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2 IN THE SUPREME COURT OF THE STATE OF NEVADA

3 Electronically Filed
4 Apr 27 2022 06:09 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

5 BO DWIGHT HEGGE,
Appellant,

6 vs.
7 THE STATE OF NEVADA,
Respondent.

CASE NO. 83664

8 APPENDIX TO RESPONDENT'S BRIEF

9 Appeal From The Fourth Judicial District Court

10 Of The State of Nevada

11 In And For The County Of Elko

12 THE HONORABLE AARON D. FORD

13 ATTORNEY GENERAL OF NEVADA

14 100 N. CARSON STREET

CARSON CITY, NV 89701

15 TYLER J. INGRAM
16 Elko County District Attorney's
Office
17 540 Court Street, 2nd Floor
Elko, NV 89801

By: JEFFREY C. SLADE
State Bar No. 13249

18 ATTORNEYS FOR RESPONDENT

Ben Gaumond Law Firm, PLLC
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Elko, NV 89801
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ATTORNEY FOR APPELLANT

1 **Table Of Contents Supplemental Appendix**
2 **To The Respondent's Brief**

3 **Description Of Document(s) In**

4 **Alphabetical Order (N.R.A.P. 30[c][2])**

Page Nos. In Appendix

4 Criminal Complaint Certified1-7

5 Exhibit filed with Reply to Opposition to Motion to Withdraw.....8-15

6 Dated this 27th day of April, 2022.

7 TYLER J. INGRAM
 Elko County District Attorney
8 540 Court Street, 2nd Floor
 Elko, NV 89801
9 (775) 738-3101

10 By: 

11 JEFFREY C. SLADE
 Deputy District Attorney
 Nevada Bar Number: 13249

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Honorable Aaron D. Ford
Nevada Attorney General

and

Ben Gaumond Law Firm, PLLC
Benjamin C. Gaumond, Owner
Nevada Bar Number 8081
495 Idaho Street Suite 209
Elko, NV 89801
Attorney for Appellant

and

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Attorney for Appellant

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1 CASE NO. EL-JC-CR-F-21-836

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3 DP

4
5 IN THE ELKO JUSTICE COURT
6 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA
7

8 STATE OF NEVADA,

9 Plaintiff,

CRIMINAL

10 vs.

COMPLAINT

11 BO DWIGHT HEGGE,

12 Defendant.

13 COMES NOW, THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by
14 and through its Counsel of Record, the Elko County District Attorney's Office, and based
15 upon the Declaration Of Probable Cause and/or the narrative report and the Officer
16 Declaration executed by the submitting officer in connection with said narrative report,
17 complains and alleges that the Defendant above-named, on or about the 12th and/or 13th day
18 of February, 2021, at or near the location of Elko, within the County of Elko, and the State of
19 Nevada, committed the following described criminal offenses:

20
21 COUNT 1

22 **ROBBERY WITH USE OF A DEADLY WEAPON, A CATEGORY B FELONY**
23 **AS DEFINED BY NRS 200.380 AND NRS 193.165. (NOC 50138)**

24 That the Defendant did willfully and unlawfully take personal property consisting
25 of money or currency from the person or presence of Arthur Gene Brasher
26 and/or Dean Brasher and/or Kody Holland by means of force or violence, or fear
27 of injury to and against the will of said victim, in the following manner: pointing a
28 firearm at Arthur Gene Brasher and/or Dean Brasher and/or Kody Holland while

1 demanding said money and/or the return of a coin the Defendant alleged was
2 taken by Arthur Gene Brasher and/or Dean Brasher and/or brandishing said
3 firearm while demanding money and/or the return of a coin the Defendant
4 alleged was taken by Arthur Gene Brasher and/or Dean Brasher and/or in
5 another manner as yet unknown.

6
7 COUNT 2

8 **BURGLARY WITH THE USE OF A FIREARM, A CATEGORY B FELONY AS**
9 **DEFINED BY NRS 205.060.5. (NOC 50426)**

10 That the Defendant did willfully, unlawfully, either by day or by night, enter a
11 structure or vehicle described as follows: 536 Morse Lane lot 16 and/or the
12 residence of Arthur Gene Brasher, and that the Defendant did so with the intent
13 to commit grand larceny or petit larceny, assault or battery on any other person
14 or any felony, to-wit: assault and/or robbery and/or battery and/or another crime
15 as yet unknown. Furthermore the Defendant had in his possession a firearm or
16 deadly weapon during the commission of the crime.

17
18 COUNT 3

19 **ASSAULT WITH A DEADLY WEAPON, A CATEGORY B FELONY AS**
20 **DEFINED BY NRS 200.471.1, AND .2(b). (NOC 50201)**

21 That the Defendant:

- 22 1. did willfully and unlawfully attempt to use physical force against another
23 person, one Arthur Gene Brasher and/or Dean Brasher and/or Kody Holland; or
24 2. did intentionally place another person, one Arthur Gene Brasher and/or Dean
25 Brasher and/or Kody Holland, in reasonable apprehension of immediate bodily
26 harm.

27 Further, the Defendant committed said offense with the use of a deadly weapon
28 or at a time when the Defendant had the present ability to use a deadly weapon,

1 to wit: a firearm, and in the following manner: brandishing said firearm and/or
2 pointing said firearm at Arthur Gene Brasher and/or Dean Brasher and/or Kody
3 Holland and/or in another manner as yet unknown.

4
5 COUNT 4

6 **POSSESSION OF A FIREARM BY A PROHIBITED PERSON, A CATEGORY**
7 **B FELONY AS DEFINED BY NRS 202.360.1. (NOC 51460)**

8 That the Defendant willfully and unlawfully owned; and/or possessed, actually or
9 constructively; and/or had custody and/or control of the following described
10 firearm(s): Smith and Wesson semi-automatic pistol.

11
12 Furthermore, that the Defendant, at the time of the ownership, possession,
13 custody or control, of said firearm(s) had been previously convicted of
14 committing a misdemeanor crime of domestic violence, had been previously
15 convicted of committing a felony criminal offense, was a fugitive from justice, was
16 an unlawful user of, or addicted to, any controlled substance, or was otherwise
17 prohibited by federal law from having a firearm, to wit:

18 Previously convicted of a felony offense in the Fourth Judicial District in case
19 number CR-FO-09-2394 and/or is an unlawful user of or addicted to a controlled
20 substance.

21
22 COUNT 5

23 **CARRY CONCEALED EXPLOSIVE, PNEUMATIC GUN, FIREARM OR**
24 **DANGEROUS WEAPON WITHOUT A PERMIT, A CATEGORY C FELONY AS**
25 **DEFINED BY NRS 202.350. (NOC 51459)**

26 That the Defendant did willfully, unlawfully and knowingly carry concealed upon
27 his/her person a pistol, revolver, other firearm or other dangerous or deadly
28 weapon or pneumatic gun, to-wit: a Smith and Wesson semi-automatic pistol.

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COUNT 6

**POSSESSION OF A SCHEDULE I OR II CONTROLLED SUBSTANCE, A
CATEGORY E FELONY AS DEFINED BY NRS 453.336. (NOC 62073)**


That the Defendant did unlawfully, and knowingly or intentionally, possess,
actually or constructively, a schedule I or II controlled substance, to wit:
Methamphetamine a schedule I controlled substance.

All of which is contrary to the form of the statute in such cases made and provided,
and against the peace and dignity of the State of Nevada. Said Complainant, therefore,
prays that the Defendant(s) be dealt with according to law.

The undersigned hereby declares under penalty of perjury that the foregoing
Complaint is true to the best of his/her knowledge, information, and belief.

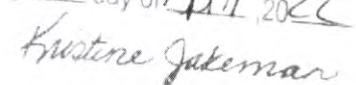
Dated: February 23, 2021.

TYLER J. INGRAM
ELKO COUNTY DISTRICT ATTORNEY


JEFFREY O. SLADE
Deputy District Attorney
State Bar No.: 13249

Estimation Of Time Needed

The State estimates that 3 hours will be needed to conduct the trial/preliminary
hearing in this matter.

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE
25 day of April, 2022

CLERK

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DECLARATION OF PROBABLE CAUSE

ARRESTEE'S NAME: Hegge, Bo Dewight

DOB: 05/24/1986

DATE OF ARREST: 02/13/2021

TIME OF ARREST: 1759hrs

PLACE OF ARREST: 536 Morse Ln #16

TYPE OF ARREST:

Without Arrest Warrant: ☒

With Arrest Warrant: ☐

Arrested for P & P Hold: ☐

Citizen's Arrest: ☐ (Citizen's Arrest Form must be attached)

(If Domestic Violence is charged, indicate date and time that the battery occurred:

Date: Time:)

(If DUI is charge, indicate the arrest and conviction dates for each prior DUI offense within 7 years:

Prior Arrest: Prior Conviction: Prior Arrest: Prior Conviction:)

NOC	NRS- CTTY COUNTY	CHARGE DESCRIPTION	# CT	M GM F	BAIL	COURT
202.360		Ex Felon in Possession of a firearm	1	F	20,000	ELJC
202.350		Carrying concealed firearm w/o permit	1	F	5,000	ELJC
200.471		Assault w/ Deadly Weapon	1	F	20,000	ELJC
205.067		Home Invasion	1	F	50,000	ELJC
205.060		Burglary w/ firearm	1	F	50,000	ELJC
200.380		Robbery w/firearm	1	F	100,000	ELJC
453.336		Possession of a C/S	1	F	5,000	ELJC

I, D. Pinkham MADE THE ARREST OF THE ABOVE NAMED ARRESTEE AND HERBY DECLARE, UNDER PENALTY OF PERJURY, THAT I HAVE KNOWLEDGE OF OR HAVE BEEN INFORMED OF THE FOLLOWING FACTS AND CIRCUMSTANCES WHICH SUPPORT THAT A CRIME OR CRIMES HAS OR WERE COMMITTED:

On 02/13/2021 at approximately 1711hrs, I Officer D. Pinkham with the Elko Police Department was dispatched to 536 Morse Lane #16 for a report of an assault. The call narrative advised the reporting party advised he was held at gun point the day prior by a male and female subject and forced out of his residence.

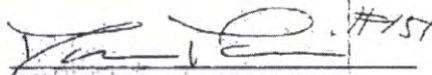
I arrived and made contact with the reporting party, Arthur Brasher. Arthur advised me his brother owed Bo Hegge 80 dollars. Arthur stated on 02/12/2021, Bo knocked on his door, put a gun to his head and shoved his way into the residence. Arthur stated Bo shoved him so hard he fell over the couch in the living room. Arthur stated Bo demanded they give him more than he loaned them. Arthur stated he gave Bo 20 dollars and Kody (roommate) gave him 180 dollars. Bo threatened Arthur stating he would be back for the rest of the money. Arthur described the firearm as a black semi-automatic pistol.

After learning this information, Officer Cunningham and I approached the residence. As I approached, I could see a male subject I knew to be Bo Hegge standing in the driveway. With the information that Bo could be armed with a firearm, I asked Bo to put his hands behind his back so I could search him for weapons. As I grabbed Bo's left wrist, he tensed up and refused to put his right arm behind his back. I could see his right hand was inside his hoodie pocket. I ordered Bo to put his hands behind his back. Bo continued to resist until I was able to pull his hand out of his pocket and place it behind his back. Officer Cunningham removed a black Smith and Wesson semi-automatic pistol from the pocket Bo had his hand inside. Bo was placed in handcuffs. I requested dispatch run a records check and a criminal history check on Bo. Dispatch advised Bo had two non extraditable warrants and that he had prior felony convictions.

Bo was advised he was under arrest. I conducted a search incident to arrest. Inside Bo's left pants pocket, I located a plastic baggie with a white crystal like substance. With my training and experience, I recognized the substance

to be methamphetamine. I used a Detecta-chem test to test the substance. The substance tested presumptively positive for methamphetamine. I transported Bo to the Elko County Jail where he was booked on the above charges.

DATE: 02/13/2021


(PEACE OFFICER OR CITIZEN)

DEPT.: EPD ID NO.: 151

*FOR JUDGE'S USE ONLY	
PROBABLE CAUSE FOR FURTHER DETENTION:	FOUND: <input type="checkbox"/>
	NOT FOUND: <input type="checkbox"/>
DATED THIS _____ DAY OF _____	TIME: _____
_____ (MAGISTRATE)	

F-21-00375PA
TD

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ELKO DISTRICT COURT

CLERK DEPUTY *mb*

Case No.: DC-CR-21-90

Dept. No.: 1

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

STATE OF NEVADA,

Plaintiff,

Vs.

**REPLY TO OPPOSITION TO
MOTION TO WITHDRAW PLEA
OF NO CONTEST**

BO DWIGHT HEGGE,

Defendant.

Comes now the Defendant above-named and in reply to the Opposition of the State to withdraw his plea of No Contest informs the Court as follows.

A presentence motion to withdraw a guilty plea may be granted "for any reason where permitting withdrawal would be fair and just." Stevenson v. State, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015).

The forgoing statement in Stevenson disavows prior decisions of the Nevada Supreme Court which over a number of years had exclusively focused on the validity of the plea in determining whether to allow withdrawal.

Now the District Court must consider the totality of the circumstances to determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just. Stevenson v State, 354 P. 3d 1277 (2019).



1 The States Opposition to Defendant's motion does not assert that the State would be in
2 anyway prejudiced by the court allowing withdrawal of the No Contest plea. No significant
3 expenditure of time or resources of the State to achieve the plea agreement is claimed. No
4 subsequent decisions of the State with respect to prosecuting other people based on the belief
5 that Defendant had been convicted are claimed.

6 Moreover, the evidence will establish that the State withheld information it received
7 about the principal witness against Defendant, Arthur Brasher, from March 18, 2021 until June
8 24, 2021.

9 Defendant's response to the allegation of the State in its Opposition that Defendant
10 entered his no contest plea and now seeks to withdraw it as a result of the agreement having
11 been used as a place holder makes no sense.

12 There is no indication whatever that Defendant used or intended to use the entry of his
13 plea of No Contest as a means to hold an outcome in place while he tries to find a means to
14 negotiate or force a more favorable agreement.

15 Neither does Defendant understand the State's assertion that Counsel has become a
16 necessary witness.

17 Most importantly, Defendant will inform the Court that his decision to enter a plea of no
18 contest was largely based on the potential of him being convicted of not only possessing a
19 firearm as an ex-felon, but also being convicted of possession of a controlled substance, robbery,
20 burglary and assault with a deadly weapon. Had Defendant been convicted of two of the charged
21 felonies would potentially have resulted in him becoming an habitual criminal.

22 Defendant admits and will testify that the case, including the anticipated evidence against
23 him, was discussed with counsel. His assertion is that he now realizes that he didn't understand
24 counsel's legal conclusions in their entirety, specifically that he did not fully understand the
25 concept of how fact finders are required and permitted to weigh evidence.

26 Defendant will also testify that he told counsel, as well as law enforcement authorities
27 that he had not been to the residence of Arthur Brasher the day before his arrest on February 13,
28 2021.

As indicated above and in Defendant's motion, the principal witness against him was
Arthur Brasher. It was Mr. Brasher who allegedly provided information that created an
articulable and reasonable suspicion to Officer Pinkham that resulted in a pat down search of

1 Defendant by the officer on February 13, 2021. As a result of the pat down search, a gun in the
2 possession of Defendant as well as a bag of methamphetamine were found.

3 An articulable reasonable suspicion of a police officer that a person they encounter might
4 possess a firearm might be armed is an intricate question.

5 First, what is "reasonable", has to be understood. In the real world, legally trained
6 lawyers and judges endlessly debate what is reasonable. Defendant is not legally trained. He did
7 not even attend High School according to the information contained in the Pre-Sentence report of
8 the Division of Parole and Probation. He did, however, get a GED.

9 Mr. Hegge will testify that he was made aware that just before the pat down search,
10 Arthur Brasher told officers that Defendant had possessed a firearm the preceding day at Mr.
11 Brasher's residence and had threatened Mr. Brasher with it. Mr. Brasher did say that. The
12 statement was recorded on a police officer's body camera.

13 The question of "Reasonableness" that the statement was true, however, goes well
14 beyond simply hearing the statement. A finding of reasonableness requires the officer to
15 evaluate Mr. Brasher's reliability.

16 Officer Pinkham did not ask Mr. Brasher why he hadn't reported the unjustified armed
17 assault on him by Mr. Hegge the day before to the police. The assault on Mr. Brasher was
18 unjustified, as Office Pinkham knew from Mr. Brasher's statement that Defendant was angry
19 over money he loaned to Mr. Brasher's brother, who didn't repay it.

20 Officer Pinkham did not ascertain whether Mr. Brasher was angry at Defendant. Officer
21 Pinkham did not ascertain when on the preceding day he claimed Defendant was at the residence.

22 Defendant will testify that he was unaware that his response to Officer Pinkham's
23 question of why he was at the residence that was posed to him just prior to the pat down search,
24 contradicted the claims of Mr. Brasher and because his presence was based on his allegation that
25 a coin of considerable value had been stolen from him, that should have triggered further
26 inquiries by Officer Pinkham to ensure that Mr. Brasher's statement was reliable.

27 Up to that point, Defendant will testify that he believed the reasonableness of Officer
28 Pinkham's determination of an articulable suspicion was a close question that he would likely
lose because fact finders typically favor the testimony of police officers.

Defendant will testify that he subsequently learned that Officer Pinkham was aware that
the residence Mr. Brasher lived in had prior incidents that resulted in police presence.

1 Defendant will also testify that he subsequently learned that Mr. Brasher left Elko
2 County shortly after Defendant's arrest, and that Mr. Brasher has been incarcerated in the State
3 of Utah for criminal offenses.

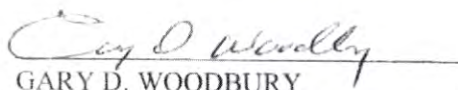
4 Defendant's information that Mr. Brasher left Elko County and was incarcerated in Utah
5 came in the form of a letter from Mr. Brasher that was received by the Elko County District
6 Attorney's Office on March 18, 2021, approximately 11 days before Defendant signed the plea
7 agreement.

8 That document was not transmitted to Defense Counsel in Discovery until June 24th,
9 2021, the day before Defendant's motion to withdraw his plea was filed. A copy of the letter and
10 the discovery notice is attached.

11 The State has raised no issue that makes Defendant's Motion to withdraw his plea of No
12 Contest unreasonable, or that would not result in a fair and just outcome.

13 Respectfully submitted this 2 day of JULY 2021.

14
15
16 By: GARY D. WOODBURY

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20 GARY D. WOODBURY
21 Nevada State Bar No. 1915
22 Attorney for Defendant
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CERTIFICATE OF SERVICE

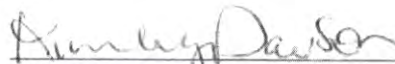
Pursuant to NRCP 5(b), I certify that I, KIMBERLY DAWSON, on the 15 day of
JULY 2021 served the foregoing REPLY TO OPPOSITION TO MOTION TO WITHDRAW
PLEA OF NO CONTEST by delivering, mailing or by facsimile transmission or causing to be
delivered, mailed, or transmitted by facsimile transmission, a copy of said document to the
following:

By delivering to:

THE HONORABLE KRISTON HILL
FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

AND

ELKO COUNTY DEPUTY DISTRICT ATTORNEY
JEFFREY SLADE
540 COURT ST, 2ND FLOOR
ELKO, NV 89801


KIMBERLY DAWSON

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ELKO Courts, SAT, 13, March, 21
2021 MAR 18 AM 11:28

RECEIVED
ELKO COUNTY
DISTRICT ATTORNEY
My Name is Arthur Brasher and I was residing at 335 MORSE LN. #16 on a late evening in the middle of February 2021 I believe when my home was entered by several people, one man I knew named "Beau" had a gun with three other people that I was somewhat familiar with 1. a guy they call "Bro" 2. A guy named Cody AND some one that I was not familiar with.

I went out the front door as they came in the back and went to a neighbors house and called the police. The police came AND arrested them AND I filed charges.

I informed the Police that "Beau" had been to my house the previous day with his wife "Christy" AND put a gun to my head AND pushed me over a couch as they entered my home.

Now I AM writing you to secure the full prosecution of these individuals AND to make sure the court dont need anything from me, I AM in jail in utah for a minute BUT AM doing alright. please let me know

That everything is moving Forward
And if the courts need Anything
Further from me

I Am very thank ful for your
assistance That Day by the
E/Ko Police

Please contact me if you need me
For Anything AS I Dont know
yet how long I will be in the
Richfield, ut county Jail, sevier Co.
But I HAVE found possible work
once released so I will
keep in touch every Few months

Please send me A copy of the
Incident Report AND Charges
THAT I had filed I would
Also like to know the
resolution of this case please

THANK YOU

Arthur Gene Brasher

2021 MAR 18 AM 11:28

RECEIVED
ELKO COUNTY
DISTRICT ATTORNEY

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