape is imminent.

Destruction of evidence

Peace officers may enter premises without a warrant or consent when there is immediate danger of destruction or removal of crime-related evidence.

NOTE: A mere suspicion that evidence will be destroyed does not amount to exigent circumstances. There must be specific facts that evidence will likely be destroyed or removed without intervention.

Re-entry

Following the exigent circumstance, peace officers must vacate the premises within a reasonable amount of time and may not reenter unless they obtain a search warrant or consent.

Creating an exigency

Peace officers may not use exigent circumstances as an excuse for a warrantless entry if they have created the emergency unnecessarily by their own conduct.

Examples

Two officers were investigating a truck hijacking that occurred earlier in the day. When the officers arrested three of the known suspects outside of a residence, one of the suspects told the officers that the fourth suspect was inside the home. Entry into the residence by officers, without a warrant, was lawful to prevent the escape of the fourth suspect.

A commercial property was found unlocked and unattended. The officer entered the property to locate the name and phone number of the owner and to see if there were any signs of someone inside. While inside, the officer discovered contraband in plain

view. The entry was legal because the officer was attempting to prevent damage or further damage to the property.

While responding to a neighbor's complaint of strange noises coming from a nearby apartment, officers found a trail of fresh blood in the hallway leading to the apartment door. When the officers started to announce themselves, they heard vague moaning sounds from inside. The officers reasonably suspected that someone inside the apartment was in need of immediate medical attention and entered the property without a warrant or consent.

Searches Incident to Arrest (PO G2iv)

Introduction

When a suspect is lawfully arrested and taken into physical custody, a limited authority exists for peace officers to conduct a warrantless search of the suspect's person, also of the property and area within the suspect's immediate control.

Necessary conditions

A search incident to arrest may be conducted when:

- probable cause for a lawful arrest exists
- the suspect is taken into custody
- the search is contemporaneous with the arrest

NOTE: The search is justified by the custodial nature of the arrest, not by the nature or circumstances of the crime that lead to the arrest.

Scope of the search

A search incident to a custodial arrest may include:

- a full search of the arrestee's person
- containers on the arrestee's person
- the nearby physical area that was under the immediate control of the arrestee (sometimes referred to as "within arm's reach")

Custodial arrest

To conduct a lawful search incident to arrest, the person must be taken into custody.

A custodial arrest is one in which the person will be transported to another location or facility, such as a station, jail, detox center, juvenile hall, or school.

A search incident to arrest is not permitted when the person is merely cited and released.

Contemporaneous search

To be legal, the search must be contemporaneous with the arrest. That is, the search must be conducted:

- at or near the time of arrest, although either can precede the other
- at or near the place of the arrest
- while the arrestee is still on the scene

NOTE: If the search precedes the arrest, the officer must have probable cause to arrest at the time of the search.

The search can still be upheld as contemporaneous even if delayed somewhat, if the delay is reasonably necessary (e.g., for safety reasons), and the search is conducted as soon after the arrest as practical.

"Arm's reach" rule

Peace officers may search any area that is or was reasonably within the arrestee's control. This could include any area from which the arrestee may:

- grab a weapon
- obtain any item that could be used as a weapon
- destroy evidence

NOTE: The fact that the arrestee has been handcuffed or otherwise immobilized does not eliminate or change the "arm's reach" rule.

NOTE: It is improper to try to expand or enlarge the area of an arrestee's immediate control by moving the arrestee (e.g., from one room to another) in order to enhance an officer's ability to see objects in plain view.

Protective sweeps

A protective sweep is a brief search to look for individuals only.

If peace officers are already lawfully inside or outside a house and have a specific factual basis for believing there may be other people inside who pose a danger to them, the officers can conduct a protective sweep.

Protective sweeps are limited to spaces immediately adjoining the area of an arrest:

- where another person could be hiding
- from which an attack could be immediately launched

It is illegal to sweep into areas beyond those "immediately adjoining" the arrest location, unless the officer has reasonable suspicion, based on articulable facts, that there may be someone there who poses a danger to the officer.

Any contraband or crime-related evidence in plain view during a protective sweep may be seized.

NOTE: Obtaining a warrant to search for evidence is always preferable. A warrant would allow not only the seizure of an item in plain view, but also a further and more thorough search for similar or additional evidence that may be on the premises.

Examples

Two officers, who had exigent circumstances and probable cause, entered an auto service establishment without a warrant. They found the two suspects for whom they were searching inside and arrested them. The officers then conducted a warrantless search of the desk the suspects had been sitting behind and found cocaine and a handgun. The search was upheld since it was in an area in the suspect's immediate control.

Arresting officers had to use force to gain custody of an armed robbery suspect in his bedroom. The officers searched the area within 6-8 feet of the suspect and discovered two guns in a box at the foot of the bed. Searching an area that far away was lawful because it was within a reasonable lunging distance of the agitated suspect at the time of the arrest.

Probation/Parole Searches (PO G2v)

Introduction

Under specific circumstances, peace officers may conduct warrantless searches of a person who is on probation or on parole. Searchable probation or parole status must be established prior to a search.

Probation

Probation is a *sentencing alternative* for a person convicted of a criminal offense and is granted at a judge's discretion. Rather than incarceration, the individual remains under the authority of the probation department. Probation may be formal (supervised) or informal (unsupervised).

An individual serving a period of probation must agree to certain conditions. These may include conditions such as:

- getting a job
- avoiding drugs and other criminal behavior
- not traveling outside a limited area
- submitting to periodic searches without a warrant, probable cause, or reasonable suspicion

Parole

Parole is a conditional release from a state prison which allows an individual to serve the remainder of a sentence outside of prison, which a person must serve on the "outside" after having completed the actual prison sentence.

Who/when may they be searched?

In Nevada;

- For probationers, valid search clause must exist – generally names what can be searched for
- For parolees – any parole violation Probation officer/Parole Officer (P.O.) must have reasonable suspicion
- May be done by another agency if authorized by P.O. and related to supervision
- P.O. may not search for police to evade 4th amendment, but may always search if reasonable suspicion exist that a violation has occurred

Note: Every parole or probation release includes a clause prohibiting criminal activity. To do so would be a probation/parole violation. In terms of understanding, the P.O. will search to insure compliance with the release clause, which is of course determining whether or not a crime had occurred.

The officer must have specific authority granted by the supervising P.O. or have the supervising P.O. present.

Scope of the search

Parole search conditions permit a search of the parolee's person, residence, and any other property under their control (e.g., vehicle, backpack, etc.).

Probation search conditions depend on the specific terms of the probationer, which may be as broad as parole conditions.

Search of a residence

The following conditions apply when the location being searched is the residence of a probationer/parolee.

	Conditions
Certainty	Although absolute certainty is not required, the officer must possess some specific information that reasonably indicates the residence is, in fact, the probationer's/parolee's. Understand NV requires supervising P.O. authorization
Knock and Notice	Officers must comply with all knock and notice requirements unless compliance is excused for good cause.
Joint Occupants	Officers who are conducting a lawful probation/parole search need not obtain the consent of a joint occupant of the premises, nor will the objections of a joint occupant invalidate the search.
Rooms	Officers may search any rooms under a probationer/parolee's control, including any areas controlled jointly with other occupants of the residence.
Personal Property	Personal property may be searched when officers reasonably believe it is owned or controlled, or jointly owned or controlled by the probationer/parolee.
Denials	If the probationer/parolee denies that they live in the residence or that personal property belongs to them (or if a joint occupant denies such), officers are not required to accept such denials. (A false denial might be expected when contraband is on the premises.)

Harassment

Probation/parole searches must never be conducted for reasons unrelated to the rehabilitative, reformative, or legitimate law enforcement purposes. A search is invalid if the reason it was undertaken was to harass the probationer/parolee.

Searches may also be considered harassment if they:

- occur too often
- take place at an unreasonable hour
- are unreasonably prolonged

- demonstrate arbitrary or oppressive peace officer conduct
- are undertaken with personal animosity toward the probationer/parolee

Note: The U.S. Supreme Court has stated that a person may waive their Fourth Amendment rights allowing *any peace officer* to search their home or person at any time day or night, with or without probable cause and this waiver is valid. The courts have said as long as that search is not *arbitrary and capricious* and the purpose of the search is to insure compliance with probation or parole clauses, the waiver and subsequent search is valid. *That* said Nevada limits that waiver and allows only parole/probation officers to authorize such a search.

Probable Cause Search (PO H1)

Introduction

The courts have created an exception to the warrant requirement when a motor vehicle is involved. They have determined that the risk of the vehicle being moved to a different location, in combination with the reduced expectation of privacy that people have in vehicles, justifies a warrantless search as long as the search is based on probable cause that the vehicle contains contraband or evidence of a crime.

Note: Nevada only recently adopted the federal rule in terms of searching vehicles without a warrant (based on probable cause). The case (State v. Lloyd-312 P.3d 467) voided prior Nevada Supreme Court cases that either required a search warrant or allowed the vehicle exception where there was both probable cause and exigency. State v. Lloyd (2013) established that Nevada officers may search a vehicle with probable cause (no additional requirements). As this is a rather new concept in Nevada, students are encouraged to understand what the district attorney's office in their jurisdictions may require.

Probable cause exception

If officers honestly believe they have enough information to obtain a search warrant for a vehicle from a magistrate, it is legal for them to go ahead and search the vehicle without a warrant.

Warrantless searches of vehicles based on the probable cause exception are also referred to as searches under the "automobile exception," or the "vehicle exception," to the usual warrant requirement.

NOTE: The probable cause exception applies not only to any vehicle which is mobile, but also to any vehicle which reasonably appears to be mobile even if, in fact, it is not.

NOTE: If the vehicle is in a place which has a reasonable expectation of privacy, such as a garage, a warrant may be necessary to search (enter) the property (garage).

Necessary conditions

The conditions required to justify a probable cause vehicle search are exactly the same as those necessary to obtain a search warrant.

For a search of a vehicle to be legal under the probable cause exception:

- the vehicle must have been lawfully stopped, or otherwise be lawfully accessible
- the officers must have enough facts, knowledge, training, or experience to provide probable cause that the item they are seeking will be found inside the vehicle

Scope of the search

The scope of a vehicle search based on probable cause depends on the item or object peace officers are searching for.

Officers may search any part of a motor vehicle, or anything inside the vehicle, as long as what they are searching for might reasonably be located there. This includes, but is not limited to:

- the passenger compartment
- the glove compartment
- the hood
- the trunk
- any closed personal containers (including locked containers)

Vehicles

NRS 482.075 defines a motor vehicle as a vehicle that is self-propelled. Examples of motor vehicles include, but are not limited to, the following:

- automobiles
- airplanes
- buses
- recreational vehicles
- carts, etc.

NOTE: Self-propelled wheelchairs, invalid tricycles, or motorized quadri-cycles when operated by a person because of disability are not considered motor vehicles.

NOTE: Boats are searchable under the same rules as motor vehicles.

Motor homes

A motor home is considered a motor vehicle when it is being used on a highway, or if it is capable of such use and is located in a place not regularly used for residential purposes.

Example: A motor home parked on the public street in front of a residence is considered a motor vehicle.

Probable cause

Probable cause to search a vehicle means exactly the same thing that it does in a search warrant context.

Probable cause to search means there is enough credible information to provide a fair probability that the object the peace officers is looking for will be found at the place they want to search.

Time of search

Under the probable cause exception, it is not necessary that the search of the vehicle take place contemporaneously with the vehicle stop (e.g., on the roadside at the time of the stop). Instead, officers may have the car towed away and conduct the search at a later time, even after it has been impounded and is in police custody, as long as they still have probable cause.

Note: Again this is a relatively new concept in Nevada. The probable cause does not have to be related to the reason for the initial stop or when the search takes place.

Closed containers

If peace officers have probable cause to believe the item they are looking for is inside a vehicle, they are entitled to open and search any closed, personal container within the vehicle which might reasonably contain the item. (This rule also applies to locked containers.)

Probable cause to search a container may be established through the officer's sight, smell or touch, or by the container's shape, design, or the manner in which it is being carried.

Examples

During a traffic stop for speeding, an officer noticed the smell of beer inside the vehicle. Although the driver adequately performed a series of sobriety tests, the officer had probable cause to search the passenger compartment for open containers of alcohol.

Information from a reliable source, plus the officer's knowledge of a person's past criminal record, provided probable cause to search a person's recreational vehicle, parked in the public parking area of an apartment complex, for items from a residential burglary.

Peace officers had probable cause to believe a person had stolen cash from an open cash register at a convenience store. The officers were justified in searching all areas of the person's vehicle where the cash might reasonably be located (i.e., the recesses of the car seats, the trunk, the pockets of a jacket on the back seat, etc.).

Plain View Seizures- vehicles (PO# H2)

Introduction

Seizing crime-related evidence in an officer's plain view from a place the officer has a lawful right to be does not involve any type of search.

Requirements for seizure

Peace officers must meet the same requirements for plain view seizures involving vehicles as they would for seizing an item within plain view anywhere else.

Peace officers must:

- have probable cause to believe the item is crime-related
- lawfully be in a location to observe the item
- have lawful access to the item

Probable cause

To seize evidence from a vehicle, peace officers must recognize the item as being crime-related or have probable cause to believe that it is. Such probable cause may be based upon information from reliable sources, the knowledge and training of the officers, plain smell, etc.

Lawful observation and access

Generally it makes little difference if an officer observes the crime-related item from outside a vehicle or while the officer is lawfully inside the vehicle.

The area that can be observed from outside a vehicle (i.e., the passenger compartment) carries such a low expectation of privacy that officers may enter the vehicle to seize the property.

NOTE: The use of a flashlight or other reasonable sensory enhancement tool, either from outside the vehicle or after lawful entry, is permissible as long as the device allows the officer to see anything that would have been visible during daylight hours.

Examples

A peace officer stopped a car for expired registration tags. From outside the vehicle, the officer observed an open and partially filled bottle of beer on the floor of the passenger compartment of the car. The officer ordered the driver from the car, seized the bottle of beer, and then conducted a search of the passenger compartment for more open containers of alcohol.

A peace officer made a traffic stop and observed, from outside the vehicle, items which she recognized as methamphetamine smoking devices on the floorboards. The plain view observation permitted the officer to enter the passenger compartment and seize the evidence, and provided probable cause to search for more.

Protective Searches of Vehicles (PO H3)

Introduction

A *protective search* of a vehicle is a limited warrantless search of the passenger compartment of a vehicle for weapons.

Necessary conditions

A protective vehicle search is permitted if:

- the driver or other occupant is being lawfully detained
- the officer reasonably believes, based on specific facts, that there may be a weapon (lawful or unlawful) or item that could be used as a weapon, inside the vehicle

Officers need only a reasonable suspicion that a weapon or potential weapon is in the vehicle. However, this suspicion must be based on specific facts or information.

Scope of search

Like a cursory/frisk/pat search of a detained person, protective vehicle searches are allowed to prevent an unexpected assault on peace officers.

Officers may search:

- only for weapons or potential weapons
- in the **passenger compartment** of the vehicle
- where the occupant(s) of the vehicle would have reasonable access to a weapon or item that could be used as a weapon

Once the searching officer determines there are no weapons or potential weapons within the passenger compartment, the search must end.

NOTE: Officers should never assume there is only one weapon. If a weapon is discovered, the officer may seize it and continue to search for others even if there is no specific reason to believe there are additional weapons in the vehicle.

Plain view

While conducting a protective vehicle search, officers may seize any item in plain view if there is probable cause to believe it is contraband or evidence of a crime. Officers may also develop enough probable cause to continue searching the vehicle based on the probable cause exception to the warrant requirement.

Containers

During a protective vehicle search, if the officer comes across a container within the passenger compartment, the officer is entitled to seize it and open it only if it is reasonable to believe that it could be used as a weapon, or that it might contain a weapon.

Examples:

After receiving notification of an *armed* assault within the area, officers stopped a vehicle containing occupants who roughly matched the description of the assailants. The officers ordered the driver and the passenger out of the car and conducted a limited protective search of the passenger compartment for weapons.

A man, known by the officer for previously carrying a concealed weapon, was ordered to step out of the car in which he was a passenger. During a cursory/frisk/pat search of the man, the officer found a handgun. Even though the man was able to produce documentation showing the possession of the weapon was legal, the officers were justified to conduct a limited protective search of the passenger compartment of the vehicle for additional weapons.

NOTE: If, while conducting the protective vehicle search of the passenger compartment, officers identified evidence which provided probable cause to believe there was contraband or evidence of a crime in the trunk, the officers could have searched the trunk based on the probable cause exception to the general warrant requirement

Consent Searches of Vehicles (PO H4)

Introduction

If peace officers obtain valid consent to search a vehicle and/or any item within the vehicle, the warrantless search will always be upheld as legal.

Necessary conditions

The conditions for searching a vehicle based on consent are the same as any other **consent search**.

Consent must be:

- voluntary, and
- obtained from a person with the authority (or apparent authority) to give that consent

NOTE: Each officer is responsible for knowing their agency policy or consent searches.

Scope of search

Peace officers may search only those areas of the vehicle they reasonably believe the consenting person authorized them to search. If the consenting person expressly or implicitly restricts certain areas of the vehicle or items within the vehicle, the officers must honor those restrictions.

Voluntary consent during vehicle stops

For any consent obtained during a vehicle stop or detention, there may be a question of its *voluntariness.* A court will determine whether consent was truly voluntary based on the totality of the circumstances.

In some instances, it may be easier to prove the voluntariness of the consent if it is obtained after the purpose of the stop has been concluded (and they are free to leave).

Closed containers

Consent to search a particular area may or may not include searching any closed container within the area. If the container is locked the officer would need specific consent to open that container. Peace officers must clearly understand the scope of the consent being given.

Establishing ownership of an object within a vehicle is also particularly important since individuals who disclaim ownership may lack authority to grant permission to search it.

Individuals who deny ownership may also lack standing to challenge the validity of the search later in court. Therefore, peace officers should always ask if a container within a vehicle belongs to the person who is granting the permission to search the vehicle and include the answer in their report.

Examples

Officers who obtained voluntary consent to search a vehicle for drugs were entitled to look inside a closed paper bag on the front seat, because narcotics are often carried in similar containers.

Searches of Vehicles Incident to Custodial Arrest (PO H5)

Introduction

When an officer makes a custodial arrest of a person in a vehicle, the officer may be able to conduct a warrantless search of the vehicle's passenger compartment.

Necessary conditions

Officers may search the passenger compartment of a vehicle if they have made a valid custodial arrest of any occupant of the vehicle and:

- the arrestee is unsecured (e.g. not locked in the police car, not handcuffed) and
- has reachable access to the vehicle and/or
- the officer has reasonable suspicion to believe evidence, pertaining to the crime of which the suspect was arrested, is to be found in the vehicle and/or
- the office has reasonable suspicion there is a weapon in the vehicle

NOTE: The search may be conducted before the occupant is actually placed under arrest as long as probable cause to arrest existed at the time of the search.

Scope of search

No matter what the arrest is for, as long as the driver or occupant of a vehicle is taken into custody, peace officers may search:

"The passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest"

Or

The arrestee is un-secure and still has access (arms reach) to the vehicle.

NOTE: The trunk of a vehicle may not be searched incident to the arrest of an occupant of the vehicle.

Custodial arrest

The arrest must be custodial, meaning the arrestee will be transported by law enforcement personnel to another location, such as a jail, detox facility, or school.

An arrest is not custodial, and therefore no search is allowed, if the arrestee is merely cited and released.

Establishing a nexus to the vehicle

It is immaterial whether the occupant was inside or outside the vehicle at the time of the arrest or when the search began.

If officers did not see the arrestee inside the vehicle, they may nevertheless consider the person to be an occupant of the vehicle if:

- the officers reasonably believe the arrestee was an occupant shortly before the arrest
- there was something else indicating a close association between the vehicle and the arrestee at the time of the arrest (e.g., the arrestee placed an object inside the vehicle just before the arrest)

Contemporaneous nature of the search

A search is deemed incident to an arrest only if it occurred:

- at or near the time of the arrest
- at or near the place of the arrest
- while the arrestee is still at the scene

On rare occasions, the contemporaneous requirement can be waived if it was reasonably necessary:

- To delay the search

- To conduct the search in another location

- To conduct the search after the arrestee was removed from the scene

- The search was conducted as soon as it was practical to do so

Examples

Peace officers arrested a man next to his car at the scene of a petty theft. They conducted a search of the man's vehicle as he stood nearby. The search was considered

contemporaneous and legal because the man had access to the car at the time of the search.

The driver of a vehicle was taken into custody for driving while under the influence of alcohol. While conducting a search of the vehicle, the officers opened and searched the belongings of a hitchhiker whom the driver had picked up prior to the vehicle stop. Even though the items did not belong to the arrestee, the search was legal because the items were in the passenger compartment of the vehicle.

Officers received a broadcast description of an armed robbery suspect and vehicle. The suspect vehicle was stopped and the driver, who matched the suspect description, was arrested. The suspect vehicle was searched incident to the suspect's arrests. The search was legal because the suspect was lawfully arrested and officers had reasonable suspicion to believe evidence of the robbery and/or weapon would be found in the vehicle.

Searches of Vehicles as Instrumentalities (PO H6)

Introduction

When peace officers have probable cause to believe the vehicle itself constitutes evidence of a criminal act, they may seize the vehicle without a warrant and wait until later for an examination performed in accordance with sound scientific procedures.

Necessary conditions

A vehicle may generally be deemed an instrumentality of a crime if:

- the crime was committed inside the vehicle
- the vehicle was the means by which the crime was committed (e.g., hit and run)

NOTE: A vehicle is not an instrumentality merely because it is used during the commission of a crime.

Obtaining a warrant

Even though officers will have probable cause to search any vehicle which was used as an "instrumentality" of a crime, meaning that no search warrant is required, many agencies prefer to obtain a warrant before conducting a scientific examination of a vehicle.

Scope of search

If the search is undertaken without a warrant, the scope will be determined by the nature of the evidence being sought. That is, officers may search any part of the vehicle where the object(s) they are looking for might reasonably be located.

If the search is undertaken pursuant to a warrant, the scope will be determined by the terms of the warrant.

Examples:

A female victim was kidnapped and raped in the suspect's van. Peace officers later arrested the suspect at his residence and seized and impounded his vehicle. Three days later, the officers legally entered the van to conduct a scientific examination to search for blood and semen stains.

The vehicle of a man arrested for kidnaping a 10-year-old boy was seized and later searched for fingerprints and other evidence that the boy had been in the vehicle.

Vehicle Inventories (PO I)

Introduction

A vehicle inventory is not a search for evidence or contraband. It is a procedure peace officers use to account for personal property in a vehicle that is being impounded or stored.

Necessary conditions

To inventory a vehicle:

- the vehicle must be in the lawful custody of law enforcement
- the officer conducts the inventory pursuant to a standardized agency policy

Scope of search

The courts have made it clear that a standardized agency policy may be very broad regarding vehicle inventories, permitting examination of any area where valuable or dangerous items are commonly kept. This may include, but is not limited to:

- under the seats
- glove compartments
- consoles
- the trunk
- closed containers

Purpose of an inventory

A vehicle inventory should never be undertaken for the purpose of finding evidence or contraband, but rather only for taking note of personal property.

The purpose of a vehicle inventory is to protect:

- the property of a person whose vehicle has been impounded or stored
- the government agency from false claims of loss

If, during the course of an inventory, officers discover evidence of a crime or contraband, they may lawfully seize it.

Lawful custody

An inventory may be conducted only after the vehicle has come into lawful custody for reasons other than solely for the purpose of conducting the inventory.

The decision to impound and/or inventory must be made in good faith for lawful reasons such as, but not limited to:

- the driver (sole occupant) is taken into custody
- the vehicle, involved in a traffic accident, cannot be driven
- the vehicle must be moved to protect it or its contents from theft or damage
- circumstances which require removal (e.g., vehicle as a traffic hazard, stolen vehicle, etc.)

Authority to impound

Assuming the vehicle is lawfully in police custody, the officer always has legal authority to impound or store it and, therefore, to inventory it. However, depending on agency policy, there may be occasions where the officer may choose to release the vehicle to a validly licensed passenger or other person.

Personal possessions

If a vehicle is to be inventoried, but the driver or other occupant requests possession of some object from inside the vehicle (e.g., purse, clothing, briefcase, etc.), the searching officer may pat the item down for weapons for the officer's own safety before handing it over.

Whether or not the item still must be inventoried as an object that was in the vehicle at the time the vehicle was impounded or stored will depend on agency inventory procedures.

Standardized procedures

Agency procedures for conducting a vehicle inventory will be considered sufficiently standardized as long as:

- the agency has an established routine
- all officers know about the routine
- all officers are supposed to follow the routine when conducting vehicle inventories

NOTE: Standardized procedures do not necessarily have to be reduced to writing as long as they are commonly known to all officers.

NOTE: All inventories should be documented even if nothing of value is found.

Officer discretion

The courts have recognized that standardized procedures may leave some discretion in the hands of a field officer whether or not to open a given container. However, this discretion cannot be unlimited and must be based on concerns related to the purposes of an inventory.

Repossessed vehicles

If a licensed repossession agency has already repossessed a vehicle and completed the statutorily required inventory, peace officers may examine and seize inventoried items without a warrant if they have reason to believe the items are connected to a crime being investigated.

Examples

An officer impounded a vehicle because the driver, also the sole occupant, had no valid driver's license. While waiting for the tow truck, the officer conducted an inventory and discovered illegal narcotics in the glove compartment. The officer lawfully seized the narcotics as evidence and placed the driver under arrest for possession of an illegal controlled substance.

An officer conducted an inventory of a vehicle, following the DUI arrest of the driver and sole occupant of the vehicle, and found a back pack behind the front seat. Inside the backpack, the officer found a nylon bag containing metal canisters with drug paraphernalia and cocaine inside the canisters. The officer also found cash sealed in an envelope that was located in a side pocket of the backpack. Discovery and seizure of all these items was legal.

Searches and Seizures from the Body by Warrant (PO J1)

Introduction

Understandably, a person's reasonable expectation of privacy over their own body is very high. Because of this, a warrant will usually be required to enter a person's body to search for and seize evidence.

Fourth Amendment protection

The Fourth Amendment protection against unreasonable searches and seizures is violated when a legitimate expectation of privacy has been infringed. This expectation applies not only to a suspect's property or possessions, but also to the suspect's person.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Fifth Amendment protection

No person has the legal right to withhold or destroy physical evidence, even if that evidence is located on or inside one's person. The Fifth Amendment protection against self-incrimination only protects what a person may say, not any physical evidence that person may possess.

Express wording

Wording authorizing the search of a person's "home, car, and person" does not authorize them to enter the person's body. A warrant to conduct a bodily intrusion search must contain exact wording that expressly permits any type of bodily intrusion, such as collecting a blood sample.

Probable cause plus

As in any other warrant procedure, peace officers must show probable cause to search within their affidavit to obtain a warrant. That is, there must be enough credible information to provide a fair probability that the search will result in the discovery of evidence of a crime.

But, in addition to probable cause, the courts also require that the more intense, unusual, prolonged, uncomfortable, unsafe, or undignified the procedure contemplated, the greater the showing for the procedure's necessity must be. This additional show of need is often referred to as probable cause plus.

Additional requirements

Before issuing a search warrant to enter a person's body, the court will also address a number of factors regarding the necessity and safety of the search itself. The following table identifies these additional factors.

Factor	Consideration
Method used	What is the likelihood this type of search will result in the discovery of the evidence sought?
Seriousness of the offense	Does the nature of the offense justify the infringement on the person's privacy and dignity?
Importance of the evidence to the investigation	Is this particular evidence absolutely necessary to the investigation, or is it sought merely to corroborate other existing evidence?
Existence of alternate means	Are there any other less intrusive methods or means of obtaining the same evidence?
Safety and intrusiveness	Will the method or extent of the proposed intrusion: - threaten the individual's safety or health? - be conducted in accordance with accepted medical practices? - involve unusual or untested procedures? - result in psychological harm to the individual?

Examples

A man was suspected of assaulting the victim with a knife. Detectives were granted a court order allowing them to obtain a blood sample from the suspect after they were able to show that the suspect had been identified by a witness, that there was blood at the scene that may have been the assailant's, and that the suspect would be taken to a facility where the blood would be drawn by medical personnel in accordance with accepted medical practices.

NOTE: When a warrant is sought to obtain a blood sample, the "probable cause plus" requirement is almost non-existent, since taking blood involves such a minimal intrusion and is so routine in our society. Accordingly, the warrant will be sufficient if it shows (1)

probable cause that the test results will show evidence of a crime, and (2) that the removal of blood will be conducted by trained medical personnel in accordance with accepted medical practices.

Without a Warrant (PO J2)

Introduction

Under certain conditions, evidence may be taken from a suspect's body without a search warrant.

Consent

Peace officers may seize evidence from a suspect's person if they have obtained valid consent from that person to do so, and if the search is not considered unreasonably intrusive.

Implied consent

A person who drives a motor vehicle in Nevada has given implied consent for chemical testing (blood, breath, or urine) without a warrant.

Note: Recent Supreme Court decisions seem to indicate that refusals to allow a blood cannot be criminalized. However, action taken on a person's driver's license (suspension or revocation) is administrative and not criminal.

Note: Recent U.S. Supreme Court decisions would indicate a warrant is necessary to force a blood draw for DUI. The Nevada Supreme Court previously determined that a warrant is necessary for a DUI forced blood draw (or non-consensual).

Incident to arrest

Under certain circumstances, seizing evidence from a suspect's person may be done without a warrant as incident to an arrest. The requirements for such a seizure are identified in the following table. (Note: see above for information regarding blood draws and DUI).

To search for and seize evidence from a suspect's body without a warrant, peace officers must have...	Explanation
Probable cause to arrest.	The officer must be aware of facts that constitute probable cause to arrest.

Probable cause to search.	The officer must reasonably believe that the search will result in the discovery of evidence of a crime.
Exigent circumstances.	It must be reasonable to believe that evidence will be lost or destroyed if the officer waits to obtain a warrant.
A need that outweighs the intrusiveness.	The need for the evidence must outweigh the intrusive nature of the search and any foreseeable danger.

Exigent circumstances

The existence of exigent circumstances may depend on the stability of the evidence being sought. Officers may seize evidence from a person's body if it reasonably appears the evidence will be lost or destroyed if the officers wait to obtain a warrant.

Evidence is considered to be either stable evidence or evanescent evidence. The following table further clarifies the two levels of evidence stability.

Stable Evidence	Evanescent Evidence
Evidence that will not change over time.	Evidence that will change or be lost over time.
Example: - Blood samples for routine tests, such as typing or DNA	Example: Scrapings from under a suspect's fingernails

Example

Officers, with probable cause to believe a suspect committed a murder, took scrapings for analysis from under the suspect's fingernails. The warrantless seizure was considered reasonable, both because the intrusion was minor and because the evidence was easily destructible.

Use of Force during Bodily Intrusion Search and Seizure

Introduction

If a person forcibly resists the lawful seizure of evidence from his/her body, officers may use reasonable force to carry out the search and seizure.

Level of force

Officers may use only that degree of force that is necessary to overcome the person's resistance and recover the evidence. Officers may not use unreasonable force to recover evidence.

As a general rule, no bodily intrusion is permissible if the force necessary to do it would shock the conscience.

Preventing a suspect from swallowing evidence (PO K)

If officers have probable cause to believe there is evidence in a person's mouth, they may use reasonable force to remove it, or to prevent the person from swallowing it.

If only minimal force is necessary to remove an object, the warrantless search and seizure will no doubt be upheld. However, if the person refuses to open his mouth or tries to swallow the evidence, or it appears that he is about to swallow the evidence, a problem can arise.

Officers are permitted to exert minimal pressure on the neck area to prevent swallowing. However, such pressure may not prevent breathing or substantially impair the flow of blood to the person's head. In other words, no "choke holds" may be used, because they are too dangerous.

NOTE: Officers should be fully aware of their own department policies and procedures in this area.

Swallowed evidence

If the person has swallowed the suspected evidence or contraband, peace officers have several options.

- Detain the suspect under controlled conditions and wait until the evidence naturally passes through the suspect's system, or
- If a doctor declares the suspect's life is in danger or the suspect is at risk for serious bodily injury then the suspect's stomach can be pumped or an emetic can be administered to induce vomiting, or

- The suspect may give consent to a stomach pump or emetic but it should occur under the supervision of a doctor, or

In all other circumstances it should be assumed that a search warrant would be required to pump a suspect's stomach or administer an emetic to induce vomiting for the recovery of evidence.

Documentation

The manner in which officers describe their conduct in incident or arrest reports may significantly affect the admissibility of any evidence recovered through the application of physical force. Officers must present enough information to show that their actions were necessary and that the amount of force was reasonable under the totality of the circumstances.

Examples

When an officer asked a female suspect her name, he immediately noted that she had difficulty speaking and observed balloons normally used to contain heroin inside her mouth. The officer reached inside the suspect's mouth and retrieved the evidence before the suspect could swallow it.

After a suspect placed narcotics in his mouth in an attempt to swallow them, an officer applied a hold to the suspect's neck for approximately 10 seconds, while simultaneously ordering the suspect to spit out the evidence. The officer's actions were considered reasonable after the officer noted that, during the application of the hold, the suspect was able to breathe and speak, because the suspect continued to shout profanities at the officer.

Special Circumstances

Introduction

Peace officers cannot obtain evidence such as blood samples or fingerprints at random. At the same time, individuals cannot prevent officers from lawfully gathering evidence.

Blood samples (PO L)

The most common type of bodily intrusion authorized by a warrant is the seizure of a person's blood for testing. Blood samples, obtained in a medically approved manner, are considered minimally intrusive. If a warrant is sought, it does not require a detailed explanation of need. Instead, because taking blood involves such a minimal intrusion and is so routine in society today, the affidavit must demonstrate only:

- probable cause that the test results will show evidence of a crime

- the removal will be conducted by trained medical personnel in accordance with accepted medical practices

If blood is going to be taken without a warrant or consent, officers must have, in addition to probable cause to arrest and probable cause to search, exigent circumstances.

Blood may be taken, even in situations where the suspect is unconscious, or where the officers must apply reasonable force.

NOTE: Subjects' failure to participate in tests they have no legal right to refuse may be used as evidence of consciousness of guilt.

NOTE: Officers should be fully aware of their agency's own policies and procedures in this area.

Fingerprints (PO M1)

Peace officers may obtain fingerprint samples from a person if they have that person's consent or probable cause to believe the person was involved in criminal activity.

If the person has been placed under arrest, the person has no legal right to refuse a fingerprint examination.

Officers may use a reasonable amount of force to obtain the fingerprints of a person who refuses to cooperate. However, fingerprints taken by force are often smeared or incomplete and are seldom useful.

Handwriting samples (PO M2)

Handwriting samples obtained by peace officers are admissible as evidence. The refusal to give a handwriting sample may be commented upon later at a person's trial as consciousness of guilt.

It is impractical to physically force a person to provide handwriting samples. If a person refuses to willingly provide handwriting samples, a court may order them to provide one or be held in contempt-of-court.

Voice evidence

A person has no legal right to refuse to give voice evidence. Although a person cannot be forced to provide a vocal sample, refusal to do so can later be commented on at trial for the purpose of showing consciousness of guilt.

Identification Procedures (PO N)

Introduction

The search for a perpetrator of a crime may include asking a victim or witness to identify a suspect from a number of individuals. Once a proper identification has been made, the suspect may be seized (arrested).

Purpose

The purpose of any identification procedure is to confirm or eliminate a person as the actual perpetrator.

Undue suggestively

Because it is a violation of a defendant's constitutional right to due process to be convicted on the basis of an unduly suggestive identification process, peace officers must not suggest in any way to the victim or witness that a person to be observed during an identification process committed the crime.

Indeed, peace officers must be very careful to avoid any conduct before, during, and after the identification process which might be ruled suggestive.

General identification procedures

Officers should not do anything that suggests or could be interpreted as suggesting which person to select during any type of identification procedure. The following table summarizes recommended actions or behaviors to aid peace officers in avoiding any form of suggestively before, during, and after an identification process.

Peace officers should ALWAYS...	Peace officers should NEVER...
Obtain as detailed and complete a description of the suspect as possible from the victim or witness before any identification process.	Make suggestions, lead, or prompt victims or witnesses to give a description they do not mean to give.
tell the victims or witnesses that: - they should keep an open mind, - The person who committed the crime may or may not be among those present.	tell the witness or victim that: - the person who committed the crime has been caught, - the victim's property or other evidence was found in the suspect's possession, or - The suspect has made incriminating statements.

Maintain an appearance of neutrality before, during, and after the actual viewing.	Say anything about a suspect to the victim or witness before, during, or after the actual viewing.

Absolute certainty

A victim or witness will rarely say that they are 100 percent certain about their identification of a suspect.

If peace officers feel victims or witnesses are certain about their identification, they may ask for confirmation. However, peace officers should never ask a victim or witness to state on a scale of 1-10 or as a percentage how sure they are that they are certain. Any identification presented as a scale may give a juror a reasonable doubt about a defendant's guilt.

Documentation

Everything that occurs during the identification process should be noted in the peace officer's report. This includes:

- a verbatim account of what the victim or witness said
- a description of the victim's or witness' response to viewing the suspect

Field Show ups

Introduction

A **field show up** is the viewing of a possible suspect by the victim or witness that commonly occurs in the field shortly after a crime has been committed.

Timing

A show up is appropriate only if it can be done a short time after the crime has taken place.

The advantages of this short time lapse include:

- the victim's or witness' fresh memory of the perpetrator and events
- the immediate release of an innocent subject
- the continuation of a search while the trail is still fresh

Location

The general rule is that an officer who detains a subject pending a show up should not move the subject to another location, but rather should transport the victim or witness to the subject.

There are three exceptions to this general rule.

- The subject clearly and voluntarily consents to being moved
- Independent probable cause exists to arrest the subject and take the subject into custody

It is very impractical to transport a witness to a possible suspect because:

- the victim or witness is too injured to be moved
- the availability of transporting officers is limited, and the wait would create a greater intrusion on the subject's freedom than transporting the subject

Legal representation

Since the detention of a subject for the purpose of identification is not considered full custody, the subject is not entitled to have an attorney present at the time of the in-field show up.

Searches

A full search of the detained subject, or any search of the subject's vehicle, should be avoided until after there has been a positive identification, or unless the subject has consented to the search.

Officers may conduct a cursory/frisk/pat search of a detained subject prior to a field show up only if there are specific reasons to believe the subject is armed or dangerous.

Implications of custody

If at all possible, officers should avoid any indication that the subject has been arrested and, therefore, perceived as guilty by law enforcement authorities.

Unless there is a reasonable threat to officer safety, reduce the inherent suggestiveness of implied custody by displaying the suspect outside the law enforcement vehicle and without handcuffs or other forms of restraint.

Examples

A witness observed a robber for 15 minutes from a close distance during the crime. The initial description offered by the witness matched the description of a suspect. A field show up took place within 20 minutes at the suspect's motel, and the witness confirmed

the identity of the suspect. Under these conditions, the identification procedure was upheld.

A suspect agreed to be transported to the location of the witness if his companion could come along and if the officer would bring him back afterwards. The officer consented to the suspect's terms, and the field show up was upheld.

OPPM
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CHARLES MCCALL,
#0839616

Defendant.

CASE NO: C-20-350999-2

DEPT NO: III

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

DATE OF HEARING: MARCH 8, 2021
TIME OF HEARING: 10:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through AUSTIN BEAUMONT, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Suppress.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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POINTS AND AUTHORITIES

I. PROCEDURAL HISTORY

On September 24, 2020, Defendant Charles Wade McCall ("McCall") was charged by way of Information with one count of ESTABLISHING OR POSSESSING A FINANCIAL FORGERY LABORATORY (Category B Felony), three counts of OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony), and five counts of POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION (Category C Felony). On September 25, 2020, McCall was arraigned, pled not guilty, and waived his speedy trial right. Co-Defendant Colette Rhea Winn ("Winn") also pled not guilty, but invoked her right to a speedy trial. The case was originally set for jury trial on December 7, 2020 in District Court Department 19. On January 4, 2020, this case was improperly judicially reassigned to District Court Department 23. On February 3, 2021, this case was reassigned by minute order to District Court Department 3. At the Central Trial Readiness Conference on February 10, 2021, this case was first set for trial in District Court Department 3 on March 22, 2021.

On February 22, 2021, Defendant McCall filed the instant Motion to Suppress, which was set for argument on March 8, 2021. The State's Opposition follows.

II. STATEMENT OF FACTS

On June 25, 2020, Parole and Probation Officer Wilson conducted a status check with Colette Winn, who was on probation. Officer Wilson evoked the search clause on Winn's residence located at 1209 Ingraham St., Las Vegas, NV 89101. Parole and Probation Officer Crowe, along with Parole and Probation Officer Conroy and Parole and Probation Officer Glen conducted a safety walkthrough of the residence. A secondary occupant who was later identified as Charles McCall was also located in the residence. When Parole and Probation did a safety sweep of McCall's bedroom, they saw shot gun shells in plain view.

With Parole and Probation having knowledge that McCall was a convicted felon and recently released from probation status, Officer Crowe read McCall his Miranda rights. During the interview with McCall, McCall explained to Officer Crowe that he "fucked up." He told

Officer Crowe that he would find multiple firearms (one shotgun, two handguns), narcotics in the top desk drawer, and multiple pieces of financial paperwork that didn't belong to him inside of his bedroom. While conducting a search of Winn's bedroom during the invocation of the search clause contained within her probation agreement, Officer Glenn located profiles in other people's names, ID cards, check stock and 3 laptops. In McCall's bedroom, Officer Glenn located an embosser, blank credit card stock, a reader/writer, large amounts of US currency and illegal narcotics.

Parole and Probation Officer Crowe contacted LVMPD Detective J. Purcell and advised him of their findings. Detective Rosas, along with Detective Brown and Detective R. Balint responded to assist. A record check of McCall revealed he has been convicted of a felony four (4) times in Nevada. Detective Rosas requested and obtained a telephonic search warrant to search the residence and the vehicles outside the residence. The search warrant was obtained to retrieve all financial crimes related items, documents, narcotics and narcotic paraphernalia, and firearms found inside the residence. The search warrant included a request for buccal swab for DNA to be taken from the cheek of both McCall and Winn. During the execution of the search warrant, on top of McCall's bedroom bed, Detective Balint recovered two firearms, a Ruger .380 caliber, serial# 372212462, Smith and Wesson .32 caliber, serial# 241401, and a shotgun, Maverick Mossberg, model 88, 12 gauge, serial# MV35108S. The firearms were placed on the bed by Officer Comoy after locating them throughout McCall's room. Officer Conroy stated he located the Ruger under the pillow on top McCall's bedroom bed. The Smith and Wesson was inside McCall's dresser drawer, and the Maverick shotgun was located inside McCall's bedroom closet. Detective Balint also located unspent ammunition shells on the floor.

Detective Brown and Detective Balint recovered a credit card embosser, blank credit card stock, notebooks, personal profiles and a Magtek card/check reader inside McCall's Bedroom. In Winn's bedroom, Detectives recovered personal and private profiles, ID's in other people names, blank check stock, and three laptops. Detective Brown also located in Winn's

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bedroom multiple credit cards that appeared to be tampered with, and that were not in Winn's name. Detective Brown located a stack of fraudulent DMV tempt tags inside Winn's bedroom. He also located a fraudulent OMV tempt tag inside McCall's bedroom and in McCall's vehicle, which was parked in the driveway. Post Miranda, McCall told Detective Brown that he had signed the tempt tag located in his car. In the family room, Detective Brown and Detective Balint recovered laminate sheets and a card laminator.

While each piece of individual equipment located is innocuous in nature, when combined and used to manufacture counterfeit items, they become illegal to possess. The forger would use a tool such as a razor or sandpaper to remove the laser inscribed information of a genuine issued credit or debit card. The manual embosser is then used to raise numbers and is frequently a new account number and or account holder. In some cases, the forger damages the magnetic strip, requiring the account number to be manually entered, overriding all security features. This forces the transaction through and makes the merchant liable for any loss. In other cases, the forger will use an encoder to change the information on the magnetic strip to match the newly embossed information. The financial forgery laboratory that was recovered from the residence in this incident, is substantial in facts that there is an embosser with finished product.

Narcotics detectives also responded and took into the custody the large amounts of narcotics, narcotics paraphernalia, and the majority of the U.S. Currency.

Due to the above facts and circumstances, Charles McCall had in his possession and under his control, two handguns, a Ruger .380 caliber, serial# 372212462, and a Smith and Wesson, CTGE .32 caliber, serial# 241401, and a shotgun, Maverick Mossberg, model 88, 12 gauge, serial# MV35108S. Due to his prior felony convictions, McCall was charged with Possession of a Firearm by Prohibited Person. By having in their possession the credit card embosser, blank credit card stock, notebooks, personal profiles and a Magtek card/check reader inside McCall's bedroom, personal and private profiles, ID's in other people names, blank check stock, and three laptops inside Winn's bedroom, the fraudulent DMV tempt tags inside both Winn's and McCall's bedroom and in McCall's car, the laminating paper, and card

laminator inside the family room, Winn and McCall were charged with Establishing or Possessing a Financial Forgery Laboratory. Winn and McCall were transported to CCDC, where they were booked accordingly. Winn and McCall were later charged with Possession of Document Or Personal Identifying Information based on a review of, *inter alia*, the ID's in other people's names.

III. ARGUMENT

A. THE SEARCH OF DEFENDANT MCCALL'S BEDROOM DID NOT VIOLATE MCCALL'S FOURTH AMENDMENT RIGHTS AND EVIDENCE SEIZED PURSUANT TO THAT SEARCH SHOULD NOT BE SUPPRESSED.

While Defendant McCall was living within Co-Defendant Winn's residence—a residence that could be searched at any time pursuant to the terms of her probation agreement—McCall had no reasonable expectation of privacy within the common areas of that home. In order to assert a violation under the Fourth Amendment, one must have a subjective and objective expectation of privacy in the place searched or items seized. *See* Katz v. United States, 389 U.S. 347, 361, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) (Harlan, J., concurring). A subjective expectation of privacy is exhibited by conduct which shields an individual's activities from public scrutiny. *Id.* In Katz, the critical fact for the court in determining that the defendant had a subjective expectation of privacy was that he "shut the [phone booth] door behind him." By so doing, Katz excluded the public and was entitled to assume his conversation was not being intercepted. *Id.*

However, an individual is not cloaked with Fourth Amendment protection simply by taking steps to conceal his activities. An objective expectation of privacy, *i.e.*, one which society recognizes as reasonable, must also exist. *Id.*, 389 U.S. at 361, 88 S.Ct. at 516; *see also,* Oliver v. United States, 466 U.S. 170, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1983). "The test of legitimacy is not whether the individual chooses to conceal assertedly 'private' activity. Rather, the correct inquiry is whether the government intrusion infringes upon personal and societal values protected by the Fourth Amendment." Oliver, 466 U.S. at 182–183, 104 S.Ct. at 1743–44. In determining whether a reasonable expectation of privacy exists, the Court has

considered such factors as "the intention of the Framers of the Fourth Amendment (citation omitted), the uses to which the individual has put a location (citation omitted), and our societal understanding that certain areas deserve the most scrupulous protection from government invasion (citation omitted)." Oliver, 466 U.S. at 178, 104 S.Ct. at 1741.

In United States v. Knights, 534 U.S. 112, 122 S.Ct. 587 (2001), the U.S. Supreme court specifically held that a warrantless search of a probationer's home is reasonable under the Fourth Amendment when supported by reasonable suspicion and authorized by a condition of his probation. The Court additionally concluded that, so long as the search is based on reasonable suspicion, it need not be for a probationary purpose but may be for general law enforcement purposes.

In Nevada, as elsewhere, probation officers have long enjoyed extensive powers to search probationers under their supervision. To justify a warrantless search by a parole or probation officer, the officer must have reasonable grounds to believe that a violation of the parole or probation has occurred; "...[t]hus, it has been said that even a "hunch," if reasonable and held in good faith, would justify a search of a parolee's home." Seim v. State, 95 Nev. 89, 93–94, 590 P.2d 1152, 1154–55 (1979) (*citing* United States v. Smith, 395 F.Supp. 1155 (W.D.N.Y.1975)). "Neither probationers nor parolees can assert, save in a limited number of circumstances...Fourth Amendment guarantees against correctional authorities who supervise them." Seim, 95 Nev. at 94, 590 P.2d at 1155 (1979). "[W]hen [a] defendant in order to obtain probation specifically agreed to permit at any time a warrantless search of his person, car and house, he [has] voluntarily waived whatever claim of privacy he might otherwise have had." People v. Mason, 5 Cal.3d 759, 97 Cal.Rptr. at 306, 488 P.2d at 634 (1971).

Within co-defendant Winn's probation agreement is the following search clause:

> Search: You shall submit your person, **place of residence**, vehicle or areas under your control to search including electronic surveillance or monitoring of your location, **at any time, with or without a search warrant or warrant of arrest**, for evidence of a crime or violation of probation by the Division of Parole and Probation or its agent.

Exhibit A to Defendant's Motion (emphasis added).

As a co-habitant of Winn's residence, McCall cannot be found to have had a subjective or objective expectation of privacy in the common areas of that residence due to the search clause that could be invoked upon their shared residence. Thus, any evidence that was seized from any common area of the home is plainly admissible. However, McCall takes issue with the search of his bedroom, which he asserts he had a reasonable expectation of privacy in, despite living in a residence that could be searched at any time pursuant to co-defendant Winn's probation agreement. Motion to Suppress at 4. A nearly identical factual situation involving the search of a bedroom within a residence shared with probationers was recently examined as a matter of first impression in State v. Bursch, 905 N.W.2d 884, 891-894. (Minn. Ct. App. 2017).

In Bursch, Bursch lived with two probationers, his brother (also named Bursch) and another man named Syverson. *Id.* at 888. Bursch was a convicted felon, but he was not on probation at the time of the search at issue. When probation officers received a tip that person in Bursch's residence possessed stolen goods, officers attempted to perform a search of the residence. *Id.* Bursch initially declined to permit the search, but eventually relented. *Id.* Bursch acknowledged to officers that he knew his brother and Syverson were on probation and therefore subject to searches, and acknowledged that he had firearms in his bedroom. *Id.*

Upon entering the residence, Bursch led officers to a bedroom that was shared by his brother and Syverson. *Id.* In the hallway on the way to the brother's bedroom, Officer Hitchen passed by the open door to Bursch's bedroom, through which he saw firearms. *Id.* Bursch attempted to close the door to his bedroom, explaining that he did not want them entering. *Id.* However, Officer Hitchen advised him that he needed to perform a protective sweep to make sure that no one was hiding in the bedroom. *Id.* Bursch relented after Officer Hitchen explained to him that they would not be "searching" the bedroom, but merely making sure that there was no one hiding in it. *Id.* Hitchen entered the bedroom and observed several firearms. *Id.* Upon discovering the firearms, the law enforcement officers, who were aware that Bursch was a felon and was not allowed to possess firearms, arrested Bursch. *Id.*

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On appeal, the Minnesota Court held that 1) a non-probationer who chooses to live with a probationer has a diminished expectation of privacy within areas of that residence shared with the probationer; 2) Bursch's Fourth Amendment rights were not violated when law enforcement entered the residence over his objections; 3) that the entry into Bursch's private bedroom and the later seizure of firearms that were seen within Bursch's bedroom from an officer's vantage point in the hallway was justified under the plain-view exception to the Fourth Amendment; 4) that Bursch's admission to having firearms in his room, and the visibility of the firearms from the hallway, each independently gave law enforcement the reasonable articulable suspicion to perform a protective sweep of his bedroom; and 5) that probation officers and other law enforcement had an objective legal basis for the search of the residence because they received a tip from a concerned citizen about criminal activity and knew that Bursch's brother and Syverson were on probation. *Id.* at 890-894. The startling similarities between the facts of the instant case and Bursch are well worth examining; while the Minnesota court's holdings in Bursch are not controlling here, the reasoning is based on U.S. Supreme Court case law addressing Fourth Amendment search and seizure issues, which is controlling here. As such, the State submits this court should find Bursch persuasive.

1. PLAIN VIEW EXCEPTION TO THE FOURTH AMENDMENT WARRANT REQUIREMENT.

Evidence of a crime or contraband that is observed by a law enforcement officer from a position that the officer has a right to be in is not a search under the Fourth Amendment as the items were observed in plain view. *See* State v. Conners, 116 Nev. 184, 187 n.3, 994 P.2d 44, 46 n.3 (2000) (noting that under " [t]he plain-view doctrine ... if police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant" (internal quotation marks omitted)).

On June 25, 2020, in response to a tip from a concerned citizen that co-defendant Winn was engaging in illegal activity, Nevada Parole and Probation officers conducted a search of Winn's residence pursuant to the search clause contained within her probation agreement.

While lawfully within Winn's residence, officers were in a hallway that led to both Winn and McCall's rooms. While the door to McCall's bedroom was open, officers saw shotgun shells on McCall's bed. Officers knew that McCall was a convicted felon and that his prior felony conviction prohibited him from possessing firearms. Officers then conducted a safety sweep of McCall's room, uncovering numerous items of incriminating character, including narcotics, large amounts of U.S. currency, firearms, and financial forgery lab equipment. After receiving a Miranda advisement from officers on scene, McCall admitted that he "fucked up," and confirmed that a search of his room would uncover firearms, narcotics, and financial documents that did not belong to him.

Parole and Probation officers on site contacted LVMPD Detective Rosas, who requested and obtained a telephonic search warrant. That search warrant was obtained to retrieve all financial crime-related items, narcotics, narcotics paraphernalia, and firearms within the residence, including those items located within McCall's bedroom.

Here, just as in Bursch, officers were in the hallway of the residence of a probationer when they saw firearms or firearm-related items located in plain view inside McCall's bedroom. When examining the plain-view exception under nearly identical circumstances, the Bursch court reasoned and held as follows:

> ...absent a showing that it was reasonable for law enforcement to believe that the probationers had shared authority of Bursch's bedroom, Bursch had a full expectation of privacy in his bedroom and was within his rights to close the door to it or object to a search of it. Since there is nothing in the record to indicate that law enforcement reasonably believed that Bursch's brother or Syverson exerted any authority over Bursch's bedroom, probation officers and other law enforcement were not allowed to enter it merely because they were conducting a probation search of the residence.
>
> But this does not end our inquiry. **The state argues that, even assuming Bursch's higher expectation of privacy in his bedroom, probation officers and other law enforcement could nonetheless enter Bursch's bedroom under the plain-view exception to the Fourth Amendment. We agree.** Police officers can seize evidence that is in plain view, so long as they "have not violated the Fourth Amendment in arriving at the spot from which the observation of the

> evidence is made." Kentucky v. King, 563 U.S. 452, 463, 131 S.Ct. 1849, 1858, 179 L.Ed.2d 865 (2011). Law enforcement entered the residence under the authority of a probation search and proceeded to the hallway. Since the hallway is a common area, the probation officers and other law enforcement were within their authority to be present in the hallway.
>
> From where he stood in the hallway, Hitchen saw firearms in Bursch's bedroom. That the firearms were in plain view, however, does not alone justify their entry: "first, not only must the item be in plain view; its incriminating character must also be immediately apparent." Horton v. California, 496 U.S. 128, 136, 110 S.Ct. 2301, 2308, 110 L.Ed.2d 112 (1990) (quotation omitted). Before entering the residence, Bursch had admitted that he kept firearms in his bedroom. And Hitchen knew that Bursch was not permitted to lawfully possess firearms. The "incriminating character" of the firearm, therefore, was "immediately apparent" to Hitchen. **We conclude that the officers justifiably entered the room under the plain-view exception to the Fourth Amendment's warrant requirement.**

State v. Bursch, 905 N.W.2d 884, 893 (Minn. Ct. App. 2017) (emphasis added).

Officers here also knew that McCall was a felon and as such was prohibited from possessing firearms; pursuant to McCall's post-Miranda confession, officers also knew that McCall's bedroom would contain firearms, ammunition, narcotics, and financial crime-related items. Given that officers saw these items of incriminating character in plain view from a lawful vantage point, the search of McCall's room did not violate McCall's Fourth Amendment rights and the items seized pursuant to that search should not be suppressed.

2. PROTECTIVE SWEEP EXCEPTION TO THE FOURTH AMENDMENT WARRANT REQUIREMENT

A "protective sweep" is a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding. In Maryland v. Buie, the U.S. Supreme court held "...as an incident to the arrest the officers could, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched. Beyond that, however, we hold that there must be articulable facts

which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene." 494 U.S. 325, 334, 110 S. Ct. 1093, 1098, 108 L. Ed. 2d 276 (1990).

In Bursch, officers performed a protective sweep of Bursch's bedroom based on the knowledge that Bursch was a convicted felon, the knowledge that Bursch confessed to having firearms in his bedroom, and the knowledge that firearms in Bursch's bedroom were in plain view from the officers' vantage point in the hallway.

Here, officers also performed a protective sweep of McCall's room based on the knowledge that McCall was a convicted felon, the knowledge that McCall confessed to having firearms in his bedroom, and the knowledge that shotgun shells in Bursch's bedroom were in plain view from the officers' vantage point in the hallway. The similarities between the basis for the protective sweep between the instant case and Bursch are uncanny; when faced with a review of the legality of that protective sweep, the Minnesota court held that the sweep did not violate Bursch's Fourth Amendment rights:

> The district court determined that law enforcement was allowed to enter Bursch's bedroom to perform a protective sweep. Bursch disagrees, but cites no authority in support of his argument. Two types of protective sweeps are allowed. State v. Bergerson, 671 N.W.2d 197, 202 (Minn. App. 2003) (*adopting* Maryland v. Buie, 494 U.S. 325, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990)), *review denied* (Minn. Jan. 20, 2004). With the first type, police officers may look in "spaces immediately adjoining the place of arrest, such as closets, from which an attack could be immediately launched," without the need for probable cause or reasonable suspicion. *Id.* (quotation omitted). With the second type, officers may search areas "near, but not immediately adjoining, the place of arrest," but must have reasonable articulable suspicion to justify the sweep. *Id.* Protective sweeps must also be limited to cursory inspections of spaces where someone could be hiding and should not last longer than necessary to make sure that there is no danger in the area. *Id.* If police have probable cause to arrest a defendant prior to a search of his person and formally arrested the defendant soon after the search, then it does not matter whether the search came before or after the arrest. *See* Rawlings v. Kentucky, 448 U.S. 98, 111, 100 S.Ct. 2556, 2564, 65 L.Ed.2d 633 (1980).

//

> **Bursch's admission to having firearms in his room, and the visibility of the firearms from the hallway, each independently gave law enforcement the reasonable articulable suspicion to perform a protective sweep of his bedroom** under the second prong of Bergerson. It does not matter that the protective sweep came prior to Bursch's arrest because Hitchen already knew that Bursch was not allowed to possess firearms and Hitchen had probable cause to arrest him when they conducted the protective sweep. *See id.* Law enforcement has to be allowed to take actions to protect themselves when entering an unfamiliar environment, and this is especially true when they know that firearms are involved. Hitchen's entrance into Bursch's bedroom was a legitimate protective sweep.

State v. Bursch, 905 N.W.2d 884, 893–94 (Minn. Ct. App. 2017) (emphasis added).

Just as the Bursch court articulated, law enforcement officers must be allowed to take actions to protect themselves when entering an unfamiliar environment, and this is especially true when they know that firearms are involved. Indeed, the ultimate decision in Bursch squarely addressed the same factual circumstances and legal questions raised as are present in the instant case, and held that the evidence seized should not be suppressed:

> This case raises a novel issue of law in Minnesota, and Bursch does not lose his right to have us decide the issue just because there is limited caselaw that he can rely upon to support his position. Because Bursch knew that his brother and Syverson were subject to probation searches and chose to reside with them anyway, he continued to have a right of privacy in his bedroom, but had a diminished expectation of privacy in the common areas of the residence he shared with them. Accordingly, Bursch's Fourth Amendment rights were not violated when law enforcement entered the residence over his objections. And because Hitchen knew that Bursch was not permitted to possess firearms and observed a firearm in Bursch's bedroom from the hallway, his entry into Bursch's private bedroom and the later seizure of those firearms were justified under the plain-view exception to the Fourth Amendment. Even if Hitchen had not seen any firearms from the hallway, his entry into Bursch's bedroom was a legitimate protective sweep, justified by Bursch's admission to having firearms in his bedroom and the law enforcement officers' knowledge that Bursch was not allowed to possess firearms.

State v. Bursch, 905 N.W.2d 884, 894 (Minn. Ct. App. 2017) (emphasis added).

//

Here, officers knew that firearms and/or ammunition were present in the the unfamiliar environment of McCall's bedroom, located within the similarly unfamiliar environment of Winn's home. Here, just as in Bursch, officers conducted a legitimate protective sweep of McCall's bedroom, where numerous items of incriminating character were readily apparent. The protective sweep therefore did not violate McCall's Fourth Amendment rights, and the evidence seized pursuant to that protective sweep should not be suppressed.

3. INEVITABLE DISCOVERY EXCEPTION TO THE FOURTH AMENDMENT WARRANT REQUIREMENT

Under the inevitable-discovery doctrine, evidence will not be suppressed based on improper police conduct if the prosecution can prove by a preponderance of the evidence that it ultimately would have been discovered by lawful means. Nix v. Williams, 467 U.S. 431, 444, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984); Proferes v. State, 116 Nev. 1136, 1141, 13 P.3d 955, 958 (2000) (adopting this doctrine), *overruled on other grounds by* Rosky v. State, 121 Nev. 184, 111 P.3d 690 (2005).

Here, just as in Bursch, McCall admitted to officers on scene that he "fucked up" and that his bedroom would contain firearms, narcotics, and financial crimes-related items. Pursuant to that initial confession, McCall later confessed that there were financial and/or forgery crime-related items within his vehicle outside his residence. Pursuant to these confessions, detectives obtained a telephonic warrant to search the entire residence as well as the resident's vehicles. Even assuming *arguendo* that the initial plain-view search of McCall's bedroom was improper—which it was not—and that the protective sweep of McCall's bedroom was improper—which it was not—McCall's own confession that evidence of an incriminating nature could be found in both his bedroom and in his vehicle ultimately led to a search of McCall's bedroom and vehicle pursuant to a lawfully-obtained search warrant. Thus, as officers would have inevitably discovered the evidence at issue pursuant to the search warrant that was obtained and executed in this case, any alleged improper police conduct prior to the search conducted pursuant to the execution of the search warrant would not cause the suppression of any evidence uncovered prior to that search warrant.

4. EVIDENTIARY HEARING

Defendant McCall notes in his Motion that "[t]o date, defense counsel has not received any body cam footage to verify any of the officers' versions of events." Motion at 3. Unfortunately, as the officers present on the scene were either Parole and Probation Officers or LVMPD detectives, no officer on scene was required to wear a body worn camera, nor did any officer present wear a body worn camera during this event. As such, while the State has requested any body cam videos from this event, a due diligence search has uncovered no body cam videos associated with this event. While this Motion to Suppress could in theory be considered without an evidentiary hearing if body worn camera footage of the event was available, the State agrees that an evidentiary hearing on this suppression motion is warranted.

IV. CONCLUSION

The State agrees that an evidentiary hearing should be conducted on McCall's Motion to Suppress. However, at the conclusion of that hearing, the State will request this court deny McCall's Motion to Suppress, as the search and seizure of the evidence located in McCall's bedroom did not violate McCall's Fourth Amendment rights.

DATED this 5th day of March, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY _____
AUSTIN BEAUMONT
Deputy District Attorney
Nevada Bar #14167

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State's Opposition to Defendant's Motion to Suppress, was made this 5th day of March, 2021, by Electronic Filing to:

MICHAEL W. SANFT, ESQ.
michael@sanftlaw.com

Corina Garcia

C. Garcia
Secretary for the District Attorney's Office

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DISTRICT COURT

CLARK COUNTY, NEVADA

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STATE OF NEVADA, Plaintiff,	CASE NO. C-20-350999-2
vs.	DEPT. NO. III
CHARLES WADE MCCALL, Defendant.	**Transcript of Proceedings**

BEFORE THE HONORABLE MONICA TRUJILLO, DISTRICT COURT JUDGE

EVIDENTIARY HEARING (DAY 1)

MONDAY, MARCH 15, 2021

APPEARANCES:

For the State of Nevada: AUSTIN BEAUMONT, ESQ.
Deputy District Attorney

For the Defendant: MICHAEL W. SANFT, ESQ.

RECORDED BY: BECKY GOMEZ, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript produced by transcription service.

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MONDAY, MARCH 15, 2021 AT 2:15 P.M.

THE COURT: Case number C-20-350999-2, *State of Nevada versus Charles Wade McCall*. Who is here on behalf of the State?

MR. BEAUMONT: Austin Beaumont for the State.

THE COURT: Thank you. On behalf of the Defendant?

MR. SANFT: Your Honor, good afternoon. Michael Sanft on behalf of Mr. McCall, who is present via BlueJeans this afternoon.

THE COURT: Thank you. This is the time set for the evidentiary hearing on suppression issue. State, do you intend to call witnesses?

MR. BEAUMONT: Yes, Your Honor.

THE COURT: Okay. Who do you have as your first witness?

MR. BEAUMONT: Excuse me. I'm sorry. I didn’t hear that first question.

THE COURT: I said: Do you intend to call witnesses? You said: Yes. I said: You can call your first witness.

MR. BEAUMONT: Oh, thank you.

State calls Officer Crowe.

THE MARSHAL: Crowe?

MR. BEAUMONT: Yep.

[Pause in proceedings]

THE MARSHAL: All right. Please step up. Please face the Clerk to your left and please raise your right hand.

ROBERT CROWE

[having been first duly sworn, testifies as follows:]

THE CLERK: Please be seated.

THE WITNESS: Thank you.

THE CLERK: Please state and spell your first and last name for the record.

THE WITNESS: Robert Crowe, R-O-B-E-R-T, Crowe, C-R-O-W-E.

THE CLERK: Thank you.

DIRECT EXAMINATION OF ROBERT CROWE

BY MR. BEAUMONT:

Q Mr. Crowe, what is your occupation?

A I'm a probation officer for the State of Nevada.

Q And how long have you been in that position?

A Approximately seven years.

Q And were you performing your duties as a probation officer on June 21 -- on or about June 25th, 2020 in the area of 1209 Ingraham Street, Las Vegas, Nevada?

A I was.

Q And was that in the Clark County?

A Yes.

Q All right. What was the reason that you responded to that location?

A To assist Officer Katrina Wilson with a home contact on one of her probationers.

Q All right. And do you know what that probationer's name was?

A Colette Winn.

Q And what caused you and Officer Wilson to respond to that location?

A Officer Wilson had received information from an anonymous source that Ms. Winn had been violating her probation, that there would be fraud-related materials inside the residence, that she was living with a felon by the name of Charles McCall, that they were selling narcotics --

MR. SANFT: Your Honor, I'm going to object to this as being hearsay.

THE COURT: Sustained.

BY MR. BEAUMONT:

Q In the course of your own investigation of this event, were you made aware of any anonymous tips?

A Yes.

Q All right. So, what was the anonymous tip that you were made aware of?

A Officer Wilson showed me a letter that she had received in the mail. The letter stated that Colette Winn was living at the 1209 Ingraham, I believe it was, and that she was living with a felon by the name of Charles McCall, that there was fraud-related materials inside the residence, that they were selling narcotics, and there were possibly weapons in the residence.

Q So, after you learned of this during the investigation, what did you do?

A On June 25th, I set up surveillance on the residence, as Officer Wilson planned on bringing Ms. Winn from our office at 215 East Bonanza to the residence. I looked for Charles McCall. I conducted a criminal investigation. I looked at his priors and saw that he was previously on parole, and it had just expired, and was a convicted felon. And, then, I waited for Officer Wilson to arrive with Colette Winn at the residence.

Q So you said you were conducting surveillance. While you were conducting surveillance, did you see anything of interest?

A I saw one male subject coming and going from the residence. I wasn't able to identify if it was Mr. McCall or not.

Q All right. Did you see any more subjects or just one?

A Just the one.

Q Okay. All right. So, as you were assisting Officer Wilson, based on your knowledge that one of the residents of this home was a convicted felon, did that concern you?

A Yes.

Q Were you concerned for your safety prior to entering this residence?

A Yes.

Q Okay. Prior to your entry, were you made aware of any other residents in the home?

A I was not.

Q So, at some point during your surveillance and investigation, did you enter this home?

A Yes.

Q Okay. And were there other officers with you or were you alone?

A There were other officers with me.

Q Do you remember any of their names?

A Officer Conroy, Officer Glenn, Officer Harvey [phonetic], and Officer Wilson.

Q And, at any point, did you conduct a search of Ms. Winn's bedroom?

A I did not conduct a search of Ms. Winn's bedroom.

Q Okay. Were you aware of any search that was

conducted by anyone on your team that day?

A Yes.

Q Okay. And, after that search, were you privy to anything that was recovered from that?

A I was told that there were personal profiles, fraud-related materials in the bedroom.

Q Did you see any of them -- any of the fruits of this search personally?

A I conducted a walkthrough of that bedroom, but there was a whole lot going on in there and there was some -- I remember seeing some IDs and credit cards that were laid out on a desk, but I didn't look at them in depth.

Q Did the IDs and credit cards belong to Ms. Winn?

A They did not.

Q All right. And, at some point during this search, was Ms. Winn placed under arrest?

A Yes.

Q And what was she placed under arrest for?

A Probation violation.

Q So, I'll back up a little bit. When you walk into this residence, did you go in through the front door or back door?

A Front door.

Q Okay. When you walked in through the front door, how would you describe it when you walked in?

A You're looking directly down a hallway that goes to the rear of the residence and there's two bedrooms pretty much right when you walk in on the righthand side. There's a separate hallway and then there's a master bedroom towards the back of the house.

Q How far away from the front door would you say these bedroom doors were?

A So, the first two that were on my right when I stepped in, maybe 10 feet. And, then, the one to the way back, 30 feet.

Q All right. So, was there a -- an entry room, like a living room right as you walk in?

A So, on the way to the back bedroom, there's a -- when you first walk in, there's like a little sitting room. Then there was a dining room and a kitchen back there. And, then, the master bedroom was on the far back right.

Q Okay. So, fair to say that the bedrooms are off of the living room, from your description?

A Correct.

Q Okay. All right. And, at some point during this, did you speak to Mr. McCall?

A I did.

Q And what did you tell him?

A So, when we had first entered the residence, we had announced, police, as we walked in with Ms. Colette,

just in case there was anyone else home. Mr. McCall came out from the bedroom that had been in the back, as I said. He came out. He had a dog with him. We asked him to put the dog up. And he put the dog in the master bedroom that he had come out of. We told him that we needed to conduct a sweep of the entire residence for officer safety and asked him to move the dog for us. He moved the dog to a bathroom that was in the bedroom, the master bedroom.

We conducted a security sweep and Officer Conroy had observed some shotgun ammo that was --

MR. SANFT: Objection, Your Honor. That's hearsay as well.

BY MR. BEAUMONT:

Q All right. Let's just back up just a bit.

A Yeah.

THE COURT: Sustained, for the record. Go ahead.

BY MR. BEAUMONT:

Q So you said there was a bathroom in the bedroom. Is it like an en suite or a master bath?

A Master bath.

Q Okay. So, when you told Mr. McCall to secure the dog, did he say anything to you regarding securing the dog?

A I don't remember. I think maybe he asked us where we wanted him to put him and, because we could see into that bathroom that was in there, we asked him to put the

dog in there.

Q Okay. And, at some point, did he put the dog in there?

A Yes.

Q All right. So, did you watch Mr. McCall go into his bedroom to secure the dog?

A Yes.

Q Were you with him at the time?

A I was outside the doorway. I didn't want to get bit by the dog.

Q All right. So, if you could describe where you were standing in relation to Mr. McCall when he opened the door, how close was he? How close were you to do the door?

A We were right next to each other when he opened the door. Then he walked in and grabbed the dog. He was maybe -- from myself to defense counsel at the bed, he grabbed the dog. I could --

Q So, --

A -- watch him walk the dog to the bathroom and put the dog into the bathroom.

Q Okay. So, just for the record, you're gesturing about 15 feet from you to Mr. McCall letting the dog into the bathroom?

A Yes.

Q Okay. But you said also that when he opened the

door, you were right next to him. Correct?

A Correct.

Q Okay. Was he saying anything as he opened the door?

A Not that I recall.

Q Okay. Was he -- describe his movements. Was he gesturing? Was he making any sort of nonverbal communication?

A Mr. McCall was pretty compliant when we were asking him to deal with the dog. He didn't want the dog to get loose either because he didn't want there to be any sort of incident with the dog.

Q Okay. At any point, did he object to you going into his room?

A Not that I recall.

Q Okay. Do you remember if the door to the bedroom was locked?

A It was not.

Q And how do you know that?

A I watched Mr. McCall open the door just by turning the doorknob.

Q Okay. So, he didn't have a key in his hand or anything?

A No.

Q Okay. So, when he opened the door and went to get

the dog, did he leave the door open?

A Yes.

Q Okay. And you testified that you could see through the open door towards the bathroom once. Correct?

A Correct.

Q All right. So, when the door was open, how wide was this door open?

A So, I don't know if it was myself or one of the officers, but we stood on the door, just in case the dog got loose so that we could shut the door. So we have control of the door to open and close it. So, we had the door open completely while we were watching him grab the dog.

Q Okay. And did Mr. McCall say anything about you holding the door while he was getting the dog?

A No.

Q Okay. All right. And, at some point, you said he secured the dog in the master bathroom. Correct?

A Yes, sir.

Q Okay. And, after he did that, what did Mr. McCall do?

A He exited the bedroom.

Q Did he leave you alone in the bedroom?

A Myself and Officer Conroy then conducted a security sweep of the bedroom to make sure there was no one

else present, as there was a closet in the back that we couldn't see into.

Q Okay. So, you said a security sweep, what exactly is a security sweep?

A It's a walkthrough of the residence for officer safety, especially when we have reason to believe there might be weapons in the home. And, then, just to make sure there's no one else in the residence hiding that could potentially come out and cause harm to officers.

Q And did you believe that there might be other people in the residence?

A I mean, I don't want to speculate, but when I was -- I conducted surveillance on the residence, like I said, prior. And I saw one subject coming in and out. I did not believe that that subject was Mr. McCall. So, I thought there might be another person inside.

Q All right. And you said earlier that you received a tip that there might be weapons in the residence. Correct?

A Yes, sir.

Q Okay. So, at that point, just to clarify, when you opened the door, you knew that Mr. McCall was a felon, that there may be weapons, and that there may be another person in the residence. Correct?

A Correct.

Q Okay. And is that why you conducted the protective sweep?

A Yes, sir.

Q All right. You said Officer Conroy was with you. Correct?

A Correct.

Q All right. Did you personally observe any items of incriminating nature?

A No.

Q Now, in the course of your investigation, were you made aware that there were items found within Mr. McCall's bedroom?

A Yes.

Q All right. And did you talk to Mr. McCall about this?

A I did.

Q Did you advise him of his *Miranda* rights before speaking with him?

A I did.

Q And did you read his rights from a card or from memory?

A I actually have a note in my phone that I read it off of.

Q Okay. Did Mr. McCall say anything to you after you read him his *Miranda* advisement?

A Yes. He did.

Q And what did he say?

A The first thing he said was that he fucked up and then he said -- I asked him -- well, I advised him that Officer Conroy had seen shotgun shells in plain view when we conducted the security sweep of the bedroom. Mr. McCall then admitted that there would be firearms in the bedroom.

Q Did he admit to anything else to you?

A Not in my presence.

Q So, after Mr. McCall admitted to you that there would be guns in his room, what did you do?

A I asked him where they were and he pointed them out. Officer Conroy then verified that the weapons were there.

Q And, at any point, did you contact Metro?

A I did.

Q And what did you communicate to Metro as a result -- in regards to this investigation?

A I advised them why we were there. Pretty much everything that I've testified today. I advised them that we had found some fraud-related materials in the bedroom that Ms. Winn was claiming was her bedroom and that we had found three firearms and some methamphetamine in the bedroom that Mr. McCall had exited, and that he was a convicted felon.

Q All right. And, in the course of your investigation, was there any follow-up from Metro on this event?

A Yes. Metro arrived on scene.

Q Okay. And, to your knowledge, was there a search warrant acquired in this matter?

A Yes. There was.

Q All right. And was it executed in your presence?

A Yes.

MR. BEAUMONT: I'll pass the witness.

THE COURT: Anything, Mr. Sanft?

CROSS-EXAMINATION OF ROBERT CROWE

BY MR. SANFT:

Q Officer Crowe, a few questions here. Your testimony was that you're the one who conducted surveillance of the home?

A Yes, sir.

Q That was the day of the intended visit by Parole and Probation --

A Yes.

Q -- to the home?

A Yes.

Q Was there any other surveillance that was conducted of the home prior to that?

A Not to my knowledge.

Q All right. And meaning not to your knowledge, meaning that there was a meeting of some sort between you and other probation officers, that what your intentions were that day with regard to this particular residence. Is that correct?

A Yes.

Q Okay. And the main person that was involved in this was Officer Wilson. Right?

A She was Colette Winn's supervising officer.

Q Right. Which means -- and I'm assuming, you tell me if I'm wrong, that if you're the supervising officer, you're the one that's kind of in charge of this particular visit. Right?

A Yes.

Q All right. And so you and other officers, this would have been -- how do you say? Officer Guice [phonetic], Glenn, Conroy, Harvey, you guys are in supportive roles to Officer Wilson?

A Correct.

Q All right. Your understanding at this particular point is that there was a letter that was received by Parole and Probation? Is that a yes?

A Yes, sir.

Q Did you provide that letter to the District Attorney's Office?

A I did not. Oh, I did today actually.

Q Okay.

A I had not prior to today.

Q So, prior to today, no disclosure of that particular information to the District Attorney's Office?

A Correct.

Q All right. Did you write a report in this case?

A I did not.

Q All right. And fair to say that -- obviously, there was a report written at some point. Right?

A Yes, sir.

Q Did you review any documents prior to your preparation of your testimony here today?

A I did.

Q You reviewed a document that was prepared by Officer Wilson? Is that fair?

A It was a Declaration of Arrest written by Las Vegas Metropolitan Police Department that I reviewed.

Q Okay. By detectives at some point in the future?

A Yes, sir.

Q All right. Did you -- was there any types of reports written by either -- as far as you know, by Officers Conroy, Glenn, Harvey, or Wilson? As far as you know?

A There should be a Violation Report. I don't know

who wrote it. I would assume it was Officer Wilson, as it was her probationer, but I can't tell you for a fact who wrote the Violation Report.

Q Okay. So, outside of this Declaration of Arrest Report that was written by a Metro police officer, you didn't review any other documents in preparation for today's testimony?

A Just the photograph of the anonymous letter that Officer Wilson had received and then the Declaration of Arrest. Correct.

Q Okay. And, on the day -- in preparing for the actual visit by Parole and Probation, the one document that you reviewed at that particular point would have been the letter or no?

A I had seen the letter. Yes.

Q You had seen the letter?

A Yes.

Q Okay. Now, on this particular day, your representation to the Court is -- and, once again, you're providing that letter for the first time to the State today.

A Correct.

Q Right? Okay. Your recollection is that somehow the letter justified in your mind a visit to the home in such a way where you were afraid of officer safety. Right?

A Where I was concerned for officer safety?

Q Yeah.

A Yes. Yes.

Q Okay. Concerned. Fine.

So, you come to the door. All four of you knock on that door in the front of the house?

A I know myself, Officer Glenn, Officer Wilson, and Officer Conroy were at the front door. Yes.

Q Okay. And, as you were at that front door, were you wearing what you're wearing here today? Something like a polo shirt sort of thing or were you dressed a little more formally than that in terms of just like maybe something with probation office on it or something like that?

A Yeah. I had a tactical vest on with police across the front.

Q Gotcha. And a tactical vest, meaning something that has pockets for equipment like guns, and bullets, and all kinds of stuff that you can put in the vest, as well as maybe some protective gear?

A Ammunition, handcuffs. Yes, sir.

Q Okay. And were all four of you wearing that when you approached that door?

A I can't testify to what the other officers were wearing. I know that's what I was wearing.

Q Do you -- so, who was the officer that went around the back to the back rear door while you guys were at the front door?

A I don't recall who was on rear containment, but I know that we did have other officers on scene, as well, watching the sides of the house and the rear.

Q All right. But you're only talking -- you -- what you've disclosed to the Court today is Officer Conroy, Glenn, Harvey, and Wilson, beside yourself?

A Correct.

Q So, out of those officers -- you're saying there were more officers besides those officers that were present?

A Correct.

Q Do you know who those officers were?

A Officer Hillure [phonetic], Officer Jacobs, Officer Page, and that's all I can remember right now.

Q Okay. And when you reviewed your Declaration -- this Declaration of Arrest Report that was written by a Metropolitan detective, did you ever recall in the report reading any of the names that you've disclosed here in court today? Officer Hillure, Jacobs, Page, Glenn?

A I believe Officer Glenn is in the report and Officer Conroy is in the report. But -- I'm not sure about Conroy, but I know Officer Glenn is in the report.

Q Okay. There's another officer too, Officer Conroy?

A Yes, sir.

Q Oh, Conroy?

A Conroy. Yes.

Q Conroy. Okay. Gotcha.

All right. And, so, these other officers are located in the back of the residence in the event that someone tries to jump out of the back of the residence and flee?

A Correct.

Q That's standard operating procedure when you're conducting this kind of search of the home?

A Correct. Trying to maintain containment.

Q Okay. So, your job though as the officer that's in the -- that's kind of the point, because you're the guy who is sitting outside in the car surveilling the home. Right?

A Yes.

Q Do you recall what time you surveilled this home prior to the visit that occurred on that day?

A I believe I was there around 11:30 and the contact was conducted around 12:30.

Q So you were there for an hour?

A Correct.

Q All right. And you said you noticed an individual that was coming in and out, but you could not identify that as Mr. McCall?

A Correct.

Q Now, would it be fair to say that when you're having the meeting, and this is between all these officers now, and I'm assuming that Hillure, Jacobs, and Page were somehow briefed as well as to what was going on?

A Correct.

Q Did you all take a look at a picture of Charles McCall to identify who this person is that you believe was a potential threat in this case?

A I know that I had looked at a picture of Mr. McCall. I cannot testify if the other officers had seen a picture of him or not.

Q Okay. And if you were to describe Mr. McCall, say -- fair to say that he'd be a Caucasian male?

A Yes, sir.

Q Maybe a little bit portly?

A Yes, sir.

Q Maybe a bald head?

A Yes, sir.

Q Okay. And he's -- when I say Caucasian, he's definitely a white guy. Right?

A Yes.

Q All right. And your testimony here today, the person you saw roll in and out of that residence, you couldn't determine that that was Mr. McCall?

A Correct.

Q Is it because he was wearing a mask?

A I was sitting semi far away from the residence. I could not physically see if it was him or not. I just know it was a male subject.

Q Okay. So, at the time that you're preparing for this search, all you see is one male subject and you're saying -- you're telling this Court that you could not tell whether that was a portly, white male, baldheaded, about 5'7?

A I could not tell if it was Mr. McCall or not.

Q Okay. Now, when you were in the residence, were you aware that there was another male that was located in the residence?

A Yes.

Q Okay. Now, it's not in the report. Right?

A I don't believe it is.

Q Okay. This is the Declaration Report. So, we're missing information. Right? Right? Because you're telling the Court something that's different from what's in this report.

A That there was another male in the house, yes.

Q Okay. Do you know what that person's name was?

A I do not.

Q All right. And did you ever talk to that person?

A I did not.

Q Were you ever aware of who that person was in terms of his relation to Mr. McCall?

A I was not.

Q What's that?

A I do not know who that person is in relation --

Q Okay.

A -- to Mr. McCall.

Q And did you, at any point, ever observe that male, at some point, sitting while you guys are conducting your business inside of the McCall residence?

A I did see him seated in the living room when I returned from the security sweep and dealing with Mr. McCall.

Q Okay. And with regards to this particular male, could you describe this male to the Court?

A He was an older male, maybe 50 years old. He was a thinner build than Mr. McCall. I don't remember much else about him.

Q All right. And was this maybe the male that you saw going in and out of the house?

A It could have been.

Q But you -- once again, you're not sure?

A I'm not sure.

Q All right. So, as far as you know, not what you have is you have identified one male that you don't know is either Mr. McCall, short, portly, white guy or older male, standard build, 50 years old that was coming in and out of the house while you were surveilling it. Right?

A Correct. I don't know who that was that I saw outside.

Q All right. But with regards to this particular letter, which we've never seen, in the letter, did it describe to you or talk to you at all about people that lived in the house besides Mr. McCall?

A I believe it just said that Mr. McCall was living there.

Q Okay. And, as a result, all the -- the information you had was one person living in the house besides the probationer in this case?

A To my knowledge, yes.

Q Okay. And, once again, to your knowledge, but also based upon your interaction with the briefing that took place prior to you actually conducting this particular visit?

A Yes.

Q Okay. There was no -- as far as you know, no

further briefings that were done outside your presence prior to you getting into your car, driving to this location, and conducting the surveillance. Fair?

A Correct.

Q Now, you said at some point there was a concern of officer safety. Correct?

A Yes, sir.

Q All right. How many searches have -- of that statute, have you done before?

A A lot.

Q Okay. And, when you say a lot, I'm assuming more than 100?

A Yes, sir.

Q Okay. And would it be fair to say that when searches like that happen, it's typically because you have some type of information that tells you, reliably, right?

A Yes, sir.

Q That something potentially could be of danger to a probation officer if he walked into or she walked into some area. Right?

A Correct.

Q Okay. Would it be fair to say that something like, for instance, like if a person has been convicted of say a robbery, say it was initially robbery with use plead down to robbery, he's on probation for robbery, and you

believe that there was some shenanigan going on, that that would be something that could rise to the level of you conducting an officer safety sort of level of visit?

A I've been trained to conduct officer safety level of visit on every home contact that I go on.

Q Okay. Meaning that, in this case, you walk in there, you have your guns out, and you've got your tactical vests on, and you bang on the door, and you demand to go into the house?

A Demand to go into the house? I would agree with everything until you said I demand to go into the house.

Q Okay. I mean, okay. Let's ask this question then. When I say demand, what I'm saying is that when you bang on the door, did you ever ask Mr. McCall nicely: May we please enter in to inspect this probationer's bedroom?

A I did not.

Q You did not. And, once again, I don't want to say that you're the person that did it, but who was the main person that was the spokesperson for the four of you standing outside with tactical vests and guns?

A Well, I believe I was at the front. So, I was the one making contact with Mr. McCall --

Q Okay.

A -- when we entered the residence.

Q Okay. So, it wasn't Ms. Wilson. It was you that

was the person that was the verbal person --

A Yes.

Q -- talking to Mr. McCall?

A Yes, sir.

Q And you're telling the Court that you did ask politely for him to allow you to come in, to search that particular room in the house?

A No. I did not ask him that.

Q Okay. And you -- as far as you understand, the rooms that were in the house, how many rooms were in the house?

A Bedrooms?

Q Yes.

A I believe there were three bedrooms in the house.

Q Okay. And you've described a little bit about how the bedrooms are situated.

MR. SANFT: Your Honor, may I approach?

THE COURT: Yes.

BY MR. SANFT:

Q Now, I'm going to give you a pen and a piece of paper here. Can you draw for us kind of an outline of how the house was in the situation -- where all the bedrooms and so forth was?

A Yes, sir.

So, there's like a little hallway here. There's a

door here and here.

MR. SANFT: All right. So, just for the record, if you could for me, -- first of all, we're going to mark this as Proposed Defense Exhibit A, Your Honor, if we could.

THE COURT: Okay.

BY MR. SANFT:

Q And, with regards to Proposed Defense Exhibit A, first of all, the area here that says front door, that's the area facing towards the street. Is that right?

A Yes, sir.

Q So, can you just draw a line right here for it -- the street? Sorry. All right.

And, then, with regards to this right here, I'm pointing to what says bedroom here. Whose bedroom was that?

A It's -- on the front it said Colette in letters, I believe, on the front of the door.

Q And was that the probationer in this case?

A Yes, sir.

Q Can you put an A and circle that, next to that bedroom, so that the Court can see that? Okay.

And, then, with regards to the second bedroom here, whose bedroom was that?

A I don't know.

Q All right. Will you put a B there and circle that as well? All right.

And, then, over here, whose bedroom was that?

A I didn't know at the time, but after conducting a talk with Mr. McCall, he said it was his.

Q Okay. Can you just put a C next to it?

Now, we have this open space right here. Can you tell the Court what this open space was?

A I believe this was like a dining room area, kitchen, living room.

Q Okay. And can you tell us where the rear door was to that residence?

A I don't recall exactly where it is back here. I think right here.

Q Okay. And your testimony is that the other officers, or the three officers you mentioned before, they were somehow standing over here looking at that door? Something like that?

A The other officers were outside of the residence. I was on task with going into the house, so I was not paying attention --

Q Sure.

A -- what they were doing.

Q So, would it be fair to say, based upon your training and experience as a probation officer, when you're

conducting this kind of thing and you are under the fear that someone might run out, that there would be officers with eyes on that back door there? Would that be a fair assessment of how the training goes?

A Correct.

Q Okay.

MR. SANFT: And, Your Honor, if I could just have this marked and admitted as Defense Exhibit A, please?

THE CLERK: Mr. --

MR. SANFT: Thank you.

BY MR. SANFT:

Q Now, when you're conducting this kind of entrance into a residence for officer safety purposes, do you go into each area piecemeal? Meaning, do you go into the first bedroom and go, oh, okay, there's no one there, and then go into the second bedroom, and go, oh, there's no one there? Meaning, do all four of you do that or do you just kind of fan out and you go to different spots in the house?

A So, different officers cover different areas of the house.

Q Okay. And, with regards to this plan, was there any type of plan as to who was going to do what?

A Just who was going to make entrance in the front of the house.

Q Okay. And, then, once entrance was made to the

front of the house, then everyone just kind of were left to their own devices to kind of go to different areas based upon just what their -- circumstances happen. Right?

A It's fluid. Correct.

Q Okay.

A Yes.

Q Now, in this case, -- I'm sorry?

A That was the chair.

Q In this case here, the exhibit -- this Defense Exhibit A, your testimony was that the bedroom A was the target of the probationer's that you were looking at. Right?

A Correct.

Q Do you know how many times Officer Wilson had visited that home prior to this particular visit?

A I don't think she had ever been there before.

Q Oh, okay. So this is her very first visit?

A Yes.

Q And is that pretty standard operating procedure is to have -- let's see here. One, two, three, four, five, six, seven, eight -- eight officers attend a first visit of a home?

A Depends on the circumstances.

Q I mean, is that normal? Is that a normal type of visit?

A Yes, that's normal for this circumstance.

Q Okay. Meaning that because of this letter, all of a sudden it escalated from, you know, just like a normal knock on the door, let me see where you live, to: Hey, we're going to have people in the back of the house, we're going to have people in the front of the house, everyone's wearing tactical vests, and we're going to go into the house?

A Yes, sir.

Q Okay. Now, when you said that you had -- you walked into the door, can you tell the Court what you told Mr. McCall to tell him that he needed to open the door and let you in?

A I actually -- Officer Conroy had retrieved the door code. So, we knocked, announced police, and opened the door ourselves.

Q Okay. So, you opened up the door because you had the door code?

A Correct. And --

Q Okay.

A -- Colette Winn was with us.

Q Gotcha. All right. So, the reason for that is because Colette Winn had access to that front door?

A Correct.

Q Okay. And would it be fair to say that that would

be considered kind of the common door. Right? People come in and out of that door all the time?

A Yes.

Q It's not Colette's door?

A Correct.

Q Okay. And, so, when you announced, police, and you went into the house, at that particular point, you saw Mr. McCall?

A Correct.

Q Where was he standing?

A He came from the bedroom, towards the back of the house.

Q Okay. And where was his dog?

A I don't recall if he was holding the dog at the time or if he closed the -- I believe he closed the dog in the door in the master bedroom that he had exited from. So, the dog was still in that bedroom.

Q Okay. All right. So, the dog's in the bedroom and then the door -- he closed the door and then he comes up towards you?

A Correct.

Q All right. Did you have your gun drawn?

A I believe I did.

Q Okay. And, as far as you can observe, were any of your other fellow officers having their guns drawn as well?

A I believe they did.

Q Okay. And, at that particular point, you're asking Mr. McCall politely, nicely that you just walked into his house and you're going to tell him, hey, we're going to search your house for -- for what, exactly?

A For probation violations for Colette Winn.

Q Okay. All right. Now, you, at some point, learned that the -- that this bedroom, bedroom A that's marked here, was Colette's bedroom. Right?

A Correct.

Q When did you learn that?

A After I had already dealt with Mr. McCall. I stepped in and Mr. McCall was -- like I said, like from me to you. And I handled Mr. McCall as he was the first unknown when we entered the residence.

Q Okay. And you didn't ever talk to Colette Winn prior to you being the voice of the group and marching/burst into the house. Right?

A Correct.

Q So she never told you that her bedroom was actually the bedroom that we -- that you marked here as bedroom A in Defense Exhibit A?

A Correct.

Q All right. Fair to say that that's kind of important information?

A Well, as I was entering the residence, my task was to conduct a security sweep and make the residence secure for officers to search safely.

Q But there's no discussion beforehand in the group to say: Hey, Colette's bedroom is actually located, as you marked here, bedroom A, which is immediately to the right and it's the first door to the left. You didn't have that conversation with anybody else in your group of eight or nine or seven, eight?

A No. I think it's more important to make sure the whole residence is secure before we start searching a bedroom.

Q Okay. So, fair to say that you walked in there with full intention of making sure that every bedroom was going to be searched for officer safety before conducting your official business with Colette?

A Correct.

Q Okay. And, once again, it's all based upon one single source of information in an anonymous letter?

A And my training and experience. I've been trained to enter every residence and make sure that officers are safe to conduct their business.

Q Okay. I understand that. But, once again, you do know that you have one person that's on probation in that house, not three people that are on probation in that

house?

A Correct.

Q Right. And your testimony here today is you observed one person, you don't even know who that person is, coming in and out of the house?

A Correct.

Q You observe Mr. McCall that's there who had [indiscernible] the door. And, even now, you're saying you don't even know if that was the person coming in and out of the house?

A Correct.

Q And then, at some point in the future, you have one other person that's in the house?

A Correct.

Q You don't have any other further information of any other people inside that house. Right?

A Can you repeat the question?

Q You don't have -- the letter doesn't indicate how many people are in the house, you just know that Mr. McCall is in the house, you know that Colette lives in the house, and you know that there's some other older dude that lives in the house?

A Correct.

Q All right. And that -- based upon your training and experience, you are allowed to go into every single

house or every single room in a house?

A Not to search the room, physically manipulating the room, but to -- for officer safety to make sure there's no one else in the residence.

Q Okay. And, in this case, as you were in the house conducting officer safety, you said that Mr. McCall took his dog to -- which, by the way, do you remember what the dog's name was?

A I do not remember.

Q That you -- that he took the dog and he put the dog inside the bedroom?

A Correct.

Q His bedroom?

A Correct.

Q That's the bedroom that you marked here on Defense Exhibit A as bedroom C?

A Correct.

Q Okay. And you said that you were able to see what -- the bathroom from where he had opened the door to let the dog in?

A From the doorway, yes.

Q Okay. Can you describe the demeanor of the dog at the time when he was trying to put the dog in the bedroom?

A I don't remember anything of -- that stands out.

Q Do you recall anybody, and I'm assuming it was you

because you're the voice of the group, telling Mr. McCall to control his dog otherwise you were going to shoot the dog? Do you ever recall saying that to Mr. McCall?

A I don't.

Q Okay. Now, would it be fair to say the reason why you don't recall that is because none of you were wearing bodycams?

A We did not have bodycams. Correct.

Q Okay. And, fair to say, once again, that you knew that you were going to conduct some type of search that was relatively high intensity because you're talking about it being an officer safety, but none of you were wearing anything to document what you were doing inside the house in terms of bodycam footage?

A That's correct. We're not issued body cameras.

Q Okay. So, you're not issued hat and that's the reason why you're not doing that?

A Yes, sir.

Q Gotcha. So, you don't recall if you told Mr. McCall that you were going to shoot the dog and then, at some point, you don't even recall the demeanor of the dog, you don't know if the dog was excited, barking, snarling, playing dead. You don't know anything about the dog at all?

A Correct. I just remember there was a dog in

there.

Q okay. And is that because it's not written in the Declaration of Arrest Report that you didn't draft?

A It is not in that report.

Q So, at some point, you take the dog and you put the dog into the bedroom. Or he puts the dog into the bedroom?

A Into the bathroom.

Q Into the bathroom?

A Correct.

Q Do you recall -- and I want to make sure I'm clear here, where the bathroom was located on Defense Exhibit A of the master bath -- the bathroom at C -- or bedroom C.

MR. SANFT: May I approach, Your Honor?

THE COURT: Yes.

THE WITNESS: So, it would have been as soon as you walk into bedroom C, it would have been on your right here.

BY MR. SANFT:

Q Okay. Can you just put a D next to that and circle it as well?

A Yes, sir.

Q Thank you. And, so, that's immediately to the right of the door as you open the door, and then right there is the bed -- the bathroom?

A Correct.

MR. SANFT: All right. So, I'm going to show you what's -- has not been marked. Your Honor, if I could have these exhibits -- I've previously shown counsel, just marked as Proposed Exhibits B, C, and D, Defense?

THE COURT: Okay.

[Pause in proceedings]

BY MR. SANFT:

Q Did you cause during the course of your search of this residence for photographs be taken?

A Did I what?

Q Did you cause the photographs to be taken of the house?

A I believe Las Vegas Metro took photographs before the search warrant was executed.

Q Okay. So, before the search warrant was executed, they took pictures?

A I believe. I know that's their standard protocol. I don't remember --

Q You don't have to guess. Just tell me whether that's what happened or not. You don't have to tell me if you believe it or --

A I don't remember.

Q Okay. That's fine. But you weren't present when photographs were taken?

A But I was not present you're saying?

Q Right.

A Correct.

Q So you weren't there when somebody was taking pictures of the house?

A I may have been. I don't remember if pictures were taken.

MR. SANFT: Okay. Your Honor, may I approach?

THE COURT: Yes.

BY MR. SANFT:

Q I'm showing you what's been marked as Proposed Exhibit B, C, and D. Defense Proposed. Can you look at those three pictures real quick?

A Yes, sir.

Q All right. Do those pictures fairly and accurately depict the residence -- various parts of the residence at the time of your search on June of 2020?

A I recognize this one picture, the bedrooms closer to the front of the house.

Q Okay. I'll give that to you.

A I don't remember a picture of a door -- this door, as well. I don't remember.

Q Well, I don't really want you to remember a picture of the door, I want you to remember whether that's the door of one of the residents -- or one of the bedrooms

that you went into.

A So, this picture that's just a door handle, I don't remember if that's one of the doors in the house.

Q Okay.

A The picture that has a door that's labeled, I do remember the doors being labeled, the two bedrooms that were up front.

Q Okay.

A And this last picture of the door, I'm not sure which angle this -- so, is this from the inside of the door?

Q I -- don't guess. It's either you know it or you don't.

A I don't know it.

Q Okay. That's fine.

MR. SANFT: Your Honor, if I could just move for admission of Defense Exhibit D into the record? He recognizes this picture.

MR. BEAUMONT: That one that he recognizes, yes.

MR. SANFT: Yeah. Yeah. Cool?

MR. BEAUMONT: Yes. All right.

THE COURT: It will be admitted.

[DEFENSE EXHIBIT D ADMITTED]

BY MR. SANFT:

Q All right. And just for the Court's edification,

that particular exhibit, Exhibit D, that exhibit is in relation to Defense Exhibit A, that's when you first walk in through the front door and immediately to your right. Is that right?

A Correct.

Q Okay. So, that's what you would see if you come in through the front and immediately make that right?

A Correct.

Q Now, in that photograph here, what we have is -- you have -- looks like a name that's on the top here. Right?

A Correct.

Q What does it say on there?

A Victor MS or M and S.

Q Okay. And then this -- there's that door here. Right?

A Correct.

Q And then what's this -- this is the door of the probationer that you're looking at?

A Yes, sir.

Q That's Ms. Colette?

A All right.

Q And was there any other doors here on the righthand side?

A I don't recall.

Q Okay. No bathroom, as far as you recall?

A I don't recall.

Q Okay. But you didn't -- would it be fair that you didn't search in that area, I'm assuming?

A Correct.

Q Did you search inside Colette's room?

A I did not.

Q Okay. Thank you.

A Yes, sir.

Q All right. So, your testimony was that Mr. McCall puts the door -- puts the dog inside the bathroom and you stood where in relation to him putting the dog inside the bathroom?

A Outside of the bedroom doorframe.

Q Okay. Meaning outside the bathroom doorframe, did you break the plane of that doorframe? Do you understand what I'm saying?

A Yes. The bedroom, the master bedroom doorframe.

Q Right. Right.

A While he was moving the dog, I don't recall. I know that I did after he moved the dog.

Q Okay. When did that happen? When did he -- when did you break the frame or break the plane of the doorframe?

A So, after he moved the dog into the bathroom, then

we broke the plane, and cleared the bedroom and the back closet to make sure there was no one else inside.

Q Okay. So the moment -- and he had put the dog in the bed -- in the bathroom because you told him to?

A Correct.

Q Okay. And when he had done that, and he had opened the door, you had then walked through as he's putting the dog in the bathroom to search the closet area?

A Correct.

Q Okay. And just for my edification, since there weren't any video of this, Mr. McCall is putting the dog that's either half alive, sleeping, barking excitedly, growling, snarling into the bathroom and he's focused on putting this dog into the bathroom. Fair?

A Correct.

Q He's not looking at you guys?

A Correct.

Q So, when that happens, you didn't ask Mr. McCall, hey, I'm going to now search the closet area and you need to give me permission to go into your room and search the closet area. Correct?

A I did not ask.

Q Okay. And, as far as you know, who was the other officer that was with you when you were breaking the plane?

A Officer Conroy and Officer Glenn.

Q Okay. So you had three officers that went into that room?

A Correct.

Q All right. Now, just a couple of more questions here and then I'm done.

You have said that after you had -- after -- the room was searched, you had a conversation with Mr. McCall and after you had given him *Miranda*, he had said these things about being found out. Right?

A Correct.

Q Okay. Would it be fair to say, of course, is that -- I mean, you found the stuff that you already knew was in his room, right, after the fact?

A I didn't know if it was in his room.

Q Oh, no. But after you saw that it was in the room, then there was some discussion. Right?

A After Officer Conroy observed shotgun shells in plain view, I asked him if there were any weapons in the room.

Q Okay. So, he observed shotgun shells in the room. Are -- let me get back up a little bit. But no gun, no shotgun, just shotgun shells?

A Correct.

Q In the room?

A Correct.

Q Do you recall what they looked like?

A I don't.

Q Did you ever cause or ask Metropolitan Police Department crime scene analyst, detective, whoever it is that was taking the pictures to take pictures of what you saw when you first walked in in terms of those gunshot -- whatever it was that --

A I did not. I didn't see the shotgun shells. Officer Conroy did.

Q Oh, okay. So, he's the one who saw them. So, obviously, you're standing inside the room. Officer Conroy is standing inside the room, but he was able to see them and you were not?

A Correct.

Q So, he -- what was it x-ray vision? Some type of special ability to move things out of the way so he can see it and you couldn't do it or what?

A When we stepped into the room, I went to the left and he went towards the back, towards the closet.

Q Okay. Meaning that from your angle, you couldn't see what it is that he saw?

A Correct.

MR. SANFT: Okay. Officer -- Your Honor, I have no further questions.

THE COURT: Thank you. Redirect?

MR. BEAUMONT: Just a couple, Your Honor.

REDIRECT EXAMINATION OF ROBERT CROWE

BY MR. BEAUMONT:

Q So, in your training and experience as an officer conducting these home checks, have you ever encountered dogs before?

A Yes.

Q All right. And, based on your training and experience, does a strange dog bite?

A Yes.

Q Do they sometimes not bite?

A Yes.

Q All right. So, fair to say, you can't be sure?

A Correct.

Q All right. So, based on the notion that you can't be sure of whether a dog's going to bite, in your view, would a dog present a danger to officers, as a person would?

A It could.

Q So, did you see -- for purposes of clarity, I'm going to refer to it as outdoor man, the fellow that you encountered outside of the residence before you came in. Did you see outdoor man inside the house prior to opening Mr. McCall's bedroom?

A I did not.

Q All right. So, it's fair to say that he might have been in that room?

A Correct.

Q And you said that in your understanding, Officer Wilson had never been to that house?

A Correct.

Q And so it's fair to say that you wouldn't have had a reason to go to that house either?

A Can you repeat the question?

Q Would it be fair to say that you had no reason to go to that house either?

A Correct.

Q All right. And had you gone to that house before?

A I had never been there before.

Q And, so, you had never been inside the home?

A Correct.

Q And, so, at that point, you wouldn't have been familiar with the layout?

A Correct.

Q And you didn't know what you might find inside that house. Correct?

A Correct.

Q So, after Officer Conroy informed you that he saw shotgun shells in the room, did you conduct any further searches of the room prior to speaking to Mr. McCall?

A I did not.

Q And you didn't do any searches before you spoke to him post-*Miranda*. Correct?

A Correct.

MR. BEAUMONT: No further questions. Actually, I'm sorry. One more question.

BY MR. BEAUMONT:

Q As you've never been to this home before and you were assisting Officer Wilson, would you have gone directly to Ms. Winn's room without conducting a protective sweep?

A Can you repeat the question?

Q Would you have gone to Ms. Winn's bedroom in this event without conducting a protective sweep?

A No.

MR. BEAUMONT: All right. No further questions.

THE COURT: Any recross, Mr. Sanft?

MR. SANFT: Yes, Your Honor.

RECROSS-EXAMINATION OF ROBERT CROWE

BY MR. SANFT:

Q With regards to the protective sweep, you understand the relationship between the three individuals that you found in the house?

A I do not know how they're related to each other.

Q Okay. So you don't know if they're related, married, dating all each other, whatever. Right? You

don't know anything about that?

A Correct.

Q Okay. Now, you had mentioned earlier about outdoor man, wouldn't it be fair -- you just told the Court before that you don't even know if that was Mr. McCall or not?

A I have no idea who --

Q Okay.

A -- I saw outside.

Q All right. So, it's not like you said: Oh, there's Mr. McCall, so there must be another person in here because that's not the outdoor man I saw before. Right? You can't say that here in court, can you?

A Can you repeat the question?

Q Meaning you can't turn around in here and go: Oh, okay, I saw -- I see this guy now that looks like -- he's identified himself as Mr. McCall, but that's not fitting the description of the person I observed and surveilled as the quote/unquote, outdoor man, that the State had just referenced earlier. Right?

A Correct.

Q Now, also here, regards to -- just based upon the dog's demeanor, I mean, if the dog's wagging his tail and coming up to you and wanting to get petted, I mean, you understand the difference between a dog like that and a dog

that obviously is really ticked off that you are now breaking the plane and going into his house or her house. Right? I --

A I don't try to predict what a dog's going to do. I've been attacked by a dog while in a house and sometimes the dogs that seem nice are actually really scared and as soon as you get close, they're not as nice. So, --

MR. SANFT: Sure. Okay. I have no further questions, Your Honor.

THE COURT: Thank you. Mr. Beaumont, do you have another witness after this?

MR. BEAUMONT: Yes.

THE COURT: Okay. Is it going to be a little more -- with regard to the timeline or should I ask my questions of this officer, a couple of questions, regarding the timeline.

MR. BEAUMONT: I guess my officer that would testify next has a different base of knowledge, but I think that Officer Crowe could testify to any timeline questions.

THE COURT: Okay. Officer, so, the person that you saw sitting on the couch, at what point did you see the person sitting on the couch? Upon entering?

THE WITNESS: No. I saw him after I had come back from Mr. McCall's bedroom and everything that we had just discussed.

THE COURT: Okay. So you had already gone to the back of the house and came back and saw this person who you didn't know sitting on the couch?

THE WITNESS: Correct. Other officers had been dealing with him.

THE COURT: Okay. And at what point did you find out that Mr. McCall was a convicted felon?

THE WITNESS: I knew that prior to going into the residence.

THE COURT: And that was based on the letter?

THE WITNESS: It said his name and I did a records check in the Parole and Probation records.

THE COURT: Okay. And, so, then, just to confirm, the letter only mentioned Ms. Winn and Mr. McCall?

THE WITNESS: Correct.

THE COURT: As living in the home?

THE WITNESS: Correct.

THE COURT: Okay. Thank you. Any follow-up based on that?

MR. BEAUMONT: No, Your Honor.

THE COURT: Thank you.

THE WITNESS: Thank you.

MR. SANFT: Your Honor, if I could, please?

THE WITNESS: Yes, sir.

THE COURT: Oh, sorry.

MR. SANFT: Just one quick question with regards to the start in this case.

It's kind of difficult to have this kind of hearing without having all of the discovery on the matter and it seems that particular point, being so close to trial, that this piece of information would have been very important to consider prior to today's hearing. Now, I was thinking about objecting to it earlier but my -- the problem is now that the Court's raised that issue in terms of asking about what the content of the letter is. We don't even know what the letter says for the four corners of the document that it stands for. And, as a result, I don't know what to do about that. I would like an opportunity to review that letter, because I think that that would be fair, prior to any further testimony from anybody else in this matter. I don't necessarily want a continuance, but I'd like to see the letter.

THE COURT: Do you have a copy of the letter?

MR. BEAUMONT: I could print the letter out. I just received it today. This is based on -- Your Honor, I'm sorry.

These officers that I subpoenaed from Parole and Probation, I found out very late that they didn't get the subpoenas. Because of the short turnaround time, I believe there's some sort of IT issue involved. So, I've been

reaching out to them all weekend. So, during the course of our conversations, getting everyone together for this, Officer Crowe provided me an e-mailed copy of a picture that he took of the original note. So, I suppose as long as we stipulate to its authenticity, I could print it out. It would just take five minutes of me running back to my office, print it out, bring it back.

THE COURT: Okay. One second though. Are we -- this is on for central calendar call on the 17th. Right?

MR. BEAUMONT: Yes.

THE COURT: Not readiness? Okay. Let me see.

Okay. Is that going to be sufficient if he goes and prints it out and --

MR. SANFT: Well, I mean, I guess the problem is I don't know if I want to stipulate to anything to do with the authenticity of the letter. I mean, you know, it -- this is a surprise. It just kind of drops the -- there's nothing mentioned in any of the discovery I have, which is not much. And, so, as a result of that, I don't think I can.

MR. BEAUMONT: And, in all candidness, Your Honor, when I received the letter without knowing who it's from, I have no way to authenticate who it came from. I was concerned about admissibility issues. So, rather than admit the actual letter, Officer Crowe, who read the

letter, had the foundation to testify to its contents. Not for the truth of the matter, but just for the purposes of what he did in his investigation as a result of seeing that letter.

THE COURT: Okay. And you guys are third up to go and I know Mr. McCall is out, but Ms. Winn is still in custody?

MR. SANFT: He's not in custody, Your Honor.

THE COURT: No. I said he's out, but Ms. Winn is in.

MR. SANFT: Yes. And, Your Honor, I guess the only issue is I do have a murder trial that started on March 5 -- or, I'm sorry, April 5th, in front of Judge Villani that's a firm setting as well with Marc DiGiacomo and that would -- I want to say that's probably going to be like a week and maybe a couple of days. So, I don't know when this trial is supposed to be set for but --

THE COURT: The 20 -- they said the 22nd.

MR. SANFT: Of March?

THE COURT: Right. But, you know, the way it's going, you're going to be trailing, presumably, if the other two get set.

MR. BEAUMONT: Anecdotally, --

MR. SANFT: Right.

MR. BEAUMONT: -- Your Honor, I'm also in trial at

this moment. My trial started on Friday afternoon because of the way we've been stacking them is if you're not first or second then --

THE COURT: Right.

MR. BEAUMONT: -- you're probably on Friday.

THE COURT: Okay. So you're the one with Judge Yeager?

MR. BEAUMONT: Correct.

THE COURT: Okay. Well, I mean, --

MR. SANFT: I know. I know. It's just a --

THE COURT: I mean, Covid has created a mess. I'm not sure what we can do. I mean, obviously, this was a quick turn around and the quick turnaround was because you guys were set for calendar call on the 17th. So I was just trying to resolve the motions issues before you got there, but, obviously, --

MR. BEAUMONT: And I believe that -- I believe, honestly, that we can resolve this issue today with the officers that I was able to get together for today. Officer Wilson could not be here. Officer Glenn could not be here, but I don't believe that their testimonies are necessary.

MR. SANFT: And I have -- I would object to that because I think that Officer Wilson, the primary officer that started the whole business of the search, is the most

important officer and should be here because the issue is, once again, this is -- and I'm sorry. Do we need the witness to be on the stand for this?

THE COURT: Oh, no. I'm sorry.

THE WITNESS: That's all right.

THE COURT: We just started going. Sorry.

MR. SANFT: I know. I'm sorry. I didn't mean to leave you up there.

THE WITNESS: [Indiscernible]. It's all right.

[Witness exits courtroom]

MR. SANFT: Officer Wilson is the person that conducts this -- she's the one that makes the determination that this is going to be conducted in this way and this is her very first search -- I mean, going into the residence, to actually have a conversation. As a result of that, I think that her testimony is the -- it's like any other case that we would have where the last detective to testify is the one who is the primary officer that's responsible for the totality of the case and can answer any question that's out there because that officer is the one that's responsible. We don't have that in this case. What we now are going to have is hearsay issues over and over again as to who knew what, who knew what, who knew what, and it's not all based upon, oh, your impression was this and you learned about that. Like, I've got to have detective --

or, no, Officer Wilson up here to testify to that issue, to whatever the question is that's going to be posed -- the basis for their stop -- or her -- them going into that house. Why did they decide to do it the way that they did? Because, you know, Officer Crowe testified right now. I get it. You can dance around the issue of hearsay all day, but I'd rather speak to the source.

MR. BEAUMONT: And, Your Honor, with this letter, the source is the person who wrote the letter. Any one of these officers who then received and reviewed that letter have the exact same basis to testify as to its contents. Officer Crowe saw it, Officer Conroy saw it, and Officer Conroy can also testify as to events that occurred in Officer Wilson's presence that Officer Crowe could not. I'm -- with Mr. Conroy's -- or Officer Conroy's testimony, he can fill in the gaps in time as to what happened in between Officer Wilson learning of this tip and actually picking up Ms. Winn, going to the house, opening the door. He's in that car, for a lack of a better description.

So, if we continue it for Ms. -- or for Officer Wilson's testimony, it's not going to add anything to the proceedings, as far as getting information that we wouldn't know. Her basic knowledge, again, is the exact same base of knowledge as Officer Conroy and Officer Crowe as to this -- to -- regardless, even without the tip, the basis for

searching the house in the first place isn't relevant as to the search for Ms. Winn because she's on probation and she can be searched at any time without reasonable suspicion.

THE COURT: But I think the issue is whether it goes to the protective sweep.

MR. BEAUMONT: Right. And that's the protective sweep. But, again, her knowledge is going to be no different than any of Officer Crowe's knowledge in that they all had apparent access to this letter or this tip and Officer Crowe read it. Officer Conroy, I believe, also read it and was along with Officer Wilson when they took Ms. Winn to the house.

So, there's nothing to be gained by putting Officer Wilson on the stand because there's nothing that she knows directly regarding this search. And the basis for the protective sweep that Officers Crowe or Conroy would not know.

THE COURT: No. I understand. And I understand, Mr. Sanft, trust me. There were plenty of times where I wanted specific officers called and they weren't, however, my concern now is this letter because that -- I -- and I -- that's my fault. I assumed it was handed over to him prior to this hearing when you guys were talking about it at the beginning because that would have been a basis to cross this officer on since he did read it and he went into the

house.

MR. BEAUMONT: Right. And I just got the e-mail from this officer --

THE COURT: No, I'm not blaming you. I know. I know --

MR. BEAUMONT: -- at some point this morning.

THE COURT: I'm just saying that he could have used the letter to cross him and now we're here.

MR. SANFT: Right.

THE COURT: So, --

MR. SANFT: Well -- and, I'm sorry, Judge. Go ahead.

THE COURT: Oh, no. Go ahead.

MR. SANFT: I think the question is is what -- you know, I don't want to muddy the record. I don't. But, second of all, there is value to Officer Wilson's testimony. For instance, Officer Wilson can tell me -- or tell the Court, for instance, the -- maybe what she learned about the house prior to deciding that she was going to go into the house. Did she have a conversation with Ms. Colette about where her room was located, for instance? Or who else lived in the house, for that matter? Things that I think are basic things that happen when you say: I fear officer safety. So, we're going to get as much information together as we can, prior to invading into this home, and

doing what they did.

I think Officer Wilson is the only person that can really do that because the buck stops with her. She's the one responsible for making sure that her fellow workers are all apprised properly and conduct that due diligence that needs to happen prior to them walking in hot and heavy with their badges and their guns and their tactical vests on. I think she's the only person that can do that. And, as a result of that, I want her here. I want to be able to cross-examine her on that issue because I think it goes to the core of the protective sweep. What basis do you have outside of a bare-faced allegation of the letter? That's the question of the day that I don't know how anyone else can answer outside of the primary officer responsible for the search of the home, which is Officer Wilson.

MR. BEAUMONT: And, Your Honor, the person who is primarily responsible for the search in question is Officer Crowe and Officer Conway. Whether Officer Wilson was there because she's supervising the probationer Winn isn't relevant to the search of Mr. McCall's room and the search that was conducted as the protective sweep. While Ms. Wilson was with Ms. Winn, her knowledge wouldn't have had anything to do with anything that happened during this protective sweep. Again, it was Officers Crowe and Conroy and their responsibility, as he was testifying, he was

tasked to conduct a protective sweep to make sure that there was no one else at the residence. He was the one conducting surveillance prior to, to see whether there were people coming in or out and were. He was the person next to the door along with Officer Conroy who watched all of this happen, as far as putting the dog in the room. Any conversation that was had with Mr. McCall was with Mr. Crowe -- or with Officer Crowe and with officer Conroy.

So, the relevant officers are those two. Potentially Officer Glenn as well, who waw a standby officer as well and wasn't involved in the protective sweep, as Officer Crowe's already testified. So, anything that Officer Wilson would testify to as to the protective sweep or anything that was part of Mr. McCall's bedroom, again, would all be hearsay. So we would be in the same position --

MR. SANFT: No.

MR. BEAUMONT: -- as we are now because she would only be testifying as to what Officer Crowe saw or what Officer Conroy saw or what Officer -- potentially, Glenn, would have seen. So, her testimony wouldn't add anything to the rationale for the protective sweep in the first place, which, again, came from Officer Crowe, his observations personally at the scene, his records check, and his personal knowledge of seeing the same note that

Officer Wilson had.

THE COURT: Mr. Sanft?

MR. SANFT: I apologize for interrupting.

MR. BEAUMONT: No.

MR. SANFT: I just got a little excited.

Well, that's the problem that I have is that the basis to even get the ball rolling is Officer Wilson.

THE COURT: I know.

MR. SANFT: So, --

THE COURT: I understand. So, I can't, obviously, direct the State on who they can call, but if you're asking me to continue it, one for the letter, and, two, if you want to subpoena the officer on your own, then that's a different story. I can't really tell him -- I can rule based on what I heard, you know? But I agree that the letter is an issue and, I mean, would it be preferable for Officer Wilson to testify? Sure. But we're still in a conundrum of the trial calendar call on Wednesday.

MR. SANFT: I know. I know.

MR. BEAUMONT: And, Your Honor, I -- my argument here is that given five minutes, I can print this letter, I can give it to Mr. Sanft, he can review it. We can recall Mr. Crowe. He can cross-examine Mr. Crowe on all of the contents of that letter, which, again, from my limited view of the letter today, there is no signature. There is no

name. It's an anonymous letter. So, and that's why I did not feel comfortable putting an anonymous letter from an anonymous source, an anonymous tip into the record. And that's why I didn't introduce it.

And I believe that through his testimony, and personal observation, that he can testify to. But, again, if Mr. Sanft wants to cross-examine him. We can recall Mr. Crowe. He's outside. And it would take him a total of five to 10 minutes.

MR. SANFT: I don't -- I just don't know if that's enough. I mean, that's the problem that I'm having and I -- here's my concern at this particular point. I remember having this discussion, this debate over this letter. I think we continue it just for the fact that we need to provide that witness now because, if we don't, and for some reason in the future there's some PCR issue with regards to whether I'm not -- I should have insisted on providing Ms. Wilson to testify, what do I say to that? You know, based upon the record that we're laying here today.

So, as a result, I think, just to clean this thing up, we provided Ms. Wilson. She can get up on the stand and testify and then that will help at least establish why they believe, when they were prepping for this, that they had to go in there hot and heavy and do an officer safety sort of check. Do you know what I'm saying? Because if we don't

do it that way, and I think what happens is we lay -- we have that door open for some PCR issue in the future or some appellate issue in the future and I don't want to leave the record that way.

MR. BEAUMONT: And I understand Mr. Sanft's concerns, but, again, if we put Officer Wilson up there, her basis of knowledge does not change Officer Crowe and Conroy's actions as far as the protective sweep goes. Their decision to conduct the protective sweep was based on their personal knowledge and their observations of a tip that they collectively were privy to.

MR. SANFT: So, and I guess the issue that I have with the State's representation at this point is it sounds to me like no one made the decision, but everyone did. Right? Oh, I see a letter here. You know what? Even though it's not my case and my probationer, we're going to conduct an officer safety check now. It doesn't work that way. But one officer that would be responsible for making that call gathers the other people together and say: I want to conduct an officer safety check because of this. Let's have a meeting. Let's talk about how we're going to do it. Let's do it that way. They don't sit around and go: Oh, by the way, here's this letter. What do you guys want to do with that? Oh, I think it should -- it's a level of officer safety.

I don’t see it that way. Maybe it's that. I don't know. But I’m saying I think we need to have that testimony in order for us to make the record clean.

THE COURT: I think --

MR. BEAUMONT: And, I think, sorry, Your Honor. And just one final thing. I -- Officer Crowe did also testify that in these situations they conduct officer safety sweeps as a normal and a -- not in the normal course of business wasn’t his testimony, but it’s standard to conduct these officer protective sweeps because, as he said, he’s run into situations with dogs that have attacked him. This is not an uncommon occurrence to protect the other officers that you’re on the scene with for these probationer searches. This wasn’t an aberration. This was a normal and standard activity.

THE COURT: I would agree, but I think the circumstances here is the fact that there’s multiple residents and there’s individual rooms and, in this case, there wasn’t even an arrest. I mean, the officers were with the resident. They wanted -- there was a probationer and -- whose room that they, presumably, wanted to search. So, she was already in their custody. So, this is a little bit different, at least in the Court’s view.

MR. BEAUMONT: I guess different as to how? Just to clarify.

THE COURT: Well, for protective sweeps. I mean, typically, they're done either incident arrest or -- and that's usually in the immediate area. If they have a reasonable belief that something else is in the house that is dangerous, which, obviously, goes to his point of who all they knew ahead of time, and what this letter actually says, which is why I asked the Officer that question, but also the amount of people living in there. That's a little bit different than if it was just the probationer's house and they were going in.

MR. BEAUMONT: And that's -- I guess we might be getting a little too far into argument at this point.

THE COURT: I know.

MR. BEAUMONT: So, --

THE COURT: That's because --

MR. BEAUMONT: I don't want to stray too far.

THE COURT: So my preference -- the Court's preference would be to have Officer Wilson and give him the letter. Now, I understand if you don't want to call Officer Wilson, but, you know, are you completely opposed? Like what -- I know we have calendar call. This is already a mess. I'm not happy with this record.

MR. SANFT: I guess the issue is if Mr. Beaumont is still in trial and I am going to be in trial, I don't know wherein this trial is going to actually happen if we

fall in what? Number two? Or number three?

THE COURT: Three. You're number three.

MR. BEAUMONT: Yeah. And more directly, I don't know if --

THE COURT: And actually now you're two because I -- the one just dealt right before you came in here. So you're number two to go.

MR. BEAUMONT: And, more directly, Your Honor, I found out that Officer Wilson wouldn't be available I want to say early Sunday morning. So, I reviewed everything that I could with the officers that I could contact and I fully believed that I can conduct this hearing and establish the evidence that I need to establish and argue what I need to argue with the officers that I do have. And I don't think it's necessary to call Officer Wilson.

More to the point, I would have asked for a continuance if I thought that Officer Wilson's testimony was essential, but not knowing when Officer Wilson would be available, I really couldn't make a good faith motion for a continuance because I -- all I know is that she's unavailable and I don't have a return date.

MR. SANFT: Well, let's do this then. If the State is insisting on doing it, then let's go forward with it and then I'll keep making my objections, and then we'll just definitely even muddy up the waters even more, and,

then, at that particular point, we'll have some issues that I can take up on an appeal. I mean, you know, that's what we're going to end up doing because it's going to be hearsay, hearsay, hearsay. I learned it this way; I learned it that way. And nothing truly from the source. But we can go forward with it. I mean, if the State believes that they have sufficient without having to bring in the primary officer responsible for the actual search itself, then let's go ahead and go forward with it.

MR. BEAUMONT: And, again, just to the record, I don't think that it's an issue that's going to be resolved by calling Ms. Wilson because, again, if these officers received an anonymous letter from an anonymous source, each of them have the same basis of knowledge to testify to it. So, if the Court considers Officer Crowe's testimony hearsay based on him viewing an anonymous tip letter, then Officer Wilson's testimony will be similar hearsay based on the receiving that same letter and any of these officers would be hearsay as well.

So, the -- their testimony is based on what they all personally observed, which was the letter. Again, I didn't have the witness who wrote this -- or the person who wrote this. I would have loved to have called that person. I don't know who that person is. But, I believe, based on, again, Mr. Crowe's protective sweep and based on what will

follow with Officer Conroy, that we have sufficient officers here to explain and inform the Court as to the actions occurred.

THE COURT: Okay. Mr. Sanft, do you want a copy of the letter now before we proceed with the next officer?

MR. SANFT: Sure.

THE COURT: Okay. So do you want to -- you said about five or 10 minutes?

MR. BEAUMONT: Yeah, five or 10.

THE COURT: Okay. We'll be in a brief recess.

[Recess taken at 3:09 p.m.]

[Hearing resumed at 3:39 p.m.]

THE COURT: Okay. Guys, we've got to get back on the record so that's going to have to wait.

MR. SANFT: Sorry, Your Honor.

THE COURT: Back on C-20-350999-2, *State of Nevada versus Charles Wade McCall*.

MR. BEAUMONT: Your Honor, if we could -- sorry.

THE COURT: Oh.

[Colloquy between counsel]

[Pause in proceedings]

MR. BEAUMONT: Your Honor, if we could approach?

THE COURT: Sure.

MR. SANFT: Are we off the record?

THE COURT: Yes.

[Recess taken at 3:40 p.m.]

[Hearing resumed at 3:44 p.m.]

THE COURT: So, recalling Officer Crowe?

MR. SANFT: Yes.

[Pause in proceedings]

THE COURT: One -- now we're having technical difficulties.

THE COURT RECORDER: I know.

THE COURT: Let's just add that to the madness, please.

THE COURT RECORDER: I'm just going to shut down real quick, if I can?

MR. SANFT: All right.

[Pause in proceedings]

THE COURT RECORDER: Okay. I think it's working now.

MR. BEAUMONT: Your Honor, --

THE COURT RECORDER: I don't know what's [indiscernible].

THE COURT: Okay.

THE MARSHAL: Please step up. Please face the Clerk to your righthand and please remain standing.

THE CLERK: Same person.

THE COURT: Yes. We're going to recall him.

THE CLERK: Reswear him?

THE COURT: No. You realize you're still under oath though?

THE WITNESS: Yes.

THE COURT: Okay. That's fine. Thank you.

Do you want a chance to direct him with the letter first or are we going to go straight to cross?

MR. BEAUMONT: I can direct him, just briefly.

THE COURT: Okay. Mr. Beaumont.

MR. BEAUMONT: Counsel's marking it.

THE COURT: Go ahead.

MR. BEAUMONT: Oh, --

THE COURT: Oh.

RECALL WITNESS ROBERT CROWE

DIRECT EXAMINATION OF ROBERT CROWE

BY MR. BEAUMONT:

Q Officer Crowe, you've testified that you came across a letter in your investigation regarding Ms. Winn and Mr. McCall. Correct?

A Yes, sir.

Q All right. I have what's been marked as Proposed Exhibit E, showing it to the defense. Permission to approach?

THE COURT: Yes.

BY MR. BEAUMONT:

Q All right. Do you recognize Proposed Exhibit E?

A Yes, sir.

Q And how do you recognize it?

A It's the letter that Officer Wilson showed me and that I provided to you.

Q Okay. And is this a fair and accurate representation of the letter that you reviewed prior to conducting the investigation of the Winn case?

A Yes.

MR. BEAUMONT: Move to admit.

THE WITNESS: Yes. Oh.

MR. SANFT: No objection, Your Honor.

THE COURT: That will be admitted.

MR. BEAUMONT: Thank you, Officer Crowe.

[EXHIBIT E ADMITTED]

BY MR. BEAUMONT:

Q All right. So, you testified that in this letter there was information that there were weapons and that Ms. Winn was conducting illegal activities. Correct?

A Yes, sir.

Q All right. And then there was a reference to Mr. McCall in the letter, too. Correct?

A Yes.

MR. BEAUMONT: All right. Pass the witness.

THE COURT: Mr. Sanft?

CROSS-EXAMINATION OF ROBERT CROWE

BY MR. SANFT:

Q Have you ever spoken to Ms. Colette Winn?

A No. I haven't.

Q Okay. And that's because that's not your person that you're responsible for. Right?

A Correct.

Q Any of the other officers that we talk about here, Hillure, Jacobs, Page, Conroy, and so forth, are they responsible for Ms. Winn?

A Officer Wilson was her supervising officer. So, no.

Q Okay. Meaning, you -- do you know if any of these other officers spoke directly to Ms. Winn in preparation for the visit that occurred in June of 2020?

A Correct. I don't think they did.

Q Okay. Meaning that that's not part of the common standard or operating procedure with regards to how you handled your own individual cases. Right?

A Yes, sir.

Q Now, this letter that we have here, how do you know that this is legit?

A Legit?

Q Meaning -- okay. I'm showing you State's -- or Defense Exhibit E, this is the copy of the letter that you saw. Is that fair?

A Correct.

Q Do you want to take look at it again to make sure?

A No. I know that's the --

Q Okay. Okay. So, I mean, how do you know that this letter was legitimate?

A What do you mean by legitimate? That -- thinking that it was factual?

Q Well maybe -- well, let me ask you this. How did this letter exist? Like who received this letter in your office?

A Officer Wilson.

Q Okay. You didn't receive it and give it to Officer Wilson?

A Correct.

Q Well, would it be fair to say right now that you're even assuming that Officer Wilson got it first? You don't even know that, do you?

A No. She got it in her mailbox. That's what she -- that's how she got it.

Q Okay. And was it in an envelope?

A I don't recall. That would be a better question for her, but --

Q Yeah. So, once again, you don't know if it's in an envelope, you don't know if it was mailed to her, you don't know if it was just dropped off, you don't know if

there was postmark on it. You don't' know anything about that at all?

A Correct.

Q Okay. And with regards to this particular document here, when I ask you whether it's legitimate -- you did the surveillance. Right? You testified to that earlier?

A Yes, sir.

Q Do you recall reading in the letter -- it says here that Ms. Winn had purchased two vehicles, a Mazda 323 and a BMW 3 Series.

A Yes.

Q Do your remember that?

Did you observe a Mazda 323 and a BMW 3 Series parked outside when you were conducting surveillance?

A I did.

Q Where were they parked?

A At the residence.

Q Okay. Is that in any of the reports?

A Don't believe so.

Q Okay. Did you ever cause some pictures to be taken? Because that -- anything like that?

A No.

Q Okay. And with regard to those particular vehicles, did you ever confirm that those vehicles were

purchased and owned by Ms. Winn?

A I did not. She arrived at our office in one of those vehicles.

Q Okay. But, once again, did you confirm, individually, besides anybody else in your team, that she owned those vehicles and purchased them?

A I did not.

Q All right. Now, with regards to her having no job. Did you know if she had a job or not?

A I do not know.

Q And the -- you said she arrived in one of the vehicles. The BMW 3 Series?

A Yes.

Q And the Mazda 323 was parked outside, too?

A Yes.

Q Okay. And you don’t know if that’s her vehicle?

A I don't know.

Q Do you know how many computers were found in her room?

A I do not know.

Q It says here three. Do you know if there were three computers that were found in her room?

A I don't know how many computers were found in her room.

Q Okay. How about a PayPal card in her purse? Do

you know if that -- if she had a PayPal card in her purse?

A I do not.

Q how about the issue of the -- do you know what colors the computers were?

A I do remember there was a red one, which it does state in the letter as well.

Q Right. Do you know what was on that computer, on the red one?

A I do not.

Q Do you know if she had $3,500 in cash?

A I do not.

Q Because that's what's in here. Right?

A That's what the letter states. Yes.

Q Yeah. Now, before I keep going on and on and on with all of this, I'm just saying right now. All you know is that you had a piece of paper that said something to do with something, but you don't -- you can't verify to this Court here today --

A Correct.

Q -- any of this information, outside of the fact that she showed up in a BMW 3 Series to the office?

A And that we found guns and narcotics in the residence.

Q In her room?

A No.

Q In my client's room?

A Correct.

Q Okay. Let's see here. I'm just trying to find where it says the guns for -- and so forth.

A I think it's near the bottom. I was trying to find it when you guys showed me, too. It was a little too quick for me to read the whole thing.

Q Can you just look, because I don't see it on -- I'm just a really bad reader. I can barely read. So, if you can just take a look at it yourself because I can't see it.

[Pause in proceedings]

THE WITNESS: Weapons might be found, so be careful and God bless you.

BY MR. SANFT:

Q Okay. So weapons might be found. You said drugs and guns for Mr. McCall.

A What's the question?

Q Well, I guess, the question is when it says there at the bottom -- if it's saying Mr. McCall has guns and weapons, God bless you?

A It does not say who would have guns or weapons. It just says --

Q Okay. Can you --

A -- weapons might be found. So be careful.

Q Okay. Guns might be found, so be careful. Meaning what kind of reference do they have to Mr. McCall in that letter?

A Just that he lives at the residence.

Q But outside of that, no specific reference to him owning, possessing firearms in his bedroom. Right?

A Correct.

Q But still that was enough for you guys to do the officer safety hot and heavy, go in there, and walk into the bedroom. Right?

A Officer safety security sweep, yes.

MR. SANFT: Gotcha. All right. I have no questions, Your Honor.

THE COURT: Thank you. Any redirect on the letter?

REDIRECT EXAMINATION OF ROBERT CROWE

BY MR. BEAUMONT:

Q Does the letter refer to anyone's room?

A It states: Colette Winn is also slinging drugs out of the far back bedroom.

Q All right. And the far back bedroom, earlier you testified and drew in your diagram that the bedroom in which you found Mr. McCall's items was near the back of the house. Correct?

A Correct.

Q And is it fair to say that the letter refers to the residence generally regarding Ms. Winn's affairs?

A Yes.

MR. BEAUMONT: No further questions.

THE COURT: Thank you.

MR. SANFT: Nothing, Your Honor.

THE COURT: Thank you, Officer Crowe. Sorry about that.

MR. SANFT: And, Your Honor, if we could just instruct the witness not to disclose the contents of today's hearing with anybody else outside that's going to be testifying?

THE COURT: Yes. You're advised not to speak about any other officers about --

THE WITNESS: Yes, ma'am.

THE COURT: -- the testimony.

State, you can call your next witness.

MR. BEAUMONT: State calls Officer Conroy.

THE COURT: Oh, give him a second.

THE MARSHAL: No, it's all right.

THE COURT: Sorry.

[Pause in proceedings]

THE MARSHAL: All right. Please step up. Please face the Clerk to your left and please raise your right hand.

SEAN CONROY

[having been first duly sworn, testifies as follows:]

THE CLERK: Please be seated. Would you please state and spell your first and last name for the record?

THE WITNESS: Sean Conroy, S-E-A-N C-O-N-R-O-Y.

THE COURT: Thank you.

THE CLERK: Thank you.

DIRECT EXAMINATION OF SEAN CONROY

BY MR. BEAUMONT:

Q All right. Mr. Conroy, what is your occupation?

A Parole and probation officer for the State of Nevada.

Q All right. And how long have you been in that position?

A About three years now.

Q And were you performing your duties as a probation officer on June 25th, 2020?

A Yes.

Q And did you have an occasion to respond to 1209 Ingraham Street, Las Vegas, Nevada on that day?

A Yes.

Q And is that in Clark County?

A Yes. It is.

Q All right. So what caused you to respond to that location?

A So, my partner, Officer Wilson, received a letter stating that one of her probationers had fraudulent credit cards, and possibly guns, and possibly drugs in the residence, and other felons were there.

Q All right. And you said Officer Wilson is your partner. Did you assist Officer Wilson in anything related to this event?

A Yes.

Q And what did you do?

A So, subject showed up to the office and we questioned her about some things. We cuffed her, and placed her into custody, and searched her car. And, then, we transported her to the residence.

Q All right. So you transported her to the residence yourself or with anyone else or --

A Me and Officer Wilson. I drove and then Ms. Colette was in the back.

Q All right. So, Ms. Wilson was in the front seat?

A She was in the back.

Q Okay. She was with --

A With --

Q She was with --

A She was with Colette.

Q All right. And what were you driving at the time?

A I believe it was my Malibu.

Q Okay. Is that your --

A State issued --

Q -- State issued car?

A Right.

Q Okay. All right. So, on the way to Ms. Winn's residence, did you have a conversation with Ms. Winn in the vehicle?

A Yes. We asked her if there was going to be people there, who would also be at the residence, how to get into the residence since she didn't have keys on her, and she gave me her -- the couple passcodes. She didn't know what the combination would be to her residence because of the -- that keypad.

Q Sorry. Just to clarify. You said she didn't have keys to her own home?

A Correct. She said that it was only a keypad.

Q And you said that she gave you codes, plural. Correct?

A Yes. She was confused on whether it was one set of numbers or another set of numbers. So, she wasn't sure.

Q Okay.

A It was one or the other.

Q So she -- just to clarify, she wasn't sure of the code to her own residence. Is that correct?

A Correct.

Q Okay. Did you believe she was being truthful with that information?

A No. I did not.

Q And why do you say that?

A Because I -- when you enter your residence, you know your residence -- you lock up, you get in. So, you have a passcode to your house or a key. You know, you'd have it either memorized or on you.

Q So, --

A Sorry. It felt like she was trying to make it so that whoever was in the residence, it could make them aware or we -- so we could knock on the door or whatnot.

Q Okay. So you're testifying that you felt that she was trying to --

MR. SANFT: I'm going to object to this as speculation, Your Honor.

THE COURT: Sustained.

MR. BEAUMONT: I'll rephrase.

BY MR. BEAUMONT:

Q So, you felt that she was being dishonest about whether or not she knew the code to her own home. Correct?

A Correct.

Q Okay. And when you got to the front door with Ms. Winn, did she try to enter a code?

A No. I entered the code. So, I started with the

one that she gave us last, not the first one.

Q Okay. So how many codes in total did she give you before the correct one?

A So, she gave me two codes total. And that was in the vehicle. So, I just went with the last one.

Q And you said that she said something about roommates or other people in the house?

A Yeah. She said there would be other people at the house and in the letter we received was a parolee's name that we knew just got off parole.

Q Okay. So it wasn't just the parolee's name, there were other people?

A Excuse me?

Q I'm sorry. There was more than one person besides that parolee at the residence?

A Yes.

Q Correct? From what she told you?

A Yes.

Q Okay.

A She said she had two roommates.

Q Okay. Do you remember, by any chance, if she named the roommates?

A I can't recall at this point. I remember we asked her about the Defendant because his name was in the letter and she said he was there.

Q But you don't remember the other name?

A No.

Q Okay. All right. So, after you got the correct code from Ms. Winn and you entered, what happened next?

A We went into clear the residence. Both roommates started to come out of the -- their rooms into the common area. We were, you know, calling out police and letting them know that we are with Parole and Probation. And the Defendant and the roommate came out, separate rooms, and the Defendant had a dog with him. And we asked him to put the dog away. And he put him in the back room.

Q Okay. So, --

A And then we went through to clear the house.

Q Now, back up a second.

A Okay.

Q Before you entered the residence, you said you knew that Mr. McCall was a felon. Correct?

A Correct.

Q And you said that you reviewed the letter that gave you concern prior to searching the house?

A Correct. And I also spoke with his old PO.

Q His old PO?

A Yes.

Q Okay. So, based on the information knowing that Mr. McCall was a felon and in the home, did it give you

concern when you saw him with a dog?

A Yes. I did.

Q And why is that?

A Just because whenever there's an animal there, we don't know what they'll do or how they act. So, just from experience, some dogs are friendly. Other ones get upset or bite.

Q All right. So, after you encounter Mr. McCall with the dog, what did you do?

A We pulled him aside and we asked him to put the dog away. As we cleared -- me and Officer Crowe cleared the back room and his room. So, we asked him to put the dog in the master bedroom/bathroom after I visually cleared it.

Q Was that the bedroom that he came out of?

A Yes.

Q Okay. So, while you were talking to Mr. McCall about the dog and the bedroom, did you have a view of Officer Wilson?

A She was with Ms. Colette in the living space.

Q Okay. And did she stay there with Ms. Winn?

A Yes. She did. She stayed there with her and the other roommate.

Q Did you receive any instructions from Ms. Winn regarding the protective search?

A Excuse me?

Q Did you receive any instructions from -- I'm sorry. From Ms. Wilson or Officer Wilson regarding any sort of protective search?

A What do you mean by protective search?

Q Did she instruct you to conduct a protective search, Ms. Wilson?

A So, whenever we go into a residence, we clear the residence, we make sure that there are no other people there every time. So, we make sure that there's not somebody in the back bedroom and -- that jumps out and surprises us. So, we always clear the house and make sure that we know all occupants are in the main room.

Q And is that even -- in situations where you don't have any information that would directly suggest that someone's home?

A We do that every time.

Q Okay. So, in this situation, where you had information that there were other people were at the residence, you conducted it also. Correct?

A Can you rephrase that?

Q You -- the search that you conducted here was based on the knowledge that there were other people in the house as well. Correct?

A Yes.

Q Okay. And that was based on what Winn had personally told you. Correct?

A Yes.

Q All right. And, just to rephrase, because I'm sure I asked this question before, Officer Wilson did not tell you two to conduct any sort of protective sweep or search. Correct?

A Correct.

Q Okay. And who conducted the search or the sweep, rather, of the residence?

A So, there's multiple officers. Me and Officer Crowe took -- usually we split up in pairs and we had two other officers take the right side. Me and Officer Crowe took the left. We took the living room, the back room, and the subject -- or the Defendant's bedroom.

Q Okay. So, did you and Officer Crowe walk together just the two of you or were you with anyone else?

A So, Officer Glenn was also behind us, watching our back and clearing the back space to make sure no one popped out. So, it was the three of us that took the left side.

Q Okay. Did you talk to Mr. McCall at any point during this sweep?

A Just to ask him to -- if he could put the dog in the bathroom after I visually cleared it.

Q Sorry. Did you say bathroom or back room?

A What's that?

Q Did you say bathroom or back room?

A Bathroom. Sorry.

Q Okay. Masks.

A The masks. Yeah.

Q So, when you asked Mr. McCall to secure his dog in the bathroom, did he say anything to you?

A Not at that time.

Q Okay. So, did he object to any sort of entry into his room?

A No.

Q Was his door locked or unlocked?

A Unlocked. It was open.

Q So it was open?

A Yeah. He closed the dog in when he initially came out.

Q Okay. So, just so I can get the chronology correct, --

A Okay.

Q -- when you walked in, Mr. McCall came out of his bedroom and shut the door and he had a dog with him. Correct?

A He came out with the dog and I asked him if he could, you know, have the dog -- put him away. So we walked back with him and put the dog in the bathroom.

Q Okay. So, at that point, you were following Mr. McCall into his bedroom with the dog. Correct?

A Yes, sir.

Q Okay. So, did you watch Mr. McCall put the dog into the bathroom?

A Yes.

Q Okay. And what was -- where were you when he was putting the dog in the bathroom?

A Right. So, I visually cleared it first, and then I let him put the dog in the bathroom.

Q Okay.

A So, I was in his bedroom, next to the bathroom.

Q Okay. So, you accompanied Mr. McCall when he went into the room with the dog?

A Yes. And Officer Crowe and Officer Glenn.

Q Okay. At any time when you were accompanying Mr. McCall, did he object to you being in his room?

A No.

Q All right. And after the dog was secure, did you do a protective sweep of the room?

A Yeah. So, I did the right side. Officer Crowe took the left side and I -- and we found out and I had passed the dresser and cleared the walk-in closet.

Q Okay. And did you see anyone in there?

A No. I did not.

Q Okay. And where was Officer Glenn during this?

A He stayed back at the door and he was with Defendant.

Q Okay. So was he in the room or was he in the hallway?

A He was in the room.

Q Okay. So, while you were in Mr. McCall's room, did you see any items of any incriminating nature?

A Yeah. So, when I was clearing the room, I noticed a few shotgun shells on top of his dresser next to his walk-in closet. I cleared that and that's the only thing I noticed right away.

Q Okay. So when he was -- observed those shotgun shells, what was your reaction?

A I know that he's a felon, already knowing his history, usually when there's a bullet, there's a gun. So I looked at Officer Crowe, and we finished clearing, and I made a notify -- or made it aware that there are shotgun shells there and he read the *Miranda*.

Q And did you hear the *Miranda* advisement as well?

A Yes. I did.

Q All right. Did you speak to Mr. McCall after that?

A We chatted -- you know, I -- Crowe was talking to him more. I was kind of in between with them. So, --

Q Were you close enough to hear that conversation?

A Yes, sir.

Q Okay. At any point, during your conversation or the sweep of the room, did Officer Wilson approach?

A She came in afterwards. After we found multiple weapons in the room, but it was afterwards.

Q Okay. So, you said afterwards. At some point, did you leave the room?

A No. I was in the room the whole time.

Q Okay. Did Officer Crowe or Officer Glenn leave the room?

A Officer Crowe left to speak with -- to get on the phone because we found -- the Defendant told us where multiple weapons were in his room and we kind of froze the scene so that way it would apply -- have Metro apply for a search warrant and whatever else.

Q So, when you were having this -- when you and Officer Crowe were having this conversation with Mr. McCall, where were you located in the house?

A I was in his room.

Q Okay. So, he -- the *Miranda* warning was read in his room?

A Yes.

Q All right. And he spoke after the *Miranda* warning to you in the room?

A Yes. He agreed to talk to us.

Q All right. About how long would you say it took between seeing the shotgun shells and the *Miranda* advisement?

A About 90 seconds.

Q Okay. So, almost immediately, would be fair to say?

A Correct.

Q Okay. So did you personally confront him about the shotgun shells or was that Officer Crowe?

A Officer Crowe initiated the conversation. We -- that way there wasn't too many people talking to him.

Q Okay. So, just to clarify, you saw the shotgun shells, and then you told Officer Crowe. Is that correct?

A Yes.

Q All right. Do you at all remember the extent of the conversation between Officer -- I'll rephrase.

Did Mr. McCall say anything to you specifically regarding what would be in the room?

A He spoke out loud to all of us and he told us he just wanted to be honest and that we would find things in his room. And I can't remember if it was me or Officer Crowe and asked: Well, what are we going to find? And he started to say: I have got a shotgun in the closet.

We go: Okay. So, went to the closet. I pulled

it out. Placed it on the bed.

And, then: Is that it? And he continued to say: Oh, there's a gun in the dresser. So, we retrieved that. Put it to the bed.

He said: All right. Well, there's also a gun under my pillow. Okay. So, we retrieved that and put it on the bed.

All right. Then I also got some drugs and some money in the dresser drawer, after Officer Crowe had left the room.

Q All right. And he said all this to you personally?

A Out loud.

Q Out --

A Out loud to all of us. Yes.

Q All right. So, before you entered the room, you said that Mr. McCall opened the door. Correct?

A Yes.

Q All right. Was it locked at all?

A No.

Q Did he use a key to get into the door?

A No. He didn't.

Q Okay. Could you describe his demeanor prior to opening the door? What did you observe?

A His demeanor?

Q Yes.

A He was compliant. He said he's been on parole, and he knows the deal, and we told him we just need to make sure there's nobody else in the room. And that's when I asked him about the dog and if he could put the dog away.

Q Okay. Just to back up a little bit, before you entered the room, you said that Mr. McCall told you that he was on parole, he knows the deal. Can you expand on that?

A So, he said he just got off parole and that he knows -- he knows how parole and probation officers have to clear a room -- have to make sure no one else is there. And he went onto tell me that he completed parole successfully.

MR. BEAUMONT: Okay. Court's indulgence.

[Pause in proceedings]

BY MR. BEAUMONT:

Q Did he say anything regarding the weapons or guns prior to opening the door?

A No.

Q Did he say anything regarding drugs prior to opening the door?

A No.

Q Okay. But he did admit that he was just on parole?

A Yeah. Alter we went in, yeah. He said that he

just completed parole.

Q And that he's familiar with how these searches work?

A Mm-hmm.

Q So, did any of his demeanor or any of his words suggest to you that he was objecting to the search of the room?

A No.

Q Did he specifically say that you could?

A So, he was compliant. He knew that we had to clear the room for officer safety. So, he was in compliance that way. He put the dog in the room.

Q So, you said that Officer Crowe left to call Metro. Correct?

A Yes.

Q All right. And, based on your personal observations, did Metro arrive on the scene?

A Oh yeah.

Q Okay. And did they conduct a search as well?

A They did. Yes.

Q Okay. And were you present for that search?

A Yes.

Q Did you assist in that search?

A We -- I, basically, let them go hands-on at that point. They took control of it.

Q All right. And, in that room, did they -- were you with them in the room when they were doing the search?

A Yes.

Q Okay. And did you point out the guns that Mr. McCall identified?

A Yes. Once Metro arrived on scene, we let them know that there is multiple weapons, where they were, and yeah.

MR. BEAUMONT: All right. I'll pass the witness.

CROSS-EXAMINATION OF SEAN CONROY

BY MR. SANFT:

Q Officer Conroy, did you ever write a report of your testimony here today prior to testifying here today?

A No. I do not believe so.

Q Is that because you just didn't write one or is that just because that's just common practice in your office to not write reports?

A Can you rephrase the question?

Q Sure. Did you write a report in this case? And the answer is: You don't think you did. Is that your answer?

A Yeah. I didn't write a report.

Q Okay. Is that common practice in your office to not write reports on something like this?

A So, we write reports when it's under our offender.

So, usually the supervising officer writes the report.

Q Gotcha. And, in this case, you were the supervising officer?

A Incorrect.

Q I'm sorry. Who was the supervising officer?

A Officer Wilson.

Q Ah, okay. So, Officer Wilson is the one that accumulates and puts the report together. Right?

A Yes. For violation report. Metro actually wrote the report for his booking, for his DOA.

Q Okay. But, with regards to your department -- I'm not talking about Metropolitan Police Department, Officer Wilson would be the person that would be most knowledgeable about putting together any type of report on this case. Right? Because it wasn't you.

A It was not me. It was Metro and Officer Wilson that wrote the report.

Q No, no. Let's make sure that we're clear. The report that Officer -- that the Metropolitan Police Department filed was a Declaration of Arrest Report. Is that fair?

A Correct.

Q Did you read that report?

A Yes.

Q Did you read that report in preparation for your

testimony here today?

A I reviewed it.

Q Okay. Did you read or review any other reports or any other documents in preparation for your testimony here today?

A I reviewed the letter that was anonymously sent.

Q Okay. And this is the letter -- I'm just gong to show you right here. This has been marked and admitted as Defense E. Is that right?

A I can't see it from there, but --

Q Here. I'll help you out.

A All right.

MR. SANFT: May I approach, Your Honor?

THE COURT: You may.

BY MR. SANFT:

Q Is this the letter?

A It is.

Q Okay. Now, outside of those two documents, which is the Declaration of Arrest written by the Metropolitan Police Department and that letter right there, did you review anything else in preparation for your testimony here today?

A Nope.

Q Did you talk to anybody prior to your testimony here today in preparation for your testimony here today?

A Nope. Not in preparation. We spoke about the case when I was -- because I did not receive a subpoena. So, Officer Crowe let me know that we were being subpoenaed for today's case.

Q Okay. But there -- no discussion between you and Officer Crowe about what had happened on this particular night and do you remember this, do you remember that? Nothing like that?

A No. We just kind of went over the case itself as in what it was about. I couldn't recall. When he said Colette, I didn't know who it was or -- you know, and then he told me that it was this case.

Q Okay. And you don't remember calling Colette because Colette wasn't your probationer?

A Excuse me?

Q She was not under your supervision, Colette Winn?

A She was under Nevada supervision. So, I --

Q Under who?

A -- wasn't directly supervising her. No.

Q Under who?

A Nevada Parole and Probation.

Q Oh, under the State of Nevada's Parole and Probation, she was under their supervision. Right?

A Yes. Under our supervision.

Q But, in terms of the file, the -- who is

responsible in your office of supervising Ms. Colette Winn, that's not you?

A No. It's Officer Wilson.

Q It's who?

A Officer Wilson.

Q Okay. Did you ever speak prior to this event with Ms. Winn?

A No.

Q About her probation?

A No.

Q Okay. So, in terms of information about where she resides, her efforts to find a job, anything like that, --

A I have no idea.

Q -- would that be --

A I never spoke with her.

Q -- Ms. Wilson?

I'm sorry?

A I never spoke with here. I have no idea about any of that.

Q Okay. This thing that I showed you, that document that you have in front of you, Defense Exhibit E, did you receive that in the mail?

A No. I did not.

Q Okay. Do you know who?

A Department did. It was addressed to Parole and

Probation.

Q Okay. And did it end up in your box after it was addressed to Parole and Probation?

A No.

Q Whose box did it end up in?

A Officer Wilson.

Q All right. And, when you first learned of this letter, who told you about this letter?

A Officer Wilson.

Q All right. When that happens, did you reach out to Ms. Winn to ask her about that letter and the contents of that letter or anything like that?

A I did not.

Q You -- now you told the Court earlier that you were partners with Ms. Wilson. How does that work?

A I don't understand what you mean by that.

Q Well, what I mean is when you say you're partners, do you both sit in the same room to interview the people that you're responsible for supervising like Ms. Winn?

A So, usually, we go out in teams or with multiple people, that way there's not just one officer there. So, not assigned, but we just pick and choose who we want to go out with.

Q Okay. I'm not talking about going out. What I'm talking about specifically is, at some point, Ms. Winn

comes into the office to conduct whatever her monthly meeting is with her probation officer. Were you present during any of those meetings prior to the discussion about this visit in June of 2020?

A No.

Q All right. And you look at me kind of quizzically. Is that just because that's standard operating procedure with the Department of Parole and Probation is that you don't need to -- you don't meet with other people's probationers?

A We do on time to time. So, usually, if you're directly supervising that person, that person's under you, but other officers go out on other people's offenders because we're all responsible for everybody.

Q Okay. So, in this case though, that letter that you have in front of you, anything about that letter at all that tells you that that letter was substantiated by anything at all that Ms. Winn might have said to her probation officer?

A Can you repeat that?

Q Do you know if she drove a BMW or had a Mazda 232?

A I didn't know any of that prior to this.

Q Okay. You don't know about -- did you know if any cash was found at the residence?

A I do not know that.

Q Are you aware of any computers that were found in her bedroom under her control?

A I was aware that there is a couple computers and some other things found there.

Q Okay. So, basically, you walked into the situation without any real idea of anything to do with anything, outside of the fact that Ms. Winn lived at that residence?

A I don't understand what you're saying about I don't know anything about anything.

Q Well, what I'm asking you is that outside of what you're saying here today about what you know about what you know about Ms. Winn, in reality you didn't really know much. I mean, you have the letter in front of you but you can't even confirm with us --

A I overlooked her file and looked over her PSI previously.

Q Okay. Can I ask you how long she lived at that particular residence?

A I do not know.

Q You don't know that? Hmm. So, when you say that someone is lying because they're forgetting the number -- the numerical input of their code into the door, if the person just barely moved into the house, for instance, maybe they just forgot it because they had not used to go

in it. But you don't know that. Right?

A No. I do not know that.

Q Okay.

A She said that she was -- that they changed it multiple times and that she couldn't recall what it was.

Q But, once again, you can't sit here and tell the Judge how long she lived there before you guys decided to do that visit?

A No.

Q Are you aware of how many times Officer Wilson had visited that particular residence prior to this particular visit in June of 2020?

A No.

Q Are you aware of -- that this was the first visit that she ever did at that residence on that day?

A I believe so.

Q Okay. That's not -- I'm not asking for your guess. You tell me yes or no. Were you aware that was her first visit?

A I do not recall.

Q Okay. And the letter that you have in front of you, your testimony is that you learned about other people that were potential residents or people that lived at the residence?

A I was made aware there were people that lived at

that residence?

Q Yeah.

A Yes.

Q Who told -- who made you aware of that?

A Ms. Winn.

Q Ms. Winn?

A Yeah.

Q Okay. And, so, who did she identify? You said she identified Charles McCall?

A Yep.

Q Did she identify anybody else besides Charles McCall?

A I don't recall.

Q Okay. Did you, at any point, ever search the residence? You said you searched the master bedroom. Right?

A So, I cleared the main living room, the back living room, the kitchen, and his bedroom.

Q Okay. Were you aware at all of the relationship between the parties?

A No.

Q How long have you been a probation officer for?

A Three years.

Q Okay. Can you tell me what the standard search clause is that's in every probation order or probation as

issued by the Judge when someone's granted probation?

A That there's a search clause involved and that we can search the residence. Depending on what the Judge orders, we can search their cell phone and electronic devices.

Q Okay. Are you aware that, in that particular search clause, it says that it's anything under the control of the person that's on probation?

A Yes.

Q Are you aware of that?

A Yes. Or anything they have access to. Correct.

Q Let's see here. Under your control. So, you're saying if he -- if that person has access to an area, like say a common area --

A So under control.

Q Okay.

A Correct.

Q So, in this particular case, can you tell the Court what you found in that room that indicated that the bedroom that was Mr. McCall's was under the control of Ms. Winn?

A Well, the door was unlocked and we were clearing it.

Q Okay. So, you're --

A I wasn't searching the residence or the room at

that point.

Q Okay. So, you're telling the Court that because the door was unlocked that that means that it was under the control of Ms. Winn?

A No. I'm saying is -- the reason I was in that room was not to search, but to clear the room and make sure there are no other individuals there.

Q Okay. And your testimony was about that that -- you said that the -- you said that Mr. McCall did not object when you walked into the room. Right?

A Correct.

Q So, in your mind, that meant consent? Right?

A Consent to clear. Yes.

Q Okay. So when a person says -- doesn't say no or yes, in your mind, that means yes? Right?

A So, he wasn't standing off, he wasn't saying he didn't want us to come in there. We just had to clear for officer safety and he agreed. He complied.

Q Okay. And just, once again, describe to the Court -- you're walking in there with the gun drawn, wearing tactical vest, and you were with two other dudes, and you just barged into --

A Two other officers. Correct.

Q -- this guy's house.

I'm sorry?

A You said two other dudes. I said two other officers.

Q I apologize. I don't mean to me facetious when I --

A No, no. I just wanted --

Q Okay. So two other officers and you guys walk into the room like that. Right? That's how it was. Right?

A We cleared the room. Yes.

Q Okay. And your testimony earlier was that when you walked into the room, you did that as Mr. McCall was putting away his dog?

A So, Officer McCall -- or Mr. McCall was coming out of the bedroom when we were calling out: Police, Parole and Probation. And his dog was coming out and his dog was barking. That's when we asked him if he could put his dog away.

Q Okay.

A So, he went and put his dog into his room.

Q Okay.

A And, then, to clear the bedroom, we asked him: So we can clear the room, can you put your dog in the bathroom? I visually cleared the bathroom and he put the dog away.

Q Ah. So, you're -- where your consent -- your

definition of consent comes in is when you said: Please put your dog away so we can search your room or clear your room. And because he put the dog away --

A So, I didn't ask for consent at all for him to -- for me to search his room. I was just clearing it, making sure there was no other individuals there.

Q Okay.

A I wasn't actually searching for anything.

Q Oh, okay. Now, you had a meeting with these other officers prior to the search. Right? Or prior to the visit, these other officers.

A Which other officers?

Q All right.

A Officer Wilson, yes.

Q Officer Wilson, you had a conversation with her about this particular visit?

A Yes.

Q Who else was present during that meeting with Officer Wilson?

A Just me and her.

Q Did you ever have a meeting with any other officers besides Officer Wilson with regards to searching this particular house?

A I do not believe so.

Q Do you know how many other officers were involved

in the visit?

A Do I know how many other officers were involved in the --

Q Yeah. Yeah.

A I didn't hear the last part.

Q How many other officers were involved in this particular visit?

A So, me, and Officer Wilson, and then Crowe, and Officer Glenn, and can't recall who else. But, later on, our lieutenant was called out, and Metro was also called out, which were another --

Q Okay. And you're --

A -- maybe five officers.

Q So you're officer -- your lieutenant was called out later, after the -- everything was opened and uncovered. Right?

A Yes.

Q Okay. But as you're knocking on the door, who was involved in that particular moment in time?

A I'd estimate about six.

Q Okay. Who? You're saying yourself, Officer Glenn?

A Officer -- me, Officer Wilson, Officer Glenn, Officer Crowe, I believe Officer Page was there, and I don't recall who else.

Q Okay. Do you know where these officers were located when --

A I do not recall.

Q So, when you reviewed this Declaration of Arrest Report, do you know where -- you've reviewed -- you've read this thing in preparation for your testimony here today. Right?

A I just briefly glanced over the -- just the subject. I didn't read the whole report.

Q Well, so you don't know if this is complete or accurate. Right? If you just kind of glanced over it.

A Earlier today. Yes.

Q Do you -- not that it's earlier today, but whether or not you actually reviewed it to see if it was complete or accurate, you didn't do that?

A No.

Q You just reviewed it to do what exactly?

A To recall the case.

Q Okay. So you reviewed a piece of paper that you don't even know is complete or accurate to recall your recollection of a case prior to your testimony here today?

A Yes.

Q Do you know what the relationship were between the people that were located in the house?

A I do not.

Q And you said -- did -- you said that when you saw the gunshot shells on the dresser, your testimony was -- and I put this in -- I wanted to make sure I was clear on your quote. Usually if there's a bullet, there's a gun. Right? That's --

A Excuse me?

Q -- what you said?

You said that when you saw the shotgun shell sitting on top of the dresser, that in your opinion usually if there's a bullet, there's a gun?

A My experience, yes.

Q Okay. Three years?

A Yes.

Q Actually, at the time, it was actually more like two years and some months?

A Sure.

Q All right. And, then, once the -- once you determined that shotgun shell was on the dresser, you said that it was seconds between locating that shelf and issuing *Miranda* to Mr. McCall?

A Officer Crowe issued *Miranda*.

Q Within seconds after you --

A A few seconds, yes.

Q -- identifying the shells.

Meaning --

A I saw them -- saw the shotgun shells, I cleared the closet, made Officer Crowe aware of it, just glancing at it, and then he read him *Miranda*.

Q Okay. So, when the person gets read his *Miranda*, they're being detained at that point, they're being cuffed. Right?

A Yes.

Q And that's --

A Well, not all the time, but they're read *Miranda*.

Q Okay. But, in this case, specifically, Mr. McCall, was he cuffed and then read *Miranda*?

A I can't remember.

Q Is that because it's not in this report that you read and to review --

A It's because I didn't do it.

Q But you're in the room?

A Yes.

Q So, because you didn't do it, you don't recall even though you're in the room?

A I do not recall if he was cuffed at that time or earlier.

MR. SANFT: I have no further questions, Your Honor.

THE COURT: Thank you. Redirect?

REDIRECT EXAMINATION OF SEAN CONROY

BY MR. BEAUMONT:

Q At any point, did you see Ms. Winn's room?

A Towards the end.

Q Do you remember anything of note about her bedroom door?

A Of her what?

Q Her bedroom door.

A No.

Q Were there any signs or any words on any bedroom doors?

A People's names were on the door I can re -- I don't remember -- I remember her roommates had his name on the door. I don't recall if her name was on the door.

Q Do you remember if there was a sign or any --

A I do not recall.

Q -- words on Mr. McCall's room?

A Uh-huh.

Q Was there a sign saying: Keep out?

A No. I don't recall any of that.

Q Just nothing on the door?

A Uh-huh.

MR. SANFT: Is that a no?

THE WITNESS: No. Sorry.

BY MR. BEAUMONT:

Q Have you conducted protective sweeps on other

residences before?

A Yes.

Q Have you found ammunition or shotgun shells in any of those?

A Yes.

Q When you find them, what do you normally do?

A When we find ammunition?

Q Yes.

A Usually if I'm the officer, I'll detain the person, I'll *Mirandize* them, I'll handcuff them, for our safety.

Q Okay. And is that based on trying to protect yourself and other officers?

A Correct.

Q All right. And do you call Metro in those circumstances?

A Certain circumstances, yes.

Q And after you talk to Metro, do you normally see search warrants executed?

A Do we usually what?

Q See search warrants executed?

A Yes.

Q Okay. So, fair to say, in this situation, detaining Mr. McCall and having Metro -- or having Mr. Crowe call Metro is standard procedure?

A Yes.

Q All right. And you testified that you don't write the reports for these events. Correct?

A I do not write reports for what?

Q You don't write the reports for these type of events?

A No. So, the arresting officer will write the report or the probation officer that's in charge, supervision of the offender will write the report of their person.

Q Okay. So, fair to say that you don't submit charges based on your reports. Correct?

A I don't submit charges on my reports?

Q You don't submit charges to the District Attorney's Office based on any reports that you write. Correct?

A Correct.

Q Okay. And where do your reports go?

A Where what?

Q Where do your reports go?

A So I -- anything I write goes to the Division and we would submit it through the courts.

Q Okay. And is that for probation revocation proceedings?

A Yes.

Q Okay. And you had never been to this house before either. Correct?

A Correct.

Q All right. So, you weren't familiar with the layout of the house?

A I was not.

Q All right. And you weren't certain of how many people lived there?

A I was not.

Q You weren't certain of how many people might be in the house?

A I was only told by Defendant that there may be two people.

Q Other than herself?

A What's that?

Q Is that other than herself.

A Other than herself. Correct.

Q All right. Now, the first person that you said you encountered when you came in was Mr. McCall and his dog. Correct?

A Correct.

Q Did you encounter anyone else before you swept Mr. McCall's room?

A Their roommate came out the other side.

Q Okay. And did you speak to him at all?

A Did I what?

Q Did you speak to him at all prior to entering Mr. McCall's room?

A Not that I recall.

MR. BEAUMONT: No further questions.

THE COURT: Any redirect [sic], Mr. Sanft?

MR. SANFT: Yes, Your Honor. Just a couple of quick follow-ups here.

RECROSS-EXAMINATION OF SEAN CONROY

BY MR. SANFT:

Q Showing you what's been marked and admitted as Defense Exhibit A --

MR. SANFT: May I approach, Your Honor?

THE COURT: Yes. And it's recross. I think I said redirect.

Yes, you may approach.

MR. SANFT: I'm sorry. All right. Sorry.

BY MR. SANFT:

Q All right. This is a rough drawing. Does that look like the layout of the house, as far as you recall?

A As far as I recall, yes.

Q Okay. And, then, second of all, I'm showing you here what's been marked and admitted as State's Exhibit Number -- or Defense Exhibit D. I'm showing you a photograph. Do you recognize that particular photograph?

A Vaguely.

Q Okay. But you don't recognize it?

A It looks like the right side of the house.

Q Okay. Do you know where the probationer's bedroom was in relation to that photograph?

A It was -- this open door here, it looks like.

Q Okay. I'm going to show you what's been marked as Proposed Defense Exhibit C. Do you recall or remember anything having to do with that particular photograph?

A No.

Q All right. And this has been marked as Proposed Defense Exhibit D. Do you recognize this particular photograph?

A It looks like the Defendant's bedroom, but I can't recall from this -- just the photo of the door.

Q Okay. Did you take any photographs to document what you or any of the officers with Probation did in this case?

A I do not recall. I didn't personally.

Q I'm sorry?

A I didn't take any photos. I don't recall if anyone else did.

Q All right. And with regards to you being present when detectives were searching the room, do you remember that line of questioning with the State?

A With what?

Q With detectives searching the room and you said you were present at some point, identify what you saw -- what you found.

A Yeah.

Q Did you, at any point, recommend or see them take photographs of anything?

A I don't recall.

Q Okay. And, then, finally, your -- the last question here is: You said that usually if I'm the officer I want to detain the person for officer safety. Meaning, if you were to find on your cases. Right? The files that you have, that you're responsible for, if you were doing that kind of search, you would detain the person for officer safety if you had discovered or saw a shotgun shell? Is that -- and I wanted to make sure I was clear. I don't want to put any words in your mouth.

A Can you repeat that?

Q So, the question that was asked by the State, you had answered and responded, if -- usually, if I'm the officer, I usually detain the person for officer safety if you had seen a shotgun shell sitting in some other person's house that you were --

A Yeah. Depending on if it was -- I was closest, but --

Q Yeah. So, it -- can you describe this to me? You said: Usually. Is that the probationer that you're usually detaining for officer safety?

A Doesn't matter. Whoever is closest to us. So, if -- Officer Crowe happened to be closer at that point. I was still towards the back closet area.

Q No, no. I'm talking in general. In your two and three months experience at this particular point working for Parole and Probation, you said: Usually if I'm the officer, I would detain the person for officer safety if you see a shotgun shell sitting in somebody's bedroom.

A Correct.

Q Do you recall that line of questioning?

A Correct.

Q Is that what you do?

A Yes.

Q Is that what you do with probationers?

A Probationers -- if we find ammunition there, or a weapon, or drugs, or anything like that, so that we can --

Q So do you -- I'm sorry. Go ahead and continue.

A No, go ahead.

Q So, are you telling the Court then that you arrest anybody? So you walk into somebody's else and say it's --

A No.

Q -- the probationer's -- it's not the probationer's

bedroom, but say it's somebody else's bedroom, then you just see a shotgun shell -- you know, a shotgun shell sitting up there, you just arrest the person that -- the bedroom that's in?

A It just depends on the situation. So, I knew he was a felon. I knew that there was a shotgun shell. So, we detained him for our safety.

Q You detained for your safety, but you just testified and you said he was immediately read *Miranda* within seconds. So which one was it?

A So, he was read *Miranda*. I can't recall when he was detained, but you're saying as far as what I -- common practice for me.

Q Are you aware that when you read someone *Miranda*, you typically at that point are indicating to them that they are being detained? Are you aware of that?

A Yes.

Q Okay. And you just told the Court that he was read *Miranda* within seconds --

A I did not read *Miranda*. Officer Crowe read Miranda.

Q Fine. Within seconds of you observing that shell. Right? That's what you told us earlier?

A Correct.

MR. SANFT: Okay. No further questions, Your

Honor.

THE COURT: Thank you. Do you have any --

MR. BEAUMONT: I have no questions, Your Honor.

THE COURT: Okay. You can -- thank you.

[Pause in proceedings]

THE COURT: State, you have another witness?

MR. BEAUMONT: Actually, I'm -- Court's indulgence.

THE COURT: Okay.

[Pause in proceedings]

MR. BEAUMONT: Your Honor, I have my detectives here who conducted the search of both the room and the residence pursuant to the search warrant after the protective sweep.

THE COURT: Right.

MR. BEAUMONT: Ordinarily, I, just for the issue of completeness, I would call them and we could go through them. However, I feel, potentially, that there is a lingering issue of whether the Court is satisfied that all of the relevant witnesses has been called. So, --

THE COURT: It's your burden, State. So --

MR. BEAUMONT: It is.

THE COURT: -- you decide how you want to proceed with your case.

MR. BEAUMONT: So, based on the testimony of these

two officers, I'm not going to call my detectives because their actions took place well after Mr. McCall is *Mirandized* and they had nothing to do with the protective sweep and the search of the residence prior -- at any time prior to the search warrant.

THE COURT: Okay.

MR. BEAUMONT: So, with those two witnesses, I will rest.

THE COURT: Okay. Mr. Sanft?

MR. SANFT: Your Honor, at this particular point, I would like to call, on behalf of the defense, Mahatuhi Santos.

THE COURT: And he is present via BlueJeans.

MR. BEAUMONT: Oh, my apologies, Your Honor. Court's indulgence.

THE COURT: Okay.

MR. BEAUMONT: If I could have the Marshal excuse my officers?

THE COURT: Oh, yes.

MR. BEAUMONT: Just so that they're not waiting around.

THE COURT: Okay. Thank you.

[Colloquy between the Court and staff]

THE COURT: He's on BlueJeans.

THE CLERK: Please raise your right hand.

MAHATUHI SANTOS

[having been first duly sworn via video conference, testifies as follows:]

THE CLERK: Please state and spell your name for the record.

THE WITNESS: My name Mahatuhi Santos, M-A-H-A-T-U-H-I, Santos, S-A-N-T-O-S.

THE CLERK: Thank you.

DIRECT EXAMINATION OF MAHATUHI SANTOS

BY MR. SANFT:

Q Mr. Santos, where do you reside?

A At 1209 Ingraham.

Q How long have you resided at that residence?

A Year now.

Q How long?

A One year.

Q Okay. On -- in June of 2020, were you a resident of that residence?

A Yes.

Q I'm going to show you what's been marked and admitted as -- this is Defense Exhibit D. How do we do this? Do you see this by any chance, Mr. Santos?

A Yeah, little bit. You know, too far.

Q Let me do this. Am I pointing at the right camera? Is this the camera right now I'm pointing at?

Right? Right here? That one.

Okay. Hold on. I'm going to do this. Does that do anything? Nope.

THE COURT: That's not the right camera?

THE CLERK: No.

MR. SANFT: We can't make hard -- like hard --

THE COURT RECORDER: Well, if they turn the Elmo on, it's going to knock him out.

MR. SANFT: Let's do this. I'll have the bailiff come over here and I'll just talk on the microphone and that will turn this camera on.

Officer, can you just hold this up real quick and just be completely still for a minute while I gibber gab?

THE MARSHAL: Is it this camera?

MR. SANFT: Yes. To the right.

BY MR. SANFT:

Q Okay. Victor, can you see the -- can you see what we're showing you right now?

A Yes.

Q Okay. Do you recognize that particular photograph?

A Yes. The hallway.

Q Okay. And the -- there looks like there appears to be a door that's directly in front?

A Yes.

Q Whose doorway is that?

A Mine.

Q All right. Now, if you could just point out just -- with regards to that doorway, is there a lock that's on that doorway?

A Yes.

Q And what kind of lock is that?

A Deadbolt.

Q All right. With regards to that room, does everyone have the ability to go into that room?

A No.

Q All right.

A Not without my permission.

Q So, -- all right. So, if, for instance, though, if you had unlocked your door and forgot to lock it before you leave, does anyone have permission to go into that room if you did not lock it?

A No.

Q Now, we were talking here about a lady by the name of Colette Winn. Did you know her?

You can bring that down. You can bring that down now. Thank you. Can you stay up there? You're going to be my official photo --

Mr. Santos, did you know Colette Winn?

A I know her when I moved in this house.

Q How long had --

A [Indiscernible].

Q -- she resided in the house prior to the events that occurred with Parole and Probation, as far as you know?

A Three months. Three month.

Q And with regards to Ms. Winn living in that location, did you ever allow her to go into your room?

A No. No. Never.

Q Did you ever go into her room?

A No. Unless she asked me to help her with something, yes.

Q Did you ever -- I mean, was she not allowed to go into the kitchen, the living room, the family room, anything like that? As far as you know?

A Yeah. She can go in the kitchen, living room, and, you know, and all that. Yes. Not in --

Q Now I'm showing you as what's been marked as Proposed Defense Exhibit C -- Marshal, can you look at the back of that photograph for that one and see which one that is?

THE MARSHAL: This is B.

MR. SANFT: B.

BY MR. SANFT:

Q I'm showing you what's been marked as Proposed

Defense Exhibit B. Do you recognize this particular photograph?

MR. SANFT: You can back up a little bit, if you could, sir?

THE COURT: Sorry, Officer.

BY MR. SANFT:

Q How's that? Can you see that now?

A Yes. Yes. That's Mr. McCall's door in the room.

Q To which room is that door?

A McCall room. For --

Q C -- okay.

A Yeah. Go ahead.

Q Is that room -- does that room have a lock? Or that door have a lock?

A Yes.

Q Okay. And do you have a key to that lock?

A No. No.

Q As far as you know, did anyone in the house have a key to the lock outside of Mr. McCall?

A No.

Q Now, on the bottom left of that door, do you see -- if you -- thank you, Bailiff.

On the bottom left of that door, see where the door is, it -- there looks like there's some sort of device or something at the bottom of that door. Do you see that?

A Yes.

Q What is that?

A A [indiscernible]

THE DEFENDANT: Bring it closer to the --

THE WITNESS: Hey, hold on. The spring. The spring.

BY MR. SANFT:

Q Okay. Do you see at the bottom? Okay. Do you know if that spring was present on the day of the search?

A Yes. Yes.

Q Now, in addition to that -- you said that Ms. Colette had lived in that residence for three months. Is that right?

A Yes.

Q Did she -- I mean, what -- what would be her relationship to Mr. McCall? A tenant? A roommate? Housemate? Girlfriend?

A Tenant.

Q All right. Did they -- as far as you know, did they ever have a relationship outside of just being a tenant?

A No. I don't -- not to my knowledge.

Q Okay. Now, there's been some discussion about the searches that took place on this day. Did you ever give anyone permission on the day that Probation was in your

home to search your room?

A No. No.

Q Can you tell the Court how you learned that they were going to search your room?

A I was asleep, and they wake me up, and it was two cops at the door pointing a gun at me and told me to get up and come outside in the living room, in the front living room, and sit -- I sit there. And they didn't ask me nothing. The only thing they asked me -- one of the officers say: Are you living here? Are you paying the rent? I say: Yeah. I pay for the rent in that room and that's it. I didn't go into nothing else and all of a sudden I seen somebody went in my room and took everything out of the closet and I don't know what's the [indiscernible]. That's it.

Q So, did they search your room?

A Yes. Yes. They did.

Q All right. Did they put things back where they found it?

A No.

Q And they did --

A I asked them --

Q And make sure I'm clear, did they ask you permission to go into your room and search it?

A No. They didn't ask me nothing.

Q Okay. Now, in addition, I'm going to show you here what's been marked as Proposed Defense Exhibit C. Do you see that? That right there?

A Yes.

Q What is that a picture of?

A I don't know what's that -- where -- I don't know. I mean, was that is -- I don't --

Q Okay. That's fine. I don't want you to guess, so don't guess. But all right.

So, let me ask you this. A couple of more questions. The -- had you ever been on probation before or anything like that?

A No.

Q Had you ever had your room searched before the way it was searched in this case?

A No. Never.

Q And with regards to the officers that were there, you had said that at some point they asked you whether you paid rent in that room and you told them that you did?

A Yes. I paid rent. Yeah. To live here.

Q Okay. And, as far as you know, was that also the same relationship or the same situation that Ms. Colette was in as well? Ms. Winn.

A Yes.

Q And who did she pay rent to?

A To McCall.

Q To who? I'm sorry?

A Mr. McCall.

MR. SANFT: Okay. I have no further questions, Your Honor.

THE COURT: Thank you. State?

MR. BEAUMONT: Yes.

CROSS-EXAMINATION OF MAHATUHI SANTOS

BY MR. BEAUMONT:

Q Mr. Santos is it?

A Yes.

Q Where are you located right now?

A Pardon me?

Q Where are you located right now?

A At 1209 Ingraham.

Q And what room are you in?

A I am in --

THE DEFENDANT: Because your phone don't --

THE WITNESS: My phone don't work, so I am in McCall's room. My phone does not work with the system.

BY MR. BEAUMONT:

Q All right. You're in Mr. McCall's room right now?

A Yes, sir.

Q All right. And did Mr. McCall give you permission to be in your room?

A Yes.

Q Do you occasionally have permission to enter into Mr. McCall's room?

A Because my phone didn't work, you know, so I ask what am I going to do and --

Q That's --

A -- he --

Q No. Sir, that's not the question I asked you. Have you had permission to enter Mr. McCall's room before?

A No.

Q This is the first time you've been in Mr. McCall's room?

A No. I've been before and -- when he asked me, you know, when he need something fixed. Yeah. I come in.

Q So, you have been in his room before?

A Yes.

Q So he has given you permission to be in his room before?

A Yes. To fix something.

Q All right. And for our purposes, can you please turn your camera to your right? Okay. Is there anyone else in the room with you right now other than Mr. McCall?

A Yes. This gentleman here.

Q Is it just you two in the room right now?

THE DEFENDANT: And the dog.

THE WITNESS: And the dog on the bed.

BY MR. BEAUMONT:

Q All right. Have you ever seen Ms. Winn inside of Mr. McCall's room?

A No.

Q And you said that Ms. Winn paid rent to Mr. McCall. Is that correct?

A Yes.

Q So, it's Mr. McCall's home?

A Yes.

Q And you said you lived there for over a year as a resident. Is that correct?

A Yes, sir.

Q All right. Have there been any other people living there as a resident in the last year?

A No.

Q Has anyone visited the home other than you, and Mr. McCall, and Mrs. Winn?

A Yes. His son.

Q Have there ever been any other visitors inside of this home to your knowledge?

THE DEFENDANT: A couple of friends.

THE WITNESS: A couple of friends. Yes.

BY MR. BEAUMONT:

Q How many?

A Four or -- yeah. Four or five. His friend.

Q So people that know Mr. McCall?

A Yes.

THE DEFENDANT: [Indiscernible].

BY MR. BEAUMONT:

Q I'm sorry. Is Mr. McCall trying to testify?

A Pardon me?

Q Is Mr. McCall trying to testify right now? I can hear him in the background?

A No. He talking to the dog.

MR. BEAUMONT: Your Honor, if we could ask the Defendant to leave the room for just a moment? This is a bit of a bizarre situation. I -- what can I see is that Mr. McCall is directly next to Mr. Santos and it appears and sounds as though Mr. McCall is trying to coach Mr. Santos through his testimony.

THE COURT: It looks like Mr. Santos is walking out.

THE WITNESS: I leave the room. I left the room. I'm outside.

THE COURT: Is that sufficient, Mr. Beaumont?

MR. BEAUMONT: Thank you.

BY MR. BEAUMONT:

Q Is there a lock on Mr. McCall's door right now?

A Yes.

Q All right. Is the door open?

A Right now, yes. I just --

Q And where are you located?

A -- come out of it.

I'm in the living room.

Q Can you see this -- the door to Mr. McCall's room from the living room?

A Yes.

Q Are you near the front door?

A Yes. I live in the back -- the rear -- the backdoor. Yes.

Q All right. You're near the backdoor right now?

A Yes. The backdoor of the living room, in the back.

MR. BEAUMONT: I have no further questions.

THE COURT: Thank you. Any redirect?

MR. SANFT: No, Your Honor.

THE COURT: Thank you. Thank you, Mr. Santos.

THE WITNESS: Thank you, Your Honor.

THE COURT: Okay. I'm assuming argument is going to be a little lengthy. We're going to have to leave at 5. Can you guys come back after my civil in the morning?

MR. SANFT: Sure.

THE COURT: To get this -- go ahead and do argument at that time?

MR. BEAUMONT: Yes, Your Honor.

THE COURT: My civil should be really short tomorrow. So, just in case, because of the way things are going, let's say 10:30 tomorrow morning for argument and decision.

MR. SANFT: Yes.

THE COURT: Can I -- did we get a copy of the letter back already? Because I want to look at the copy of the letter.

MR. SANFT: It's an exhibit. It's right here, Your Honor. It's on --

THE COURT: Okay.

MR. SANFT: -- the State's desk.

THE COURT: Okay.

MR. SANFT: And these are the other exhibits.

Your Honor, the only thing I could ask to do at this particular point is a housekeeping matter, is I'd like to move, at this point, for admission of Defense Proposed Exhibit B and I think that was the only one. The other proposed exhibit was not verified or substantiated by anybody, which is -- would have been C, but the other photograph was.

THE COURT: So just B?

MR. SANFT: Yes, Your Honor.

THE COURT: Any objection?

MR. BEAUMONT: No.

THE COURT: Okay. B will be admitted.

[DEFENDANT'S EXHIBIT B ADMITTED]

MR. SANFT: And just -- I'm going to provide Proposed Defense Exhibit C to your Clerk for housekeeping purposes.

THE COURT: Okay.

MR. SANFT: But it was not admitted.

THE COURT: Okay. And we already previously admitted E. Correct?

MR. SANFT: yes, Your Honor. That was through -- I think it was through Officer Crowe.

THE COURT: Okay. Okay. All right. So we'll be back tomorrow at 10:30 and we'll provide Mr. McCall with a BlueJeans link as well.

MR. SANFT: Thank you, Your Honor.

THE COURT: Because it's going to be different after civil. So, I'll see you guys tomorrow at 10:30.

MR. SANFT: Thank you. We are done, 5 o'clock.

THE COURT: Thank you. Right on time.

MR. SANFT: You can hang up now, Charles.

PROCEEDING CONCLUDED AT 5:00 P.M.

* * * * *

CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **March 15, 2021**

C-20-350999-2 State of Nevada
vs
Charles McCall

March 15, 2021 **2:00 PM** **Evidentiary Hearing**

HEARD BY: Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Alan Castle

RECORDER: Rebeca Gomez

REPORTER:

PARTIES PRESENT:

Beaumont, Austin C.	Attorney for Plaintiff
McCall, Charles Wade	Defendant
Sanft, Michael W.	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Testimony and exhibits presented. (See worksheets). Arguments by counsel regarding objection during Officer Crowe's testimony. MATTER TRAILED. RECALLED. CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets). COURT ORDERED, matter CONTINUED.

CONTINUED TO: 3/16/2021 10:30 AM

To The Probation Officer for Colette R Winn, DOB 05/16/1975. Ms. Colette Winn is engaged in various illegal and illicet activities at the home of convicted felon Charles W Mccall. Colette has a ring doorbell installed to watch for any and all police activity, she has the app on her phone, and is doing this to monitor probation. She has made no attempt to move as directed py her probation officer. She purchased two vehicles, a mazda 323 and a bmw 3 series, with a suspended license and no job, that are parked in front of her residence at 1209 ingraham street. She has 3 computers in her room with social security numbers, profiles and credit card information she has been using to file unemployment claims, including her ex boyfriend in prison and collecting. She has his Pay Pal Card in her purse. All theses computers, the red one has all the information you need. Colette R Winn is also slinging drugs out of the far back bedroom and has 3500 in cash at all times. She is engaged in criminal activity with all ex felons. You need to be careful, as she stays up nearly 24 hours watching out for probation. Her doors are baricaded and her side door leading outside the house is where she runs if she suspects probation is coming. I hope this information has been helpful. Ms. Colette Winn plans on living at this convicted felons house even after she gets a fake address. She has not attempted to work, move out, or become a model citizen. Wepons might be found, so please be careful and god bless you. I write with no name because I am a concerened citizen, and am scared. She has credit cards in other names in her purses as well