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FILED

Case No. CR-FP-18-7207

Dept. No. 1

2018 DEC 12 PM 4:04

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY 

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

THE STATE OF NEVADA,

PRETRIAL ORDER
(Criminal Case)

Plaintiff,

V.

SARAH ELIZABETH GRAVELLE,

Defendant.

IT IS HEREBY ORDERED that:

1. The above-entitled case shall be tried before a jury commencing Tuesday, the 19th day of February, 2019, at 9:00 a.m. Further, the Elko County Jury Commissioner shall draw a panel consisting of 110 prospective jurors two (2) weeks prior to the scheduled trial date. Three days have been set aside for the trial in this matter. During Defendant's arraignment hearing held on the 26th day of November, 2018, Defendant waived the right to a trial within 60 days.

2. The Early Case Conference shall be held on the 16th day of January, 2019, at 3:30 p.m. Counsel shall attend said conference on the record, and expect to discuss whether there is possible settlement of the case.

PRE-TRIAL MOTIONS

3. All Pretrial Motions, including but not limited to Motions in Limine, Motions to Suppress, whether filed by the State or Defendant, as well as Offers of Proof by the State of Nevada alleging

APPENDIX 0068

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uncharged crimes or misconduct by the Defendant that the State intends to introduce in its case in chief, shall be filed and served on or before forty-five (45) days prior to the scheduled trial date, any oppositions thereto shall be filed and served within ten (10) days thereafter, and any replies to oppositions shall be filed and served within five (5) days thereafter. In all situations where Defendant has not waived time, the deadline for filing all Pretrial Motions shall be thirty (30) days prior to the scheduled trial date; the deadlines for filing any oppositions and replies shall remain the same. The foregoing Pretrial Motions and Offers of Proof shall be accompanied by written points and authorities that clearly articulate that party's position as to why the evidence in question should be admitted or excluded at the trial.

4. Except upon a showing of unforeseen extraordinary circumstances, or unless specifically excused by law, no additional pre-trial motions may be filed or orally presented later than as described above in paragraph 4.

PENDING MOTIONS

5. Fifteen (15) days prior to trial, each party shall file a list of any pending motions and provide a copy to chambers. That list shall include the title of the motion, its filing date, and any subsequent filings related thereto, including the date of filing. The list shall also include whether a hearing is requested on any pending motion and an estimate of the time such a hearing will require.

TRIAL EVIDENCE

6. No later than thirty (30) days before trial, the parties shall meet and confer with respect to submission of a joint list of witnesses, a joint list of trial exhibits, and a joint list of discovery material which each party intends to offer in evidence during the course of trial. To accommodate witness schedules, the parties shall also address the anticipated dates of witness attendance, including any experts.

7. The parties shall file and lodge with chambers no later than fifteen (15) days prior to trial a copy of the joint list of witnesses (including any anticipated appearance dates) and joint list of trial exhibits (identifying whether a witness or an exhibit is that of the State or Defendant) which each party intends to offer in evidence during the course of trial. The joint list shall indicate any witness, exhibit, or other item of evidence to which an objection continues to be raised by the opposing party. If no objection

1 is raised or reserved, the Court will view this as a stipulation of admissibility.

2 8. Trial counsel for all parties shall contact Faye Fleury at the Elko County Clerk's Office
3 [(775) 753-4600] no later than ten (10) days prior to trial, to arrange a date and time to mark trial exhibits.
4 All State's exhibits shall be marked in one numbered series (Exhibit 1, 2, 3, etc.). All Defense exhibits
5 shall be marked alphabetically (Exhibit A, B, C, etc.). All exhibits shall be placed in binders provided by
6 counsel with a bound copy provided to the court. Once trial exhibits are marked by the clerk, they shall
7 remain in the custody of the clerk. When marking the exhibits with the clerk, counsel shall advise the clerk
8 of all exhibits which may be admitted without objection and those that may be admissible subject to
9 reserved objections.

10 JURY INSTRUCTIONS AND VERDICT FORMS

11 9. The Court shall give Instructions 1 and 2 to the jury prior to the commencement of the trial.
12 The Court shall give instruction 3 during trial, if necessary, and instructions 4 through 22 prior to closing
13 arguments. Any objection to these instructions shall be filed at least fifteen (15) days prior to the scheduled
14 trial date. Jury instructions 1-22 can be found online at the Elko County website,
15 <http://www.elkocountynv.net>. Departments > District Courts > Department 1 > Forms > Criminal Jury
16 Trial Forms.

17 10. On or before fifteen (15) days prior to trial, the State shall provide to the Court and
18 opposing counsel its proposed jury instructions and verdict forms. **Both parties are hereby ordered NOT**
19 **to submit duplicates of Instructions 1-22.** The parties shall then meet and confer regarding the State's
20 proposed instructions and verdict forms. The parties shall submit to the Court, signed by counsel for both
21 parties, the instructions and verdict forms upon which they agree, no later than seven (7) days before trial.
22 Defendant shall submit his/her proposed instructions and verdict forms to the Court no later than seven (7)
23 days before trial, and to opposing counsel no later than after Defendant's opening statement.

24 (i) Any pattern instructions must be *identical* to those instructions as they appear in
25 the most recent publication of the pattern jury instructions and include a citation to the pattern jury
26 instruction.

1 (ii) Any original instructions shall be accompanied by a separate copy of the
2 instruction containing a citation to the form instruction, statutory or case authority supporting that
3 instruction. All modifications made to pattern instructions taken from statutory or other authority
4 shall be specifically noted on the citation page.


5 (iii) On or before seven (7) days prior to trial, counsel shall also jointly provide this
6 Court with a USB drive ("thumb-drive") containing the complete set of agreed-upon and/or
7 individually proposed jury instructions and verdict forms in MS Word or WordPerfect, or email
8 said instructions to the Court's Judicial Administrator. Said instructions and verdict forms shall
9 be prepared in 12 point Times New Roman font.

10 11. Should the parties negotiate a resolution of the case, a written Memorandum of Plea
11 Agreement **must** be filed before the case is taken off calendar.

12 12. Nothing in this Order is intended to require Defendant to waive or violate any of his/her
13 Constitutional rights.

14 13. Failure to comply with any provision of this Pretrial Order may result in the imposition of
15 sanctions.

16 DATED this 12 day of December, 2018.

17
18 
19 NANCY PORTER
District Judge – Department 1
20
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1 CERTIFICATE OF HAND DELIVERY

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court,
3 Department 1, and that on this 12 day of December, 2018, I personally hand delivered a true file-
4 stamped copy of the foregoing PRETRIAL ORDER (Criminal Case) addressed to:

5 Tyler J. Ingram, Esq.
6 Elko County District Attorney
7 540 Court Street, 2nd Floor
8 Elko, NV 89801
9 [Box in Clerk's Office]

Phillip C. Leamon, Esq.
Elko County Deputy Public Defender
571 Idaho Street
Elko, NV 89801
[Box in Clerk's Office]

8 Elko County Jury Commissioner
9 C/O Elko County Clerk
10 550 Court Street, Third Floor
11 Elko, NV 89801
12 [Box in Clerk's Office]

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FILED

2018 DEC 28 PM 2:44

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY RL

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

THE STATE OF NEVADA,

Plaintiff,

vs.

Sarah Elizabeth Gravelle

Defendant.

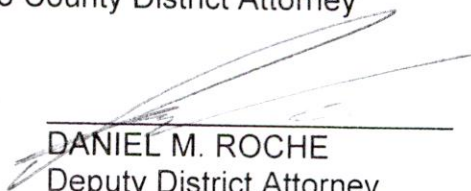
OFFER OF PROOF CONCERNING
IMPEACHMENT OF DEFENDANT
WITH PRIOR FELONY CONVICTIONS

COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, TYLER J. INGRAM, District Attorney for the County of Elko, and DANIEL M. ROCHE Deputy District Attorney, and submits the following Offer of Proof Concerning Impeachment of Defendant with Prior Felony Convictions (O/P Felony Convictions). This O/P Felony Convictions is made and based upon the Points and Authorities attached hereto, together with all pleadings and papers on file herein.

Dated this 27th day of December 2018.

TYLER J. INGRAM
Elko County District Attorney

By:


DANIEL M. ROCHE
Deputy District Attorney
State Bar Number: 10732

Affirmation Pursuant to NRS 239B.030
SSN Does Appear _____
SSN Does Not Appear CD

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EXHIBIT 1

EXHIBIT 2

The State asserts that certified copies of the Judgments of Conviction are admissible for impeachment purposes, should the Defendant elect to testify at trial, pursuant to NRS 50.095. NRS 50.095(1) provides:

For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime is admissible but only if the crime was punishable by death or imprisonment for more than 1 year under the law under which he was convicted.

Obviously, the Judgments of Conviction meet the criteria of NRS 50.095(1), and a certified copy thereof is admissible as prima facie evidence of the conviction. NRS 50.095(6).

At trial, the State intends to establish Gravelle's status as a convicted felon, if Gravelle elects to testify, by asking whether Gravelle has suffered Judgments of Conviction for a

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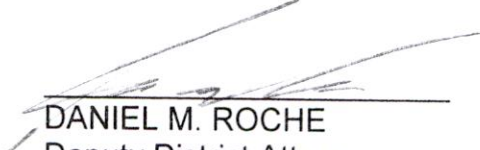
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1 felony or felonies. If Gravelle denies having suffered felony convictions, the State intends to
2 produce certified copies of the Judgments of Conviction attached hereto. See *Tomarchio v.*
3 *State*, 99 Nev. 572 (1983); *Corbin v. State*, 111 Nev. 378 (1995).
4

5 Dated this 27th day of December 2018.

6 TYLER J. INGRAM
7 Elko County District Attorney

8 By:


9 
10 DANIEL M. ROCHE
11 Deputy District Attorney
12 State Bar Number: 10732

13 **Unsworn Declaration in Support of Offer of Proof**
14 **Pursuant to NRS 53.045**

15 Comes now DANIEL M. ROCHE, who declares the following to the above-
16 entitled Court:

- 17 1. That the Declarant is presently serving as a Deputy District Attorney of the Elko
18 County District Attorney's Office.
19 2. That I have read the assertions of fact set forth in this pleading and incorporate
20 them into this Declaration.
21 3. This offer of proof is made in good faith, and not merely for the purposes of
22 delay.
23 4. I declare under penalty of perjury that the foregoing is true and correct.

24 Dated this 27th day of December, 2018

25 
26 DANIEL M. ROCHE
27 State Bar Number: 10732
28 Deputy District Attorney

1
2
3 NOTICE

4 TO: Phillip Leamon, Attorney for the above-named Defendant and to the Clerk of the
5 Fourth Judicial District Court.

6 A hearing on this Offer of Proof Concerning Impeachment of Defendant With Prior
7 Felony Convictions, is requested and a court reporter is requested. It is estimated that one-
8 quarter (1/4) hour should be set aside for the hearing on this Offer of Proof.

9 Dated this 27th day of December 2018.

10 TYLER J. INGRAM
11 Elko County District Attorney

12
13 By: 

14 DANIEL M. ROCHE
15 Deputy District Attorney
16 State Bar Number: 10732
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CERTIFICATE OF SERVICE

I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko County District Attorney's Office, and that on the 28th day of December, 2018, I served the foregoing OFFER OF PROOF CONCERNING IMPEACHMENT OF DEFENDANT WITH PRIOR FELONY CONVICTIONS, 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 NANCY PORTER
FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

PHILLIP LEAMON
ATTORNEY AT LAW
569 COURT STREET
ELKO, NV 89801

Carisa Anchondo
CARISA ANCHONDO
Caseworker

Exhibit 1

STATE OF NEVADA

VS.

SARAH ELIZABETH GRAVELLE

1 CASE NO. CR-FP-11-469

2 DEPT. NO. 1

FILED

2011 DEC -2 P 4:16

CLERK DISTRICT COURT

CLERK _____ DEPUTY _____

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6 IN THE FOURTH JUDICIAL DISTRICT COURT
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO
8

9 THE STATE OF NEVADA,

10 PLAINTIFF,

11 V.

JUDGMENT OF CONVICTION

(Guilty Plea-Probation)

12 SARAH ELIZABETH GRAVELLE,

13 DEFENDANT.
14

15 On the 12th day of September, 2011, the above-named defendant, SARAH ELIZABETH
16 GRAVELLE [who is further described as follows: Date of birth: 01/17/1990 (age 21); Place of birth:
17 Silverton, Idaho] was arraigned and entered a plea of guilty to the crime(s) described below and as
18 more fully set forth in the criminal information filed herein. Legal counsel present at the defendant's
19 arraignment were Kriston N. Whiteside, Esq., representing the Defendant, and Robert J. Lowe, Elko
20 County Deputy District Attorney, representing the state. At the time the above-named defendant
21 entered his/her plea of guilty, this Court informed him/her of all applicable constitutional rights, the
22 elements of the crime(s) charged, and the maximum possible penalty for said crime(s). After being
23 so informed, the above-named defendant stated that he/she understood all of the applicable
24 constitutional rights, the elements of the crime(s) charged and the maximum possible penalty for said
25 crime(s). This Court then made a finding that the defendant had entered his/her plea freely and
26 voluntarily, and with full understanding of his/her constitutional rights, the nature of the charges and

APPENDIX 007934

1 the consequences of his/her plea.

2 DESCRIPTION OF CONVICTIONS

3 COUNT 2: POSSESSION OF A CONTROLLED SUBSTANCE, A FELONY AS
4 DEFINED BY NRS 453.336

5 On the 21st day of November, 2011, the above-named defendant appeared before this Court
6 for the purpose of sentencing and entry of a final judgment of conviction in this matter. This Court,
7 the state and the defense counsel had previously received a Pre-Sentence Report which had been
8 prepared by the Division of Parole and Probation. The above-named defendant was personally
9 present at the sentencing. Legal counsel present at the defendant's sentencing were Kriston N.
10 Whiteside, Esq., representing the Defendant, and Mark S. Mills, Elko County Deputy District
11 Attorney, representing the state. Also present was Arthur Tjaden, representing the Division of Parole
12 and Probation.

13 After hearing from all parties and allowing the defendant an opportunity to personally address
14 the Court, this Court finds that the appropriate judgment in this case is and shall be as follows:

15 SENTENCE TERMS

16 For the conviction of Count 2, the defendant is sentenced to a maximum term of
17 30 months in the Nevada Department of Corrections with minimum parole
18 eligibility after 12 months. The defendant is credited with 1 day(s) heretofore
served as computed to and including the date of this sentencing (the 21st day of
November, 2011).

19 Pursuant to NRS 176.0913 the name, social security number, date of birth and any
20 other information identifying the defendant shall be submitted to the central
21 repository for Nevada records of criminal history. The defendant shall submit to a
22 blood and saliva test, to be made by qualified persons. The tests must include
analyses of his blood to determine genetic markers and of his saliva to determine
its secretor status. The results of the tests shall be submitted to the central
repository for Nevada records of criminal history.

23 Said sentence is hereby suspended and the defendant is placed on probation for a
24 period of 36 months under the following special conditions:

25 STANDARD PROBATION REQUIREMENTS

26 1. The defendant is ordered to pay the administrative fee in the amount of \$25.00
as required by NRS 176.062. Said amount shall be deducted from any cash bail
monies posted by the defendant before any remainder is returned upon the

1 exoneration of bail. It is further ordered that if the defendant has any monies in
2 the possession of the Elko County Jail, that said monies shall be delivered directly
to the Elko County Clerk and applied to this fee.

3 2. The defendant is ordered to pay the forensic fee in the amount of \$60.00 as
4 required by NRS 453.575. Said amount shall be deducted from any cash bail
monies posted by the defendant before any remainder is returned upon the
5 exoneration of bail. It is further ordered that if the defendant has any monies in
the possession of the Elko County Jail, that said monies shall be delivered directly
6 to the Elko County Clerk and applied to this fee.

7 3. The defendant is ordered to pay the genetic testing fee of \$150.00 as required
by NRS 176.0915. Said amount shall be deducted from any cash bail monies
8 posted by the defendant before any remainder is returned upon the exoneration of
bail. It is further ordered that if the defendant has any monies in the possession of
9 the Elko County Jail, that said monies shall be delivered directly to the Elko
County Clerk and applied to this fee.

10 4. That the defendant pay the Justice Court all amounts due as a result of the
11 prosecution of this case.

12 5. That the defendant is ordered to comply fully with the Division of Parole and
13 Probation's Standard Probation Agreement, and the Rules and the conditions
described therein and shall pay those "supervision fees" as required by NRS
213.1076 and NAC 213.230.

14 6. That the defendant shall submit to an intensive supervision program, to include
15 electronic monitoring, whenever deemed appropriate by the Division of Parole
and Probation.

16 7. That the defendant shall answer truthfully and fully all reasonable inquiries of
17 the probation officer. If requested by his/her probation officer, the defendant shall
submit to a polygraph examination concerning compliance with these rules or the
18 defendant's knowledge of any criminal activity.

19 8. That the defendant shall submit his/her person, property, place of residence,
vehicle or areas under his/her control to search at any time, with or without a
20 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.

21 **DRUG, ALCOHOL AND COUNSELING REQUIREMENTS**

22 9. That the defendant completely abstain from the use, possession or consumption
23 of any alcoholic beverages. Further that the defendant completely abstain from
being present in any cocktail lounge, bar or similar establishment operated for the
24 primary purpose of serving alcoholic beverages, unless required to be so present
during actual employment.

25 10. That the defendant shall obtain a substance abuse evaluation and, if deemed
26 appropriate, that he/she shall enter and complete a substance abuse program.

1 11. That the defendant completely abstain from gambling, or from being present
2 in a gambling establishment except for employment purposes.

3 **EDUCATIONAL/EMPLOYMENT REQUIREMENTS**

4 12. That the defendant shall provide her probation officer a copy of her high
5 school diploma or obtain her GED within one year of her probation grant.

6 **OTHER REQUIREMENTS**

7 13. That the defendant shall attend and complete a parenting class within the first
8 90 days of her probation grant.

9 **CONSTRUCTION**

10 All financial requirements set forth herein are terms of the sentence as well as terms of
11 probation. If the defendant's probation is revoked, the defendant will not be relieved of the financial
12 requirements set forth in this Judgment of Conviction.

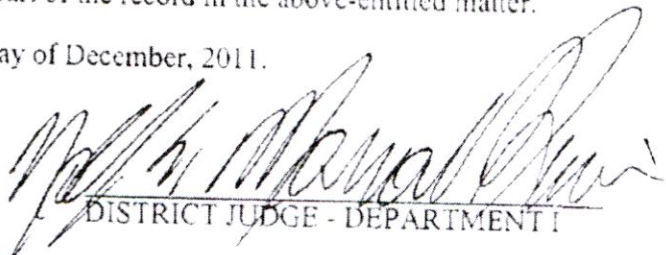
13 **BAIL**

14 IT IS HEREBY ORDERED that any bail bond previously posted for said defendant shall be
15 exonerated. Any cash bail posted for said defendant shall be applied first to fines and/or costs due
16 pursuant to this judgment and, unless otherwise agreed to by the parties, any amount remaining shall
17 be returned by the clerk to the person who posted said cash bail

18 **ENTRY OF JUDGMENT**

19 IT IS FURTHER ORDERED that the clerk of the above-entitled Court enter this
20 JUDGMENT OF CONVICTION as part of the record in the above-entitled matter.

21 SO ORDERED this 2nd day of December, 2011.

22 
23 DISTRICT JUDGE - DEPARTMENT I

24 CERTIFIED COPY
25 DOCUMENT ATTACHED IS A
26 TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

day of 20



CLERK

CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department I, and that on this 2nd day of December, 2011, I personally hand delivered a file stamped copy of the foregoing document to:

Dept. of Parole and Probation
3920 E. Idaho Street
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Elko County Sheriff's Office
775 W. Silver Street
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Mark D. Torvinen, Esq.
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Kriston N. Whiteside, Esq.
Henderson Bank Building
401 Railroad Street, Suite 307
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Dated this 2nd day of December, 2011.

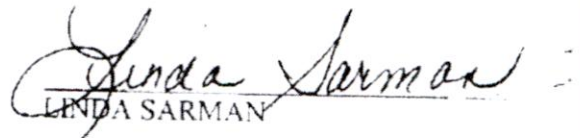

LINDA SARMAN

Exhibit 2

STATE OF NEVADA

VS.

SARAH ELIZABETH GRAVELLE

UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA

v.

SARAH GRAVELLE

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:15-cr-55-MMD-VPC

USM Number: 49987-048

Steven Sexton, CJA

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 2 of the indictment☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC 922(j) and 924(a)(2)	Possession of Stolen Firearms	7/3/2015	2
18 USC 2	Aiding and Abetting	7/3/2015	2

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☒ Count(s) 1 _____ ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

6/20/2016

Date of Imposition of Judgment



Signature of Judge

MIRANDA M. DU, U.S. DISTRICT JUDGE

Name and Title of Judge

June 20, 2016

Date

APPENDIX 0085

DEFENDANT: SARAH GRAVELLE
CASE NUMBER: 3:15-CR-55-MMD-VPC

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
TIME SERVED

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: SARAH GRAVELLE
CASE NUMBER: 3:15-CR-55-MMD-VPC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

3 years

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court, not to exceed 104 tests annually.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☐ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: SARAH GRAVELLE
CASE NUMBER: 3:15-CR-55-MMD-VPC

SPECIAL CONDITIONS OF SUPERVISION

1. You shall participate in and successfully complete a substance abuse treatment and/or cognitive based life skills program, which will include drug/alcohol testing and/or outpatient counseling, as approved and directed by the probation office. You shall refrain from the use and possession of beer, wine, liquor, and other forms of intoxicants while participating in substance abuse treatment. Further, you shall be required to contribute to the costs of services for such treatment, as approved and directed by the probation office based upon your ability to pay.
2. You shall complete 50 hours of community service, as approved and directed by the probation officer.
3. To ensure compliance with all conditions of release, the defendant shall submit to the search of her person, and any property, residence, business or automobile under her control by the probation officer, or any other authorized person under the immediate and personal supervision of the probation officer without a search warrant at a reasonable time and in a reasonable manner. Provided, however, the defendant shall be required to submit to any search only if the probation officer has reasonable suspicion to believe the defendant has violated a condition or conditions of release.
4. You shall not possess, have under your control, or have access to any firearm, explosive device, or other dangerous weapons, as defined by federal, state, or local law.
5. You shall report, in person, to the probation office in the district to which you are released within 72 hours of discharge from custody.

ACKNOWLEDGEMENT

Upon finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed)

Defendant

Date

U.S. Probation/Designated Witness

Date

DEFENDANT: SARAH GRAVELLE
CASE NUMBER: 3:15-CR-55-MMD-VPC

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____	\$ _____
---------------	----------	----------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: SARAH GRAVELLE
CASE NUMBER: 3:15-CR-55-MMD-VPC

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

FILED

2018 DEC 28 PM 2:45

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY JP

1 CASE NO. CR-FP-18-7207

2 DEPT. NO. 1

3
4
5 IN THE FOURTH JUDICIAL DISTRICT COURT
6 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

OFFER OF PROOF CONCERNING

10 vs.

OTHER CRIMES OR WRONGS

COMMITTED BY DEFENDANT

11
12 Sarah Elizabeth Gravelle,

13 Defendant.
14

15 COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, TYLER J.
16 INGRAM, District Attorney for the County of Elko, and DANIEL M. ROCHE, Deputy District
17 Attorney, and submits its Offer of Proof Concerning Other Crimes or Wrongs Committed by
18 Defendant Sarah Elizabeth Gravelle (hereinafter "Gravelle"). This Offer of Proof Concerning
19 Other Crimes or Wrongs Committed by Defendant is made and based upon the Points and
20 Authorities attached hereto, together with all pleadings and papers on file herein.

21 Dated this 27th day of December, 2018.

22
23 TYLER J. INGRAM
Elko County District Attorney

24
25 By: _____

26 DANIEL M. ROCHE
Deputy District Attorney
State Bar Number: 10732
27
28

POINTS AND AUTHORITIES

In this case, Plaintiff, State of Nevada (State), is offering to prove that during the search of Gravelle and/or her vehicle, other items that may or may not be contraband were located. Specifically, officers located the following items:

1. A white syringe plunger cap found in Gravelle's right front pocket.
2. A driver's license, social security card, wildlife card, and two debit cards with the names of persons other than Gravelle found in Gravelle's wallet.
3. A container with a purple bottom with suspected methamphetamine residue found in a blue backpack.
4. Receipts with Gravelle's name found in the blue backpack.
5. An orange syringe cap found in the blue backpack.
6. A marijuana pipe found in the blue backpack.
7. Memory/SIM cards found in Gravelle's vehicle.

1. Pertinent Facts

The facts of the instant case are revealed upon review of the Preliminary Hearing Transcript (PHT) and/or Officer Joshua Taylor's narrative report, which is attached hereto as Exhibit 1 (D4-3). On August 22, 2018, Officer Taylor of the Elko Police Department conducted a traffic stop of a vehicle driven by Gravelle. Exhibit 1 at 1. Gravelle admitted recently smoking methamphetamine and that she had previously been in federal prison. *Id.* She initially consented to a search of her vehicle but then revoked her consent. *Id.* She stated that she was "unsure" if there was anything illegal in the vehicle. *Id.* She consented to a search of her pockets and Officer Taylor located a white syringe plunger cap. *Id.* Officer Taylor also located a gray cardholder in Gravelle's wallet, containing a driver's license, social security card, a wildlife card, a US Bank debit card, and a Bank of America debit card all belonging to persons other than Gravelle. *Id.* Gravelle denied knowing two of the individuals whose items were in her wallet. *Id.* A dog sniff of the vehicle was conducted and the K-9 gave a positive alert. *Id.* A search of the vehicle was then conducted. *Id.*

During the search of the vehicle, a light blue backpack was found in the back seat. *Id.*

1 Gravelle and her passenger both denied ownership of the backpack, but Gravelle also
2 denied that anyone else had access to her vehicle. *Id.* Officer Dean Pinkham located a pink
3 "Juicy Couture" glasses case within the backpack, as well as several receipts with Gravelle's
4 name on them. *Id.* Inside the glasses case, Pinkham found a container with a purple bottom
5 and methamphetamine residue, a silver container with a bag of methamphetamine inside,
6 another baggie of methamphetamine, and an orange needle cap. *Id.* A marijuana pipe was
7 found in a side pouch of the backpack. *Id.* Gravelle was shown the pipe and she stated it
8 was hers. *Id.* When Officer Taylor told her it had been found in the backpack, she stated
9 that it shouldn't have been there but in the center console. *Id.* A search of the center
10 console did not reveal any marijuana pipes. *Id.* Officer Pinkham also found a bag with
11 several memory and SIM cards. *Id.* Several of these cards had the names of cell phone
12 providers written on them. *Id.* Those cards were taken into evidence for further
13 investigation. *Id.* at 2.

14 **2. Argument**

15 The State submits that the items located during the search of the vehicle constitute res
16 gestae, and respectfully requests that this Court find the same. Out of an abundance of
17 caution, assuming the Court disagrees, the State requests that this Court find the above
18 allegations to be admissible as other bad acts, crimes, or wrongs. The applicable law
19 includes Nevada Revised Statutes (NRS) §§ 48.015-.045 and, of course, the seminal case
20 regarding "collateral act" evidence in Nevada, *Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503
21 (1985), *overruled on other grounds by McConnell v. State*, 120 Nev. 1043, 102 P.3d 606
22 (2004).

23 NRS 48.035(3) provides that "[e]vidence of another act or crime which is so closely
24 related to an act in controversy or a crime charged that an ordinary witness cannot describe
25 the act in controversy or the crime charged without referring to the other act or crime shall not
26 be excluded." NRS 48.045(2) provides that "[e]vidence of other crimes, wrongs or acts is not
27 admissible to prove that character of a person in order to show that he acted in conformity
28 therewith," but that such evidence may "be admissible for other purposes, such as proof of

1 motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or
2 accident." The list set forth in NRS 48.045(2) is not exhaustive.

3 Once the State makes a case that the "collateral act" evidence is relevant to a trial
4 issue other than the character of the defendant, the district court should conduct an
5 evidentiary hearing on an offer of proof outside the presence of the jury. *Petrocelli*, 101 Nev.
6 at 51, 692 P.2d at 507. At that *Petrocelli* hearing, the State must prove the occurrence of the
7 "collateral act" at issue by clear and convincing evidence. *Qualls v. State*, 114 Nev. 900,
8 902, 961 P.2d 765, 766 (1998). However, before it can elect to admit evidence of a collateral
9 act as proposed by the State, the district court must conclude that the probative value of that
10 evidence is not substantially outweighed by the danger of unfair prejudice to the defendant.
11 *Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997); NRS 48.035(1). "The
12 trial court's determination to admit or exclude evidence is to be given great deference and will
13 not be reversed absent manifest error." *Bletcher v. State*, 111 Nev. 1477, 1480, 907 P.2d
14 978, 980 (1995).

15 Here, the State should be permitted to present evidence of the results of the search of
16 Gravelle and her vehicle. The presence of an orange cap from the other end of a syringe
17 than the white cap found in Gravelle's pocket, the receipts with her name on them, and the
18 marijuana pipe that she claimed was hers—all found in the backpack—tend to show
19 possession or ownership of the backpack. The totality of the remaining items, including the
20 identification cards and bank cards belonging to various individuals and the various SIM
21 cards and memory cards, tend to show the existence of ongoing criminal activity. This
22 evidence tends to show motive, opportunity, intent, preparation, plan, knowledge, identity, or
23 absence of mistake or accident. See NRS 48.045(2).

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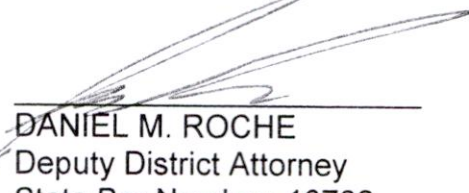
1 **3. Conclusion**

2 The State should be permitted to present evidence of the entire story of the case,
3 including the complete results of the search of Gravelle and her vehicle.

4 Dated this 27th day of December, 2018.

5 TYLER J. INGRAM
6 Elko County District Attorney

7
8 By:

9 
10 DANIEL M. ROCHE
11 Deputy District Attorney
12 State Bar Number: 10732

13 **Unsworn Declaration in Support of Offer of Proof**

14 **Pursuant to NRS 53.045**

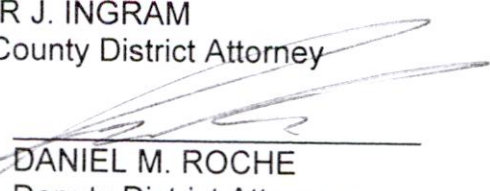
15 Comes now DANIEL M. ROCHE, who declares the following to the above-
16 entitled Court:

- 17 1. That the Declarant is presently serving as a Deputy District Attorney of the Elko
18 County District Attorney's Office.
- 19 2. That I have read the assertions of fact set forth in this pleading and incorporate
20 them into this Declaration. Those assertions are based upon the report of Officer
21 Joshua Taylor, which is attached to this pleading as Exhibit 1.
- 22 3. This Offer of Proof is made in good faith, and not merely for the purposes of
23 delay.
- 24 4. I declare under penalty of perjury that the foregoing is true and correct.

25 Dated this 27th day of December, 2018.

26 TYLER J. INGRAM
27 Elko County District Attorney

28 By:


 DANIEL M. ROCHE
 Deputy District Attorney
 State Bar Number: 10732

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A hearing on this Offer of Proof Concerning Other Crimes or Wrongs Committed by Defendant, is requested and a court reporter is requested. It is estimated that one-half (1/2) hour should be set aside for the hearing on this Offer of Proof.

TYLER J. INGRAM
Elko County District Attorney

DANIEL M. ROCHE
Deputy District Attorney
State Bar Number: 10732

1 CERTIFICATE OF SERVICE

2 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the
3 Elko County District Attorney's Office, and that on the 28th day of December, 2018, I
4 served the foregoing Offer Of Proof Concerning Other Crimes Or Wrongs Committed By
5 Defendant, by delivering, mailing or by facsimile transmission or causing to be delivered,
6 mailed or transmitted by facsimile transmission, a copy of said document to the following:

7 By delivering to:

8 THE HONORABLE NANCY PORTER
9 FOURTH JUDICIAL DISTRICT COURT
10 ELKO COUNTY COURTHOUSE
ELKO, NV 89801

11 PHILLIP LEAMON
12 ATTORNEY AT LAW
13 569 COURT STREET
ELKO, NV 89801

14 Carisa Anchondo
15 CARISA ANCHONDO
16 Caseworker

17
18 DA # F-18-02300
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Exhibit 1

STATE OF NEVADA

VS.

SARAH ELIZABETH GRAVELLE

Initial Report JDT

Officer Taylor

Initial Report

On 8/22/18 at approximately 0205 hours, I noticed a silver car travelling West on Idaho Street, but was unable to see the license plate due to an apparent failure of the license plate light which was not illuminating the license plate. I conducted a traffic stop on the vehicle as it turned onto 4th Street heading north from Idaho Street and it stopped at the intersection of 4th Street and Court Street, Elko. When it was coming to a stop, I could see through the un-tinted windows and noticed the passenger moving around and it appeared he had his arm down the left side of his seat.

Note: I could then see the license plate as being a Nevada license plate of 435E80.

I approached the vehicle on the passenger side and upon contact, I immediately recognized the passenger as Nicholas Done.

Note: I know Nicholas Done as a known user of controlled substances.

The driver identified herself as Sarah GRAVELLE. Nicholas told me he was not putting anything down by the seat and stated he was taking off his seatbelt. He denied being in possession of any controlled substances or "guns."

Note: Other Officers arrived and I asked them to have Nicholas Done exit the vehicle due to his erratic actions upon initial stop and pat him down for weapons while I spoke with GRAVELLE.

I spoke to GRAVELLE at the driver's side window. She admitted she was user of methamphetamine and "smoked" it last "Friday" (8/17/18). She admitted she was an ex-felon that had been in a "federal" prison. I asked for consent to search the vehicle and she initially stated yes, but then asked what happened if she stated no. I stated I would continue my investigation and would respect her the same if she said yes or no. She denied being in possession of any controlled substances. She admitted she had recently returned from a "trip" to California. She stated she was "unsure" if anyone had left anything illegal in her vehicle. She was adamant that she was not in possession of illegal items. She denied having any "guns" in the vehicle, but stated she had a "pocket knife" in the vehicle. She also stated she had a "marijuana" pipe in the vehicle.

My Mindset: I decided to utilize my certified drug detection canine, Kyng, to assist in the investigation.

I asked GRAVELLE to exit the vehicle and she initially did not move, but asked why. I informed her it was to continue my investigation and told her to exit the vehicle as I opened the door. She still stayed seated and I had to command her to exit again. She finally exited the vehicle and I informed her I would pat her pockets and waistband for weapons. I then asked her if I could search her pockets and she consented. I found a white cap that I know to be from the plunger end of a hypodermic device in her left front jeans pocket. GRAVELLE denied knowing what it was and stated she "found" the cap.

Note: I deployed my drug certified canine, Kyng, and he had a positive alert. See K9 Sniff Report 2018-17415 for details.

Officer Pinkham and I conducted a probable cause search of the vehicle. Officer Pinkham found a light blue backpack in the back seat. I heard him ask both Nicholas and GRAVELLE if it was either of theirs. Both denied ownership of the backpack.

I spoke to GRAVELLE about her vehicle and she stated no one was allowed to use her vehicle. She stated she "just" cleaned it out so she would not get "in trouble."

I had found in GRAVELLE's wallet a gray cardholder with the following cards in it:
Driver's license, social security card, and wildlife card for

A US Bank debit card with _____ name on it. The card had the number of _____

A Bank of America debit card with _____ s name on it. The card had a number of _____

I seized the cards for safekeeping at the Elko Police Department since they did not belong to GRAVELLE. She stated she did not know who _____ was. She denied knowing _____ She did not know why the cards were in her wallet with the gray card carrier. She stated she knew _____ as a female who lived in spring creek, Nevada.

Officer Pinkham informed me he found a pink eyeglasses case with suspected methamphetamine in it. He stated the eyeglasses case was in the first large pouch of the blue backpack. He also stated he found several receipts in another large pouch of the same backpack with GRAVELLE's name on them.

The pink "Juicy Couture" eyeglasses case contained the following items:

Tweezers.

Two nail files.

Container with a purple bottom that had suspected methamphetamine residue.

Silver container with a clear top containing a small bag with suspected methamphetamine in it.

Orange cap from the needle end of a hypodermic device.

Some type of metal tool.

Small zip lock style bag with suspected methamphetamine in it.

I seized pink eyeglasses case with the contents as evidence.

The receipts had GRAVELLE's name clearly printed on them and one had an address of the receipt location as being in Paso Robles, California. This receipt also confirmed GRAVELLE's statement that she had been in California. I seized the receipts as evidence.

I found a marijuana pipe in a side pouch of the blue backpack. I removed it, showed the pipe to GRAVELLE, and she admitted that was her marijuana pipe. I later told her it was found in the backpack and she told me it "shouldn't" have been in the backpack, but rather in the center console (I already searched the center console and NO marijuana pipe was found).

Officer Pinkham also stated he found a small bag with several memory cards in it. I seized the various SIMS cards and memory cards. Several were written with which phone carrier they came from.

My Mindset: GRAVELLE had been convicted of stolen weapons possessions in the past. She was an admitted user of methamphetamine. She admitted to travelling to California, which is a known source state of controlled substances. I believed the SIMS cards and memory cards potentially had evidence of buying, selling, transporting, controlled substances or other items such as firearms that are common in the illegal controlled substance market. I decided to seize them for the Elko Combined Narcotics Unit to further investigate them.

GRAVELLE was unable to tell me who owned the backpack. I arrested GRAVELLE for the controlled substances and drug paraphernalia found in the backpack. I also charged GRAVELLE for having license plate light violation.

I placed her in handcuffs to which I checked for tightness prior to double locking. I searched her incident to arrest and transported her to jail.

While at jail, I tested both bags of suspected methamphetamine with NIK test kits. They both individually tested positive for methamphetamine.

On 8/22/18, I gained gross weights on the bags of presumptively positive methamphetamine. The bag from the silver container had a gross weight of .66 grams. The bag that was freely in the eyeglasses case had a gross weight of 1.42 grams.

I attempted to find contact information for _____ and _____, but was unable to find anything.

I am respectfully requesting the detective division of the Elko Police Department attempt to find more specific owner information for the debit cards.

I am respectfully requesting the Elko Combined Narcotics Unit investigate the SIMs and memory cards in relation to controlled substances.

I entered all items I seized as evidence in as evidence. I entered the items I seized for further investigation in as safekeeping.

I entered the pictures I took in as digital evidence into VeriPic.

I am forwarding this report for prosecution.

END OF REPORT

1 CASE NO. CR-FP-18-7207
2 DEPT. I

FILED

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ELKO CO DISTRICT COURT

CLERK DEPUTY

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4
5 IN THE FOURTH JUDICIAL DISTRICT COURT
6 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

7
8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 SARAH ELIZABETH GRAVELLE,

12 Defendant.

13
14 } OPPOSITION TO STATE'S OFFER
15 } OF PROOF CONCERNING OTHER
16 } CRIMES OR WRONGS
17 } COMMITTED BY DEFENDANT
18

19 The Defendant SARAH ELIZABETH GRAVELLE, (hereinafter "defendant") by
20 and through her attorney, PHILLIP LEAMON, of the Elko County Public Defender's
21 Office, and opposes the State's Offer Of Proof Concerning Other Crimes Or Wrongs
22 Committed By Defendant that was filed in this case on the 28th day of December, 2018.
23 Consequently, the defendant requests a Petrocelli hearing to determine admissibility of
24 other bad acts.

25 This response is based on the points and authorities herein and all relevant rules
26 and law.

27 DATED this 31 day of January, 2019.

28 KRISTON HILL

29 ELKO COUNTY PUBLIC DEFENDER
571 Idaho Street
Elko NV 89801

By: _____

PHILLIP C. LEAMON
Elko County Deputy Public Defender
NV Bar Number 13709

Elko County
Public Defender

1
2 POINTS & AUTHORITIES

3 **I. STATEMENT OF FACTS**

4 In its Offer of Proof Concerning Other Crimes or Wrongs Committed By
5 Defendant, the State requests that it be allowed to elicit testimony concerning items that
6 are potentially contraband that were located during the search of Ms. Gravelle and her
7 vehicle. The items the State seeks to admit include: a white syringe plunger cap; a
8 driver's license, social security card, a wildlife card, and two debit cards that did not
9 have Ms. Gravelle's name on them; a container with a purple bottom where
10 methamphetamine residue was found; receipts with Gravelle's name found in the blue
11 backpack, an orange syringe cap found in a blue backpack; a marijuana pipe found in a
12 blue backpack; and memory/SIM cards found in Gravelle's vehicle.

13 **II. ARGUMENT**

14 **i. Requirements for admitting uncharged bad acts.**

15 Evidence of other wrongs cannot be admitted at trial for the purpose of proving
16 that a defendant has a certain character trait and acted in conformity with that trait on the
17 particular occasion in question. Nev. Rev. Stat. Ann. § 48.045(1). But, evidence of other
18 wrongs may be admitted for other purposes. Nev. Rev. Stat. Ann. 48.045(2). While
19 admissible for purposes under NRS 48.045(2), a presumption of inadmissibility attaches
20 to other bad act evidence. See, Bigpond v. State, 270 P.3d 1244, 1249 (Nev. 2012)
21 citing Rosky v. State, 111 P.3d 690, 697 (Nev. 2005)

22 The appropriate test for admitting other wrongs under NRS 48.045(2) is: (1) the
23 evidence is relevant to the crime charged; (2) the other act is proven by clear and
24 convincing evidence; and (3) the probative value of the other act is not substantially
25 outweighed by the danger of prejudice. Qualls v. State 961 P.2d 765, 766 citing Tinch v.
26 State, 946 P.2d 1061, 1064-65 (Nev. 1997); Armstrong v. State, 885 P.2d 600, 600-01
27 (Nev. 1994); accord, Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985). The State,
28 however, can admit other wrongs when res gestae applies.

1 **ii. Test to apply Res Gestae.**

2 The test for admitting evidence under res gestae is whether witnesses can
3 describe the charges without referring to uncharged acts. See, Nev. Rev. Stat. Ann. §
4 48.035(3). The Nevada Supreme Court has held that if the evidence in question is
5 admissible under res gestae, then there is no need to apply the three-pronged test
6 Petrocelli requires. See, State v. Shade, 111 Nev. 887, 894 (Nev. 1995).

7 The dispositive question asked when determining if res gestae applies is: can a
8 witness describe the crime charged without referring to related uncharged acts? Id. at
9 900. The litmus test for admitting the uncharged acts is the necessity in including them.
10 Id. (stating that if the court determines that testimony relevant to the charged crime
11 cannot be introduced without reference to uncharged acts, it must not exclude the
12 evidence of the uncharged acts).

13 The Nevada Supreme Court explains further that the test for NRS 48.035(3)
14 requires that the uncharged acts are part of the whole criminal scheme. Sutton v. State,
15 114 Nev. 1327, 1331 (Nev. 1998). Specifically, that when several crimes or bad acts are
16 intermixed, they must form an indivisible criminal transaction. Id. Or simply put, can the
17 State effectively show the elements of any charged offense without referencing other
18 uncharged acts? See, Sutton at 1332 (ruling that possession of a bottle of pills did not
19 support an element of any offense that the defendant was actually charged with).

20 The indivisibility requirement can preclude the State's entitlement to tell the
21 "whole story" using uncharged acts.
22

23 **iii. Applying Res Gestae to the Instant Case.**

24 The State seeks to admit all of the items listed under its Points and Authorities
25 section under the doctrine of res gestae. However, the State provides no analysis as to
26 how each of the items would be admissible pursuant to this doctrine. For these pieces of
27 evidence to be admitted, or testimony regarding the evidence to be admissible, the State
28 must show that witnesses cannot describe the crime charged without referring to related
29 uncharged acts. The State has not made an effort to show that the witnesses cannot

1 describe the charged crime without reference to the above items and the bad acts
2 associated with the possession of the items.

3 The first item the State addresses is a white cap allegedly from the plunger end of
4 a hypodermic device. Ms. Gravelle was not found to have been in the process of using
5 methamphetamine when the cap was found. The officer could easily describe the search
6 of the blue backpack without referencing the cap found in Ms. Gravelle's pocket.

7 The next items the State seeks to admit are the cards found in Ms. Gravelle's
8 wallet. The cards are in no way linked to the possession of methamphetamine charge.
9 The officers would be able to describe finding the methamphetamine without reference
10 to the cards, which were not even found in the same area as the methamphetamine.

11 The next items the State seeks to admit are a container that allegedly contained
12 methamphetamine residue, and an item purporting to be an orange syringe cap. Defense
13 counsel agrees with the State that these items would most likely be admissible under the
14 doctrine of res gestae. These item was found in the same eyeglasses case as the
15 methamphetamine, likely in direct contact with the items.

16 The next items the State seeks to admit are the receipts with Ms. Gravelle's name
17 on them. While defense counsel admits that the receipts would likely be admissible at
18 trial, res gestae does not seem like the proper avenue to pursue the admission. The
19 previously discussed items seem to relate to a bad act, possession of a hypodermic
20 device, possession of a card without cardholder's consent, and possession of drug
21 paraphernalia all fit under uncharged bad acts. However, the receipts do not seem to be
22 attached to any form of an uncharged bad act.

23 The State next seeks to admit a marijuana pipe found in a side compartment of
24 the blue backpack. This item should not be admitted under the doctrine of res gestae.
25 The officers would be able to describe the search of the backpack and eyeglasses case
26 without referencing this item.

27 Finally the State seeks to admit Memory/SIM cards found in the vehicle. The
28 items are in no way linked to the possession of methamphetamine charge. The officers
29

1 would be able to describe finding the methamphetamine without reference to the cards,
2 which were not even found in the same area as the methamphetamine.

3 **iv. Whether the Uncharged Bad Acts are Admissible Under NRS 48.045**

4 In its Motion, the State alternatively suggests that the acts may be admissible
5 under NRS 48.045(2) for other purposes such as proof of motive, opportunity, intent,
6 preparation, plan, knowledge, identity, or absence of mistake or accident.

7 Many of the items should not be allowed to come in under NRS 48.045. The
8 State alleges that the white cap in Ms. Gravelle's pocket shows ownership of the
9 backpack. However, this is not necessarily true. The State has not shown that the white
10 cap is in any way related to the orange cap. The State alleges that this item is from the
11 other end of the syringe without any proof that this is true. It is equally possible that the
12 two items are completely unrelated. Notably, the two caps being different colors suggest
13 that they are not from the same needle, if from a needle at all. If the State found a needle
14 in the vehicle or backpack the State's argument may be valid that it shows ownership,
15 however the State cannot making that showing of proof.

16
17 The debit cards and the memory/SIM cards should not be admissible under NRS
18 48.045. In order for these items to be admissible the State must provide non-propensity
19 explanation. These non-propensity explanations may include motive, opportunity,
20 intent, preparation, plan, knowledge, identity, or absence of a mistake or accident. See
21 NRS 48.045(2). The State does not demonstrate how the debit cards or memory/SIM
22 cards show motive, opportunity, intent, preparation, plan, knowledge, identity, or
23 absence of a mistake or accident. The State asserts that that the items "tend to show the
24 existence of ongoing criminal activity." State's Offer of Proof Concerning Other Crimes
25 or Wrongs by Defendant at 4. The State fails to demonstrate that these items fall into
26 any of the above exceptions. The State seemingly contends that because Ms. Gravelle
27 may have been involved in some type of unknown criminal activity involving these
28 items she must also have possessed the methamphetamine. It is precisely these types of
29 assertions that NRS 48.035(2) seeks to prohibit.

1 Assuming *arguendo*, that the State was able to proffer an non-propensity reason
2 for the debit cards and memory/SIM cards, the items would not survive a Petrocelli
3 analysis. First, the items must be relevant to the crime charged. Here, these items are in
4 no way relevant to the possession of a controlled substance charge. Additionally, while
5 the existence of the items is certainly without question, there is a high risk that probative
6 value of these acts are substantially outweighed by the danger of prejudice. As such,
7 even if the items were relevant to something other than propensity, they would still be
8 inadmissible under Petrocelli.

9 As previously noted, the defense does not necessarily object to the orange cap, or
10 the container found inside the eyeglasses case doctrine of res gestae. Defense counsel
11 further agrees with the State's analysis regarding the marijuana pipe. As previously
12 noted, the receipts do not seem to correlate to a bad act and are not proper to addressed
13 by NRS 48.035(2).

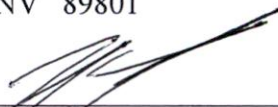
14 Accordingly, this Court should not the white cap, the debit cards, or the
15 memory/SIM cards to come in under NRS 48.045(2).

16 **III. CONCLUSION**

17 The defendant requests a hearing to determine if res gestae applies, and if res
18 gestae does not apply, then the court subject the uncharged acts to a Petrocelli analysis.
19 The defendant requests a cautionary instruction be given to the jury if res gestae applies
20 or if the evidence is admissible under NRS 48.035(2). Nev. Rev. Stat. Ann. § 48.035(3).
21

22 Respectfully submitted this 3rd day of January, 2019.
23

24 KRISTON HILL
25 ELKO COUNTY PUBLIC DEFENDER
26 571 Idaho Street
27 Elko NV 89801

28 By: 
29 PHILLIP LEAMON
Elko County Deputy Public Defender
NV Bar Number 13709

Elko County
Public Defender

AFFIDAVIT OF PHILLIP LEAMON

STATE OF NEVADA)
 : ss.
COUNTY OF ELKO)

PHILLIP LEAMON, being first duly sworn, deposes and says:

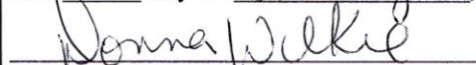
1. That I am an attorney duly licensed to practice law in the State of Nevada.
2. That my office has been appointed to represent the Defendant, SARAH ELIZABETH GRAVELLE, and has done so at all critical stages.
3. That this opposition to State's Offer of Proof Concerning Other Crimes or Wrongs Committed By Defendant is filed in good faith and not for purposes of delay.
4. I make these statements under penalty of perjury.



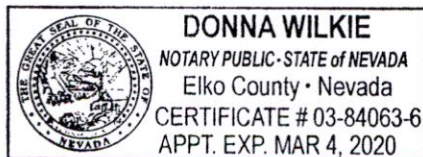
PHILLIP LEAMON

STATE OF NEVADA
COUNTY OF ELKO

SUBSCRIBED AND SWORN to before me
this 3rd day of January, 2019.



NOTARY PUBLIC



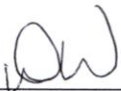
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am the secretary for the Elko County Public Defender's Office and that on this 3rd day of January, 2019; I delivered or caused to be delivered a true copy of the foregoing document to:

THE HONORABLE NANCY PORTER
District Judge, Department I
Fourth Judicial District Court
Elko County Courthouse
Elko, NV 89801

ELKO COUNTY DISTRICT ATTORNEY'S OFFICE
571 Idaho Street
Elko, NV 89801



Elko County
Public Defender

1 CASE NO. CR-FP-18-7207
2 DEPT. I

FILED
2019 JAN -4 PM 3:37
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY 

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

8
9 STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 SARAH ELIZABETH GRAVELLE,

13 Defendant.

14
15 MOTION TO DISMISS

16 The Defendant SARAH ELIZABETH GRAVELLE, (hereinafter "defendant") by
17 and through her attorney, PHILLIP LEAMON, of the Elko County Public Defender's
18 Office, moves this Honorable Court for an order dismissing the instant case.

19 This motion is made and based upon the pleadings and papers on file herein, the
20 Points and Authorities attached, and such other evidence as this Court deems just and
21 proper.

22 DATED this 4th day of January, 2019.

23 KRISTON N. HILL
24 ELKO COUNTY PUBLIC DEFENDER
25 569 Court Street
26 Elko, NV 89801

27 By: 

28 PHILLIP LEAMON
29 Elko County Deputy Public Defender
NV Bar Number 13709

Elko County
Public Defender

POINTS & AUTHORITIES

I. STATEMENT OF FACTS

On August 22, 2018, Officer Joshua Taylor initiated a traffic stop on a vehicle that did not have a functioning license plate light. Preliminary Hearing Transcript (PHT) at 6-7. After he initiated the stop, Officer Taylor testified at the preliminary hearing that he could see the passenger, later identified as Nicholas Done, move his left hand down by his seat. Id. at 8. Officer Taylor testified that he was concerned as Mr. Done was a known drug user. Id. Officer Taylor initiated contact with Ms. Gravelle, who was the driver of the vehicle. Id. at 7. Officer Taylor further testified that he could not remember whether or not he took Ms. Gravelle's license, registration, or insurance information during the stop. Id. at 23. Officer Taylor did not do any work in regards to issuing a citation regarding the license plate light being out. Id.

Officer Taylor testified that after other officers arrived he pulled Mr. Done out of the vehicle began to question Ms. Gravelle. Id. at 9. Officer Taylor did not find any weapons or drugs on Mr. Done. Id. at 24. He then forced Ms. Gravelle to exit the vehicle. Id. Ms. Gravelle initially consented to a search of the vehicle but then changed her mind and denied Officer Taylor consent to search the vehicle. Id. at 26. Officer Taylor then deployed his canine Kyng who alerted to the presence of narcotics in the vehicle. Id. at 26-27

Officers Taylor and Pinkham subsequently conducted a search of the vehicle. Id. at 14. Officer Pinkham testified that he found a blue backpack located on the floorboard in the rear passenger section of the vehicle. Id. at 39. Inside the blue backpack, near the top of the main compartment Officer Pinkham found an eyeglasses case. Id. at 40. Inside the case was among other items methamphetamine. Id.

1 **II. ARGUMENT**

2 **A.** Whether the Case should be dismissed because of a bad faith violation of
3 NRS 289.830

4 In criminal investigation police officers generally have no duty to collect all
5 potential evidence, however this rule is not absolute. Daniels v. State, 114 Nev. 261, 268
6 (1998). However, in some cases a failure to gather evidence may warrant sanctions
7 against the State. Randolph v. State, 117 Nev. 970 986 (2001). The Nevada Supreme
8 Court has fashioned a two part test in determining the remedy when the police have
9 failed to collect, or gather, the evidence. First is the evidence material and second, if
10 material, was the failure to gather negligence, gross negligence, or bad faith. Gordon v.
11 State, 117 P. 3d 214, 218 (2005).

12 The instant case must be dismissed due to a violation of NRS 289.830(1)(b).
13 NRS 289.830(1)(b) mandates that law enforcement officers wear a recording device and
14 except when protecting a person's privacy and "prohibiting deactivation of a portable
15 event recording device until the conclusion of a law enforcement or investigative
16 encounter. Both Officers Taylor and Pinkham testified that they were not in compliance
17 with the statute during this stop, as the officers were not wearing body cameras.

18 Applying the Daniels test to the matter at hand this court must first determine
19 whether or not the evidence the body camera would have recorded, had it been worn as
20 required by the statute, would be material to the instant case. The answer to this
21 question is a resounding yes. As noted in the Statement of Facts, there are several key
22 facts that would have been observed by the body camera. First and foremost the body
23 camera would have provided footage of Mr. Done's activities. The body camera would
24 have shown Mr. Done making furtive movements and possible placing an item in the
25 same vicinity as the backpack containing the methamphetamine was found. This footage
26 would support the assertion that the methamphetamine likely belonged to Mr. Done and
27 not to Ms. Gravelle. This is further highlighted by the fact no drugs or weapons were
28 found on Mr. Done's person. Furthermore, the body camera would have recorded
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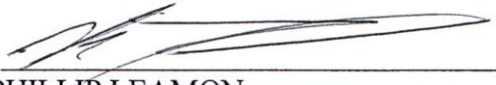
1 pivotal information regarding the stop. As described in the Defense's Motion to
2 Suppress Evidence, Officer Taylor illegally detained Ms. Gravelle in order to conduct a
3 search for incriminating evidence. Officer Taylor could not recall whether or not he took
4 Ms. Gravelle's driver's license, whether he took her registration and proof of insurance,
5 or the exact length of the stop. PHT at 22, 27, 31. This information would have been
6 captured on the body camera, and would have been material as it would have shown that
7 Officer Taylor took little to no steps in order to effectuate the traffic stop, thus requiring
8 suppression of evidence found as a result of the search. Accordingly, the evidence that
9 the officers failed to gather in this case was material.

10 This court must next determine whether or not the officers' failure to gather
11 evidence amounts to bad faith. Earlier this year the legislature in effect required officers
12 to gather video evidence any time they are dispatched to a potential crime scene and
13 interact with the public. NRS 289.830(1)(b), requires that the body camera be worn by
14 officers and requires "activation of a portable event recording device whenever a peace
15 officer is responding to a call for service or at the initiation of any other law enforcement
16 or investigative encounter between a uniformed peace officer and a member of the
17 public." Officers Taylor and Pinkham previously testified that they were in violation of
18 the statute, and were not wearing the body camera while investigating the instant case.
19 PHT at 29, 43. It seems ludicrous to suggest that an officer's willful violation of a statute
20 can amount to anything other than bad faith.

22 **III. Conclusion**

23 Here, Officers Taylor and Pinkham failed to gather material evidence by not
24 wearing or activating a body camera. The failure to do so was in bad faith, as the
25 officers acted in direct violation of NRS 289.830(1)(b). Accordingly, Daniels requires
26 dismissal. Daniels, 114 Nev. at 267, 956 P.2d at 115 (1998). Alternatively, if the court
27 does not find bad faith, then at the very least, it is gross negligence and then Ms.
28 Gravelle is entitled to a presumption that the evidence would have been unfavorable to
29 the State, thus prompting a jury instruction.

1 KRISTON HILL
2 ELKO COUNTY PUBLIC DEFENDER
3 571 Idaho Street
4 Elko NV 89801

5 By: 
6 PHILLIP LEAMON
7 Elko County Deputy Public Defender
8 NV Bar Number 13709

9 AFFIDAVIT OF PHILLIP LEAMON

10 STATE OF NEVADA)
11 : ss.
12 COUNTY OF ELKO)

13 PHILLIP LEAMON, being first duly sworn, deposes and says:

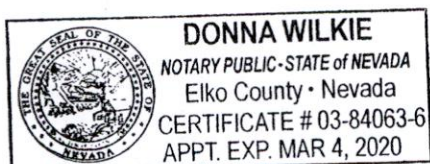
- 14 1. That I am an attorney duly licensed to practice law in the State of Nevada.
15 2. That my office has been appointed to represent the Defendant, SARAH
16 ELIZABETH GRAVELLE, and has done so at all critical stages.
17 3. That this Motion to Dismiss is filed in good faith and not for purposes of delay.
18 4. I make these statements under penalty of perjury.

19
20
21 
22 PHILLIP LEAMON

23 STATE OF NEVADA
24 COUNTY OF ELKO

25 SUBSCRIBED AND SWORN to before me
26 this 4th day of January, 2019.

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28 NOTARY PUBLIC



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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am the secretary for the Elko County Public
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CLERK _____ DEPUTY _____

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

8
9 STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 SARAH ELIZABETH GRAVELLE,

13 Defendant.


14
15 MOTION TO SUPPRESS EVIDENCE

16 The Defendant SARAH ELIZABETH GRAVELLE, (hereinafter "defendant") by
17 and through her attorney, PHILLIP LEAMON, of the Elko County Public Defender's
18 Office, moves this Honorable Court for an order suppressing all evidence seized pursuant
19 to the search of Ms. Gravelle's vehicle, which occurred on August 22, 2018.

20 This motion is made and based upon the pleadings and papers on file herein, the
21 Points and Authorities attached, and such other evidence as this Court deems just and
22 proper.

23 DATED this 4th day of January, 2019.

24 KRISTON N. HILL
25 ELKO COUNTY PUBLIC DEFENDER
26 569 Court Street
27 Elko, NV 89801

28 By: 
29 PHILLIP LEAMON
Elko County Deputy Public Defender
NV Bar Number 13709

Elko County
Public Defender

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3 POINTS & AUTHORITIES

4 **I. STATEMENT OF FACTS**

5 On August 22, 2018, Officer Joshua Taylor initiated a traffic stop on a vehicle
6 that did not have a functioning license plate light. Preliminary Hearing Transcript (PHT)
7 at 6-7. After he initiated the stop, Officer Taylor testified at the preliminary hearing that
8 he could see the passenger, later identified as Nicholas Done, move his left hand down
9 by his seat. Id. at 8. Officer Taylor testified that he was concerned as Mr. Done was a
10 known drug user. Id. After seeing Mr. Done, Officer Taylor waited on backup to arrive.
11 Id. at 9. Officer Taylor initiated contact with Ms. Gravelle, who was the driver of the
12 vehicle. Id. at 7. Officer Taylor further testified that he could not remember whether or
13 not he took Ms. Gravelle's license, registration, or insurance information during the stop.
14 Id. at 23. Officer Taylor did not do any work in regards to issuing a citation regarding
15 the license plate light being out. Id.

16 Officer Taylor testified that after other officers arrived he pulled Mr. Done out of
17 the vehicle began to question Ms. Gravelle. Id. at 9. No weapons or drugs were found
18 on Mr. Done. Id. at 24. After his safety concerns regarding Mr. Done were put at rest,
19 Officer Taylor then forced Ms. Gravelle to exit the vehicle. Id. Ms. Gravelle initially
20 consented to a search of the vehicle but then changed her mind and denied Officer
21 Taylor consent to search the vehicle. Id. at 26. Officer Taylor then deployed his canine
22 Kyng who alerted to the presence of narcotics in the vehicle. Id. at 26-27. Officer
23 Taylor could not remember the exact amount of time Ms. Gravelle was detained prior to
24 Kyng being deployed. Id. at 31.

25 Officers Taylor and Pinkham subsequently conducted a search of the vehicle. Id.
26 at 14. Officer Pinkham testified that he found a blue backpack located on the floorboard
27 in the rear passenger section of the vehicle. Id. at 39. Inside the blue backpack, near the
28

1 top of the main compartment Officer Pinkham found an eyeglasses case. Id. at 40.
2 Inside the case was among other items methamphetamine. Id.

3 **II. ARGUMENT**

4 **A.** Whether the evidence obtained during the search of Ms. Gravelle's
5 vehicle was the result of an illegally prolonged detention

6 The Fourth Amendment of the United States Constitution and Article 1, Section
7 18 of the Nevada State Constitution prohibit unreasonable searches and seizures of
8 persons and their houses, papers and effects. An officer needs reasonable and articulable
9 suspicion of criminal activity in order to initiate a traffic stop or to further detain a
10 suspect. State v. Wright, 104 Nev. 521 (1988); see also Delaware v. Prouse, 440 U.S.
11 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979); Terry v. Ohio, 393 U.S. 1, 88 S. Ct. 1868,
12 20 L. Ed. 2d 889 (1968). The officer is permitted to make reasonable inquiry into
13 suspicious circumstances and conduct a limited investigation to verify the presence of a
14 danger. Dixon v. State, 103 Nev. 272, 273-274 (1987) (Citing Terry v. Ohio, 392 U.S. 1,
15 (1968)). Such a detention, however, should generally be brief with the officer making
16 diligent efforts to quickly confirm or refute the suspicion. United States v. Sharpe, 470
17 U.S. 675, 686 (1985). The stop becomes unlawful, however, if it is prolonged beyond
18 the time reasonably required to complete its purpose. Arterburn v. State, 111 Nev. 1121,
19 1125 91995) (citing Florida v. Royer, 460 U.S. 491, 500 (1983); U.S. v. Del Vizo, 918
20 F.2d 821, 824 (9th Cir. 1990)). If the officer exceeds the bounds of the investigatory stop,
21 the seizure transforms into a full-fledged arrest. Centanni v. Eight Unknown Officers,
22 15 F.3d 537, 590 (6th Cir. 1994).

24 If a defendant challenges a warrantless search or seizure, the government had the
25 burden of justifying the police officer's actions. Chimel v. California, 395 U.S. 752, 762
26 (1969).

27 Both the United States and Nevada Supreme Courts have weighed in on the issue
28 of a stop being prolonged in order to deploy a drug detecting canine. In State v.
29 Beckman, the Nevada Supreme Court reversed a district court's denial of a motion to

1 suppress, finding that a delay caused by officers deploying a drug sniffing canine was an
2 unlawful seizure. State v. Beckman, 129 Nev. 481, 484, 305 P.3d 912 (2013). The
3 Beckman court found that a “prolonged stop may be reasonable in three limited
4 circumstances: when the extension of the stop was consensual, the delay was *de minimis*,
5 or the officer lawfully receives information during the traffic stop that creates a
6 reasonable suspicion of criminal conduct.” Id. 129 Nev. at 488.

7 In Rodriguez v. United States, the United States Supreme Court likewise found
8 that law enforcement officers cannot prolong a stop in order to deploy a drug sniffing
9 canine. Rodriguez v. United States, 135 S. Ct. 1609, 191 L. Ed. 2d 492, (2015). The
10 Court found that a seven or eight minute delay was not *de minimus*. Id. 135 S. Ct. at
11 1617. The Court further noted that

12 “if an officer can complete traffic-based inquiries
13 expeditiously, then that is the amount of “time reasonably
14 required to complete [the stop’s] mission.” Caballes, 543
15 U. S., at 407, 125 S. Ct. 834, 160 L. Ed. 2d 842. As we
16 said in Caballes and reiterate today, a traffic stop
17 “prolonged beyond” that point is “unlawful.” [**501]
18 Ibid. The critical question, then, is not whether the dog
19 sniff occurs before or after the officer issues a ticket, as
Justice Alito supposes, post, at ___ - ___, 191 L. Ed. 2d, at
509, but whether conducting the sniff “prolongs”—i.e.,
adds time to—“the stop,” supra, at ___, 191 L. Ed. 2d, at
499.

20 Rodriguez 135 S. Ct. at 1616.

21 Applying the above rationales to the instant case it is clear that the evidence
22 should be suppressed. Under the Beckman analysis the instant case does not fit into any
23 of the three categories where a prolonged stop may be reasonable. First, there is no
24 denying that the detention was not consensual. A reasonable person would have not felt
25 like they were free to go in this situation. Officer Taylor testified that he could not
26 remember if he took her license but admitted she was being detained and was not free to
27 leave the situation. PHT at 26. Furthermore, prior to the deploying Kyng, Officer
28

1 Taylor had to order Ms. Gravelle out of her vehicle. Id. at 24. Accordingly, this was not
2 a consensual encounter as described in Beckman.

3 The next exception involves cases where the delay was *de minimus*. Here the
4 delay was not *de minimus*. Officer Taylor took little to no steps to effectuate the reason
5 for the initial stop, which was due to Ms. Gravelle's license plate light being out.
6 Officer Taylor testified that he could not recall whether or not he took Ms. Gravelle's
7 driver's license, whether he took her registration and proof of insurance. This would all
8 be standard procedure in a relatively minor traffic stop. Instead at the onset this turned
9 into a full blown narcotics investigation. Officer Taylor initially delayed the stop
10 because Mr. Done was a known drug user, and was afraid for his safety. However, when
11 other officers arrived and Mr. Done was found not to be a threat there were not steps
12 taken at that time to effectuate the traffic stop. At no point did Officer Taylor ever begin
13 work on issuing a citation. PHT at 23. At least ten minutes passed from the outset of
14 the stop to Kyng being deployed, and at no time was any work done with regards to the
15 initial stop. Id. at 11. Accordingly, this narcotics investigation, including deploying
16 Kyng added time to the stop and was not *de minimus*.
17

18 Finally, Officer Taylor did not have reasonable suspicion to further detain Ms.
19 Gravelle as a result of information learned after the initial stop. The totality of the
20 circumstances here would not cause a prudent person to have an honest or strong
21 suspicion that Ms. Gravelle had committed a crime. Beckman 129 Nev. at 489. "The
22 'reasonable, articulable suspicion' necessary for a Terry stop is more than an 'inchoate
23 and unparticularized suspicion or 'hunch'." Rather, there must be some objective
24 justification for detaining a person." Terry v. Ohio, 392 U.S. 1, 27, 88 S. Ct. 1868,
25 1883, 20 L. Ed. 2d 889, 909, (1968). In support of his detention Officer Taylor initially
26 cited that he decided to deploy Kyng because the passenger of the vehicle was allegedly
27 a known drug user, because Ms. Gravelle stated she had used methamphetamine five
28 days before, and because she had cleaned her car after a trip to California. PHT at 12.
29 On cross examination Officer Taylor admitted that it was not a crime to associate with a

1 methamphetamine user or to travel to California. Id. at 25 Officer Taylor was asked
2 about why he believed reasonable suspicion existed, to which he replied "other than he's
3 (Mr. Done) a known narcotic user and the first time I ever met her, and I needed to speak
4 with her again. Id. at 26. Officer Taylor also admitted that he did not see any indicia
5 that would suggest that Ms. Gravelle had recently used or was under the influence of a
6 controlled substance. Id.

7 On redirect examination Officer Taylor was once again asked about his decision
8 to extend the stop in order to employee Kyng. Id. at 33. Officer Taylor testified that he
9 believed that Ms. Gravelle may have had illegal items in the car in the past. Id. Officer
10 Taylor then for the first time indicated that Ms. Gravelle was also nervous throughout
11 the stop. Id. However, this was Officer Taylor's first mention of this nervousness at any
12 point throughout the preliminary hearing, despite being asked about his reason to deploy
13 Kyng on numerous occasions. Id. at 5-33. Furthermore, none of Officer Taylor's
14 documents relating to this incident, the Declaration of Probable Cause, Sniff Report, or
15 Initial Report, state that Ms. Gravelle was nervous. See Exhibits A-C. Officer Taylor
16 also stated that one of the biggest reasons for deploying Kyng was that she had admitted
17 to cleaning out her car to ensure there were no items that would get her in trouble. Id. at
18 33. However, in his Initial Report, Officer Taylor discusses finding the blue backpack
19 during the search of the vehicle at which point the report states that "[b]oth denied
20 ownership of the backpack. I spoke to GRAVELLE about her vehicle and she stated no
21 one was allowed to use her vehicle. She stated she "just" cleaned it out so she would not
22 get "in trouble"". Exhibit C at 1. This report seems to contradict Officer Taylor's
23 testimony at the preliminary hearing. If the report is correct this statement could not
24 have been a basis for determining he had reasonable suspicion to further detain Ms.
25 Gravelle.
26


27 It was not until Ms. Gravelle asserted her constitutional right to not consent to a
28 search that Officer Taylor decided to further detain Ms. Gravelle and deploy Kyng. A
29 person's assertion of their rights can never constitute probable cause to believe a person

1 has committed a criminal offense. Under the totality of the circumstances Officer Taylor
2 did not have reasonable suspicion that Ms. Gravelle was involved in any drug activity.
3 Thus the third exception noted in Beckman would not apply to the instant case.

4 **III. Conclusion**

5 All pieces of evidence derived from the illegal search must be suppressed, for
6 they are fruits of the illegal searches. Wong Sun v. U.S., 371 U.S. 471 (1963). Based on
7 the foregoing, the defense respectfully requests that this Honorable Court suppress from
8 evidence any and all evidence derived from the search of Ms. Gravelle's vehicle.
9

10 KRISTON HILL
11 ELKO COUNTY PUBLIC DEFENDER
12 571 Idaho Street
13 Elko NV 89801

14 By: 
15 PHILLIP LEAMON
16 Elko County Deputy Public Defender
17 NV Bar Number 13709
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Elko County
Public Defender

AFFIDAVIT OF PHILLIP LEAMON

STATE OF NEVADA)
 : ss.
COUNTY OF ELKO)

PHILLIP LEAMON, being first duly sworn, deposes and says:

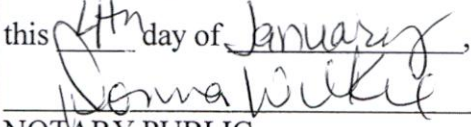
1. That I am an attorney duly licensed to practice law in the State of Nevada.
2. That my office has been appointed to represent the Defendant, SARAH ELIZABETH GRAVELLE, and has done so at all critical stages.
3. That this Motion to Dismiss is filed in good faith and not for purposes of delay.
4. I make these statements under penalty of perjury.

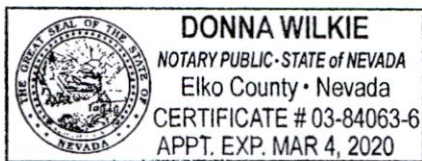

PHILLIP LEAMON

STATE OF NEVADA
COUNTY OF ELKO

SUBSCRIBED AND SWORN to before me

this 4th day of January, 2019.


NOTARY PUBLIC



Elko County
Public Defender

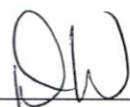
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am the secretary for the Elko County Public Defender's Office and that on this 4th day of January, 2019; I delivered or caused to be delivered a true copy of the foregoing document to:

THE HONORABLE NANCY PORTER
District Judge, Department I
Fourth Judicial District Court
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Elko, NV 89801

ELKO COUNTY DISTRICT ATTORNEY'S OFFICE
571 Idaho Street
Elko, NV 89801



Elko County
Public Defender

EXHIBIT A

DECLARATION OF PROBABLE CAUSE

ARRESTEE'S NAME: GRAVELLE, SARAH

DOB: 01/17/1990

DATE OF ARREST: 8/22/18

TIME OF ARREST: 0247

PLACE OF ARREST: 4TH ST/COURT ST

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: NA

Time: NA)

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

Prior Arrest: NONE

Prior Conviction: NONE

Prior Arrest: NONE

Prior Conviction: NONE)

NOC	NRS CITY COUNTY	CHARGE DESCRIPTION	# CT	M GM F	BAIL	COURT
	453.336	POSS OF C/S	1	F	5000	EJC
	453.566	POSS OF DRUG PARA	1	M	640	EJC
	484D.115	REAR LICENSE PLAT LAMP VIOLATION	1	M	115	EJC

I, OFFICER TAYLOR 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 8/22/18 at approximately 0205 hours I noticed a silver car travelling West on Idaho Street, but was unable to see the license plate due to an apparent failure of the license plate light not being illuminated. I conducted a traffic stop on the vehicle as it turned onto 4th Street and stopped at 4th Street and Court Street, Elko, for the license plate lamp violation. I could then see the vehicle was bearing a Nevada license plate of 435E80 and I could see the passenger moving around in the vehicle. The passenger appeared to have his arm down the left side of his seat.

Upon contact I recognized the passenger as Nicholas Done who was an admitted user of controlled substances.

I spoke to the driver who identified herself as Sarah GRAVELLE and she admitted to being a user of methamphetamine. She denied consent to search the vehicle, but was "unsure" if anything illegal was in the vehicle.

GRAVELLE consented to a search of her person and I found a white cap to from the plunger end of a hypodermic device in her left front jeans pocket.

I deployed my certified drug detection canine, Kyng, and he had a positive alert to the presence of a narcotic odor. I conducted a probable cause search on the vehicle. Officer Pinkham assisted in the search and informed me he found a pink eye glasses case with suspected methamphetamine in it inside of a blue backpack. GRAVELLE and Nicholas denied ownership of the bag.

Officer Pinkham also told me he also found several receipts with Sarah GRAVELLE's name on them in the same bag. I found a marijuana pipe in the bag and showed the marijuana pipe to GRAVELLE. She admitted it was her

Initiation Pursuant to NRS 239B.030

Does Appear

Does Not Appear

Page 1 of 2

APPENDIX 0125

25

pipe. She told me the vehicle was hers, no one drives it, and she had recently cleaned it out so she would not get in trouble.

I seized the pink eye glasses case that contained several small containers with white residue and two bags of suspected methamphetamine. It also contained what appeared to be a hypodermic device cap for the needle end. I also seized the receipts with GRAVELLE's name on them.

Based on the indicia of GRAVELLE's name found with suspected methamphetamine and GRAVELLE admissions I decided to arrest her for possession of a controlled substance, possession of drug paraphernalia, and license plate lamp violation.

I informed GRAVELLE she was under arrest, placed her in handcuffs to which I checked for tightness prior to double locking, searched her incident to arrest, and transported her to jail.

While at the jail I NIK tested both bags of suspected methamphetamine individually. They both individually tested presumptively positive. GRAVELLE was booked on the above charges. I estimated the total combined net weight of the presumptively positive methamphetamine between 2 and 3 grams.

DATE: 08/22/18


(PEACE OFFICER OR CITIZEN)

DEPT.: EPD ID NO.: 145

*FOR JUDGE'S USE ONLY

PROBABLE CAUSE FOR FURTHER DETENTION:

FOUND: ☐

NOT FOUND: ☐

DATED THIS _____ DAY OF _____ TIME: _____

(MAGISTRATE)

EXHIBIT B

K9 Sniff Report

Officer Taylor
K9 Sniff Report

On 8/22/18 at approximately 0205 hours, I was on a traffic stop at 4th Street and Court Street, Elko. While there, I decided to transition into an investigation into controlled substances and decided to utilize my certified drug detection canine, Kyng, in the investigation.

Note: The driver was Sarah Gravelle and the passenger was Nicholas Done. They were in a silver Chevrolet car bearing a Nevada license plate of 435E80.

I returned to my vehicle to get my certified drug detection canine, Kyng, out on lead. While walking up to the vehicle Kyng had a change of breathing, head snap towards the driver's side of the vehicle, engaged in rapid sniffs, and stopped moving by the front door. I commanded him to follow me to the front wanting him to start on the front bumper. We started on the middle of the front bumper and worked in a counter clockwise pattern around the vehicle. While approaching the front driver's door his head snapped up towards the open window. He engaged in rapid sniffs, worked down the open edge of the open driver's window, pressed his nose on the rear seam to the driver's door while working the seam with rapid sniffs, stopped working, and stood refusing to move. I continued to the end of the lead then applied a heavy amount of pressure to him while commanding him to continue working. Kyng refused to break from his commitment. The result of which was positive for the presence of a narcotic odor. I returned Kyng to my patrol vehicle ending our exterior sniff.

Canine Kyng and I have been working as a drug detection canine team since August 2016. Canine Kyng and I are currently nationally certified in the detection of narcotic odors as of August 27th, 2016 being a yearly certification with American Society of Canine Trainers (internationally certifying agency). Canine Kyng is trained and certified in the detection of narcotic odors. These substances include: Cocaine, Heroin, Methamphetamine, and MDMA. Upon locating the odor of one or more of these four (4) controlled substances, Kyng's behavior will change indicating a response to the odor. This response may indicate items recently contaminated with the odor of one or more of the controlled substances.

END OF REPORT

EXHIBIT C

Initial Report JDT

Officer Taylor
Initial Report

On 8/22/18 at approximately 0205 hours, I noticed a silver car travelling West on Idaho Street, but was unable to see the license plate due to an apparent failure of the license plate light which was not illuminating the license plate. I conducted a traffic stop on the vehicle as it turned onto 4th Street heading north from Idaho Street and it stopped at the intersection of 4th Street and Court Street, Elko. When it was coming to a stop, I could see through the un-tinted windows and noticed the passenger moving around and it appeared he had his arm down the left side of his seat.

Note: I could then see the license plate as being a Nevada license plate of 435E80.

I approached the vehicle on the passenger side and upon contact, I immediately recognized the passenger as Nicholas Done.

Note: I know Nicholas Done as a known user of controlled substances.

The driver identified herself as Sarah GRAVELLE. Nicholas told me he was not putting anything down by the seat and stated he was taking off his seatbelt. He denied being in possession of any controlled substances or "guns."

Note: Other Officers arrived and I asked them to have Nicholas Done exit the vehicle due to his erratic actions upon initial stop and pat him down for weapons while I spoke with GRAVELLE.

I spoke to GRAVELLE at the driver's side window. She admitted she was user of methamphetamine and "smoked" it last "Friday" (8/17/18). She admitted she was an ex-felon that had been in a "federal" prison. I asked for consent to search the vehicle and she initially stated yes, but then asked what happened if she stated no. I stated I would continue my investigation and would respect her the same if she said yes or no. She denied being in possession of any controlled substances. She admitted she had recently returned from a "trip" to California. She stated she was "unsure" if anyone had left anything illegal in her vehicle. She was adamant that she was not in possession of illegal items. She denied having any "guns" in the vehicle, but stated she had a "pocket knife" in the vehicle. She also stated she had a "marijuana" pipe in the vehicle.

My Mindset: I decided to utilize my certified drug detection canine, Kyng, to assist in the investigation.

I asked GRAVELLE to exit the vehicle and she initially did not move, but asked why. I informed her it was to continue my investigation and told her to exit the vehicle as I opened the door. She still stayed seated and I had to command her to exit again. She finally exited the vehicle and I informed her I would pat her pockets and waistband for weapons. I then asked her if I could search her pockets and she consented. I found a white cap that I know to be from the plunger end of a hypodermic device in her left front jeans pocket. GRAVELLE denied knowing what it was and stated she "found" the cap.

Note: I deployed my drug certified canine, Kyng, and he had a positive alert. See K9 Sniff Report 2018-17415 for details.

Officer Pinkham and I conducted a probable cause search of the vehicle. Officer Pinkham found a light blue backpack in the back seat. I heard him ask both Nicholas and GRAVELLE if it was either of theirs. Both denied ownership of the backpack.

I spoke to GRAVELLE about her vehicle and she stated no one was allowed to use her vehicle. She stated she "just" cleaned it out so she would not get "in trouble."

I had found in GRAVELLE's wallet a gray cardholder with the following cards in it:

Driver's license, social security card, and wildlife card for Brigitte Lemke.

A US Bank debit card with Adam C. Kilpack's name on it. The card had the number of 4366 1898 5517 6914.

A Bank of America debit card with Jolene R. Caviglia's name on it. The card had a number of 5175 7200 0647 6825.

I seized the cards for safekeeping at the Elko Police Department since they did not belong to GRAVELLE. She stated she did not know who Jolene Caviglia was. She denied knowing Adam Kilpack. She did not know why the cards were in her wallet with the gray card carrier. She stated she knew Brigitte and as a female who lived in spring creek, Nevada.

Officer Pinkham informed me he found a pink eyeglasses case with suspected methamphetamine in it. He stated the eyeglasses case was in the first large pouch of the blue backpack. He also stated he found several receipts in another large pouch of the same backpack with GRAVELLE's name on them.

The pink "Juicy Couture" eyeglasses case contained the following items:

Tweezers.

Two nail files.

Container with a purple bottom that had suspected methamphetamine residue.

Silver container with a clear top containing a small bag with suspected methamphetamine in it.

Orange cap from the needle end of a hypodermic device.

Some type of metal tool.

Small zip lock style bag with suspected methamphetamine in it.

I seized pink eyeglasses case with the contents as evidence.

The receipts had GRAVELLE's name clearly printed on them and one had an address of the receipt location as being in Paso Robles, California. This receipt also confirmed GRAVELLE's statement that she had been in California. I seized the receipts as evidence.

I found a marijuana pipe in a side pouch of the blue backpack. I removed it, showed the pipe to GRAVELLE, and she admitted that was her marijuana pipe. I later told her it was found in the backpack and she told me it "shouldn't" have been in the backpack, but rather in the center console (I already searched the center console and NO marijuana pipe was found).

Officer Pinkham also stated he found a small bag with several memory cards in it. I seized the various SIMS cards and memory cards. Several were written with which phone carrier they came from.

My Mindset: GRAVELLE had been convicted of stolen weapons possessions in the past. She was an admitted user of methamphetamine. She admitted to travelling to California, which is a known source state of controlled substances. I believed the SIMS cards and memory cards potentially had evidence of buying, selling, transporting, controlled substances or other items such as firearms that are common in the illegal controlled substance market. I decided to seize them for the Elko Combined Narcotics Unit to further investigate them.

GRAVELLE was unable to tell me who owned the backpack. I arrested GRAVELLE for the controlled substances and drug paraphernalia found in the backpack. I also charged GRAVELLE for having license plate light violation.

I placed her in handcuffs to which I checked for tightness prior to double locking. I searched her incident to arrest and transported her to jail.

While at jail, I tested both bags of suspected methamphetamine with NIK test kits. They both individually tested positive for methamphetamine.

On 8/22/18, I gained gross weights on the bags of presumptively positive methamphetamine. The bag from the silver container had a gross weight of .66 grams. The bag that was freely in the eyeglasses case had a gross weight of 1.42 grams.

I attempted to find contact information for Adam Kilpack and Jolene Caviglia, but was unable to find anything.

I am respectfully requesting the detective division of the Elko Police Department attempt to find more specific owner information for the debit cards.

I am respectfully requesting the Elko Combined Narcotics Unit investigate the SIMs and memory cards in relation to controlled substances.

I entered all items I seized as evidence in as evidence. I entered the items I seized for further investigation in as safekeeping.

I entered the pictures I took in as digital evidence into VeriPic.

I am forwarding this report for prosecution.

END OF REPORT

Heamon

FILED

2019 JAN -8 AM 10:05

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY AL

1 CASE NO.: CR-FP-18-7207

2 DEPT. NO.: 1

3
4
5 IN THE FOURTH JUDICIAL DISTRICT COURT
6 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 Sarah Elizabeth Gravelle,

12 Defendant.
13

REPLY TO OPPOSITION TO STATE'S
OFFER OF PROOF CONCERNING
OTHER CRIMES OR WRONGS
COMMITTED BY DEFENDANT

14 COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, TYLER J.
15 INGRAM, District Attorney for the County of Elko, and DANIEL M. ROCHE, Deputy District
16 Attorney, and submits the following reply in support of its offer of proof concerning other
17 crimes or wrongs committed by the Defendant.

18 Dated this 4th day of January, 2019.

19 TYLER J. INGRAM
20 Elko County District Attorney

21 By: _____

22 DANIEL M. ROCHE
23 Deputy District Attorney
24 State Bar Number: 10732
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Affirmation Pursuant to NRS 239B.030
SSN Does Appear
SSN Does Not Appear AL

Page 1 of 5

Docket 83781 Document 2022-03241

JAN 8 2019 AM 11:01

1 POINTS AND AUTHORITIES

2 On December 28, 2018, the State filed an offer of proof concerning other crimes or
3 wrongs committed by Defendant. Defendant Sarah Elizabeth Gravelle (hereinafter
4 "Gravelle") filed an opposition on January 3, 2019. In her opposition, Gravelle states that she
5 does not necessarily object to the admissibility of evidence regarding an orange syringe cap,
6 a container with methamphetamine residue, a marijuana pipe, and receipts with Gravelle's
7 name on them that were found during the investigation. See Opposition at 6. However,
8 Gravelle states her opposition to admission of a white syringe plunger cap, debit cards, and
9 SIM/memory cards. *Id.*

10 The State rests on its previous arguments regarding the various debit, ID, SIM, and
11 memory cards found during investigation of the case. See Offer of Proof. This reply is made
12 only to address the issue of the white syringe plunger cap. In her opposition to the offer of
13 proof, Gravelle denies that the white syringe plunger cap in her pocket tends to show
14 ownership of the backpack where the orange syringe cap was found. Opposition at 5.
15 Gravelle argues that the two items are completely unrelated, stating "the two caps being
16 different colors suggest that they are not from the same needle, if from a needle at all." *Id.*
17 This argument lacks merit.

18 Syringes for human use typically have an orange cap on the needle and a white cap
19 on the plunger. See Exhibit 1.¹ Any officer with familiarity with syringes would be able to
20 testify that the presence of the white plunger cap in Gravelle's pocket and the orange cap in
21 the backpack tended to show that they were linked. This tends to show knowledge or lack of
22 mistake. See NRS 48.045(2).

23 Even without the link between the two items, however, the white plunger cap would
24 still be admissible at trial. The presence of drug paraphernalia in conjunction with illegal
25 narcotics tends to show motive, knowledge, or lack of mistake. The fact that Gravelle had a
26 part of a syringe in her pocket is evidence that the illegal narcotics in her backpack were not

27
28 ¹ Exhibit 1 contains two pictures of a standard syringe. Counsel for the State is a Type 1 diabetic and
Exhibit 1 contains images of a syringe that was in counsel's desk drawer. These pictures were taken
immediately upon review of Gravelle's opposition.

1 there by accident. Evidence of the white plunger cap found on Gravelle's person should be
2 admitted at trial.

3 Dated this 4th day of January, 2019.

4 TYLER J. INGRAM
5 Elko County District Attorney

6
7 By: 

8 DANIEL M. ROCHE
9 Deputy District Attorney
10 State Bar Number: 10732

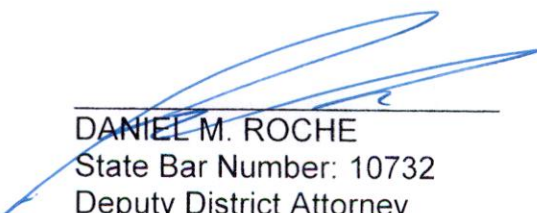
11 **Unsworn Declaration In Support of Reply**

12 **Pursuant to NRS 53.045**

13 Comes now DANIEL M. ROCHE, who declares the following to the above-
14 entitled Court:

- 15 1. That the Declarant is presently serving as a Deputy District Attorney of the Elko
16 County District Attorney's Office.
- 17 2. That I have read the assertions of fact set forth in this pleading and incorporate
18 them into this Declaration.
- 19 3. This reply is made in good faith, and not merely for the purposes of delay.
- 20 4. I declare under penalty of perjury that the foregoing is true and correct.

21 Dated this 4th day of January, 2019

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24 DANIEL M. ROCHE
25 State Bar Number: 10732
26 Deputy District Attorney
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APPENDIX 0135

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By delivering to:

PHILLIP LEAMON
ATTORNEY AT LAW
ELKO COUNTY PUBLIC DEFENDER
ELKO, NV 89801

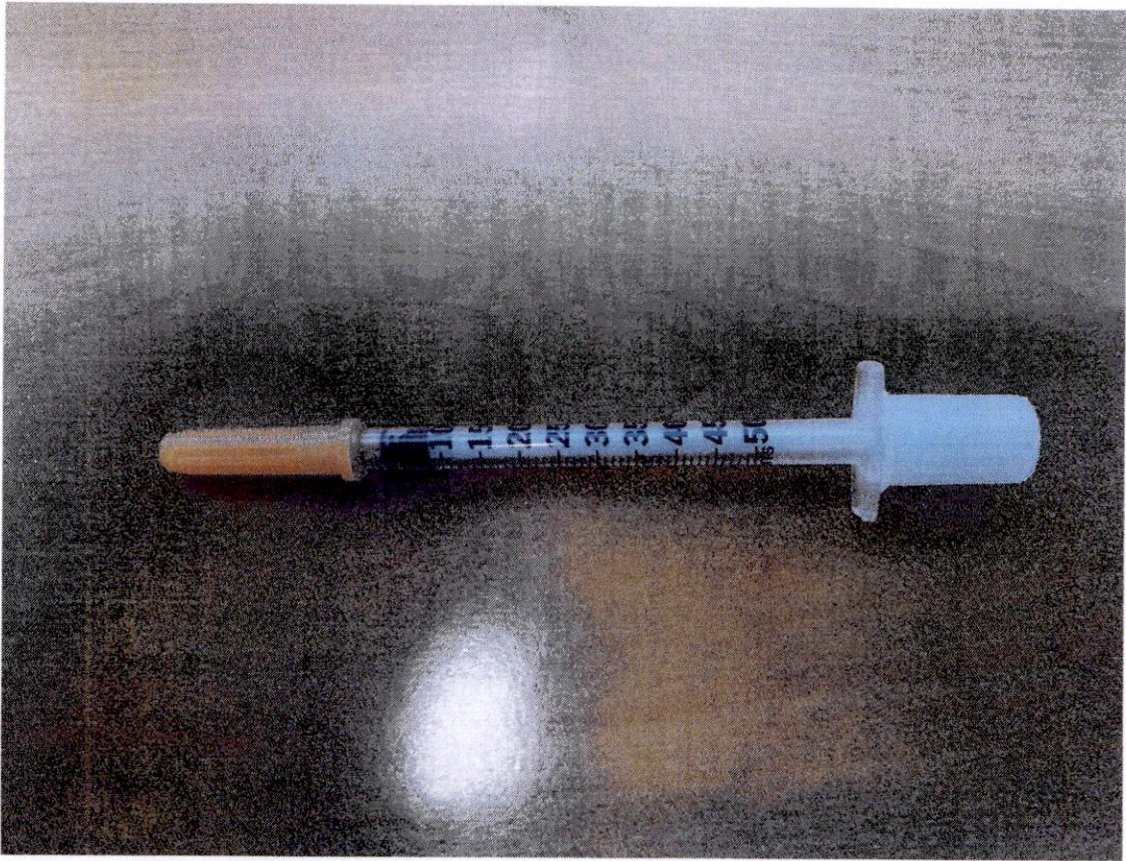
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Exhibit 1

STATE OF NEVADA

VS.

SARAH ELIZABETH GRAVELLE




Pub Def

FILED

2019 JAN 14 PM 2:55

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY 

CASE NO. CR-FP-18-7207
DEPT. NO. 1

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

THE STATE OF NEVADA,

Plaintiff,

vs.

Sarah Elizabeth Gravelle,

Defendant.


OPPOSITION TO
MOTION TO DISMISS

COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, TYLER J. INGRAM, District Attorney for the County of Elko, and DANIEL M. ROCHE, Deputy District Attorney, and hereby opposes Defendant Sarah Elizabeth Gravelle's (hereinafter "Gravelle") motion to dismiss. Said opposition is made and based upon the following points and authorities together with all pleadings and papers on file herein.

Dated this 14th day of January, 2019.

TYLER J. INGRAM
Elko County District Attorney

By:


DANIEL M. ROCHE
Deputy District Attorney
State Bar Number: 10732

JAN 14 2019 PM 4:05

POINTS AND AUTHORITIES

I. Background

Effective July 1, 2018, peace officers in the State of Nevada were required to wear a portable event recording device during investigative encounters with the public. Nev. Rev. Stat. (NRS) § 289.830. The Elko Police Department did not complete its efforts to comply with the statute—by obtaining funding from the City of Elko, procuring the necessary physical equipment, entering into the requisite contracts, and receiving the necessary training—until October 23 or 24, 2018. See Exhibit 1.

Gravelle stands charged with one count of possession of a controlled substance after methamphetamine was located in her vehicle during an August 22, 2018, search conducted by Officers Joshua Taylor and Dean Pinkham of the Elko Police Department. See Information; Preliminary Hearing Transcript (PHT) at 5-21.

On January 4, 2019, Gravelle filed a motion to dismiss based on the fact that the officers who investigated the case were not wearing the statutorily-required portable event recording devices. Motion at 3-4. This opposition follows.

II. Argument

In her motion, Gravelle proceeds under the theory that the failure to comply with NRS 289.830 constituted a failure to gather potential evidence. Motion at 3. Generally, police officers have no duty to collect all potential exculpatory evidence from a crime scene. *Daniels v. State*, 114 Nev. 261, 956 P.2d 111 (1998). However, that rule is not absolute. *Id.* In *Daniels*, the Nevada Supreme Court adopted a two-part test from the New Mexico Supreme Court to address alleged instances of the failure to gather evidence. 114 Nev. at 267, 956 P.2d at 115 (citing *State v. Ware*, 881 P.2d 679 (N.M. 1994)). In reviewing such a claim, a reviewing court must first decide whether the evidence at issue is “material,” “meaning that there is a reasonable probability that, had the evidence been available to the defense, the result of the proceedings would have been different.” *Id.* Second, a reviewing court must then decide if the failure to gather evidence was “the result of mere negligence, gross negligence, or a bad faith attempt to prejudice the defendant’s case.” *Id.* If the police

1 were merely negligent, no sanctions are imposed. *Id.* If the police were grossly negligent,
2 the defense is entitled to a presumption that the evidence would have been unfavorable to
3 the State. *Id.* And if the police acted in bad faith, dismissal is possible depending on an
4 evaluation of the totality of the case. *Id.*

5 Gravelle asserts that this case should be dismissed because the evidence that would
6 have been collected by a body-worn camera is material, and because the officers' failure to
7 use a body-worn camera was in bad faith. Motion at 3-4. Neither of these assertions is
8 correct.

9 **A. Gravelle fails to establish that the evidence is material.**

10 First, the potential evidence is not demonstrably material to the case. Gravelle argues
11 that "several key facts" would have been observed had a body camera been used during the
12 investigation of the case. Motion at 3. Specifically, Gravelle asserts that a body camera
13 would have captured the "furtive movements" of the passenger in the vehicle, Nicholas Done,
14 and shown him "possible (sic) placing an item in the same vicinity as the backpack containing
15 the methamphetamine." *Id.* This assertion is wholly speculative.

16 The only evidence of Done's "furtive movements" is the preliminary hearing testimony
17 of Officer Taylor that he observed Done "kind of move around, look around. Then his left
18 hand I could see go down by the seat." PHT at 8. Body-worn cameras are often worn at
19 different vantage points than a person's eyes, and it is entirely speculative whether a body-
20 worn camera would have captured these movements. But even more importantly, Gravelle is
21 not seeking to impeach the testimony of Officer Taylor, but instead argues that these
22 observed movements by Done support Gravelle's defense. Motion at 3. Accordingly, had
23 these movements been captured on video, the resultant evidence would be cumulative. A
24 video recording of an occurrence that the parties are not disputing is not material evidence.

25 As an additional argument for materiality, Gravelle contends that the potential body-
26 camera video would have been material to the questions raised in her motion to suppress
27 because it would have shown whether Officer Taylor took her driver's license or registration
28 during the stop, and the exact length of the stop. Motion at 4. None of these facts are

1 determinative with respect to the motion to suppress, and Gravelle's assertion that the body-
2 camera footage would have supported, rather than undermined, her motion to suppress is
3 once again entirely speculative. While we do not have a recording with which to determine
4 the precise length of the stop, there is no indication in the record that it was anything other
5 than the approximately ten minutes described by Officer Taylor. PHT at 12. His answer is
6 consistent with the general description of events. *Id.* at 7-12. The issue will not come down
7 to the exact second. Additionally, as will be addressed more fully in the State's response to
8 that motion, Gravelle's assertion that Officer Taylor did not take steps to effectuate the traffic
9 stop are unpersuasive because Officer Taylor developed reasonable suspicion of additional
10 criminal activity upon approaching the vehicle and conversing with Gravelle.

11 The importance of potential body-camera video in this case is a matter of speculation.
12 The potential evidence is not material to the case.

13 **B. Gravelle fails to establish that the officers acted in bad faith.**

14 In addition to the fact that Gravelle fails to establish that the evidence was material,
15 she also wholly fails to demonstrate that Officer Taylor or Officer Pinkham acted in bad faith.
16 In order to show bad faith in the context of the failure to gather evidence, a defendant must
17 do more than show negligence or recklessness; bad faith requires a showing of malicious
18 intent to withhold evidence with obvious exculpatory value. See *United States v. Estrada*,
19 453 F.3d 1208, 1213 (9th Cir. 2006); *Phillips v. Woodford*, 267 F.3d 966, 987 (9th Cir. 2001).
20 The required intent is something more akin to "official animus" or "a conscious effort to
21 suppress exculpatory evidence." *California v. Trombetta*, 467 U.S. 479, 488 (1984),

22 Gravelle argues that "[i]t seems ludicrous to suggest that an officer's willful violation of
23 a statute can amount to anything other than bad faith." Motion at 4. Gravelle's argument
24 completely ignores the fact that neither Officer Taylor nor Officer Pinkham had control over
25 the use of a body-worn camera. The patrol officers of the Elko Police Department were
26 dependent upon their department administrators and the City of Elko for the provision and
27 training in the use of portable event recording devices. See Exhibit 1. Until they were
28 provided with the necessary equipment and were trained in its use, they lacked the ability to

1 comply with the statute. The fact that Officers Taylor and Pinkham were not wearing body-
2 worn cameras during the traffic stop and investigation in this case was not their choice. Nor
3 was it a deliberate attempt to hide evidence. It was a question of departmental funding and
4 implementation of new department policies in light of a relatively recent unfunded mandate
5 from the Nevada Legislature. See Exhibit 1; 2017 Nev. Stat., ch. 129, § 1, at 588.

6 The few courts that have been called upon to decide whether the failure to use body-
7 worn cameras constituted bad faith have been particularly lenient when the implementation
8 of those cameras was new. See, e.g., *United States v. Taylor*, 312 F. Supp. 3d 170, 178
9 (D.D.C. 2018) (citing two unpublished decisions from Nevada: *United States v. Brown*, No.
10 17-CR-58, 2017 U.S. Dist. LEXIS 215420, 2017 WL 8941247, at *15-16 (D. Nev. Aug. 14,
11 2017) and *United States v. Cisneros*, No. 17-CR-121, 2017 U.S. Dist. LEXIS 218279, 2017
12 WL 8810688, at *9 (D. Nev. Dec. 14, 2017)). To borrow Gravelle's language, "it seems
13 ludicrous to suggest that" the officers in this case, who were not equipped with department-
14 issued body worn cameras, were willfully violating state law. See Motion at 4.

15 If Gravelle is entitled to dismissal of her case based on the mere fact that she was
16 stopped and investigated by officers from the Elko Police Department who were not wearing
17 body-worn cameras, the effective result is that the State would be precluded from
18 prosecuting the majority of the crimes that occurred in the City of Elko during a period of
19 almost four months. At the point that that becomes a possibility, ludicrous does seem to be
20 the appropriate word.

21 **III. Conclusion**

22 Gravelle fails to demonstrate that potential body-camera footage of her traffic stop
23 constitutes material evidence, and she further fails to demonstrate Elko Police Officers Taylor

24 ///

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1 and Pinkham acted in bad faith when they conducted the stop and investigation without
2 body-worn cameras. Accordingly, Gravelle's motion should be denied.

3 Dated this 14th day of January, 2019.

4 TYLER J. INGRAM
5 Elko County District Attorney

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7 By: 

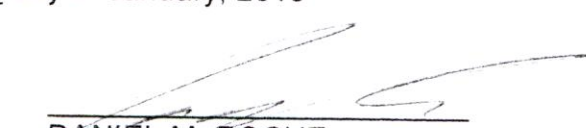
8 DANIEL M. ROCHE
9 Deputy District Attorney
10 State Bar Number: 10732

11 **Unsworn Declaration In Support Of Opposition**
12 **Pursuant to NRS 53.045**

13 Comes now DANIEL M. ROCHE, who declares the following to the above-
14 entitled Court:

- 15 1. That the Declarant is presently serving as a Deputy District Attorney of the Elko
16 County District Attorney's Office.
- 17 2. That I have read the assertions of fact set forth in this pleading and incorporate them
18 into this Declaration.
- 19 3. This opposition is made in good faith, and not merely for the purposes of delay.
- 20 4. I declare under penalty of perjury that the foregoing is true and correct.

21 Dated this 14th day of January, 2019

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24 DANIEL M. ROCHE
25 Deputy District Attorney
26 State Bar Number: 10732
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A hearing on this Opposition is requested and a court reporter is requested. It is estimated that one-half (1/2) hour should be set aside for the hearing on this Opposition.

TYLER J. INGRAM
Elko County District Attorney

DANIEL M. ROCHE
Deputy District Attorney
State Bar Number: 10732

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By delivering to:

Phillip Leamon
ATTORNEY AT LAW
569 COURT STREET
ELKO, NV 89801

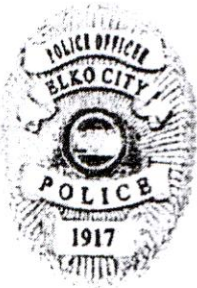
DA# F-18-02300

Exhibit 1

STATE OF NEVADA

VS.

SARAH ELIZABETH GRAVELLE



ELKO POLICE DEPARTMENT

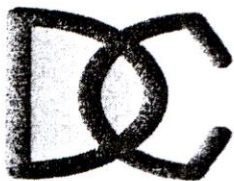
Ben Reed, Jr.
Police Chief

1448 Silver Street
Elko, Nevada 89801
775.777.7310
775.738.1415 Fax
www.elkocity.com

October 23, 2018

Body Camera Dates

- Since 2014 doing trials and research, rapidly evolving technology.
- 79th Session Mandates (For Elko County unfunded mandate).
 - E911 surcharges can be used, Elko just implemented in 2017 at .25/1.00 allowed per phone line. Elko County using to upgrade from basic 911 service.
- For Elko City, 17/18 budget was already set, no funds to purchase in this cycle.
- Early 2018, approximate amounts added to budget for 18/19 budget cycle. Initial AXON quote 01/29/18.
- Body Worn Camera forum 02/06/18 for policy, brands, related
- Contract to write policy for EPD initiated 04/12/18
- AXON trials completed 05/09/18
- Updated quote received from AXON 06/04/18
- City attorney review of contract, tentative approval 06/08/18. 2 days past cutoff for agenda items for council meeting 06/12/18
- City attorney approval of policy on 06/08/18
- AXON approval to join state contract on 06/08/18
- Elko City Council approval to join state contract 06/26/18. Ordered 06/28/18.
- Confirm on 06/29/18 that we cannot train until equipment is in hand
- 07/13/18 meet with West Wendover PD, retention categories
- Body worn cameras and equipment shipped on 07/17/18, received 07/15/18
- 08/20/18 receive contact from AXON for CAD integration, RMS integration, retention categories/times, and population of data fields. Started 08/23/18.
- No training dates available in August or September, training dates set 09/07/18 for 10/23/18 and 10/24/18 based upon trainers schedule.
- Training 10/23/18 and 10/24/18, policy introduced.
- IT set up for docks to connect BWC's to Evidence.com, pending. Anticipate BWC's active 10/23/18 or 10/24/18.



Terry R. Derden
Derden Consulting, Chtd.
www.derdenconsulting.com

ENGAGEMENT LETTER

April 10, 2018

Captain Ty Trouten
Elko Police Department
1448 Silver St
Elko, NV 89801

Captain:

Thank you so much for the opportunity to help your department. I look forward to working on this with you and your team. As we discussed last week, I will prepare and execute with your group a draft policy covering body camera use, retention, public release, and discovery in order to determine a new policy for Elko PD, as well as identify some best practices and procedures in regard to your program. We will meet and identify these needs by phone, video teleconference, or via email. To save your department costs, I see no need to travel to Elko.

My fee for preparation and execution of this consultation/draft policy is \$500.00. If this meets with your approval, please sign below and deliver this signed letter back to me via email.

I have no doubt this will be beneficial for your department and your partners in the City of Elko.

Sincerely,

Terry R. Derden
Derden Consulting, Chtd.

Having read the above, and in full agreement with the term of service to be provided and the fee stated, I agree to the terms and payment herein by affixing my signature below.

Name BEN REED, JR Title ELKO POLICE CHIEF Signed
APR 12 2018

147

Agenda Item # _____

Elko City Council
Agenda Action Sheet

1. Title: Review, consideration, and possible approval of the Elko Police Department joining the Nevada State Purchasing / AXON Enterprises, Inc. contract for body worn cameras, digital storage audio / video footage known, as Evidence.com. This would be a five (5) year contract between the City of Elko and AXON, and matters related thereto. **FOR POSSIBLE ACTION.**
2. Meeting Date: **June 26, 2018**
3. Agenda Category: **APPROPRIATIONS**
4. Time Required: **15 Minutes**
5. Background Information: **Over the last four (4) years, the Elko Police Department tested several body worn camera systems offered by multiple companies. The testing was to determine reliable, functional, body worn cameras as well as types of storage, redaction, and dissemination software.**

The Elko Police Department determined AXON was the only body worn camera provider to satisfy all conditions. This includes cloud storage of audio / video recordings, evidentiary quality storage system, redaction software, dissemination software for prosecutorial needs, and reliable, functional body worn cameras.

The State of Nevada contracted with AXON in November, 2016 to provide these same products and services. This contract allows other agencies to join, allowing for the same pricing of products and services. AXON has approved Elko Police Department to join this contract (see attached contract).

In addition, the Nevada State Legislature passed Senate Bill 176 in 2017, and the Governor signed it into law, requiring certain Peace Officers to wear a "portable event recording device while on duty."

6. Budget Information:
Appropriation Required: **\$ 55,111.60 (first year; FY18/19)**
Budget amount available: **\$13,000 (Capital Equip) / \$43,000 (Services)**
Fund name: **Capital Equipment and Police Services and Supplies**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **The FY2018/19 budget allotted funding from Capital Equipment and line-item budgets for the Elko Police Department to acquire the body worn cameras, storage, and software. This contract is for five (5) years, with the total cost breakdown as follows:**

Agenda Item # _____

Year 1 - \$55,111.60

Year 2 - \$42,232.40

Year 3 - \$42,232.40

Year 4 - \$42,232.40

Year 5 - \$42,232.40

TOTAL - \$224,041.20

9. **Recommended Motion: Authorize the Elko Police Department to enter into a five (5) year contract with AXON Enterprises, Inc. to supply body worn cameras and related hardware and software by joining the Nevada State Purchasing / AXON Enterprises, Inc. contract, in the amount of \$224,041.20.**
10. **Prepared By: Captain Ty Trouten, Elko Police Department**
11. **Committee/Other Agency Review:**
12. **Council Action:**
13. **Agenda Distribution:**



AXON

Elko Police Department - NV

AXON SALES REPRESENTATIVE

Jared Zygowicz

(480) 463-2139

jzygowicz@axon.com

ISSUED

6/4/2018

APPENDIX 0152

144



Axon Enterprise, Inc.
17800 N 85th St
Scottsdale, Arizona 85255
United States
Phone (800) 978 2737

Q-169360-43255.696JZ

Issued: 06/04/2018

Quote Expiration: 07/31/2018

Account Number: 107221

Start Date: 07/01/2018

Payment Terms: Net 30

Delivery Method: FedEx - Ground

SHIP TO

Tyler Trouten
Elko Police Dept. - NV
1448 Silver Street
Elko, NV 89801
US

BILL TO

Elko Police Dept. - NV
1448 Silver Street
Elko, NV 89801
US

SALES REPRESENTATIVE

Jared Zygowicz
Phone: (480) 463-2139
Email: jzygowicz@axon.com
Fax: 480 550 9251

PRIMARY CONTACT

Tyler Trouten
Phone: (775) 777-7313
Email: ttrouten@ci.elko.nv.us

Due Net 30

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	6	336.00	336.00	2,016.00
80082	UNLIMITED BWC BUNDLE: YEAR 1 PAYMENT	40	948.00	825.71	33,028.40
80052	CAD/RMS SERVICE ADD-ON: YEAR 1 PAYMENT	40	180.00	121.20	4,848.00
85110	EVIDENCE.COM INCLUDED STORAGE	1,600	0.00	0.00	0.00
80022	PRO EVIDENCE.COM LICENSE: YEAR 1 PAYMENT	5	468.00	468.00	2,340.00
85110	EVIDENCE.COM INCLUDED STORAGE	150	0.00	0.00	0.00
Hardware					
74001	AXON CAMERA ASSEMBLY, ONLINE, AXON BODY 2, BLK	40	499.00	209.48	8,379.20
74021	MAGNET MOUNT, THICK OUTERWEAR, AXON RAPIDLOCK	40	0.00	0.00	0.00
74054	VELCRO MOUNT, RAPID LOCK	10	0.00	0.00	0.00
11509	BELT CLIP, RAPIDLOCK	30	0.00	0.00	0.00
11553	SYNC CABLE, USB A TO 2.5MM	40	0.00	0.00	0.00
73004	WALL CHARGER, USB SYNC CABLE, FLEX	40	0.00	0.00	0.00
70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	6	42.00	0.00	0.00
74008	AXON DOCK, 6 BAY + CORE, AXON BODY 2	6	1,495.00	0.00	0.00
Services					
85144	AXON STARTER	1	2,500.00	2,500.00	2,500.00

Q-169360-43255.696JZ

Protect Life.

Due Net 30 (Continued)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Services (Continued)					
85146	AXON 1-DAY SERVICE	1	2,000.00	2,000.00	2,000.00
				Subtotal	55,111.60
				Estimated Shipping	0.00
				Estimated Tax	0.00
				Total	55,111.60

Spare Axon Body 2

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Hardware					
74001	AXON CAMERA ASSEMBLY, ONLINE, AXON BODY 2, BLK	3	0.00	0.00	0.00
73004	WALL CHARGER, USB SYNC CABLE, FLEX	3	0.00	0.00	0.00
74021	MAGNET MOUNT, THICK OUTERWEAR, AXON RAPIDLOCK	3	0.00	0.00	0.00
74054	VELCRO MOUNT, RAPID LOCK	3	0.00	0.00	0.00
11509	BELT CLIP, RAPIDLOCK	3	0.00	0.00	0.00
11553	SYNC CABLE, USB A TO 2.5MM	3	0.00	0.00	0.00
				Subtotal	0.00
				Estimated Tax	0.00
				Total	0.00

Year 2-2019

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80083	UNLIMITED BWC BUNDLE: YEAR 2 PAYMENT	40	948.00	825.71	33,028.40
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	6	336.00	336.00	2,016.00
80053	CAD/RMS SERVICE ADD-ON: YEAR 2 PAYMENT	40	180.00	121.20	4,848.00
85110	EVIDENCE.COM INCLUDED STORAGE	1,600	0.00	0.00	0.00
80023	PRO EVIDENCE.COM LICENSE: YEAR 2 PAYMENT	5	468.00	468.00	2,340.00
85110	EVIDENCE.COM INCLUDED STORAGE	150	0.00	0.00	0.00
				Subtotal	42,232.40
				Estimated Tax	0.00
				Total	42,232.40

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Protect Life

Year 3-2020

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80084	UNLIMITED BWC BUNDLE: YEAR 3 PAYMENT	40	948.00	825.71	33,028.40
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	6	336.00	336.00	2,016.00
80054	CAD/RMS SERVICE ADD-ON: YEAR 3 PAYMENT	40	180.00	121.20	4,848.00
85110	EVIDENCE.COM INCLUDED STORAGE	1,600	0.00	0.00	0.00
80024	PRO EVIDENCE.COM LICENSE: YEAR 3 PAYMENT	5	468.00	468.00	2,340.00
85110	EVIDENCE.COM INCLUDED STORAGE	150	0.00	0.00	0.00
Subtotal					42,232.40
Estimated Tax					0.00
Total					42,232.40

Year 4-2021

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80085	UNLIMITED BWC BUNDLE: YEAR 4 PAYMENT	40	948.00	825.71	33,028.40
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	6	336.00	336.00	2,016.00
80055	CAD/RMS SERVICE ADD-ON: YEAR 4 PAYMENT	40	180.00	121.20	4,848.00
85110	EVIDENCE.COM INCLUDED STORAGE	1,600	0.00	0.00	0.00
80025	PRO EVIDENCE.COM LICENSE: YEAR 4 PAYMENT	5	468.00	468.00	2,340.00
85110	EVIDENCE.COM INCLUDED STORAGE	150	0.00	0.00	0.00
Subtotal					42,232.40
Estimated Tax					0.00
Total					42,232.40

Year 5-2022

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80086	UNLIMITED BWC BUNDLE: YEAR 5 PAYMENT	40	948.00	825.71	33,028.40
87026	TASER ASSURANCE PLAN DOCK 2 ANNUAL PAYMENT	6	336.00	336.00	2,016.00
80056	CAD/RMS SERVICE ADD-ON: YEAR 5 PAYMENT	40	180.00	121.20	4,848.00

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Year 5- 2022 (Continued)

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages (Continued)					
85110	EVIDENCE.COM INCLUDED STORAGE	1,800	0.00	0.00	0.00
80026	PRO EVIDENCE.COM LICENSE: YEAR 5 PAYMENT	5	468.00	468.00	2,340.00
85110	EVIDENCE.COM INCLUDED STORAGE	150	0.00	0.00	0.00
				Subtotal	42,232.40
				Estimated Tax	0.00
				Total	42,232.40
				Grand Total	224,041.20

410



Protect Life.



Discounts (USD)

Quote Expiration: 07/31/2018

List Amount	281,062.00
Discounts	57,020.80
Total	224,041.20

**Total excludes applicable taxes and shipping*

Summary of Payments

Payment	Amount (USD)
Due Net 30	55,111.60
Spare Axon Body 2	0.00
Year 2- 2019	42,232.40
Year 3- 2020	42,232.40
Year 4- 2021	42,232.40
Year 5- 2022	42,232.40
Grand Total	224,041.20

1351

Protect Life.

Notes

Nevada Highway Patrol contract #3273 is used for pricing and purchasing justification only.

Axon's Sales Terms and Conditions

By signing this document, you certify that you have read and agree to the provisions set forth in this document and Axon's Master Services and Purchasing Agreement (MSPA), posted at <https://www.axon.com/legal/sales-terms-and-conditions>, as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. You represent that you are legally authorized to sign this Agreement on behalf of your entity. If you do not have this authority, please do not sign this document.

Signature:

B. Reed, Jr.

Date:

28 JUNE, 2018

Name (Print):

BEN REED, JR.

Title:

ELKO, NV POLICE CHIEF

PO# (Or write N/A):

N/A

Please sign and email to Jared Zygowicz at jzygowicz@axon.com or fax to 480.550.9251

Thank you for being a valued Axon customer. For your convenience on your next order, please check out our online store buy.axon.com

Quote: Q-169360-43255.696JZ

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Protect Life.


APPENDIX 0158

Pwd Def

FILED

2019 JAN 14 PM 2:56

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY 

CASE NO. CR-FP-18-7207
DEPT. NO. 1

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

THE STATE OF NEVADA,

Plaintiff,

vs.

Sarah Elizabeth Gravelle,

Defendant.


OPPOSITION TO
MOTION TO SUPPRESS

COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, TYLER J. INGRAM, District Attorney for the County of Elko, and DANIEL M. ROCHE, Deputy District Attorney, and hereby opposes Defendant Sarah Elizabeth Gravelle's (hereinafter "Gravelle") motion to suppress evidence. Said opposition is made and based upon the following points and authorities together with all pleadings and papers on file herein.

Dated this 14th day of January, 2019.

TYLER J. INGRAM
Elko County District Attorney

By:


DANIEL M. ROCHE
Deputy District Attorney
State Bar Number: 10732

Affirmation Pursuant to NRS 239B.000
SSN Does Appear
SSN Does Not Appear

JAN 14 2019 PM 4:05

1
2 POINTS AND AUTHORITIES

3 **I. Background**

4 Gravelle stands charged with one count of possession of a controlled substance after
5 methamphetamine was located in her vehicle after a traffic stop on August 22, 2018. See
6 Information; Preliminary Hearing Transcript (PHT) at 5-21. On January 4, 2019, Gravelle filed
7 a motion to suppress, contending that Officer Joshua Taylor unnecessarily prolonged the traffic
8 stop before searching her vehicle. Motion at 3-7. This opposition follows.

9 **II. Argument**

10 In her motion to suppress, Gravelle argues that her constitutional rights were violated
11 because Elko Police Officer Joshua Taylor unnecessarily prolonged the traffic stop before
12 conducting a sniff with his K-9 unit. Motion at 3-7. The State largely agrees with the facts as
13 presented in Gravelle's motion. See Motion at 2-3. Gravelle also correctly cites the applicable
14 law. See Motion at 3-4. However, Gravelle's motion fails because she misapplies that law to
15 the facts of this case. See Motion at 4-7.

16 The United States and Nevada Constitutions both protect against unreasonable
17 searches and seizures. See U.S. Const. amend. IV; Nev. Const. art. 1, § 18. The "[t]emporary
18 detention of individuals during a traffic stop constitutes a 'seizure' of 'persons' within the
19 meaning of these constitutional provisions. *State v. Beckman*, 129 Nev. 481, 486, 305 P.3d
20 912, 916 (2013). Accordingly, a traffic stop must be reasonable under the circumstances, and
21 is permissible any time an officer has probable cause to believe that a traffic violation has
22 occurred. *Id.*

23 A traffic stop can become unreasonable if it is extended beyond the time necessary to
24 effectuate its purpose. *Id.* at 488, 305 P.3d at 917; see also *Rodriguez v. United States*, 135
25 S. Ct. 1609, 1614-15 (2015). However, a prolonged stop may be reasonable in three
26 circumstances: (1) when the extension of the stop is consensual, (2) when the delay was *de*
27 *minimus*, or (3) when the officer receives information during the traffic stop creating a
28 'reasonable suspicion of criminal conduct. *Id.* To at least some extent, all three exceptions
apply in this case.

1 **A. Gravelle consented to and/or created some of the delay.**

2 The first circumstance under which a prolonged stop may be permissible is when the
3 extension of the stop is consensual. *Id.* In this case, Gravelle initially consented to a search
4 of her vehicle. Exhibit C; PHT at 33-34. She then revoked that consent. *Id.* Any delay caused
5 by her consent to search cannot be held against Officer Taylor.

6 Further, Officer Taylor testified during the preliminary hearing that Gravelle was
7 intentionally delaying his investigation by extending their conversation beyond the topic at
8 hand. PHT at 34-35. To the extent that Gravelle's delay tactics contributed to the extension
9 of the traffic stop, that delay cannot be attributed to Officer Taylor.

10 At least some portion of the time period between the initial stop and the deployment of
11 Officer Taylor's K-9 was consented to by Gravelle, or deliberately caused by her actions.

12 **B. Any delay was *de minimus*.**

13 Ultimately, the extension of the traffic stop was *de minimus*. The two cases most
14 heavily relied upon by Gravelle are instructive. In *Beckman*, Trooper Richard Pickers of the
15 Nevada Highway Patrol had fully completed his traffic stop but held the defendant for eight
16 additional minutes while awaiting the arrival of a drug-sniffing dog. 129 Nev. at 484-85, 305
17 P.3d at 915. Likewise, In *Rodriguez*, Nebraska police officer Morgan Struble conducted a
18 traffic stop and then, just like Trooper Pickers in *Beckman*, did not deploy his K-9 unit until after
19 the traffic stop was effectuated. 135 S. Ct. at 1612-13. Officer Struble's deployment of his K-
20 9 unit occurred 27 minutes after the initial stop, and "seven or eight" minutes after Struble had
21 issued the written warning that concluded the traffic stop. *Id.*

22 In the present case, Taylor's K-9, Kyng, was already present with him when the stop
23 was effectuated. PHT at 5-10. Kyng was deployed "maybe around ten minutes" after the initial
24 stop. PHT at 11. There was no downtime at any point during the traffic stop. See PHT at 32-
25 33. Ten minutes is well within the normal time frame associated with a traffic stop, and the
26 record does not support Gravelle's assertions that Officer Taylor prolonged the traffic stop
27 beyond what would normally have been required.

28 In her motion, Gravelle argues that Officer Taylor prolonged the stop because he never

1 began working on issuing a citation or otherwise addressed the reason for the initial stop.
2 Motion at 5. Notably, the Elko County Public Defender's Office argued in *Beckman* that
3 Trooper Pickers had violated the defendant's constitution rights by detaining him after the traffic
4 stop had been completed, but is now seeking the same result on a contrary set of facts.
5 *Compare Beckman*, 129 Nev. at 484-85, 305 P.3d at 914-15, with Motion at 5. In contrast to
6 *Beckman*, Officer Taylor in this case did not prolong the traffic stop in order to conduct a search
7 with his K-9 unit. As will be explained in the following section, he conducted a traffic stop and
8 then never got around to issuing a citation because, upon approaching the passenger side of
9 the vehicle, Officer Taylor began developing safety concerns and reasonable suspicion of
10 additional criminal activity. See Exhibit C; PHT at 9, 24-25. By the time he came around the
11 vehicle and had a conversation with Gravelle, Officer Taylor had reasonable suspicion that she
12 was in possession of contraband and he was legally justified in conducting additional
13 investigation. PHT at 25-26, 33-35.

14 **C. During the traffic stop, Officer Taylor developed reasonable suspicion of**
15 **additional criminal activity.**

16 The third circumstance in which an officer is justified in prolonging a traffic stop is when
17 the officer develops reasonable suspicion of criminal conduct. *Beckman*, 129 Nev. at 488, 305
18 P.3d at 917; *see also Rodriguez*, 135 S. Ct at 1615. Reasonable suspicion is "a particularized
19 and objective basis for suspecting the particular person stopped of criminal activity." *Navarette*
20 *v. California*, 572 U.S. 393, 396 (2014) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18
21 (1981)). Application of the standard requires taking into account the totality of the
22 circumstances, *id.* at 397, and "nervous, evasive behavior is a pertinent factor in determining
23 reasonable suspicion." *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000).

24 In this case, Officer Taylor conducted a traffic stop of Gravelle's vehicle and, upon
25 contact, "immediately recognized the passenger as Nicholas Done," who Officer Taylor was
26 familiar with as a "known user of controlled substances." Exhibit C. Officer Taylor spoke with
27 Gravelle, who admitted that she was also a user of methamphetamine and had used it days
28 before. *Id.* Gravelle admitted that she was a convicted felon and that she had recently returned

1 from a trip to California. *Id.* She also volunteered that she had a marijuana pipe in the vehicle.
2 *Id.*; PHT at 34-35. Gravelle initially consented to a search of her vehicle, but then became
3 nervous and withdrew consent, as evidenced by her physically bouncing her knee, stuttering,
4 shaking, and unnecessarily prolonging the conversation. PHT at 33-34. Even after she was
5 removed from the vehicle she continued to call Officer Taylor back to share information with
6 him, a fact that Officer Taylor, based on his experience, found to be suspicious. *Id.* at 34.

7 Although each of these facts, individually, may be insufficient to create reasonable
8 suspicion of criminal activity, reasonable suspicion "must be determined with an objective eye
9 in light of the totality of the circumstances." *State v. Lisenbee*, 116 Nev. 1124, 1128, 13 P.3d
10 947, 950 (2000) (citing *Alabama v. White*, 496 U.S. 325 (1990)). The totality of these
11 circumstances created articulable, reasonable suspicion of criminal activity, and Officer Taylor
12 was legally justified in detaining Gravelle for the purpose of conducting an investigation. At
13 that point, it is not relevant whether the deployment of Kyng prolonged the traffic stop beyond
14 the time necessary to effectuate the reason for the stop; Officer Taylor now had a separate
15 legal justification for detaining Gravelle.

16 **III. Conclusion**

17 As explained above, Officer Taylor did not violate Gravelle's constitutional rights during
18 the traffic stop and subsequent investigation. Accordingly, her motion to suppress should be
19 denied.

20 Dated this 14th day of January, 2019.

21 TYLER J. INGRAM
22 Elko County District Attorney

23
24 By: 

25 DANIEL M. ROCHE
26 Deputy District Attorney
27 State Bar Number: 10732
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1. That the Declarant is presently serving as a Deputy District Attorney of the Elko County District Attorney's Office.
2. That I have read the assertions of fact set forth in this pleading and incorporate them into this Declaration. Those assertions of fact are based upon my review of the police reports and the testimony at the preliminary hearing in this matter.
3. This opposition is made in good faith, and not merely for the purposes of delay.
4. I declare under penalty of perjury that the foregoing is true and correct.

DANIEL M. ROCHE
Deputy District Attorney
State Bar Number: 10732

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A hearing on this opposition is requested and a court reporter is requested. It is estimated that one-half (1/2) hour should be set aside for the hearing on this opposition.

TYLER J. INGRAM
Elko County District Attorney

DANIEL M. ROCHE
Deputy District Attorney
State Bar Number: 10732

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By delivering to:

Phillip Leamon
ATTORNEY AT LAW
569 COURT STREET
ELKO, NV 89801

DA# F-18-02300

1 Case No. CR-FP-18-7207

2 Dept. No. 1

FILED
2019 FEB -1 PM 3:40
ELKO CO DISTRICT COURT
CLERK — DEPUTY 

3
4
5
6 IN THE FOURTH JUDICIAL DISTRICT COURT
7 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA
8

9 THE STATE OF NEVADA,

10 Plaintiff,

11 V.

ORDER DENYING MOTION TO DISMISS

12 SARAH ELIZABETH GRAVELLE,

13 Defendant.
14 _____ /

15 Before the Court is a Motion to Dismiss filed by Sarah Elizabeth Gravelle (hereinafter
16 “Defendant”) on January 4, 2019. An Opposition to Defendant’s Motion to Dismiss was filed by the
17 State of Nevada on January 14, 2019. A hearing was held in this matter on January 16, 2019. Present
18 at said hearing was Elko County Deputy District Attorney Daniel M. Roche, representing the State of
19 Nevada. Defendant was present at said hearing and was represented by Elko County Deputy Public
20 Defender Phillip C. Leamon.

21 Defendant moves to dismiss the criminal charges against her because the Elko City police
22 officers who arrested her were not wearing portable event recording devices (i.e. “police body-cams” or
23 “body-worn cameras”), which violates NRS 289.830. Defendant argues that dismissal is warranted
24 because police officers have a duty to gather evidence, and a violation of NRS 289.830 constitutes a
25 bad faith failure to gather evidence during a criminal investigation. Both Defendant and the State cite
26 the Nevada Supreme Court’s decision in *Daniels* for the test to determine whether there has been a

1 failure to gather evidence. Daniels v. State, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998).

2 The first part of the *Daniels* test, “requires the defense to show that the evidence was material,
3 meaning that there is a reasonable probability that, had the evidence been available to the defense, the
4 result of the proceedings would have been different.” Id. If the evidence was material, “the court must
5 then determine whether the failure to gather the evidence was the result of mere negligence, gross
6 negligence, or a bad faith attempt to prejudice the defendant’s case.” Id. To warrant dismissal of the
7 charges, the failure to gather evidence must have been done in bad faith. Id. Even where bad faith is
8 found, dismissal remains a discretionary remedy based on an evaluation of the case as a whole. Id.

9 Assuming, *arguendo*, that this Court finds the un-gathered police body-cam footage is material
10 evidence, Defendant’s motion to dismiss would still be denied for two reasons: (1) the officers did not
11 act in bad faith; and (2) this Court does not have the authority to declare a remedy for a violation of
12 statute when the legislature does not provide one.

13 When police officers act in bad faith, they conduct themselves “knowingly” and with “reckless
14 disregard” for their duty. Falline v. GNLV Corp., 107 Nev. 1004, 823 P.2d 888, 891 (1991) (defining
15 bad faith actions in workmen’s compensation investigation). When exculpatory evidence is withheld
16 by the State, the police and/or prosecutors act with “official animus,” or “a conscious effort to suppress
17 exculpatory evidence.” California v. Trombetta, 467 U.S. 479, 488 (1984). Therefore, bad faith
18 misconduct is the type of conduct that falls within the actor’s discretion. Franchise Tax Bd. Of Cal. v.
19 Hyatt, 401 P.3d 1110, 1126 (Nev. 2017). Here, the police officers who arrested Defendant were not yet
20 equipped with body-worn cameras. The officers did not fail to activate their cameras, or in any other
21 way choose to violate NRS 289.830. Portable event recording devices were not procured or issued by
22 the Elko Police Department until, at least, two months after Defendant’s arrest. Thus, there was no bad
23 faith misconduct on behalf of the officers who arrested Defendant.

24 Moreover, it is fundamental that it is the province of the judicial branch of government to say
25 what the law is, but the judiciary is without power to declare a legal remedy when there is no legal
26 right. Marbury v. Madison, 5 U.S. 137, 163 (1803). The judiciary has the authority to hear and

1 determine justiciable controversies, and enforce any valid judgment, decree, or order. Galloway v.
2 Truesdell, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967). The legislature has very broad power to frame,
3 enact, amend, and repeal laws, but it may not confer or impose powers of a non-judicial character upon
4 the judiciary. Id. at 23. Within constitutional limitations, the legislature has the exclusive power to
5 define the parameters of punishments for violations of statute. State v. Second Judicial Dist. Court, No.
6 73475, 2018 Nev. LEXIS 110 (Dec. 6, 2018). When the legislature fails to attach a remedy to a statute,
7 and when that statute does not guarantee a vested legal right, the district courts are without authority to
8 provide a remedy for violation of the statute. See Bell v. Hood, 327 U.S. 678, 684 (1946) (holding that
9 where protected rights have been invaded, courts may use any available remedy to make good the
10 wrong done).

11 Here, Defendant moves for dismissal of the charges against her based on violations of
12 NRS 289.830. This statute does not contain a provision for dismissal of criminal charges if and when it
13 is violated. In fact, the legislature did not provide a penalty or remedy for violations of NRS 289.830.
14 Furthermore, Defendant does not argue how a violation of this statute infringes on one or more of her
15 constitutional rights. Since this Court does not find that a violation of NRS 289.830 unconstitutionally
16 infringes on Defendant's right(s), Defendant has no legal right to a remedy for an officer's failure to
17 wear a portable event recording device.

18 Defendant's Motion to Dismiss is DENIED.

19 SO ORDERED this 1 day of February, 2019.

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22 NANCY PORTER
23 District Judge – Department 1
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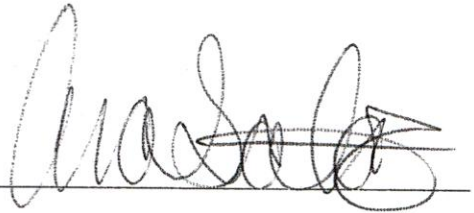
1 CERTIFICATE OF HAND DELIVERY

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court,
3 Department 1, and that on this 1 day of February, 2019, I personally hand delivered a true file-
4 stamped copy of the foregoing **ORDER DENYING MOTION TO DISMISS** addressed to:

5 Tyler J. Ingram, Esq.
6 Elko County District Attorney
7 540 Court Street, 2nd Floor
Elko, NV 89801
[Box in Clerk's Office]


Phillip C. Leamon, Esq.
Elko County Deputy Public Defender
571 Idaho Street
Elko, NV 89801
[Box in Clerk's Office]

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1 Case No. CR-FP-18-7207

2 Dept. No. 1

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ELKO CO DISTRICT COURT
CLERK — DEPUTY 

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6 IN THE FOURTH JUDICIAL DISTRICT COURT
7 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA
8

9 THE STATE OF NEVADA,

10 Plaintiff,

11 V.

**ORDER DENYING MOTION TO
SUPPRESS EVIDENCE**

12 SARAH ELIZABETH GRAVELLE,

13 Defendant.
14 _____ /

15 Before the Court is a Motion to Suppress Evidence filed by Sarah Elizabeth Gravelle
16 (hereinafter "Defendant") on January 4, 2019. An Opposition to Defendant's Motion to Suppress
17 Evidence was filed by the State of Nevada on January 14, 2019. A hearing was held in this matter on
18 January 16, 2019. Present at said hearing was Elko County Deputy District Attorney Daniel M. Roche,
19 representing the State of Nevada. Defendant was present at said hearing and was represented by Elko
20 County Deputy Public Defender Phillip C. Leamon.

21 Defendant contends that her constitutional protection against unreasonable searches and
22 seizures was violated when the police impermissibly prolonged her detention and conducted searches
23 of her person and her vehicle pursuant to a routine traffic stop. Defendant argues that since the
24 evidence against her was seized as a result of a constitutional violation, it should be suppressed. This
25 Court may suppress evidence obtained in violation of a person's constitutional rights as a remedial
26 measure designed to deter law enforcement from future constitutional violations. Byars v. State, 336

1 P.3d 939, 947 (Nev. 2014).

2 The Fourth Amendment to the United States Constitution is applicable to Nevada through the
3 Fourteenth Amendment. U.S. Const. amend. XIV, § 1. The Fourth Amendment provides, “the right of
4 the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and
5 seizures.” U.S. Const. amend. IV. The Constitution does not forbid all searches and seizures, just
6 unreasonable searches and seizures. Elkins v. United States, 364 U.S. 206, 222 (1960). Therefore,
7 challenges to searches based on the contention that Fourth Amendment protections were violated turn
8 on whether the law enforcement action was reasonable.

9 The protections of the Fourth Amendment are extended to routine traffic stops. The United
10 States Supreme Court has held that stopping an automobile and detaining its occupants constitutes a
11 “seizure” of “persons” within the meaning of the Fourth Amendment. State v. Beckman, 129 Nev.
12 481, 486, 305 P.3d 912, 916 (2013); Delaware v. Prouse, 440 U.S. 648, 654 (1979). To determine the
13 reasonableness of a routine traffic stop and an ensuing investigative detention, courts consider whether
14 the officer’s action was 1) “justified at its inception,” and 2) “reasonably related in scope to the
15 circumstances which justified the interference in the first place.” Terry v. Ohio, 392 U.S. 1, 20 (1968).

16 A routine traffic stop is justified at its inception when the police have probable cause to believe
17 that a traffic violation has occurred. Beckman, 129 Nev. at 486. An officer’s actions during a routine
18 traffic stop are limited in scope to: (1) addressing the traffic violation; (2) attending to related safety
19 concerns; and (3) making ordinary inquiries incident to the traffic stop. Rodriguez v. United States,
20 135 S. Ct. 1609, 1614 (2015). A routine traffic stop “must be temporary and last no longer than is
21 necessary to effectuate the purpose of the stop.” Id. (quoting Florida v. Royer, 460 U.S. 491, 500
22 (1983)).

23 A routine traffic stop may be prolonged when an officer develops reasonable suspicion of other
24 criminal activity. Beckman, 129 Nev. at 489. Reasonable suspicion is articulable suspicion that is
25 more than an “inchoate and unparticularized suspicion or hunch.” Id. (citing Terry, 392 U.S. at 27).
26 Extending the duration of a routine traffic stop based on reasonable suspicion creates a new Fourth

1 Amendment event that is judged “with an objective eye in light of the totality of the circumstances.”
2 *Id.* (quoting *State v. Lisenbee*, 116 Nev. 1124, 1128, 13 P.3d 947, 950 (2000)). A person may not be
3 detained longer than is reasonably necessary to confirm or dispel suspicions of criminal behavior, and
4 in no event longer than sixty minutes. NRS 171.123(4).

5 Here, the officer stopped Defendant for driving on a public roadway without a light to
6 illuminate her vehicle’s rear license plate. This is a traffic law violation in Nevada.¹ Defendant does
7 not challenge the reason for the stop and concedes that the stop was “justified at its inception.”

8 Defendant argues that the officer impermissibly prolonged her traffic stop because he never
9 began working on a citation. Mot. to Supp. 5:12-4. The officer testified at the preliminary hearing that
10 when he first stopped Defendant’s vehicle he observed the front seat passenger, “move around,” and
11 “look around.” Preliminary Hearing Transcript (“PHT”) 8:21-5. Then, the officer testified that he saw
12 the passenger’s left hand reach “down by the seat.” *Id.* The officer testified that he has found
13 weapons, including “knives, bats, [and] guns, down by seats,” in the past. *Id.* Additionally, when the
14 officer made contact with this passenger on the passenger’s side of the vehicle, he recognized him as a
15 convicted felon and a methamphetamine user. PHT 8:6-8, 9:1. These observations caused the officer
16 to fear for his safety. *Id.* When additional officers arrived to assist, the officer had the passenger exit
17 the vehicle where he could be frisked for weapons, and so that the passenger no longer had access to
18 anything hidden inside the vehicle. PHT 8:12, 9:3-5. Attending to officer safety concerns is not only a
19 permissible extension of a routine traffic stop, it is a necessary component of the traffic stop’s mission.
20 *See Rodriguez*, 135 S. Ct. at 1614, 1616.

21 Defendant contends that two additional impermissible extensions of the stop occurred after
22 Defendant’s passenger was removed from her vehicle. Specifically, Defendant argues that the officer
23 engaged in conversation with Defendant when he should have been addressing the purpose of the stop
24 by verifying Defendant’s driver’s license, registration, and proof of insurance. Mot. to Supp. 5:6-8.

25
26 ¹*See* NRS 484D.115 and 484D.100.

1 Another extension of the stop occurred when the officer deployed his police service dog for a drug sniff
2 around the exterior of the vehicle. Since a routine traffic stop may only be prolonged after an officer
3 develops reasonable suspicion of other criminal activity, the first question asks whether either of these
4 extensions were within the scope of a routine stop's mission. If not, the second question analyzes
5 whether the officer has articulated facts that objectively establish reasonable suspicion of other criminal
6 activity, thereby allowing the officer to exceed the scope of a routine traffic stop to investigate other
7 criminal activity.

8 Regarding the conversation between the officer and Defendant, the officer testified that after the
9 passenger was secured by assisting officers, he contacted Defendant at the driver's side window.
10 PHT 9:4-6, 24:25. During that contact, the officer inquired as to Defendant's association with the
11 passenger, a known methamphetamine user, and Defendant admitted to using methamphetamine
12 recently. PHT 12:18-9, 25:15-22, 33:5-9. Additionally, the officer testified that Defendant volunteered
13 information that she had just cleaned her car because she "didn't want to get in trouble for anything in
14 [the car]." PHT 12:20-25. The officer understood Defendant to be referencing contraband items that
15 may have caused her "trouble" with law enforcement. *Id.* The officer's testimony reflects that he then
16 became suspicious that there may be drugs inside the car. PHT 13:18. The officer requested consent to
17 search the vehicle and Defendant became visibly nervous. PHT 26: 22-4, 34:1-14. Defendant refused
18 to give consent to search the vehicle. *Id.* At this point, the officer decided to deploy his police service
19 dog, "Kyng," for a drug sniff around the exterior of the vehicle. PHT 27:1.

20 In *Beckman*, the Nevada Supreme Court upheld the actions of a trooper who engaged in
21 conversation with a driver about his travels and his employment during a nine minute segment of a
22 routine traffic stop. *Beckman*, 129 Nev. at 487. "Officers may also inquire about the occupants'
23 destination, route, and purpose." *Id.* (citing *United States v. Sanchez*, 417 F.3d 971, 975 (8th Cir.
24 2005)). Brief, routine questioning falls within the scope of a routine stop's mission and is permissible
25 when it lasts no longer than is necessary to verify or dispel the officer's suspicion. *Sanchez*, 417 F.3d
26 at 975; (accord *Rodriguez v. United States*, 135 S. Ct. at 1615 (holding the seizure remains lawful only

1 so long as unrelated inquiries do not measurably extend the duration of the stop)). Here, the officer's
2 questioning of Defendant about her travels and her association with her passenger is the type of
3 questioning that is within the scope of a routine traffic stop. Defendant's answers to the officer's
4 questions, combined with her obvious and pronounced nervousness, gave rise to the officer's
5 reasonable suspicion of drug-related criminal activity. Under the totality of the circumstances
6 surrounding this traffic stop, it was reasonable for the officer to deploy "Kyng" for a drug sniff around
7 the exterior of the vehicle.

8 However, as a matter of course, officers may order the occupants of a vehicle out of that vehicle
9 pursuant to a lawful traffic stop. Cortes v. State, 127 Nev. 505, n.2, 260 P.3d 184, n.2 (2011);
10 Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977). Therefore, when the officer testified that he
11 ordered Defendant to exit her vehicle and requested consent to search Defendant's person, the officer
12 was entitled to take this action whether reasonable suspicion existed or not. PHT 13:16-20. Once
13 outside her vehicle, Defendant consented to a search of her person. PHT 13:21. The officer testified
14 that he found a white plastic cap in Defendant's pocket that he immediately recognized as the cover for
15 the plunger side of a hypodermic needle. PHT 13:21-4. When asked about the item, Defendant told
16 the officer she "found it." PHT 13:25, 14:3-4. The officer's testimony reflects that he then left
17 Defendant with his assisting officers while he deployed "Kyng" for a drug sniff around the exterior of
18 the vehicle. "Kyng" was already on scene. PHT 9:7-13.

19 This Court finds that the officer had reasonable suspicion to prolong Defendant's traffic stop for
20 a drug sniff before ordering Defendant out of her vehicle. The officer's reasonable suspicion was
21 bolstered by the discovery of a piece of a hypodermic needle in Defendant's pocket, and Defendant's
22 suspicious response when asked about the presence of the item.

23 Therefore, IT IS HEREBY ORDERED that Defendant's Motion to Suppress is DENIED.

24 DATED this 1 day of February, 2019.

25
26 
NANCY PORTER
District Judge — Department 1

1 CERTIFICATE OF HAND DELIVERY

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court,
3 Department 1, and that on this 1 day of February, 2019, I personally hand delivered a true file-
4 stamped copy of the foregoing **ORDER DENYING MOTION TO SUPPRESS EVIDENCE** addressed
5 to:

6 Tyler J. Ingram, Esq.
7 Elko County District Attorney
8 540 Court Street, 2nd Floor
9 Elko, NV 89801
10 [Box in Clerk's Office]


Phillip C. Leamon, Esq.
Elko County Deputy Public Defender
571 Idaho Street
Elko, NV 89801
[Box in Clerk's Office]

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1 Case No. CR-FP-18-7207

2 Dept. No. 1

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ELKO CO DISTRICT COURT
CLERK _____ DEPUTY 

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6 IN THE FOURTH JUDICIAL DISTRICT COURT
7 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA
8

9 THE STATE OF NEVADA,

10 Plaintiff,

11 V.

12 SARAH ELIZABETH GRAVELLE,

13 Defendant.
14 _____/

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S OFFER
OF PROOF CONCERNING OTHER
CRIMES OR WRONGS COMMITTED BY
DEFENDANT**

15 Before the Court is an Offer of Proof Concerning Other Crimes or Wrongs Committed by
16 Defendant filed by the State of Nevada on December 28, 2018. An Opposition to State's Offer of
17 Proof Concerning Other Crimes or Wrongs Committed By Defendant was filed by Sarah Elizabeth
18 Gravelle (hereinafter "Defendant") on January 3, 2019. A hearing was held in this matter on January
19 16, 2019. Present at said hearing was Elko County Deputy District Attorney Daniel M. Roche,
20 representing the State of Nevada. Defendant was present at said hearing and was represented by Phillip
21 C. Leamon, Elko County Deputy Public Defender.

22 The State's Offer of Proof Concerning Other Crimes or Wrongs Committed by Defendant seeks
23 the admission of a number of items under the doctrine of *res gestae*, or in the alternative, as evidence of
24 other bad acts, crimes, or wrongs. *Res gestae* is codified at NRS 48.035(3), which states:

25 Evidence of another act or crime which is so closely related to an act in controversy or a crime
26 charged that an ordinary witness cannot describe the act in controversy or the crime charged
without referring to the other act or crime shall not be excluded, but at the request of an

1 interested party, a cautionary instruction shall be given explaining the reason for its admission.
2 NRS 48.035(3). When the doctrine of *res gestae* is invoked, "the controlling question is whether
3 witnesses can describe the crime charged without referring to related uncharged acts." State v. Shade,
4 111 Nev. 887, 894, 900 P.2d 327, 331 (1995). Based on the arguments of counsel and the evidence
5 received, the Court finds that none of the items at issue herein are admissible under the doctrine of *res*
6 *gestae*.

7 Alternatively, the State has argued that the items at issue herein are admissible as other bad
8 acts, crimes, or wrongs. The rule governing admission of evidence pertaining to collateral offenses, or
9 prior bad acts, is codified at NRS 48.045(2), which states:

10 "Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in
11 order to show that the person acted in conformity therewith. It may, however, be admissible for
12 other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge,
identity, or absence of mistake or accident."

13 NRS 48.045(2). Whenever a party seeks the admission of collateral offense evidence, the proponent
14 must first establish that the evidence is admissible for a non-propensity purpose. Petrocelli v. State,
15 101 Nev. 46, 51, 692 P.2d 503, 507 (1985). The court must then determine if (1) the evidence is
16 relevant to the crime charged; (2) the other act is proven by clear and convincing evidence; and (3) the
17 probative value of the other act is not substantially outweighed by the danger of prejudice. Qualls v.
18 State, 114 Nev. 900, 902, 961 P.2d 765, 766 (1998); *citing* Tinch v. State, 113 Nev. 1170, 1176, 946
19 P.2d 1061, 1064-5 (1997). Based on the arguments of counsel and the evidence received, the Court
20 finds that:

- 21 1. The white plunger cap from Defendant's pocket is not collateral offense evidence. The
22 Court will rule on admissibility at the time of trial.
- 23 2. The driver's license, social security card, wildlife card, and two debit cards with the
24 names of persons other than Defendant, but found in Defendant's wallet, are
25 inadmissible propensity evidence.
- 26 3. The container with the purple bottom having suspected methamphetamine residue is

admissible as collateral offense evidence only if the State can establish that the residue is actually methamphetamine.

4. The receipts with Defendant's name found in the blue backpack are not collateral offense evidence. The Court will rule on admissibility at the time of trial.
5. The orange syringe cap found in the blue backpack is not collateral offense evidence. The Court will rule on admissibility at the time of trial.
6. The marijuana pipe found in the blue backpack is not relevant and is therefore, inadmissible.
7. The memory/SIM cards found in Defendant's vehicle are inadmissible propensity evidence.

SO ORDERED this 1 day of February, 2019.

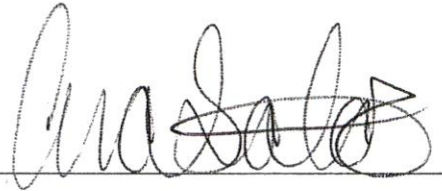
Nancy Porter
NANCY PORTER
District Judge – Department 1

CERTIFICATE OF HAND DELIVERY


Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 1 day of February, 2019, I personally hand delivered a true file-stamped copy of the foregoing **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S OFFER OF PROOF CONCERNING OTHER CRIMES OR WRONGS COMMITTED BY DEFENDANT** addressed to:

Tyler J. Ingram, Esq.
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
[Box in Clerk's Office]

Phillip C. Leamon, Esq.
Elko County Deputy Public Defender
571 Idaho Street
Elko, NV 89801
[Box in Clerk's Office]

A handwritten signature in dark ink, appearing to read "Phillip C. Leamon", is written over a horizontal line.

PD
1 CASE NO. CR-FP-18-7207
2 DEPT. I
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FILED
2019 FEB 27 PM 4:25
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY 

6 IN THE FOURTH JUDICIAL DISTRICT COURT
7 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA
8

9 STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 SARAH ELIZABETH GRAVELLE,

13 Defendant.

) MOTION TO DECLARE A

) MISTRIAL, OR IN THE


) ALTERNATIVE MOTION TO SET

) ASIDE VERDICT

14
15 The Defendant SARAH ELIZABETH GRAVELLE, (hereinafter "defendant") by
16 and through her attorney, PHILLIP LEAMON, of the Elko County Public Defender's
17 Office, hereby moves this Court for an Order declaring a mistrial based upon the jury
18 considering evidence not admitted in trial..

19 DATED this 27th day of February, 2019.
20

21 KRISTON N. HILL
22 ELKO COUNTY PUBLIC DEFENDER
23 569 Court Street
24 Elko, NV 89801

25 By: 
26 PHILLIP LEAMON
27 Elko County Deputy Public Defender
28 NV Bar Number 13709

29 Elko County
Public Defender

POINTS & AUTHORITIES

I. STATEMENT OF FACTS

On February 20, 2019, the State and Defense both closed their respective cases at which time the jury began deliberations. After the jury had deliberated for approximately an hour, the Jury submitted a question. The question involved whether the jury could be allowed to see an exhibit that was not entered into evidence, which was photographs of evidence containing inadmissible propensity evidence. At that point the Court realized that an exhibit list containing all proposed exhibits was sent back with the Jury for deliberations. This list included several items that were never admitted into trial, including reference to a purple container, references to photographs that contained inadmissible evidence, and most importantly references to Judgments of Convictions.

After being informed of the mistake the Court contacted counsel for the parties in order to determine how to handle this issue and whether a curative instruction could cure the mistake. While the parties were deciding how to address the issue the Jury notified the Court they had come to a verdict. The Jury found Ms. Gravelle guilty of Count 1 of the Criminal Information, Possession of a Controlled Substance.

II. ARGUMENT

This Court Should Declare a Mistrial Because the Jury was Allowed to Consider Evidence not Admitted at Trial Prior to Announcing its Verdict.

This Court should declare a mistrial because the Jury was allowed to consider inadmissible evidence prior to reaching its verdict. Furthermore, the damage in the instant case was compounded because the Court never had an opportunity to issue a curative instruction before the Jury reached its verdict.

The most instructive case for the instant situation is Winiarz v. State. In that case the Jury had occasion to view the clerk's notes from the first trial, containing the original verdict of first degree murder with use of a deadly weapon and the sentence of life in prison without the possibility of parole. This document was found in a box of exhibits erroneously placed in the jury room during the guilt phase of the trial, where it

1 was seen by some jurors and briefly discussed." Winiarz v. State, 820 P.2d 1317, 1318
2 (1991).

3 The Nevada Supreme Court in Winiarz found that the lower court erred by not
4 granting a mistrial. The Nevada Supreme Court held that when "prejudicial evidence is
5 improperly admitted, "a new trial must be granted unless it appears, beyond a reasonable
6 doubt, that no prejudice has resulted." Id. at 1318 (internal quotations omitted). In
7 determining whether the district court abused its discretion by denying a motion for a
8 mistrial, we consider (1) "whether the issue of innocence or guilt is close," (2) "the
9 quantity and character of the error," and (3) "the gravity of the crime charged. Id.
10 (internal quotations omitted). If an error is ultimately harmless, it will not be reversible.
11 See NRS 178.598; see also , Koenig v. State 99 Nev. 780, 784, 672 P.2d 37, 40 (1983)
12 (holding the district court's error in admitting reference to the defendant's prior
13 convictions was harmless where the evidence of guilt was overwhelming).

14 Applying the Winiarz standard to the instant case, it is clear a mistrial should be
15 granted. First, it is clear that the Jury had access and knowledge of information not
16 presented at trial. We know this because the question to the Judge directly referenced
17 the inadmissible evidence. The exhibit list included references to additional evidence
18 that was not presented at trial including references a purple container, the weight of the
19 methamphetamine, additional photographs, and to JOC's or Judgments of Convictions
20 from prior felony cases.

21 Having determined the Jury was presented with wrong exhibit list we must first
22 look at the issue of guilt and innocence. While the Jury found Ms. Gravelle guilty it was
23 by no means a case where overwhelming evidence was presented against Ms. Gravelle.
24 This was a constructive possession case where another known methamphetamine user
25 was making furtive movements in the area where the methamphetamine was found.
26 Furthermore, there was no DNA or fingerprint evidence showing that Ms. Gravelle had
27 handled the methamphetamine. Accordingly, this weights in favor of a mistrial being
28 declared.
29


1 The next factor deals with the quantity and character of the error. Much like the
2 error in Winiarz, the error in the instant case appears to be the result of an accident made
3 by court staff. The instant error is of a sufficient nature to warrant a mistrial. The
4 evidence list made it appear as though there was much more evidence against Ms.
5 Gravelle than was presented at trial. Much of the evidence admitted directly undercuts
6 Ms. Gravelle's trial strategy. For example, the Court sustained an objection as to the
7 weight of the methamphetamine. The weight was listed on the exhibit list. Furthermore,
8 the jury potentially had knowledge of Ms. Gravelle's prior convictions. While Ms.
9 Gravelle's name is not attached to this information the exhibit list noted that there was a
10 CR-F number attached to the JOC's. It would not be a stretch of the imagination to find
11 that the Jury could have come to the conclusion that these were documents related to a
12 criminal case. Ms. Gravelle's decision to testify in the instant matter was heavily
13 influenced by the fact that she had prior felony convictions that we did not want the Jury
14 to learn about. Finally, what distinguishes this case from many other similar cases where
15 a mistrial was not granted is that the Court never had an opportunity to issue a curative
16 instruction. Because the verdict came back while the parties were determining how to
17 proceed the Jury was never told that they could not rely on any of the inadmissible
18 evidence when arriving at their verdict. This fact weighs heavily in the favor of a
19 mistrial being granted. See Koenig 99 Nev. at 784; Chatman v. State, 2017 Nev. App.
20 Unpub. LEXIS 390, *2, 2017 WL 2591451.

22 Finally, the gravity of the instant offense leans towards a mistrial being granted.
23 While this only a Category E Felony, it is still a felony offense. Furthermore, a
24 conviction on this offense could potentially be used against Ms. Gravelle in future
25 proceedings, most notably to potentially be considered if a habitual criminal claim were
26 ever filed against Ms. Gravelle.

1 **III. Conclusion**

2 For the above reasons this Court should grant the above motion for a mistrial due
3 to the fact that the Jury was made aware of evidence that was never presented during the
4 course of the trial.

5 KRISTON HILL
6 ELKO COUNTY PUBLIC DEFENDER
7 571 Idaho Street
8 Elko NV 89801

9 By: 
10 PHILLIP LEAMON
11 Elko County Deputy Public Defender
12 NV Bar Number 13709

13 AFFIDAVIT OF PHILLIP LEAMON

14 STATE OF NEVADA)
15 : ss.
16 COUNTY OF ELKO)

17 PHILLIP LEAMON, being first duly sworn, deposes and says:

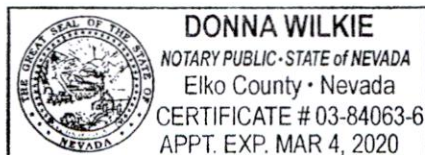
- 18 1. That I am an attorney duly licensed to practice law in the State of Nevada.
19 2. That my office has been appointed to represent the Defendant, SARAH
20 ELIZABETH GRAVELLE, and has done so at all critical stages.
21 3. That this Motion is filed in good faith and not for purposes of delay.
22 4. I make these statements under penalty of perjury.

23 
24 PHILLIP LEAMON

25 STATE OF NEVADA
26 COUNTY OF ELKO

27 SUBSCRIBED AND SWORN to before me
28 this 27 day of February, 2019.

29 
NOTARY PUBLIC

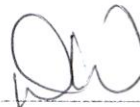


CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am the secretary for the Elko County Public Defender's Office and that on this 27 day of February, 2019; I delivered or caused to be delivered a true copy of the foregoing document to:

THE HONORABLE NANCY PORTER
District Judge, Department I
Fourth Judicial District Court
Elko County Courthouse
Elko, NV 89801

ELKO COUNTY DISTRICT ATTORNEY'S OFFICE
571 Idaho Street
Elko, NV 89801



Pub Def

FILED

1 CASE NO. CR-FP-18-7207

2 DEPT. NO. 1

2019 MAR -6 PM 2:41

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY RP

3
4
5 IN THE FOURTH JUDICIAL DISTRICT COURT
6 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 Sarah Elizabeth Gravelle,

12 Defendant.
13

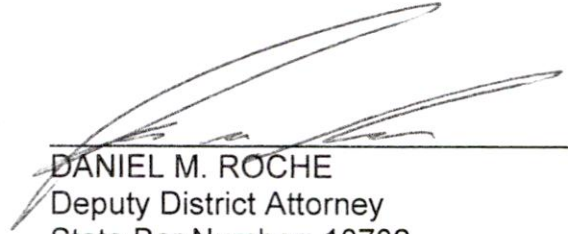
STATE'S OPPOSITION TO
MOTION TO DECLARE A MISTRIAL
OR, IN THE ALTERNATIVE,
MOTION TO SET ASIDE VERDICT

14 COMES NOW, plaintiff, State of Nevada, by and through its attorneys, TYLER J.
15 INGRAM, District Attorney for the County of Elko, and DANIEL M. ROCHE, Deputy District
16 Attorney, and hereby opposes defendant Sarah Elizabeth Gravelle's (hereinafter "Gravelle")
17 motion for a mistrial or alternative motion to set aside the verdict. Said opposition is made
18 and based upon the following points and authorities together with all pleadings and papers
19 on file herein.

20 Dated this 6th day of March, 2019.

21 TYLER J. INGRAM
22 Elko County District Attorney

23
24 By:


25 DANIEL M. ROCHE
26 Deputy District Attorney
27 State Bar Number: 10732
28

1 POINTS AND AUTHORITIES

2 **I. Background**

3 On August 30, 2018, Gravelle was charged by criminal complaint with one count of
4 possession of a controlled substance. A preliminary hearing was held on September 19,
5 2018, and Gravelle was bound over to district court for trial. A criminal information was filed
6 on October 1, 2018, and Gravelle entered a plea of not guilty at her arraignment on
7 November 26, 2018. Jury trial was scheduled to commence on February 19, 2019, and trial
8 went forward as scheduled.

9 On the afternoon of the second day of trial, February 20, 2019, the jury was instructed
10 on the law and began its deliberations. After deliberating for a short time, a jury question was
11 submitted asking why the jury had not seen Plaintiff's Exhibit No. 8 identified as "Photo
12 (DSCN3307) items from eyeglass case." Exhibit 1 (attached). It was then discovered that
13 the court clerk had inadvertently provided the jury with a list of all of the evidence that had
14 been marked for trial, rather than just the evidence that had been admitted. *See id.* The
15 error was corrected, and the parties and the Court agreed to respond to the jury question by
16 referring them to Jury Instruction No. 31, which stated in part, "the Court is not at liberty to
17 supplement the evidence." However, before the jury could be so instructed, the foreperson
18 informed the Court that it had reached a verdict.

19 Rather than pursue the available alternatives of (1) instructing the jury as planned and
20 directing them to reconsider, (2) questioning the jurors about whether they had considered
21 any inadmissible evidence in reaching their verdict, or (3) moving for an immediate mistrial,
22 Gravelle elected to accept the verdict with the option of litigating her complaints in a future
23 motion.¹ The jury returned a guilty verdict.

24 On February 27, 2019, Gravelle filed a timely² motion for a mistrial or, alternatively, to
25 set aside the verdict. This opposition follows.

26 ///

27
28 ¹ See *Pantano v. State*, 122 Nev. 782, 787, 792-93, 138 P.3d 477, 480, 483-84 (2006) (upholding trial court's resolution of motion for mistrial filed after jury verdict).

² See NRS 176.515(4).

1 **II. Argument**

2 In her motion, Gravelle contends that this Court should declare a mistrial because the
3 presentation of the list of marked exhibits to the jury allowed the jury to consider
4 "inadmissible evidence." Motion at 2. Gravelle further claims that "the damage in the instant
5 case was compounded because the Court never had an opportunity to issue a curative
6 instruction before the Jury reached its verdict." *Id.* Neither of these arguments has merit.

7 There is the potential for substantial prejudice when a jury is permitted to consider
8 evidence not admitted at trial. *Winiarz v. State*, 107 Nev. 812, ___, 820 P.2d 1317, 1318
9 (1991). When such instances occur, the error is subject to harmless-error review. *See id.*;
10 *see generally, Valdez v. State*, 124 Nev. 1172, 1188-89, 196 P.3d 465, 476-77 (2008)
11 (discussing the standards for harmless-error review and acknowledging that there is some
12 debate as to whether the distinctions between the harmless-error standards make any
13 significant difference). In cases of juror misconduct, the Nevada Supreme Court has applied
14 the *Chapman* harmless-error standard, and held that a new trial is warranted unless it
15 appears, beyond a reasonable doubt, that no prejudice has resulted. *Barker v. State*, 95
16 Nev. 309, 313, 594 P.2d 719, 721 (1979) (citing *Chapman v. California*, 386 U.S. 18 (1967)).
17 In *Winiarz*, the Court applied that same standard to a jury's consideration of inadmissible
18 evidence resulting from court error. 107 Nev. at ___, 820 P.2d at 1318 (citing *Barker*). The
19 Court further explained that when a jury is exposed to inadmissible evidence, there are three
20 factors to consider when determining if that exposure has created reversible prejudice: (1)
21 whether the issue of innocence or guilt is close, (2) the quantity and character of the error,
22 and (3) the gravity of the crime charged. *Id.*; *Rowbottom v. State*, 105 Nev. 472, 486, 779
23 P.2d 934, 943 (1989); *Big Pond v. State*, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985).

24 As explained below, the exhibit list that was inadvertently given to the jury did not
25 contain any prejudicial, inadmissible evidence. All of the applicable factors weigh against a
26 mistrial in this case. Moreover, the jury's verdict was accepted without additional instruction
27 because that was the course Gravelle chose. Accordingly, no relief is warranted.

28 ///

1 **A. The jury did not have access to any prejudicial, inadmissible evidence.**

2 It is important to note at the outset that the jury in this case did not receive a single
3 piece of evidence that had not been properly admitted at trial. Rather, along with the
4 evidence, the jury was given a piece of paper listing the exhibits that had been marked for
5 trial. See Exhibit 1. No items on the list—other than those that had been admitted at trial—
6 were given to the jury. This fact alone distinguishes the instant case from the case law relied
7 upon by Gravelle. In *Winiarz*, the jury at the defendant's second trial for murder was given
8 the clerk's notes from the first trial, which included a verdict form finding the defendant guilty
9 of first-degree murder with the use of a deadly weapon and sentencing him to life in prison.
10 107 Nev. at ___, 820 P.2d at 1318. In *Pantano v. State*, the jury in a trial for sexual assault
11 and lewdness with a child was provided with a transcript containing an admission that had
12 not been admitted at trial. 122 Nev. 782, 786-87, 138 P.3d 477, 480 (2006). And in *Barker*,
13 the jury was provided with independent research by the jury foreman about the effects of
14 heroin on the human mind. 95 Nev. at 311, 594 P.2d at 720. Despite this deliberate
15 misconduct by the jury, the Nevada Supreme Court affirmed the trial court's denial of a new
16 trial because no prejudice had resulted. *Id.* at 313, 594 P.2d at 721. Nevertheless, Gravelle
17 contends that the information contained on the exhibit list in this case was sufficient to
18 prejudice her defense.

19 First, Gravelle contends that a mistrial is warranted because "the Jury had access and
20 knowledge of information not presented at trial" as demonstrated by the fact that the jury's
21 "question to the Judge directly referenced the inadmissible evidence." Motion at 3. That
22 question was in reference to Plaintiff's Exhibit No. 8, which was a photograph of "items from
23 eyeglass case." See Exhibit 1. The jury had the actual eyeglass case in a clear plastic
24 evidence bag in the jury room, see *id.*, but it appears that their receipt of an evidence list
25 indicating that there was a photograph of the contents led the jurors to question whether they
26 had received all the admitted evidence. The photograph had not been admitted at trial
27 because the Court had excluded some of the items in the photograph as prior bad act
28 evidence. However, the jury was not aware of this fact. Rather than showing that the jury

1 had knowledge of inadmissible evidence, the juror question makes it clear that the jury was
2 **not** exposed to the unadmitted evidence. The jury merely became aware that there was a
3 picture that it had not seen. If anything, the fact that the State had failed to present this
4 evidence to the jury could have been negatively inferred against the State. There is no basis
5 in the record to conclude that the fact that the jury became aware of a photograph it had not
6 seen was prejudicial to Gravelle. Moreover, the fact that the jury reached a verdict without
7 waiting for an answer to its inquiry makes it clear that the referenced photograph, which it
8 never saw, played no part in the jury's verdict.

9 Secondly, Gravelle complains that the evidence list referenced additional evidence
10 that was not presented at trial, including references to a photograph of a purple container
11 (Plaintiff's Exhibit No. 12 listed as "Photo (DSCN3311) container with purple bottom"), the
12 weight of the methamphetamine (Plaintiff's Exhibit Nos. 2 and 3 listed as "Baggie with 1.226g
13 methamphetamine" and "Baggie with less than 1g presumptive methamphetamine") and two
14 references to prior judgments of conviction (Plaintiff's Exhibit Nos. 13 and 14 listed as
15 "Certified JOC for case CR-FP-11-0469" and "Certified JOC for case 3:15-CR-00055-MMD-
16 VPC"). Exhibit 1. Gravelle fails to articulate any persuasive theory of prejudice based on
17 the identification of these items. See *Pantano*, 122 Nev. at 792, 138 P.3d at 484 (denying
18 relief in part because defendant offered "no concrete theory" of prejudice).

19 Plaintiff's Exhibit No. 12 was not admitted at trial nor was there any reference to it
20 during trial. The Court ruled before trial that it was irrelevant. Gravelle fails to explain how
21 the identification of Plaintiff's Exhibit No. 12 on the list, or the existence of such a container,
22 would have been prejudicial. There is also no indication anywhere in the record that the jury
23 noticed or considered this item.

24 Plaintiff's Exhibit Nos. 2 and 3 were properly admitted at trial without objection on the
25 first day of trial. Plainly written on these exhibits in clear, black lettering are the respective
26 gross weights of the samples as measured by Officer Joshua Taylor of the Elko Police
27 Department ("1.42 gross" on Exhibit 2 and ".66 gross" on Exhibit 3). Moreover, because
28 these baggies were admitted, the jurors would have been able to observe the relative amount

1 of the drugs with their own eyes. The fact that Gravelle objected to the expert testimony of
2 Brad Taylor from the Washoe County crime lab regarding the net weight of these samples
3 during the second day of trial does not change the fact that the gross weight of the samples
4 had already been admitted. Accordingly, Gravelle fails to articulate how references to the
5 samples' net weight ("1.226g" for Exhibit 2 and "less than 1g" for Exhibit 3) was prejudicial to
6 her case. Gravelle objected to the net weight evidence as irrelevant.³ If the evidence is
7 irrelevant, meaning it does not make any fact pertinent to the jury's decision more or less
8 likely, see NRS 48.015, then she fails to explain how the evidence would affected the jury's
9 verdict. Gravelle offers this evidence as an example of evidence that directly undercut her
10 trial strategy. Motion at 4. Simply objecting to what one considers irrelevant evidence is not
11 a "trial strategy." Gravelle entirely fails to show prejudice from the jury being informed of the
12 net weight of the drugs.

13 Finally, while Plaintiff's Exhibit Nos. 13 and 14 carry the remote possibility for
14 prejudice since they are in reference to two of Gravelle's prior felony convictions, the
15 descriptions on the list that was given to the jury did not include Gravelle's name, the word
16 felony, or any other word indicating that they documented prior criminal activity by Gravelle.
17 See Exhibit 1. In order for Gravelle to have been prejudiced by these items on the list, one
18 would have to assume both that the jurors knew what the letters "JOC" stood for and that
19 they assumed these two JOCs belonged to Gravelle. Both of these assumptions are
20 extremely unlikely, particularly in light of the fact that Gravelle's trial strategy was to blame
21 Nicholas Done for the presence of the illegal narcotics. Testimony was elicited by the
22 defense at trial that Done was known to both of the officers in the case as a user of narcotics
23

24 ³ The State asserts that the samples' net weights were relevant for a variety of reasons, such as showing
25 that there was a testable amount of the controlled substance, that the crime lab took the proper, careful
26 steps to document its work, and as additional evidence that the proper samples were tested because the
27 gross weight of the samples taken by the police were similar to the net weights at the lab. Showing
28 relevance is a very low threshold. See, e.g., *Tennard v. Dretke*, 542 U.S. 274 (2004); *Holmes v. State*,
129 Nev. 567, 575, 306 P.3d 415, 420 (2013). As weight is not an element of the offense, the State
chose not to argue yet another minor issue at trial in favor of completing its presentation of the evidence.
However, Gravelle's suggestion that her objection to Brad Taylor's testimony regarding the net weight of
the drugs was part of her "trial strategy" is patently frivolous. She fails to articulate a theory of defense for
which preclusion of the net weight of the drugs would have increased the chances of acquittal.

1 and that he had been recently arrested for the possession of heroin. In fact, on the evidence
2 list that was given to the jury, Defense Exhibit No. A was listed as "Declaration of Probable
3 Cause for Nicholas Done." Even if one or more jurors knew what a JOC was (an unlikely
4 fact), they would more than likely have attributed Plaintiff's Exhibits 13 and 14 to Nicholas
5 Done.

6 There is no evidence anywhere in the record that these additional listed exhibits were
7 considered by the jury. Even if they were considered, Gravelle offers no concrete theory of
8 resultant prejudice.

9 **B. Even if the list constitutes inadmissible evidence, no relief is warranted**
10 **because all three factors enumerated in *Winiarz v. State* weigh against a**
11 **mistrial.**

12 In the event that the list of marked exhibits is deemed "inadmissible evidence" for the
13 purposes of *Winiarz*, careful consideration of the three factors identified in that case clearly
14 demonstrates that no relief is warranted.

15 **1. The issue of guilt or innocence was not close.**

16 The first factor listed in *Winiarz* is whether the issue of innocence or guilt is close. 107
17 Nev. at ___, 820 P.2d at 1318. In this case, it was not. During a routine traffic stop by
18 Officer Joshua Taylor of the Elko Police Department, Gravelle (who was driving the stopped
19 vehicle) admitted to being a user of methamphetamine, having used a few days prior, and
20 having just returned from a trip out of state. During this conversation with Officer Taylor,
21 Gravelle became nervous and started stuttering, bouncing her knee, and trying to direct the
22 conversation elsewhere. Officer Taylor conducted a sniff for drugs with his K-9, Tyr, and
23 after the dog reacted to the presence of illegal narcotics, a search of the vehicle was
24 conducted. Inside a backpack on the rear passenger floorboard, officers located a pink
25 "Juicy Couture" eyeglasses case containing methamphetamine. In the same backpack there
26 were multiple receipts with the name "Sarah Gravelle" on them, as well as a marijuana pipe
27 that Gravelle claimed was hers. In addition, a white syringe plunger cap was found on her
28 person and an orange syringe needle cap was found with the drugs.

1 At trial, Gravelle's defense was that the drugs belonged to her passenger, Nicholas
2 Done, who was a known user of narcotics. This was a weak defense because not only were
3 the drugs found with multiple items of Gravelle's personal property, but the proffered theory
4 of defense did not preclude the obvious possibility of joint possession, on which the jury was
5 instructed.

6 The jury deliberated for a short time before finding Gravelle guilty beyond a
7 reasonable doubt of possession of a controlled substance. Even if this is not a case where
8 the evidence should be described as overwhelming, it was certainly not a close case as there
9 were multiple pieces of evidence tying Gravelle to the narcotics. The physical evidence, in
10 combination with Officer Taylor's observations and Gravelle's admissions, made it so that the
11 question of guilt or innocence was not close.

12 **2. The error was minor.**

13 The second factor listed in *Winiarz* is "the quantity and character of the error." 107
14 Nev. at ___, 820 P.2d at 1318. As explained in detail above, the only "evidence" that was
15 given to the jury was a list of exhibits marked for trial. *See supra*, § II(A). Only the identified
16 exhibits that had been admitted at trial were given to the jury, and there is no evidence in the
17 record that the jury considered improper evidence in reaching its verdict. Accordingly, this
18 factor weighs against a mistrial.

19 **3. The charged offense is the least serious felony for which a defendant** 20 **can be tried.**

21 The third factor listed in *Winiarz* is the gravity of the crime charged. 107 Nev. at ___,
22 820 P.2d at 1318. In this case, Gravelle was charged with a single category E felony, the
23 least serious felony that can be charged in Nevada. This is highly distinguishable from the
24 other Nevada cases addressing jury misconduct or exposure to inadmissible evidence.
25 *Winiarz* was a murder case, which weighed heavily in favor of a mistrial. 107 Nev. at ___,
26 820 P.2d at 1318-19. *Barker* also involved a challenge to a conviction for first-degree
27 murder. 95 Nev. at 310, 594 P.2d at 720. And *Pantano* involved two charges that carried
28 possible sentences of life in prison: sexual assault of a child and lewdness with a child. 122

1 Nev. at 786, 138 P.3d at 480; see NRS 200.366 (setting penalties for sexual assault); NRS
2 201.230 (setting penalties for lewdness with a child). In Gravelle's case, this factor weighs
3 very heavily against a mistrial.

4 All told, all three factors in *Winiarz* weigh against a mistrial in this case.

5 **C. If erroneous, the failure to instruct the jury constitutes invited error.**

6 In her motion, Gravelle suggests that any prejudice in this case "was compounded
7 because the Court never had an opportunity to issue a curative instruction before the Jury
8 reached its verdict." Motion at 2. The State takes issue with this incomplete description of
9 events for two reasons: (1) the "curative instruction" that the defense had agreed upon was
10 simply a reiteration of an instruction that had already been given to the jury, and (2) when
11 presented with the possibility of instructing the jury and then asking them to reconsider their
12 verdict in light of the curative instruction, the defense elected to forego the instruction and
13 receive the verdict.

14 First, when the parties met in chambers to discuss the jury question, they discussed
15 possible courses of action, including crafting a curative instruction. However, rather than do
16 so, the defense agreed that the Court should simply reiterate Jury Instruction No. 31, which
17 stated in part, "the Court is not at liberty to supplement the evidence." Accordingly, even
18 before the parties received the jury's verdict, the defense had chosen a course of action that
19 would not have resulted in any new instructions to the jury.

20 Second, after the parties were informed that the jury had reached a verdict, the State
21 suggested the possibility of providing a curative instruction and asking the jury to reconsider
22 its verdict in light of the instruction. That option was rejected. Acceptance of the jury's
23 verdict without requesting a curative instruction was a choice made by the defense. A
24 defendant cannot seek relief on the basis of invited error. See, e.g., *Carter v. State*, 121
25 Nev. 759, 769, 121 P.3d 592, 599 (2005); *Rhyne v. State*, 118 Nev. 1, 9, 38 P.3d 163, 168
26 (2002). Because Gravelle chose to accept the jury's verdict without providing additional
27 instruction or canvassing the jury about the exhibit list, she is not entitled to any relief on the
28 basis that the jury was not provided with such instruction.

1 **D. If there are unresolved questions of fact necessary to the Court's**
2 **decision, the State requests an evidentiary hearing.**

3 As explained above, there is no evidence that the jury's verdict was based on anything
4 other than the properly admitted trial evidence. This Court should find that the clerk's error of
5 providing the jury with the marked exhibit list was harmless beyond a reasonable doubt and
6 deny Gravelle's motion for mistrial. However, if the Court does not believe that it can do so
7 without additional fact finding, the State respectfully requests that this Court schedule an
8 evidentiary hearing to poll the jurors regarding their exposure to the exhibit list and the
9 impact, if any, on their verdict. *See Winiarz*, 107 Nev. at ___, 820 P.2d at 1318 (indicating that
10 district court polled jury before ruling on mistrial).

11 **III. Conclusion**

12 The court clerk's error of placing a list of marked exhibits in the jury room with the
13 evidence was a minor error. The evidence against the defendant was strong and the charge
14 against her was minor. Accordingly, all three factors in *Winiarz* weigh against a mistrial and
15 Gravelle's motion should be denied.

16
17 Dated this 6th day of March, 2019.

18 TYLER J. INGRAM
19 Elko County District Attorney

20
21 By: _____

22 DANIEL M. ROCHE
23 Deputy District Attorney
24 State Bar Number: 10732

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1. That the Declarant is presently serving as a Deputy District Attorney of the Elko County District Attorney's Office.
2. That I have read the assertions of fact set forth in this pleading and incorporate them into this Declaration. As there is not yet a trial transcript and some of those assertions relate to off-the-record discussions, said assertions of fact are based upon my personal recollection of the trial proceedings.
3. This opposition is made in good faith, and not merely for the purposes of delay.
4. I declare under penalty of perjury that the foregoing is true and correct.

DANIEL M. ROCHE
Deputy District Attorney
State Bar Number: 10732

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A hearing on this opposition is requested and a court reporter is requested. It is estimated that one-half (1/2) hour should be set aside for argument on this opposition. If an evidentiary hearing is to be held, several hours may be necessary.

TYLER J. INGRAM
Elko County District Attorney

DANIEL M. ROCHE
Deputy District Attorney
State Bar Number: 10732

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By delivering to:

PHILLIP LEAMON
ATTORNEY AT LAW
569 COURT STREET
ELKO, NV 89801

DA# F-18-02300

Exhibit 1

STATE OF NEVADA

VS.

SARAH ELIZABETH GRAVELLE

THE STATE OF NEVADA

PLAINTIFF,

vs.

SARAH E. GRAVELLE

DEFENDANT.

DATE: February 20, 2019

CASE NO.: CR-FP-18-7207

JUDGE: NANCY PORTER

DEPT.: 1

February 19 - 20, 2019

JURY TRIAL

PLAINTIFF'S EXHIBITS - Daniel M. Roche #1987

NO.	DESCRIPTION	MARKED	ADMITTED
1	Juicy Couture eyeglass case and contents	02/07	02/19
2	Baggie with 1.226g methamphetamine	02/07	02/19
3	Baggie with less than 1g presumptive methamphetamine	02/07	02/19
4	Receipts	02/07	02/19
5	Photo (DSCN3302) receipt from Terri Jim to Sarah Gravelle	02/07	02/19
6	Photo (DSCN3305) receipt with Sarah Gravelle's name on it	02/07	02/19
7	Photo (DSCN3306) eyeglass case	02/07	02/19
8	Photo (DSCN3307) items from eyeglass case	02/07	
9	Photo (DSCN3308) closed container with white crystals	02/07	02/19
10	Photo (DSCN3309) open container and baggie of white crystals	02/07	02/19
11	Photo (DSCN3310) baggie of white crystals	02/07	02/19
12	Photo (DSCN3311) container with purple bottom	02/07	
13	Certified JOC for case CR-FP-11-0469	02/07	
14	Certified JOC for case 3:15-CR-00055-MMD-VPC	02/07	
15	Officer Joshua Taylor's initial report	02/07	
16	Officer Joshua Taylor's K9 sniff report	02/07	
17	Washoe County Crime Lab forensic report	02/07	

DEFENDANT'S EXHIBITS - Phillip Leamon #1896

NO.	DESCRIPTION	MARKED	ADMITTED
A	Declaration of Probable Cause for Nicholas Done	02/19	

FILED

2019 JUL -5 PM 3:50

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY fl

CASE NO. CR-FP-18-7207
DEPT. I

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

STATE OF NEVADA,

Plaintiff,

vs.

SARAH ELIZABETH GRAVELLE,

Defendant.

SECOND MOTION TO DECLARE A
MISTRIAL, OR IN THE
ALTERNATIVE MOTION TO SET
ASIDE VERDICT

The Defendant SARAH ELIZABETH GRAVELLE, (hereinafter "defendant") by and through her attorney, PHILLIP LEAMON, of the Elko County Public Defender's Office, hereby moves this Court for an Order declaring a mistrial based upon one of the jurors being unqualified.

DATED this 5th day of July, 2019.

KRISTON N. HILL
ELKO COUNTY PUBLIC DEFENDER
569 Court Street
Elko, NV 89801

By: [Signature]

PHILLIP LEAMON
Elko County Deputy Public Defender
NV Bar Number 13709

Elko County
Public Defender

1 POINTS & AUTHORITIES

2 **I. STATEMENT OF FACTS**

3 On June 27, 2019, this Court held a hearing on Ms. Gravelle's first motion for
4 mistrial. During the course of the hearing the Court asked prospective jurors several
5 questions regarding the case, and whether the instant case was difficult to resolve. The
6 attorneys also asked the jurors follow up questions. During the hearing juror number
7 eight, Dora Torres, testified. During the questioning of Ms. Torres, it became apparent
8 that she may not have had sufficient command of the English language necessary to
9 serve on a jury. The Court asked Ms. Torres several questions about whether the case
10 was difficult or tough. Ms. Torres seemed to have difficulties understanding what the
11 court meant and answering questions. Eventually, Ms. Torres seemed to explain to the
12 Court that she meant that sitting in judgement of someone was difficult. However,
13 defense counsel returned to this line of questioning and asked about one of the defense
14 theories presented at trial. When asked if the methamphetamine could have belonged to
15 the passenger of the vehicle, Ms. Torres said, it is possible who knows.
16

17 After the jurors testified the Court proceeded to hear argument on the motion.
18 However, the Court was concerned about Ms. Torres's command of the English
19 language and asked the parties to address that issue as well during argument. Defense
20 counsel argued that this issue could also warrant a mistrial as it appeared there could
21 have been a language barrier, and because it appeared that Ms. Torres could have had
22 doubts about whether Ms. Gravelle actually possessed the methamphetamine.

23 **II. ARGUMENT**

24 **This Court Should Declare a Mistrial Because one of the Selected Jurors**
25 **was not qualified to Serve as a Juror.**

26 NRS 6.010 lists possible disqualifications for potential jurors in the state of
27 Nevada. Some of the disqualifications include people who been convicted of treason, a
28 felony, or other infamous crime, and who are not rendered incapable by reason of
29

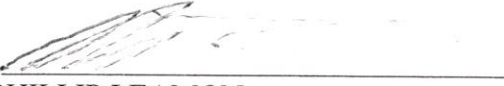
1 physical or mental infirmity. See NRS 6.010. Another prohibition is against people who
2 do not have sufficient knowledge of the English language. Id.

3 Here it appears that Ms. Torres is should not have sat on the jury as she did not
4 appear to have sufficient knowledge of the English language. While no transcript yet
5 exists of the hearing on the motion for mistrial, very real concerns existed about Ms.
6 Torres's knowledge of the English language. Enough so that the court asked counsel to
7 address the issue during argument. The Nevada Court of Appeals recently addressed the
8 issue of unqualified jurors in Sayedzada v. State. In that case the court was examining
9 whether counsel had the right to challenge a particular juror's qualifications, in that case
10 potential bias, after a verdict had been reached. Sayedzada v. State, 419 P.3d 184, 187
11 (2018). In that case the Court of Appeals looked at when the parties learned of the
12 reason for disqualification. The Court ultimately held that a defendant must not have
13 had knowledge of the infirmity at the time of Voir Dire. Id. at 190. Here, the defense
14 was not aware of Ms. Torres's limitations with the English language until the hearing on
15 the mistrial. It is counsel's recollection that there was nothing remarkable about Ms.
16 Torres during Voir Dire and that she seemed quiet. However, when questioned about
17 the case during the mistrial hearing it was clear that Ms. Torres had some issues being
18 able to answer the Court's questions. Had either the Court or Defense Counsel knew of
19 these limitations she would have been excused from the jury. Accordingly, Ms. Torres
20 was not qualified to sit on the jury and the parties did not learn of the fact until after the
21 verdict. Accordingly, a mistrial is warranted.

1 **III. Conclusion**

2 For the above reasons this Court should grant the above motion for a mistrial due
3 to the fact that an unqualified person was able to sit on the jury.

4 KRISTON HILL
5 ELKO COUNTY PUBLIC DEFENDER
6 571 Idaho Street
7 Elko NV 89801

8 By: 
9 PHILLIP LEAMON
10 Elko County Deputy Public Defender
11 NV Bar Number 13709

12 AFFIDAVIT OF PHILLIP LEAMON

13 STATE OF NEVADA)
14 : ss.
15 COUNTY OF ELKO)


16 PHILLIP LEAMON, being first duly sworn, deposes and says:

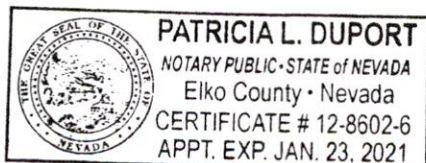
- 17 1. That I am an attorney duly licensed to practice law in the State of Nevada.
18 2. That my office has been appointed to represent the Defendant, SARAH
19 ELIZABETH GRAVELLE, and has done so at all critical stages.
20 3. That this Motion is filed in good faith and not for purposes of delay.
21 4. I make these statements under penalty of perjury.

22 
23 PHILLIP LEAMON

24 STATE OF NEVADA
25 COUNTY OF ELKO

26 SUBSCRIBED AND SWORN to before me
27 this 5th day of July, 2019.

28 
29 NOTARY PUBLIC




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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am the secretary for the Elko County Public Defender's Office and that on this 6th day of July, 2019; I delivered or caused to be delivered a true copy of the foregoing document to:

THE HONORABLE NANCY PORTER
District Judge, Department I
Fourth Judicial District Court
Elko County Courthouse
Elko, NV 89801

ELKO COUNTY DISTRICT ATTORNEY'S OFFICE
571 Idaho Street
Elko, NV 89801



PD-Leamon

FILED

2019 JUL 12 AM 9:57

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY 2

CASE NO. CR-FP-18-7207

DEPT. NO. 1

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

THE STATE OF NEVADA,

Plaintiff,

vs.

SARAH ELIZABETH GRAVELLE,

Defendant.

OPPOSITION TO SECOND MOTION
TO DECLARE A MISTRIAL OR, IN THE
ALTERNATIVE SET ASIDE VERDICT

COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, TYLER J. INGRAM, District Attorney for the County of Elko, and DANIEL M. ROCHE, Deputy District Attorney, and hereby opposes Defendant Sarah Elizabeth Gravelle's (hereinafter "Gravelle") "Second Motion to Declare a Mistrial, or in the Alternative Motion to Set Aside Verdict" filed in the above-captioned case. This opposition is made and based upon the following points and authorities together with all pleadings and papers on file herein.

Dated this 11th day of July, 2019.

TYLER J. INGRAM
Elko County District Attorney

By:

Daniel M. Roche
Deputy District Attorney
State Bar Number: 10732

Attestation Pursuant to NRS 229B.030
SSN Does Appear
SSN Does Not Appear FW

JUL 12 2019 PM 11:00

1 POINTS AND AUTHORITIES

2 **I. Background**

3 On February 20, 2019, a jury found Gravelle guilty beyond a reasonable doubt of
4 possession of a controlled substance. After trial, Gravelle filed a motion for a mistrial or to
5 set aside the verdict based upon a clerical error that resulted in the jury receiving an
6 evidence list in the jury room during deliberations. A hearing on that motion was held on
7 June 27, 2019. During that hearing, it became apparent that one of the jurors who had
8 rendered the verdict spoke English as her second language. Now, Gravelle has filed a
9 second motion for mistrial or to set aside the verdict on the basis that this juror did not meet
10 the qualifications to serve as a juror pursuant to NRS 6.010 because she lacked "sufficient
11 knowledge of the English language." This opposition follows.

12 **II. Argument**

13 In her motion, Gravelle contends that Juror Dora Torres was not qualified to sit as a
14 juror at her trial because Juror Torres did not have sufficient knowledge of the English
15 language. This claim should be rejected.

16 Nevada law provides that:

17 [E]very qualified elector of the State, whether registered or not, who has sufficient
18 knowledge of the English language, and who has not been convicted of treason,
19 a felony, or other infamous crime, and who is not rendered incapable by reason
20 of physical or mental infirmity, is a qualified juror of the county in which the
person resides.

21 Nev. Rev. Stat. (NRS) § 6.010. Nevada has not defined the phrase "sufficient knowledge of
22 the English language" in the statute, but the Supreme Court of California has defined the
23 identical phrase in its juror-qualification statute as meaning "sufficient knowledge of the
24 English language to understand the legal proceedings and the evidence upon which a juror
25 would base his or her decision in any given case." *People v. Eubanks*, 266 P.3d 301, 319
26 (Cal. 2011). A person with sufficient knowledge of English is simply one who is fully able to
27 understand spoken and written English. *People v. Jones*, 25 Cal. App. 3d 776, 783 (1972).
28 This does not require that a juror be expert in his or her use of the English language. In fact,

1 the California courts have upheld the jury service of a juror who spoke English but had a
2 Spanish interpreter available at trial. See *People v. Moreno*, 192 Cal. App. 4th 692, 703-04
3 (2011).

4 Here, Gravelle contends that she is entitled to a new trial because Juror Torres did not
5 meet the minimum English competency requirement. Gravelle's motion is based upon some
6 confusion during questioning of Juror Torres at the hearing on the first motion for mistrial.
7 See Motion at 2. Her motion should be denied for at least three reasons.

8 First, Gravelle fails to cite any authority providing for a mistrial based on the post-trial
9 discovery of a juror's less-than-perfect English language skills. See Motion.

10 Second, assuming, *arguendo*, that such authority exists, Juror Torres demonstrated
11 more than "sufficient" knowledge of the English language. During voir dire, Juror Torres was
12 asked to read items shown on a projector and to provide her basic biographical information.
13 Nothing about her presentation at that time raised any concerns about her English skills. It
14 was not until four months after trial, during the hearing on the first motion for mistrial, that any
15 issue was raised. And while there was some confusion during the questioning of Juror
16 Torres at the hearing, that confusion was ultimately cleared up through further questioning
17 and clarification. Notably, several other jurors for whom English was their first language also
18 misunderstood questions that were posed by the Court, whether due to acoustics or the
19 phrasing of those questions. These incidents did not render those jurors unqualified after the
20 fact. And after there seemed to be some misunderstandings during questioning of Juror
21 Torres, she was asked directly whether she understand the proceedings and evidence at
22 trial, and her answer was unequivocally in the affirmative.

23 Third, when a prosecutor in Clark County used a peremptory challenge to dismiss a
24 juror under similar circumstances, the Nevada Supreme Court reversed the defendant's
25 conviction after concluding that the use of the challenge violated the U.S. Constitution. See
26 *Diomampo v. State*, 124 Nev. 414, 423-24, 185 P.2d 1031, 1037-38 (2008). The Supreme
27 Court held that the confusion or misunderstanding that occurred during questioning of a juror
28 who spoke English as his second language was not enough for the State to plausibly

1 conclude that the juror's understanding of English was insufficient to serve as a juror. *Id.*
2 Just like the juror in *Diomampo*, Juror Torres was proficient enough in the English language
3 to serve as a juror. She was able to read and speak English without any translation
4 assistance and she stated that she understood the trial proceedings and the evidence. The
5 miscommunication that occurred during her questioning at the hearing on the motion for
6 mistrial is not sufficient to conclude otherwise. The need to for the Court or counsel to speak
7 up or to ask a few additional questions to clarify answers is not enough to render a potential
8 juror unfit for service. To hold that jurors like Torres are incompetent to serve would
9 effectively exclude vast numbers of qualified U.S. citizens with English competency from jury
10 service on the mere basis that they lack the fluency of native speakers. The statute does
11 not require expertise in English; it requires sufficient knowledge. NRS 6.010.

12 In her motion Gravelle cites *Sayedzada v. State*, 134 Nev. ___, 419 P.3d 184 (Nev.
13 Ct. App. 2018). That case deals with a claim of juror bias raised after conviction. The
14 Nevada Court of Appeals held that a failure to excuse a juror for cause is not reversible error
15 unless an unfair or biased juror was actually empaneled. *Id.* at ___, 419 P.3d at 188.
16 Gravelle does not have a colorable claim that juror Torres, or any other juror, was biased. Of
17 all the jurors who were questioned at the hearing on the first motion for mistrial, juror Torres
18 was the most favorable to Gravelle.¹

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26 ¹ To the extent that Gravelle relies on juror Torres' statements regarding the strength of the evidence or any
27 difficulty she had in voting guilty, see Motion at 2, her reliance is misplaced. Juror statements made after trial
28 cannot be used to impeach the verdict unless they are related to extraneous influences on a jury. *Meyer v.*
State, 119 Nev. 554, 562-63, 80 P.3d 447, 454 (2003). Evidence related to a juror's thought processes or
opinions leading to a verdict are not admissible to impeach a jury verdict. *Id.*; *Brioady v. State*, 133 Nev. ___,
___ n.2, 396 P.3d 822, 825 n.2 (Nev. 2017).

1 **III. Conclusion**

2 The confusion that arose during the examination of Juror Torres at the hearing on the
3 prior motion for mistrial is insufficient to show that she lacked sufficient English skills to
4 qualify as a juror in this case. Moreover, Gravelle has cited no authority providing for a new
5 trial on the sole basis that one of the jurors had less-than-perfect English language skills.
6 Gravelle's second motion for mistrial should be denied.

7
8 Dated this 11th day of July, 2019.

9 TYLER J. INGRAM
10 Elko County District Attorney

11
12 By: _____

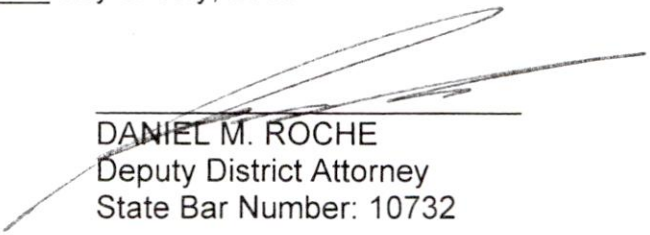
13 Daniel M. Roche
14 Deputy District Attorney
15 State Bar Number: 10732
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Unsworn Declaration In Support of Opposition
Pursuant to NRS 53.045

Comes now DANIEL M. ROCHE, who declares the following to the above-entitled Court:

1. That the Declarant is presently serving as a Deputy District Attorney of the Elko County District Attorney's Office.
2. That I have read the assertions of fact set forth in this pleading and incorporate them into this Declaration. Said assertions of fact are based upon my memory of the proceedings. Any transcript of said proceedings should be determinative of the facts.
3. This opposition is made in good faith, and not merely for the purposes of delay.
4. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 18th day of July, 2019



DANIEL M. ROCHE
Deputy District Attorney
State Bar Number: 10732

1 CERTIFICATE OF SERVICE

2 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the
3 Elko County District Attorney's Office, and that on the 12th day of July, 2019, I served the
4 foregoing Opposition, by delivering, mailing or by facsimile transmission or causing to be
5 delivered, mailed or transmitted by facsimile transmission, a copy of said document to the
6 following:

7 By delivering to:

8 THE HONORABLE NANCY PORTER
9 FOURTH JUDICIAL DISTRICT COURT
10 ELKO COUNTY COURTHOUSE
11 ELKO, NV 89801

12
13 PHILLIP LEAMON
14 ATTORNEY AT LAW
15 569 COURT STREET
16 ELKO, NV 89801

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19 CARISA ANCHONDO
20 CASEWORKER

21 DA# F-18-02300
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FILED

2020 JAN 13 PM 2:30
ELKO CO DISTRICT COURT

CLERK _____ DEPUTY DR

Case No. CR-FP-18-7207

Dept. No. 1

IN THE FOURTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

THE STATE OF NEVADA,

Plaintiff,

V.

SARAH ELIZABETH GRAVELLE,

Defendant.

**ORDER DENYING MOTION FOR
MISTRIAL/ SET ASIDE VERDICT
FILED ON FEBRUARY 27, 2019**

On February 19, 2019, this Court commenced a jury trial in this matter. The State of Nevada was represented by Daniel M. Roche, Elko County Deputy District Attorney. Sarah Elizabeth Gravelle (hereinafter "Defendant") was present and represented by Phillip C. Leamon, Elko County Deputy Public Defender. Defendant was charged with Possession of a Controlled Substance, a Category E Felony, as defined by NRS 453.336. On February 20, 2019, both the State and Defendant rested their cases and the jury began its deliberations.

After deliberating for a short time, the jury submitted a question to the Court inquiring about whether they could see Plaintiff's Exhibit No. 8, which is a "Photo (DSCN3307) items from eyeglass case." This photo was never admitted into evidence at trial. It was then discovered that the court clerk had inadvertently provided the jury with a list of all the evidence that had been marked for trial, rather than just the evidence that had been admitted. This error was immediately corrected by removal of the list from the jury room. The Court and the parties conferred about what action to take regarding the jury's question, but before

1 anything could be done, the foreperson informed the Court that the jury had reached a verdict. Defendant
2 contemplated an immediate motion for a mistrial, but decided instead to hear the jury's verdict and reserved
3 her motion until after the verdict was read. The jury returned a verdict of guilty.

4 On February 27, 2019, Defendant filed a Motion to Declare a Mistrial, Or in the Alternative, Motion
5 to Set Aside Verdict (hereinafter "Motion"). On March 6, 2019, the State filed an Opposition to Defendant's
6 Motion. A hearing was held in this matter on June 27, 2019.

7 The issue now before the Court is whether the court clerk's error prejudiced Defendant to the extent
8 that a mistrial, or a setting aside of the jury verdict, is warranted. The Nevada Supreme Court has held that
9 there is a potential for substantial prejudice when a jury is permitted to consider evidence not admitted at
10 trial. Winiarz v. State, 107 Nev. 812, 814, 820 P.2d 1317, 1318 (1991). A motion for mistrial, or a motion
11 to set aside verdict, must be granted unless it appears beyond a reasonable doubt that no prejudice resulted
12 from the error. Id. (citations omitted). Factors the Court must consider to determine the extent of prejudice
13 to Defendant's case include: "whether the issue of innocence or guilt is close, the quantity and character of
14 the error, and the gravity of the crime charged." Id. (citing Rowbottom v. State, 105 Nev. 472, 486, 779 P.2d
15 934, 943 (1989); quoting Big Pond v. State, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985)).

16 Defendant argues that the facts in *Winiarz* support her Motion. In *Winiarz*, the defendant's
17 conviction for first degree murder was overturned and a second trial ensued. While the jury in the second
18 trial was deliberating, it erroneously had access to the clerk's notes from the first trial containing the original
19 guilty verdict for first degree murder and the sentence of life in prison without the possibility of parole.
20 Winiarz, 107 Nev. at 813-4. The error was brought to the district judge's attention after a guilty verdict was
21 entered, and during the penalty phase of the trial. Id. The jurors were then polled regarding what bearing,
22 if any, the clerk's notes had in reaching the guilty verdict. Id. All the jurors stated that the information had
23 no impact on finding the defendant guilty, and consequently, the judge allowed the verdict to stand. Id.
24 However, applying the criteria set forth in the preceding paragraph, the Nevada Supreme Court reversed,
25 holding that the error was not harmless.

26 The State argues that the facts in *Patano* are more analogous to the facts herein. Patano v. State,

1 122 Nev. 782, 138 P.3d 477 (2006). At the trial in *Patano*, the district court permitted the State to play an
2 audiotaped interview between the police detective and the defendant. *Patano*, 122 Nev. at 786. While the
3 audiotape played, jurors were allowed to follow along with uncertified copies of the interview transcript.
4 *Id.* at 787. The transcript was never admitted into evidence. *Id.* Before the jury verdict was rendered, it was
5 discovered that several jurors had possession of the transcript during their deliberations. *Id.* Unsure of
6 whether to move for a mistrial, the defendant elected to hear the verdict first. *Id.* The verdict was guilty on
7 all charges. *Id.* Following a hearing on a motion for mistrial, the district court found that the transcript
8 contained an admission related to one of the charges that was not included in the audiotape due to a copying
9 error. *Id.* Because the portions of the tape played at trial did not contain the admission, and because no other
10 evidence was introduced to support the charge, the district court granted the mistrial as to that charge only,
11 and allowed the guilty verdict on the remaining charge to stand. *Id.* On appeal, the Nevada Supreme Court
12 upheld the district court's decision, holding that a partial grant of the motion for mistrial satisfied the
13 *Winiarz* criteria. *Id.* at 792.

14 Returning to the matter at hand, the Court finds that the *Winiarz* criteria apply here because the jury
15 was permitted to consider information not admitted at trial. Specifically, the jury in this case was permitted
16 to examine the comprehensive list of the parties' proposed trial exhibits, even though not all the exhibits
17 were admitted as evidence. *See attached* Exhibit A. The Court discovered this error when the jury
18 foreperson inquired about a photograph that had not been admitted into evidence at trial. The photograph
19 was not admitted because it contained images of items that this Court excluded as collateral act evidence.
20 The list, however, does not describe the collateral act items in any detail. Of additional concern were the
21 State's proposed exhibits 13 and 14, which are listed respectively as, "Certified JOC for case CR-FP-11-
22 0469;" and "Certified JOC for case 3:15-CR-00055-MMD-VPC." These proposed exhibits are copies of
23 Defendant's prior convictions, which would have only been admissible if Defendant had testified.

24 To determine whether Defendant's case was prejudiced by the list of proposed exhibits, the Court
25 held a hearing and asked eleven of the twelve jurors a set of pre-arranged questions. The questions the Court
26 asked were drafted on the record in consultation with the parties. The questions were drafted with the

1 intention of finding out what the jurors understood regarding the list of proposed exhibits and the associated
2 abbreviations contained therein. None of the jurors knew what a "JOC" is or what those letters stand for.
3 None of the jurors knew what "CR" was in reference to the case numbers. Only one of the jurors considered
4 the case to be a close call. Four of the jurors either did not remember the list or they did not recall the nature
5 of the discussion related to the list.


6 After the hearing on this Motion, the Court analyzed this matter under the *Winiarz* criteria and the
7 Court finds as follows:

- 8 1. The issue of guilt or innocence was not close. Methamphetamine was found by the police
9 in a backpack behind the passenger's seat in a vehicle driven by Defendant. Although the
10 defense theory was that the methamphetamine belonged to the passenger, evidence found
11 inside the backpack tied the controlled substance to Defendant. Based on the evidence
12 presented at trial, a reasonable jury could have found that the methamphetamine was
13 possessed solely by Defendant, or jointly by Defendant and her passenger.
- 14 2. The quantity and character of the error are slight. The jurors did not see actual exhibits, just
15 an exhibit list. The questions asked at the hearing held on June 27, 2019, revealed that the
16 jurors did not understand the contents of the list. In particular, they did not understand that
17 the list contained information that suggests Defendant has a prior criminal history. The
18 remaining proposed exhibits, including exhibits 8, 12, 15, 16, and 17, were not described in
19 a manner that prejudiced Defendant's case. Additionally, the inclusion of the weight of the
20 methamphetamine for exhibits 2 and 3 was not prejudicial because it clearly indicated that
21 the amount was a personal use quantity, rather than an amount that the jury may have
22 construed as a trafficking amount of controlled substance.
- 23 3. Although Defendant was on trial for a felony offense, the crime charged is the lowest level
24 of felonies; it is a category E felony. On this basis, this case is distinguishable from the line
25 of Nevada cases that have dealt with this issue and resulted in mistrial. Those cases involved
26 much more serious felony offenses.

1 Based on these factors, the Court finds beyond a reasonable doubt that Defendant suffered no
2 prejudice from the court clerk's error. The error was harmless.

3 Therefore, **IT IS HEREBY ORDERED** that Defendant's Motion to Declare a Mistrial, Or in the
4 Alternative, Motion to Set Aside Verdict filed on February 27, 2019, is **DENIED**.

5 SO ORDERED this 10 day of January, 2020.

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8 NANCY PORTER
District Judge - Dept. No. 1
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THE STATE OF NEVADA

PLAINTIFF,

vs.

SARAH E. GRAVELLE

DEFENDANT.

DATE: February 20, 2019

CASE NO.: CR-FP-18-7207

JUDGE: NANCY PORTER

DEPT.: 1

February 19 - 20, 2019

JURY TRIAL

PLAINTIFF'S EXHIBITS - Daniel M. Roche #1987

NO.	DESCRIPTION	MARKED	ADMITTED
1	Juicy Couture eyeglass case and contents	02/07	02/19
2	Baggie with 1.226g methamphetamine	02/07	02/19
3	Baggie with less than 1g presumptive methamphetamine	02/07	02/19
4	Receipts	02/07	02/19
5	Photo (DSCN3302) receipt from Terri Jim to Sarah Gravelle	02/07	02/19
6	Photo (DSCN3305) receipt with Sarah Gravelle's name on it	02/07	02/19
7	Photo (DSCN3306) eyeglass case	02/07	02/19
8	Photo (DSCN3307) items from eyeglass case	02/07	
9	Photo (DSCN3308) closed container with white crystals	02/07	02/19
10	Photo (DSCN3309) open container and baggie of white crystals	02/07	02/19
11	Photo (DSCN3310) baggie of white crystals	02/07	02/19
12	Photo (DSCN3311) container with purple bottom	02/07	
13	Certified JOC for case CR-FP-11-0469	02/07	
14	Certified JOC for case 3:15-CR-00055-MMD-VPC	02/07	
15	Officer Joshua Taylor's initial report	02/07	
16	Officer Joshua Taylor's K9 sniff report	02/07	
17	Washoe County Crime Lab forensic report	02/07	

DEFENDANT'S EXHIBITS - Phillip Leamon #1896

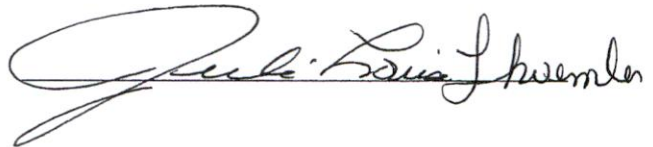
NO.	DESCRIPTION	MARKED	ADMITTED
A	Declaration of Probable Cause for Nicholas Done	02/19	

CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 13th day of January, 2020, I personally hand delivered a file stamped copy of the foregoing **ORDER DENYING MOTION FOR MISTRIAL/SET ASIDE VERDICT FILED ON FEBRUARY 27, 2019** addressed to:

Tyler J. Ingram, Esq.
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
[Box in Clerk's Office]

Phillip C. Leamon, Esq.
Elko County Deputy Public Defender
571 Idaho Street
Elko, NV 89801
[Box in Clerk's Office]



1 Case No. CR-FP-18-7207

2 Dept. No. 1

FILED

2020 JAN 13 PM 2:30
ELKO CO DISTRICT COURT

CLERK _____ DEPUTY CS

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6 IN THE FOURTH JUDICIAL DISTRICT COURT
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO
8

9 THE STATE OF NEVADA,

10 Plaintiff,

11 V.

12 SARAH ELIZABETH GRAVELLE,

13 Defendant.
14 _____ /

**ORDER DENYING MOTION FOR
MISTRIAL/ SET ASIDE VERDICT FILED
ON JULY 5, 2019**

15 Before the Court is a Second Motion to Declare a Mistrial, Or in the Alternative, Motion to Set Aside
16 Verdict (hereinafter "Motion") filed by Sarah Elizabeth Gravelle (hereinafter "Defendant") on July 5, 2019.
17 The State of Nevada filed an Opposition to Defendant's Motion on July 12, 2019. The Motion stems from
18 information learned at a hearing held on June 27, 2019, regarding Defendant's First Motion to Declare a
19 Mistrial, Or in the Alternative, Motion to Set Aside Verdict. At said hearing, the State was represented by
20 Daniel M. Roche, Elko County Deputy District Attorney. Defendant was not present, but represented by
21 Phillip C. Leamon, Elko County Deputy Public Defender.

22 The hearing on June 27, 2019 was held so that the parties could make their oral arguments on
23 Defendant's First Motion to Declare a Mistrial, Or in the Alternative, Motion to Set Aside Verdict.
24 Additionally, the trial jurors were subpoenaed to be asked a set of pre-arranged questions designed to assist
25 the Court in making its decision on the first mistrial motion. In the course of questioning juror #9, Dora
26 Beatriz Torres, the Court became concerned that Ms. Torres has some difficulty understanding the English

1 language. Ms. Torres exhibited some confusion over the questions the Court was asking. She responded,
2 "I don't know," and "I don't remember," multiple times. Ms. Torres did not disclose any difficulty with the
3 English language during voir dire, and no concerns had arisen before the jury was empaneled.

4 Defendant now moves for a mistrial on the basis that Ms. Torres was not qualified to serve as a juror
5 because she lacks sufficient knowledge of the English language. See NRS 6.010. Defendant relies on
6 *Sayedzada v. State* for the contention that a verdict may be set aside when a juror was subject to
7 disqualification, but the defect was not discovered until after the verdict was rendered. 419 P.3d 184 (Nev.
8 Ct. App. 2018). This, however, is not a complete statement of the holding in *Sayedzada*. The Nevada Court
9 of Appeals actually held that a party waives the right to challenge a juror's presence on the jury on appeal
10 where (1) the party was aware of a basis for the challenge during voir dire; (2) the party had the opportunity
11 to challenge the prospective juror but decided not to do so; and (3) the party accepted the jurors's presence
12 on the jury panel. *Sayedzada*, 419 P.3d at 190, 194. The policy underlying this waiver rule is that "parties
13 should not be able to strategically place questionable jurors on the jury as a means of cultivating grounds
14 for reversal should the verdict be unfavorable." *Id.*


15 The jury selection and voir dire process in this Court includes the pre-trial process of mailing out
16 juror questionnaires to prospective jurors; return of the completed questionnaires to the parties; voir dire
17 questioning by the Court and the parties on the date of trial; and the reading of statements shown on a
18 projector for the purpose of relaying basic biographical data. Routinely, this Court excuses prospective
19 jurors when they attest to or exhibit a lack of proficiency with the English language. Given that this is the
20 long-standing procedure in this Court, Defendant was either aware, or should have been aware of cause to
21 challenge Ms. Torres' English-speaking ability at the time of voir dire; Defendant had opportunity to
22 challenge Ms. Torres, but she did not do so; and Defendant accepted Ms. Torres' presence on the jury.
23 Therefore, the Court concludes that Defendant's Second Motion to Declare a Mistrial, Or in the Alternative,
24 Motion to Set Aside Verdict is based on an argument that was waived during voir dire.

25 Notwithstanding that conclusion, the Court notes that at the hearing held on June 27, 2019, Ms.
26 Torres was asked if she understood everything that took place at the trial and she stated that she did.

1 Furthermore, the Court watched the recording of Ms. Torres' testimony at said hearing, and the Court finds
2 that Ms. Torres' understanding of the English language was sufficient to serve as a juror.

3 Based on the foregoing, **IT IS HEREBY ORDERED** that Defendant's Second Motion to Declare
4 a Mistrial, Or in the Alternative, Motion to Set Aside Verdict filed on July 5, 2019, is **DENIED**.

5 SO ORDERED this 10 day of January, 2020.

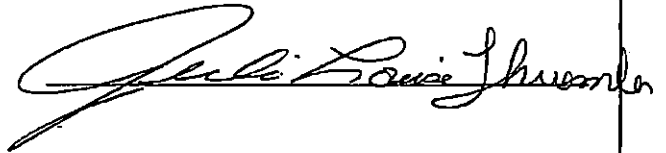
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8 NANCY PORTER
District Judge - Dept. No. 1
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CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 3rd day of January, 2020, I personally hand delivered a file stamped copy of the foregoing **ORDER DENYING MOTION FOR MISTRIAL/ SET ASIDE VERDICT FILED ON JULY 5, 2019** addressed to:

Tyler J. Ingram, Esq.
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
[Box in Clerk's Office]

Phillip C. Leamon, Esq.
Elko County Deputy Public Defender
571 Idaho Street
Elko, NV 89801
[Box in Clerk's Office]



FILED

2021 OCT 15 AM 9:00

4th JUDICIAL DISTRICT COURT
CLERK _____ DEPUTY Wm

1 CASE NO. CR-FP-18-7207

2 DEPT. NO. 2

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

9 * * * * *

10 _____
11 THE STATE OF NEVADA,

12 Plaintiff,

13 vs.

JUDGMENT OF CONVICTION

14 SARAH ELIZABETH GRAVELLE,

15 Defendant.
16 _____/

17 On February 20, 2019, a jury found Defendant SARAH ELIZABETH GRAVELLE (date
18 of birth: January 17, 1990; place of birth: Silverton, ID) guilty to **COUNT 1: POSSESSION OF**
19 **A CONTROLLED SUBSTANCE, A CATEGORY E FELONY AS DEFINED BY NRS 453.336**
20 **(NOC 51127)**, which crime(s) occurred on or about August 22, 2018. The court held a
21 sentencing hearing on October 11, 2021 and sentenced Defendant as follows:

22 **IT IS ORDERED that Defendant shall pay a genetic administrative**
23 **assessment of \$3.00.**

24 **IT IS FURTHER ORDERED Defendant shall pay an administrative**
25 **assessment of \$25.00.**

26 **IT IS FURTHER ORDERED that Defendant shall pay the forensic fee of**
27 **\$60.00.**
28

1 **For Count 1, Defendant shall serve a maximum term of 48 months and**
2 **a minimum term of 19 months in prison. Defendant shall have credit**
3 **for 172 days served as of October 11, 2021.**

4 **IT IS FURTHER ORDERED** that the Defendant shall serve 25 days in the Elko County
5 Jail as a punishment for contempt of court for her failure to appear for sentencing on May 18,
6 2020.

7 **IT IS FURTHER ORDERED** that the contempt sentence shall be concurrent
8 to the sentence on Count 1.

9 Throughout these proceedings, Defendant was represented by the Elko County Public
10 Defender's Office.

11 THEREFORE, the Clerk is directed to enter this Judgment of Conviction as part of the
12 record in this matter.

13
14 DATED this 12 day of October 2021.

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18 ALVIN R. (AL) KACIN
19 District Court Judge
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FILED

CASE NO.: CR-FP-18-7207
DEPT. 2

2021 NOV 12 AM 10:51

4th JUDICIAL DISTRICT COURT
CLERK _____ DEPUTY *[Signature]*

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

THE STATE OF NEVADA,

Plaintiff,

vs.

SARAH ELIZABETH GRAVELLE,

Defendant.

NOTICE OF APPEAL

TO: TYLER INGRAM, Elko County District Attorney

NOTICE is hereby given that SARAH ELIZABETH GRAVELLE, defendant above named, hereby appeals to the Supreme Court of Nevada from the Judgment of Conviction filed on October 15, 2021, in the above-entitled action.

This appeal is to all issues of fact and law.

DATED this 12 day of November, 2021.

MATTHEW PENNELL
ELKO COUNTY PUBLIC DEFENDER
569 Court Street (Physical Address)
571 Idaho Street (Mailing Address)
Elko, NV 89801
(775) 738-2521

By: *[Signature: RAS]*
ROGER H. STEWART
Chief Deputy Public Defender
NV Bar Number 3823

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