

THE STATE OF NEVADA,

Appellant,

V.

CHARLES WADE MCCALL

Respondent.

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Case No. 82640

APPELLANT’S APPENDIX
Volume 2

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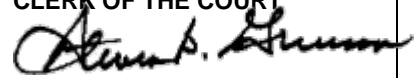
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DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

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

BEFORE THE HONORABLE MONICA TRUJILLO, DISTRICT COURT JUDGE
EVIDENTIARY HEARING (DAY 2)

TUESDAY, MARCH 16, 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.

1 TUESDAY, MARCH 16, 2021 AT 2:15 P.M.

2
3 THE COURT: Case number C-20-350999-2, *State of*
4 *Nevada versus Charles Wade McCall*. Mr. Beaumont on behalf
5 of the State; Mr. Sanft on behalf of Mr. McCall, and Mr.
6 McCall is present via BlueJeans. So, it's the time set for
7 argument, continued evidentiary hearing from yesterday.
8 State?

9 MR. BEAUMONT: Thank you, Your Honor.

10 So, to start out, everything here really revolves
11 around the protective sweep that was completed by Officers
12 Crowe and Conway. That was what got them into the room.
13 That's where all of this really starts. But for the
14 standard of whether a protective sweep is lawful or
15 appropriate, we look at *Maryland versus Buie*. That's 494
16 U.S. 325, which holds that there must articulable facts,
17 which, taken together with the rational inferences from
18 those facts, would warrant a reasonably prudent officer in
19 believing the area to be swept harbors an individual posing
20 a danger to those on the arrest scene.

21 And the case that I also submitted to the Court,
22 *Bursch*, out of Minnesota, goes into facts that are
23 extremely similar to this and *Bursch* found that the
24 protective sweep was lawful, and appropriate, and did not
25 suppress the evidence.

1 So, looking at the articulable facts here, which
2 would lead the officers to believe that the area to be
3 swept harbors a danger to those on the arrest scene, both
4 officers testified that they received an anonymous tip
5 regarding criminal activity at Ms. Winn's house. And
6 while, ordinarily, if we are looking at tips from anonymous
7 sources, we look for indicia of reliability. While that's
8 not appropriate or really relevant here, it does show that
9 certain things in the note became known upon further
10 inspection of the residence, which lends credibility to the
11 officers' knowledge as to what they were expecting when
12 they showed up to this residence.

13 First off, the note talked about having two
14 specific make and model cars. Officer Crowe saw both those
15 same make and model cars in front of the residence. The
16 note said that McCall is felon. Officer Crowe checked into
17 that and that checked out. The note stated that the house
18 belonged to Mr. McCall and Mr. Santos testified to that.
19 He testified that Ms. Winn and that he were paying rent to
20 Mr. McCall to live in that home. And the note stated the -
21 - that someone was selling drugs out the backdoor of this
22 residence. And, as we actually saw on the BlueJeans video
23 with Mr. Santos, the backdoor of this residence is right
24 outside of Mr. McCall's master bedroom. The master
25 bedroom, incidentally, ordinarily belonging to the person

1 who is owning the place, and, of course, Mr. McCall is in
2 that master bedroom.

3 So, all of these specific note facts that were put
4 forward in this note that was received by the Office of
5 Parole and Probation turned out to be true, either upon
6 initial inspection or upon further inspection. So, with
7 all those indicia of reliability in the note, officers had
8 a reasonable expectation that the rest of the note would
9 likely be true. And, in that note, there was a warning
10 that Ms. Winn was engaged in criminal activity with both
11 felon, Mr. McCall, and ex-felons. So, that's leading the
12 officers to believe that there may be more than just Mr.
13 McCall in that residence. And, most notably, that there
14 may be weapons in the house. So, all of these things are
15 known or at least suspected of the officers before they
16 ever even arrive at this residence.

17 So, then, we look at Mr. Crowe's -- or Officer
18 Crowe's testimony after he checks into Mr. McCall, finds
19 he's a felon, matches the cars, he goes and runs
20 surveillance. And he sees an unknown man coming in and out
21 of the house that he testified did not appear to be Mr.
22 McCall. So, that's lending more credibility to the notion
23 that the substance of this note is accurate. And, given
24 that this is an unknown house, he testified he'd never been
25 there, he doesn't know all of the occupants, he doesn't

1 know the layout, this is an unfamiliar environment and it
2 could pose a threat to his safety and the other officers'
3 safety.

4 Then, Officer Conroy testifies that he actually
5 drives Ms. Winn to the house and, while they're driving,
6 she's very evasive about the actual code to the door, the
7 door that she lives in, the door that she uses everyday as
8 a residence -- a resident of that home. And Mr. Conroy
9 believes that she was being evasive about it because she
10 was trying to signal any other people in the home that
11 there might be people coming over by entering the wrong
12 number over and over.

13 So, he finally got the correct number and, once he
14 gets the correct number, at this point he knows or at least
15 strongly suspects that there might be multiple people in
16 house that he's not aware of. And, again, Mr. Conroy,
17 never been to this house. He doesn't know who lives there.
18 He knows that there are -- is at least one other person in
19 the house, one of those people being a felon.

20 So, now he's got a threat that he rationally
21 perceives to both his safety and the other officers'
22 safety, again, before they even open the door. And, as the
23 caselaw I submitted to the Court indicates, and states
24 specifically that officers must be allowed to take actions
25 to present -- to protect themselves when conducting

1 probation checks in an unfamiliar environment. Both
2 officers testified they would not have gone just to Winn's
3 room without performing a sweep just for the safety, just
4 based on those potential threats that they knew of at that
5 time. And they testified that it's standard to conduct
6 protective sweeps for their safety and other officers' when
7 they're doing probation checks.

8 So, next, we have these officers, Conroy and
9 Crowe, locking the door at the same time. And they both
10 testified that the first thing they see is Mr. McConnell --
11 or, I'm sorry, Mr. McCall coming out of the master bedroom
12 in his house with a barking dog. The outdoor man that Mr.
13 Crowe had seen was not in sight. So, at that point, it's
14 reasonable to expect that one or more people in the house
15 may pose a danger to the officers.

16 And, again, Winn's reticence to give up her code
17 and to have some sort of red flag or signal to other people
18 in the house, gives them a reasonable expectation that
19 there may be more than just Mr. McCall there.

20 They're also noting that the dog is a potential
21 threat. Officer Conroy noted that it was barking and
22 Officer Crowe noted that he'd been attacked by dogs on
23 prior probation searches. So, it's not just for personal
24 safety -- or for safety from persons in this case, it's
25 also safety from a dog or potentially more dogs because now

1 there's a brand new unknown thrown into this mix.

2 So, the officers tell McCall to restrain his dog
3 and he complies. They accompany him to his room and they
4 tell him that they're going to conduct a protective sweep.
5 And rather than locking the door and saying you can't come
6 in, rather than saying this is my private area, this is my
7 private bedroom, I'm not allowing you in here, I'm going to
8 put the dog in and I'm going to shut the door, none of that
9 happens. There's no evidence that there was a lock on the
10 door. None of that was entered into any evidence.
11 Instead, he just opens the door and walks right in with the
12 dog.

13 And, before he does that, he says: Well, you
14 know, I was on parole. I know how this works. And if
15 that's not express consent to search his room, it's
16 certainly implied consent. This is a man who has been on
17 parole again. He's been on probation. Like he said: He
18 knows how this works. He knows that rooms can be searched.
19 He's living with someone who is on probation. He's aware
20 that his common area has a diminished expectation of
21 privacy because the search clause in Ms. Winn's Probation
22 Agreement submits the entire home to a search. Again, I
23 was just on parole, I know how this works. He is aware
24 that his residence could be searched pursuant to the
25 probation clause.

1 So, he opens the door. Again, no unlock. No key.
2 No evidence that there was any sort of keep out sign on the
3 door. Nothing like that. So, he walks his dog into his
4 bathroom while Officer Conroy and Crowe walk in. Again, no
5 objection at any time to them going in. No: Stay out of
6 my room. No: Could you please hang out in the hallway?
7 No: This is my private area, I've got some stuff in here.
8 You guys just kind of want to stay out in the hallway.
9 Nothing like that. Again, he is complying, and he's
10 complacent, and he's helpful with this search of his room.

11 So, at this point, the officers are now in a place
12 where they have a lawful right to be and now we have a bit
13 of a combination of the plain view doctrine and the
14 protective search doctrine. So, Crowe goes in one way to
15 check the room for anyone posing a threat. He doesn't find
16 anyone. Conroy goes another way. At this point, they're
17 not ruffling through his bed. They're not going through
18 his drawers. They're not using this as a pretext to go
19 rummaging about through hidden items or move things around.
20 It's just a visual scan of the room to see if there's
21 anyone else or anything that imposes an immediate threat.

22 While they're doing that, we see shotgun shells on
23 the dresser. Plain view, right out there on the top of the
24 dresser. So, at this point, once Officer Conroy has seen
25 these shotgun shells, we have to add up everything that's

1 happened up until now to determine whether or not it was
2 reasonable and warranted for them to be doing this
3 protective sweep and did -- and talk about what happens
4 next. Winn's evasive, we have a note about weapons, we
5 have multiple people in the house, one of them unaccounted
6 for, one of them is a convicted felon that we're -- they're
7 with right now. And, so, he's not supposed to have guns.
8 So, at this point, they're extremely reasonably afraid for
9 their safety.

10 So, they then -- and according to both officers
11 for standard procedure is to -- once they found something
12 like this, put the probationer or whomever it is in
13 handcuffs, put them into custody, *Mirandize* them, and let
14 them know that they may be subject to further
15 investigations.

16 Immediately, within seconds, was Mr. -- or was it
17 Officer Conroy's testimony, Mr. McCall starts talking about
18 everything. He confesses to having multiple guns in the
19 room, he has drugs, he has IDs, he has forge lab equipment,
20 he has narcotics. He has a number of things he just
21 immediately gives up to the officers and he just says: I
22 want to be honest. And, so, they ask him: All right.
23 Well what do you have? I have a firearm over under my
24 pillow. I have a firearm in the closet. I have a firearm
25 in the dresser. I have -- I may be misquoting where these

1 were found that is my recollection of his testimony.

2 So, he's now consenting to a search of his room.
3 He's consenting to this search. He's allowing them to
4 search and he says: I just want to be honest. I just want
5 to be honest I have drugs. I just want to be honest I have
6 guns. He tells them everything. And, based on this
7 confession, based on his consent to search his room from
8 that point forward, they apply for a search warrant to
9 search the rest of the residence, as well as the cars.

10 And, while Mr. McCall's honesty and consent for
11 the sweep are commendable, these actions completely
12 eviscerate the notion that he had either a subjective or
13 objective expectation of privacy in his bedroom. And it
14 also eviscerates the notion that the protective sweep was
15 unwarranted or overbroad. They had notice that there may
16 be weapons. Mr. McCall allows them to go in. At no point
17 objects. And complies and helps with this search. He's
18 extremely cooperative with the officers.

19 So, going back to the underlying idea of the
20 subjective or objective expectation of privacy, if he has
21 no objective expectation of privacy, he can't be alleging
22 that there was some sort of violation of his Fourth
23 Amendment. And, as I submitted to the Court, the caselaw
24 establishes that you have a diminished expectation of
25 privacy when you're living with a probationer in the first

1 place for common areas.

2 But it's his own home and he's permitting a
3 probationer to live with him, while he's apparently dealing
4 drugs out the back door, possessing forged lab items, and
5 guns. So, he has created his own diminished expectation of
6 privacy by engaging in criminal acts and then allowing
7 probationers to come in who are subject to a search clause.

8 He consents to the search of his room. That
9 diminishes his expectation of privacy. He consents to the
10 search of his room post the discovery of the shotgun shells
11 in plain view. That diminishes his expectation of privacy.
12 He told them exactly where these prohibited items were.
13 Again, they weren't rummaging around and looking for them.
14 He told them directly: This is here, this is here, and
15 this is here.

16 So, you add on top of that that there's really not
17 even a subjective expectation of privacy in his own room
18 because he holds it out to his other roommates. We've sat
19 and watched on BlueJeans while the witness, Mr. Santos, sat
20 next to him, hanging out in his room during the entire
21 hearing, eating chips, hanging out, having a great time in
22 the seat next to him, and then gets up to testify, notably,
23 after he's heard all of the other witnesses' testimony in
24 this evidentiary hearing. While he's testifying, Mr.
25 McCall doesn't even leave the room. He's sitting next to

1 him, coaching him through the witness testimony. And, even
2 in his own testimony, he's saying that he's been in there
3 on multiple and prior occasions over the last year. The --
4 Mr. McCall's room is, effectively, a common area. There
5 seems to be some sort of computer or some set up in there
6 that Mr. Santos was either using at the time, or has been
7 using in the past.

8 Additionally, the other two doors in the house
9 have their names on them. Colette's name -- Officer Crowe
10 or Conroy testified that Colette's name was on her door.
11 There was another name on the other door, but there's no
12 name on Mr. McCall's door. There's no even expectation of
13 privacy amongst his own house. There's no Charles.
14 There's no Mr. McCall. There's nothing like that. So,
15 again, effectively, he's got a common area in his bedroom.

16 So, to put it all together, we're starting off
17 with a point where the facts indicate that Mr. McCall has
18 an extremely diminished, if not a zero expectation of
19 privacy in his own room, in this house, in this particular
20 case. It's further diminished by the fact that he's living
21 with the probationer -- or, I'm sorry, that a probationer
22 is living with him, with his permission. And, we say that
23 there are so many things from this original note that not
24 only turned out to be true on initial inspections, but
25 after inspection. Specifically the part about dealing

1 drugs out the backdoor. The backdoor that was right next
2 to Mr. McCall's room and that we physically saw on
3 BlueJeans when Mr. Santos left Mr. McCall's room at the
4 Court's request and we saw the backdoor to the house that
5 he was alleged that there was drugs being dealt out of.

6 So, with all of these things being present, both
7 in the note and to the officers' observations as they
8 chronologically entered the home, saw Mr. McCall, saw the
9 dog, was missing some outdoor man that they didn't know of,
10 all of these things created a reasonable expectation that
11 the area that they were sweeping, e.g. Mr. McCall's room,
12 could harbor an individual posing a danger to those on the
13 arrest scene.

14 So, for that reason, the protective sweep was
15 reasonable, did not violate Mr. McCall's rights. Anything
16 found as a result of that protective sweep, e.g. the
17 shells, simply led officers to be able to find what Mr.
18 McCall consented to having them search for. The shells
19 themselves weren't even necessarily incriminating. It's
20 not necessarily illegal for him to possess shells. But
21 they certainly were indicative of something else might be
22 going on. And when they saw those shells in plain view in
23 a place they had every right to be legally, from that point
24 forward, everything else was an admission of Mr. McCall.

25 So, again, the notion that he was trying to set

1 aside his room as a protected area or had some heightened
2 expectation of privacy in his own room here, his own
3 actions eviscerate that. His actions prior to being
4 searched, e.g. living with Ms. Winn, all of these things
5 add up to the officers having an extremely reasonably
6 prudent belief that there were articulable facts that there
7 was a danger to them on the scene.

8 And, again, this was a by the book protective
9 sweep. They walk in. They look around. They look for
10 other people. That's it. They just happened to see
11 shotgun shells and ask him about it. No further searching.
12 No further seizing. They didn't even seize the shells at
13 the time that they saw them. These officers were doing
14 what they were trained to do, by the book, and conducted a
15 perfectly lawful protective sweep of the residence that
16 resulted in finding numerous pieces of incriminating
17 evidence.

18 So, for that reason, anything that was seized as a
19 result of this search should not be suppressed.

20 THE COURT: Thank you, Mr. Beaumont.

21 Mr. Sanft?

22 MR. SANFT: Well, let me ask you -- may I ask the
23 Court this? Is the State's argument persuasive enough to
24 the Court that I need to refute it or can we just make a
25 ruling on -- based upon that right now?

1 THE COURT: I think you need to refute it.

2 MR. SANFT: Okay. Because I guess the question
3 is, at the end of the day -- and it's interesting because
4 the one point that I -- I was always curious about in my
5 mind, is the last point that the State made, and that is
6 about the shotgun shells themselves, about whether or not
7 they're actually illegal. And I looked, I couldn't find
8 anything in the federal side, possession of shotgun shells
9 potentially by an ex-felon could be charged. On the State
10 side, obviously it's not illegal to have shells. You have
11 to have a firearm for that shell.

12 I don't recall the letter, and I don't know if the
13 Court has that letter in front of you right now, if I could
14 just refer to that because I didn't -- as much as I --

15 THE COURT: I actually wrote on it. Do we have
16 the exhibit, Alan?

17 THE CLERK: Yes, Your Honor.

18 MR. SANFT: With regards to that particular
19 exhibit, it's very interesting when you have a case
20 involving probation officers versus Metropolitan Police
21 Officers because even though I think they go through
22 similar training with regards to POST-10 certifications and
23 so forth, ultimately at the end of the day, probation
24 officers have a different view on how to do things versus
25 Metropolitan police officers. Metro officers are trained

1 in such a way to where they're a lot more cognizant about
2 issues like the Fourth Amendment, issues of the right of
3 privacy, for instance. And, as a result, they're more
4 cautious when they see something, when they approach
5 something, when they're looking for something because they
6 know full well that that Fourth Amendment is one of those
7 rights that we have in our country that is potentially
8 sacrosanct. We -- it's drafted in such a way and foreseen
9 by the drafters in such a way to prevent unreasonable
10 search and seizure, unreasonable government intrusion into
11 your privacy. Right?

12 So, as a result, Metro approaches their work a
13 little different. Probation officers, on the other hand,
14 come across, in my mind, like cowboys. Right? They're
15 just happy to be there. They're excited. They get to put
16 on their vests, their tactical vests, they get to put their
17 firearm on their hand, they walk up with it, they get to
18 use loud voices when they approach into a house, and, as a
19 result, they are just excited to be there. But the problem
20 is that probation officers run with a lessened or actually
21 a nonexistent expectation of the Fourth Amendment for a
22 probationer. You're on probation, you give up that right.
23 It's clause number 6 in a standard probation form that the
24 Court fills out, outside of the special conditions. Number
25 6 specifically, you give up your right to privacy. You

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 THE COURT: Thank you, Mr. Sanft.

6 Mr. Beaumont?

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

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

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

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

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

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

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

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

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

1 note.

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

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

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

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

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

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

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

10 THE COURT: Thank you, Mr. Beaumont.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 MR. SANFT: Yes, Your Honor.

13 THE COURT: Thank you.

14 Anything further?

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

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

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

1 would move to dismiss the case.

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

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

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

10 THE COURT: Correct.

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

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

16 MR. SANFT: Yes, Your Honor.

17 THE COURT: So, --

18 MR. SANFT: Thank you.

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

20 MR. SANFT: No, Your Honor.

21 THE COURT: Thank you.

22

23 PROCEEDING CONCLUDED AT 11:28 A.M.

24 * * * * *

25

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

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18

19 

20 KRISTEN LUNKWITZ

21 INDEPENDENT TRANSCRIBER

22

23

24

25

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 16, 2021

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

March 16, 2021 10:30 AM Evidentiary Hearing

HEARD BY: Trujillo, Monica

COURTROOM: RJC Courtroom 11C

COURT CLERK: Alan Castle

RECORDER: Rebeca Gomez

REPORTER:

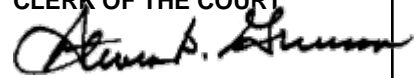
PARTIES

| | | |
|-----------------|----------------------|------------------------|
| PRESENT: | Beaumont, Austin C. | Attorney for Plaintiff |
| | McCall, Charles Wade | Defendant |
| | Sanft, Michael W. | Attorney for Defendant |
| | State of Nevada | Plaintiff |

JOURNAL ENTRIES

- Arguments by Mr. Beaumont and Mr. Sanft as to their respective positions. Court stated findings and COURT ORDERED, the items in plain view during the unlawful protective sweep must be suppressed and the evidence seized pursuant to the warrant must be suppressed as it was from the fruit of the poisonous tree of the unlawful protective sweep. Mr. Sanft moved to dismiss the case. Mr. Beaumont objected to the dismissal and stated he understands the Court's ruling. Court instructed Mr. Sanft to file the appropriate written motion.

NIC



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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

CHARLES MCCALL,
#0839616,

Defendant.

Case No. C-20-350999-2
Dept. No. III

NOTICE OF APPEAL

TO: CHARLES MCCALL, Defendant; and

TO: MICHAEL W. SANFT, ESQ., Counsel for Defendant; and

TO: MONICA TRUJILLO, District Judge, Eighth Judicial District Court,
Dept. No. III.

NOTICE IS HEREBY GIVEN THAT THE STATE OF NEVADA, Plaintiff in the
above entitled matter, appeals to the Supreme Court of Nevada, pursuant to NRS 177.015(2)
from the order the district court orally rendered March 16, 2021, granting Defendant's Motion
to Suppress.

Dated this 17th day of March, 2021.

STEVEN B. WOLFSON,
Clark County District Attorney

BY /s/ Jonathan E. VanBoskerck
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528

1 **CERTIFICATE OF ELECTRONIC TRANSMISSION**

2 I hereby certify that service of the above and foregoing was made this 17th day of
3 March, 2021, by electronic transmission to:

4
5 MICHAEL SANFT, ESQ
Email: michael@mgslaw.vegas

6 JONATHAN E. VANBOSKERCK
7 Chief Deputy District Attorney

8
9 I further certify that I served a copy of this document by mailing a true and correct copy
10 thereof, postage pre-paid, addressed to:

11 JUDGE MONICA TRUJILLO
12 Eighth Judicial District Court, Dept. 3
13 Regional Justice Center
14 200 Lewis Avenue
15 Las Vegas, Nevada 89101

16
17 BY /s/ E. Davis
18 Employee, District Attorney's Office

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1 **ORDG**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -vs-

8 CHARLES McCALL

9 Defendant.

CASE NO: C-20-350999-2

DEPT NO: III

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

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

15 **HEREBY FINDS THAT:**

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

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

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

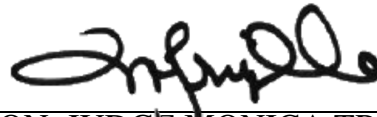
3 While the plain view doctrine allows objects not otherwise listed in a search warrant
4 to be seized, the initial intrusion must still be lawful. *Luster v. State*, 115 Nev. 431, 434, 991
5 P.2d 466, 468 (1999). Here, officers did not obtain a search warrant for the home until after
6 the initial violation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

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

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

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

25
26 Dated this 28th day of April, 2021

27 

28 HON. JUDGE MONICA TRUJILLO

B2B FDD 4009 B191
Monica Trujillo
District Court Judge

AA 0283

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-20-350999-2

7 vs

DEPT. NO. Department 3

8 Charles McCall
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/28/2021

15 Michael Sanft

michael@sanftlaw.com

16 Austin Beaumont

austin.beaumont@clarkcountyda.com