

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID EDWARD ELLISTON,  
  
Appellant,

vs.

THE STATE OF NEVADA,  
  
Respondent.

Electronically Filed  
Jan 13 2022 01:45 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Docket No. 83217  
D. Ct. 20 CR 00121 1B

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APPEAL FROM JUDGMENT OF  
THE HONORABLE JAMES T. RUSSELL  
  
FIRST JUDICIAL DISTRICT COURT

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APPELLANT'S APPENDIX

VOLUME 2

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## **INDEX TO APPELLANT'S APPENDIX**

### **VOLUME 1**

<b><u>Document</u></b>	<b><u>Pages</u></b>
Criminal Information. ....	1-5
Motion to Suppress Evidence. ....	6-11
Motion for Disclosure of Informants and Impeaching Information. ....	12-16
Opposition to Motion to Suppress Evidence. ....	17-50
JAVS CD-ROM Transcript of Proceedings, Preliminary Hearing, Friday, January 24, 2020. ....	51-171
Motion to Bifurcate Charges Within Same Trial. ....	172-176
Reply Memorandum in Support of Disclosure of Informants and Impeaching Information. ....	177-182
Motion for Reconsideration Regarding Disclosure of Informants and Impeaching Information. ....	183-193
Objection to Motion for Reconsideration. ....	194-198
Motion for Leave to Amend Criminal Information Amended Criminal Information. ....	199-211
Amended Criminal Information. ....	212-220
Transcript of Proceedings, Volume 1, Jury Trial, Tuesday April 6, 2021. ....	221-250

## **INDEX TO APPELLANT'S APPENDIX**

### **VOLUME 2**

<b><u>Document</u></b>	<b><u>Pages</u></b>
Transcript of Proceedings, Volume 1, Jury Trial, Tuesday April 6, 2021.....	251-375
Transcript of Proceedings, Volume 2, Trial, Wednesday April 7, 2021.....	376-500

### **VOLUME 3**

Transcript of Proceedings, Volume 2, Trial, Wednesday April 7, 2021.....	501-511
Second Amended Criminal Information.....	512-515
Memorandum of Plea Negotiation Pursuant to Alford. . . .	516-524
Second Amended Criminal Information.....	525-528
Submission of Forensic Report #1-Controlled Substances	529-533
Submission of Letters of Support for Defendant. . . . .	534-549
JAVS Transcript of Proceedings, Sentencing, June 14, 2021	550-582
JAVS Transcript of Proceedings, Status, March 1, 2021. . . .	583-586
Judgment of Conviction.....	587-588
Corrected Judgment of Conviction.....	589-590
Motion for Disclosure of Informants . . . . .	591-595

## **INDEX TO APPELLANT’S APPENDIX**

### **VOLUME 3**

<b><u>Document</u></b>	<b><u>Pages</u></b>
Opposition to Motion for Disclosure of Informants and Impeaching Information. . . . .	592-603
Order Denying Motion to Suppress. . . . .	604-612
Order. . . . .	613-615
Order Denying Motion to Bifurcate. . . . .	616-618
Notice of Habitual Criminality. . . . .	619-633
Order. . . . .	634-636
Memorandum of Plea Negotiation Pursuant to Alford. . .	637-649
Submission of Substance Abuse Evaluation. . . . .	650-658
Submission of Letters of Support for Defendant. . . . .	659-674



1       that information?

2               A.     What did I do with the information? So Detective  
3       Miris, who was sitting over here in the Griffin House parking  
4       lot area, he told us that it was leaving. He gave a  
5       direction of travel. I believe at the time it was eastbound,  
6       so coming down this way towards Nevada. And then I was  
7       listening to radio traffic between Deputies Granata, Hadlock,  
8       and Henneberger who had seen the vehicle.

9               Deputy Granata saw the vehicle approach a stop  
10      sign here. And then I had some radio issues very briefly.  
11      But then once I was able to hear where she was at, I heard  
12      that she was making a traffic stop on the vehicle down here  
13      by Curry Street, a little off the map itself, by Vital Signs  
14      behind The Railroad Museum.

15              Q.     Did you leave your surveillance position at some  
16      point?

17              A.     Yes.

18              Q.     At what point did you leave your surveillance  
19      position?

20              A.     Like I said, I had some radio issues where, like,  
21      there was some crackling. I don't know if it was bad  
22      reception. But, once I figured out Deputy Granata was down  
23      here with that vehicle, I left from where I was at and went  
24      down there.

1 Q. Okay. Did you join Deputy Granata at any  
2 particular location?

3 A. Yes.

4 Q. Where did you join her?

5 A. Right at Vital Signs.

6 Q. And is that in Carson City?

7 A. Yes.

8 Q. When you got to the Vital Signs location and you  
9 said you joined Deputy Granata, who else was there and what  
10 did you see?

11 A. The white truck, of course, was there with the  
12 gentleman driving it, and then Deputy Granata and myself, and  
13 that was it initially until Deputy Henneberger and Deputy  
14 Pullen arrived.

15 Q. Okay. So, the truck with the male driver, where  
16 was it?

17 A. It was in the Vital Signs parking lot. The truck  
18 was facing the building in the parking lot, just pulled nose  
19 first in to one of the stalls up against the planter wall.

20 Q. And where was Deputy Granata's vehicle?

21 A. Behind and off to the left of the white truck.

22 Q. Where was Deputy Granata when you got there, if  
23 you remember?

24 A. She was either within a few steps of the driver

1 window or already at the driver window, but that side of the  
2 car.

3 Q. Where did you park?

4 A. To the right of Deputy Granata's vehicle, which  
5 would have been behind and to the right of the suspect  
6 vehicle.

7 Q. Did you get out of your car?

8 A. Yes.

9 Q. Did you make an approach to the white truck?

10 A. Yes.

11 Q. How do you do that?

12 A. I remember in this case the windows on the truck,  
13 either there was a glare or they were tinted or something,  
14 but I couldn't really see in to the car that well, so I was a  
15 little slow to come up so I could see through the window.  
16 But, once I got up there, I was watching through the back  
17 window and through the right side windows, just watching an  
18 angle that Deputy Granata couldn't see, And I was trying to  
19 listen to what she was saying to the driver. But it was  
20 windy that day, so I was having some difficulty hearing that  
21 conversation.

22 Q. Okay. So why when you're approaching a vehicle  
23 do you watch the windows like that?

24 A. I want to make sure that I have a good

1 situational awareness of what's going on inside the vehicle.  
2 You can stop a car for any number of reasons, but,  
3 ultimately, the only person that knows what's in that car is  
4 the person that's in it. So we're concerned about officer  
5 safety hazards or the presence of weapons, the status of the  
6 shifter and the ignition, is the car still on, is it in park,  
7 is it in drive. All of those things are things that I'm  
8 thinking about when I'm looking through the window.

9 Q. Now, did you make it up to the passenger side  
10 window of the truck?

11 A. Yes.

12 Q. Were you able to see inside?

13 A. Yes.

14 Q. How many people were inside the truck?

15 A. One.

16 Q. Okay. And was that person male or female?

17 A. Male.

18 Q. Do you see the driver of the truck in court  
19 today?

20 A. I do.

21 Q. Can you tell us where he's sitting and what he's  
22 wearing?

23 A. The gentleman sitting next to Mr. Fey with the  
24 gray mask.

1 MS. BRANTINGHAM: I would ask that the record  
2 reflect identification of the defendant by the witness.

3 THE COURT: The record will so reflect.

4 MS. BRANTINGHAM: Thank you.

5 Q. (By Ms. Brantingham) Did you make -- Let me ask  
6 you this. Did you learn his name?

7 A. Yes.

8 Q. What's his name?

9 A. David Elliston, Junior.

10 Q. Were you able at that point in time when you  
11 first observed Mr. Elliston to make any observations about  
12 him, his demeanor, anything like that?

13 A. Not immediately while he was in the car, but then  
14 I learned at some point Deputy Granata was having him exit  
15 the car. I later learned that was a discussion about a  
16 driver's license. And then I was able to see Mr. Elliston  
17 and talk to him a little more.

18 Q. Okay. Now, in your initial approach and  
19 observation of the vehicle, did you make any observations  
20 about its contents?

21 A. I did notice a white cabinet in the back just  
22 facing up. I did notice that it was a rental vehicle with  
23 the bar codes etched on the window. It had California  
24 plates. I tried to look inside the car. But, like I said,

1 the windows, either there was a glare or it was tinted, but I  
2 couldn't really see directly what was inside the car.

3 Q. Okay. You said at some point in time you learned  
4 that Deputy Granata was having Mr. Elliston exit the vehicle.  
5 What did you do when that happened?

6 A. I moved to that side of the truck to be with  
7 Deputy Granata and Mr. Elliston. And then I stayed with  
8 Mr. Elliston while Deputy Granata went and got her electronic  
9 citation book and she started to conduct a records check.

10 Q. Now, as you were standing there with  
11 Mr. Elliston, were you then able to make more observations  
12 about his demeanor?

13 A. Yes.

14 Q. What did you observe?

15 A. Initially, when we were speaking, I was either  
16 overhearing conversation or had a direct conversation with  
17 Mr. Elliston where he was talking about his license or why he  
18 was in town and then I would ask questions about, you know,  
19 where are you working, where did you live at, that kind of  
20 thing. At some point in that conversation it got brought up  
21 that a police K-9 was coming to the scene, and Mr. Elliston's  
22 demeanor changed.

23 Q. How did it change?

24 A. He was wearing a tank top shirt, so I could see

1 his chest and neck very well. He just -- He turned red. He  
2 got very tense in the front of the -- in the neck, in the  
3 chest, in his face. His voice got a lot lower where I was  
4 having a hard time even at that point making out what he was  
5 saying. So I was concerned that once he learned of the K-9  
6 showing up that he was also concerned about the K-9 showing  
7 up.

8 Q. Okay. Now, did you call for the K-9 or did  
9 somebody else, do you remember?

10 A. I believe I did.

11 Q. Now, what you observed, the reddening, the  
12 lowering of the voice, the tension in his neck and chest  
13 area, is that something you as an officer pay attention to?

14 A. Yes.

15 Q. Why?

16 A. We're trained on either pre-attack or pre-flight  
17 clues or just somebody that is trying to be deceptive or  
18 they're getting nervous. And then there's always a level  
19 of -- You know, there's always a certain level of how nervous  
20 people are when they talk to the police. And then we  
21 recognize, like, a level that's either above or below that.  
22 So we just pay attention to that because it's a good  
23 indicator of probably what's going to happen next.

24 Q. Okay. So let me ask you about Mr. Elliston's

1 particular level. Based upon your experience and judging  
2 from that, like, normal level of nervousness when dealing  
3 with the police, when he learned the K-9 was coming, where  
4 was the level?

5 A. I felt like initially when we were discussing the  
6 driver's license situation, because he had an expired  
7 driver's license, I felt he was already a bit tense. But  
8 then as we started to ask questions about where he was coming  
9 from and where he lived and then he learned the police K-9  
10 was showing up, his tension went up quite a bit.

11 Q. Did you ultimately take some action in response  
12 to the demeanor you observed?

13 A. Yes.

14 Q. What did you do?

15 A. I detained Mr. Elliston.

16 Q. And how did you do that?

17 A. I placed him in handcuffs.

18 Q. Why did you place him in handcuffs?

19 A. I did not -- Mr. Elliston, his vehicle had not  
20 been searched and he had not been fully searched. I didn't  
21 know about the presence of any weapons. I didn't know what  
22 his intention was at that time. He was visibly tense and  
23 nervous when he knew that a police dog was coming to the  
24 scene. I didn't want there to be any chance of any kind of



1 physical conflict or fight, flight, none of that. So I put  
2 him in handcuffs, allowed him to, you know, kind of cool  
3 down, collect himself, whatever his thoughts are, dismiss  
4 that, and then make it safe so that we can do our -- whatever  
5 we're going to do with the car, the investigation.

6 Q. Okay. Did you see any of those pre-flight  
7 indicators that you were talking about?

8 A. Yes.

9 Q. And what would some of those be?

10 A. He was initially -- Mr. Elliston was initially,  
11 like, square talking to me, like, directly. But then as  
12 Deputy Granata went to her vehicle to get her citation book  
13 and conduct a records check, he started to turn toward what  
14 we call the open lane. So when we're looking for routes of  
15 flight or escape, somebody will -- if they have an intention  
16 to flee, will, you know, naturally turn their body toward  
17 that open lane. That's what I interpret it as. Plus, that  
18 with what I described as the tension in his neck and his  
19 flushed skin and just his increased nervousness, all of those  
20 things had me concerned. I didn't know what was going to  
21 happen, but something potentially bad was going to happen  
22 next.

23 Q. So you said you contained him in handcuffs.  
24 Where did -- Did you stay right there with him? Did you take

1 him to a different location? What happened next?

2 A. I stayed with him initially there and then at  
3 some point he moved to Deputy Henneberger's patrol vehicle.

4 Q. During your interaction with Mr. Elliston did a  
5 law enforcement K-9 show up?

6 A. Yes.

7 Q. Who showed up?

8 A. Deputy Jeff Pullen and his K-9, Blue.

9 Q. Now, you said you had a K-9 at the time?

10 A. Yes.

11 Q. Why didn't you use your K-9?

12 A. My K-9, Ivo, the assignment I was on that day  
13 would have required him to stay in the car for 12 hours on  
14 end. That's not fair to him, so I left him at home that day.  
15 And then this case started to unfold. This was not my  
16 original assignment for the day. And I called Deputy Pullen  
17 with his dog first. Secondly, his dog is not imprinted on  
18 the odor of marijuana.

19 Q. I'll cover that with Deputy Pullen. So you said  
20 Deputy Pullen showed up with his K-9 partner, Blue. Did he  
21 perform an exterior sniff of the vehicle?

22 A. Yes.

23 Q. Could you see that happen or where were you when  
24 that sniff was ongoing?

1           A.    I could see it out of my peripheral vision, but I  
2 was more focused on Mr. Elliston and what was going on behind  
3 the stop. So I didn't watch the dog's behavior or anything  
4 like that.

5           Q.    Did Deputy Pullen inform you or the other  
6 deputies that the dog alerted to the car?

7           A.    Yes.

8           Q.    And, based upon that K-9 alert, what did you or  
9 other deputies do?

10          A.    Myself, Deputy Hadlock, and Deputy Henneberger  
11 went to search the vehicle.

12          Q.    What was your role in the search of the vehicle?

13          A.    Deputies Hadlock and Henneberger went straight to  
14 the car. I went to grab a camera so that we could photograph  
15 anything.

16          Q.    Did you take photographs during the search of the  
17 vehicle?

18          A.    Yes.

19          Q.    Did you see property or items of interest found  
20 inside the vehicle?

21          A.    Yes.

22          Q.    And can you tell us what you saw?

23          A.    Initially Deputy Henneberger located a tan case  
24 in the passenger seat area. He opened it and set it on the

1 passenger seat. And then he called me over. So I came over  
2 to look at what it was and take some pictures of it. And it  
3 had drugs and drug paraphernalia inside of the box.

4 Q. When you say there were drugs inside the box, can  
5 you tell us what you saw? Can you describe it?

6 A. I saw several baggies of varying sizes, I saw  
7 methamphetamine, I saw some drug paraphernalia related to,  
8 like, pipes. There was a scale, a digital scale was rainbow  
9 colored. There was a power tool box on the floor board of  
10 the passenger's seat.

11 Q. Did you photograph all of those items?

12 A. Yes.

13 Q. Did you photograph -- Let me ask you this. The  
14 box, you said Deputy Henneberger opened it and you saw it.  
15 Did you make an effort to photograph it as it was located in  
16 place before it was opened?

17 A. No, I didn't. When I found it, the box was  
18 opened and on the passenger's seat, and that's how I found  
19 it.

20 Q. So that's how you photographed it?

21 A. Yes.

22 Q. Now, did you look inside that DeWalt box?

23 A. Yes.

24 Q. What was inside that DeWalt box?

1 A. A gray and black nine millimeter handgun.

2 Q. Was there a magazine for that handgun?

3 A. Yes.

4 Q. And magazine, can you inform us on a magazine?

5 A. It's a box with bullets in it and that goes

6 inside the gun and feeds that gun some bullets.

7 Q. What did you do when you found those items?

8 A. Did a safety check on the weapon just to see what

9 status -- was it loaded, did it have bullets in it. So I

10 removed the magazine from the weapon, I checked the chamber

11 to make sure it was clear. And, once it was all safe, then I

12 photographed it.

13 Q. Okay. And what other items did you see inside

14 the vehicle of note?

15 A. There was -- In the center console there was a

16 light-colored cardboard tube. And once Deputy Hadlock opened

17 that, I saw him pull some of the contents out, and there

18 appeared to be heroin, some hypodermic needles. I believe

19 there was a spoon, some other baggies inside that cardboard

20 container, which was in the center console.

21 Q. What about cash? Was there any cash inside the

22 vehicle?

23 A. Yes.

24 Q. Where was that?

1           A.    There was approximately \$20 in the visor, if I  
2           remember correctly. And then there was about \$790 in the  
3           vehicle. I don't remember if it was in the center console  
4           with a wallet, but it was in the center console passenger  
5           area of the vehicle.

6           Q.    Now, did you photograph all of these items that  
7           you found inside the vehicle?

8           A.    Yes.

9           Q.    May I please have Exhibit 1? And this is 1-A. I  
10          think we can hold 1-B for a second.

11          All right, Detective Bindley, showing you what's  
12          been marked for identification as State's Exhibit 1-A, can  
13          you take a look through that packet and let me know when  
14          you've had a chance to take a look.

15          A.    Okay.

16          Q.    All right. Did you take the photographs in that  
17          packet?

18          A.    Yes.

19          Q.    And do all the photographs fairly and accurately  
20          depict the vehicle and its contents as you saw them on May  
21          30th of last year?

22          A.    Yes.

23          MS. BRANTINGHAM: Move for admission of Exhibit  
24          1-A.

1 MR. FEY: Your Honor, I have no objection to  
2 these documents -- these photographs being admitted. But I  
3 understand that the State and I are going to stipulate.  
4 There are what purports to be weights, there's a scale and  
5 these baggies on these weights. If we stipulate that these  
6 weights do not reflect anything because there's no evidence  
7 of calibration on weights, I would ask the jury to  
8 disregard -- I would ask the Court to ask the jury to  
9 disregard any numbers on the scale.

10 THE COURT: You stipulate essentially that --

11 MS. BRANTINGHAM: Yes.

12 THE COURT: -- the 20 photographs can be  
13 admitted, however, the photographs in regards to scales, any  
14 indication of weight will be disregarded by the jury; is that  
15 correct?

16 MS. BRANTINGHAM: Yes.

17 THE COURT: Is that correct, Mr. Fey?

18 MR. FEY: That's correct, your Honor.

19 THE COURT: Okay. Thank you. They'll be  
20 admitted with that admonition.

21 MS. BRANTINGHAM: Thank you. And I would also  
22 move for admission of Exhibit 1-B, which is just an  
23 electronic copy of the physical photographs for purposes of  
24 publishing them to the jury.

1 THE COURT: Okay. That's the thumb drive?

2 MS. BRANTINGHAM: Yes.

3 THE COURT: Any objection?

4 MR. FEY: No objection, your Honor.

5 THE COURT: It can be admitted with the same  
6 admonition.

7 MS. BRANTINGHAM: And at this time may I publish  
8 these photographs?

9 THE COURT: You may.

10 THE BAILIFF: 7809.

11 Q. (By Ms. Brantingham) All right. So, Detective  
12 Bindley, now looking at the first photograph in this packet,  
13 can you tell us what's depicted in this photograph?

14 A. Yes. That is the white truck that I'm referring  
15 to. And that is Deputy Henneberger on the right and Deputy  
16 Hadlock on the left. And the building in the background is  
17 Vital Signs.

18 Q. Is that the location the vehicle stopped on the  
19 traffic stop?

20 A. Yes.

21 Q. Turning now to photo number two, can you tell us  
22 what's depicted in this photograph?

23 A. Yes. The brown box on the floor is the tan or  
24 brown box I was referring to with the baggies and the drugs



1 inside of it. That yellow and black box is where the handgun  
2 was located. The cardboard tube that I was referring to is  
3 right here in front of the cell phone. And that's the tube I  
4 was referring to that had some of the heroin and  
5 paraphernalia inside of it.

6 Q. Okay. And do you see a cell phone in the center  
7 console there?

8 A. Yes.

9 Q. Are you aware of how many cell phones were  
10 located in the vehicle?

11 A. Two.

12 Q. Is there any significance to that in your  
13 training and experience?

14 A. Yes.

15 Q. What's the significance to that?

16 A. In my training and experience when I've  
17 investigated those involved in drug sales before, there's  
18 typically used two phones. So usually one is for, like, a  
19 friends and family phone. The other one is to conduct  
20 business, arrange for transactions, solicit prices.

21 Q. Okay. Now I've got up on the screen there photo  
22 number three. Can you tell us what we're looking at in this  
23 photograph?

24 A. Yes. So, this is Deputy Henneberger's hand right

1 here, and he's just standing up some of the bags on the top  
2 layer here. There's some additional red baggies that are  
3 smaller and bundled up and unused. And they're underneath  
4 over here. A small amount of marijuana in the top left  
5 corner. And then these right here are baggies with different  
6 weights of what were later found out to be methamphetamine.

7 Q. Okay. Now, is there anything significant based  
8 upon your training and experience to the contents of this  
9 box?

10 A. Yes.

11 Q. What's the significance?

12 A. When I later did presumptive weights on the  
13 baggies of methamphetamine, they were packaged in either  
14 one-ounce bags or two-ounce bags. And there's also  
15 approximately a four-gram bag. And these are all common  
16 street transaction drug weights. So 30 grams or 28 grams is  
17 one ounce or a zip. Two ounce being 60 grams. Or typically  
18 the weight with the bag of four grams is typically a ball or  
19 one-eighth of an ounce of drugs is called a ball.

20 Q. Okay. And so the weights you said are  
21 significant. What about the baggies themselves, even those  
22 empty baggies?

23 A. Usually when I've seen drugs packaged for  
24 distribution or preparing the package for distribution

1 there's a larger amount and then a collection of baggies that  
2 hold a smaller amount so that they can be divvied up  
3 depending on what somebody wants to purchase or a user. If  
4 they just want a gram, they can divvy out a gram. Or if you  
5 want a teener, you want a ball, you want a half ounce and  
6 then you can divvy out that smaller amount in to smaller  
7 baggies and sell it without having to bring out the entire  
8 contents.

9 Q. Okay. Now, how would somebody divvy up the drugs  
10 that are in this case in to smaller amounts?

11 A. Typically what's used is some kind of loading  
12 device, so usually, like, a spoon or some kind of scoop. Or  
13 they can just use their fingers. Typically it's placed on to  
14 a scale of some kind to see whatever the person is that wants  
15 to buy, they buy a certain weight, they weigh that out. It  
16 goes in to a baggie and that baggie is sealed and sold or  
17 given to who ever is trying to buy it.

18 Q. All right. Looking at photograph number four  
19 now, can you tell us -- You talked about the DeWalt box.  
20 What's the white object to the left of the DeWalt box in the  
21 photograph there?

22 A. That's the rainbow-colored scale I was referring  
23 to. On the weighing surface, there's, like, a rainbow kind  
24 of pattern on the weighing surface.

1 Q. Is this the type of scale that you're talking  
2 about that would commonly be used to weigh controlled  
3 substances in sales transactions?

4 A. Yes.

5 Q. Photograph number five focus just now on the  
6 white object or the rainbow-colored object sitting on the  
7 seat there. Is that the front or the weighing surface of the  
8 scale that you saw on the ground earlier?

9 A. Yes.

10 Q. Photograph number six, close-up version of the  
11 contents of the cup holders?

12 A. Yes.

13 Q. And what was in the -- this cylindrical container  
14 here?

15 A. That was where there was some hypodermic devices,  
16 some heroin and some baggies.

17 Q. Is that near the gearshifter to the vehicle? Can  
18 you see the gearshifter in this photograph?

19 A. Yes. It's depicted in the background.

20 Q. Photograph number seven, can you tell us what  
21 we're looking at here?

22 A. Yes. This is a top-down view of once we pull the  
23 top of the container off. This right here is the plunger for  
24 hypodermic device and then the two wings. This right here is

1 the bulbous area for a glass methamphetamine pipe with some  
2 substance inside of it and then some baggies behind it. And  
3 then this orange thing you're seeing through is the  
4 hypodermic device but it's turned to point up with the cap  
5 on.

6 Q. The -- Sorry. Before I pull up the next  
7 photograph. The pipe you talked about, is that device  
8 commonly used for what?

9 A. That's typically used for methamphetamine use.  
10 I've never seen it used with heroin.

11 Q. All right. Now, photograph number eight, can you  
12 tell us what's depicted in this photograph?

13 A. Yes. That's a nine millimeter high point  
14 semi-automatic handgun and the magazine is above it. And you  
15 can see that there are some bullets in the magazine and you  
16 can see they're just protruding right out the top right here.  
17 And that was located in this box. So the first picture was  
18 the box in its entirety. And then this was the sole contents  
19 of that box.

20 Q. All right. Photograph number nine, can you tell  
21 us what we're looking at in this photograph?

22 A. Yes. It's a gathering of cash where you put your  
23 eyeglasses in the upper center console.

24 Q. And, photograph number ten, is that that same

1 cash?

2 A. Yes.

3 Q. Do you recall -- I think I asked you. But do you  
4 recall how much cash was in this particular site?

5 A. It was approximately seven to \$800. I think the  
6 exact number was 792.

7 Q. Now, what denominations of cash do you see in  
8 this photograph?

9 A. There is one, one or two \$100 bills, a \$50 bill,  
10 but other than that it's twenties and ones.

11 Q. Is there something significant about the  
12 denominations of the cash based upon your training and  
13 experience?

14 A. People carry all sorts of denominations of  
15 different cash for whatever different sort of reasons.  
16 However, when I have seen people that are involved in street  
17 level drug sales, those sales are typically in cash and  
18 they're typically in smaller denominations.

19 Q. When you combine the cash in the denomination of  
20 the other items that you found in this case, is it indicative  
21 of drug sales activity?

22 A. Yes.

23 Q. All right. Now, photograph number 11, in this  
24 photograph, is that that same case with the brown wrapping

1 and the baggies containing the methamphetamine?

2 A. Yes. In this picture I was just trying to  
3 eliminate some glare so I could better illustrate what's in  
4 here. So this is a collection of the red baggies I was  
5 talking about. These are very small bags that are about an  
6 inch by an inch. So they're for much smaller amounts. If  
7 somebody were to use this pack of drugs, it would be for a  
8 smaller amount. This first bag that's marked, the second  
9 one, and then there's a third one kind of tucked in here,  
10 these are all packaged to about 30 grams with the bag or  
11 about one ounce. And then this bag has two, you can see two  
12 distinct shards or rocks in it and this one weighed  
13 approximately two ounces.

14 Q. Now, is that your hand at the left side of the  
15 photograph?

16 A. That is my hand.

17 Q. And there's an object in your hand. What is  
18 that?

19 A. Yes. Ms. Berena is referring to this. This tube  
20 right here with this cotton applicator on the end, what that  
21 is it's a chemical test called a NARTEC kit. And, basically,  
22 what it is is it has a chemical inside and it will react with  
23 the active ingredient in methamphetamine. If the active  
24 ingredient is present then it will turn a certain color. In

1 this case it's blue. And then, if the active ingredient is  
2 not present, then it will either run a no response or turn a  
3 totally different color, typically brown. But, in this case,  
4 the blue that you're seeing is reactive to a presumptively  
5 positive sample of methamphetamine.

6 Q. Okay. And are you trained to use that NARTEC  
7 test?

8 A. Yes.

9 Q. And did the results lead you to believe that the  
10 substance in the brown case was methamphetamine?

11 A. Yes.

12 Q. All right. Photograph number 12, is this --  
13 Well, can you just tell us what this is?

14 A. This is a scale that I carry in my car. And,  
15 like Mr. Fey said, it's not calibrated or anything. It just  
16 gives me an approximate weight of what I'm looking at. This  
17 is one of the bags that I mentioned indicating that it weighs  
18 approximately one ounce.

19 Q. Okay. Did you similarly weigh all of the baggies  
20 that were in that case?

21 A. Yes.

22 Q. And, as we go through this photograph, these next  
23 few photographs, I'll just ask you if that's what I'm looking  
24 at. Photograph number 13, is this another different bag on



1 your scale?

2 A. Yes.

3 Q. Photograph number 14, is this another bag on your  
4 scale?

5 A. Yes.

6 Q. Photograph number 15, is this the bag with the  
7 two different shards that you talked about?

8 A. Yes.

9 Q. Photograph number 16, is this the bag with the  
10 smaller quantity?

11 A. Yes.

12 Q. Photograph number 17, is this also a separate bag  
13 that was located in that brown box?

14 A. Yes.

15 Q. Photograph number 18, what are we looking at  
16 here?

17 A. This is a different drug. This is heroin or  
18 black tar heroin. And this was -- This came from, if you  
19 guys can see, that cylindrical container from the cup holder,  
20 that is its lid, which is where this came from. And that's  
21 just me weighing that amount of heroin in that container.

22 Q. Photograph number 19, can you tell us what we're  
23 looking at in this photograph?

24 A. This is the same drug. And if the bag were to be

1 flipped over -- And you might be able to see on the  
2 monitor -- it is red on the other side similar to the other  
3 bags located in the tan box.

4 Q. Okay. Were those the empty bags that were  
5 smaller in size that you were talking about?

6 A. Yes. The ones that were empty and tucked in the  
7 top of the box.

8 Q. And photograph number 20, is this your hand again  
9 in this picture?

10 A. Yes.

11 Q. Okay. And the -- So there are three things in  
12 your hand in this picture. Can you tell us what's going on  
13 here?

14 A. Yes. This is similar to the test I described  
15 earlier, the NARTEC. However, with heroin, it uses a  
16 different chemical to identify the active agent in heroin.  
17 So, in this test, if the active agent is present, then it  
18 will turn green. The lighting is not doing me much help  
19 here. But this is green right here on the lower half of this  
20 residue portion. And this black portion is just where I got  
21 oversaturated on the test. But it's a presumptive test for  
22 heroin.

23 Q. Okay. And based on -- I mean, the same thing  
24 with the meth, the NARTEC for the methamphetamine, are you

1 trained to use the NARTEC for the heroin as well?

2 A. Yes.

3 Q. And, based on the results of your training and  
4 experience, did you believe the subject then to be heroin?

5 A. Yes.

6 Q. What was in the baggie?

7 A. Heroin.

8 Q. All right. So you said that you kind of got a  
9 general idea from your weighing of the drugs to what  
10 quantities you were dealing with. Understanding that those  
11 aren't scientific weights, are you familiar with the street  
12 values of methamphetamine and heroin at the time of this  
13 investigation?

14 A. Yes.

15 Q. Is that something that you would have had to know  
16 in your role as a Special Enforcement Team member?

17 A. Yes.

18 Q. When you added up all of your weights for the  
19 methamphetamine, roughly what did you come to?

20 MR. FEY: Objection, your Honor. The basis for  
21 my objection is that these are gross weights and they haven't  
22 been -- there's been no chemist that testifies to the gross  
23 weight. She's asking him to speculate about what might be  
24 the street value on a gross value and that's not appropriate.

1 I don't think this individual has that knowledge.

2 THE COURT: I will sustain the objection and ask  
3 you to lay a little better foundation. Thank you.

4 MS. BRANTINGHAM: Thank you.

5 Q. (By Ms. Brantingham) Deputy Bindley, when you  
6 see drugs on the streets, methamphetamine and heroin, are  
7 they bought and sold in baggies?

8 A. Typically, yes.

9 Q. Okay. And do the dealers who sell those drugs in  
10 the baggies come up with a value to assign to them regardless  
11 of whether or not they're in a baggie?

12 A. Yes.

13 Q. And is it based on essentially an approximate  
14 weight of the substance inside the baggie?

15 A. Yes.

16 Q. Are you familiar then with the values, the  
17 monetary value, of methamphetamine and heroin as sold by  
18 dealers in baggies?

19 A. Yes.

20 Q. For an ounce of methamphetamine, what would the  
21 street value have been at this time?

22 A. Depending on its origin -- I could elaborate on  
23 that if you wanted to. But typically four to five hundred  
24 dollars an ounce.

1 Q. And what about for heroin? What would the value  
2 of an ounce of heroin have been?

3 A. Heroin is more valuable. Typically 900 --  
4 nine to -- 900 to \$1,200 per ounce. But, again, it depends  
5 on where it's coming from.

6 Q. So, approximating then the value of the  
7 methamphetamine that was located in the vehicle, what would  
8 you approximate the value to be?

9 A. Approximately \$2,000.

10 Q. And, approximating the value of the heroin that  
11 was inside the vehicle, what was the approximated value?

12 A. Approximately six to \$700.

13 Q. All right. So we're talking somewhere in the  
14 neighborhood of 26, \$2700 in controlled substances in total?

15 A. Yes.

16 Q. I just want to ask you a couple more questions.  
17 You mentioned earlier that the vehicle that Mr. Elliston was  
18 driving, the drugs were found in, was a rental vehicle. Is  
19 there something significant about that based upon your  
20 training and experience?

21 A. Well, and again, generally not just a rental  
22 vehicle itself, but when you combine it with everything else.  
23 The first thing I noticed when I saw that it was a rental  
24 vehicle is that it was on the back streets. That's just not

1 common traveler behavior. Usually if you're in a rental car  
2 and you're traveling and you punch in the GPS, it takes you  
3 to a location and it takes the main route to get there. So  
4 it is suspect when we see a rental vehicle using back,  
5 low-traveled streets, especially in Carson.

6 Secondly, rental vehicles are commonly used by  
7 people engaged in either drug trafficking or drug sales,  
8 because it makes it a little more difficult for law  
9 enforcement to investigate because of the ease of the ability  
10 to change the vehicle just based on how often you need it,  
11 how long you need it for. You can drop a vehicle off and  
12 pick up a different one. So, if you think, you know, law  
13 enforcement is on to one vehicle, you could drop off and pick  
14 up a different one, and we would pretty much have to start  
15 over unless we know exactly who you are. So it presents a  
16 couple of issues.

17 Q. When you look at the totality of the  
18 circumstances in this case, was it your opinion that  
19 Mr. Elliston had these drugs with the intent to sell them?

20 A. Yes.

21 MS. BRANTINGHAM: All right. And just a couple  
22 more housekeeping matters here. If I may have Exhibits 11  
23 and 12, please.

24 THE COURT: Ms. Brantingham, are you going to be

1 a while longer?

2 MS. BRANTINGHAM: No. I'm just going to have him  
3 identify and move to admit Exhibits 11 and 12.

4 THE COURT: We need to take a break for the jury  
5 in a few minutes and that.

6 MS. BRANTINGHAM: We can do it now if you prefer.  
7 It's going to take a minute to get through the chain of  
8 custody.

9 THE COURT: Well, how long are we talking about?

10 MS. BRANTINGHAM: Five, ten minutes.

11 THE COURT: Go ahead. Because I would rather you  
12 finish up with this witness and then take a break and then  
13 let Mr. Fey cross.

14 Q. (By Ms. Brantingham) Detective Bindley, do you  
15 want gloves to open these?

16 A. What's in them?

17 Q. I'll show them to you.

18 A. Yes, please.

19 Q. All right. So I'm handing you a box of gloves  
20 and I'll hand you the scissors. Showing you first what's  
21 been marked for identification as Exhibit 11. Do you  
22 recognize that box?

23 A. Yes.

24 Q. And how do you recognize it?

1 A. This is a firearm storage box for our vault.

2 Q. Okay. Is it commonly used in the Carson City  
3 Sheriff's Office?

4 A. Yes.

5 Q. Okay. And, if you could, go ahead and open up  
6 that box. Don't show it to anybody but yourself for the  
7 moment. Take a look at the contents and let me know if you  
8 recognize what's inside that box.

9 A. Yes, I do.

10 Q. What's in there?

11 A. The Hi-Point nine millimeter handgun that I was  
12 referring to.

13 Q. And is this the handgun that you recovered from  
14 Mr. Elliston's vehicle on May 30th of 2020?

15 A. Yes.

16 MS. BRANTINGHAM: Move for admission of Exhibit  
17 11.

18 MR. FEY: No objection, your Honor. Before it is  
19 shown to the witness or the jury, I would like to take a look  
20 at it myself.

21 THE COURT: Sure.

22 MR. FEY: May I approach the witness?

23 THE COURT: Why don't you approach.

24 Does it have a cord in the barrel?



1 MR. FEY: I'm sorry, your Honor.

2 THE COURT: A cord running through the barrel?

3 MR. FEY: Yes.

4 THE COURT: I just want to make sure. We do that  
5 for safety reasons. We don't want any accidents.

6 MR. FEY: Thank you.

7 Q. (By Ms. Brantingham) All right. Now, it's  
8 secured in that box; right?

9 A. Yes, it's secure, safe, there's no ammunition in  
10 it.

11 Q. Is it secured to the box? So, if I ask you to  
12 open it up and show it to the jury, can you do that without  
13 it falling out?

14 A. That happened once. I won't do it again.

15 Q. All right. Can you then remove the contents of  
16 the box and publish it for the jurors to see?

17 A. I'm sorry. Do you want me to leave it attached  
18 to the box and show them?

19 Q. Yeah, you can leave it attached, that's fine.

20 THE COURT: You can walk in front of them. Just  
21 walk all the way down.

22 Q. (By Ms. Brantingham) All right. I'll take that  
23 from you and I'll trade you for what's been marked for  
24 identification as Exhibit 12. Take a look at that and let us

1 know if you recognize that.

2 A. Okay. Do you want me to open it?

3 Q. I mean, is that a Carson City Sheriff's Office  
4 evidence envelope?

5 A. Yes.

6 Q. Commonly used by the sheriff's office to package  
7 evidence?

8 A. Yes.

9 Q. Go ahead and open it up. Again, just keeping the  
10 contents to yourself for now.

11 A. Okay.

12 Q. Do you recognize what's in that envelope?

13 A. Yes.

14 Q. What is it?

15 A. It's a handgun magazine for that handgun that I  
16 showed.

17 Q. Is it the magazine that you recovered from  
18 Mr. Elliston's vehicle on May 30th of 2020?

19 A. Yes.

20 MS. BRANTINGHAM: Move for admission of Exhibit  
21 12.

22 THE COURT: ANY objection?

23 MR. FEY: If I can just see that as well.

24 THE COURT: You may.

1 MR. FEY: Thank you.

2 THE WITNESS: Uh-huh.

3 THE COURT: Any objection?

4 MR. FEY: No objection.

5 THE COURT: It will be admitted.

6 MS. BRANTINGHAM: All right. And you can go  
7 ahead and pull that out now and let's take a look at it. You  
8 can just -- While you're walking, I'm going to ask you,  
9 there's no bullets in that magazine currently. Can you tell  
10 us why?

11 THE WITNESS: For safety reasons for the vault,  
12 they are removed and just booked separately, so we don't have  
13 any accidents.

14 MS. BRANTINGHAM: Okay. All right. I will take  
15 the photographs and the magazine back from you.

16 And, if I can have just a moment, your Honor, I  
17 think I'm ready to pass the witness. I'll pass the witness.

18 THE COURT: Thank you.

19 Ladies and Gentlemen of the jury, we're going to  
20 take a 15-minute break at this time. During this recess  
21 you're admonished, again, not to discuss or communicate with  
22 anyone, including fellow jurors, in any way regarding the  
23 case or its merits either by voice, phone, text, internet, or  
24 other means or communication or social media, read, watch, or

1 listen to any news or media account or commentary about the  
2 case. Do not do any research such as consult dictionaries,  
3 using the internet, or using reference material, make an  
4 investigation, test the theory of the case, recreate any  
5 aspect of the case, or in any way investigate or learn about  
6 the case on your own, form or express any opinion regarding  
7 the case until it's submitted to you. So we'll go ahead and  
8 take about a ten or 15-minute break. Thank you.

9 THE BAILIFF: Judge, number 11.

10 THE COURT: The note from number 11 -- I'm  
11 reading it because I made a note to myself to talk to number  
12 11 during the break. Basically seems to be nodding off a  
13 little bit. He says, I do apologize. My eyes are starting  
14 to burn, sting. Closing doesn't help, but I am listening to  
15 the speech of the witness and his evidence. I am so very  
16 sorry.

17 So, anyway, that's juror number 11. So I'm not  
18 going to say anything to him. Obviously he's acknowledging  
19 that we're watching to make sure everybody stays awake. So  
20 thank you. We'll take a short recess.

21 (Recess was taken)

22 THE COURT: We're back on the record in respect  
23 to case Number 20-CR-00121 outside the presence of the jury.  
24 Counsel, are you ready to proceed?

1 MR. FEY: Yes, your Honor.

2 THE COURT: Go ahead and bring them in.

3 Will counsel stipulate to the presence of the  
4 jury?

5 MS. WHITE: Yes, your Honor.

6 MR. FEY: Yes, your Honor.

7 THE COURT: Cross, Mr. Fey, are you ready?

8 MR. FEY: Thank you, your Honor.

9 CROSS-EXAMINATION

10 By Mr. Fey:

11 Q. Deputy Bindley, thank you for being here this  
12 afternoon. You said 11 was a firearm. What was the caliber  
13 on the firearm?

14 A. Nine millimeter.

15 Q. Nine millimeter Parabellum?

16 A. Yes, sir.

17 Q. It was not a 380; is that correct?

18 A. I don't believe so.

19 MR. FEY: Okay. Just a little housekeeping, your  
20 Honor. On the exhibit list it lists a 380 caliber instead of  
21 a nine millimeter, but based upon his testimony --

22 THE COURT: So it should be a Hi-Point nine  
23 millimeter.

24 MR FEY: Nine millimeter, thank you, your Honor.

1 Q. (By Mr. Fey) And so you discovered the firearm  
2 in a box?

3 A. Yes, sir.

4 Q. Okay. And you picked it up and turned it over  
5 and the firearm fell out. And isn't it true that the  
6 magazine was separate and it also fell on to the floor?

7 A. I don't believe so. I believe the magazine was  
8 in the firearm.

9 Q. Okay. Are you certain of that?

10 A. I'm sorry.

11 Q. Are you sure of that, sir?

12 A. Not a hundred percent. I know it was with the  
13 firearm. Whether it was in it or not, I'm not sure.

14 Q. Okay. Your Honor, I have something that I would  
15 like to refresh the witness' recollection. If I can get  
16 electronics to work correctly, your Honor. Court's  
17 indulgence, your Honor. Sometimes the electricity doesn't  
18 correspond. Okay. Here we go. Face ID. I'm turning the  
19 sound up.

20 And do you wear a body camera?

21 A. Yes, sir.

22 Q. Okay. If I show you this would it help to  
23 refresh your recollection?

24 A. Yes.

1 Q. Is your recollection refreshed?

2 A. Yes, sir.

3 Q. And do you now recall whether the firearm was

4 loaded or not?

5 A. Not loaded. The magazine was separate.

6 Q. The magazine was separate, thank you. With

7 respect to that firearm, did you send this out for prints to

8 the crime lab, sir?

9 A. I did not, no.

10 Q. Is there a reason that you didn't do that?

11 A. I did not do that. I did not submit it to the

12 crime lab.

13 Q. Okay. Do you know if Deputy Henneberger did

14 that?

15 A. I do not know.

16 Q. Was he ascribed on this particular day?

17 A. Yes.

18 Q. And what is ascribed in an investigation like

19 this?

20 A. So later on in the evidence booking phase once we

21 take everything back to the room, because there's drugs

22 involved, one person will read off the evidence of what it

23 is, the other person will type it on the computer, so we're

24 not contaminating the computer. So he was the person typing

1 on the computer what it was.

2 Q. Okay. So he's basically the one who's making the  
3 record; correct?

4 A. Yes.

5 Q. And deputy, let's say, if Deputy Hadlock had  
6 found something, that would have been -- that would have been  
7 the piece of evidence -- there would be some notation as to  
8 who found what particular piece of evidence; correct?

9 A. Yes.

10 Q. And that would be on the evidence sheet with  
11 ascribed putting everything down. How do they make a  
12 notation that particular item was found by a particular  
13 deputy?

14 A. Typically it's reflected on the body camera and  
15 then one person is responsible for the evidence to book it  
16 in.

17 Q. So you were, in this particular case, on this  
18 particular day, this is May 30th of 2020, almost a full year  
19 ago. So I think you, in response to Ms. White's questions,  
20 you indicated there was an ongoing investigation in to the  
21 area around the Griffin Street Apartments; is that right?

22 A. Yes.

23 Q. All right. And what kind of an ongoing  
24 investigation? Was this months long, days long, weeks long?



1           A.    I would say it was about a month to a month and a  
2 half.

3           Q.    So month to month and a half. And I think you  
4 stated that there were various forms of intelligence or  
5 surveillance that were provided to you; is that right?

6           A.    Yes.

7           Q.    Okay. So you had mentioned secret witness. If I  
8 see a crime occur, I call secret witness. I don't have to  
9 give my name or anything and I just say, hey, there's a lot  
10 of noise here and people coming and going and that would be  
11 something that you would consider and then you would put as  
12 part of your calculus in deciding whether or not there might  
13 be some illegal activity going on; isn't that true?

14          A.    Yes.

15          Q.    All right. And, on this particular day, on May  
16 30th, what time did you begin your surveillance in the day?

17          A.    I believe it was about 11:00 a.m., maybe noon.

18          Q.    Okay. Do you know what time Mr. Elliston's  
19 vehicle was stopped?

20          A.    I don't off the top of my head, no.

21          Q.    So about 11 in the morning or something like  
22 that. And was this just generalized information that you had  
23 received?

24          A.    It was a combination of generalized and specific

1 information.

2 Q. Okay. And do you know an individual by the name  
3 of Jonathan Waters?

4 A. Yes.

5 Q. And how do you know Mr. Waters?

6 A. As somebody who provided information.

7 Q. All right. As somebody who provided information.  
8 Are you aware -- Strike that. Had you had previous  
9 encounters with Mr. Waters?

10 A. Yes.

11 Q. Did any of those encounters deal with any illegal  
12 activity on the part of Mr. Waters?

13 A. Yes.

14 Q. And, as such, he knew you by name, did he not?

15 A. Yes.

16 Q. He called you -- Did he call you on the morning  
17 of May 20th or did he call you before that?

18 A. Are you referring to May 30th, sir?

19 Q. I'm sorry.

20 A. Are you -- You said May 20th. Are you referring  
21 to --

22 Q. I apologize. May 30th is the date, yes.

23 A. Yes, he texted me.

24 Q. So he texted you in the morning of May 30th?

1           A.    I believe it was either early afternoon or  
2 morning hours, but yes.

3           Q.    Okay. Had you had previous conversations with  
4 Mr. Waters in the days prior or the week prior?

5           A.    I hadn't talked to him for some days prior to May  
6 30th, but I had talked to him earlier in the month in a  
7 previous week.

8           Q.    Were you involved in a search of Mr. Waters'  
9 property about two or three days before May 30th?

10          A.    No.

11          Q.    So, on the morning of May 30th, is this the --  
12 you had -- I think you said there were six vehicles including  
13 your own, is that correct, in this investigation?

14          A.    Yes.

15          Q.    Right. You were the head -- Were you the case  
16 officer? What would you describe your position?

17          A.    I was coordinating the information and I was  
18 running the lead for the case.

19          Q.    I'm sorry.

20          A.    I was running the leads for the case. So the  
21 information I was getting about this location was my  
22 responsibility.

23          Q.    Okay. This concrete information that you  
24 received from Mr. Waters, was it in the form of a phone call

1 or text?

2 A. Text.

3 Q. And that was before 11 or after 11?

4 A. Approximately mid to late morning on the 30th.

5 Q. Okay. And, other than Mr. Waters contacting you  
6 on that morning, had you spoken with or received a text from  
7 any other informants?

8 A. No.

9 Q. On that day?

10 A. No.

11 Q. So it would be fair to say that on that  
12 particular day the informant with whom you communicated for  
13 the entire day was Mr. Jonathan Waters; right?

14 A. Yes.

15 Q. And what did the text say? You don't to have  
16 quote it, but in general terms what was it?

17 A. Mr. Waters had brought my attention to somebody  
18 that he solely knew as Dave or David previously, explained to  
19 me some of the dealings about Dave or David. And then on  
20 that morning he had texted me and said, hey, that guy I told  
21 you about, he's coming through.

22 Q. So, he told you that he had had previous dealings  
23 with David, who you interpreted to be Mr. Elliston; is that  
24 right?

1           A.    I didn't know that to be until after the fact,  
2   but yes.

3           Q.    All right. But on that particular morning he  
4   said the person I've been talking about is here?

5           A.    Or is coming through or he's here, something to  
6   that effect.

7           Q.    And so based upon that conversation isn't that  
8   the reason that you had six vehicles there?

9           A.    Not solely because of that text.

10          Q.    No?

11          A.    It was surveillance for the Griffin House because  
12   we were working the drug complaints that were coming from the  
13   place.

14          Q.    And is it fair to say that the only person who  
15   was singled out by vehicle was the person that you understood  
16   to be David?

17          A.    Yes.

18          Q.    Okay. So at some point in time did you receive  
19   another phone call or a text from Mr. Waters?

20          A.    Yes.

21          Q.    And what time was that relative to, let's say,  
22   relative to the time that Mr. Elliston's vehicle was stopped?

23          A.    Probably about 30 minutes before he was stopped.

24          Q.    Okay. And what was the substance of that text?

1           A.    The general substance was that basically, hey,  
2   the Dave guy that I was telling you about, he's cruising  
3   through. Okay, he's here. He's here. He'll be here for a  
4   little bit. And then, okay, he's getting ready to leave.  
5   And then he's leaving.

6           Q.    And, as this is going on, you're transmitting on  
7   the radio or telephone to other deputies?

8           A.    Yes.

9           Q.    Do you have a secure net that you were  
10   transmitting on that day?

11          A.    Yes.

12          Q.    Okay. So all the other deputies would be on that  
13   secure net?

14          A.    Yes.

15          Q.    And, during the course of these communications  
16   that you had with other deputies, you're telling them that  
17   you have received word from the confidential informant that  
18   something is going to happen, right, or that the target of  
19   the investigation may be at the Griffin Street Apartments?

20          A.    That's correct.

21          Q.    At a certain time did you receive an indication  
22   that the vehicle was leaving the Griffin Street Apartments?

23          A.    Yes.

24          Q.    You were not in a position, were you, to observe

1       that vehicle leaving the Griffin Street Apartments?

2               A.    I was not.

3               Q.    But you called out on the secure net to the other  
4       deputies to watch out for this white vehicle?

5               A.    Yes.

6               Q.    Okay. And that was described to you as a truck  
7       or your best estimate, best recollection of how it was  
8       described?

9               A.    It was, like, a white newer Chevy, white newer  
10      truck. But yes.

11              Q.    All right. Did Mr. Waters indicate what  
12      direction the vehicle was traveling in?

13              A.    I don't recall if he indicated direction. I know  
14      that the people that were doing the surveillance, the other  
15      deputies, had seen the truck in question. They identified it  
16      before the truck left and then they saw the truck leave.

17              Q.    Okay. So I think you indicated when we were  
18      looking at exhibit -- I don't know what that is -- maybe 4,  
19      but the map that's next to you.

20              A.    Okay.

21              Q.    And you had pointed out where Tenth Street and  
22      Nevada Street are?

23              A.    Yes, sir.

24              Q.    And I think you indicated that Deputy Granata was

1 located somewhere between Tenth, somewhere around Tenth and  
2 Curry; is that right?

3 A. Yes.

4 Q. Do you know which direction her vehicle was  
5 facing?

6 A. Her vehicle?

7 Q. Yes, sir.

8 A. I do not.

9 Q. Do you know where Deputy Hadlock was relative to  
10 that Tenth and Curry location?

11 A. The only people with specificity that I knew  
12 where they were, like, where I could pinpoint on this map is  
13 Detective Miris, Detective Hatley, and myself. And then,  
14 generally, within a block or so, I knew that Deputies Granata  
15 and Hadlock were near the area of Tenth and Curry.

16 Q. Okay. Just so we don't get their names confused,  
17 there's a Deputy Hatley and a Deputy Hadlock?

18 A. That's correct. Detective Hatley and Deputy  
19 Hadlock are the two.

20 Q. Detective Hatley. And he would be a plain  
21 clothes officer?

22 A. Yes.

23 Q. Okay. And Deputy Hadlock is a uniformed officer  
24 belonging to the SET team?



1 A. Yes, sir.

2 Q. And Deputy Hatley -- or Detective Hatley is part  
3 of the SET team as well?

4 A. No.

5 Q. Can you tell us what the SET team is? What does  
6 it stand for?

7 A. Special Enforcement Team.

8 Q. Okay. And what is your function with SET?

9 A. We work -- We worked when I was on SET --  
10 basically street level drug enforcement. And we also do, you  
11 know, if it's patterns of crime or violent crime, we  
12 apprehend those with arrest warrants. We don't handle  
13 typical patrol calls. Street level drug enforcement.

14 Q. So this particular day, Deputy Hadlock, Deputy  
15 Granata, yourself, Deputy Pullen?

16 A. Yes.

17 Q. All right. And Deputy Henneberger were all  
18 members of the SET team; correct?

19 A. Deputy Pullen is not and Detective Hatley is not.

20 Q. Oh, I'm sorry. So Detective Hatley is not.  
21 Well, Detective Hatley was not involved in this stop, was he?

22 A. Not initially, no.

23 Q. Okay. Now, is Detective Hatley a blonde  
24 individual with facial hair? Is that who we're thinking of?

1 A. No. You're thinking of Detective Miris.

2 Q. Oh, my apologies. All right. So, at some point  
3 in time, you call out, hey, I just received an indication  
4 that the vehicle is traveling and everyone is looking for the  
5 vehicle; right?

6 A. Yes.

7 Q. When did you realize that the vehicle was being  
8 stopped? What was the indication that you received?

9 A. As I stated earlier, I heard radio traffic about  
10 they had seen the vehicle. And then I learned the vehicle  
11 had been stopped down by Vital Signs. In that interim time,  
12 I don't know if it's because of where I was in the city, but  
13 I was having some radio static issues where I was having a  
14 hard time finding out where everybody was.

15 Q. And the distance between Tenth Street and where  
16 the vehicle was stopped at Vital Signs, you're familiar with  
17 the vehicle stop location; right?

18 A. Yes.

19 Q. If I told you that the -- Well, strike that. Do  
20 you know the address of the Vital Signs business?

21 A. I believe it's in the 2400 block of South Curry.  
22 I don't know the exact numbers.

23 Q. All right. 2400 block is close enough. We can  
24 do that. But I guess the question I'm asking is the vehicle

1 was reportedly stopped at the intersection of Tenth -- it was  
2 noted at the intersection of Tenth and Curry Street; is that  
3 correct?

4 A. Yes.

5 Q. And that, based upon your understanding, is  
6 when -- is where the vehicle violation took place; right?

7 A. Yes. But I didn't become aware of that until  
8 later after the stop.

9 Q. Understood, sir. And that's the 1000 block;  
10 correct?

11 A. Yes.

12 Q. Of Curry Street. The vehicle ultimately pulled  
13 over on the 2400 block of Curry Street; correct?

14 A. Yes.

15 Q. And that's 14 blocks, approximately, isn't it?

16 A. When you say 14 blocks, I think it's misleading.  
17 It's not that far.

18 Q. Okay. A block is between two streets; correct?

19 A. Yes.

20 Q. So Fifth Street -- Fifth Street to Sixth Street  
21 is one block; correct?

22 A. Yes.

23 Q. Sixth Street to Seventh Street one block.  
24 Seventh Street to Eighth Street one block. They may be

1 called different things, but each of the streets that are  
2 numbered are one block apart?

3 A. Sure.

4 Q. So the Tenth Street and the addresses are set up  
5 in the 1000 block addresses that begin with ten maybe 1012,  
6 1025; right? That's what the addresses will be in the 1000  
7 block?

8 A. Okay.

9 Q. And then the 2400 block, the addresses will be 24  
10 and something else; right?

11 A. Okay.

12 Q. Are you -- Am I not clear? I mean, I want to  
13 make sure.

14 A. I'm understanding what you're saying.

15 Q. Okay. Isn't it a fact that between Tenth Street  
16 and the 2400 block, that's 14 blocks, or however long a  
17 distance 14 blocks is?

18 A. Okay.

19 Q. Approximately nine-tenths of a mile?

20 A. That sounds about right, nine-tenths of a mile.

21 Q. In any event, the next thing you do, you're  
22 proceeding southbound on Curry because that's the call  
23 that -- Deputy Granata made that call that she was going to  
24 stop the vehicle or how did you know that she was going to

1 stop the vehicle?

2 A. Eventually, once I was able to pick up the radio  
3 traffic of where she finally stopped, then that's how I found  
4 out where she was.

5 Q. So she called out that she was stopping him down  
6 on the 2400 block; correct?

7 A. I believe so, yes.

8 Q. All right. And, when she called that out, you're  
9 in pretty close proximity, are you not?

10 A. Yes.

11 Q. And before you get to the site of the vehicle  
12 stop, you have already called for a K-9; is that true?

13 A. I don't believe I called for a K-9 until after I  
14 stopped, but yes.

15 Q. Okay. And would that be before or after you got  
16 out of your vehicle?

17 A. I don't remember if it was right before or right  
18 after, but it was about that period of time.

19 Q. In any event you saw Deputy Granata standing  
20 there. Had she approached the vehicle or was she getting  
21 ready to approach the vehicle?

22 A. I would say she was either on her way or already,  
23 like, at the site of the vehicle. She was definitely out of  
24 her car when I got there.

1 Q. And you acted in this particular case as her  
2 cover officer?

3 A. Yes, sir.

4 Q. And, by that time, the K-9 unit had already been  
5 called?

6 A. I believe so, yes.

7 Q. And, when you acted as a cover officer, you're  
8 there on the right passenger side of the vehicle,  
9 subsequently you moved to the -- she asks Mr. Elliston to  
10 move out -- or come out of the vehicle and then you move to  
11 provide cover to her?

12 A. Yes.

13 Q. All right. And at that point Mr. Elliston was  
14 not handcuffed?

15 A. Correct.

16 Q. He was not in custody, not handcuffed. And he  
17 was having a conversation with both Deputy Granata and you;  
18 isn't that true?

19 A. Yes.

20 Q. Subsequently you saw -- How were you made aware  
21 of Deputy Pullen's arrival on scene?

22 A. Watching him get there.

23 Q. You saw him get there?

24 A. Yes.

1 Q. Okay. And did you have any communication, did he  
2 transmit on air that, yes, I'm on scene?

3 A. I don't know if he did on his radio or on his  
4 computer. I don't remember hearing anything like that.

5 Q. When you got there on scene you were having a  
6 conversation with Mr. Elliston. And at some point you asked  
7 him can we search your vehicle. Do you remember doing that?

8 A. I don't remember if I specifically asked him for  
9 consent to search. I do remember talking to him about his  
10 driver's license and where he was coming from, if he was  
11 working, and discussing the K-9. I don't remember if I asked  
12 him for consent to search.

13 Q. Okay. At some point in time you did discuss with  
14 him the K-9?

15 A. Yes.

16 Q. All right. And at that point in time what did  
17 you tell him was going to happen?

18 A. I told him the K-9 -- He was concerned that the  
19 K-9 was coming to the scene and it was -- And, again, not  
20 quoting, but basically we do this for all of our stops. For  
21 Special Enforcement Team we do use a K-9 on probably north of  
22 80 percent of our stops. So it is a fairly regular  
23 occurrence for us to use a K-9. We were doing a drug  
24 investigation, so we were going to use a K-9. We were going

1 to use a K-9 in this case. At that point that's when I  
2 noticed some of the changes in his demeanor.

3 Q. Okay. And then did you say that SET team uses  
4 them on 80 to 90 percent of their stops?

5 A. Definitely the majority of our stops.

6 Q. There's a K-9 ready and utilized; is that  
7 correct?

8 A. There's one embedded with the team, yes.

9 Q. Right. And you -- Ivo was on an off day?

10 A. He was having a day off, yes.

11 Q. Or a down day. And so that's why you called --  
12 Did you call Deputy Pullen specifically? You knew he had the  
13 K-9?

14 A. Yeah. I mean, it's a small unit. So we know  
15 when each other is working. I knew Deputy Pullen was the  
16 only other K-9 working.

17 Q. Initially it was Deputy Hadlock and Deputy  
18 Henneberger who were doing the vehicle search; is that right?

19 A. Yes.

20 Q. All right. So, the best of your recollection,  
21 was Deputy Henneberger in the passenger side or was he on the  
22 driver's side?

23 A. Predominantly Deputy Henneberger was on the  
24 passenger side and Deputy Hadlock was on the driver's side.



1 Q. And were any other areas of the vehicle searched?  
2 A. Yes.  
3 Q. What area?  
4 A. I'm sorry.  
5 Q. What areas?  
6 A. The back seat and the bed and the hood.  
7 Q. And the what?  
8 A. The hood. Under the hood.  
9 Q. The engine?  
10 A. Yes, sir.  
11 Q. Okay. Why was the engine searched?  
12 A. Number one, it's a matter of habit. When we get  
13 a K-9 alert on a vehicle -- Because we have located drugs  
14 hidden and if you name a part of the car we found drugs there  
15 at some point. Number two, at this point when we searched  
16 under the hood, we knew we were going to either impound or  
17 otherwise secure the vehicle so we wanted to make sure  
18 there's no valuables, contraband, damage to the area under  
19 the hood.  
20 Q. Okay. So who did the search under the hood?  
21 A. I saw it. I was there. Deputy Henneberger and  
22 Deputy Pullen.  
23 Q. You're watching Mr. Elliston and you're saying  
24 his chest is flushed and he's wearing a tank top and you said

1 it was kind of flushed when you mentioned the dog?

2 A. Yes.

3 Q. And recognizing that you have training to  
4 determine whether a particular individual may pose a flight  
5 risk or may pose a fight risk, did Mr. Elliston take any  
6 action to move away from you or did he just turn his body?

7 A. Just turned his body.

8 Q. And you interpreted that I think you said was the  
9 open lane?

10 A. Yes.

11 Q. I think. And, so, he's talking, you're talking  
12 and he's -- is it fair to say that we're talking right now,  
13 if I turn away from you, it may or may not be casual; right?

14 A. It may or may not be. Just depends on context.

15 Q. It's consistent also with shifting your weight  
16 and maybe not wanting to talk. And, you've indicated that  
17 based upon your training and experience, it could indicate  
18 flight, but that's not necessarily what it would indicate, is  
19 it?

20 A. True.

21 Q. He never took off running, did he?

22 A. He did not.

23 Q. Never moved away from you like this as you're  
24 talking to him?

1           A.    Nope, he did not.

2           Q.    In any event, you went to your vehicle after  
3 Mr. Elliston was placed in to custody. You knew that Deputy  
4 Henneberger was doing the search by the passenger side. Are  
5 you aware that Deputy Hadlock was looking in the driver's  
6 side?

7           A.    Yes.

8           Q.    And, at that time, you went back to the -- to  
9 your vehicle. At that time you had already -- Strike that.  
10 Is it fair to say when you first looked in the vehicle you  
11 saw the duct tape or brown box open on the vehicle seat?

12          A.    Yes.

13          Q.    Okay. So that was not opened by you?

14          A.    I don't believe I opened it, no. I believe it  
15 was opened by Deputy Henneberger.

16          Q.    But you did open the DeWalt drill box?

17          A.    Yes.

18          Q.    Right. And that's where you found the firearm  
19 and the magazine?

20          A.    Yes.

21          Q.    So, was it at that time that you went back to  
22 your vehicle to get your camera?

23          A.    No. I had my -- I had gone back to my vehicle to  
24 get my camera -- After the dog had alerted and Mr. Elliston

1 was detained I went to the vehicle to get my camera.

2 Q. So the camera came first and then -- I'm just  
3 trying to do this in sequence. I had an opportunity to view  
4 the video. I'm trying to get it clear in my head. So, if I  
5 do something too many times, I apologize.

6 In any event, you went back to your vehicle at  
7 some point, and the purpose of you getting your camera was to  
8 document the evidence that you find?

9 A. And the condition of the vehicle, yes.

10 Q. And the condition of the vehicle, all right. In  
11 this particular case, we see these pictures, and some of the  
12 pictures show your hands and your arms, and the others show  
13 Deputy Henneberger's hands and arms?

14 A. Yes.

15 Q. Depending upon what piece of evidence. So it's  
16 fair to say that there were two drug containers in the  
17 vehicle; isn't that true?

18 A. Three.

19 Q. Three. And what were the three?

20 A. There was the tan container on the passenger  
21 floorboard, the cardboard cylinder in the center console, and  
22 then a bag of marijuana in the back seat.

23 Q. Okay. The marijuana is not the subject of this  
24 particular -- this case, but it was something else that you

1 found; correct?

2 A. Yes, sir.

3 Q. Right. In terms of the two items that are -- for  
4 which Mr. Elliston is charged, one item was contained in a  
5 tubular kind of device; right?

6 A. Yes.

7 Q. It was a can. Let's talk about it. It was a can  
8 with a lid; right?

9 A. Yes.

10 Q. It looks like a Tazo tea can; right?

11 A. Yes.

12 Q. And then the other one is a duct tape covered  
13 with a plastic box, which was evidently found on the  
14 floorboard along with the DeWalt box; right?

15 A. Yes.

16 Q. So, in the can, are you aware where that was  
17 found?

18 A. Yes.

19 Q. And, where was that found, sir?

20 A. The front cup holder of the center console by the  
21 shifter.

22 Q. And in that you saw -- I think your testimony is  
23 there's paraphernalia in there?

24 A. Yes.

1 Q. And there's a hypodermic needle?  
2 A. Yes.  
3 Q. There's some heroin in there?  
4 A. Yes, sir.  
5 Q. And you said there's some methamphetamine? I'm  
6 saying you suspected, these are suspected drugs; correct?  
7 A. Yes.  
8 Q. You didn't find any heroin in the box on the  
9 floor. Was there any in there?  
10 A. No.  
11 Q. So the heroin and the smaller quantity of  
12 methamphetamine is found in the can in the console; right?  
13 A. Yes.  
14 Q. You indicated that there were different packaging  
15 sizes of putative controlled substances and you said four  
16 grams and one gram. Is that the sizes that you found?  
17 A. Of what specific drugs are you referring to?  
18 Q. I'm sorry. Of what you thought was  
19 methamphetamine. I think you said there were baggies or some  
20 small containers with four-gram sizes and some other were  
21 one-gram sizes?  
22 A. No.  
23 Q. Did I misunderstand you?  
24 A. Yes, sir. In the tan container there was three

1 baggies with approximately one ounce each and then one baggie  
2 with approximately two ounces. And, in the can, there was a  
3 baggie with approximately four grams of methamphetamine. And  
4 then there was two baggies of heroin as well, both in the  
5 area of ten grams.

6 Q. So basically -- Excuse me. Pardon me. Just to  
7 get it straight, I want to make sure I'm following, most of  
8 the baggies, most of the quantity of what you believed to be  
9 methamphetamine was located in the box which was found on the  
10 floorboard?

11 A. Yes, sir.

12 Q. By Deputy Henneberger?

13 A. Yes.

14 Q. And the other small quantity of what you believed  
15 to be methamphetamine and all the heroin, what you believed  
16 to be heroin, was found in the can?

17 A. Yes.

18 Q. All right. Thank you.

19 This particular stop, vehicle stop, is not  
20 related to a search warrant. I think you indicated you use  
21 search warrants in your investigations; right?

22 A. Are you asking if one was done on this case?

23 Q. Yes, sir.

24 A. There was a search warrant done later in this

1 case that had to do with a cellular phone.

2 Q. Okay. That search warrant was granted in this  
3 case?

4 A. I don't do it. I just know that there was a  
5 search warrant in existence for this case. It wasn't related  
6 to this stop.

7 Q. Okay. When you find a quantity of controlled  
8 substances, in order to arrest someone, you don't have to  
9 find any indication that drug sales were contemplated, do  
10 you?

11 A. To arrest them --

12 Q. You find a quantity of an ounce of  
13 methamphetamine and that constitutes a trafficking quantity,  
14 28 grams; correct?

15 A. Yes, sir.

16 Q. So you don't need any indicia that the person was  
17 trying to sell that controlled substance, do you, to charge  
18 them with trafficking?

19 A. Correct. There is no sales element of  
20 trafficking.

21 Q. So trafficking just means possession?

22 A. Yes, sir.

23 Q. And possession for sale is a different thing,  
24 yes?



1 A. Yes, sir.

2 Q. Okay. The Court's indulgence, your Honor.

3 The amount of cash that you found in the dash or  
4 some place -- Strike that. Did you find the cash yourself?

5 A. I was present when the cash was found. I don't  
6 know if it was my hand or Deputy Henneberger's hand pulling  
7 it down, but I was present when it was found and I saw it in  
8 the center console eyeglass compartment.

9 Q. And whose hands are those fanning out the money?

10 A. That is Deputy Henneberger.

11 Q. Deputy Henneberger, okay. And, in fact, there  
12 were a couple hundred dollar bills, a \$50 bill?

13 A. I recall two \$100 bills and a \$50 bill, and the  
14 remainder of the denomination was twenties and ones.

15 Q. Mostly twenties; right?

16 A. Yes.

17 Q. And someone going to a casino and cashing a check  
18 or going to the bank, they could have that same amount of  
19 money with no inclination or no indication that it was going  
20 to be used for change. You said that -- Let me ask the  
21 question in a different way. I apologize. That's poorly  
22 phrased.

23 I believe you testified that in your experience  
24 smaller denomination bills are used by people who deal drugs;

1 is that right?

2 A. But I also said it was in context with what else  
3 is found.

4 Q. So the mere fact that money is in a vehicle  
5 doesn't mean that that is something that you use to buy  
6 drugs, does it?

7 A. In and of itself, no.

8 Q. And people in the State of Nevada frequently have  
9 hundred dollar bills in their pocket, do they not, based upon  
10 your experience?

11 A. Yes.

12 Q. And if you're from the State of California do you  
13 take hundred dollar bills over there?

14 A. You might.

15 Q. You indicated that the back streets were being  
16 used, okay. The only back street that was being used was  
17 Curry Street; correct?

18 A. No.

19 Q. Okay. What other back streets were being used?

20 A. Tenth, Nevada, the driveway, those are all low  
21 traffic back streets.

22 Q. Okay. I understand. I understand what you're  
23 saying. It's fair to say though that an individual driving  
24 on the back streets is, in and of itself, is not a suspicious

1 event, is it?

2 A. Correct.

3 Q. And in this particular case the reason it became  
4 suspicious was because you had texts from Jonathan Waters;  
5 right?

6 A. Well, it's the totality of everything that I  
7 observed is why it was suspicious.

8 Q. All right. You're trying to say that your  
9 attention was drawn to this vehicle because of Jonathan  
10 Waters' texts; correct?

11 A. Yes.

12 Q. And that the reason that you called for the K-9  
13 and the reason that the other deputies responded to the scene  
14 of a traffic stop was not because of the basis of the level  
15 of the traffic stop but rather because you had a suspicion  
16 that drug sales or drug transportation was involved; correct?

17 A. Yes.

18 Q. All stemming from that text that you received  
19 from Jonathan Waters; correct?

20 A. Yes. And the other things that I mentioned  
21 leading up to it.

22 Q. But I guess what I'm getting to -- And I  
23 apologize if I'm circuitously doing this. Mr. Elliston was  
24 not a target for you as someone that you wanted to surveil

1 until you heard things from Jonathan Waters; right?

2 A. Yes.

3 Q. The street values that you placed upon the  
4 alleged controlled substances were based upon what you  
5 estimated to be the weight; correct?

6 A. Yes.

7 Q. And that weight is -- your scale is not  
8 calibrated. So that weight is -- You were using how many --  
9 What was the weight that you estimated of the  
10 methamphetamine?

11 A. There's approximately 187 grams of  
12 methamphetamine, about 20.9 grams of heroin. And then, well,  
13 the marijuana, but we're not talking about that.

14 Q. Okay. Those are gross weights, are they not?

15 A. Yes.

16 Q. And, in natural fact, although you might  
17 package -- You? Not you. Although someone might package  
18 things in a one-ounce bag --

19 A. Yes.

20 Q. -- that doesn't mean that the weight of the bag,  
21 the weight of the methamphetamine, the weight of the heroin  
22 is equivalent to one ounce, does it?

23 A. I don't understand your question.

24 Q. Isn't in fact the weight that you were using to

1 estimate your value, okay, you used 187 grams, you're basing  
2 that on the gross weight of what you believe to be  
3 methamphetamine without taking in to account the packaging;  
4 isn't that true?

5 A. Oh, yes, sir, it is the gross weight.

6 Q. So, whatever the net weight is, is what counts;  
7 isn't that true, in terms of how much -- how many drugs there  
8 are?

9 A. Yes. Ultimately it would.

10 Q. So, in that net weight, it is determined how?

11 A. Typically like a sterile or a lab environment  
12 they'll actually remove the drugs from the packaging and  
13 weigh it to a net zero basis so you get a true weight.

14 Q. That's up to the lab; correct?

15 A. Yes.

16 Q. And so you would agree with me that an actual  
17 fact how much controlled substances is yet to be determined  
18 in these proceedings because you didn't do any net weight,  
19 did you?

20 A. I don't agree with that statement. I believe  
21 that I do a gross weight based on the tools I have in the  
22 field and what I've seen before and I come up with an  
23 approximate weight. And the weights I represented to the  
24 jury are the weights that, based on what I've seen before and

1 the scale that I use in the field, those are what I believe  
2 the weights to be approximately of gross weight.

3 Q. So gross weight; right?

4 A. Yes.

5 Q. But you're aware that the law contemplates that  
6 net weight is the determinative factor; right?

7 A. Yes.

8 Q. Thank you. An individual driving a rental car  
9 even from California might be driving a rental car for any  
10 number of reasons; isn't that true?

11 A. Yes.

12 Q. You have a really nice car and it's winter and  
13 you don't want to go over the pass in to California, you  
14 might want to rent an SUV to go over the pass; right?

15 A. Yes.

16 Q. That would be a valid reason. If your car is in  
17 the shop for some reason, you might want to have a rental  
18 car; correct?

19 A. Yes.

20 Q. And, if your car was previously destroyed in an  
21 accident, then you might want to have a rental car; isn't  
22 that true?

23 A. Correct.

24 Q. My assumption is not an indication of someone who

1 should be -- who is involved in drug sales, is it?

2 A. Not by itself, correct.

3 MR. FEY: Nothing further, your Honor.

4 THE COURT: Redirect?

5 MS. BRANTINGHAM: Yes, your Honor. Thank you.

6 REDIRECT EXAMINATION

7 By Ms. Brantingham:

8 Q. Let me start with some of the later questions  
9 that Mr. Fey asked you about the weight. Have you ever put a  
10 baggie similar to the ones in this case on a scale?

11 A. Yes.

12 Q. Can you tell us approximately what your scale  
13 tells you that it weighs?

14 A. Depending on the quality of the plastic, if it's  
15 old, it's degraded, it's lighter, but, yeah, like, one to  
16 three grams.

17 Q. Okay. So you lose some weight but not a majority  
18 of the weight --

19 A. Correct.

20 Q. -- to the baggie? And you talked a little bit  
21 before about the term a zip?

22 A. Yes.

23 Q. And can you tell us again what a zip means?

24 A. Now, when I first learned the term zip, it came

1 from the marijuana world when you would pack a gallon Ziploc  
2 bag full of marijuana, that was typically a zip or one ounce  
3 of marijuana. However, I've seen it translated in to  
4 methamphetamine and heroin, the sales terminology world,  
5 where if you say a zip, you're still going to get an ounce.

6 Q. And, is that saying zip, like the Ziploc bag,  
7 still apply to the packaging?

8 A. Yes. But the zip refers to the ounce of weight,  
9 not the size of the bag.

10 Q. Okay. Gotcha. All right. Now, Mr. Fey asked  
11 you some questions about the cash that was in the car and you  
12 said it's not unusual for people to carry cash around in  
13 various denominations for whatever reason. But let me ask  
14 you this. Did you have a conversation with Mr. Elliston  
15 about his employment?

16 A. Yes.

17 Q. What did he tell you about his employment?

18 A. He indicated that he was unemployed.

19 Q. People who are unemployed, do you often seem them  
20 carrying around \$800 roughly in various denominations?

21 MR. FEY: Objection, your Honor. Calls for  
22 speculation.

23 THE COURT: Sustained.

24 Q. (By Ms. Brantingham) Based on the unemployment



1 and the totality of the circumstances, do you attribute that  
2 cash to something other than money he earned from employment?

3 A. I put two and two together. With the presence of  
4 the packaging materials, the paraphernalia, and the drugs, I  
5 suspected that they were proceeds of drug sales.

6 Q. Now, let's talk about the information, the tip  
7 you got that put you on to Mr. Elliston's vehicle. Mr. Fey  
8 asked you some questions about your dealings with Mr. Waters  
9 and your conversation with him. Did he get anything for  
10 giving you that information?

11 A. No.

12 Q. What kind of informant was he? You talked about  
13 the different kinds. What kind was he?

14 A. He was a passive informant.

15 Q. Okay. And so he provided you this information.  
16 Did you give him anything in return?

17 A. No.

18 Q. Did you tell him what you were going to do with  
19 that information?

20 A. No. But, I mean, he told me where the vehicle  
21 was at, I told him what I was interested in based on his  
22 prior contact with us, or actually the gang unit. But, once  
23 he had given me that information, he knew what I was looking  
24 for.

1 Q. Okay. What you were looking for. But, in terms  
2 of the specifics of your investigation, would you ever tell  
3 somebody who provided you information how you were going to  
4 follow up on that information?

5 A. Yes.

6 Q. Okay. Did you tell Mr. Waters that you were  
7 going to stop Mr. Elliston's vehicle?

8 A. No.

9 Q. So would he have had any idea that you were going  
10 to conduct this investigation the way that you did?

11 A. No. I didn't tell him what was going to happen  
12 after Mr. Elliston left.

13 Q. Okay. So he gave you information and beyond that  
14 you said, okay thanks, or how do you respond when you get  
15 that?

16 A. Essentially, yes.

17 Q. So I guess where I'm trying to go and what I'm  
18 trying to get to is that Mr. Waters would have had no way to  
19 know what the Special Enforcement Team was going to do with  
20 the information that he provided you?

21 A. That's true.

22 Q. Now, the only other thing I want to talk to you  
23 about is this idea that there was a significant difference or  
24 a ten-block difference, 14-block difference, between where

1 the traffic violation occurred and where this stop was made.  
2 How many traffic stops have you made in your career, if you  
3 know?

4 A. Probably upward of, like, 2,000 or more. A lot.

5 Q. How often does a vehicle stop at the exact point  
6 of the violation you observed?

7 A. It's seldom. And particularly where this road  
8 was at, there's -- once you get past Lakeland, there's really  
9 no where to stop until you get past that bend that's over the  
10 park ranger station, because there's no shoulder. If you go  
11 on the east shoulder, you fall down the cliff. And then if  
12 you go off the west shoulder, you crash in to the mountains.  
13 So there's really not a whole lot of places to stop there.

14 Q. Okay. So that was going to be my next question.  
15 Was the location of this stop reasonable based on the  
16 geography of the location where the violation was observed  
17 and the vehicle was then traveling?

18 A. Yes.

19 Q. Are there things that an officer has to do before  
20 turning on the red and blue lights to make a traffic stop?

21 A. Yes.

22 Q. So what sorts of things do you do?

23 A. We're trained to forecast a stop. So what we  
24 want to do is try to stop in an area where we're not going to

1 stop traffic or cause an accident if we can help it. Now,  
2 anybody that's driven around knows that we don't always do  
3 such a good job of that. But if you have to make a radio  
4 call, you're waiting for the dispatcher to indicate if the  
5 car is stolen or some kind of hazard to it before you turn  
6 your lights on. The more information you have before the  
7 stop, the better.

8 Q. Now, the violation occurs at Tenth and Curry; is  
9 that right?

10 A. As it was reported to me. I didn't personally  
11 see it.

12 Q. As far as you're aware?

13 A. As far as I know.

14 Q. So, if I'm traveling then southbound on Curry  
15 from Tenth Street, is Lakeland the next intersection I come  
16 to?

17 A. Yes.

18 Q. So there's one intersection then before that big  
19 curve in the road where the ranger's station is and there's  
20 no place to stop?

21 A. Yes.

22 Q. So you've got roughly a block or two?

23 A. Yes.

24 Q. Does it typically take longer than the time it

1 takes to travel a block or two to get the information you  
2 need to make the stop safely?

3 A. Yes.

4 Q. So then beyond that, the next location where you  
5 could reasonably and safely stop is Vital Signs?

6 A. Yes. It's the first -- Right as you get around  
7 the bend, there's a little dog park there. But, unless  
8 you're from here, you don't know about it. And then the next  
9 straight is, like, south -- I think they call it South Curry  
10 Court or something, but it's some little turn-off. But that  
11 is the next place after Lakeland where you can turn off.

12 MS. BRANTINGHAM: Thank you for your testimony.  
13 I'll pass the witness.

14 THE COURT: Recross.

15 MR. FEY: Thank you. Just briefly.

16 RECROSS-EXAMINATION

17 By Mr. Fey:

18 Q. At the time you were receiving these text  
19 messages from Mr. Waters, were you aware that he was under  
20 investigation for any criminal activity?

21 A. I was aware he was on supervision with probation.  
22 That's all I knew.

23 Q. Probation supervision?

24 A. Yes.

1 Q. And you were not aware of any new investigations  
2 regarding Mr. Waters at that time?

3 A. I was not.

4 Q. Okay. And are you aware of any subsequent  
5 investigations involving him?

6 MS. BRANTINGHAM: Objection. It's not relevant.

7 THE COURT: I'm going to overrule the objection.  
8 Go ahead. You can answer.

9 Q. (By Mr. Fey) Are you aware of any subsequent  
10 investigations involving Mr. Waters since May 20th -- May  
11 30th of last year?

12 A. No.

13 Q. So your team is not personally involved with any  
14 kind of investigation in to him?

15 A. Well, in full disclosure, I came off of that team  
16 the following month.

17 Q. I apologize. I forgot about that.

18 A. Yeah. So I don't know. I know me personally.  
19 But I don't know of any investigation that Mr. Waters was  
20 involved in after that point.

21 Q. And the fact that you knew him was based upon  
22 previous dealings that he had had with the SET team; isn't  
23 that true?

24 A. No. The gang unit.

1 Q. With the gang unit?

2 A. Yes.

3 Q. You were aware that he was previously convicted  
4 of a crime?

5 MS. BRANTINGHAM: Objection.

6 THE COURT: Well, tell me why that's relevant.

7 MR. FEY: I think it goes to -- Let's do this.  
8 I'm going to withdraw that question. I think it's not  
9 relevant.

10 THE COURT: Okay. Thank you.

11 Q. (By Mr. Fey) You talked about packages and you  
12 talked about a zip. And I think earlier you talked about  
13 eight ball. What is that?

14 A. So when purchasing drugs or it's common street  
15 terminology, one-eighth of one ounce of a drug could be  
16 referred to as an eight ball or an eighth, so it's an eighth  
17 of an ounce. It's just a street term. Did you also mention  
18 teener?

19 Q. No. But go ahead.

20 A. Okay. So same thing. One-sixteenth of an ounce  
21 or one-sixteenth or a teener. It's just a street term.

22 Q. It is a street term that you're using. And, when  
23 you use street terms, you talk individually, you talk about  
24 black and you talk about crystal and you talk about clear,

1 various terms; right?

2 A. Yes.

3 MR. FEY: Thank you. Nothing further, your  
4 Honor.

5 THE COURT: Thank you. You may step down.

6 THE WITNESS: Okay, sir.

7 THE COURT: Can this witness be excused?

8 MS. BRANTINGHAM: He can.

9 THE COURT: Any objection to the witness being  
10 excused?

11 MR. FEY: I have no objection, your Honor.

12 THE COURT: Thank you.

13 Does the State want to call its next witness?

14 MS. WHITE: Yes, your Honor. Our next witness is  
15 Lizzeth Granata.

16 THE COURT: Please raise your right hand and be  
17 sworn.

18 (The witness was sworn in)

19 THE COURT: Please state your full name and spell  
20 your last name, please.

21 THE WITNESS: Yes. Lizzeth Granata,  
22 G-r-a-n-a-t-a.

23 THE COURT: Thank you. Please be seated.

24 MS. WHITE: All right. Thank you.



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LIZZETH GRANATA

Called as a witness on behalf of the  
State, having been first duly sworn,  
Was examined and testified as follows:

DIRECT EXAMINATION

By Ms. White:

Q. And, if you're comfortable, you can take off your  
mask also to help the jurors hear what you're speaking.  
Sometimes it's a little easier than the microphone.

Deputy Granata, are you employed with the Carson  
City Sheriff's Office?

A. I am.

Q. How long have you been employed with them?

A. It will be five years in December of this year.

Q. And what's your current assignment?

A. I'm assigned to patrol day shift.

Q. How long have you been on patrol day shift?

A. Since January of this year.

Q. Prior to that what was your assignment?

A. I was assigned to a school resource officer for  
three years.

Q. Is that a year-round assignment?

A. Yes. No. Just during the school year.

1 Q. So, do you have a different assignment then  
2 during the summer months when school is not in session?

3 A. Yes.

4 Q. And what is that assignment?

5 A. Last year it was working with the Street  
6 Enforcement Team.

7 Q. And is that also commonly known as the SET team?

8 A. Yes.

9 Q. How many summers did you work with the SET team?

10 A. 2020 and then the summer of 2019.

11 Q. And what did you do during the summer months  
12 prior to that?

13 A. I was on patrol.

14 Q. Okay. What are your duties when you're on the  
15 SET team?

16 A. It was mostly drug investigations, drug  
17 enforcement, and drug apprehension.

18 Q. As part of those investigations do you ever  
19 engage in surveillance?

20 A. Yes.

21 Q. And what training did you go through for that  
22 assignment with the SET team?

23 A. Just the patrol training officer training. It's  
24 a field training officer program. It's usually 12 weeks,

1 different phases.

2 Q. Is that the training that every officer has to go  
3 through to become a deputy sheriff?

4 A. Yes.

5 Q. What -- What specifically did you learn in that  
6 training? Did you learn anything specific to controlled  
7 substances or drugs?

8 A. Yes. Responding to calls of drug involvement,  
9 drug use, drug transactions.

10 Q. And did you receive any other certifications as  
11 part of your training?

12 A. Testing drugs such as NARTEC, NIK testing.

13 Q. All right. Are you a drug recognition expert?

14 A. I am.

15 Q. Could you describe the process for becoming a  
16 drug recognition expert?

17 A. Yes. It's an 80-hour class that involves a  
18 12-step process of how to determine whether someone is under  
19 the influence of drugs or alcohol.

20 Q. And are you also ARIDE certified?

21 A. Yes.

22 Q. And specifically what is the training for that  
23 certification?

24 A. Again, to determine whether someone is under the

1 influence of alcohol or drugs.

2 Q. Does your training specific to drug recognition  
3 and then this ARIDE training useful in your work on the SET  
4 team?

5 A. Yes.

6 Q. What does ARIDE stand for?

7 A. I do not know.

8 Q. Okay. Are you also trained to investigate simple  
9 traffic citations?

10 A. I am.

11 Q. Could you describe your training about engaging  
12 in a traffic citation?

13 A. Yes. Observing vehicles that make traffic --  
14 illegal traffic turns or -- I mean. Sorry. I don't know how  
15 to explain it.

16 Q. Okay. Are you familiar with Nevada law --

17 A. Yes.

18 Q. -- specific to traffic violations?

19 A. Yes. Enforcing Nevada law traffic.

20 Q. Okay. And are you as part of your patrol  
21 training in these other certifications, is it fair to say  
22 you're trained to investigate anything from a simple traffic  
23 citation to a much more serious crime?

24 A. Yes.

1 Q. And do you have specific training regarding  
2 identifying illegal drugs?

3 A. I am. I do.

4 Q. Okay. And what was that training process?

5 A. Again, just from experience, from going to calls  
6 for service or coming across drugs in general during my  
7 employment and investigating calls or traffic stops.

8 Q. What type of drugs might you come across?

9 A. Methamphetamine, marijuana, cocaine, heroin.

10 Q. Okay. I'm going to direct you specifically to  
11 May 30th of 2020. Were you on duty that day?

12 A. I was.

13 Q. And what was your assignment?

14 A. I was working with the Street Enforcement Team.  
15 My shift for the day was noon to 10:00 p.m.

16 Q. So this was after the school year?

17 A. Yes.

18 Q. And that afternoon what were you doing with the  
19 SET team?

20 A. We were watching the Griffin House -- It's an  
21 apartment complex -- for complaints of drug issues going  
22 within -- happening within the apartments.

23 Q. And what was your role specifically in watching  
24 those apartments?

1           A.    I was watching traffic, vehicles coming in and  
2 out of that apartment complex.

3           Q.    Specifically were you looking for any particular  
4 vehicle?

5           A.    I was not.

6           Q.    So what were you -- what were you looking for  
7 while you were watching traffic?

8           A.    People committing traffic violations.

9           Q.    Okay. Were you parked while you were watching  
10 traffic and vehicles? Were you driving?

11          A.    I was parked.

12          Q.    Specifically where were you parked?

13          A.    I was facing southbound on Curry Street at the  
14 intersection of Curry Street and Tenth Street.

15          Q.    So you were -- Which direction were you facing on  
16 Tenth Street?

17          A.    I was facing southbound.

18          Q.    Okay. And do you know where anyone else was  
19 surveilling that afternoon?

20          A.    I don't know.

21          Q.    And, where you were stationed, is that in Carson  
22 City?

23          A.    Yes, Carson City.

24          Q.    At any time did you get information from the SET

1 team about a specific vehicle?

2 A. Yes. When a white Chevy truck left the apartment  
3 complex.

4 Q. Is that a truck then that you were looking for?

5 A. I observed the truck and that's when someone  
6 radioed over the traffic, that's the vehicle, stop it.  
7 That's at the same time that I had observed it stopped -- not  
8 stop at the stop sign.

9 Q. Okay. So, when you observed the vehicle, which  
10 direction was it traveling?

11 A. It was going southbound on Curry Street.

12 Q. And what did you do then when you saw it going  
13 southbound?

14 A. I followed the truck to make a traffic stop.

15 Q. Were you directly behind the truck or were there  
16 other cars in between?

17 A. When I did the traffic stop?

18 Q. When you saw it traveling southbound on Curry.

19 A. I think there was one or two cars between us.

20 Q. Okay. And then what did you observe as you were  
21 following it?

22 A. I waited until the two vehicles that were between  
23 us moved out of the way and then I activated my patrol lights  
24 and made a traffic stop. And then the car stopped at Vital

1 Signs on Curry Street.

2 Q. What did you observe that led to the stop?

3 A. The vehicle did not stop at the four-way  
4 intersection, which is a four-way stop sign on Curry and  
5 Tenth Street.

6 Q. And then after activating your lights where did  
7 the car stop?

8 A. In the parking lot of Vital Signs.

9 Q. And is that also here in Carson City?

10 A. Yes.

11 Q. What happened after the car stopped?

12 A. I made contact with the driver and explained the  
13 reason for the stop.

14 Q. So, specifically, where in the parking lot did --  
15 did the truck stop? Was it facing a building, facing the  
16 road?

17 A. Facing the building.

18 Q. Was it in a parking space?

19 A. I don't recall.

20 Q. Okay. Did you also pull in to the parking lot?

21 A. I did.

22 Q. And where did you park your vehicle?

23 A. Right behind the truck.

24 Q. So it's safe to say you then got out of your car?



1           A.    Yes.

2           Q.    And at any point did you inform the rest of the  
3 SET team that you had made this stop?

4           A.    They heard it over the radio.

5           Q.    And at what point did you broadcast that over the  
6 radio?

7           A.    Right when I activate my lights.

8           Q.    Okay. And so after getting out of your car then  
9 what is it that you said you did?

10          A.    I went up to the driver, driver's door, and made  
11 contact with the driver and I explained the reason for the  
12 stop.

13          Q.    How many people were inside the car?

14          A.    Just one, the driver.

15          Q.    And do you see the driver in court today?

16          A.    Yes.

17          Q.    Could you identify for the record where he's  
18 sitting and something he's wearing?

19          A.    Yes. The gentleman wearing brown shoes, gray  
20 pants, and a black button-up shirt.

21                MS. WHITE: And I would ask that the record  
22 reflect identification, your Honor.

23                THE COURT: The record will so reflect.

24                MS. WHITE: Thank you.

1 Q. (By Ms. White) When you spoke to the driver  
2 specifically what did you ask him?

3 A. I asked him for his driver's license and  
4 registration and proof of insurance. And then I asked him  
5 where he was coming from and where he was going. He said he  
6 was coming from the apartments over there. He didn't know  
7 what apartments. And he was going to Minden.

8 Q. Did he provide you the information you asked for?

9 A. He gave me his California ID card, but he did not  
10 have insurance on him.

11 Q. Is an ID card the same thing as a driver's  
12 license?

13 A. It's not.

14 Q. What's the difference?

15 A. An ID card says identification and then a  
16 driver's license says driver's license.

17 Q. And what did you then do with the identification  
18 card?

19 A. I had dispatch -- I ran his information through  
20 dispatch via my radio.

21 Q. At any point did you ask the driver to exit the  
22 car?

23 A. Yes, I did.

24 Q. At what point did you ask him to exit the car?

1           A.    When I made contact with him and then Deputy  
2 Bindley was in the passenger side and he asked me to ask him  
3 to step out.

4           Q.    So was Deputy Brett Bindley the first officer to  
5 arrive on scene with you?

6           A.    He was.

7           Q.    Do you recall at what point he arrived on scene?

8           A.    Almost at the same time that I did.

9           Q.    And you said he was at the passenger's side when  
10 you asked the defendant to exit. Did you mean the  
11 passenger's side of the white truck?

12          A.    Yes.

13          Q.    Why did you ask him to exit the vehicle?

14          A.    To speak with him further about his -- him not  
15 having a driver's license.

16          Q.    And is it is it typical in these type of stops to  
17 ask somebody to exit a vehicle?

18          A.    Yes. Also, Deputy Brett Bindley had called for a  
19 K-9, so I knew he needed to exit the vehicle.

20          Q.    Okay. And when you had his California ID did you  
21 learn his name?

22          A.    Yes.

23          Q.    And what is that?

24          A.    David Elliston.

1 Q. Were you able to confirm that name with a  
2 driver's license?

3 A. Yes.

4 Q. And where was that driver's license from?

5 A. California.

6 Q. What did you do next after asking him to exit the  
7 car and taking his California ID?

8 A. I began to issue a citation.

9 Q. And what was that citation for?

10 A. The stop sign and having -- not having a valid  
11 driver's license or proof of insurance.

12 Q. How do you issue a citation?

13 A. We are issued it's called an IPAC. It's an  
14 electronic citation book where we issue citations with a pen  
15 and then it's printed out.

16 Q. And, while you were speaking with him, did you  
17 observe anything about his demeanor?

18 A. He was nervous.

19 Q. How did you know he was nervous?

20 A. His hands were shaky and so was his voice.

21 Q. In your experience have you made multiple traffic  
22 stops?

23 A. I have.

24 Q. Would you be able to even approximate how many

1 traffic stops? Is it upward of a few hundred?

2 A. Yes.

3 Q. And are people typically nervous when they're  
4 stopped by law enforcement?

5 A. They're not.

6 Q. Are there times when people are nervous?

7 A. Yes.

8 Q. And how did the defendant's nervousness in this  
9 case compare to other traffic stops you routinely make?

10 A. He was more nervous than the usual person.

11 Q. And what did that mean to you?

12 A. There was something going on that he was not  
13 telling me about. There was --

14 MR. FEY: Your Honor, I'm going to object to that  
15 and ask that it be stricken as speculation.

16 THE COURT: I'm going to sustain the objection.

17 Q. (By Ms. White) Okay. So you indicated Deputy  
18 Brett Bindley arrived on scene. Did other officers of the  
19 SET team arrive as well?

20 A. Yes.

21 Q. Did you see what they did when they arrived?

22 A. No.

23 Q. What were you doing as other deputies were  
24 arriving on scene?

1           A.    I went back to my car and started issuing a  
2           citation.

3           Q.    At any point did you talk to other deputies about  
4           the stop?

5           A.    No.

6           Q.    At any point were you informed about items that  
7           were found in the defendant's vehicle?

8           A.    I had heard it was drugs, they had located drugs  
9           and a firearm.

10          Q.    Did you see those drugs?

11          A.    I did not.

12          Q.    Did you ever see the firearm?

13          A.    I did not.

14          Q.    At any point did you help other deputies with any  
15          of the items that they found?

16          A.    Yes.  Deputy Henneberger handed me the items for  
17          me to transport them to the station for him so he could book  
18          them.

19          Q.    When he handed the items to you what did they  
20          look like?

21          A.    It was in a brown bag.

22          Q.    Did you know what was inside each of the brown  
23          bags?

24          A.    No.  I just knew that it was evidence collected

1 from the vehicle.

2 Q. Approximately how many brown bags were there, do  
3 you recall?

4 A. Two or three.

5 Q. And after grabbing the brown bags where did you  
6 put them?

7 A. In the back of my vehicle. In the back  
8 passenger's seat.

9 Q. And from the back passenger's seat then where did  
10 you take them?

11 A. I transported them to the sheriff's office where  
12 I gave them to Deputy Henneberger for him to book them in to  
13 the sheriff's office evidence vault.

14 Q. And is it typical to bring those items to the  
15 Carson City Sheriff's Office after putting them in your  
16 vehicle?

17 A. Yes.

18 Q. Okay. Did you, when were you running information  
19 through dispatch, also run the registration of the vehicle?

20 A. Yes. Usually when I make a traffic stop I give  
21 them the license plate number.

22 Q. And did you find any information about the  
23 vehicle's registration?

24 A. It was a rental car.

1 Q. Did you ever ask the defendant about the car he  
2 was driving?

3 A. I did not.

4 Q. If you had asked him about his vehicle he was  
5 driving, would you have made note of it in your report?

6 A. Yes. I do recall. He said it was his car and  
7 his wife's car.

8 Q. At what point did he say that?

9 A. At the initial contact when I went up to him the  
10 first time.

11 Q. And then later did you confirm whether it was in  
12 fact his and his wife's car?

13 A. No. Because dispatch had stated that it was a  
14 rental vehicle. The information had returned to a rental  
15 vehicle, not to a specific person.

16 MS. WHITE: Okay. I have no further questions,  
17 your Honor. I pass the witness.

18 THE COURT: Cross, Mr. Fey.

19 CROSS-EXAMINATION

20 By Mr. Fey:

21 Deputy Granata you, you are -- you've been to the  
22 police officers academy?

23 A. Yes.

24 Q. And when was that?



1 A. 2012.

2 Q. 2012?

3 A. Yes.

4 Q. And after that did you serve any time in  
5 detention?

6 A. No. After that, in 2013, I got hired by the West  
7 Wendover Police Department where I was a police officer for  
8 two years. After that, I went to Douglas County Sheriff's  
9 Office, where I was employed there for one year in the  
10 detention facility. Then after that I was hired here.

11 Q. Okay. And, at this time, during the school year,  
12 was the school year over on May 30th of 2020?

13 A. Yes, it was.

14 Q. Okay. But prior to that you were a school  
15 officer?

16 A. Yes.

17 Q. And you're the ones that make sure that I don't  
18 speed through the school zone?

19 A. Correct.

20 Q. When you went to the academy you were taught how  
21 to put together reports; correct?

22 A. Yes.

23 Q. All right. And, when you are told to put  
24 together reports, they tell you that a report has to be

1 factual, put things that are true in there; right?

2 A. Correct.

3 Q. Manufacture -- You're nodding your head?

4 A. Yes.

5 Q. It also has to be accurate, doesn't it?

6 A. Correct.

7 Q. And it has to be complete?

8 A. Yes.

9 Q. Now, you said that Deputy Henneberger handed you

10 three, two or three, brown bags?

11 A. Correct.

12 Q. By brown bags what are you talking about?

13 A. The bags where usually you put evidence that we

14 collect from scenes or vehicles.

15 Q. Okay. So, these brown bags, were they sealed in

16 any way?

17 A. No. They were just -- they had folded it but

18 that was it.

19 Q. Is this like a Smith's bag?

20 A. Yes.

21 Q. Like a garbage bag or a grocery bag?

22 A. Yes. Just a paper bag.

23 Q. Okay. And do you think there was evidence inside

24 of there?

1 A. Correct.

2 Q. Okay. Were you told what the evidence was?

3 A. No.

4 Q. You didn't sign for these bags, did you?

5 A. No, I did not sign for them.

6 Q. So he gave you two or three bags, you're not

7 sure?

8 A. Yes.

9 Q. And you took those to the jail?

10 A. Not to the jail. To the sheriff's office.

11 Q. To the sheriff's office. My apologies. You took

12 them to the Carson City Sheriff's Office and you gave them to

13 whom?

14 A. Deputy Henneberger.

15 Q. So Deputy Henneberger transported Mr. Elliston;

16 correct?

17 A. Yes.

18 Q. And, then when you met him at the sheriff's

19 office, was he back in the sally port or was he in the actual

20 sheriff's office part?

21 A. In the room where the Street Enforcement Team

22 books their evidence and where they write their reports.

23 Q. Okay. So Mr. Elliston was not in that room with

24 you?

1 A. No.

2 Q. Okay. When you handed this bag to Deputy

3 Henneberger, first off, it wasn't sealed, right, when you

4 received it?

5 A. No, it was not.

6 Q. And when you handed it to him it wasn't sealed?

7 A. No.

8 Q. Did you have him sign for this bag?

9 A. No.

10 Q. You don't know what was in that bag, do you?

11 A. No.

12 Q. Did you mention in your report anywhere that you

13 transported evidence to the Carson City Sheriff's Office?

14 A. I did not.

15 Q. Okay. So your report was incomplete in that

16 matter, wasn't it?

17 A. Correct.

18 Q. Now, May 30th, do you know approximately what

19 time it was when you made the vehicle stop?

20 A. Yeah. In the afternoon around 2:00 o'clock.

21 Q. Do you wear a body cam?

22 A. Yes.

23 Q. And as far as you're aware the other deputies

24 wear body cams as well?

1 A. Yes.

2 Q. And those body cams are synched to each other,  
3 are they not?

4 A. Yes, for one case number, yes, they are attached.

5 Q. A case number. And also time wise aren't they  
6 interconnected?

7 A. Yes.

8 Q. Okay. And so that if I see something that you do  
9 at, say, let's say the time I'm going to look at is 2110,  
10 okay, what does that number mean to you?

11 A. It's 9:00 o'clock, 9:10.

12 Q. That would be a time; right?

13 A. Yes, that's a time.

14 Q. All right. And then that's your body cam that  
15 says 2110 when we're looking at it. But, when we're done, I  
16 put my body cam, it's coordinated, they sync together. And  
17 the same things that you're observing at 2110 should be  
18 happening at the same time on another body cam video; right?

19 A. Correct.

20 Q. So if you indicate that you arrived on scene at  
21 this time, 2:10, 2:00 o'clock, whatever, and someone is two  
22 minutes behind you, when they arrive, your body cam should  
23 say two minutes behind -- two minutes after your time;  
24 correct?

1 A. Yes.

2 Q. Did I say that -- Did I ask that in an  
3 intelligent way? I confused almost myself there. Let me  
4 back up. We can build a complete picture using a bunch of  
5 body cam. We can build a complete record of a stop and what  
6 went on; correct?

7 A. Yes, correct.

8 Q. And let's say if someone tries to -- someone  
9 raises their hand at 2:10 --

10 MS. WHITE: Your Honor, I'm going to object to  
11 this. There's no foundation for the deputy's understanding.

12 THE COURT: I'm going to overrule it, because I'm  
13 fascinated where he's going. I'm not sure where he's going  
14 either, so let's get to that point.

15 MR. FEY: As soon as I figure it out.

16 Q. (By Mr. Fey) I guess what I'm saying is this.  
17 If someone comes at a different time and -- Let me do this so  
18 I can get my train of thought back. In other words, if I  
19 look at your body cam video and the things that I see on your  
20 body cam video are duplicated on another body cam video, they  
21 should be occurring at the same time on each body cam video;  
22 isn't that right?

23 A. Yes. Just different views from different  
24 officers standing in different areas, yes.

1 Q. Okay. Thank you. All right. So we have that.  
2 Now, it's approximately a little bit before two. You are  
3 where?

4 A. On Curry. At the intersection of Curry and Tenth  
5 Street.

6 Q. Curry and Tenth Street. And which direction is  
7 your vehicle facing?

8 A. Facing southbound.

9 Q. Southbound on?

10 A. Curry Street.

11 Q. Curry, okay. Are you north of Tenth Street or  
12 are you south of Tenth Street?

13 A. North.

14 Q. North. And so you're facing southbound?

15 A. Yes.

16 Q. All right. On the direct examination by  
17 Ms. White you indicated that you were facing southbound on  
18 Tenth Street. But that is not what you meant to say; is that  
19 right?

20 A. No.

21 Q. Okay. Now, in response to her question, where  
22 did you first see the defendant's vehicle? You said it was  
23 going southbound on Curry Street. Do you recall that?

24 A. No. It left the Griffin House, the Griffin

1 Apartments area, and then it went eastbound on Tenth Street.  
2 It stopped -- It did not stop -- There is a four-way  
3 intersection there. It did not stop. It continued  
4 southbound on Curry Street.

5 Q. Okay. So when you said that you saw that -- the  
6 first time you saw the defendant's vehicle and you said  
7 southbound on Curry Street, that wasn't right, was it?

8 A. No.

9 Q. You didn't see him going southbound on Curry  
10 Street?

11 A. I did. I saw him from the moment he was on Tenth  
12 Street going eastbound towards Curry Street. On Curry Street  
13 he made a right turn to go southbound on Curry Street.

14 Q. And that was after someone called out on the  
15 radio, that's the vehicle, stop it?

16 A. Correct.

17 Q. Who did that?

18 A. I believe it was Deputy Bindley.

19 Q. If you don't know, I don't want you to speculate.

20 A. I don't remember.

21 Q. Okay. So someone called out on the radio, that's  
22 the vehicle, stop it, and you already begun going southbound  
23 on Curry at that time?

24 A. Correct. Correct.



1 THE COURT: Let me ask you the question. Did you  
2 see him violate the stop sign before you heard that or after  
3 you heard that?

4 THE WITNESS: Before.

5 THE COURT: So you saw him violate the stop sign  
6 before you were told to stop that vehicle?

7 THE WITNESS: Correct.

8 MR. FEY: Thank you, your Honor.

9 Q. (By Mr. Fey) So, when you saw him violate the  
10 stop sign, did he stop and then turn right or did he not  
11 stop?

12 A. He did not stop at the posted stop sign.

13 Q. Okay. And does -- Can you estimate -- Well,  
14 you've already testified. That's fine. You proceeded  
15 southbound on Curry Street behind the vehicle and I think you  
16 said that you confirmed -- Strike that. You eventually  
17 stopped down by Vital Signs?

18 A. Correct.

19 Q. And that was, to the best of your training and  
20 experience, that was the best place to pull him over?

21 A. Yes.

22 Q. All right. Can you estimate how long a distance  
23 that was?

24 A. Maybe a quarter mile.

1 Q. All right. You stopped him. You asked him to  
2 step out of the vehicle. Before you asked him to step out of  
3 the vehicle, you asked him for his documents?

4 A. Correct.

5 Q. And you said you received a California ID card?

6 A. Yes.

7 Q. And the California ID card indicated that it gave  
8 his correct name; correct?

9 A. Correct.

10 Q. That's how you identified. It had a picture of  
11 him?

12 A. Yes, yes.

13 Q. And you checked his identification through the --  
14 your computer and it came back that --

15 A. Through the radio, yes. Dispatch informed me  
16 that he did not have a valid driver's license.

17 Q. On direct examination I thought you said you  
18 checked his identification using his California driver's  
19 license. That's not true?

20 A. It was over the radio.

21 Q. But he didn't have his California driver's  
22 license, did he?

23 A. I'm sorry. California ID card. Not a driver's  
24 license.

1 MS. WHITE: Yeah. I think that misstates the  
2 testimony. I recall the deputy indicating she only received  
3 the ID card.

4 THE COURT: I think she said driver's license too  
5 at one point in time too, so I was confused. So clarify.

6 Q. (By Mr. Fey) Just to clarify. You never saw a  
7 California driver's license; correct?

8 A. I did not.

9 Q. You never used the California driver's license to  
10 confirm Mr. Elliston's identity; correct?

11 A. Correct.

12 Q. In fact, you did receive a California ID card and  
13 you ran that through over the radio and that confirmed his  
14 identity?

15 A. Correct.

16 Q. The Court's indulgence.

17 You're currently on the patrol division; right?

18 A. Yes.

19 Q. And just to confirm, the SET team is kind of a  
20 temporary team; is that right? I mean -- That's not the  
21 right way to say it. It's a temporary assignment that you  
22 were on during the summers when you were working the schools;  
23 right?

24 A. Correct.

1 Q. And now that you're working patrol do you work  
2 any time of the year as part of the SET team?

3 A. Currently?

4 Q. Yes, ma'am.

5 A. No. I am only assigned to the patrol division.

6 Q. Okay. And patrol, again, when did you become  
7 assigned to patrol?

8 A. I returned from the school resource officer  
9 assignment in January back to patrol.

10 Q. And you were questioned about ARIDE training.  
11 ARIDE training has to do with traffic stops and advanced  
12 roadside investigation; right?

13 A. Correct.

14 Q. All right. And that deals with drivers and what  
15 they do; correct? It's not designed for -- Strike that. Let  
16 me ask the question a different way. It's a tool that you  
17 use to determine whether a driver might be impaired. It's  
18 not something that you -- It doesn't indicate to you whether  
19 someone might be transporting something in their vehicle,  
20 does it?

21 A. No.

22 Q. Okay. It has to do with driving ability --

23 A. Yes.

24 Q. -- and possible impairment?

1 A. Correct.

2 Q. All right. And the same thing with DRE, drug  
3 recognition examination or drug recognition expert, you are  
4 certified as a drug recognition examination officer; right?

5 A. Correct.

6 Q. All right. And that doesn't have anything to do  
7 with drugs that are found in a vehicle, it has only to do  
8 with drugs that may be on board an individual?

9 A. Correct.

10 Q. In his body or her body?

11 A. Yes.

12 Q. In your situation when you're on Curry Street  
13 facing southbound you were not watching vehicles go in to or  
14 out of the complex over there out of the Griffin Street  
15 Apartments, were you?

16 A. I was not. I could not view it from where I was  
17 positioned.

18 Q. Okay. And do you know where Deputy Hadley was  
19 when you were in your vehicle parked in your vehicle facing  
20 southbound on Curry Street?

21 A. I do not know where Deputy Hadlock was at.

22 Q. I said Hadley. It's Hadlock. I apologize.  
23 Thank you.

24 No further questions, your Honor.

1 THE COURT: Redirect.

2 MS. WHITE: Yes. Thank you, your Honor.

3 REDIRECT EXAMINATION

4 By Ms. White:

5 Q. I wanted to just ask you a couple of questions  
6 about the bags that you transported to the Carson City  
7 Sheriff's Office. When those were in your vehicle were they  
8 in your sole custody and control?

9 A. They were.

10 Q. Did you have any reason to believe anything was  
11 added to or removed from those bags?

12 A. No.

13 Q. Did you transport those bags directly to the  
14 sheriff's office?

15 A. I did.

16 MS. WHITE: I have no further questions.

17 THE COURT: Recross.

18 MR. FEY: But you still don't know what was in  
19 those bags, do you?

20 THE WITNESS: I don't know.

21 MR. FEY: No further.

22 THE COURT: Ma'am, you can step down. Thank you.  
23 Can this witness be excused?

24 MR. FEY: No objection.

1 MS. WHITE: Yes, your Honor.

2 THE COURT: Thank you.

3 Do you have additional short witness or anything  
4 else or do you think it will be longer than 30 minutes?

5 MS. BRANTINGHAM: We have Deputy Pullen is our  
6 next witness. I think we can get through his testimony in 30  
7 minutes.

8 THE COURT: Okay. I would like to try so that we  
9 get -- Let me ask the jurors do you need a quick break or is  
10 everybody okay?

11 A JUROR: Like two minutes.

12 THE COURT: You would like a break?

13 A JUROR: Two minutes.

14 THE COURT: Two-minute break?

15 A JUROR: Yep.

16 THE COURT: We'll go ahead and take a two-minute  
17 break for you then. Ladies and Gentlemen, we're going to  
18 take a two-minute recess. No. We'll take five minutes or  
19 so.

20 During this recess you must not discuss or  
21 communicate with anyone, including your fellow jurors, in any  
22 way regarding the case or its merits either by voice, phone,  
23 e-mail, text, internet, or other means by communication or  
24 social media. Don't read, watch, or listen to any news or

1 media account or commentary about the case. Do not do any  
2 research such as consulting dictionaries, using the internet,  
3 or using reference materials, make an investigation, test the  
4 theory of the case, recreate any aspects of the case, or in  
5 any way investigate or learn about the case on your own, form  
6 or express any opinion regarding the case until it's  
7 submitted to you. We'll just take a short recess. Thank  
8 you.

9 (Recess was taken)

10 THE COURT: Does the State wish to call their  
11 next witness?

12 MS. BRANTINGHAM: The State calls Deputy Jeff  
13 Pullen.

14 MR. FEY: Your Honor, may I make a request?

15 THE COURT: Yes.

16 MR. FEY: I don't share Ms. Brantingham's view  
17 that this entire witness can be, direct and  
18 cross-examination -- There's going to be opinion evidence  
19 that's going to come in on this.

20 THE COURT: We're going to go ahead and take our  
21 evening break. I want to talk to counsel about a couple of  
22 things, anyway.

23 So, Ladies and Gentlemen, sorry. We should have  
24 thought about it. But we're going to go ahead and take our



1 evening recess at this time. During this overnight recess,  
2 do not discuss or communicate with anyone, including fellow  
3 jurors, in any way regarding the case or its merits either by  
4 voice, phone, e-mail, text, internet, or other means of  
5 communication or social media, read, watch, or listen to any  
6 news or media account, commentary about the case, do any  
7 research such as consult dictionaries, using the internet, or  
8 using reference materials, make any investigation, test the  
9 theory of the case, recreate any aspect of the case, or in  
10 any way investigate or learn about the case on your own, form  
11 or express any opinion subject -- regarding this case until  
12 it's submitted to you.

13 So if you'll be back here tomorrow no later than  
14 8:30. We're going to try to start right at 8:30 if you'll  
15 please be here by that time. So you're excused for the  
16 evening. Take your yellow badges with you. Leave your notes  
17 on your chairs.

18 We're outside the presence of the jury at this  
19 time. The Court has some questions. It really does. And  
20 I've got some concerns. Some of the concerns I have, one is  
21 the chain of custody, which apparently has been stipulated  
22 to. Did that stipulation go to the bag being handled by one  
23 deputy and handed off not sealed up or done anything, put in  
24 the vehicle and transported, and everything else? So I want

1 to hear some argument about that, because I have some  
2 concerns about the custody in regards to that. I'm not sure  
3 where it's going. But I don't think that's the correct way  
4 you handle it. You don't sit there and basically get a bag,  
5 hand it to another bag, don't mark it or put it in anything  
6 and then take it to the station and everything else in  
7 regards to that. So I have some concerns about that. That's  
8 one issue.

9 The second issue I think is if you look at the  
10 evidence box in regards to the gun, it doesn't even indicate  
11 it's a nine millimeter. It indicates a 380 ACP. So, again,  
12 what's that mean in respect to this matter? So that's two  
13 issues I have.

14 The third issue I have basically, I have  
15 concerns -- I denied a motion to suppress in this case based  
16 upon the traffic stop being a legal viable way to stop. I  
17 have some concerns whether or not from -- Listen to this  
18 carefully. Because was she ordered to stop the vehicle  
19 before she saw the violation or was she ordered to -- How  
20 would they know that? How would they even have any clue that  
21 she saw the violation? I'm just having some concerns and I  
22 granted a motion -- denied a motion to suppress. And that  
23 causes me some concerns. So I hope I'm making sense.

24 And I want to give everybody a chance to think

1 about these things and talk to me about it later. Because if  
2 in fact the stop occurred and she said she did it -- And I  
3 asked that question. She said I saw the violation but then I  
4 was ordered to stop that vehicle. Well, how would anybody  
5 giving that order to stop that vehicle have knowledge of the  
6 traffic stop in respect to that? That doesn't make sense to  
7 me. So I'm raising that issue again.

8 So those three issues. I'm not saying what's  
9 going to happen. I want to hear some argument on it and I  
10 have some concerns about it, because I don't think it's clear  
11 and I think there's some problems there, especially the chain  
12 of custody. There's a stipulation that we stipulate to the  
13 chain of custody. Well, does that apply to how they handle  
14 the drugs from the car to the deputy sheriff to the back of  
15 the vehicle back to the station and everything else?

16 Mr. Fey, I don't know. There's a stipulation.

17 MR. FEY: Well, the stipulation, your Honor, has  
18 to do with -- is predicated upon the fact that we didn't want  
19 to have to chase the -- we didn't think there were any issues  
20 once the drugs were in the custody and control of the crime  
21 lab.

22 THE COURT: Well, you probably didn't even know  
23 about this issue.

24 MR. FEY: I did not know about the brown bags.

1 THE COURT: Well, that's causing me some concern.  
2 Also I did get another note. I just wanted to tell you the  
3 other note, it's from juror number 12, who says basically,  
4 juror to my left is juror number 11, which we know has been  
5 closing his eyes because his eyes are bothering him, he's not  
6 sleeping, he's taking notes, he's wide awake, we made sure he  
7 was available, and he's not, so that's how I'm handling that.  
8 I'm not worrying about that because he is paying attention  
9 and I think he was just -- his eyes have been bothering him  
10 so he's been closing his eyes.

11 So, again, I'm just raising these points because  
12 I want some -- Again, be here by 8:15 tomorrow to talk about  
13 these things. I have some concerns. And, hopefully, you  
14 understand what my concerns are.

15 MS. BRANTINGHAM: Your Honor, I think we can  
16 address some for the Court now.

17 THE COURT: Okay.

18 MS. BRANTINGHAM: They're not -- So I'll address  
19 at least the first two as it pertains to the collection of  
20 the evidence. That is actually very common. They place it  
21 in paper bags and transport it in a vehicle under the custody  
22 and control of one officer until it gets to the scene.

23 And so what you're going to hear when Deputy  
24 Henneberger testifies should clear up any concerns. He'll

1 talk about collecting the evidence, putting it in that bag,  
2 giving it to Deputy Granata to transport so it stays secure  
3 with her in her car. Evidence is never sealed at the scene.  
4 It's not. It's not sealed until it gets back to the  
5 sheriff's office. So, it's bagged like it was, given to her,  
6 she puts it in her car in her custody and control, transports  
7 it to the --

8 THE COURT: And she testified it was never out of  
9 her control, I understand that.

10 MS. BRANTINGHAM: Right. So then she hands it  
11 back over to Deputy Henneberger, who will be able to testify  
12 that what he got at the sheriff's office is the same thing  
13 that he gave her on scene.

14 THE COURT: Is he the one -- Why didn't he  
15 transport it to the sheriff's office?

16 MS. BRANTINGHAM: He transported the defendant.  
17 So he takes the defendant and she has to take the evidence.

18 THE COURT: I understand that.

19 MS. BRANTINGHAM: Yeah. And he'll testify and  
20 clear up any confusion.

21 THE COURT: That's standard procedure?

22 MS. BRANTINGHAM: It's standard procedure. It's  
23 actually also reflected on the body camera too. It's the way  
24 they collect evidence at a scene and transport it to the

1       sheriff's office.

2               THE COURT: Tell me about the stop.

3               MS. BRANTINGHAM: So, the stop, we also have  
4 another witness who is going to testify that he observed the  
5 traffic violation, he was the one who radioed over the radio,  
6 that's our vehicle, get a stop on it, or whatever he said.

7               But I don't know that the command is as  
8 commanding as the Court is perceiving it. Often times what  
9 happens is somebody comes over the radio, hey, that's our  
10 car, get a stop on it, something along those lines. But her  
11 testimony was before that ever came over the radio she saw  
12 the traffic violation.

13              THE COURT: She clearly said that and I clarified  
14 that. But she also said I was told to stop that vehicle.

15              MS. BRANTINGHAM: Which -- Right -- may not be  
16 the way you're interpreting it as somebody else saw the  
17 traffic violation. But we have another officer who saw it  
18 and is the one who gave the radio traffic, hey, that's the  
19 vehicle, stop it.

20              MS. WHITE: And, that's correct, your Honor. We  
21 do have another witness who will testify having seen a  
22 traffic violation.

23              THE COURT: I hope so. Because I'm telling you  
24 right now I've got some questions about that. I mean, you

1 don't basically orchestrate or tell somebody to stop a  
2 vehicle before it even -- a violation even occurs or takes  
3 place or anything. That bothers me. And I granted -- denied  
4 a motion to suppress based upon the representations.

5 So I'm rethinking some stuff in that and I think  
6 that, you know, I think there's an issue subject to the  
7 testimony, the other testimony, to clarify things in respect  
8 to that.

9 So I hope you understand where I'm coming from.  
10 Because I'm listening to her and it's all over the board.  
11 She was not the sharpest, clearest witness on that issue.

12 So, Mr. Fey, I'll give you an opportunity.

13 MR. FEY: I would like an opportunity to think  
14 about it tonight and address it in the morning if you want  
15 to. I think clearly the issue of a chain of custody, I was  
16 surprised by the brown bags. I've never heard of that.

17 THE COURT: I've never heard of that either.

18 MR. FEY: Once it gets to the custody of the  
19 sheriff's office, it's there. They keep it in their vault.  
20 But, before it gets there, that is troubling. And  
21 considering that she didn't know what was in the bag.

22 THE COURT: Well, I want to hear the standard  
23 procedure. I want to hear about how it's done, why it's done  
24 that way, and why there's, you know, protected and how you

1 make sure the custody is protected and everything else. And  
2 I'll be glad to hear that. I think that's a valid point and  
3 I want to hear that.

4 Again, I'm not sure what the stipulation was.  
5 That's kind of a -- Because I listened to it and I wrote it  
6 down. We stipulate to the chain of custody in this case.

7 MR. FEY: We did. And I will represent as an  
8 officer of the court that the issue was because the order was  
9 granted by Mr. Rogers' motion.

10 THE COURT: To allow for that other testing.

11 MR. FEY: So, once he did that, I'm not going to  
12 muddy this up by saying under Soars versus State there's  
13 insufficient connections, though that's the stipulation, and  
14 I think counsel agrees with that. I was not aware of any  
15 break in the chain of custody of the evidence, if that's what  
16 happened with Deputy Granata. I'm just not aware of that.

17 THE COURT: Well, I'm not sure it was or wasn't.  
18 I want to hear --

19 MS. BRANTINGHAM: I would represent to the Court  
20 that it's not a break. It's a continuation of the chain of  
21 custody from Henneberger to Granata to Henneberger in to the  
22 evidence vault. That is the chain.

23 THE COURT: Well, make sure it's clear,  
24 abundantly clear.



1 MS. BRANTINGHAM: I will make sure it's crystal  
2 clear.

3 THE COURT: Let's clear up the stop too.  
4 Because, again, I asked the question because I didn't  
5 understand what she was talking about and I wanted to clarify  
6 that she testified very clearly she saw the violation before  
7 she made a determination of the stop. But she also said,  
8 stop that vehicle, that was my order. So what was the timing  
9 on all of that?

10 MS. BRANTINGHAM: I think she clarified that for  
11 you too, because she testified that she observed the  
12 violation before she heard the radio traffic.

13 THE COURT: And I heard that. I understand that.  
14 But how was somebody giving her that order stop that vehicle  
15 have any indication to stop that vehicle unless it was  
16 pre-ordained?

17 MS. BRANTINGHAM: Well, it was. I don't think  
18 that was a mystery. It was a pre-factual stop. So they were  
19 looking for a reason to stop it.

20 THE COURT: And I understand that. I do. But  
21 you also have to be very careful.

22 MS. BRANTINGHAM: Sure.

23 THE COURT: What about the box with the wrong --

24 MS. BRANTINGHAM: Deputy Bindley testified that

1 was the gun he collected out of the car.

2 THE COURT: I understand that. He verified that  
3 and everything else. But the evidence box says 380 ACP. But  
4 Mr. Fey corrected us and corrected the evidence.

5 MR. FEY: I'm a shooter.

6 THE COURT: Huh?

7 MR. FEY: I'm a shooter.

8 THE COURT: It's a nine millimeter.

9 MR. FEY: It's a nine millimeter. Nine  
10 millimeter Parabellum.

11 THE COURT: Anyway, I have not made any  
12 determinations on anything. I'm just telling you what's  
13 bothering me and it's concerning and I want to clear it all  
14 up and make sure it's correct. Thank you.

15 MR. FEY: Thank you.

16 MS. WHITE: Thank you, your Honor.

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1 STATE OF NEVADA )  
2 ) ss.  
3 COUNTY OF WASHOE )

4 I, CHRISTY Y. JOYCE, Nevada Certified Court  
5 Reporter Number 625, do hereby certify:

6 That I was present in the District Court of  
7 Carson Township, in and for the State of Nevada, on Tuesday,  
8 the 6th day of April, 2021, for the purposes of reporting in  
9 verbatim stenotype notes the within-entitled hearing;

10 That the foregoing transcript, consisting of  
11 pages 1 through 152, is a full, true, and correct transcript  
12 of said hearing.

13  
14 Dated at Reno, Nevada, this 19th day of  
15 November, 2021.

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CHRISTY Y. JOYCE, CCR #625

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CASE NO. 20-CR-00121 1B

DEPT. NO. 1

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

BEFORE THE HONORABLE DISTRICT COURT JUDGE, TODD RUSSELL

THE STATE OF NEVADA,

Plaintiff,

vs.

DAVID EDWARD ELLISTON,

Defendant.

TRANSCRIPT OF PROCEEDINGS

VOLUME 2

TRIAL

WEDNESDAY, APRIL 7, 2021

Reported By:

Kathy Jackson CSR  
Nevada CCR #402  
California CCR #10465

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APPEARANCES:

For the State:

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Deputy District Attorney  
Carson City, Nevada

SARAH WHITE, ESQ,  
Deputy District Attorney  
Carson City, Nevada

For the Defendant:

WALTER FEY, ESQ.  
Attorney at Law  
Carson City, Nevada

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INDEX OF WITNESSES

NAME	PAGE
DEPUTY JEFF PULLEN	
Direct Examination by Ms. Brantingham	164
Cross-Examination by Mr. Fey	178
Redirect Examination by Ms. Brantingham	185
Recross-Examination by Mr. Fey	187
DEPUTY DANIEL HENNEBERGER	
Direct Examination by Ms. Brantingham	201
Voir Dire Examination by Mr. Fey	226
Continued Direct Examination by Ms. Brantingham	229
Cross-Examination by Mr. Fey	240
Redirect Examination by Ms. Brantingham	259
Recross-Examination by Mr. Fey	263, 270



1 WEDNESDAY, APRIL 7, 2021, CARSON CITY, NEVADA

2 -oOo-

3 THE COURT: We're back on the record in respect  
4 to Case Number 20CR00121 1B. Is the State ready?

5 MS. WHITE: Yes, Your Honor.

6 THE COURT: Is the defense?

7 MR. FEY: And the defense is ready as well, Your  
8 Honor.

9 THE COURT: Thank you. Again, I raised a few  
10 issues at the end of the day yesterday. Again, I think it's  
11 important that we go -- I just want to go back through a  
12 couple of things in my mind. I did a little research in  
13 respect to that. One of the researches I did is in regards  
14 to the chain of custody in respect to that.

15 Basically the standard rule of the chain of  
16 custody of the evidence must be established with sufficient  
17 completeness to render it improbable that the original item  
18 has been exchanged with another that have been contaminated  
19 or tampered with. So I think that generally I don't think  
20 that's kind of improbable in this case. Again, but I would  
21 like to make sure we have the testimony as you've indicated  
22 from which detective or what?

23 MS. BRANTINGHAM: It will be -- it will be both  
24 Deputy Henneberger and Deputy Hadlock to some degree since

1 both of them found and recovered certain pieces of evidence.  
2 You already have Detective Bindley's testimony about the  
3 firearm. Deputy Henneberger will be covering primarily the  
4 methamphetamine in the box and the scale and those things in  
5 the passenger side, along with the cash which, of course, we  
6 don't actually have in evidence. And then Deputy Hadlock  
7 will cover the metal tin and some of those things.

8 So but both witnesses are prepared to talk about  
9 chain of custody and how they preserved the evidence at the  
10 scene and then later booked it into evidence.

11 THE COURT: Okay. So, again, I think that we  
12 need that testimony to kind of figure out where we go in  
13 respect to this matter. So I don't think argument is  
14 appropriate at this time until we get that evidence and play.

15 Again -- and, again, I think additionally I think  
16 the other issue kind of was in respect to Deputy Granata in  
17 regards to her transporting it and everything else and it's  
18 highly improbable that did something in that short period of  
19 time or whatever. So, again, I did look at the law on that,  
20 but I think we need to clarify that and make sure the record  
21 is clear in respect to that.

22 Additionally, the issue in regards to the stop, I  
23 want to make sure that we have some additional testimony in  
24 regards to the stop. In regards to my understanding

1 yesterday at the end of the day somebody else also saw the  
2 violation as a result of that and then there was the order  
3 given to effectuate the traffic stop; is that correct?

4 MS. WHITE: That's correct, Your Honor. And  
5 Deputy Hadlock today is prepared to talk about the stop and  
6 his observations and what he communicated to Deputy Garanata  
7 about the stop.

8 I would ask that we could put him on the stand  
9 and ask him questions specific to the stop outside the  
10 presence of the jury, just to -- just to avoid any issues  
11 that might unfairly prejudice the State since the jury, of  
12 course, isn't required to determine whether or not the stop  
13 specifically in and of itself is appropriate but that's an  
14 issue for the Court, so as not to confuse the jury.

15 THE COURT: I don't have a problem with that.

16 Mr. Fey, any problem with that?

17 MR. FEY: Pardon me, Your Honor?

18 THE COURT: Any problem with --

19 MR. FEY: Oh, no, outside the presence of the  
20 jury I think it's appropriate in this particular case. It's  
21 an issue of law.

22 Good morning.

23 THE COURT: I went back and reread the order in  
24 regards to the motion to suppress. I went back and read my

1 order and everything else. I think it's correct in light of  
2 what I've heard so far, but I think it's better that we  
3 substantiate some things and make sure the record is clear in  
4 case there's an issue later on in respect to the matter.

5 Also in respect to the firearm, I think it was  
6 clear that Detective Bindley verified that was the weapon.  
7 He indicated that was the weapon found. I think there's just  
8 some inconsistency in regards to box being marked. I think  
9 Mr. Fey clearly indicated it was a nine-millimeter based upon  
10 his expertise with firearms. And as a result of that I think  
11 that Detective Bindley took care of that issue with respect  
12 to that as well. We just need to clear it up with whoever  
13 put it in that box and labeled it, and I would appreciate if  
14 you do that as well.

15 Any other issues before we start this morning,  
16 Ms. White?

17 MS. WHITE: No, Your Honor.

18 THE COURT: Mr. Fey?

19 MR. FEY: Nothing, Your Honor.

20 THE COURT: Okay. Again, we'll start right at  
21 8:30. And, again, we'll give you a short break before we  
22 start in regards to that.

23 Different court reporter this morning.

24 (Whereupon, a brief recess was taken.)

1 THE COURT: We're back in on the record and  
2 outside the presence of the jury in Case Number 20CR00121 1B.  
3 Counsel, are you ready to proceed?  
4 MS. WHITE: Yes, Your Honor.  
5 THE COURT: Mr. Fey?  
6 MR. FEY: Yes, Your Honor.  
7 THE COURT: We were waiting for all 14 jurors to  
8 get here. So they are a few minutes late. Go ahead and  
9 bring them in.  
10 Counsel, stipulate to the presence of the jurors?  
11 MS. WHITE: Yes, Your Honor.  
12 MR. FEY: Yes, Your Honor.  
13 THE COURT: Thank you. Please be seated.  
14 Does the State wish to call their next witness,  
15 please.  
16 MS. BRANTINGHAM: The State calls Deputy Jeff  
17 Pullen.  
18 THE COURT: Sir, please come forward. Stop right  
19 there and please raise your right hand and be sworn.  
20  
21 DEPUTY JEFF PULLEN,  
22 called as a witness on behalf of the  
23 State having been first duly sworn,  
24 was examined and testified as follows:

1 THE COURT: Please take the witness stand. State  
2 your full name, and spell your last name. And you can remove  
3 the mask if it helps you.

4 THE WITNESS: Jeff Pullen, P-u-l-l-e-n.

5 THE COURT: Your witness, counsel.

6 MS. BRANTINGHAM: Thank you.

7 DIRECT EXAMINATION

8 BY MS. BRANTINGHAM:

9 Q. Deputy Pullen, where are you currently employed?

10 A. Carson City Sheriff's Office.

11 Q. What do you do for the sheriff's office?

12 A. I'm currently assigned to patrol, a canine  
13 handler.

14 Q. Okay. And how long have you been with the  
15 sheriff's office?

16 A. 19 years.

17 Q. Before coming to the Carson City Sheriff's Office  
18 did you have other law enforcement experience?

19 A. I worked for El Dorado County Sheriff's Office  
20 for three years and Nevada Highway Patrol for three years.

21 Q. Okay. So 25, 26 years law enforcement experience  
22 in total?

23 A. Does military count?

24 Q. What did you do for the military?

1 A. Military police for five years.

2 Q. How long did you do that?

3 A. Five years also.

4 Q. Okay. So you're going on 30, 31 years of law  
5 enforcement experience in total?

6 A. Yes.

7 Q. Okay. And what sort of training did you have to  
8 go through to become a peace officer?

9 A. I went to the California POST and received  
10 ongoing training in my career with El Dorado County Sheriff's  
11 Office. And then I went through Nevada POST and then NHP  
12 specifics and continually -- continuing education provided  
13 through the sheriff's office every year.

14 Q. Okay. When you say POST is that police academy?

15 A. It is.

16 Q. All right. How long were your two academies?

17 A. I think 800 hours for Nevada POST and 600 for  
18 California POST.

19 Q. Okay. And you said you do continuing education  
20 on a frequent basis?

21 A. Correct.

22 Q. In your time with the sheriff's office what other  
23 assignments have you held?

24 A. On the gang unit, the special enforcement team

1 and canine for the last 14 years.

2 Q. So let's talk about -- let's talk about being a  
3 canine handler. You said you've been a canine handler for  
4 14 years.

5 A. Correct.

6 Q. You have a partner with you today. Who is your  
7 partner today?

8 A. Blue.

9 Q. And besides Blue have you had other canine  
10 partners?

11 A. This is my third dog.

12 Q. Who were your first two dogs?

13 A. Troy and Rex.

14 Q. Was Troy your first dog?

15 A. He was.

16 Q. And when you got Troy you became a canine  
17 handler, what sort of training did you have to go through to  
18 become a canine handler?

19 A. With him I attended an eight-week in-house school  
20 from Pacific Coast Canine which included it was all narcotic  
21 work only with that dog.

22 Q. What does that mean, narcotic work?

23 A. It's sniffing for illegal drugs.

24 Q. Okay. And who was your trainer for that course?



1           A.    It was Ken Pavolick.

2           Q.    Is he well respected within the canine community  
3 or was he at that time?

4           A.    I guess you could say that.

5           Q.    After the eight-week course then were you and  
6 your partner Troy certified?

7           A.    That was an 80-hour course.

8           Q.    80-hour course?

9           A.    Not eight-hour. We were through California POST.

10          Q.    Okay. And what does certification mean?

11          A.    It's just a test to see that the dog knows odor  
12 and that you're able to read your dog to see if your dog  
13 knows odor.

14          Q.    How long did you work with Troy?

15          A.    Five years.

16          Q.    When Troy retired is when you got Rex?

17          A.    Correct.

18          Q.    And were you certified with Rex?

19          A.    I was.

20          Q.    And what was that process?

21          A.    That was an eight-week school at Vohne Kennels in  
22 Indiana where we work with narcotics, patrol and trafficking,  
23 specifically with Rex the total course.

24          Q.    Okay. And at the end of that course is there

1 some sort of certification test, something like that?

2 A. We did a National Police Association drug  
3 recognition test to make sure the dog could read odor and we  
4 could watch the dog and know his behavior change on the  
5 different odors.

6 Q. And did you pass that test?

7 A. We did.

8 Q. How long were you and Rex working together?

9 A. Seven years.

10 Q. Okay. And when Rex retired did you get Blue?

11 A. I did.

12 Q. Now where -- where did you get Blue?

13 A. At Vohne Kennels in California.

14 Q. When you went to Vohne Kennels did you select  
15 Blue as your partner?

16 A. Not right away. I was going through a trainer  
17 school.

18 Q. Okay.

19 A. And I had worked several dogs, 19 dogs the whole  
20 course, and he was one of the first dogs I worked, and with  
21 his behavior and his work ethic I picked him out of the other  
22 dogs.

23 Q. Now you said you were going through a trainer  
24 course. How is that different from a handler course?

1           A.    That teaches me to work the dogs, train the dogs  
2   define odor, train the dogs for patrol apprehension work and  
3   for tracking.

4           Q.    And are you now the trainer for the canine unit  
5   in the Carson City Sheriff's Office?

6           A.    I am.

7           Q.    How long have you held that position?

8           A.    Since May of 2018.

9           Q.    When you picked Blue was he imprinted on any  
10   particular odors or did you imprint him?

11          A.    I did the imprinting on him from the beginning.

12          Q.    And can you tell us what that means.

13          A.    It's just a game of playing with a ball and  
14   getting him used to sticking his nose in a box with the odors  
15   in it. He's only trained on three odors, meth, heroin and  
16   cocaine. Marijuana was purposely left out with the laws in  
17   Nevada. So those three odors, we were done with him in a  
18   week where he was finding the odors by himself.

19          Q.    Okay. Is the goal of imprinting the dog to teach  
20   him to recognize those odors and to tell you he's recognized  
21   them?

22          A.    It's for his him to recognize them, correct.

23          Q.    Do you then go through a separate process where  
24   you train him to alert you that he has smelled one of those

1 odors?

2 A. Correct.

3 Q. So what does that process look like?

4 A. Basically it's just a sit. You can read the  
5 dog's behavior up to his breathing change. His tail wags  
6 faster when he gets an odor and then he'll sit which alerts  
7 me that he's found one of the three odors he's trained on and  
8 certified on.

9 Q. Okay. Now after you selected Blue did you go  
10 through the same certification process that we talked about  
11 with Rex?

12 A. No.

13 Q. Okay. It was a different process?

14 A. We went through Nevada POST.

15 Q. Okay.

16 A. Nevada POST certification for dogs, I believe it  
17 was four years ago, five years ago. He was trained Nevada  
18 POST standards.

19 Q. And what does that certification process look  
20 like?

21 A. It's the same thing. It's building searches,  
22 vehicle searches, open area search. If you're false you're  
23 done with the test. You have to come back in a week and test  
24 again. You can miss one but you can't false.

1 Q. Okay. So what is a false?

2 A. It's alerting to an area where there is no odor  
3 of narcotics.

4 Q. Okay. So if I'm understanding correctly then you  
5 and Blue have to perform sniffs in open air buildings and  
6 vehicles?

7 A. Correct.

8 Q. He has to alert where there is odor, not alert  
9 where there isn't?

10 A. Correct.

11 Q. Okay. You said he can -- he can miss one,  
12 meaning he cannot alert to one location where there is a  
13 controlled substance?

14 A. Correct.

15 Q. But he can't alert where there's no controlled  
16 substance?

17 A. Correct.

18 Q. Okay. When were you and Blue first certified?

19 A. In August of 2018.

20 Q. When you went through the certification testing  
21 process with him did he alert where he was supposed to and  
22 not have any falses?

23 A. Correct, the first time.

24 Q. How often do you -- are you required to

1 recertify?

2 A. Once a year.

3 Q. And what does that recertification process look  
4 like?

5 A. It's the same thing, vehicles, buildings and  
6 outdoor area search.

7 Q. Does that certification allow you and Blue to  
8 work in the field?

9 A. It does.

10 Q. Does it -- does it essentially judge his  
11 reliability?

12 A. In a controlled environment, yes.

13 Q. Is Blue reliable as a canine?

14 A. In his training he's 98.98 percent reliable.

15 Q. What's the -- what's the kind of accepted  
16 standard across the country for reliability?

17 A. It's 50 percent reliability in a controlled  
18 training environment.

19 Q. So he's almost doubled?

20 A. Correct.

21 Q. What's necessary to work. Once you're certified  
22 then can you and Blue perform sniffs in the field?

23 A. We can.

24 Q. What is a sniff?

1           A.    A sniff is just a brief walking the dog around a  
2 vehicle, walking for change of behavior and final response to  
3 an odor if he finds one.

4           Q.    Do you have a particular way that you perform  
5 sniffs on vehicles?

6           A.    I start the same way every time. I start at the  
7 front of the vehicle, work in a clockwise direction. That  
8 way I know that he's sniffing, and I can watch him and just  
9 it's a routine that we get in to knowing that he's going to  
10 search a vehicle.

11          Q.    Okay. Does that help him understand what he's  
12 supposed to do?

13          A.    It does. I think any other way we kind of throw  
14 him off a little bit because he's trained a certain way.

15          Q.    Okay. And you said you start at the front of the  
16 vehicle. How -- can you just walk us through kind of a  
17 routine sniff of a vehicle. What do you do?

18          A.    So it's counterclockwise. We start at the front.  
19 I'll give him his command and they call it a booger flick but  
20 to get him noticing where I want him to search. He'll start  
21 that search, go nose level and work his way up to the  
22 different levels of the vehicle and work his way around the  
23 vehicle back to where we started at.

24          Q.    Okay. And you said if he smells an odor he

1 changes behavior?

2 A. His breathing will change and get deeper and his  
3 tail will start wagging faster and for that final response it  
4 will be a sit.

5 Q. Okay. So let's say that he sits at the driver  
6 side door just after you started your sniff. Do you continue  
7 to go around the vehicle or do you stop at that point?

8 A. I'll continue to search the rest of the vehicle.

9 Q. Why do you do that?

10 A. To make sure it's not an anomaly that he just got  
11 something else but to make sure I get another response to the  
12 letting me know there's something actually there.

13 Q. Okay. So let's talk about, I want to take you  
14 now to the afternoon of May 30th of last year, 2020. Were  
15 you employed by the sheriff's office and working with your  
16 partner Blue on that day?

17 A. I was.

18 Q. Were you asked to assist the SET team in an  
19 investigation they had going on?

20 A. I was.

21 Q. Okay. Were you asked to sniff a vehicle?

22 A. I was.

23 Q. Where was the location that you were asked about?

24 A. It was at I believe 2142 South Curry Street,



1 Vital Signs parking lot.

2 Q. Is that here in Carson City?

3 A. It is.

4 Q. Did you go to that location?

5 A. I did.

6 Q. When you got to that location who was there?

7 A. There was Deputy Granata. Deputy Bindley, Deputy  
8 Hadlock, and a short time later Deputy Henneberger had  
9 arrived.

10 Q. Is there a protocol you follow when you show up  
11 to a scene and you're going to perform a dog sniff to make  
12 sure everything is set up for you?

13 A. I want to make sure that no stop is being delayed  
14 or ticket being written. I was asked to do a quick exterior  
15 sniff of the vehicle which I did, and.

16 Q. When you do an exterior sniff of a vehicle are  
17 the occupants inside or outside the vehicle?

18 A. They are outside the vehicle usually for officer  
19 safety.

20 Q. When you did the sniff in this vehicle, actually  
21 when you got to the scene was the driver already out?

22 A. The driver was talking to Deputy Bindley.

23 Q. The person that you identified as the driver, do  
24 you see him in court today?

1 A. I really did not get a good look at him.

2 Q. Okay. So you weren't worried about that in your  
3 approach?

4 A. I was focused on the dog, correct.

5 Q. Okay. Did you get Blue out of your patrol car?

6 A. I did.

7 Q. Okay. What did you do once you got him out of  
8 the patrol car?

9 A. I walked him up to the vehicle and we started his  
10 sniff of the vehicle.

11 Q. And how did he perform?

12 A. He gave two alerts to odor of narcotics in the  
13 vehicle.

14 Q. Can you tell us about the sniff and where he  
15 alerted?

16 A. The first one was at the driver door. He sniffed  
17 the bottom of the seam up to the open window, and his  
18 breathing changed and he sat. And then I praised him a  
19 little bit to get him moving. Again, we moved again and he  
20 alerted again to the rear passenger door seam and that was  
21 the alerts to the vehicle.

22 Q. So what did those alerts tell you?

23 A. That he had sniffed one of the three narcotic  
24 odors he's trained and certified on.

1 Q. Okay. So that would be methamphetamine, heroin  
2 or cocaine?

3 A. Correct.

4 Q. Now can you tell which odor he was alerting to?

5 A. No.

6 Q. Okay. So --

7 A. He doesn't lift a right leg for one.

8 Q. It's just one of the three?

9 A. Just a sit.

10 Q. Once you received those alerts and knew that he  
11 had smelled one of the odors he's trained on what did you do  
12 with that information?

13 A. Deputy Hadlock and Henneberger, I work with them  
14 enough where they know that once Blue sits that's an alert on  
15 a vehicle. And I gave them the okay to, that he alerted on  
16 the vehicle, and they searched the vehicle and I put Blue  
17 away.

18 Q. Okay. So you let the officers know?

19 A. There was an alert on the vehicle.

20 Q. There was an alert, and then they proceeded to  
21 sniff?

22 A. Correct.

23 Q. Or search.

24 Pass the witness.

1 THE COURT: Cross?

2 MR. FEY: Thank you.

3 CROSS-EXAMINATION

4 BY MR. FEY:

5 Q. Deputy Pullen, you were told before you were  
6 dispatched to the address down on South Curry Street on  
7 May 30th of last year, you were informed by one of the SET  
8 team members that to be standing by in case they made a  
9 traffic stop of a suspect vehicle, right?

10 A. Correct.

11 Q. All right. So on that particular day who did you  
12 speak with and told you to be standing by?

13 A. I believe it was Deputy Bindley because he left  
14 his dog at home. I don't know for sure if it was Bindley but  
15 it was one of the deputies.

16 Q. Okay. So where were you waiting before being  
17 dispatched out to that place?

18 A. I really wasn't waiting. I was still assigned to  
19 work a beat within Carson City. I was in the area of the  
20 Sportsman's Warehouse.

21 Q. Okay. On this particular day -- strike that.

22 You indicated your training, and I received  
23 information from a representative that I received information  
24 from the district attorney's office as part of their

1 notification of intent to call you as an expert witness in  
2 this case, all right. In that -- my understanding from your  
3 direct testimony and from the information I received is that  
4 you have two roles. You are both a trainer and you also  
5 certify dogs, do you not?

6 A. I do not certify dogs, no.

7 Q. Okay.

8 A. That's a conflict of interest for me to certify  
9 my own dogs.

10 Q. I'm sorry?

11 A. It's a conflict of interest for me to certify my  
12 own dogs.

13 Q. Okay. So Blue was not certified by you?

14 A. No. Outside agency.

15 Q. Okay. Via outside agency. What agency is that?

16 A. Washoe County Sheriff's Office.

17 Q. Okay. Does --

18 A. And Douglas County Sheriff's Office.

19 Q. I'm sorry. I didn't mean to speak over your  
20 words. I apologize. So Washoe County Sheriff's Office, you  
21 make an appointment. They come down and they run you and  
22 Blue as a team through what you do, right?

23 A. We went up to Washoe County.

24 Q. Okay.

1 A. And did our certification at their facility.

2 Q. So they run you but together. I mean, for  
3 example Blue would not be certified to go with Deputy  
4 Bindley, right?

5 A. Correct.

6 Q. All right. You and your dog are for the mark of  
7 a better word made it together as a team, correct?

8 A. Correct.

9 Q. All right. And is that team the two of you that  
10 certify -- that are certified together. If you had -- if you  
11 had a sick day you couldn't send him up with Bindley and have  
12 Bindley do the certification on your dog.

13 A. Correct.

14 Q. All right. So two of you together being  
15 certified as a team is done by an outside agency. Now when  
16 we have that certification you said it lasts for one year.  
17 The first time that Blue was certified in August of 2018,  
18 yes?

19 A. Correct.

20 Q. All right. And you were present at that and Blue  
21 was present at that?

22 A. Yes.

23 Q. In 2019 you were recertified; is that right?

24 A. Twice in 2019 because of medical issues I was out

1 for more than 30 days so I recertified him again.

2 Q. Okay. So then once in 2020 as well?

3 A. Correct.

4 Q. All right.

5 A. Been certified three times in two years.

6 Q. Okay. The documentation that would indicate that  
7 Blue and you have been certified as a team, do you have that  
8 with you, sir?

9 A. I do not.

10 Q. Is there a reason that you didn't bring it to  
11 court?

12 A. I didn't know it was subpoenaed or not. I wasn't  
13 asked to bring it.

14 Q. Okay. So we have merely your word to say that,  
15 yes, he was certified, you didn't even do the certification,  
16 did you?

17 A. I didn't conduct the certification, no, but I did  
18 certify.

19 Q. You were certified with him, right?

20 A. Correct.

21 Q. But you didn't grade and determine the  
22 certification, correct?

23 A. I did not, no.

24 Q. All right. So in the documents that have been

1 provided, when you had the dog Rex you provided certification  
2 records of you and Rex together, correct?

3 A. I didn't provide any certification letters.

4 Q. I'm sorry?

5 A. I didn't provide any.

6 Q. Okay. So you didn't provide any documentation of  
7 that?

8 A. I did not, no.

9 Q. Okay. But you were certified with Rex as a team?

10 A. Correct.

11 Q. All right. And as -- with Troy as a team?

12 A. Correct.

13 Q. All right. But, again, I have no way of looking  
14 at those documents because they are not here in court, are  
15 they?

16 A. I have not --

17 Q. As far as you know?

18 A. Did you ask for them? I don't know.

19 Q. Okay.

20 A. If you asked for them I would have brought them.

21 Q. Okay. You would agree with me that when a dog  
22 sits down he's just sitting down, correct?

23 A. It depends on the situation.

24 Q. When a dog sits down absent some kind of



1 expert -- some kind of person interpreting what the dog is  
2 doing he is just there. For all of the rest of the world  
3 that dog is just sitting down, right?

4 A. What context? When he's searching the vehicle?

5 Q. Let me --

6 A. When I'm asking him to sit right here. I don't  
7 know what you're getting at.

8 Q. Okay. I apologize. When a dog is asked to, you  
9 have the dog sniff the car in a particular case, all right.  
10 And in this particular case you indicated that he sat down  
11 and had two particular occasions, right?

12 A. Correct, after a change of behavior.

13 Q. After what?

14 A. A change of behavior.

15 Q. Okay. And, in fact, he sat down at the front of  
16 the vehicle as well too, didn't he, right by the engine bank?

17 A. Correct.

18 Q. Okay. Why is that not a -- why is that not an  
19 alert?

20 A. I didn't direct him to search the vehicle at that  
21 time. He had done it all on his own.

22 Q. I'm talking about after he alerted. You said he  
23 alerted two times, once at the pass at the driver side door,  
24 correct? You say he alerted. He sat down.

1 A. Correct.

2 Q. Two times on that occasion, right. Then the  
3 second time you said he sat down again at the rear passenger  
4 door?

5 A. So one time at the driver door and one time at  
6 the rear passenger door.

7 Q. And then he, following that he came to the front  
8 of the vehicle with you. And then he sat down at the front  
9 of the vehicle by the right front or the left front tire;  
10 isn't that right?

11 A. Right by the door.

12 Q. I'm sorry?

13 A. It was close to the door where he alerted the  
14 first time.

15 Q. Right at the front of the vehicle, wasn't it?

16 A. Correct.

17 Q. Why is that not an alert?

18 A. Because he had already alerted on the vehicle and  
19 I ended the search.

20 Q. Okay.

21 A. He did it all on his own. He wasn't asked to  
22 perform the search anymore.

23 Q. The dog goes around, and the only person that  
24 really can interpret with any amount of reliability what the

1 dog is thinking is you; isn't that true?

2 A. Or another handler or previous handler.

3 Q. Okay. Who had been -- made it as a team with the  
4 dog, correct?

5 A. I can watch other dogs in our department search  
6 and I know when they are onto odor. I've been doing it long  
7 enough. Deputy Bindley has been a handler. He would have  
8 noticed it. Everybody knows in our department other dogs,  
9 all other dogs change of behaviors are.

10 Q. All right. Dogs really are pragmatic, aren't  
11 they? Others react differently than Blue, correct?

12 A. Correct.

13 Q. I didn't mean to alert him by saying his name.  
14 My question though is this without some kind of indication of  
15 how he was certified the past three times, in fact we don't  
16 have any information in this court to indicate that you and  
17 he have technically been certified other than your word?

18 A. Correct, other than my word.

19 Q. All right. Thank you. Nothing further.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MS. BRANTINGHAM:

23 Q. Deputy Pullen, are you a law enforcement officer?

24 A. I am.

1 Q. Sworn to uphold the laws in the State of Nevada  
2 and the Constitution of the United States?

3 A. I am.

4 Q. Did you take an oath to tell the truth this  
5 morning?

6 A. I did.

7 Q. Did you tell the truth about his certification?

8 A. I did.

9 Q. Now you're the trainer for the department as  
10 well, right?

11 A. Correct.

12 Q. If your dog was not performing properly in a  
13 training environment what would you do?

14 A. He would be pulled and remediated.

15 Q. Is that true of all of the canines in the Carson  
16 City Sheriff's Office?

17 A. Correct.

18 Q. Is your certification current?

19 A. It is.

20 Q. Has it ever lapsed?

21 A. No.

22 Q. Is there any reason to believe that Blue did  
23 anything other than perform properly?

24 A. No.

1 MS. BRANTINGHAM: I have nothing further.

2 THE COURT: Recross?

3 RECROSS-EXAMINATION

4 BY MR. FEY:

5 Q. So on his first certification on heroin, was it  
6 high or low, do you remember?

7 A. I don't know.

8 Q. You don't know?

9 A. No.

10 Q. How about on cocaine, was it high or low?

11 A. I don't have those records in front of me to see.  
12 I don't know.

13 Q. Okay. What about his second certification, sir?

14 A. You're asking me to guess. I'm not going to  
15 guess.

16 Q. So it's fair to say --

17 A. Usually during testing one is high and one is  
18 low.

19 Q. I'm sorry?

20 A. Usually during testing one is high and one is  
21 low. So which one was low and high I don't know.

22 Q. Okay. They do test for different levels of each  
23 controlled substance, correct?

24 A. I would assume.

1 Q. On the certification?

2 A. They do one high and one low.

3 Q. Okay. So when you had the Washoe County team do  
4 the certification, did they do that with one high sample and  
5 one low sample for each of the three tests, the three  
6 substances?

7 A. I would assume. That's part of the  
8 certification.

9 Q. Okay. Are those documents available to us?

10 A. If they were subpoenaed, yes.

11 Q. I didn't subpoena them, no.

12 A. If they were subpoenaed I could get them.

13 Q. Okay. So you won't get them without a subpoena;  
14 is that right?

15 A. You have to ask my attorney.

16 Q. I was asking you, sir.

17 A. You have to ask my attorney though.

18 Q. Okay.

19 A. That's a legal question I'm not going to answer  
20 for you.

21 Q. And on Blue's third certification what levels of  
22 controlled substances were tested high or low, medium?

23 A. The heights of it where each height was at, is  
24 that what you're trying to get?

1 Q. I'm asking you, they vary, the amounts of the  
2 controlled substance to determine whether an animal can  
3 detect it, correct?

4 A. Oh, you're going for the amounts not how high and  
5 low it is. The amount of the narcotics used, correct?

6 Q. Right.

7 A. Okay. They use anywhere from a gram up to  
8 eight -- 12 grams.

9 Q. Right. And each of those tests, evidently he was  
10 certified, but the person who certified him is not here  
11 today?

12 A. Correct.

13 Q. And that certification is used to make sure that  
14 when you go out in the field that your conclusions after you  
15 see a dog go around the vehicle that your conclusions are  
16 more than just say that dog is -- my dog sat down. You use  
17 the term alert which indicates something to you, correct?

18 A. Correct.

19 Q. And that term alert means that you think that  
20 your dog has found a controlled substance on which he has  
21 been trained?

22 A. I believe, yes, sniff the odor of the narcotics.

23 Q. Right. You believe that he has detected the odor  
24 of narcotics on which he had been trained?

1 A. Correct.

2 Q. And that's your belief; is that right?

3 A. That's what my certification and my training  
4 tells me, correct.

5 Q. And that's your opinion?

6 A. Well, certification shows me that he is usually  
7 correct in finding the odors.

8 Q. Right. And yet that certification is not  
9 available to us.

10 A. I don't have it with me, no.

11 Q. Okay.

12 THE COURT: Thank you. You can step down.  
13 Okay. Detective Pullen be excused?

14 MR. FEY: No objection.

15 MS. BRANTINGHAM: He can be excused.

16 THE COURT: Thank you. How about Blue?

17 MS. BRANTINGHAM: We'll keep him. He's kind of  
18 cute.

19 (Witness excused.)

20 THE COURT: Does the State want to call its next  
21 witness.

22 MR. FEY: Your Honor, may I request a short  
23 hearing outside the presence of the jury.

24 THE COURT: That's fine. We'll go ahead and take



1 a short break at this time.

2 Ladies and gentlemen, during this break you're  
3 admonished not to discuss or communicate with anyone,  
4 including fellow jurors in any way regarding the case by  
5 voice, phone, e-mail, text internet or other means of  
6 communication or social media, read, watch or listen to any  
7 news or media account commentary about the case.

8 Do not do any research such as consult  
9 dictionaries, using the internet or using reference materials  
10 or make any investigation or test the theory of the case,  
11 recreate any aspect of the case or in any way investigate or  
12 learn about the case on your own, form or express any opinion  
13 regarding the case until it's submitted to you. We'll just  
14 take a short break. Thank you.

15 THE COURT: The record will reflect we're outside  
16 the presence of the jury.

17 MR. FEY: Thank you, Your Honor. Your Honor,  
18 following Deputy Pullen's testimony -- well, first let me  
19 preface this. I was provided with documentation from the  
20 State. It was -- notably it was notification, a notice of  
21 expert witnesses for the prosecution's case in chief. And  
22 Mr. Jeff J. Pullen of the Carson City Sheriff's Office was  
23 named as an expert.

24 In accordance with that, they provided me with

1 documentation regarding Deputy Pullen's previous training  
2 with two other dogs but not one piece of paper regarding any  
3 kind of documentation with Blue.

4 Now while currently as I look at this I would  
5 say, okay, but these dogs that Deputy Pullen had previously  
6 had, they really -- you know, they were certified. There's  
7 documentation here so that I can make a determination, so the  
8 Court can make a determination as to whether or not Deputy  
9 Pullen's testimony in actual fact is based -- is based in  
10 fact.

11 We have no documentation regarding Deputy  
12 Pullen's testimony with -- with respect to any kind of  
13 certification of Rex, excuse me, of Blue other than Deputy  
14 Pullen's statement that oh, yes, he was certified. But I  
15 don't know what kind of gram, what the weights were. I  
16 didn't do the certification, someone else did.

17 And the reason I'm doing this, Your Honor, is  
18 that I believe in accordance with NRS 50.305, experts can  
19 testify as to opinions. Now, Deputy Pullen's statements are  
20 opinions as to what his -- his dog is doing and hence the  
21 reason for my questioning to the whole world. That's just a  
22 dog sitting down. But to Deputy Pullen that's a dog who  
23 detected the smell of a controlled substance. They are made  
24 it as a team. I don't know if that's -- it's a word, made

1 it. I'm just trying to designate that they are together as a  
2 team. And Deputy Pullen candidly said that he wouldn't be  
3 doing this with Ivo, he's not certified with Ivo. He's only  
4 certified with Blue and only on the controlled substances  
5 that he did.

6 Now the reason for this, Your Honor, is that  
7 there are, I'm entitled after he testified to -- to have him  
8 disclose underlying facts or data on cross-examination. He  
9 didn't do it. He said you can get a subpoena for that.  
10 That's not my responsibility, Your Honor. He is an expert  
11 designated by the State, and yet there's no documentation  
12 regarding him and Blue working together as a team. I hope  
13 I'm not talking too quickly, all right.

14 As authority for that, I cite the case of  
15 Singleton versus State, 90 Nevada 216. And Blake versus  
16 State, 121 Nevada at 779. The reason I'm making a point of  
17 this, Your Honor, is as follows. The defendant was seized by  
18 law enforcement in this state. The first seizure came when  
19 he was directed to stop his vehicle. When Deputy Granata,  
20 blue and red lights to stop him, he pulled over into the  
21 parking lot and was forced to stop. That's what he did. She  
22 came up to the window, got his identity card from California.  
23 And then after a period of time directed him to step out of  
24 the vehicle. He did that. That's the second seizure. The

1 third seizure is when law enforcement entered that vehicle  
2 and found punitive controlled substances.

3 The dog search is the basis for the -- the dog  
4 sniff is the basis for the drug search and that is a seizure.  
5 It's very clear that is a search and the only way it  
6 goes into any kind of legality if it creates probable cause.

7 I submit, Your Honor, without proof that this  
8 deputy, and it's his testimony, I asked him for data. I  
9 asked him for documents in which he based his opinion  
10 regarding Blue's conduct. Without those his comments do not  
11 serve to elevate the dog's conduct to probable cause because  
12 we have no yardstick determining the success of this dog  
13 other than the handler and he's not the one who certified  
14 him.

15 If that's the case, Your Honor, then I renew my  
16 motion to suppress, to exclude all of the evidence of any  
17 controlled substance in that vehicle and the evidence of the  
18 firearm because but for that dog search being interpreted as  
19 probable cause that search is illegal.

20 THE COURT: Ms. Brantingham?

21 MS. BRANTINGHAM: Your Honor, first of all,  
22 Mr. Fey could have subpoenaed any training records he wanted  
23 from the sheriff's office at any point in time during the  
24 course of this case. If he had any question about Deputy

1 Pullen's training or certification, Deputy Pullen is a well  
2 respected, well recognized canine handler and trainer within  
3 the sheriff's office. He's testified in this court numerous  
4 times. He's been doing this for 14 years. He took an oath  
5 this morning and testified he and his partner are certified.  
6 That is evidence. That is sufficient evidence from which he  
7 can be permitted to testify.

8 As to the alert on the vehicle in this case, and  
9 not just sufficient evidence, well beyond sufficiency, when  
10 the standard is 50 percent and his dog is 98.99 percent  
11 reliable, that's plenty of information on which to support  
12 Deputy Pullen's testimony.

13 Beyond that, his testimony isn't an opinion.  
14 It's a trained observation. Those are very different things.  
15 He's not offering an opinion. He's offering a trained  
16 observation based on 14 years worth of experience in the  
17 field and several years worth of experience actually handling  
18 this dog. He was able to differentiate between the two  
19 alerts given on the vehicle and the sit that was not an alert  
20 because it was not done in the context of a sniff, ordered  
21 sniff of the vehicle.

22 There is absolutely no basis to exclude his  
23 testimony. The fact that the training records weren't  
24 presented in court, he wasn't subpoenaed to bring them. He

1 did disclose the underlying data which is to say he was  
2 certified both in Washoe County and Douglas County when asked  
3 about it on cross-examination.

4 Disclosing data doesn't mean bringing documents.  
5 Disclosing -- a disclosure is a statement, if you will, which  
6 he did disclose when asked on cross-examination about Blue's  
7 certification he disclosed that Blue was certified in Washoe  
8 County as well as Douglas County. So that information was  
9 provided in the form of sworn testimony. If Mr. Fey wants to  
10 see the records he's welcome to subpoena them from the  
11 sheriff's office. He's welcome to subpoena them from the  
12 sheriff's at any point in time during this case.

13 I would submit to you that Deputy Pullen's  
14 testimony is nothing if not reliable and if there were any  
15 issues with the dogs he would be the first one to pull his  
16 dog out of service.

17 THE COURT: Why were the records for the other  
18 two dogs provided and the documents for Blue not provided?

19 MS. BRANTINGHAM: Well, what happened is that  
20 when we did the expert disclosure we provided the CV that we  
21 had on file for him. Those records were attached to the CV.  
22 I think it probably just didn't get updated when the  
23 disclosure was sent.

24 But, again, I mean, Mr. Fey could have followed

1 us and asked us about it if he had any questions as well.

2 THE COURT: Mr. Fey, any additional questions?

3 MR. FEY: Thank you, Your Honor. Your Honor,  
4 it's not my job to look at every single record. When an  
5 expert testifies on the witness stand I'm entitled to get the  
6 data which supports their opinion, and that's what this is.  
7 And what we have is data from, like I indicated, the previous  
8 dogs. I got two dogs, and there are all kinds of neat things  
9 that I wouldn't have an argument, Your Honor, about the  
10 certification of the two prior dogs, Rex and Troy, because we  
11 have a map of what they were trained on and how they were  
12 trained and who trained them, not trained, certified. We  
13 have names of individuals who evaluated and certified these  
14 dogs.

15 But when an individual testifies for opinion  
16 evidence which Deputy Pullen's testimony is, the statute says  
17 the expert may in any event be required to disclose the  
18 underlying facts or data on cross-examination. I can ask him  
19 for this data, and he doesn't have that data. His response  
20 was you can subpoena it, that if any reason to do that.

21 THE COURT: Well, again, the qualifications of an  
22 expert are governed by the Eldridge case in the State of  
23 Nevada in regards to that, basically is whether or not  
24 requirements have been met in respect to that.

1 I want to just take one quick second and look at  
2 Blake v. State.

3 THE COURT: I briefly looked at those two cases  
4 in respect to that, again, qualifications of an expert by the  
5 Eldridge case, basically I think if you go through what his  
6 testimony clearly indicated the training he went through, the  
7 training the dog went through, basically the certification  
8 process and the fact that it was certified, although I  
9 understand Mr. Fey's concern about the certification, I think  
10 the Court believes that it's been sufficiently qualified that  
11 he was basically qualified. The dog was qualified. That  
12 they were qualified as a team.

13 Additionally, I also believe that clearly I  
14 guess, Mr. Fey, if you wanted those documents you could have  
15 asked for them if it was a concern. But, again, I think that  
16 my guess is they are readily available in respect to that. I  
17 could I guess ask the district attorney's office to provide  
18 them to you and we can subject Mr. Pullen to recall if  
19 necessary after there's a review of those documentations in  
20 respect to that. I would like that done just to make sure  
21 the certification is done with respect to that. But the  
22 Court is satisfied that basically the requirements were met  
23 under Eldridge in respect to that, the qualifications of an  
24 expert witness.



1 I mean, I guess I could make an analysis, if we  
2 had a doctor in here and the doctor said I'm certified in the  
3 following five years, do we bring in the board of  
4 certification in order to bring in or ask for certifications  
5 to do that and everything? We don't. We basically rely on  
6 the testimony given in regards to certification of the  
7 process they have gone through in respect to those particular  
8 matters.

9 So as a result of that motion, to renew the  
10 motion to suppress is denied at this time in regards to the  
11 dog issue in regards to the dog in respect to that. I know  
12 there may be another issues raised at another time in respect  
13 to that.

14 So anything further?

15 MR. FEY: No, Your Honor.

16 THE COURT: Do counsel need a short break before  
17 we start? Sometimes people's coffee is going through them at  
18 this time. I would rather go through and take a short  
19 five-minute break and allow you to take care of any matters  
20 you need to before I bring the jury back in. Any thought on  
21 that? Are you fine? If you're fine we'll go ahead.

22 MS. WHITE: I'm actually okay.

23 MS. BRANTINGHAM: I'm okay.

24 MR. FEY: If we could have a brief.

1 THE DEFENDANT: I just have to use the restroom.

2 THE COURT: Okay. We'll wait for you to go real  
3 quick.

4 (Whereupon, a brief recess was taken.)

5 THE COURT: Counsel, stipulate to the presence of  
6 the jury?

7 MS. WHITE: Yes, Your Honor.

8 MR. FEY: Yes, Your Honor.

9 THE COURT: Does the State wish to call their  
10 next witness.

11 MS. BRANTINGHAM: The State calls Deputy Daniel  
12 Henneberger.

13 THE COURT: Sir, please come forward. Stop right  
14 there and raise your right hand to be sworn.

15  
16 DEPUTY DANIEL HENNEBERGER,  
17 called as a witness on behalf of the  
18 State having been first duly sworn,  
19 was examined and testified as follows:

20  
21 THE COURT: Please take the witness stand.  
22 Please state your name. Spell your last name, please. And  
23 you can remove the mask if you feel comfortable doing so.

24 THE WITNESS: All right. My name is Daniel

1 Henneberger, H-e-n-n-e-b-e-r-g-e-r.

2 THE COURT: Your witness, counsel.

3 MS. BRANTINGHAM: Thank you.

4 DIRECT EXAMINATION

5 BY MS. BRANTINGHAM:

6 Q. Deputy Henneberger, where are you currently  
7 employed?

8 A. Carson City Sheriff's Office.

9 Q. What do you do for the sheriff's office?

10 A. Right now I'm currently assigned as a school  
11 resource officer.

12 Q. Okay. What's a school resource officer?

13 A. I patrol the schools, all elementaries, high  
14 schools.

15 Q. Okay. And what sort of things do you do?

16 A. We are there for safety and to deter crime and to  
17 investigate criminal actions in the schools.

18 Q. Now being a school resource officer, are the  
19 schools in Carson City closed during the summer?

20 A. They are.

21 Q. And in 2020 were the schools closed, the physical  
22 buildings closed for a significant period of time?

23 A. They are. There is summer school, but at that  
24 time I was not working in the schools.

1 Q. When the schools are closed or otherwise not in  
2 session are you assigned to do different things within the  
3 sheriff's office?

4 A. Correct. We -- some of us have a choice. We can  
5 do special projects. We can work patrol. In this case I was  
6 assigned to the special enforcement team for the summer.

7 Q. All right. Now, let me ask you, how long have  
8 you been with the sheriff's office?

9 A. I've been employed since October 2015.

10 Q. Okay. So you are coming up then on about five  
11 and a half years?

12 A. Correct.

13 Q. In your five and a half years with the sheriff's  
14 office what other assignments have you held?

15 A. I've worked in the jail. I've worked patrol,  
16 special enforcement team and school resource officer.

17 Q. Did you go to the police academy?

18 A. I did, 2017 from approximately January to May,  
19 and then I graduated and received my POST Category 1 and 3  
20 certificates.

21 Q. What is a Category 1 certificate?

22 A. Category 1 allows you to be patrol certified and  
23 you're allowed to investigate further criminal activities.

24 Q. And what about Category 3, what is that

1 certification?

2 A. Category 3 is typically for corrections and jail.

3 Q. So you're certified to work both patrol functions  
4 and in a detention facility?

5 A. Correct. I also through training and hours I  
6 have my intermediate and advanced certificates. I also have  
7 a bachelor degree in criminal justice.

8 Q. Okay. What are intermediate and advanced  
9 certificates?

10 A. It's -- it's a part of POST Category 1 you have  
11 to meet a certain amount of hours. To get your advance in  
12 POST, depending on if you have a degree or not, a certain  
13 amount of hours will allow you to get those certificates  
14 based on training.

15 Q. Okay. Is that training hours or work hours or  
16 some combination of the two?

17 A. It's a combination of both.

18 Q. So you have enough hours then to acquire both  
19 your intermediate and advanced certificate?

20 A. Correct.

21 Q. All right. Do you have specialized training  
22 related to controlled substance investigations?

23 A. I do.

24 Q. What training do you have?

1           A.    As of now I would say I have approximately 80 to  
2   100 hours of narcotics training. Everything from inhouse  
3   training in the sheriff's office, field training, classes and  
4   that include courses like ARIDE, specialized narcotics to be  
5   able to identify, how to identify when somebody is on  
6   controlled substances and through the academy.

7           Q.    Okay. Does your training include training in  
8   recognition, visual recognition of suspected controlled  
9   substances?

10          A.    Yes.

11          Q.    In your five and a half years with the sheriff's  
12   office have you had opportunities to see methamphetamine?

13          A.    I have. I've investigated, I couldn't even give  
14   you the number, probably upwards of 100 or more of drug cases  
15   and have seen different types of narcotics, around probably  
16   more than that as well.

17          Q.    Okay. You said that includes methamphetamine.  
18   Does it include heroin as well?

19          A.    Yes.

20          Q.    All right. Are you trained in collection and  
21   preservation of evidence?

22          A.    We are. We have certain policies and procedures  
23   while collecting evidence and we abide by those rules. That  
24   way nothing gets misplaced.

1 Q. Now when you went to the academy did they cover  
2 collection and preservation of evidence there as well?

3 A. We do. Whoever teaches it, that's a basic  
4 procedure. Once you go to your agency you have a specific --  
5 a specific way on how to book evidence and evidence  
6 collection.

7 Q. Okay. So your training then, does it cover  
8 everything from when you're finding things on scene to when  
9 you're actually booking them into the evidence vault, if you  
10 will, at the sheriff's office?

11 A. Yes.

12 Q. Are you familiar with the policies and procedure  
13 of the Carson City Sheriff's Office?

14 A. I am.

15 Q. And do you comply with those policies and  
16 procedures?

17 A. I do. And depending on what kind of evidence or  
18 whatever booking, whether it's evidence, property for  
19 safekeeping, property for destruction, we have a manual in  
20 evidence that specifically tells you exactly how to book it  
21 and where to book it depending on what it is for safety  
22 reasons.

23 Q. I want to take you back now to May 30th of last  
24 year, 2020. Do you recall that day?

1           A.    I do.

2           Q.    Were you assigned to the special enforcement team  
3 at that time?

4           A.    I was.

5           Q.    How long had you been assigned to the team, if  
6 you remember?

7           A.    About that time because of COVID and schools, I  
8 believe I was on the team for about, approximately a month at  
9 that time.

10          Q.    As a member of the special enforcement team at  
11 that time what were your duties?

12          A.    We do undercover patrol. And our main goal, main  
13 focus is high drug traffic areas, midlevel users, using  
14 information to get midlevel users. That way we can pass on  
15 for bigger things as well as every now and then gang  
16 activity.

17          Q.    Okay. So you're involved in undercover kind of  
18 surveillance and investigation. On the afternoon of May 30th  
19 were you engaged in that sort of detail?

20          A.    Yeah.

21          Q.    Okay. Was there a particular apartment complex  
22 that you were investigating?

23          A.    Yes. We had information about a high drug  
24 traffic area, and we were staged in the area of Griffin House



1 Apartments.

2 Q. Where are the Griffin House Apartments?

3 A. They are located at, right off of Curry or Nevada  
4 Street. There's a couple of inlets and outlets but it's the  
5 end of that area.

6 Q. Is that on the west side of Carson City?

7 A. Yes.

8 Q. What was your role in that investigation?

9 A. At that specific time then Deputy Bindley, now  
10 detective, had information about narcotics in the area. So  
11 we were doing surveillance. And I was staged away from --  
12 everyone was in a specific spot. I was staged at Nevada and  
13 6th Street. I couldn't see the apartments and I didn't know  
14 exactly where my other partners were because they were in  
15 different areas.

16 Q. Okay. Let me ask you this. You testified that  
17 you were staged in an area where you couldn't see the  
18 apartment complex where the particular -- let me just get  
19 this out. Was there a vehicle you guys were interested in?

20 A. Yes.

21 Q. Okay. Were you staged in an area where you could  
22 not see that vehicle?

23 A. Yes.

24 Q. So you're staged in an area where you can't see

1 the apartment complex or the vehicle. Why would you be  
2 staged there? What utility is there to that?

3 A. My main goal at that point where I was staged, we  
4 were staged in different spots for when the vehicle leaves  
5 the area, that way somebody can follow it in any direction  
6 coming out of the outlet from the apartments.

7 My specific goal was if that vehicle traveled  
8 northbound I was the furthest northbound from the Griffin  
9 House, that way I could follow the vehicle.

10 Q. Okay. Now do you just stay in that position and  
11 wait for some information that things are changing?

12 A. Yes.

13 Q. At some point did you receive the information  
14 that suspect vehicle had left the Griffin House Apartments?

15 A. I did.

16 Q. How did you get that communication?

17 A. Via radio.

18 Q. Okay. Is that -- do you have a microphone there  
19 on your shoulder? Is it connected to something that let's  
20 you hear what's going on?

21 A. Yes. So I have a portable radio on my person as  
22 well as in-car radio.

23 Q. Okay. Do you have any idea which radio you got  
24 the information over at that time?

1           A.    I don't recall. I was monitoring three different  
2 channels at the time. So I don't know which channel it was  
3 but, yes, it was one of the three radios I was using at the  
4 time.

5           Q.    Okay. So why three different channels? What is  
6 that purpose?

7           A.    We have a primary channel. That's typically when  
8 you're going to do traffic stop or if you want to talk to  
9 your partners you only use channel one. Typically SET team  
10 doesn't use channel one because it's not secured and people  
11 can scan. So we don't want people to know what we're doing.

12                  Channel two is a secured channel. We'll use that  
13 most of the time for stops, but other people use the channel.  
14 We have several agencies. We have VIP's that you use the  
15 channel. Sometimes we'll use our 800 megahertz radio that  
16 aren't secured or they are a secured channel and nobody can  
17 hear us, and we'll speak freely about where we're staged,  
18 what we're doing, what we're looking for.

19           Q.    Is it important when you're conducting an  
20 undercover operation to be able to kind of maintain that  
21 communication without for instance your suspect being able to  
22 access it over a public airway?

23           A.    Yes.

24           Q.    Do you find that suspects in these types of

1 investigations have police scanners?

2 A. In my experience and dealing with people, yes,  
3 very much so.

4 Q. So does that secure channel allow you to carry  
5 out your investigation without alerting your suspect that  
6 you're on to them?

7 A. It does.

8 Q. At some point did you get information that your  
9 vehicle had left? I think you said you did. What did you do  
10 when you got that information?

11 A. When I got that information I was still staged at  
12 my spot in the area of Nevada and 6th for a little bit just  
13 so I could find out which direction of travel the vehicle was  
14 going to be going. A little bit after that, Deputy Granata  
15 initiated a traffic stop on the area of Vital Signs. At that  
16 time I already started heading south. Because as a team,  
17 when we're doing these types of investigations we typically  
18 all go to the stop.

19 Q. Okay. So let's talk about that for a minute.  
20 How does the team work together?

21 A. So depends on how many people are on the team at  
22 the time. At that time we had four people. Typically what  
23 we'll do is someone will make the stop after they've had  
24 probable cause. And if we had information that narcotics are

1 in the vehicle or that that person should have narcotics on  
2 their person, SET team also assigned a canine. At that time  
3 the canine will come, and they will pull the driver out.  
4 They will speak with them about the stop, what's going on,  
5 start a citation if needed, and the canine will do a sniff on  
6 the vehicle.

7 The rest of us will come. Depending on the  
8 outcome of the sniff of the vehicle or if they have warrants  
9 whatever charges are, then we'll search the vehicle while  
10 other people are performing interviews and other things like  
11 that.

12 Q. Okay. So everybody has kind of a different role  
13 to --

14 A. Yeah.

15 Q. -- play in this whole picture?

16 A. And it changes depending on who's making stops  
17 and who's contacting who. So it's a revolving door.

18 Q. Okay. So you said you went to the area of Vital  
19 Signs. Is that also in Carson City?

20 A. Yes.

21 Q. When you got there who else was there?

22 A. When I arrived it was Deputy Granata and  
23 Detective Bindley. Later on Deputy Hadlock arrived.

24 Q. Okay. What were Deputy Granata and Detective

1 Bindley doing when you got there?

2 A. When I arrived they were speaking with then I  
3 didn't know but now identified as Mr. Elliston outside of the  
4 vehicle, and I stood by while they spoke with him.

5 Q. The person that they were speaking with and you  
6 now identified as Mr. Elliston, do you see him in court  
7 today?

8 A. I do.

9 Q. Can you tell us where he's sitting and what he's  
10 wearing.

11 A. Over there, blue jeans, and I can't tell what  
12 color shirt, striped shirt.

13 MS. BRANTINGHAM: I would ask that the record  
14 reflect identification.

15 THE COURT: The record will so reflect.

16 MS. BRANTINGHAM: Thank you.

17 Q. So you said Deputy Granata and Deputy Bindley  
18 were speaking with Mr. Elliston. Where did you go?

19 A. I was standing near them at the time until -- I  
20 was near where they were speaking with him. I didn't make  
21 contact yet until we found out what was going on.

22 Q. Okay. Did you kind of hang out and wait for  
23 Deputy Pullen to get there with his canine?

24 A. I did.

1 Q. Did you see Deputy Pullen arrive?

2 A. I did.

3 Q. With he arrived did you see him perform an  
4 exterior sniff of Mr. Elliston's vehicle?

5 A. Yes. Deputy Pullen used his canine, Blue. I  
6 watched him do his air free sniff around the vehicle. At a  
7 little bit later time, Deputy Pullen had alerted to me that  
8 Blue alerted on the vehicle for an odor of some sort of  
9 narcotic. Typically at that time we know that it's time to  
10 search the vehicle.

11 Q. Okay. So when you get the information from  
12 Deputy Pullen that Blue had alerted to the vehicle, did you  
13 at that point have probable cause to search the vehicle?

14 A. Yes.

15 Q. Did you begin to search the vehicle?

16 A. Just prior before that Deputy Bind -- Detective  
17 Bindley, sorry, I don't know what the reason was or why I  
18 knew that he was detaining Mr. Elliston. I helped him with  
19 that briefly, and then I went straight to the passenger side  
20 of the vehicle to begin my search.

21 Q. So when you say you helped with that, what was  
22 your role in the detention?

23 A. I grabbed -- believe I grabbed Mr. Elliston's  
24 left arm to secure him that way just -- just for our safety

1 and our, that's how we work.

2 Q. Okay. Is that pretty common when you see another  
3 officer detaining somebody, you go to assist?

4 A. Yes.

5 Q. All right. So vehicle searches, are you trained  
6 in how to search a vehicle?

7 A. Yes.

8 Q. Have you searched vehicles as a routine part of  
9 your employment with the sheriff's office?

10 A. Yes.

11 Q. Do you have a standard way you go about doing  
12 that or is it different every time?

13 A. You're taught specific ways. Everyone is a  
14 little different. Me specifically, depending on what part of  
15 the vehicle I go to first, I'll search everything on that  
16 compartment or that area of the vehicle bottom to top or top  
17 to bottom, side to side in quadrants, and I'll move to  
18 another location of the vehicle the same way.

19 Q. Okay. In this particular case where did you  
20 start your search of the vehicle?

21 A. I started my search at the passenger door of the  
22 truck.

23 Q. Okay. When you opened the passenger door of the  
24 truck what did you see?



1           A.    As soon as I opened the passenger door I  
2 immediately noticed or I observed a plastic case on the  
3 ground. There was a tool or a box, some sort of tool, a  
4 scale and a metal can. Those three items -- I'm sorry.  
5 Those three items were on the floorboard, and I noticed the  
6 metal can in the center consul cup holder area.

7           Q.    Okay. So the brown case, did it stand out to  
8 you?

9           A.    It did, yes, because it was fully tan duct tape  
10 which it was an unusual item.

11          Q.    Okay. What did you do when you saw that brown  
12 case that stood out to you?

13          A.    As soon as I saw the brown case I picked it up.  
14 I put it on the passenger seat. I un or I opened the plastic  
15 clip and as soon as I opened it, immediately saw several I  
16 guess you -- it kind of looked like sticks of butter like  
17 size wise, methamphetamine, several plastic baggies.

18          Q.    Okay. What did you do? What was your reaction  
19 to finding that?

20          A.    Very surprised. I had seen methamphetamine in  
21 other narcotics several several times throughout my short  
22 career. I had never seen that much. So when I opened it I  
23 was pretty blown away. As soon as I saw it I closed it back  
24 up and put it back to its original spot and left it alone

1 until it could be photographed so we could collect it for  
2 evidence.

3 Q. Okay. So now why did you do that? Why did you  
4 close it back up and put it in its original spot?

5 A. That's way it's as close as possible to its  
6 original state without tampering.

7 Q. Okay. Is it important for you to document how  
8 things were when you found them?

9 A. Yes. That way there's no credibility issues or  
10 integrity issues with your findings in your reports.

11 Q. Okay. Did you call Deputy Bindley over?

12 A. I did. I had Deputy Bindley, Detective Bindley,  
13 sorry, mix ups, grab a camera to come photograph the item.

14 Q. Did he come over with his camera?

15 A. He did.

16 Q. Did he photograph it where you put it back in  
17 place?

18 A. He did.

19 Q. Did you also open it for him?

20 A. I did.

21 Q. And did he take some photographs while you had  
22 the package open?

23 A. Yes.

24 Q. What -- what was the weather like outside that

1 day?

2 A. It was warm and really windy.

3 Q. Did you have some trouble with the contents of  
4 that package because of the wind?

5 A. I did. Even though it was still inside the  
6 passenger seat I would have to hold down the baggies because  
7 they were flying around.

8 Q. Okay. Did you make sure that they all stayed  
9 together and secured?

10 A. Yes.

11 Q. Other than -- once you found the brown container,  
12 once deputy -- Detective Bindley photographed it what else  
13 did you do in the passenger compartment of the vehicle?

14 A. Also on the floorboard next to the toolbox I  
15 located a scale. It was a multicolored scale. Typically  
16 along with narcotics it's indicative of sales or other  
17 paraphernalia.

18 Q. Was there anything else that indicated to you  
19 what you found just in this immediate area sales?

20 A. Yeah, along with the scale and smaller baggies  
21 with large quantities of narcotics, typically in my training  
22 and experience people that are involved with these types of  
23 things they will take the large quantity, break it down into  
24 certain sizes, certain weights to be sold for certain

1 amounts.

2 Q. And would the scales and the smaller baggies be  
3 how that would be done?

4 A. Yes.

5 Q. What did you do with the brown case and the  
6 scale?

7 A. At that time still left it on the passenger seat.  
8 Deputy Bindley also photographed the scale. It was later  
9 collected. I'm not sure who put it where but they were  
10 collected for evidence in bags.

11 Q. Okay. What kind of bags were they collected in?

12 A. At that time I was -- I was using both. I used  
13 the block bags. That's what I had on me for the couple of  
14 things that I collected. They were later put into brown  
15 paper bags.

16 Q. Okay. Now did you have occasion to see the scale  
17 and the case in the brown paper bag?

18 A. Later on, yes.

19 Q. Okay. Was it the same scale and case that you  
20 collected from the car?

21 A. Yes.

22 Q. Did you find anything else inside the vehicle of  
23 note?

24 A. The only thing I found on the ceiling of the

1 vehicle, typically where a sunglass holder is, when I opened  
2 it there was a stack of cash in there.

3 Q. Okay. What did you do with that stack of cash?

4 A. I counted it in front of my body camera, and then  
5 I fanned it out for Deputy Bindley to photograph it and it  
6 was collected for evidence.

7 Q. Okay. Did you collect any other evidence from  
8 the vehicle?

9 A. At that time, no, I did not.

10 Q. Okay. Now you talked about some other things.  
11 You talked about the can in the cup holder. Did you see  
12 anything else in the vehicle other than that can? You also  
13 talked about the toolbox?

14 A. Yeah. So I saw the can. I never moved it from  
15 its spot. Later on from going back and forth to the  
16 vehicles, talking to other deputies on scene, that metal can  
17 was moved to the passenger seat and it was opened. I did  
18 pick it up and briefly look inside. I did not pull the  
19 contents out because there was hypodermic needles. I didn't  
20 want to get stuck with it. So I left it as is.

21 Q. Okay. Did you have an opportunity though to see  
22 the can and its contents to the degree you could while it was  
23 inside the vehicle?

24 A. For the most part, yes. And then later on while

1 booking it into evidence I saw all of the contents that were  
2 in it.

3 Q. Okay. Now from Mr. Elliston's vehicle did those  
4 brown bags go somewhere, the brown bags containing the  
5 evidence?

6 A. Yeah. So depending on who finds what and who's  
7 all there, all of the items will be collected. They will go  
8 to someone which in this case originally it was Detective  
9 Bindley. That way he can do some presumptive test for  
10 narcotics. After it was all collected it was all given to  
11 Deputy Granata, sorry, Granata, and she had sole possession  
12 of the evidence after we all left.

13 Later that night and we go back to the station,  
14 all of the evidence was given to me. And then I sort through  
15 everything to be booked properly as far as other presumptive  
16 tests if need be counting as far as cash. Everything needs  
17 to be weighed out and booked properly and sealed and signed.

18 The reason why we do that is certain things can't  
19 be booked together. As far as narcotics they need to be  
20 separated. Needles need to be either photographed and  
21 destroyed or booked in certain vials so you don't get hurt.  
22 And, like I said, it needs to be weighed out so that specific  
23 quantities pertain to that specific bag or envelope.

24 Q. Okay. So is all of the evidence gathered by the

1 team, individual members of the team on scene?

2 A. In most cases, yes. It depends. If you're just  
3 there with one partner you could do it on your own. In this  
4 case we were all there so several people found items of  
5 evidence and you'll collect it separately and then it will go  
6 to one person. That way chain of commands or chain of  
7 custody doesn't get broken. That way Deputy Granata didn't  
8 have certain pieces of evidence. I didn't have evidence, and  
9 Detective Bindley didn't have evidence in separate cars.  
10 That way there's no integrity issues.

11 Q. So you collected all of the evidence into these  
12 bags. You said Detective Bindley took them first and then  
13 they went into Deputy Granata's vehicle. You got them back  
14 at the sheriff's office. Did you look at them when you got  
15 them back?

16 A. When I got them at the sheriff's office, yes.

17 Q. Okay. Did you confirm that what was in the bags  
18 was the same evidence that was collected at the scene?

19 A. Yes.

20 Q. All right. Did you go through it all, lay it  
21 out, do all of those things with it?

22 A. I did.

23 Q. Did you notice anything missing or anything added  
24 to the evidence that was collected at the scene?

1 A. No.

2 Q. All right. So you did not take the evidence to  
3 the sheriff's office. Who did you take to the sheriff's  
4 office?

5 A. I transported Mr. Elliston to the -- to the  
6 detention center.

7 Q. Okay. Why did you transport him to the detention  
8 center?

9 A. Because I am -- I at the time I was one of two  
10 vehicles that have a cage to be able to transport.

11 Q. When you got to the detention center what did you  
12 do?

13 A. I provided the jail deputy with a booking sheet  
14 and waited until they did the intake on Mr. Elliston and  
15 witnessed the intake on Mr. Elliston.

16 Q. Part of the intake, does that include a search of  
17 Mr. Elliston?

18 A. Yes.

19 Q. During the search of Mr. Elliston was anything  
20 recovered of note to you?

21 A. The jail deputy at that time located an extra \$20  
22 in cash that I took and seized as part of the other cash in  
23 the vehicle.

24 Q. Okay. That \$20 cash, was it consistent with the



1 other cash you located inside the vehicle?

2 A. Yes.

3 Q. After you finished the intake process with  
4 Mr. Elliston at the jail, did you go back to the sheriff's  
5 office?

6 A. I don't recall if it was immediately or if we had  
7 gone out and done other things. But, yes, at some point  
8 after the jail we went to the sheriff's office.

9 Q. Okay. Is that when you received the evidence  
10 back from Deputy Granata?

11 A. Yes.

12 Q. Okay. You said you went through it, laid it all  
13 out and made sure everything was the same. Did you then book  
14 all of the evidence into the evidence vault?

15 A. I did.

16 Q. What does that process look like?

17 A. So it's a long process but it's interesting. So  
18 after you go through every single item, in my specific  
19 reports when I'm booking evidence I like to know exactly who  
20 found it, how much it is, how much it weighs, and in my  
21 reports I'll put who found it and typically depending on how  
22 big the area is, I'll put where they found it or they will  
23 put that in their report. But in my specific reports I'll  
24 put who found it and then book it.

1 Q. Okay. And do you do like a separate package for  
2 each item or how does that work?

3 A. Like I said earlier, it depends on how much or  
4 what evidence there is. Like I said, everything will be  
5 weighed out, but certain drug classes can go together as far  
6 as methamphetamine. Heroin will go separate. Paraphernalia  
7 will go separate. Cash will go separate. There was also a  
8 large quantity of marijuana. That will go separate, and then  
9 they all go in their specific bags. They will be sealed with  
10 evidence tape and I'll sign them.

11 Q. Okay. What is the purpose of sealing the bags  
12 with tape and signing them?

13 A. To keep the integrity of the evidence, the  
14 package that way. We know that I was the last person that  
15 touched it. If that seal is broken then we would know at  
16 some point the evidence was tampered with.

17 MS. BRANTINGHAM: All right. If I may approach  
18 and have Exhibit 3.

19 THE COURT: You may.

20 Q. (BY MS. BRANTINGHAM:) All right. Deputy  
21 Henneberger, I'm going to show you now what's been marked for  
22 identification as Exhibit 3. Take a look at that and let me  
23 know if you recognize it. I'm going to set these over here  
24 for you.

1           A.    I do.

2           Q.    How do you recognize it?

3           A.    Because, one, it's my writing. I have a specific

4 writing style. As well when I'm booking or anybody is

5 booking evidence we put it in as a certain way. When the

6 labels print out it will have your name and your initials and

7 how you booked it.

8           Q.    Okay. So the labels that are on there did you

9 generate those in the sheriff's office computer system?

10          A.    Yes.

11          Q.    Okay. And did you print those out?

12          A.    I did.

13          Q.    Do they have your name on them?

14          A.    They do.

15          Q.    All right. And is this the -- what did you book

16 in this bag?

17          A.    In this specific bag were several items of

18 methamphetamine.

19          Q.    Okay. Is this the crystal methamphetamine that

20 was recovered from Mr. Elliston's vehicle?

21          A.    Yes.

22          Q.    Okay. If you could now go ahead and open that

23 up. Open it up and take a look inside but don't take

24 anything out just yet.

1           A.    Look in it?

2           Q.    Yeah.  Go ahead and look inside.  Do you see the  
3 contents in there?

4           A.    Yes.

5           Q.    Okay.

6           A.    For the most part, not all of it.

7           Q.    What's in there?

8           A.    Methamphetamine.

9           Q.    Is it the methamphetamine that you recovered from  
10 Mr. Elliston's vehicle?

11          A.    Correct.

12          MS. BRANTINGHAM:  Move for admission of  
13 Exhibit 3.

14          THE COURT:  Any objection?

15          MR. FEY:  If I may voir dire the witness.

16          THE COURT:  You may.

17          MR. FEY:  May I see the exhibit.  Thank you, sir.

18                    VOIR DIRE EXAMINATION

19          BY MR. FEY:

20                 Q.    All right.  Deputy, let me get to a microphone.  
21 I'm going to give you this back.  You indicated, sir, that  
22 that's your handwriting.  Is that on the exterior of the bag?

23                 A.    The exterior on the actual label that goes onto  
24 the bag.

1 Q. Okay. And then what's the name of -- you say  
2 it's your handwriting. There's a line there that says chain  
3 of custody, right?

4 A. It does on the bottom, yes.

5 Q. On the bottom, is that what you're talking about,  
6 your handwriting?

7 A. I'm talking about the top where the case number  
8 and date and time is.

9 Q. Okay. So you put that case number there,  
10 correct?

11 A. Yes.

12 Q. And you put that case number there when, in the  
13 afternoon or something of that, May 30th?

14 A. Later on that evening, yes.

15 Q. Okay. So not at the scene of the seizure of  
16 these items but those numbers and case numbers and everything  
17 were put on it at the Carson City Jail?

18 A. Correct.

19 Q. Or the sheriff's office?

20 A. No. The sheriff's office.

21 Q. All right. On that chain of custody do you  
22 recognize the first signature on there?

23 A. No.

24 Q. Okay. Did you seal that bag with evidence tape?

1           A.    I did.

2           Q.    Okay.  Is the evidence tape you put on there  
3 still intact or has it been opened by somebody else?

4           A.    It's been opened by somebody else it appears.

5           Q.    So at least some point in time it was sealed and  
6 then subsequent to that it was opened by someone else and you  
7 don't know who that would be?

8           A.    Correct.

9           Q.    Okay.  So the contents, as you're looking down in  
10 there, are those in the exact same -- are those contents in  
11 the bag are the exact same way you put them in there or had  
12 they been in any way repackaged?

13          A.    I cannot answer that question because typically  
14 it will go to the lab for testing.  So when I put them in  
15 there it was how it was.  I know it's still the same items  
16 but I can't say specifically how I put them in there.

17          MR. FEY:  Your Honor, I'm going to object to this  
18 only because I think he's the wrong person to be testifying  
19 as to this -- it's been alleged that this is methamphetamine.  
20 There's been no testing produced in this courtroom that this  
21 substance is indeed methamphetamine.  I think by stipulating  
22 or agreeing to its admission I'm also stipulating that it's  
23 methamphetamine.  I'm not prepared to do that.  We have a lab  
24 technician coming later who I would --

1 THE COURT: Well, we're going to allow it to be  
2 admitted for the sole purposes of authenticating his exact  
3 procedure in regards to collection of the documents in  
4 respect to placing them in the envelope and then later  
5 obviously being sent to a lab.

6 MR. FEY: Thank you, Your Honor. That was the  
7 concern I had. Thank you.

8 MS. BRANTINGHAM: And we're not asking for the  
9 Court to recognize the identity of the substance at this  
10 time.

11 THE COURT: I didn't think so. So it's admitted  
12 for that purpose as the Court has indicated.

13 MS. BRANTINGHAM: Thank you.

14 CONTINUED DIRECT EXAMINATION

15 BY MS. BRANTINGHAM:

16 Q. Now, the content in there, are they the contents  
17 you put in there regardless of how they are now packaged?

18 A. Correct.

19 MS. BRANTINGHAM: And may we now publish them to  
20 the jury.

21 THE COURT: You may.

22 Q. (BY MS. BRANTINGHAM:) Go ahead and take them  
23 out.

24 A. Sorry.

1 Q. You thought you were done with those gloves.

2 THE COURT: But, again, only for the purposes of  
3 showing how they are packaged, not for the purpose of  
4 substantiating that they are in fact and not for any other  
5 purpose.

6 Q. (BY MS. BRANTINGHAM:) All right. If you could  
7 go ahead and just walk along the front rail of the jury box  
8 there and let everybody know what you got in your hand.

9 A. So this is a large, we would call it a --

10 THE COURT: You're going to have to speak up.

11 THE WITNESS: It would be a large crystal or rock  
12 size of methamphetamine before it's broken down for sales.  
13 It's hard to see because of the -- the semi-opaque plastic  
14 bag, but there's several other pieces and smaller quantities  
15 inside of the bag that kind of look like -- like a Pop Rock  
16 candy. It's kind of hard to see with all of that. Do you  
17 see it?

18 Q. You said this was kind of unusual to find for you  
19 at this point in your career. What -- what makes it unusual  
20 for you?

21 A. So for me all of the methamphetamine or any other  
22 narcotics I have found or seized in my young career, anywhere  
23 ranging from a few grams to probably around 30. That's not  
24 that big of a quantity. Seeing these large brick, well, not



1 brick but like butter stick type sizes and size of the  
2 crystals was -- you know, it's just a large quantity. I had  
3 never seen so much at one place at one time in person.

4 Q. Okay. All right. You can go ahead and stick  
5 that back in there now, and I'll show you a couple of things.

6 A. Bigger bags.

7 MS. BRANTINGHAM: All right. If I could now have  
8 Exhibit 5, please.

9 Q. All right. Deputy Henneberger, showing you now  
10 what's been marked for identification as Exhibit 5, do you  
11 recognize that bag?

12 A. Yes. So my writing as well on these paper bags,  
13 they don't have -- these specific brown paper bags don't have  
14 their own labels like some of our smaller envelopes. So this  
15 label was put on by me and I have a case number and date on  
16 there from my writing.

17 Q. All right.

18 A. And this -- sorry. This specific bag was sealed  
19 and signed by Deputy Granata.

20 Q. Do you recognize --

21 MR. FEY: I'm sorry. I didn't hear the name.

22 THE COURT: State it again.

23 MR. FEY: Signed by?

24 THE WITNESS: I'm sorry?

1 MR. FEY: Signed by who?

2 THE WITNESS: So this specific bag was signed by  
3 Deputy Granata.

4 Q. (BY MS. BRANTINGHAM:) So would that have meant  
5 she put that tape on there?

6 A. So I seal the evidence. One of us will sign the  
7 evidence knowing that a sworn officer has sealed it. As far  
8 as taping, we can all be involved in taping the bags or  
9 envelopes together. The signature just tells who actually  
10 signed it to be sealed.

11 Q. Okay. Well, let me ask you this, when you're  
12 booking evidence like this do you have a room that you use?

13 A. We do. There's two different ones. For patrol  
14 and other units there's a specific evidence room downstairs.  
15 For special enforcement team, we have our own office, and  
16 attached to it is an actual evidence area where we have all  
17 of our bags, our scales, our tape, anything we need, our  
18 presumptive test for narcotics. That way we can package and  
19 seal it ourselves.

20 Q. Okay. And you talked a little bit earlier about  
21 how you guys work as a team in the field. Do you work as a  
22 team in the same way when you're booking evidence?

23 A. Correct.

24 Q. Okay. All right.

1           A.    Especially when there's a large amount of  
2 evidence.  If there's a small amount of evidence and it's  
3 your case you'll just do it yourself or someone has a lot of  
4 paperwork you can book it and seal it for them.

5           Q.    Okay.  So I'm going to have you open this up and,  
6 again, look inside.  Don't take anything out just yet.

7           A.    Oh, Lord.

8           Q.    You can probably leave just on the table.  You're  
9 going to need it again.  All right.  Go ahead and look inside  
10 there.  Let me know if you recognize what's in that bag.

11          A.    I do.

12          Q.    What's in there?

13          A.    It's the plastic case with the tan duct tape that  
14 I found on the floorboard.

15          Q.    It's the case you found on Mr. Elliston's  
16 floorboard?

17          A.    Yes.

18                MS. BRANTINGHAM:  Move for admission of  
19 Exhibit 5.

20                THE COURT:  Any objection?

21                MR. FEY:  Same objection before.  Just I'll  
22 strike that.  May I just see what he has.

23                THE COURT:  You can.

24                THE WITNESS:  Take it out?

1 MS. BRANTINGHAM: Don't take it out yet.

2 MR. FEY: No objection.

3 THE COURT: It will be admitted.

4 Q. (BY MS. BRANTINGHAM:) All right. Go ahead and  
5 take it out now. And if you could do the same thing with  
6 this one, go ahead and walk to the front bar of the jury box  
7 and let us know what you got there.

8 A. Do you want me to open it or keep it closed?

9 Q. Let's go ahead and open it. And if you could, as  
10 you're walking, just describe for us what's in your hand.

11 THE COURT: Speak up again.

12 THE WITNESS: This specific case is the one I  
13 found in the floorboard of the truck. It's covered in tan  
14 duct tape. There's a magnet on the bottom. Typically with  
15 specific items like this it's to use, the magnet is used --

16 MR. FEY: Objection. Calls for speculation. No  
17 foundation.

18 THE COURT: I'm going to sustain that objection.

19 MS. BRANTINGHAM: I'll ask him a couple of  
20 foundational questions.

21 Q. Have you seen containers like this before?

22 A. I have in the past, yes.

23 Q. Are you trained to recognize them as used for  
24 some specific purpose in drug related activities?

1 A. Yes.

2 Q. What's your training?

3 A. All of the training I said before through the  
4 academy or on-line classes or field training.

5 Q. Okay. When you look at this case with the  
6 magnet, is it apparent to you that it has a particular  
7 purpose based on your training and experience?

8 A. It does.

9 Q. What is that purpose?

10 A. Conceal it somewhere on whatever vessel you are  
11 in.

12 Q. Okay. Go ahead.

13 A. You see the magnet, the plastic case, it's a hard  
14 cover case. Inside are all of the different sizes and types  
15 and colored smaller baggies, typically for the larger  
16 quantities of methamphetamine to be broken down and  
17 repackaged and resold. I don't want it to fall out.

18 Q. All right. I'll take that one back from you now.  
19 And number ten, all right, Deputy Henneberger, I'm also  
20 showing you now what's been marked for identification as  
21 Exhibit 10. Take a look at that envelope and let me know if  
22 you recognize it.

23 A. So this envelope, it has my handwriting. This is  
24 one of the envelopes that already has the label on it. So I

1 didn't have to attach one. This one was specifically signed  
2 and numbered by me.

3 Q. Okay. And go ahead and open it up now. And same  
4 as before, take a look inside. Let me know if you recognize  
5 the contents.

6 A. I do.

7 Q. What's in there?

8 A. It's a multicolored digital scale.

9 Q. Is that the scale you recovered from the vehicle  
10 Mr. Elliston was driving?

11 A. Yes, on the floorboard of the passenger seat.

12 MS. BRANTINGHAM: Move for admission of  
13 Exhibit 10.

14 THE COURT: Any objection?

15 MR. FEY: No.

16 THE COURT: It will be admitted.

17 Q. (BY MS. BRANTINGHAM:) All right. If you could  
18 now remove that item and just briefly do the same thing.

19 A. Over here?

20 Q. Yeah. Go ahead and walk it in front of the box  
21 there and let everybody know what you got.

22 A. So there are numerous, just countless different  
23 type of scales. And in this specific case, this digital  
24 scale you would put whatever you're going to weigh in this

1 case, most likely narcotics onto this area. As long as the  
2 battery work it will give you the specific weight and grams  
3 for the scale.

4 Q. All right. Thank you. I will -- I'll take that  
5 one back from you too. And then I just have one other thing.  
6 I just have one other thing I'd like to talk to you about  
7 this morning. You said that you have been assigned during  
8 your career to the detention division. Are you familiar  
9 based on your time in the detention division with the  
10 telephone system in the jail?

11 A. When I first started yes. It's been a while, and  
12 then I was reassigned to the jail briefly this year but, yes,  
13 I am.

14 Q. Okay. Are you familiar with how an inmate makes  
15 a phone call?

16 A. Yes.

17 Q. Okay. What's that process look like?

18 A. So from my experience and training in the jail,  
19 typically when someone is brought to the jail at some point  
20 during the booking process they will be assigned a specific  
21 pin. Once they get that pin number while in booking they  
22 will pick up the phone receiver and they will be prompted to  
23 do certain things. That includes, I don't remember if it's a  
24 statement or a questionnaire, but there are certain things

1 you have to say for voice recognition in order for your phone  
2 to work that way. People can't steal your phone or your  
3 phone time. And every time they get on the phone you have to  
4 say your name and a specific set of words for voice  
5 recognition.

6 Q. Okay. Is that unique per person?

7 A. Yes. Everyone has their specific pin number and  
8 their voice will be attached to it.

9 Q. Okay. What happens if somebody else tries to use  
10 their voice on another person's -- with another person's pin?

11 A. It typically won't allow the call.

12 Q. Okay. Have you had an opportunity to speak with  
13 Mr. Elliston or otherwise become familiar with his voice?

14 A. Yes. So around Christmastime I was reassigned to  
15 the jail for approximately nine weeks. This is due to an  
16 injury I had. I was on light duty. So to help the jail out  
17 I worked the control center. At that time I observed all of  
18 the inmates in the jail. I'm responsible for movements,  
19 safety, where inmates go. I talk to them on intercoms.

20 I know specifically I had spoken to Mr. Elliston  
21 because he, and I don't know if he still is, but at the time  
22 he was a trustee in the male general pod. So I had spoken to  
23 him several times over the intercoms about issues or what I  
24 needed him to do in the jail.



1 Q. Okay. Did you have an opportunity or during the  
2 course of this case to review a phone call made by  
3 Mr. Elliston from the jail on June 1st of 2020?

4 A. I did.

5 Q. Okay. During that phone call was he asked about  
6 what happened in this underlying case?

7 A. He was.

8 Q. Did he say anything about his knowledge of the  
9 controlled substances in the vehicle?

10 A. So to put it obviously not verbatim, Mr. Elliston  
11 and just to go back a little bit, I -- earlier this year I  
12 had investigated a completely separate case where I listened  
13 to hundreds and hundreds of phone calls, including  
14 Mr. Elliston's. So I can recognize his voice after he says  
15 his name, seeing specific things on video camera, knowing  
16 that he's at the phones. He has a distinct voice. It's a  
17 semi deep raspy voice.

18 But on that particular day, yes, he was speaking  
19 with his father. And his father asked him basically what  
20 happened. Mr. Elliston said, as far as he knew he just had  
21 the dope in the vehicle. He didn't know about the other  
22 stuff and he thinks that he was set up.

23 Q. Okay. Dope, is that kind of a slang term for  
24 controlled substances?

1 A. Yes.

2 Q. Do you hear it associated with methamphetamine?

3 A. All of the time.

4 Q. And heroin?

5 A. Yes, it's a common -- it's a common word.

6 MS. BRANTINGHAM: Court's indulgence for just a  
7 moment.

8 I'll pass the witness. Thank you.

9 THE COURT: Cross?

10 MR. FEY: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. FEY:

13 Q. Good morning. Thank you for being here, sir.

14 A. Good morning.

15 Q. You were involved in the search of the vehicle on  
16 the passenger side of the truck, correct?

17 A. Correct.

18 Q. All right. And that occurred after Deputy Pullen  
19 indicated that the dog had alerted in his -- right, did you  
20 talk to Deputy Pullen?

21 A. He was on a separate side of me. So typically,  
22 and specifically in this case he'll give me some sort of  
23 indicator, like a head shake or a hand that Blue had alerted  
24 on the vehicle.

1 Q. So what did he do in this particular case, sir?

2 A. I don't recall.

3 Q. Okay.

4 A. But I know -- I know he did alert to me that it

5 was okay. I just don't remember the specific gesture.

6 Q. All right. Did you coordinate with Deputy

7 Hadlock at that point in time to go opening the doors in the

8 vehicle?

9 A. There's no specific coordination. I was just

10 going to go straight to the passenger seat and he went to

11 where he was going to go, but we didn't say specifically what

12 we were going to search first.

13 Q. All right. So you opened up the passenger side

14 and you indicated there was a box that was on the floor,

15 correct?

16 A. Correct.

17 Q. And that is Exhibit 10 that you previously

18 identified today or excuse me, Exhibit 5 that you previously

19 identified today?

20 A. Correct.

21 Q. The one that was in a paper sack?

22 A. Yes.

23 Q. Right, okay. So you saw that and the first thing

24 you did was you reached down and you picked it up and you put

1 it on the seat, correct?

2 A. Correct.

3 Q. All right. And the next thing you did is you,

4 there's a like a buckle on the side. You opened it up and

5 saw the contents of it?

6 A. Correct.

7 Q. All right. Now then you put it, shut it and put

8 it back on the floor?

9 A. Correct.

10 Q. In the approximate position you found it, right?

11 A. Yes.

12 Q. Okay. Is there a reason why you did not

13 photograph where it was before before you opened it?

14 A. Although we have body cameras I would like for it

15 to be in as close of proximate state as possible before

16 photographing or moving or moving further.

17 Q. Okay. Once you did that, you came back in, you

18 did not look inside the one box, did you?

19 A. I did not.

20 Q. Okay. But in any event you found the scale that

21 is, what, Exhibit 10, is that correct, the one you identified

22 today?

23 A. If that's the correct exhibit, yes.

24 Q. I'm sorry?

1 A. Is that the correct exhibit?

2 Q. Yeah, that's the correct exhibit.

3 A. Then yes.

4 Q. Yeah, okay. So you did identify that. Now it's

5 correct to say you collected up those things and the money,

6 correct?

7 A. Yes.

8 Q. And by that time Deputy Bindley had found a

9 firearm in the DeWalt box; is that right?

10 A. I don't know who found the firearm. I just saw

11 it at a later time.

12 Q. Okay. At some point in time you gathered up the

13 evidence that you found and you put it into a paper sack, a

14 brown paper sack?

15 A. Whoever collected whatever evidence, yes. They

16 would have been either in those or in envelopes.

17 Q. Okay. So there's a brown paper, it looks like a

18 Smith's bag, like a grocery bag, correct? Do you know what

19 I'm talking about?

20 A. Yes.

21 Q. Okay.

22 A. Or a lunch bag, yes.

23 Q. All right. And so you put the evidence into

24 there, all right. Did you make a notation on that bag in any

1 way as to the contents of that bag?

2 A. No.

3 Q. Okay. And did you make a notation onto there?  
4 On the side of that bag there's a piece of white paper, is  
5 there not, that allows you to make notations, like the case  
6 number, some things like that, correct?

7 A. Only certain bags have them at that time. I  
8 don't know if labels were put on them. Like I said, the  
9 envelopes will have the actual labels printed on them. The  
10 paper bags typically don't and we don't have to put a sticky  
11 label onto it.

12 Q. Okay. You don't know. Possibly could I refresh  
13 your recollection?

14 A. Sure.

15 Q. Okay. Does this refresh your recollection as to  
16 whether you were using brown paper bags --

17 A. Yes.

18 Q. -- with white labels?

19 A. Yes.

20 Q. And what was your -- were you using them with  
21 white labels at that time?

22 A. I didn't have those bags. Deputy Bindley was  
23 taking care of that stuff.

24 Q. Okay. And this is, I'll represent this is from

1 your body camera. Would that have been something that you  
2 might have seen if you were --

3 A. Possibly, yes.

4 Q. Oh, okay. Now, with respect to the -- the white  
5 labels, those white labels contain a part of that label that  
6 says chain of custody; isn't that right?

7 A. Yes.

8 Q. Did you fill out any chain of custody information  
9 on any of those white labels?

10 A. I don't believe so.

11 Q. Okay. So how many brown paper bags did you  
12 collect up?

13 A. I couldn't tell you.

14 Q. Okay. Was it one or 50 or?

15 A. Several.

16 Q. Several, okay. And on any of those white labels  
17 on the brown paper bags, did you indicate what was in those  
18 bags, like a notation, like, you know, \$790?

19 A. No.

20 Q. On any of those brown paper bags did you put your  
21 name that you had put something in there?

22 A. Later on if I seal it yes. But at that time no.

23 Q. Okay. So you finished putting items that you  
24 found inside the vehicle, money, right, suspected controlled

1 substances, a firearm, magazine and the tin, you mentioned  
2 the round tin, and you put all of those into the brown paper  
3 bags, right?

4 A. Somebody did at some point, yes.

5 Q. Okay. All right. After you put those things  
6 into the brown paper bag what did you do with them?

7 A. I was -- I didn't do anything with them.

8 Q. Okay.

9 A. Detective Bindley was doing his presumptive test.  
10 Everything was collected, given to Deputy Granata. All of  
11 the bags were placed in her vehicle where she kept possession  
12 until we got to the sheriff's office --

13 Q. Okay.

14 A. -- later that night.

15 Q. I'm sorry. I didn't mean to overstate.

16 A. No problem.

17 Q. Okay. So you did not see Deputy Bindley do a  
18 presumptive test for anything, correct?

19 A. I did.

20 Q. All right. Did you see Deputy Granata look in  
21 any of those bags?

22 A. I don't recall.

23 Q. Okay. In your -- you were involved in  
24 transporting the defendant to the jail, correct?



1           A.    Correct.

2           Q.    And in your report do you recall indicating that

3 all of the evidence was collected and given to Deputy

4 Granata?

5           A.    At some point, yes.

6           Q.    All right. So you knew all of the evidence was

7 given to her, right.

8           A.    That I knew of.

9           Q.    In those brown paper bags?

10          A.    In whatever bags we were using. I know that

11 there was block bags as well. I just don't know if those

12 were placed inside of the paper bags.

13          Q.    Very good. When you got to the jail, it was your

14 function to be the scribe for this particular day, right, the

15 scribe for those notes?

16          A.    What do you mean? At the jail?

17          Q.    Yes, sir.

18          A.    What do you mean?

19          Q.    I'll ask it a different way. You got to the

20 jail. You opened up these brown paper bags?

21          A.    No.

22          Q.    Okay.

23          A.    Not at the jail, at the sheriff's office.

24          Q.    I apologize. I equate the two and next to each

1 other. All right. So you got to the sheriff's office, and  
2 these brown paper bags were put there by -- did you see  
3 Deputy Granata with them there?

4 A. Yes. It was all in the specific room. At some  
5 point she would have seen evidence because she had put  
6 some -- they were in bags that she would have sealed and  
7 signed by herself.

8 Q. I understand. But did you see Deputy Granata  
9 bring in these brown paper bags and put them in that room?

10 A. I don't recall if it was specifically her or if  
11 some of us had helped her out of her car because there was so  
12 much. I'm sure that one of us had grabbed bags to bring  
13 upstairs.

14 Q. Okay. So it's fair to say that the evidence that  
15 you found was placed in the hands of a third party and then  
16 later on you found it in the sheriff's office, right?

17 A. Yes.

18 Q. On the table or wherever you put them, right?

19 A. Yes.

20 Q. All right. And did you notice were any of the  
21 bags sealed prior to you giving them to Deputy Granata?

22 A. No.

23 Q. Okay.

24 A. We typically will not seal evidence at the time

1 until later on because it has to be opened. It has to be  
2 separated. It has to be weighed out.

3 Q. Okay. But nobody had stapled it?

4 A. No.

5 Q. And signed their name, nothing like that?

6 A. No.

7 Q. So I'm just trying to get this in, my head around  
8 this. This was -- you said it was the most controlled  
9 substances you ever saw, the most meth you ever saw, and you  
10 gave it to another person without putting down their name on  
11 the chain of custody?

12 A. Correct.

13 Q. All right.

14 A. We typically do chain of custody stuff after it's  
15 sealed. That way we know it goes to evidence or lab or sent  
16 off to be tested or whoever sees it after. Our -- when we do  
17 it ourselves we don't sign a chain of custody.

18 Q. I understand. So you can't testify as you sit  
19 here today that the contents of those brown paper bags were  
20 un-tampered with, can you?

21 A. I cannot, no.

22 Q. Now you've done a lot of training. You indicated  
23 you're a school resources officer; is that correct?

24 A. That's correct.

1 Q. Is that the technical term?

2 A. Yeah, it's a school resource. I'm still a deputy  
3 sheriff. It's just a special assignment. That's the name  
4 it's called. It's a school resource officer.

5 Q. I think you were asked if you're familiar with  
6 policies and procedures of the Carson City Sheriff's Office  
7 with respect to bagging and accounting for evidence that's  
8 collected, correct?

9 A. Correct.

10 Q. And is there a regulation in the Carson City  
11 Sheriff's Office that relates to the bagging of possible  
12 evidence in the field preparatory to taking into the  
13 sheriff's office? Is there any kind of regulation or  
14 procedure that's published that says that any kind of chain  
15 of custody must be noted?

16 A. Not that I know of.

17 Q. So that's a no harm, no foul then, right?  
18 There's a manual that you said regarding how to book  
19 evidence?

20 A. Yes.

21 Q. Is that right. And that manual is the Carson  
22 City manual on booking evidence?

23 A. It's a manual. I don't know if it's specific  
24 that Carson City Sheriff's Office made it or if it's the

1 actual evidence technician Marie that makes the, we call it  
2 an Evidence Bible.

3 Q. The Evidence Bible?

4 A. That's what we call it, yes.

5 Q. Okay. That's at the sheriff's office, right, not  
6 in your car?

7 A. Yes.

8 Q. All right. Okay. So you're situated -- on  
9 May 30th of 2020 you're situated in your vehicle on, I think  
10 you said on Nevada and 6th Street; is that right?

11 A. Correct.

12 Q. And you're the northernmost deputy. Do you know  
13 what the position of any other deputies are on that  
14 particular day?

15 A. I don't know specific areas. I know that  
16 Detective Bindley was in close proximity of the Griffin House  
17 and could see the vehicle. Other than that I don't know  
18 where everyone else was.

19 Q. Okay. You're on Nevada and 6th Street. Are you  
20 actually on 6th Street or on Nevada?

21 A. I'm on 6th Street on the west side of Nevada  
22 facing east towards downtown.

23 Q. So the sun comes up Nevada, it will come in front  
24 of you, right?

1           A.    Right.  So if anybody went south or northbound on  
2 Nevada I would see them.

3           Q.    All right.  The initial stop was a traffic stop  
4 was, you said Deputy Granata initiated the traffic stop but  
5 you didn't see that?

6           A.    I did not.

7           Q.    That's just what you -- what you've been made  
8 aware?

9           A.    Correct.

10          Q.    That you've heard from someone else?

11          A.    Correct.

12          Q.    Everyone has a duty during this kind of  
13 investigation, correct?

14          A.    Yes.

15          Q.    All right.  Let's talk about the jail pin number.  
16 Were you present when David Elliston received his pin number?

17          A.    I was.

18          Q.    And were you present when he initially used the  
19 pin number and had his voice identified?

20          A.    I was not.

21          Q.    So this document or not document, this recording  
22 that you described on direct examination, that recording was  
23 taken -- that was taken purportedly on the 1st of June of  
24 2020?

1 A. Correct.

2 Q. All right. And by that time you had checked into  
3 evidence on the date, on the 30th, right, that's when you  
4 did, you bagged up all of the evidence, correct?

5 A. Correct, all of us, yes.

6 Q. And on the 1st you were not still doing things.  
7 You weren't present on the 1st of June when Mr. Elliston made  
8 the telephone call?

9 A. Correct.

10 Q. All right. And, in fact, you weren't even  
11 assigned to the jail until December, around Christmastime I  
12 think you said.

13 A. Correct.

14 Q. And you said you were doing a bunch of  
15 investigations. Was that part of your official duty to  
16 listen to the --

17 A. At that specific --

18 Q. -- voice.

19 A. -- time, yes. I was tasked with a narcotic drug  
20 ring investigation separate to this case with, involving  
21 several people, and there's no case against Mr. Elliston, but  
22 he was a person of interest at the time. So I had listened  
23 to several of his phone calls, yes.

24 Q. Okay. So you had listened to several of his

1 phone calls but was that part of this investigation that you  
2 were in?

3 A. It was not. Those specific calls, no.

4 Q. Okay. So what prompted you to go listen to his  
5 phone calls?

6 A. I was -- this specific phone call or at that  
7 time?

8 Q. Well, at that time. Maybe I misunderstood what  
9 you're saying. Let me ask it this way. You're tasked with  
10 an investigation involving narcotics?

11 A. Correct. At that time, yes.

12 Q. At that time, okay. And at that time was  
13 Mr. Elliston a target of interest in that investigation?

14 A. He was.

15 Q. Okay. And that reason is, what, just you're  
16 checking all of the people who call out?

17 A. I had specific -- basically what happened was  
18 some narcotics were brought in the jail. Specific people  
19 were named within the jail, jail inmates, and I investigated  
20 and listened to everybody's phone calls in that time frame.

21 Q. In that time frame?

22 A. Yes.

23 Q. And Mr. Elliston's phone calls were included in  
24 that?



1 A. Yes.

2 Q. But not the June 1st one?

3 A. No.

4 Q. The June 1st was not included in your

5 investigation, and yet you thought you would go ahead and

6 listen to that phone call as well?

7 A. Correct.

8 Q. Okay.

9 A. I was made aware of it at a later time.

10 Q. You were made aware of it after you listened to?

11 A. No. I was made aware of that -- this specific

12 phone call.

13 Q. Yes, sir.

14 A. At a later time from the initial investigation.

15 And because of my experience with Mr. Elliston and being able

16 to identify his voice and having worked in the jail for nine

17 weeks and dealing with him, I can identify his voice in that

18 phone call.

19 Q. So --

20 A. Specific to this case.

21 Q. All right. So you went at Christmas then six

22 months, seven months after Mr. Elliston was arrested. And

23 you listened to his telephone call from the day after he was

24 arrested?

1 A. Not at that time.

2 Q. Not at Christmastime?

3 A. Not this -- I know it's kind of convoluted. This  
4 specific phone call from June that relates to this case, I  
5 had just listened to this week. I didn't listen to it in the  
6 past during that other investigation.

7 Q. But you were not a witness up -- other than  
8 listening to Mr. Elliston's June telephone call this week,  
9 other than that, okay, was that part of your duties in this  
10 particular case?

11 A. In -- in the earlier year case, yes.

12 Q. The case we're sitting in here.

13 A. No, not those calls.

14 Q. Were you directed by the district attorney's  
15 office to listen to those tapes?

16 A. I was informed of it, yes.

17 Q. You were informed of by whom?

18 A. By Ms. Brantingham.

19 Q. Okay. And that was this week?

20 A. This week was the first time I listened to the  
21 call, yes.

22 Q. And that's when you were informed about the call?

23 A. Around that time, yes.

24 Q. All right. And pardon me. Have you had any

1 personal conversations with either Ms. Brantingham or  
2 Ms. White within the last week?

3 A. Yes.

4 Q. Have you had any conversations about your  
5 testimony here with?

6 A. We had a meeting.

7 Q. I'm sorry?

8 A. We've had meetings together, yes.

9 Q. All right. And who else were in those meetings?

10 A. Just us I believe. Yeah, just us.

11 Q. So both the deputy district attorneys and  
12 yourself?

13 A. Yes.

14 Q. Is that correct? Those were in person meetings?

15 A. Those were, yes.

16 Q. And when was the last meeting you said?

17 A. Last night, 5:00, about 5:30.

18 Q. Okay. Were you informed about the substance of  
19 Deputy Granata's testimony?

20 A. I'm sorry. Can you --

21 Q. Last night when you had a conversation with  
22 Ms. White and Ms. Brantingham, were you informed in any way  
23 about Deputy Granata's testimony?

24 A. I don't believe so.

1 Q. Well, did Deputy Granata's name come in any way  
2 with your conversations with the district attorneys  
3 yesterday?

4 A. I don't believe so. We talked about evidence and  
5 evidence collection.

6 Q. And what did you talk about?

7 A. We talked about how, what policies and procedures  
8 and how I follow and how it's booked and how it is depending  
9 on the case and depending on where you're at, who and how it  
10 could be collected and then how it is booked at a later time.

11 Q. Okay. So rehearsed what you went over today,  
12 correct?

13 MS. BRANTINGHAM: I'm going to object.

14 THE WITNESS: We didn't rehearse but we talked  
15 about it.

16 THE COURT: I'm going to overrule the objection.

17 Q. (BY MR. FEY:) Were you asked by the district  
18 attorney's office to review the telephone call from June 1st?

19 A. Not specifically to me, but I was the best person  
20 for it because of my experience with David.

21 Q. So the answer is you did it on your own?

22 A. It was sent out as who can listen to this. Who  
23 can be able to identify Mr. Elliston. And I took that task  
24 upon myself because of my experiences with him.

1 Q. Okay. So when did you take that up by yourself,  
2 a week ago you talked about?

3 A. I listened to it -- what's today? I listened to  
4 it on Monday I believe.

5 Q. That's Monday the -- this Monday?

6 A. This Monday.

7 Q. Two days ago?

8 A. A couple of days ago, yes.

9 Q. And in that telephone conversation with  
10 Mr. Elliston and you thought it was his father; is that  
11 right?

12 A. Correct.

13 Q. And he told his dad that he thought he had been  
14 set up?

15 A. Correct.

16 Q. Thank you.

17 Nothing further.

18 THE COURT: Redirect?

19 MS. BRANTINGHAM: Yes.

20 REDIRECT EXAMINATION

21 BY MS. BRANTINGHAM:

22 Q. All right. Let's start with the phone call. Do  
23 you often receive requests from the district attorney's  
24 office to follow-up on your investigations?

1 A. Yes.

2 Q. Is that standard and routine with the course of  
3 criminal investigations and prosecutions?

4 A. In my experience, yes.

5 Q. Is a request to listen to a phone call anything  
6 out of the ordinary?

7 A. No.

8 Q. Okay. Was there a request made to you, well,  
9 made to the witnesses in this case informing all of you that  
10 this call had been located and asking if someone can review  
11 it and identify Mr. Elliston as the speaker?

12 A. That's correct.

13 Q. Did you believe that you were the best person to  
14 undertake that task?

15 A. I did. Because of my experiences with him and  
16 being in the jail and knowing his voice and speaking with him  
17 several several times I knew that I would be able to take on  
18 that task.

19 Q. Okay. Did you take that task on?

20 A. I did.

21 Q. Were you able to identify his voice?

22 A. Yes.

23 Q. And were you able to identify him as admitting  
24 that he knew that drugs were in his car?

1 A. Yes.

2 Q. Okay. Now, evidence collection at the scene, do  
3 you customarily gather evidence in one location for later  
4 transport to the sheriff's office?

5 A. What do you mean the same way? Like at that  
6 specific spot that we were at?

7 Q. Yes.

8 A. Yes.

9 Q. Was there anything out of the ordinary that  
10 occurred with the evidence collection and preservation in  
11 this case?

12 A. No. Even on patrol or even as a school resource  
13 officer or if you're on motors, however many people are  
14 there, depending on the investigation, anybody and everybody,  
15 meaning sworn law enforcement officers can gather evidence as  
16 long as at some point somebody has all of it so that you're  
17 not losing evidence and then it's transported and then it's  
18 booked.

19 Q. Okay.

20 A. The only time we have anybody else come out which  
21 would be our evidence technician and lab people, if it's a  
22 major crime scene, a violent crime, fluids need to be  
23 collected, they will come out and they have specific  
24 instruments and equipment that they can actually create the

1 labels and put it into our system and seal everything right  
2 there. Other than that we do it ourselves.

3 Q. Okay. Now do you ordinarily fill out a chain of  
4 custody form on scene?

5 A. No.

6 Q. So it would be unusual to do that?

7 A. In my experience, yes, and we don't -- as an  
8 onset team we don't do that. That chain of custody is  
9 typically after we book it, that's if like I stated earlier,  
10 if the lab opens it, detectives open it for whatever case  
11 you're investigating or if it's being sent off to our lab and  
12 then later sent off to Washoe County's lab or wherever it  
13 needs to go then that chain of custody will be placed on that  
14 label.

15 Q. Regardless of whether you filled out a chain of  
16 custody form was the evidence secured properly at the scene?

17 A. Yes.

18 Q. Okay. Mr. Fey asked you, well, I just can't wrap  
19 my brain around how you would see the biggest quantity of  
20 meth you've seen and then just let somebody else have it.

21 A. A sworn --

22 Q. Did you give it to a sworn law enforcement  
23 officer who was your partner?

24 A. Correct.



1 Q. Did you trust Deputy Granata to take the same  
2 care to preserve custody and control of the evidence that you  
3 would?

4 A. I did.

5 Q. Did you confirm when you saw the evidence in the  
6 sheriff's office that she, in fact, did preserve it?

7 A. Yes.

8 Q. Was the evidence at the sheriff's office the same  
9 as the evidence on scene?

10 A. Correct.

11 Q. Nothing had been added to it?

12 A. Nothing.

13 Q. Nothing had been removed from it?

14 A. Correct.

15 MS. BRANTINGHAM: Pass the witness.

16 THE COURT: Recross?

17 RECROSS-EXAMINATION

18 BY MR. FEY:

19 Q. You didn't weigh the evidence at the scene, did  
20 you?

21 A. No, I did not.

22 Q. Okay. You didn't fingerprint the evidence at the  
23 scene, did you?

24 A. Did not.

1 Q. You didn't check the duct tape box for latent  
2 fingerprints, did you?

3 A. Did not.

4 Q. You didn't fingerprint the scale at the scene,  
5 did you?

6 A. I did not.

7 Q. Did you take any serial numbers off the firearm,  
8 off the scale at the scene?

9 A. I'm sorry, the firearm?

10 Q. Did you take any serial numbers off the firearm  
11 or the scale at the scene?

12 A. Not at the scene, no.

13 Q. Okay. But when you got to the -- to the  
14 sheriff's office and you packaged these items as evidence,  
15 yes?

16 A. Correct.

17 Q. You put evidence tape on them, do you not?

18 A. One of us will, yes.

19 Q. All right. And there's some kind of a  
20 presumptive weight which is made, isn't that a weight in  
21 which that is done at the jail or the sheriff's office?

22 A. Correct. We'll use a scale.

23 Q. And you make notations on that, isn't that true?

24 A. Into the system on our report, yes.

1 Q. Into the system, okay. So we have those gross  
2 weights that were done at the sheriff's office but not at the  
3 scene; is that correct?

4 MS. BRANTINGHAM: I'm going to object.

5 THE WITNESS: Correct.

6 MS. BRANTINGHAM: That actually misstates the  
7 evidence not done by him. We've had other testimony it was  
8 done.

9 THE COURT: Well, I'm going to go ahead and allow  
10 it for now. He's answered the question. So go ahead.

11 I think he also indicated earlier there will be a  
12 lab tech to verify the weights and all of that.

13 MR. FEY: That's correct, Your Honor. I'm sure  
14 there will be and Court's indulgence.

15 Q. Isn't it fair to state that you did not count  
16 the -- the baggies of suspected methamphetamine at the scene?

17 A. Correct.

18 Q. Okay. And the first time you actually counted  
19 them and the other items in there was when you filled out all  
20 of the paperwork with respect to the evidence at the  
21 sheriff's office?

22 A. Correct.

23 Q. And with the evidence tape on the outside?

24 A. Correct.

1 Q. How do you -- when you're doing this, how did you  
2 make a determination that for example that you -- that Deputy  
3 Hadlock had found something versus you finding something?

4 A. I'm sorry. Can you restate that.

5 Q. When you're collecting evidence, okay, and you  
6 looked today at Exhibit Number 3 and there's, when you open  
7 up there's bags and inside each of those bags there are  
8 quantities that were discovered by a particular deputy, those  
9 are marked, aren't they?

10 A. As far as when I'm putting it in the report? Are  
11 you asking who do I decipher who found what?

12 Q. I want to know how do you decipher who found  
13 what.

14 A. Okay. So every deputy or detective or whoever is  
15 different. I -- I know what I find if it's one or two pieces  
16 I know what I find. If I'm searching something and there's a  
17 lot of evidence I make specific notes to me on what I found  
18 and where I found it.

19 As far as what other people found that's their  
20 responsibility to put into their report. And then when I'm  
21 booking it they will tell me what and where they found it.

22 Q. Okay. You say you make notes, piece of paper  
23 notes or do you do it --

24 A. On this specific case I didn't make notes because

1 I only found the three items so I knew where they were and on  
2 body camera. But typically I will carry a notepad with me  
3 and make notes if I have a lot of evidence that I need to  
4 write down.

5 Q. And what is the reason that the paper bags have,  
6 if you know, have a notation for chain of custody, the brown  
7 paper bag with the white paper? What's the reason for that,  
8 putting out a chain of custody on that bag?

9 A. Like I stated before, if it's going to be sent  
10 off to our lab technicians or another agency for testing or  
11 if say I book it into evidence and it's a, whatever, say it's  
12 a sexual assault case and there's other evidence and a  
13 detective comes down to check it out specifically from the  
14 evidence vault they will have to write a chain of custody,  
15 reseal it.

16 Q. I think I inartfully asked that question.  
17 Unfortunately I was talking about the grocery bags for want  
18 of a better word, the brown paper sacks that you admitted had  
19 the white piece of paper on it, right? It says chain of  
20 custody.

21 A. Correct.

22 Q. And then you said the SET team doesn't do that.  
23 We don't do the chain of custody on those brown paper bags.

24 A. In my experience in booking evidence from the

1 jail, patrol, special enforcement team and SRO we don't -- we  
2 don't put a chain of custody typically on that piece of paper  
3 because I'm not -- yeah, I'm trying to think of the word. We  
4 don't write on there chain of custody because our team or our  
5 sworn law enforcement officers are in custody of that  
6 evidence at some point. And then when it goes into the  
7 vault, after that the chain of custody will start as far as  
8 being sent off.

9 Q. Okay.

10 A. And signed.

11 Q. Do you know is there a -- I mean, there's a piece  
12 of paper that says chain of custody. You said the SET team  
13 doesn't -- we don't do that.

14 A. On the label it says chain of custody, yes.

15 Q. Yeah. And is there an official policy regarding  
16 chain of custody when it's found and sent to you right where  
17 it's discovered?

18 A. I'm sure it's in -- it is in the evidence policy  
19 and probably states that there is a chain of custody, but we  
20 don't write anything on that chain of custody.

21 Q. But not for you guys, not for SET team?

22 A. For any of the positions I've worked in the  
23 sheriff's office.

24 Q. Okay. Did you receive a request from the

1 district attorney's office, I just want to clarify this, to  
2 check Mr. Elliston's June 1st telephone call?

3 A. It was a request to the whole team and I took the  
4 task on.

5 Q. The district attorney's office requested the  
6 whole team to get that. Is that your understanding?

7 A. Correct. It was a request sent out to who would  
8 be best tasked for it. And, like I said, I took it on  
9 because of my experience with Mr. Elliston.

10 Q. Okay. I was not aware that you were requested to  
11 do that, so thank you.

12 Nothing further.

13 THE COURT: Before you step down, deputy, just  
14 one question. Obviously was there any discrepancy from, you  
15 know, you have your body cameras and photographs were taken  
16 at the scene, we've seen those photographs or Exhibit Number  
17 1A in this. Was there ever any discrepancy between what was  
18 seen on your body camera and the photos at the scene versus  
19 what was bagged at the sheriff's office later into evidence?

20 THE WITNESS: No discrepancies.

21 THE COURT: It was all the same?

22 THE WITNESS: Correct.

23 THE COURT: Thank you. I'll allow any follow-up  
24 based upon the Court's questions.

1 MS. BRANTINGHAM: Nothing based on that.

2 RECROSS-EXAMINATION

3 BY MR. FEY:

4 Q. How do you know there's no discrepancy if you  
5 didn't weigh or itemize everything that was put in the brown  
6 paper bags?

7 A. From my visual, I guess you could call it a  
8 visual estimation. We don't -- very very rare instances we  
9 do not weigh items on the scene.

10 Q. I understand that. That wasn't my question  
11 though. How do you know that these are the identical items  
12 that were put in the bag and eventually showed up at the  
13 sheriff's office? Were they marked in any weights to be  
14 distinctive?

15 A. Not in weights. But the specific larger  
16 quantities of the methamphetamine were individually packaged  
17 with a certain label on them, and they were not tampered with  
18 by the time I received them. They were still in the exact  
19 same packages, the scales in the exact same condition as well  
20 as the cash.

21 Q. You didn't count those packages, did you, before  
22 you put them in?

23 A. No, we don't do it like that.

24 Q. As a matter of fact, you just pushed them back



1 into the box, right?

2 A. Yep.

3 Q. Sent everything?

4 A. Correct.

5 Q. Thank you.

6 No further.

7 THE COURT: Thank you. You can step down.

8 THE WITNESS: You're welcome.

9 THE COURT: Can this witness be excused?

10 MR. FEY: No objection.

11 MS. BRANTINGHAM: He can.

12 THE COURT: Ladies and gentlemen, we're going to  
13 take a short recess. I apologize. I wanted to get through  
14 this witness before we took our break.

15 During this recess you're not to discuss or  
16 communicate with anyone, including fellow jurors in any way  
17 regarding the case or by voice, phone, e-mail, text, internet  
18 or other means of communication or social media, read, watch  
19 or listen to any news or media account or commentary about  
20 the case, do any research such as consult dictionaries or use  
21 the internet or reference materials, make any investigation,  
22 test the theory of the case, recreate any aspect of the case  
23 or in any way investigate or learn about the case on your  
24 own, form or express any opinion regarding the case until

1 it's submitted to you. So we'll just take a short break.  
2 Thank you.

3 (Whereupon, a brief recess was taken.)

4 THE COURT: For the record we're outside the  
5 presence of the jury. In respect to the Eldridge case, the  
6 cite is Hallmark versus Eldridge, 124 Nevada Advanced Opinion  
7 148, which is kind of the general standard. Then there's a  
8 specific criminal case called Higgs v. State of Nevada in  
9 regards to requirements for expert testimony and assistance  
10 in respect to that. And, again, reviewing that standard and  
11 everything else I felt Deputy Pullen's testimony came within  
12 those requirements in respect to that.

13 MR. FEY: Thank you, Your Honor. Pursuant to  
14 negotiations, Your Honor. It looks like this case may be  
15 settled.

16 THE COURT: Oh, okay.

17 MR. FEY: What we would like is to have a recess  
18 perhaps and excuse the jury for lunch. Get the guilty plea  
19 memo drafted. Come back. I'm suggesting we come back at  
20 1:00 o'clock. We do the plea. The jury be back at 1:30. We  
21 can thank and excuse them. If something doesn't go that way  
22 then they are ready to --

23 THE COURT: Proceed.

24 MR. FEY: -- proceed.

1 THE COURT: Ms. Brantingham, do you agree with  
2 that?

3 MS. BRANTINGHAM: Yes, Your Honor.

4 THE COURT: Okay. Why don't we go ahead and  
5 bring them in. We'll just explain to them what we're going  
6 to do with respect to this matter. And, again, thank you.

7 Will counsel stipulate the presence of the jury?

8 MS. WHITE: Yes, Your Honor.

9 THE COURT: I appreciate Mr. Fey counting every  
10 time, and I do the same thing mentally.

11 MR. FEY: It resulted from a mistrial where the  
12 jury was not back and the case proceeded on, so.

13 THE COURT: Well, ladies and gentlemen of the  
14 jury, don't take a seat. We're going to go ahead and dismiss  
15 you at this time. I want you to come back at 1:20, if you  
16 would do that. We have to take care of some preliminary  
17 matters and we're going to do that in the next hour, hour and  
18 a half or so in respect to that. Hopefully we'll -- so,  
19 again, without saying anything further I would like you back  
20 here, I would say 1:20 but no later than 1:25 or so so we can  
21 get started.

22 Again, before you leave, you're tired of hearing  
23 it. I get tired of saying it and everything else.

24 During this recess you're not to discuss or

1 communicate with anybody, including fellow jurors in any way  
2 regarding the case's merits either by voice, phone, e-mail,  
3 text, internet or other means of communication or social  
4 media, read, watch or listen to any news or media or  
5 commentary about the case, do any research, consult any  
6 dictionaries, using the internet or using reference  
7 materials, make any investigation or test the theory of the  
8 case, recreate any aspect of the case or in any way  
9 investigate or learn about the case on your own, form or  
10 express any opinion regarding the case until it's submitted  
11 to you.

12 So, again, if you can be back by 1:20 it will be  
13 great in respect to that. Thank you very much.

14 The record will reflect we're outside the  
15 presence of the jury at this time. We'll convene back here  
16 you suggested at 1:00 o'clock. Is that your suggestion?

17 MR. FEY: Your Honor, I don't know that  
18 logistically can he be brought up here like about 12:30,  
19 12:45 and can I get access to him at that time. I need to go  
20 over the guilty plea memo.

21 THE COURT: Yeah, you can bring him up by 12:30?

22 THE BAILIFF: Yes, sir.

23 THE COURT: Okay. Take him down and try to find  
24 some lunch for him.

1 MR. FEY: Right. It's a pain in the butt to get  
2 everything signed down there.

3 THE COURT: No. No. I understand. We'll do  
4 that, put him in the room up here in respect to that. It was  
5 my intent to ask you to come back to start going through jury  
6 instructions. Where we are in the case I figured you only  
7 had one more witness we would take care of this morning and  
8 the crime lab was probably going to be this afternoon, and  
9 then we would be ready for instructions in respect to that.  
10 I was kind of figuring that's where we are.

11 So this works from the Court's standpoint.  
12 Again, we'll be back on the record approximately 1:00 o'clock  
13 and see where we are in respect to this matter. So thank  
14 you.

15 MS. WHITE: Thank you, Your Honor.

16 (Whereupon, a lunch recess was taken.)

17 THE COURT: We're back on the record in respect  
18 to Case Number 20CR00121, State of Nevada versus David Edward  
19 Elliston Junior.

20 Let me ask you the question, have you reached a  
21 plea agreement?

22 MR. FEY: We have, Your Honor. If it please the  
23 Court, it's been executed by me, by Ms. White and by  
24 Mr. Elliston. I have not filed it with the Court. I'll

1 present it for file at this time.

2 THE COURT: It's also my understanding, second  
3 criminal amended information needs to be filed.

4 MS. WHITE: Yes, Your Honor, and I have an  
5 original copy right here.

6 THE COURT: Thank you.

7 Mr. Elliston, please stand. It's my  
8 understanding that you have changed your plea in this matter.  
9 Previously back on August 3rd, 2020 you entered a not guilty  
10 plea in respect to the criminal information. So at this time  
11 you're going to change your plea; is that correct?

12 THE DEFENDANT: That is correct, Your Honor.  
13 That's correct, Your Honor.

14 THE COURT: Okay. The second amended criminal  
15 information in this particular matter charges you with as  
16 follows, Count One, trafficking in a schedule one controlled  
17 substance, 14 grams to 28 grams, a category B felony as  
18 defined by NRS 453.3385 1B. So do you understand the charges  
19 against you in respect to Count One?

20 THE DEFENDANT: I do.

21 THE COURT: Count Two charges you with  
22 trafficking in a schedule one controlled substance, 14 grams  
23 to 28 grams, a category B felony as defined by NRS 453.3385  
24 1B. Do you understand the charge against you in Count Two?

1 THE DEFENDANT: I do.

2 THE COURT: Count Three charges you ex-felon in  
3 possession of a firearm, a category B felony as defined by  
4 NRS 202.360. Do you understand the charges against you in  
5 Count Three?

6 THE DEFENDANT: I do.

7 THE COURT: The possible sentence if you plead  
8 guilty or are found guilty in respect to Count One, as a  
9 category B felony is a minimum of 24 months to a maximum  
10 180 months in the Nevada Department of Corrections, 100,000  
11 dollar fine. Do you understand that?

12 THE DEFENDANT: I do.

13 THE COURT: Count Two, trafficking in a schedule  
14 one controlled substance, 14 grams to 28 grams. Again, the  
15 possible sentence of a category B felony is a minimum of 24  
16 months to a of maximum 180 months in the Nevada Department of  
17 Corrections and up to 100,000 dollar fine. Do you understand  
18 that?

19 THE DEFENDANT: I do.

20 THE COURT: As to Count Three, possible sentence  
21 which is ex-felon in possession of a firearm, a category B  
22 felony as defined by NRS 202.360, a possible sentence if  
23 you're found guilty or plead guilty is a minimum of 12 months  
24 to a maximum of 72 months at the Nevada Department of

1 Corrections and up to a 5,000 dollar fine. Do you understand  
2 that it's a possible sentence?

3 THE DEFENDANT: I do, Your Honor.

4 THE COURT: Okay. Are you a citizen of the  
5 United States?

6 THE DEFENDANT: Yes, I am.

7 THE COURT: Are you a veteran in the military?

8 THE DEFENDANT: No, I'm not.

9 THE COURT: Mr. Elliston, in respect to Count  
10 One, trafficking in a schedule -- trafficking in a schedule  
11 one controlled substance, 14 grams to 28 grams, how do you  
12 plead, guilty or not guilty?

13 THE DEFENDANT: Guilty.

14 MR. FEY: Guilty by way Alford plea.

15 THE COURT: Alford plea?

16 MR. FEY: Yes, Your Honor.

17 THE COURT: Count Two, trafficking in a schedule  
18 one controlled substance, 14 grams to 28 grams, how do you  
19 plead, guilty, not guilty or an Alford plea?

20 THE DEFENDANT: Alford plea.

21 THE COURT: Count Three, ex-felon in possession  
22 of a firearm, a category B felony, again, as defined by NRS  
23 202.360, how do you plead, guilty, not guilty or an Alford  
24 plea?



1 THE DEFENDANT: Alford plea, Your Honor.

2 THE COURT: All right. Please be seated. Before  
3 I accept your plea I must determine whether the plea is being  
4 voluntarily, knowingly entered and not the result of any  
5 force, threats or promises other than those set forth in the  
6 memorandum of plea negotiations.

7 Again, Mr. Elliston, here you're charged with two  
8 counts of trafficking in a schedule one controlled substance,  
9 14 grams to 28 grams, both category B felonies and one count  
10 of basically ex-felon in possession of a firearm, a category  
11 B felony, the State must prove these charges against you. Do  
12 you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: If they fail to prove -- if they fail  
15 to prove that you're guilty of these crimes beyond a  
16 reasonable doubt you would be found not guilty. Do you  
17 understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: And also if they failed to prove any  
20 elements of this crime you would be found not guilty. So do  
21 you understand that as well?

22 THE DEFENDANT: Yes.

23 THE COURT: Again, the possible penalties as  
24 indicated both as to Count One and Count Two are category B

1 felonies, caring a possible sentence of 24 to 180 months in  
2 the Nevada Department of Corrections and up to 100,000 dollar  
3 fine. Count Three is a minimum of 12 months to 72 months and  
4 up to 5,000 dollar fine. So do you understand that again?

5 THE DEFENDANT: Yes.

6 THE COURT: I have been provided a memorandum of  
7 plea agreement. This is an agreement between you and the  
8 State of Nevada by and through the district attorney's office  
9 that provides as follows. That the parties agree to  
10 recommend and stipulate to a sentence of incarceration in the  
11 Nevada Department of Corrections without probation as  
12 follows.

13 On Count One 24 months to 180 months. On Count  
14 Two, 24 months to 180 months. And on Count Three, 24 months  
15 to 60 months. Each count to run consecutive for an aggregate  
16 of a total of 72 months to 420 months in the Nevada  
17 Department of Corrections. The State agrees to dismiss or  
18 not pursue all of the charges arising from this specific  
19 criminal episode. So do you understand that to be the  
20 agreement?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you read and write the English  
23 language?

24 THE DEFENDANT: Yes, I do.

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of Karla K. Butko, Ltd., P. O. Box 1249, Verdi, NV 89439, and that on this date I caused the foregoing document to be delivered to all parties to this action by

X placing a true copy thereof in a sealed, stamped envelope with the United States Postal Service at Reno, Nevada. (Client)

X E-Flex Delivery System of the Nevada Supreme Court

addressed as follows:

Carson City District Attorney's Office  
885 E. Musser, #2030  
Carson City, NV 89701  
ATTN: Melanie Brantingham

DATED this 13 day of January, 2022.

  
\_\_\_\_\_  
Karla K. Butko, Esq.

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID EDWARD ELLISTON,

Docket No. 83217

Appellant,

D. Ct. 20 CR 00121 1B

vs.

THE STATE OF NEVADA,

Respondent.

---

APPEAL FROM JUDGMENT OF  
THE HONORABLE JAMES T. RUSSELL

FIRST JUDICIAL DISTRICT COURT

---

APPELLANT'S APPENDIX

VOLUME 3

KARLA K. BUTKO  
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Verdi, Nevada 89439  
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Melanie Brantingham

## **INDEX TO APPELLANT'S APPENDIX**

### **VOLUME 1**

<b><u>Document</u></b>	<b><u>Pages</u></b>
Criminal Information. . . . .	1-5
Motion to Suppress Evidence. . . . .	6-11
Motion for Disclosure of Informants and Impeaching Information. . . . .	12-16
Opposition to Motion to Suppress Evidence. . . . .	17-50
JAVS CD-ROM Transcript of Proceedings, Preliminary Hearing, Friday, January 24, 2020. . . . .	51-171
Motion to Bifurcate Charges Within Same Trial. . . . .	172-176
Reply Memorandum in Support of Disclosure of Informants and Impeaching Information. . . . .	177-182
Motion for Reconsideration Regarding Disclosure of Informants and Impeaching Information. . . . .	183-193
Objection to Motion for Reconsideration. . . . .	194-198
Motion for Leave to Amend Criminal Information Amended Criminal Information. . . . .	199-211
Amended Criminal Information. . . . .	212-220
Transcript of Proceedings, Volume 1, Jury Trial, Tuesday April 6, 2021. . . . .	221-250

## **INDEX TO APPELLANT'S APPENDIX**

### **VOLUME 2**

<b><u>Document</u></b>	<b><u>Pages</u></b>
Transcript of Proceedings, Volume 1, Jury Trial, Tuesday April 6, 2021.....	251-375
Transcript of Proceedings, Volume 2, Trial, Wednesday April 7, 2021.....	376-500

### **VOLUME 3**

Transcript of Proceedings, Volume 2, Trial, Wednesday April 7, 2021.....	501-511
Second Amended Criminal Information.....	512-515
Memorandum of Plea Negotiation Pursuant to Alford. . . .	516-524
Second Amended Criminal Information.....	525-528
Submission of Forensic Report #1-Controlled Substances	529-533
Submission of Letters of Support for Defendant. . . . .	534-549
JAVS Transcript of Proceedings, Sentencing, June 14, 2021	550-582
JAVS Transcript of Proceedings, Status, March 1, 2021. . . .	583-586
Judgment of Conviction. . . . .	587-588
Corrected Judgment of Conviction. . . . .	589-590
Motion for Disclosure of Informants . . . . .	591-595

## **INDEX TO APPELLANT’S APPENDIX**

### **VOLUME 3**

<b><u>Document</u></b>	<b><u>Pages</u></b>
Opposition to Motion for Disclosure of Informants and Impeaching Information. . . . .	592-603
Order Denying Motion to Suppress. . . . .	604-612
Order. . . . .	613-615
Order Denying Motion to Bifurcate. . . . .	616-618
Notice of Habitual Criminality. . . . .	619-633
Order. . . . .	634-636
Memorandum of Plea Negotiation Pursuant to Alford. . .	637-649
Submission of Substance Abuse Evaluation. . . . .	650-658
Submission of Letters of Support for Defendant. . . . .	659-674

1 THE COURT: Did you read this agreement?  
2 THE DEFENDANT: I read it.  
3 THE COURT: Did you go through this agreement  
4 with your attorney?  
5 THE DEFENDANT: I did.  
6 THE COURT: Did you sign this agreement?  
7 THE DEFENDANT: I did.  
8 THE COURT: Is that your signature on page seven?  
9 THE DEFENDANT: It is.  
10 THE COURT: And were you under the influence of  
11 any drugs, alcohol or any medication when you signed it?  
12 THE DEFENDANT: No.  
13 THE COURT: And you understand that irrespective  
14 of the terms and conditions of this settlement agreement that  
15 basically it's up to the Court to sentence you. Do you  
16 understand that?  
17 THE DEFENDANT: Yes, Your Honor.  
18 THE COURT: Okay. You clearly understand that?  
19 THE DEFENDANT: I clearly understand that.  
20 THE COURT: Were you under the influence of any  
21 drugs, alcohol or any medication when you signed this  
22 agreement again?  
23 THE DEFENDANT: No, Your Honor.  
24 THE COURT: Anyone force you to sign it?



1 THE DEFENDANT: No. No one forced me to.

2 THE COURT: Did anyone threaten you in any manner  
3 to get you to sign this agreement?

4 THE DEFENDANT: No.

5 THE COURT: Have any promises been made to you  
6 other than those set forth in this agreement?

7 THE DEFENDANT: None.

8 THE COURT: No, okay. Again, you understand  
9 sentencing is up to this Court?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: As to your constitutional rights  
12 you're giving up the right to plead not guilty. Do you  
13 understand that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: You're giving up your right to a  
16 speedy and public jury trial free of pretrial publicity. Do  
17 you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: You're giving up your right at trial  
20 to confront and cross-examine witnesses against you. Do you  
21 understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: You're giving up your right to call  
24 witnesses on your own behalf, the right to compel appearances

1 at trial. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: You're giving up your right to  
4 present evidence at trial, testify or remain silent based  
5 upon your Fifth Amendment Right against self-incrimination.  
6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: You're giving up your right to appeal  
9 any defects in your case up to this point in time. Do you  
10 understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand we've gone through  
13 a trial, we're halfway through trial in respect to this  
14 particular matter. So basically you're waiving any defects  
15 or anything else in respect to that trial. Do you understand  
16 that clearly?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay. Keeping all of these rights in  
19 mind do you want the Court to accept your Alford plea?

20 THE DEFENDANT: Excuse me?

21 THE COURT: Do you want this Court to accept your  
22 Alford plea?

23 THE DEFENDANT: I would like that, yes.

24 THE COURT: Okay. You're now waiving your right

1 to have your attorney present at any further proceedings. So  
2 do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Have you had a chance to talk to your  
5 attorney?

6 THE DEFENDANT: I have.

7 THE COURT: Have you had a chance to review your  
8 case with your attorney?

9 THE DEFENDANT: I have.

10 THE COURT: Are you satisfied with your legal  
11 representation?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. Let me ask the district  
14 attorney's office are there sufficient facts to support the  
15 charges in this particular case?

16 MS. WHITE: There are, Your Honor, for all three  
17 charges. And to tell the Court that for Count One,  
18 trafficking in a schedule one controlled substance, 14 to  
19 28 grams, we would be able to prove that the defendant was in  
20 possession of 187 approximately grams of methamphetamine, all  
21 of which occurred at 2412 South Curry Street in Carson City,  
22 Nevada on May 30th, 2020.

23 Additionally, regarding Count Two, trafficking in  
24 a schedule one controlled substance, 14 to 28 grams, we would

1 be able to prove that the defendant possessed approximately  
2 15 to 20 grams of heroin at 2412 South Curry Street in Carson  
3 City, Nevada also on May 30th, 2020.

4 Additionally, in regard to Count Three, ex-felon  
5 in possession of a firearm, we would be able to prove the  
6 defendant did have in his possession a firearm having been  
7 previously convicted of at least two felonies as outlined in  
8 the criminal information, one of which is burglary, a  
9 category B felony. Another is a motor vehicle theft, also a  
10 category B felony, both of which resulted in convictions.  
11 And the possession of the firearm occurred at 2412 South  
12 Curry Street in Carson City, Nevada on May 30th, 2020.

13 THE COURT: Okay. Additionally, it's my  
14 understanding reading the second amended criminal information  
15 that the habitual criminal charge is taken off the table and  
16 not basically part of this.

17 MR. FEY: That's correct, Your Honor.

18 MS. WHITE: That's correct, Your Honor.

19 THE COURT: Thank you. So based upon all of the  
20 questions and answers given do you wish to change your Alford  
21 plea at all?

22 THE DEFENDANT: No, sir.

23 THE COURT: Okay. I find the defendant  
24 voluntarily, knowingly waived his constitutional rights. I

1 find the defendant understands the charges against him, the  
2 possible sentence and voluntarily, knowingly entered his no  
3 contendere or Alford plea which is accepted by this Court.  
4 Sentencing will be on June 14th, 2021.

5 MR. FEY: Is there any earlier date we can do  
6 that, Your Honor, or is that just --

7 THE COURT: Well, I was trying to figure it out.  
8 The May 24th date is going to be Senior Judge Maddox and  
9 that. So we could do it June 7th. That's 6-7-21. Would  
10 that -- that would be the earliest.

11 MR. FEY: That will be fine.

12 THE COURT: Okay. We'll set it for June 7th,  
13 2021, at 9:00 o'clock. We'll order the division of parole  
14 and probation to prepare a presentence investigation report.  
15 And, again, the defendant is going to remain in custody until  
16 sentencing.

17 MR. FEY: Understood, Your Honor.

18 THE COURT: In this particular case in respect to  
19 this matter, again, I would also ask you whether or not the  
20 Exhibits 3 through 12 can be returned to the sheriff's office  
21 so the Court doesn't have to retain.

22 MR. FEY: They can, Your Honor.

23 MS. WHITE: Yes, Your Honor. No objection.

24 THE COURT: Thank you.

1 Anything further?

2 MR. FEY: Yes, Your Honor. I think the  
3 proceedings are concluded as to my client, and I don't see  
4 any reason for him to sit in here of everyone looking. So I  
5 would ask that he be excused.

6 THE COURT: I understand that. My intent is I  
7 can do one of two things. I can bring the jury in and excuse  
8 them from the court or wait until they are all here in the  
9 jury assembly room and go and talk to them and just excuse  
10 them at that time. I kind of prefer to do that and thank  
11 them that way in respect to that. So we'll wait.

12 MR. FEY: I'm sorry, Your Honor. I didn't mean  
13 to interrupt Your Honor. I'm sorry. He indicated a desire  
14 to thank the jury.

15 THE COURT: Oh, you want to thank the jury?

16 THE DEFENDANT: Yes. Well, I had one question  
17 additionally. I understand I did the plea. I have the money  
18 in the vehicle was my wife's and there's an open civil case  
19 because I was sued for that, and there's been no result. I  
20 did a -- I disputed all of the claims on that. I'm wondering  
21 what's the outcome of that or how do I pursue it? I mean, if  
22 possible, my wife has my child by herself and she's  
23 struggling right now. That was hers. That really had  
24 nothing to do with anything. You know what I mean.

1 THE COURT: Well, it's up to the D.A.'s office.  
2 And, I don't know, sometimes they forfeit the funds and  
3 everything else as a result of the criminal actions and  
4 everything else and expense and all of that. So I can't  
5 answer you at this point in time. But the D.A. has heard  
6 your request. They will talk to your attorney.

7 MR. FEY: I'll talk to the district attorney and  
8 see what's going on. I'm not familiar with the status of  
9 that case.

10 MS. BRANTINGHAM: The civil case pending of  
11 forfeiture has been filed so he would have to defend it in  
12 that case.

13 THE DEFENDANT: And I have. I just haven't heard  
14 back. So it's been --

15 MR. FEY: Let me look into it.  
16 Do you want to talk to the jury?

17 THE DEFENDANT: Apologize.

18 THE COURT: That's up to him. I don't mind.

19 MR. FEY: It's up to you.

20 THE DEFENDANT: Yeah. Yeah. I think they  
21 deserve that at least.

22 THE COURT: Okay. We're going to have to wait  
23 until they are all here. As soon as they are all here we'll  
24 bring them in and excuse them at that time. Just hang in

1       there for a few more minutes.

2               (Whereupon, a brief recess was taken.)

3               THE COURT: We are back on the record outside the  
4       presence of the jury on Case 20CR00121.

5               Go ahead and bring the jury in.

6               Will counsel stipulate the presence of the  
7       jurors?

8               MS. WHITE: Yes, Your Honor.

9               MR. FEY: As well.

10              THE COURT: Please be seated. I have some news  
11     for you. Essentially what's happened in this particular case  
12     is that the defendant, David Edward Elliston, has accepted a  
13     plea deal with the State of Nevada filed through the district  
14     attorney's office whereby he has pled Alford -- an Alford  
15     plea which is a no contendere plea to two counts of  
16     trafficking in a schedule one controlled substance, 14 grams  
17     to 28 grams, a category B felony as defined by NRS 453.3385  
18     1B, and additionally he's pled an Alford plea or no contest  
19     plea to Count Three which you were not hearing which is  
20     ex-felon in possession of a firearm, a category B felony, as  
21     defined by NRS 202.360.

22              So as a result of that basically this case is  
23     concluded. There will be a sentencing by this Court set for  
24     June 7th, 2021, at which time this Court will sentence him



1 pursuant to the statutes of the State of Nevada.

2           However, I wanted to thank you all. I brought  
3 you back in the courtroom to thank you all for being here and  
4 being most attentive in respect to that. That's one aspect  
5 because we can't have jury trials without jurors. So, again,  
6 we appreciate you very much you showing up.

7           I'm going to come and talk to you separately in a  
8 few minutes once we excuse you back to the room. But  
9 Mr. Elliston wanted to speak to you. I allowed that.

10           So, Mr. Elliston.

11           THE DEFENDANT: I just wanted to tell you guys  
12 all thank you. But more than I wanted to tell you thank you  
13 I want to apologize to everybody. I know you guys all have  
14 lives and thankfully the D.A. offered me a plea, the Alford  
15 plea where I can take some responsibility for my  
16 irresponsibility. And I just want to apologize to you for  
17 taking the time out of your lives and the time out of the  
18 rest of this court's lives to come here and deal with my  
19 irresponsibility, that I accept this, much of it I did it on  
20 paper and I'm sorry.

21           And to you guys as well, thank you.

22           THE COURT: Okay. We're going to go ahead and  
23 excuse you back to the jury. Thank you.

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STATE OF NEVADA,       )  
                                  ) ss.  
CARSON CITY.            )

I, KATHY JACKSON, Nevada Certified Court Reporter  
Number 402, do hereby certify:

That I was present in the District Court in Carson  
City, in and for the State of Nevada, on April 7, 2021, for  
the purpose of reporting in verbatim stenotype notes the  
within-entitled Trial;

That the foregoing transcript, consisting of pages 1  
through 121, is a full, true and correct transcription of  
said Trial.

Dated at Carson City, Nevada, this 21st day  
of November, 2021.

  
\_\_\_\_\_  
KATHY JACKSON, CCR  
Nevada CCR #402

REC'D & FILED

April 7, 2021 Date

AUBREY ROWLATT  
CLERK

By [Signature]

JASON D. WOODBURY  
DISTRICT ATTORNEY  
Nevada Bar No. 6870  
885 E. Musser Street, Suite 2030  
Carson City, NV 89701  
(775) 887-2072  
Attorney for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

STATE OF NEVADA,

Plaintiff,

v.

DAVID EDWARD ELLISTON JR.,  
PCN #NVCCSO6009598C,

Defendant.

Case No. 20 CR 00121 1B

Dept. No. I

SECOND AMENDED CRIMINAL INFORMATION

STATE OF NEVADA )  
CARSON CITY ) :ss

JASON D. WOODBURY, District Attorney in and for Carson City, State of Nevada, by SARAH E. WHITE, Deputy District Attorney, in the name and by the authority of the State of Nevada, informs the Court that DAVID EDWARD ELLISTON JR., the Defendant, above-named, on or about the 30th day of May, 2020, and before the filing of this Information, at Carson Township, in Carson City, State of Nevada, has committed the crimes of **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14 GRAMS TO 28 GRAMS**, a category B Felony as defined by NRS 453.3385(1) (b) (Count I); **TRAFFICKING IN A SCHEDULE 1**

1 **CONTROLLED SUBSTANCE – 14 GRAMS TO 28 GRAMS**, a category B Felony as  
2 defined by NRS 453.3385(1) (b) (Count II); and **EX-FELON IN POSSESSION OF A**  
3 **FIREARM**, a category B Felony as defined by NRS 202.360 (Count III), in the  
4 manner following:

5 **Count I**

6 **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14 GRAMS TO**  
7 **28 GRAMS**

8 **("B" Felony – NRS 453.3385(1) (b))**

9 That the Defendant, David Edward Elliston Jr., on or about May 30, 2020, did  
10 knowingly or intentionally, sell, manufacture, deliver, or bring into this State, or was  
11 knowingly or intentionally in actual or constructive possession of a schedule 1  
12 controlled substance, except marijuana, or any mixture which contains any such  
13 controlled substance, in a quantity weighing fourteen (14) grams or more but less  
14 than twenty-eight (28) grams, in the manner following, to-wit: the Defendant did  
15 possess within his vehicle approximately 187 grams of Methamphetamine, all of  
16 which occurred at or near 2412 South Curry Street, Carson City, Nevada.

17 **Count II**

18 **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14 GRAMS TO**  
19 **28 GRAMS**

20 **("B" Felony – NRS 453.3385(1) (b))**

21 That the Defendant, David Edward Elliston Jr., on or about May 30, 2020, did  
22 knowingly or intentionally, sell, manufacture, deliver, or bring into this State, or was  
23 knowingly or intentionally in actual or constructive possession of a schedule 1  
24 controlled substance, except marijuana, or any mixture which contains any such  
25 controlled substance, in a quantity weighing fourteen (14) grams or more but less

1 than twenty-eight (28) grams, in the manner following, to-wit: the Defendant did  
2 possess within his vehicle approximately 15 to 20 grams of heroin, all of which  
3 occurred at or near 2412 South Curry Street, Carson City, Nevada.

4 **Count III**

5 **EX-FELON IN POSSESSION OF A FIREARM**

6 **("B" Felony – NRS 202.360)**

7 That the Defendant, David Edward Elliston Jr., on or about May 30, 2020, did  
8 willfully and unlawfully possess and/or have under his custody and control any  
9 firearm, in the manner following: the Defendant did possess a Hi-Point 9mm  
10 handgun within his vehicle having been convicted a Burglary, a category B felony,  
11 and/or Motor Vehicle Theft, a category B felony, and/or having otherwise been  
12 convicted of a felony, all of which occurred at or near 2412 South Curry Street,  
13 Carson City, Nevada.

14 All of which is contrary to the form of the Statutes in such cases made and  
15 provided and against the peace and dignity of the State of Nevada.

16 DATED this 7th day of April, 2021.

17 JASON D. WOODBURY  
18 District Attorney

19 By: 

20 SARAH E. WHITE  
21 Deputy District Attorney  
22 Nevada Bar No. 14643  
23  
24  
25

1 The following are the names of such witnesses for the State of Nevada as are  
2 known to me at the time of filing this Information:

3 Det. Brett John Bindley  
4 Carson City Sheriffs Office  
5 911 E. Musser Street  
6 Carson City, NV 89701

7 Jeff J. Pullen  
8 Carson City Sheriffs Office  
9 911 E. Musser Street  
10 Carson City, NV 89701

11 Daniel Henneberger  
12 Carson City Sheriffs Office  
13 911 E. Musser Street  
14 Carson City, NV 89701

15 Jordan Hadlock  
16 Carson City Sheriffs Office  
17 911 E. Musser Street  
18 Carson City, NV 89701

19 Lizzeth Granata  
20 Carson City Sheriffs Office  
21 911 E. Musser Street  
22 Carson City, NV 89701

23 CCSO Dispatch Center  
24 4645 Snyder Avenue  
25 Carson City, NV 89701

Washoe County Sheriff Crime Lab  
911 E. Parr Blvd.  
Reno, NV 89512

Carson City Sheriffs Office Crime Lab  
Carson City Sheriff's Office 911 E.  
Musser Street  
Carson City, NV 89701

**REC'D & FILED**April 7, 2021

Date

AUBREY ROWLATT  
CLERKBy [Signature] Deputy

1 JASON D. WOODBURY  
2 DISTRICT ATTORNEY  
3 Nevada Bar No. 6870  
4 885 E. Musser Street, Suite 2030  
5 Carson City, NV 89701  
6 (775) 887-2072  
7 Attorney for Plaintiff

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

STATE OF NEVADA,

Plaintiff,

v.

DAVID EDWARD ELLISTON JR.,  
PCN#NVCCSO6009598C,

Defendant.

Case No. 20 CR 00121 1B

Dept. No. I

**MEMORANDUM OF PLEA NEGOTIATION PURSUANT TO ALFORD**

I, DAVID EDWARD ELLISTON JR., by and through WALTER B. FEY ESQ.  
and SARAH E. WHITE, Deputy District Attorney in and for Carson City, State of  
Nevada, hereby agree to plead guilty, pursuant to North Carolina v. Alford, 400 U.S.  
25 (1970), **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14  
GRAMS TO 28 GRAMS**, a category B Felony as defined by NRS 453.3385(1) (b)  
(Count I); **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14  
GRAMS TO 28 GRAMS**, a category B Felony as defined by NRS 453.3385(1) (b)  
(Count II); and **EX-FELON IN POSSESSION OF A FIREARM**, a category B Felony  
as defined by NRS 202.360 (Count III), and as more fully alleged in the charging

1 document attached hereto as Exhibit "1".

2 My decision to plead guilty by way of Alford is based upon the plea agreement  
3 in this case which is as follows:

4 That the parties agree to recommend a stipulated sentence of incarceration in  
5 the Nevada Department of Corrections without probation as follows: on Count I, 24  
6 months to 180 months; on Count II, 24 months to 180 months, and on Count III, 24  
7 months to 60 months; each Count to run consecutive for an aggregate total of 72  
8 months to 420 months in the Nevada Department of Corrections. The State agreed to  
9 dismiss and/or not pursue all other charges arising from this specific criminal  
10 episode.

11 CONSEQUENCES OF THE PLEA

12 By pleading guilty pursuant to the Alford decision, it is my desire to avoid the  
13 possibility of being convicted of more offenses or of a greater offense if I were to  
14 proceed to trial on the original charges and of also receiving a greater penalty. I  
15 understand that my decision to plead guilty by way of the Alford decision does not  
16 require me to admit guilt, but is based upon my belief that the State would present  
17 sufficient evidence at trial that a jury would return a verdict of guilty of a greater  
18 offense or of more offenses than that to which I am pleading guilty by way of Alford,  
19 as set forth in Exhibit "1."

20 I understand that as a consequence of my plea of guilty by way of the Alford  
21 decision to the charge of **TRAFFICKING IN A SCHEDULE 1 CONTROLLED**  
22 **SUBSTANCE – 14 GRAMS TO 28 GRAMS**, I may be imprisoned in the Nevada  
23 Department of Corrections for a period of not less than two (2) years and not more  
24 than fifteen (15) years and I may be fined not more than \$100,000.00. I understand  
25 that as a consequence of my plea of guilty by way of the Alford decision to the



1 charge of **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14**  
2 **GRAMS TO 28 GRAMS**, I may be imprisoned in the Nevada Department of  
3 Corrections for a period of not less than two (2) years and not more than fifteen (15)  
4 years and I may be fined not more than \$100,000.00. I understand that as a  
5 consequence of my plea of guilty by way of the Alford decision to the charge of **EX-**  
6 **FELON IN POSSESSION OF A FIREARM**, I may be imprisoned in the Nevada  
7 Department of Corrections for a period of not less than one (1) year and not more  
8 than six (6) years and I may be fined not more than \$5,000.00. I understand that  
9 restitution may be required. I understand that the law requires me to pay a \$25.00  
10 Administrative Assessment Fee.

11 I understand that, if appropriate, I will be ordered to make restitution to the  
12 victim of the offenses to which I am pleading guilty by way of Alford and to the victim  
13 of any related offense which is being dismissed or not prosecuted pursuant to this  
14 agreement. I will also be ordered to reimburse the State of Nevada for any expenses  
15 related to my extradition, if any.

16 I further acknowledge that I have been advised that if I am not a United States  
17 citizen, pursuant to Federal Immigration Law, conviction of this felony may result in  
18 deportation, revocation of resident alien status, visa or work permit, denial of re-  
19 admission to the United States, and denial of naturalization should I apply.

20 I understand that I am not eligible for probation for either Count I or Count II to  
21 which I am pleading guilty by way of Alford. However, I understand that I may be  
22 eligible for probation for Count III to which I am pleading guilty by way of Alford. I  
23 understand that, except as otherwise provided by statute, the question of whether I  
24 receive probation on Count III is in the discretion of the sentencing judge.

25 ///

1 I understand that information regarding charges not filed, dismissed charges,  
2 or charges to be dismissed pursuant to this agreement may be considered by the  
3 judge at sentencing.

4 I understand that if more than one sentence of imprisonment is imposed and I  
5 am eligible to serve the sentences concurrently, the sentencing judge has the  
6 discretion to order the sentences served concurrently or consecutively.

7 I have not been promised or guaranteed any particular sentence by anyone. I  
8 know that my sentence is to be determined by the court within the limits prescribed  
9 by statute. I understand that if my attorney or the State of Nevada or both  
10 recommend any specific punishment to the Court, the Court is not obligated to accept  
11 the recommendation.

12 I understand that the Division of Parole and Probation will prepare a report for  
13 the sentencing judge prior to sentencing. This report will include matters relevant to  
14 the issue of sentencing, including my criminal history. This report may contain  
15 hearsay information regarding my background and criminal history. My attorney and I  
16 will each have the opportunity to comment on the information contained in the report  
17 at the time of sentencing. Unless the District Attorney has specifically agreed  
18 otherwise, then the District Attorney may also comment on this report and its  
19 contents, including, but not limited to, all facts and circumstances of the offense.

20 I understand that if the State of Nevada has agreed to recommend a particular  
21 sentence or has agreed not to present argument regarding the sentence, or has  
22 agreed not to oppose a particular sentence, such agreement is contingent upon my  
23 appearance in court on the initial sentencing date and any subsequent date if the  
24 sentencing is continued. I understand that if I fail to appear for the scheduled  
25 sentencing date, or if I fail to appear at or am terminated from any counseling

1 program or specialty court program ordered prior to sentencing, or I commit a new  
2 criminal offense prior to sentencing, the State of Nevada would regain the full right to  
3 argue for any lawful sentence.

4 WAIVER OF RIGHTS

5 By entering my plea of guilty pursuant to the Alford decision, I understand that  
6 I am waiving and giving up the following rights and privileges:

7 1. The constitutional privilege against self-incrimination, including the right  
8 to refuse to testify at trial, in which event the prosecution would not be allowed to  
9 comment to the jury about my refusal to testify.

10 2. The constitutional right to a speedy and public trial by an impartial jury,  
11 free of excessive pretrial publicity prejudicial to the defense, at which trial I would be  
12 entitled to the assistance of an attorney, either appointed or retained. At the trial the  
13 State would bear the burden of proving beyond a reasonable doubt each element of  
14 the offense charged.

15 3. The constitutional right to confront and cross-examine any witnesses  
16 who would testify against me.

17 4. The constitutional right to subpoena witnesses to testify on my behalf.

18 5. The constitutional right to testify in my own defense.

19 6. The right to appeal the conviction, with the assistance of an attorney,  
20 either appointed or retained, unless the appeal is based upon reasonable  
21 constitutional jurisdictional or other grounds that challenge the legality of the  
22 proceedings and except as otherwise provided in subsection 3 of NRS 174.035. I  
23 understand that if I wish to appeal, I must notify my attorney as soon as possible, and  
24 that the Notice of Appeal must be filed within thirty (30) days from the judgment of  
25 conviction.

VOLUNTARINESS OF PLEA

I have discussed the elements of the original charge against me with my attorney and I understand the nature of the charge against me.

I understand that the State would have to prove each element of the charge against me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty by way of Alford and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

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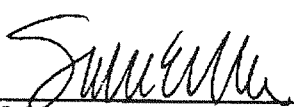
1 I am not now under the influence of any intoxicating liquor, a controlled  
2 substance or other drug which would in any manner impair my ability to comprehend  
3 or understand this agreement or the proceedings surrounding my entry of this plea.

4 My attorney has answered all my questions regarding the guilty by Alford plea  
5 agreement and its consequences to my satisfaction and I am satisfied with the  
6 services provided by my attorney.

7 DATED this 7th day of APRIL, 2021.

8  
9  
10   
DAVID EDWARD ELLISTON JR.  
Defendant

11 AGREED TO BY:

12   
13 SARAH E. WHITE  
14 Deputy District Attorney  
15 Nevada Bar No. 14643

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
Date <sup>sw</sup> 4/7/2021

CERTIFICATE OF COUNSEL

I, WALTER B. FEY ESQ., as the attorney for the Defendant named herein and as an officer of the court hereby certify that:

1. I have fully explained to the Defendant the allegations contained in the charge to which guilty by Alford pleas are being entered.

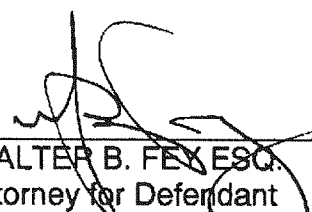
2. I have advised the Defendant of the penalties for each charge and the restitution that the Defendant may be ordered to pay.

3. All pleas of guilty by Alford offered by the Defendant pursuant to this agreement are consistent with the facts known to me, are made with my advice to the Defendant, and are in the best interest of the Defendant.

4. To the best of my knowledge and belief, the Defendant:

- a. Is competent and understands the charges and the consequences of pleading guilty by Alford as provided in this agreement.
- b. Executed this agreement and will enter all guilty by Alford pleas pursuant hereto voluntarily.
- c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time of the execution of this agreement.

Dated this 7th day of APRIL, 2021.

  
WALTER B. FEY ESQ.  
Attorney for Defendant  
1601 Fairview Drive, Suite H  
Carson City, NV 89701  
(775) 329-1101  
Nevada Bar No. 3317

**EXHIBIT 1**

JASON D. WOODBURY  
DISTRICT ATTORNEY  
Nevada Bar No. 6870  
885 E. Musser Street, Suite 2030  
Carson City, NV 89701  
(775) 887-2072  
Attorney for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

STATE OF NEVADA,

Plaintiff,

v.

DAVID EDWARD ELLISTON JR.,  
PCN #NVCCSO6009598C,

Defendant.

Case No. 20 CR 00121 1B

Dept. No. I

**SECOND AMENDED CRIMINAL INFORMATION**

STATE OF NEVADA        )  
CARSON CITY            ):SS

JASON D. WOODBURY, District Attorney in and for Carson City, State of Nevada, by SARAH E. WHITE, Deputy District Attorney, in the name and by the authority of the State of Nevada, informs the Court that DAVID EDWARD ELLISTON JR., the Defendant, above-named, on or about the 30th day of May, 2020, and before the filing of this Information, at Carson Township, in Carson City, State of Nevada, has committed the crimes of **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14 GRAMS TO 28 GRAMS**, a category B Felony as defined by NRS 453.3385(1) (b) (Count I); **TRAFFICKING IN A SCHEDULE 1**



1 **CONTROLLED SUBSTANCE – 14 GRAMS TO 28 GRAMS**, a category B Felony as  
2 defined by NRS 453.3385(1) (b) (Count II); and **EX-FELON IN POSSESSION OF A**  
3 **FIREARM**, a category B Felony as defined by NRS 202.360 (Count III), in the  
4 manner following:

5 **Count I**

6 **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14 GRAMS TO**  
7 **28 GRAMS**

8 **("B" Felony – NRS 453.3385(1) (b))**

9 That the Defendant, David Edward Elliston Jr., on or about May 30, 2020, did  
10 knowingly or intentionally, sell, manufacture, deliver, or bring into this State, or was  
11 knowingly or intentionally in actual or constructive possession of a schedule 1  
12 controlled substance, except marijuana, or any mixture which contains any such  
13 controlled substance, in a quantity weighing fourteen (14) grams or more but less  
14 than twenty-eight (28) grams, in the manner following, to-wit: the Defendant did  
15 possess within his vehicle approximately 187 grams of Methamphetamine, all of  
16 which occurred at or near 2412 South Curry Street, Carson City, Nevada.

17 **Count II**

18 **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14 GRAMS TO**  
19 **28 GRAMS**

20 **("B" Felony – NRS 453.3385(1) (b))**

21 That the Defendant, David Edward Elliston Jr., on or about May 30, 2020, did  
22 knowingly or intentionally, sell, manufacture, deliver, or bring into this State, or was  
23 knowingly or intentionally in actual or constructive possession of a schedule 1  
24 controlled substance, except marijuana, or any mixture which contains any such  
25 controlled substance, in a quantity weighing fourteen (14) grams or more but less

1 than twenty-eight (28) grams, in the manner following, to-wit: the Defendant did  
2 possess within his vehicle approximately 15 to 20 grams of heroin, all of which  
3 occurred at or near 2412 South Curry Street, Carson City, Nevada.

4 **Count III**

5 **EX-FELON IN POSSESSION OF A FIREARM**

6 **("B" Felony – NRS 202.360)**

7 That the Defendant, David Edward Elliston Jr., on or about May 30, 2020, did  
8 willfully and unlawfully possess and/or have under his custody and control any  
9 firearm, in the manner following: the Defendant did possess a Hi-Point 9mm  
10 handgun within his vehicle having been convicted a Burglary, a category B felony,  
11 and/or Motor Vehicle Theft, a category B felony, and/or having otherwise been  
12 convicted of a felony, all of which occurred at or near 2412 South Curry Street,  
13 Carson City, Nevada.

14 All of which is contrary to the form of the Statutes in such cases made and  
15 provided and against the peace and dignity of the State of Nevada.

16 DATED this 7th day of April, 2021.

17 JASON D. WOODBURY  
18 District Attorney

19 By: 

20 SARAH E. WHITE  
21 Deputy District Attorney  
22 Nevada Bar No. 14643  
23  
24  
25

1 The following are the names of such witnesses for the State of Nevada as are  
2 known to me at the time of filing this Information:

3 Det. Brett John Bindley  
4 Carson City Sheriffs Office  
5 911 E. Musser Street  
6 Carson City, NV 89701

7 Jeff J. Pullen  
8 Carson City Sheriffs Office  
9 911 E. Musser Street  
10 Carson City, NV 89701

11 Daniel Henneberger  
12 Carson City Sheriffs Office  
13 911 E. Musser Street  
14 Carson City, NV 89701

15 Jordan Hadlock  
16 Carson City Sheriffs Office  
17 911 E. Musser Street  
18 Carson City, NV 89701

19 Lizzeth Granata  
20 Carson City Sheriffs Office  
21 911 E. Musser Street  
22 Carson City, NV 89701

23 CCSO Dispatch Center  
24 4645 Snyder Avenue  
25 Carson City, NV 89701

Washoe County Sheriff Crime Lab  
911 E. Parr Blvd.  
Reno, NV 89512

Carson City Sheriffs Office Crime Lab  
Carson City Sheriff's Office 911 E.  
Musser Street  
Carson City, NV 89701

1 WALTER B. FEY, ESQ.  
Bar No. 3317  
2 1601 Fairview Drive, Suite H  
Carson City, NV 89701  
3 Telephone 775-329-1101  
Email [wbfey1@gmail.com](mailto:wbfey1@gmail.com)  
4 Attorney for Defendant

REC'D & FILED

2021 JUN 11 PM 1:04

AUDREY ROWLAND  
CLERK

BY 

DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. 20 CR 00121 1B

11 vs

Dept. No. 1


12 DAVID EDWARD ELLISTON JR.,

13 Defendant.  
14 \_\_\_\_\_/

15 **SUBMISSION OF FORENSIC REPORT #1-CONTROLLED SUBSTANCES**

16 COMES NOW, defendant and Submits the attached Substance Abuse  
17 Evaluation prepared by Brad L. Taylor, Criminalist for the Washoe County Crime Lab  
18 on or about March 3, 2021.

19 DATED this 6th day of June, 2021.


20  
21   
22 WALTER B. FEY, ESQ.  
23 1601 Fairview Drive, Suite H  
Carson City, NV 89701  
24 Telephone (775) 329-1101  
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**AFFIRMATION PURSUANT TO NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the Social Security Number of any person.

Dated, this 4th day of June, 2021.

  
\_\_\_\_\_  
Attorney for Defendant

**EXHIBIT 1**



# WASHOE COUNTY SHERIFF'S OFFICE FORENSIC SCIENCE DIVISION

911 Parr Boulevard, Reno, NV 89512  
(775) 328-2800 - [WCSO-FSD@washoecounty.us](mailto:WCSO-FSD@washoecounty.us)



## FORENSIC REPORT # 1 - CONTROLLED SUBSTANCES

Case No.: 20-2877  
Agency: CARSON CITY S.O.  
Address: 911 E Musser Street  
Carson City NV 89701  
Subject: ELLISTON, DAVID

Lab Number: FSD21-001160  
Requested By: SARAH WHITE

I, Brad L. Taylor, hereby declare that:

I am employed as a Criminalist by the Washoe County Sheriff's Office Forensic Science Division (WCSO-FSD); My professional and academic training and experience have qualified me to perform analyses so as to detect the presence and identity of controlled substances, the use or possession of which is regulated by Chapter 453 of NRS; I have qualified as an expert witness in this field in the 1st, 2nd, 3rd, 4th, 6th, 7th, 9th, 10th and 11th Judicial District Courts of the State of Nevada;

On 03/02/2021 I received the below listed evidence from the WCSO-FSD Evidence Section under the above agency case number and laboratory number. On 03/02/2021 I analyzed/examined the evidence:

EVIDENCE ANALYZED/EXAMINED		
Item #	Agency Item #	Description
1	200000602 #6-7, 12-15	7 plastic bags of crystalline substance and 1 plastic bag with white residue
1.1		A tape sealed plastic bag, marked "#14", containing crystalline substance
2	200000602 #4-5, 8-10	5 plastic bags of dark substance
2.1		2 plastic bags, marked "#5" and "#8", containing a dark substance

RESULTS/CONCLUSIONS			
Item #	Substance Description	Identification	Weight/Number
1	7 bags of crystalline substance	N/A	187.019 grams gross weight
1.1	Crystalline substance	Methamphetamine	55.729 ±(0.042) grams net weight
2	5 bags of dark substance	N/A	25.282 grams gross weight
2.1	Dark substance	Heroin	15.762 ±(0.059) grams total net weight

The net weights listed above represent a confidence level of 99.73%

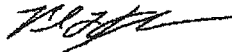
- Note 1 Item 1.1 was analyzed; No further analysis was performed on the remaining exhibits at this time; Total gross weight did not include the plastic bag with residue.
- Note 2 Item 2.1 was analyzed; No further analysis was performed on the remaining exhibits at this time

### Method(s):

color tests (Item 2.1)  
Raman spectrometry (Item 1.1)  
gas chromatography/mass spectrometry (Item 1.1, 2.1)

**Disposition Policy:** Per WCSO-FSD policy, all items will be transferred to a WCSO-FSD evidence storage location unless they have been indicated as disposed or consumed.

I declare under penalty of perjury that the foregoing is true and correct.



Brad L. Taylor  
Criminalist

03/03/2021

Date

This test report or calibration certificate shall not be reproduced except in full, without written approval of the laboratory.

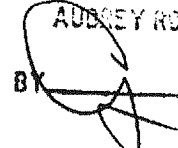


1 WALTER B. FEY, ESQ.  
2 Bar No. 3317  
3 1601 Fairview Drive, Suite H  
4 Carson City, NV 89701  
5 Telephone 775-329-1101  
6 Email [wbfey1@gmail.com](mailto:wbfey1@gmail.com)  
7 Attorney for Defendant

REC'D & FILED

2021 JUN 11 PM 1:00

AUDREY ROWLAND  
CLERK

BY  DEPUTY

6 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF WASHOE**

8 \* \* \*

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. 20 CR 00121 1B

11 vs

Dept. No. 1


12 DAVID EDWARD ELLISTON JR.,

13 Defendant.  
14 \_\_\_\_\_

15 **SUBMISSION OF LETTERS OF SUPPORT FOR DEFENDANT**

16 COMES NOW, defendant and Submits the attached Exhibit 1 Consisting  
17 of Letters of Support for Defendant for use at the Sentencing hearing scheduled for  
18 June 14, 2021, before this Court.

19 DATED this 11th day of June, 2021.

20  
21   
22 WALTER B. FEY, ESQ.  
23 1601 Fairview Drive, Suite H  
24 Carson City, NV 89701  
25 Telephone (775) 329-1101  
26  
27  
28

**AFFIRMATION PURSUANT TO NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the Social Security Number of any person.

Dated, this 11th day of June, 2021.

  
\_\_\_\_\_  
Attorney for Defendant

**EXHIBIT 1**

## INDEX TO LETTERS OF SUPPORT

- |   |         |
|---|---------|
| 1. Letter from Nila Lucas, Defendant's mother           | 1 page  |
| 2. Letter from David Elliston Sr., Defendant's father   | 4 pages |
| 3. Letter from Jamie Kapitan Elliston, Defendant's wife | 2 pages |
| 4. Letter from Richard Allen McCoy                      | 3 pages |
| 5. Letter from JJ McLaughlin, Co-worker                 | 1 page  |
| 6. Letter from Jim Sartor, Friend of Defendant          | 1 page  |



Walter Fey <wbfe1@gmail.com>

---

**David Elliston**

1 message

---

**David Elliston** <dellistonjr2@gmail.com>  
To: wbfe1@gmail.com

Sat, Jun 5, 2021 at 6:34 PM

Dear Mr. Fey,

David has had a ruff road. his sister and I tried to get him here with us but when this all took place when Covid was shutting all modes of public transportation, we couldnt get him to us. He has a new son and his main concern along with ours is that he gets a break . another person desperate from the covid. He has his families support and a way to get away from ppl he knows that put the trouble in front of him. if i were to bring him here to Wisconsin all there is to do is work. no time for trouble. He can just start living a normal life where he can raise his son with a different kind of folks. His sister is a good option for setting a good example as well. She has been in the coast guard 12 yrs and just got a honorable medical retirement. she also did ROTC in highschool and took classes before she inlisted. she went to college for 2 yrs before inlisting. she is now working on becoming a food and beverage manager for a very elite resturant in Miami. my daughter and I can find work for him and his babies mother. I really want to impress on the judge that he has turned a new life and that he wants to prove to us how much he wants to be a productive part of society. he wants to be a husband a father, a son and a brother. He has a chance that other prisoners dont have. David knows I will not tolerate any illegal things happening in my home and there wont be. His sisters is never used drugs as well. she could really pull him up to his full potential. Either way he would be supervised from both of us . Ok if you could provide this info from me to the judge i would be greatful. Please let the judge know he has safe options. I could make sure he goes to some kind of program as well.

813-369-4260  
305-833-5622

Nila Lucas

Thank You  
Meagan Phillips Sister

March 28, 2021

Dear Judge,

While I'm not condoning his actions I would like to explain to you about some things I feel I need to be taking some of the responsibility for that have had a profoundly negative effect on my son David from a very early age. When David was born in San Francisco in 1982 both his mother Nila Norris and I were very young. His mother was in custody at a halfway house for pregnant teens in San Francisco after being sent there from Lake County Ca. for assaulting her probation officer. After David was born she came back home for a weekend visit. She was supposed to return to the halfway house after the weekend but instead we caught a late night flight to Orlando Florida. There we moved in with her aunt and were married several days later. After about six months Nila cheated on me so I took David and caught the first flight back home to California. I never attempted to contact his mother again nor did she and we never heard from her again.

When I got back home from Florida I began drinking and using many different kinds of drugs. I didn't have much time for David. I wasn't ready to be a father and I knew that I could rely on my mother and Nila's mother to take care of the baby so I would be free to drink and get high. My mother worked for the local elementary school full time so during the day David would be with Nila's mom and in the evening and weekends with my mom. My mother owned a small trailer park here in Nice, Ca. and though she didn't make much she provided me and David with a place to live, food, clothes, gas and cash.

After about a year and a half of nothing but using drugs and alcohol I met Jody Leeper. She seemed to think I was a great guy and we began a relationship though our relationship was very one-sided. I didn't

have any respect for anyone especially women. We drank and used drugs every day. I was very controlling and became violent. Within 6 months Jody became pregnant and thought I might settle down and become a caring partner and a good father to the babies. My mom hoped this new relationship and a child on the way might turn me around and start me down the right path. I did not change for the better however I became much worse. David was now living with us in one of the trailers my mom owned. My drug use had increased and so did my violent behavior. Through the 18 years of our relationship I assaulted Jody many times and I cheated on her the entire 18 years we were together. Jody and I had four children together. Only a few months after birth our first born daughter Tiffany died, the cause was Sudden Infant Death. I started using more than ever and so did Jody. We had another son Eric and two daughters Andrea and Kirstin. Then I also had a son Steven outside my relationship with another girl named Tammy Gilbert. The environment that my kids grew up in was an endless cycle of screaming, physical fighting, and drug abuse. I sold drugs so my house was the party place with lots of people coming and going, getting high and staying up for weeks at a time. I was in and out of jail my kid's entire life. Most nights the music could be heard several blocks away. People were in and out all the time. The endless stream of drugs and alcohol made fist fights and gunfire a regular occurrence. Quite often I would say I'm going to the store and not come back for days or even weeks. I would come home high and angry, ready to leave again as soon as I could get enough of whatever I needed to stay loaded and manipulate others.

Looking back I think that unfortunately David just wanted to be like his dad. He started acting out and getting into trouble when he was very young. He was getting in trouble at school and by about the age of eleven he was being brought home by the police for his behavior. He eventually ended up in juvenile hall. That was the beginning of a cycle of institutions for my son. Both his grandmothers had passed away leaving David no one to turn to for anything good or decent. David developed a drug habit after

getting locked up a couple of times. He had always "hated tweakers." He wanted my attention so badly that he was willing to do whatever it took including using drugs. I think he thought if he used drugs we would have something in common. He was right. I cared so much about drugs that if he offered, I would even get high with him. I can honestly say that I was the worst father that I could ever imagine. Even in the drug infested community that I grew up in and where I still reside today I stood out when it comes to being a lousy father, partner, and son. Your Honor, I haven't even scratched the surface when it comes to describing the horrible environment that was David's childhood. David didn't ever get a chance to grow up in a normal family. I used drugs for four decades. I am now 57 years old and have finally found not only sobriety but true recovery. I was 50 years old when I turned my life around. I have been through several court-ordered and county-run rehab programs yet I graduated each one using drugs throughout the mentire programs. I lied and cheated my way through them just as I had through everything my entire life. I have finally turned my life over to Christ's care and control.

It is my prayer that David will do the same. I don't know why I ignored Christ calling my name for all those years. My mother prayed for my salvation every day of her life. Her prayer has been answered. It is my prayer that David will have one more chance to turn his life around. I know that he will have to do some time first. I understand that. I also understand that there is a suggestion regarding his sentencing from the District Attorney's office. I hope that you will find this to be sufficient to serve justice for the people and give him yet another chance. David has only been to one program in his life the Jerico Project. While there he learned a lot about himself and his addiction. He was clean and sober for over two years. I believe that Jerico was good but fell a little short on providing ongoing resources after completion of their program. Upon David's release I am willing and able to provide a healthy and sober place for him to live. I can also provide him with employment and for the first time guidance in recovery and life as a productive member of society. I am very active in recovery here in our community. I am in



leadership at the Celebrate Recovery program that I have been attending for seven and a half years now here at our local church. I lead a step study group for men and am a sponsor for several in recovery. I have taken people into my home and through Christ I helped in leading them to recovery. Four of the five people who have stayed in our home are still sober today celebrating 4 years, 2 years, 18 months, and 5 months as of last Friday. There has also been a ripple effect through myself, my wife, and those whom I mentioned. We are a small community so when one of us chooses a different path it is quite noticeable. Everyone sees something is different about you. When they see that the difference is real and lasting they start asking questions. Next thing you know they are coming to Celebrate Recovery. It's amazing to see so many people that I used to do drugs with finding recovery. Praise the Lord for he is good. Your honor thank you for taking the time to read this and thank you for your consideration.

Sincerely,

David Elliston Sr.

Mrs. White,

This is Jamie Kapitan and I'm writing you in regard to David Elliston. He is my husband and son's father. We are not legally married but that's just a formality. In regards to what Hes done wrong, his actions are inexcusable, and his past is horrible but, I am writing you to let you know that that's the man he was, and even though he still has issues and shortcomings today, what he has overcome and the man he strives to be today are something completely different. I fell in love with him for a good reason.

What you don't know is that Ive known the old David, witnessed the progress, and have been his partner for the last two and a half years. David was not only the sole influence for myself, along with others I know, to start making our own personal changes in learning to lead better lives. I still have my own struggles so I know how hard it is and even though we're not going to experience long term success on the first attempt we will in time. Recovery and change are possible, and they are a process. In this and all else he does David is one of the hardest working men Ive ever met, and honest to a fault. Not perfect. Honest.

He is devoted to me and our son as anyone could ever ask and he is a provider. That's all David does is provide. From the moment he wakes up in the morning to the moment he goes to bed he cooks, cleans, studies, exercises, runs errands, and goes to work 12 hr. Shifts, rarely taking a day off. On his days off he handles other responsibilities, and he is a good role model to my other two sons. They miss him as well and benefit from his attention. The purpose of this letter is to let him know that we need him back desperately.

I know in my heart that had covid 19 never hit he would have continued to do exactly what he was doing prior far the rest of our lives. He loved doing it and it was clear to me and anyone else. It truly broke my heart to see the internal struggle he was faced with and watching him make the decisions he felt forced to make. He was trying to be a provider because that is what he does, and I also know he realizes that was never okay. I know that he never wanted any of this to begin with and has already punished himself more than any amount of jail time ever will. Hes extremely hard on himself.

As a struggling single parent I'm asking you please put my husband back in me and my life so he can continue the path he was on as soon as possible. You've never seen the good he does so we've done the best we can to prove it, through bank records showing solid employment, being enrolled as a student, gym memberships, and a steady climb in our living arrangements, car finances, etc... He obviously ran a clean parole and led a positive productive lifestyle up until a very specific date, barely prior to his arrest. This is very serious but, thankfully short lived and not to be repeated so I'm in hopes that the remainder of the consequence can somewhat match. The cost has already been devastating on a level that is controversial from any moral standpoint and I'm asking for clemency on no more than a humane level so please.

Covid 19 not only hit us, it hit globally, taking both lives and livelihoods. David responded poorly due to lack of life experience and regrets it. Not only has he learned his lesson but, again its come at such a cost. Please give my husband and my sons father back at the earliest opportunity.

God bless you!!

Sincerely,

Jamie Kapitan Elliston

5.18.2021

To: The honorable Judge Russel

From: Richard Allen McCoy

I write to you today respectfully, truthfully, and from the heart. I am writing to you in regards to David Elliston and his character. Before I begin let me say I understand I may be just another inmate or person whos information may be invaluable or even non credible to the courts, but I'd like to take a minute to express my genuine gratitud towards this man.

I was arrested at the beginning of January 2021 When I made it to the main housing unit of the jail I met a man by the name of ~~the~~ David Elliston, as we began to talk I thought he was just going to be another one of those people who would preach to those younger than he, turns out I was half way right. As this man spoke to me, the things he said were actually hitting home 545

What he was saying had meaning and brought a new perspective to the way of life I had been living. One of ~~my~~ the things he told me that has really stuck with me is that anything I obtain in an un-honest way will be taken back at some point in time one way or another by this world because I never had it coming in the first place, now on the other hand if I obtain something in an honest way and it is taken from me the world will repay it because it was honestly mine.

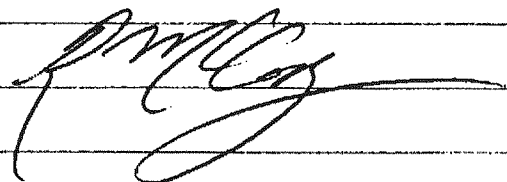
While being in jail with David Elliston I have seen this man attend every N.A., A.A, church group, and drug and ~~substance~~ substance abuse class this jail has in place without missing a single one, as well as stay in his cell an extra hour each morning to pray.

While talking to David he told me about this life changing program in San Francisco CA called the Jericho project. I was released from custody March 17<sup>th</sup> 2021 and looked into

the Jericho Project called them and was accepted into the program. Unfortunately before making it down there I was violating DAS and was re-arrested. I am to be getting out of jail time served May 19<sup>th</sup> and will be heading straight to Jericho, to get ~~my~~ ~~my~~ my life back on a good path to live a better and a ~~more~~ ~~more~~ more fulfilling life, and I owe it to David Elliston

So again I write to you today hoping this letter finds the courts and will shed a little ~~light~~ light on the character of David Elliston, a person I know and genuinely believe to be a good man who fell off during hard times. I know I have found a life long friend who has touched and changed my life for the better,

I write Respectfull, truthfull  
and from the Heart

A stylized, handwritten signature in black ink, appearing to be 'P. M. G.' or similar, with a long horizontal flourish extending to the right.

JJ McLaughlin

15630 Archery view, Truckee, California, 96161

(775) 721-5732

jj@athirdeye.consulting

Date: June 4 2021

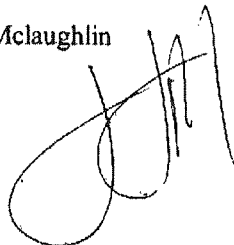
Honorable Judge Russel,

During my time working with Mr. Elliston I have come to have nothing but respect for him. I know that over the years I have watched the thinking in David change drastically. He was a hard worker and always had a clear vision of what he wanted to do with his life going forward. It was such a shock to me and my wife when we heard what happen.

We hope that you take into account the times that we all fell on with covid your honor and let David get home to his daughter in a descent amount of time so she can know him as a father.

Sincerely,

JJ McLaughlin

A handwritten signature in black ink, appearing to be 'JJ McLaughlin', written over the printed name.



Jim Sartor  
Retired Lieutenant - LASD

10259 Dorset st, Rancho Cucamonga, California, 91730  
(909) 732-6802  
LAboys909@gmail.com

Date: June 5 2021

Dear Judge Russel,

My name is Jim Sartor and proud to offer my recommendation of Mr. Elliston to whom I have personally known for 10 years as my friend.

During my relationship with Mr. Elliston I have experienced an individual who shows up earlier than asked, works hard, and carries themselves in a polite, respectable manner. In addition, Mr. Elliston is a family-person who has always presented themselves with levelheadedness and grace.

It's with great confidence that I recommend Mr. Elliston as someone who, I truly believe, possesses the character and judgment for the betterment of our community.

Please do not hesitate to contact me if you should require any further information.

Sincerely,

Signature

Jim Sartor

Date:

6-5-21



CERTIFIED  
COPY

1 CASE NO. 20-CR-00121 1B

2 DEPT. NO. 1

3 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR CARSON CITY

5 BEFORE THE HONORABLE DISTRICT COURT JUDGE, TODD RUSSELL

6  
7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 DAVID EDWARD ELLISTON,

11 Defendant.  
12 \_\_\_\_\_/

13  
14 JAVS TRANSCRIPT OF PROCEEDINGS

15 SENTENCING

16 JUNE 14, 2021

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18  
19  
20  
21  
22 Transcribed By:

Kathy Jackson CSR  
Nevada CCR #402  
California CCR #10465

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APPEARANCES:

For the State:

MELANIE BRANTINGHAM, ESQ.  
Deputy District Attorney  
Carson City, Nevada

SARAH WHITE, ESQ,  
Deputy District Attorney  
Carson City, Nevada

For the Defendant:

WALTER FEY, ESQ.  
Attorney at Law  
Carson City, Nevada

1 JUNE 14, 2021, CARSON CITY, NEVADA

2 -oOo-

3 THE COURT: Case Number 20CR00121, State of  
4 Nevada versus David Edward Elliston Junior. This is Case  
5 Number 20CR00121, State of Nevada versus David Edward  
6 Elliston Junior. Show the appearance of Melanie Brantingham,  
7 deputy district attorney on behalf of the State of Nevada.  
8 Show the appearance of Walter Fey on behalf of the defendant.  
9 The defendant is present. Show the appearance of Andrew  
10 Ricco from the division of parole and probation.

11 Mr. Fey, have you had a chance to review the  
12 presentence investigation report dated May 13th, 2021?

13 MR. FEY: Thank you, Your Honor. We have  
14 received a copy of the presentence investigation report.  
15 I've provided a copy to my client. We have certain additions  
16 and changes. The first is contained on page two, about the  
17 third line down. Mr. Elliston, at the time of his arrest was  
18 a Nevada resident. He resided in Reno.

19 THE COURT: Okay.

20 MR. FEY: On page four, Your Honor, there's the  
21 third offense down in the box, forced assault with a deadly  
22 weapon, not a firearm, that actually occurred coincident with  
23 the next offense down. So that particular brief count -- the  
24 only offense that he was arrested for in 2002 was receiving

1 known stolen property. That little squib at the top should  
2 be down below.

3 THE COURT: Forced assault with a deadly weapon.

4 MR. FEY: Correct.

5 THE COURT: Should go down to 5-11.

6 MR. FEY: That's correct, Your Honor. Then on  
7 page six of the presentence investigation, I'm aware that the  
8 division uses the police reports for the various facts  
9 attended to the case. In this particular case the bottom  
10 paragraph indicates gross weights of 187.8 grams of  
11 methamphetamine and 20.9 grams of heroin. That's why I filed  
12 a copy of the forensic report which was provided by the  
13 district attorney's office.

14 The offense really properly should be, I think  
15 these are the gross offense, the gross weights, but the next  
16 weights were decided upon by the Washoe County Crime Lab and  
17 they are contained on this forensic report which was filed  
18 with the Court.

19 THE COURT: Okay. So if I add to the report from  
20 the Washoe Crime Lab as to the weight of the drugs.

21 MR. FEY: They're still over the trafficking  
22 amounts --

23 THE COURT: Yeah.

24 MR. FEY: -- under the statute. I just wanted

1 the record to reflect it's substantially less than the gross.

2 With respect to the third thing, I previously  
3 filed a submission of a substance abuse evaluation with the  
4 Court. Does the Court have a copy of that?

5 THE COURT: I did and I did read it.

6 MR. FEY: And I received a number of letters in  
7 support of Mr. Elliston. I filed those in a document called  
8 submission of letters of support for defendant.

9 THE COURT: I did read that.

10 MR. FEY: Just this morning, Your Honor, then I  
11 received a copy of two other e-mails. I didn't have time to  
12 append them. I would ask these be made part of the  
13 proceedings.

14 I don't know if there's a McCoy who is present.

15 Okay. Thank you, Your Honor.

16 THE COURT: The sentencing date needs to be  
17 changed as well on page one.

18 MR. FEY: I'm sorry?

19 THE COURT: The sentencing date has to be changed  
20 on page one.

21 MR. FEY: It does.

22 THE COURT: Okay. Thank you. I'll add those  
23 additional.

24 MR. FEY: Thank you, Your Honor.

1 THE COURT: Ms. Brantingham, do you have any  
2 changes to the presentence investigation report other than  
3 those indicated?

4 MS. BRANTINGHAM: The only other one that I can  
5 think of is an additional seven days on his credit for time  
6 served.

7 MR. FEY: No objection, Your Honor.

8 THE COURT: So we're at 381?

9 MS. BRANTINGHAM: Yes.

10 THE COURT: Thank you.

11 Any mitigation to offer, Mr. Fey?

12 MR. FEY: Your Honor, this -- if I may, this is  
13 an interesting case for me because frankly in my prior life  
14 at defending criminal defendants very few Courts accept  
15 Alford pleas and this Court does, and it opens up an  
16 interesting issue.

17 Mr. Elliston has been consistent in his claims  
18 that he met the major portion of these controlled substances  
19 were not his. Nevertheless, an Alford plea as the Court is  
20 aware is to avoid a harsher sentence. So he entered  
21 willingly into the guilty plea memorandum, and we are bound  
22 by that to request that the Court follow the recommendations  
23 or follow the recommended sentences.

24 I ask you in mitigation, Your Honor, that the

1 Court take into consideration these letters that come in.  
2 It's as we often see at the 11th hour letters coming in and  
3 everything seems to be hunky-dory. This is a great person  
4 and then the criminal history sometimes belies that. The  
5 conduct of the defendant belies that.

6 And when we see so many diverse letters coming  
7 in, when we see so many inputs from individuals who hold  
8 Mr. Elliston at high esteem, that gives me pause because it  
9 indicates to me that our exposure to Mr. Elliston is  
10 something more than -- should be something more than two  
11 dimensional exposure that we observe both at the trial level  
12 and through the paper trail that has followed him in his  
13 life.

14 One of the substantial issues in the presentence  
15 investigation as we read through it, and I'm not going to  
16 minimize his criminal history, that's -- it is what it is,  
17 and we -- we talked very seriously about the possibility of a  
18 habitual criminal designation.

19 But one of the issues that I ask the Court to  
20 take a look at is Mr. Elliston's history. He would be  
21 arrested. Then he would get out of custody, and then he  
22 would be arrested again in a very very short period of time.

23 This indicates to me rather that Mr. Elliston  
24 never had the opportunity to get out, develop the tools that

1 were necessary to exist in society and to then move forward  
2 and use those tools to stay drug free and, therefore, crime  
3 free in his history.

4 With respect to, this changed actually in 2015  
5 when he got out, he was able to take advantage of the Jericho  
6 -- I think it was called the Jericho --

7 THE DEFENDANT: Project, the Jericho Project.

8 MR. FEY: Yeah, Jericho Project which was a  
9 long-term introduction to criminals, ex-cons into the tools  
10 that they needed to perform in society. And that accordingly  
11 resulted in a much longer delay if he was rearrested in 2018,  
12 Your Honor. He spent I think three years out of custody  
13 total. That was substantial.

14 Now I can't tell the Court that Mr. Elliston's  
15 life is turned around completely because I'm not inside his  
16 head. I'm not in him. But we do see a pattern where I think  
17 with respect to the incident charges, Your Honor, there's  
18 some question as to whether all of them were committed by  
19 Mr. Elliston. And in light of that he has been consistent  
20 that he was set up by an individual named Johnny. Johnny is  
21 the name that was used. That name Jonathan Waters came up at  
22 the trial. And he has been consistent and straight forward  
23 about that. But he has stood up and said, listen, I will  
24 take responsibility for what I believe are the actions that I



1 think that I need to be punished for.

2 I think the Court will recall, I've never seen  
3 anybody stand up and thank a jury for, he said he didn't want  
4 to waste their time by having them to continue on, and he  
5 thanked them for their service. This coupled with the  
6 letters that I see, coupled with the comments that I've and  
7 conversations I've had with Mr. Elliston leave me to believe  
8 that inside he has -- he has reached kind of a low watermark  
9 around aphorism, but he reached the bottom of his life at  
10 this point in time. And there's nowhere to go but up, and  
11 that's important because if that's the case, and I sincerely  
12 hope it is, we have a lot of individuals out there who like  
13 Mr. Elliston, who have affection for him, who have respect  
14 for him, who have taken the time to come and submit letters  
15 to this Court to let them -- let this Court know what kind of  
16 person he is. Again, not that two dimensional individual but  
17 a three dimensional individual.

18 That's important because if Mr. Elliston and  
19 because of the plea negotiations he will have a probation  
20 eligible date and if he's eligible for probation and works  
21 his way in prison, he will be getting out and he will need  
22 the support of those individuals. He will need their  
23 friendship and he will need their assistance to him if he is  
24 to continue in his life in a productive manner.

1                   When he was arrested he had just been laid off  
2                   from Tesla but prior to that he was working at Tesla. COVID,  
3                   they made a lot of layoffs across the country. I'm not going  
4                   to set how pitiful he got laid off. This happened to a lot  
5                   of people across the country. Unfortunately, when he was  
6                   laid off from Tesla he fell back in an old routine of  
7                   controlled substance.

8                   One point with respect to the firearm, which I  
9                   always thought was unique about this particular case, that  
10                  the firearm wasn't loaded. The magazine was next to it. And  
11                  where was it? Was it in the door? Was it in the consul?  
12                  No. It was on the floor in a box. It was a toolbox for  
13                  DeWalt. It was a power drill. That is not in my experience  
14                  the way that individuals transport firearms. With that, I  
15                  offer that in possible mitigation of the sentence today.

16                  One thing finally, Your Honor, AB236 was enacted  
17                  by the Nevada Legislature. It's not in effect. It's not  
18                  retroactive. We know that. And Mr. -- that was as being  
19                  sentenced in the Courts with the statutes that was in effect  
20                  up through July 30th. 31 days is how he missed the new  
21                  statutes, but that's significant.

22                  And I think there's a move as we look at  
23                  individuals here who have issues particularly with respect to  
24                  controlled substances that the Nevada Legislature has enacted

1 a -- a way of dealing perhaps more intelligently with or  
2 certainly more leniently with individuals who violate drug  
3 offenses. I offer that for the Court's consideration. Thank  
4 you.

5 THE COURT: What would be the sentence under the  
6 new statute?

7 MR. FEY: Under the new statute, if it was more  
8 than 100 grams it was two to 20 years but it's less. So it  
9 would be -- you know, I didn't check the straight statute.  
10 It's substantially less. It's not trafficking until it's  
11 100 grams or more.

12 THE COURT: Thank you.

13 Ms. Brantingham, any aggravation in this case?

14 MS. BRANTINGHAM: Yes, Your Honor. And  
15 interestingly, I can represent to the Court is that our --  
16 our sentencing agreement is just a little bit outside of  
17 that. We're looking at 72 to 420 aggregate. But what we're  
18 missing here is that Mr. Elliston was eligible for habitual  
19 offender and not the small one, and he would have been  
20 eligible either way.

21 Now this is a negotiated agreement. So I'm not  
22 going to spend a whole lot of time making argument unless  
23 there's some reason that the Court is not inclined to go  
24 along with our agreement. But what the Court can recall from

1 the trial is that it wasn't going very well for Mr. Elliston  
2 and he was certainly concerned enough about how that trial  
3 was going for him to sign on to this agreement where he  
4 stipulated to an aggregate 72 to 421 sentence on three  
5 different counts.

6 Mr. Elliston had -- you know, always I think it's  
7 interesting when defendants come before the Court and say I  
8 never really had an opportunity. Everyday, Your Honor, is an  
9 opportunity. Everyday is an opportunity for a drug addict to  
10 turn his life around, to go into treatment, to do something  
11 different, and Mr. Elliston didn't choose to do that. He did  
12 not take advantage of the opportunities that he had.

13 And he went to the Jericho Project as he  
14 indicates in 2015. But when he got out in 2018 he's  
15 convicted of burglary. So also didn't choose to take  
16 advantage of what he learned from that program. He went back  
17 to stealing. He gets paroled in October of 2019. By May of  
18 2020 he gets arrested for this offense.

19 And we're talking the weights represented in the  
20 PSI aren't real far off of what Washoe County's weights were,  
21 about 187 grams of methamphetamine and 25ish grams of heroin.  
22 Now that's gross weight and they tested a representative  
23 sample. But they would have testified at trial they believed  
24 those weights and the identification to be accurate and that

1 the sample was a representative sample of the whole.

2 So weights aren't all that far off. So you're  
3 talking six ounces of methamphetamine and just shy of an  
4 ounce of heroin. That's a lot of drugs. We would have  
5 presented testimony at trial that Mr. Elliston knew that  
6 there were drugs in his car. They knew the methamphetamine  
7 was there. And, frankly, the only drug that he even said he  
8 might not have known was there was the heroin. We had that  
9 on body camera. We had that in his interview. We were  
10 prepared to play it for the Court and the jury.

11 Mr. Elliston had a sizable amount of drugs. He  
12 knew they were there. He admitted to law enforcement that he  
13 knew they were there. Whether he wants to blame it on  
14 somebody else or not is frankly irrelevant at that point,  
15 especially --

16 THE COURT: What about the statement was made  
17 over-the-phone from the sheriff's office that he acknowledged  
18 that he knew what the drugs were and that they were there.

19 MS. BRANTINGHAM: Right. Right. So there's that  
20 too. I mean, in -- then at least two different places you've  
21 got him acknowledging he had drugs in his car and he knew  
22 they were there. The rest really becomes irrelevant, whether  
23 he tries to blame it on somebody else or not. And he comes  
24 before you with eight prior felonies, a gross misdemeanor

1 conviction and six misdemeanors.

2 Now the letters that he submits, several are from  
3 his family. Family should support their family members. We  
4 expect that, right. And what they say is, man, he's made  
5 some horrible choices.

6 MR. FEY: I apologize, Your Honor.

7 THE COURT: We've shot people for less.

8 MR. FEY: I understand that, Your Honor.

9 MS. BRANTINGHAM: So what his family members say  
10 is, man, he's made some horrible choices, but we hope he does  
11 better in the future. Okay. Well, that is kind of what it  
12 is.

13 He's got a letter in there from Richard McCoy,  
14 who I've prosecuted a number of times for drug offenses. The  
15 strength of that letter, I'm not really sure. I mean, you  
16 see people in the jail supporting each other quite  
17 frequently. I'm not sure how much weight that has.

18 And then you have two letters from a couple of  
19 people who knew him for it seems to be a pretty short period  
20 of time, one at work and one in kind of a housing rental  
21 situation. How well do they really know Mr. Elliston? Who  
22 knows. Probably not all that well. Probably none of these  
23 people really know. I mean, Mr. Elliston, frankly, is the  
24 only one who really knows who he is and what he's all about

1 and all of the things he's done.

2 THE COURT: One question, because the drugs were  
3 all involved in the same incident.

4 MS. BRANTINGHAM: Yes.

5 THE COURT: Should I run those consecutive or  
6 concurrent? I know they are different drugs and he's  
7 carrying different drugs. And sometimes when all of the  
8 stuff is the result of the same criminal conduct we run those  
9 concurrent rather than consecutive, and so that's just a  
10 question for you. I know they are different drugs, I know.  
11 That's the only question I have in regards to the deal that's  
12 worked out.

13 MS. BRANTINGHAM: Yes, Your Honor, and they are  
14 different drugs. So you have got the methamphetamine, the  
15 heroin and the firearms. So you have got two different  
16 drugs.

17 THE COURT: I understand the firearm is separate.  
18 I'm talking about the --

19 MS. BRANTINGHAM: Right. And they are in  
20 different packages and different places in the vehicle. Yes,  
21 I mean, one, yes, you should run them consecutive because the  
22 time is appropriate. But, two, you should follow the  
23 negotiated agreement of the parties.

24 THE COURT: He was facing significant other, I

1 understand.

2 MS. BRANTINGHAM: Right. And so the negotiated  
3 sentence that we came up with is a significant benefit to him  
4 in terms of what his exposure would have been, what his  
5 sentence would have been, what the mandatory sentence would  
6 have been had we gone to trial and he had been convicted  
7 which he stood a substantial likelihood.

8 THE COURT: He's facing like if I recall  
9 correctly --

10 MS. BRANTINGHAM: He got life with the  
11 possibility of parole after ten years and that's on the  
12 habitual --

13 THE COURT: On the counts --

14 MS. BRANTINGHAM: -- as well as the trafficking.  
15 So, and actually we add on all, the habitual would have been  
16 eligible on all three counts. And so you're looking at a  
17 huge amount of time in comparison to what the parties  
18 negotiated as a fair settlement for the case.

19 And I think it's important that the Court take a  
20 look at that as well and understand that this is the number  
21 the parties have come to after a lot of careful thought and  
22 consideration and negotiation and review of everything. And  
23 to some degree unless the Court has really serious issues  
24 with the negotiation, it becomes important for Courts to do



1 what they can to uphold the deals that the parties reach. It  
2 puts faith in the plea bargaining process. It helps the  
3 parties out, both in their cases and the attorneys in all  
4 future cases.

5 So, yes, I would ask that you follow the  
6 negotiated agreement in this case to sentence to the  
7 aggregate to 72, I think it was 420 months.

8 THE COURT: Mr. Fey, any legal cause why judgment  
9 shouldn't be entered?

10 MR. FEY: No, Your Honor.

11 THE DEFENDANT: I would --

12 THE COURT: I'm going to give you an opportunity,  
13 Mr. Elliston. And, again, Mr. Elliston, I recall the trial  
14 very well. I recall what happened and I also recall you  
15 standing up in front of the jury. I will tell you I was  
16 impressed with that from the standpoint of some nerve to do  
17 that in respect to that, but also understand that the charges  
18 you face were significant, more than what you pled to.

19 So anything you want to tell the Court?

20 THE DEFENDANT: Yeah. Just in regards to that  
21 statement, yeah, that was rough. This is embarrassing for me  
22 to be here. You know what I mean. It hasn't always been --  
23 you know, I honestly -- before -- before -- you know, they  
24 can sit there and say all they want about me because all of

1 the things I did I did. You know, they are true.

2 But up until 2015 I did them I believed in my  
3 bullshit. Excuse my language. But I was fully engaged in  
4 the criminal value system that I had obtained as a juvenile,  
5 as a child. You know, and -- and I had all of the  
6 rationalizations, justifications and all minimizations and  
7 everything else that went with it. You know, it was endorsed  
8 by the adults around me.

9 You know, it's really easy to just say somebody  
10 should go out and go back to a life like that they -- that  
11 they previously owned. These opportunities that they had,  
12 all of these opportunities I had, for one, I would like to  
13 point out that I did until those opportunities were taken  
14 from me but when you know what that life looks like.

15 You know, I have all of the stuff that I've  
16 prepared for you, Your Honor, on just the issue of the deal.  
17 I'm going to go ahead and do you a favor. I'm just going to  
18 miss with it. I'm just going to tell you straight out that  
19 I'm not guilty of the gun. I'm not guilty of the heroin.  
20 Yes, I knew they were in my vehicle. The informant that they  
21 had was aggressively trying to sell me the pistol. I did  
22 again and again, I'm telling him no. No, I don't want that.  
23 You know what I mean.

24 I was aware of the fact that he sold heroin or

1 had heroin, kind of kept it around to keep his old lady  
2 around. Neither him or I even do heroin. I've never done  
3 heroin. My record will reflect that I've -- that I don't do  
4 heroin. You know what I mean. And I'm -- I'm up until 15 I  
5 hadn't been convicted of any kind of drugs though. I'm a  
6 drug user.

7 So I'm going to go ahead and say that, yes, some  
8 of the meth in the vehicle, yeah, that was mine. You know, I  
9 had relapsed. I had made some poor decisions. The weed that  
10 was in the back, you know, I was trading for meth. You know  
11 what I mean. I was hauled to that house that day  
12 specifically to make a drug transaction by the informant  
13 where he tried to sell me this pistol. You know what I mean.

14 And they skirted -- I'm just going to go out and  
15 say they have skirted a lot of laws that are in place by  
16 deeming that -- by deeming this guy inactive that's obviously  
17 working a case of his own. While we were sitting there  
18 testifying to the fact that when they -- when you ordered  
19 them to deliver this guy's priors, they give two priors from  
20 2017 that he's currently on probation and parole for. While  
21 me and my lawyer, Mr. Fey, are sitting there currently  
22 looking at a Carson Now report where this guy was arrested  
23 for schedule one trafficking, you know, resisting arrest,  
24 destruction of evidence and hypodermic needles which are

1 found in my car.

2 There's body cam footage of a cop showing me  
3 under the tank top whose needles are these. You don't have  
4 track marks. You don't use needles. You know, they -- they  
5 should have known at some point, especially when I'm telling  
6 them that, yeah, that these aren't mine. Yes, they do the  
7 little word play and they tell you oh, yeah, he said he knew  
8 they were there. Yeah, I knew they were there. And I said  
9 we were getting high in the truck. You know what I mean.

10 And I find it convenient that up until the last  
11 part of -- of Bindley's testimony because you were there for  
12 the trial, throughout this preliminary investigation,  
13 throughout everything, six out of six officers just leave  
14 Officer Ramirez out. And then when they're looking at a  
15 bird's eye view of the apartments where they're at, they say  
16 where this ongoing drug investigation was I've been there  
17 three times. This ongoing drug investigation was to this  
18 otherwise nice neighborhood that Officer Ramirez is standing  
19 in front of the office where primarily the employees are  
20 making these complaints from.

21 THE COURT: And, Mr. Elliston, now is not the  
22 time to argue your case.

23 THE DEFENDANT: Okay.

24 THE COURT: I understand that. I understand. I

1 listened to the testimony and everything else.

2 THE DEFENDANT: Yeah.

3 THE COURT: And it was not going well.

4 THE DEFENDANT: It wasn't. It wasn't. The fact  
5 of the matter is I knew there was drugs in the vehicle. I  
6 did not know they were left there when the person got out.  
7 You know what I mean. Other than the drugs that were mine  
8 that I had in my pocket that I stuffed in the little can when  
9 I realized I was being pulled over. You know, I noticed the  
10 can and stuffed it in the can. That's it. That's all.

11 But aside from that, I'm sorry I gone off on that  
12 because it frustrates me. It angers me. But what more than  
13 any of that what I want -- what I want to point out is I  
14 would like to elaborate just a little bit on this, more on  
15 the PSI, just to be a little bit more specific.

16 So with the Court, what this PSI doesn't show is  
17 from 1991 to 2000 from the time that I was nine years old and  
18 up until three days after my 18th birthday on 11-14 2000, I  
19 probably had been incarcerated in juvenile hall about five of  
20 those nine years. So I didn't actually get the exact running  
21 start that some other people might have got. You know what I  
22 mean.

23 I lack a little bit of life, I really do, you  
24 know. But one month 20 days after that, I'm arrested for

1 controlled substance, under the influence. Five months after  
2 that I'm arrested for possession of controlled substance,  
3 receiving stolen property. Eight months after that I'm sent  
4 to prison on my first felony. No probation, no -- you know,  
5 I'm 18 years old. That was after eight months. I did two  
6 years in prison. I'm out for four months I get a parole  
7 violation. I'm out for 12 days I catch -- I catch a prison  
8 term, a four-year prison term. I'm out for two and a half  
9 months, parole violation. I'm out for 20 days, catch a  
10 prison term. I'm out for three months, catch a prison term.  
11 I'm out for one month, 18 days, picked up on a warrant. I'm  
12 out for seven and a half months, catch a prison term. And  
13 then I'm out for three and a half months and catch another  
14 one. That's -- that's a total of 31 months and 15 years  
15 broken up into one month 20 days, 12 days down for years at a  
16 time.

17 And this is -- this is the exact cycle, oh and  
18 five years and nine before that the juvenile is not listed on  
19 here. And my point is this, this is an exact example of what  
20 AB236 is trying to combat because she says, yeah, I have a  
21 chance everyday. Every one of us is out with no money, no  
22 skills, no nothing to a trap house in an old value system  
23 where I actually tried to like really validate the path I was  
24 on. You know what I mean. Because I didn't -- just for

1 lack of -- I adopted this in juvenile hall as a dysfunctional  
2 juvenile. You know what I mean. I carried it to an  
3 embarrassing point in adulthood, you know. And nobody would  
4 -- if nobody would have ever showed this to me I would have  
5 never known. I would have carried it on to some 50-year-old  
6 dude. This is embarrassing as hell, okay.

7 But anyways in 2015 I did go to Jericho Project,  
8 you know, and I made a few mistakes. But up until that point  
9 I'm concerned that I got arrested after that. So as soon  
10 as -- as soon as I'm granted treatment because the laws have  
11 to change in California somewhat like we're doing here in  
12 Nevada because they recognize that they built 33 prisons in  
13 ten years and it didn't do anything. You know what I mean.  
14 But waste \$350,000,000 of taxpayers money. You know, and  
15 currently that's going on in the state where most of the  
16 counties obviously have less than 100,000 people. That's a  
17 pretty big dent. You know, it isn't doing anything.

18 Well, when given -- when given a slight  
19 opportunity I made it three years clean. That surpasses all  
20 the time I've spent out since I was nine years old, the first  
21 time I had a shot, okay. I screwed up after that. But it  
22 was the first time in my life that I actually got arrested  
23 and in Las Vegas after having it out with a girlfriend,  
24 getting my heart broken, went out poorly.

1 I learned some good advice from the program. You  
2 know what I mean. I never called, ashamed for my life. I  
3 felt like Superman and I was so far from it. You know what I  
4 mean. When the training wheels came off I went face down,  
5 okay, but that was the first mistake I made in my life as far  
6 as I'm concerned, not the first mistake.

7 But up until that point I was serving my exact  
8 purpose. I did everything I was set out to try to do. And  
9 for the first time I get the shame and the guilt that comes  
10 with it. So I come out rejuvenated. I'm not going to do  
11 nothing. Nothing is going to set me back. You know what I  
12 mean. I get an honorable discharge first time in my life, no  
13 parole violations, no nothing. I live literally two feet  
14 from the police department in Reno. That's my house on High  
15 Street. You should have seen the look on the face when I  
16 told the dude who came to do my PSI that the Wolf Pack on the  
17 porch right there was my front door. You know what I mean.

18 So I'm obviously not selling drugs at any point.  
19 I push in every level of my life. You know what I mean. I  
20 came out away from Desert Willows. That lasted a month to,  
21 you know, to a studio, to a one-bedroom, to a baby on the way  
22 to a car payment to get my first car. I'm pushing hard on  
23 every level. I'm performing at work. Some of these letters  
24 that come from all the employees that I miss my supervisors,



1 you know what I mean, they are coming from people that watch  
2 me push everyday. You know what I mean.

3 You know, when -- and the whole thing here on  
4 that, but this, when COVID hit, at that point it was the  
5 first time I had ever been happy. My life was  
6 unrecognizable. I was a student. You know what I mean. I  
7 worked at at my job. I was the only -- I was the only  
8 contractor invited to TGA5, the future of Tesla, you know  
9 what I mean, out of a happened selected group of 25  
10 individuals and a shift of 5,000, you know what I mean.

11 I was making these accomplishments, and I was  
12 quite proud of myself. You know what I mean. But had I been  
13 out seven more months COVID wouldn't have affected me. You  
14 know what I mean. So I could have paid my rent. So when  
15 COVID hit, I'm already lacking life experience as it is, but  
16 I'm doing the best I can. I just want that to, the Court to  
17 reflect that. I will take advantage -- unlike what  
18 Ms. Brantingham said, I will take advantage of every  
19 opportunity I'm given until that opportunity is taken from  
20 me. I will not make those same mistakes again. You know  
21 what I mean.

22 I will never be a thief again. I will never do  
23 any of those things. And here's the thing, yeah, I have to  
24 take some work in Lake County. My drive time alone was

1 killing me, was killing me. And I went back to a place where  
2 I didn't want to go to start with. I wanted to go to Florida  
3 with my sister and the airports were closed.

4 I literally, I don't know what options I would  
5 have had. My taxes were pending. I couldn't get any -- any  
6 unemployment that I paid into, you know what I mean, that I  
7 have coming. They are still pending to this day. They have  
8 been pending for over a year. I don't know why. I couldn't  
9 call the IRS while during COVID.

10 I went to Ridge House. I reached out. If I  
11 would have been still on parole I would have reached out to  
12 parole. I went by Ridge House, the program that I still  
13 attended even though I was off parole just to go line em up,  
14 the guys, and there was chains on the door.

15 So you can't exactly say that, oh, I didn't do --  
16 well, no, I did -- you can say that I didn't make the right  
17 decisions. But even in hindsight, Your Honor, I don't know  
18 what -- I don't know what else I could have done. I was  
19 going to be homeless in a Honda with my pregnant old lady.  
20 My life went from unrecognizable and great to I'm screwed no  
21 matter what I do.

22 Instead of going out and stealing I tried doing  
23 work. You know what I mean. I tried doing work and I'm  
24 getting little construction jobs and they're not paying none

1 of that, and it's tearing me up and it's stupid. There's no  
2 excuse for why I relapsed but I did, all right.

3 And then I -- just my substance abuse evaluation  
4 clearly states, you know, the professionals, not  
5 Ms. Brantingham but actual professionals in this field, truly  
6 state that I'm highly responsive for treatment. My record  
7 indicates that I'm highly responsive for treatment. Perfect?  
8 No. No. You know what I mean. The little bit of time I  
9 spent in the program, the little bit of life experience that  
10 I have, you know, trying to scratch the surface on 35 years  
11 of just absolute nonsense, it's not -- I got a lot of work to  
12 do, but I'm going to put in the work. I'm willing to put in  
13 the work, you know, and.

14 THE COURT: Well, you know, this is a mandatory  
15 prison sentence.

16 THE DEFENDANT: I do know it's a mandatory prison  
17 sentence.

18 THE COURT: And you know that basically --  
19 basically you went to a drug house and they followed you from  
20 the drug house and everything else. You know all of these  
21 things.

22 THE DEFENDANT: Yes.

23 THE COURT: So what are we supposed to do? What  
24 do you want done?

1 THE DEFENDANT: I would just -- just that I would  
2 just like to acknowledge that there's, A, there's foul play.  
3 I'm not guilty of two of the charges. You know what I mean.  
4 Yes, the meth by itself, the 55 grams of meth --

5 THE COURT: You pled guilty to it.

6 THE DEFENDANT: I know.

7 THE COURT: An Alford plea.

8 THE DEFENDANT: I know.

9 THE COURT: An Alford plea is treated as a guilty  
10 plea.

11 THE DEFENDANT: Yeah, I know, and I had to. It  
12 was that or the habitual, just the meth alone opened me up to  
13 the habitual.

14 THE COURT: You were facing significant life of  
15 three or four counts.

16 THE DEFENDANT: Yes. But -- but one of which I'm  
17 guilty of, Your Honor, one of which and it's methamphetamine,  
18 you know.

19 THE COURT: Okay.

20 THE DEFENDANT: And I mean, yes, I took the deal  
21 on, you know, to get out from under the habitual. I had to.  
22 There was no -- there was no other option.

23 THE COURT: Based upon what was going on in the  
24 trial and everything I think you made a very wise decision to

1 take the plea.

2 THE DEFENDANT: Yes.

3 THE COURT: That was offered to you because it  
4 was not going good.

5 THE DEFENDANT: No, I do too. It wasn't.

6 THE COURT: And that's the testimony and stuff  
7 that I was listening to and following.

8 So well, anything else, again, just you put  
9 yourself in this position, nobody else did.

10 THE DEFENDANT: No. No. I understand that.

11 THE COURT: Nobody else did.

12 THE DEFENDANT: I understand that fully.

13 THE COURT: Okay.

14 THE DEFENDANT: You know, but in light of the  
15 fact that it is drugs and that I am responsive to treatment,  
16 I want to let you know that while I was down the last time I  
17 did participate in the program, got my high school diploma.  
18 I'm going to go with whatever time you give me which I  
19 understand is a prison term, and I'm going to do the same  
20 thing.

21 THE COURT: Okay.

22 THE DEFENDANT: You know what I mean. I'm going  
23 to do the same thing. I'm going to take advantage of  
24 whatever program is given to me, whatever opportunity is

1 giver to me. I'm going to do my college and do the best I  
2 can. When I -- when I'm released I am going to find a career  
3 that is recovery based so this doesn't happen again.

4 THE COURT: All right.

5 THE DEFENDANT: That's the only way I can think  
6 to turn my negative experience into anything positive.

7 THE COURT: Well, I think you're very bright. I  
8 think you have a lot of opportunities. But obviously  
9 basically look at -- your record is one of the worst I've  
10 seen in a long time. I mean it's not good. You want to  
11 blame everybody else. You know, at some point along the way  
12 you had some opportunities and -- and I know they are tough  
13 and in respect to that but well --

14 THE DEFENDANT: I do, Your Honor, and I made some  
15 horrible decisions, you know. But, yeah, I did, I made some  
16 horrible decisions, you know.

17 THE COURT: Well, it's going to be the judgment  
18 of this Court, you having pled to Alford plea on April 7th,  
19 2021, in respect to that you pled to Alford plea to Count  
20 One, trafficking in a schedule one controlled substance,  
21 14 grams to 28 grams, violation of NRS 453.3385 (1)(b).

22 You pled Alford plea to Count Two, trafficking in  
23 a schedule one controlled substance, 14 to 28 grams,  
24 violation again of NRS 453.3385 (1)(b).

1                   And then you also additionally pled Alford plea  
2                   to ex-felon in possession of a firearm Count Three, also  
3                   count -- a category B felony.

4                   The Court is going to sentence you as follows.  
5                   We'll give you credit for 381 days in respect to this matter.  
6                   Administrative assessment of \$25 applies, DNA \$3 apply.  
7                   Chemical and drug analysis 60 applies. Attorney fees are set  
8                   at 500. The Court is going to follow the agreement. And  
9                   basically it's the agreement that was agreed upon. I'm going  
10                  to go ahead on Count One, 24 months to 180 months. On Count  
11                  Two, 24 to 180 months. On Count Three, 24 to 60 months each  
12                  count to run consecutive for an aggregate total of 72 months  
13                  to 420 months at the Nevada Department of Corrections.

14                  Anything further?

15                  MR. FEY: No, Your Honor. For the record, I'm  
16                  handing Mr. Elliston copies of the letters that were  
17                  presented to the Court.

18                  THE COURT: Thank you.

19                  MR. FEY: There are no staples or paperclips.

20                  MS. BRANTINGHAM: Your Honor, I think I probably  
21                  need to, just thinking about it, since he pled Alford, I  
22                  probably do need to admit one of his prior felonies to  
23                  support Count Three, just so there's no issues down the road.  
24                  Just find one here. And this one is pretty clear too.

1 MR. FEY: I'm not certain why we're admitting the  
2 priors.

3 THE COURT: I think she just wants to support the  
4 record.

5 MS. BRANTINGHAM: Possession of a firearm count.  
6 He pled Alford. I think I gotta admit a prior to make sure  
7 that's proven up.

8 THE COURT: That's part of the record anyways.

9 MR. FEY: I think they are.

10 THE COURT: Indicated after, but I'm going to go  
11 ahead and allow them to be admitted for purposes of the  
12 record.

13 Anything further, counsel?

14 MS. BRANTINGHAM: No, Your Honor.

15 THE COURT: Mr. Elliston, I wish you well.  
16 Whether you realize it or not I wish you well. I think  
17 you're a bright, articulate guy, and take advantage of  
18 everything you can, okay.

19 THE DEFENDANT: Sir, I will, Your Honor. I just  
20 -- you know, it's getting rough. I'm 39 years old and six  
21 years put me out at 45 from them scratching me. You know, it  
22 gets discouraging when, you know, the, a mistake you made in  
23 drug use costs six years. It's time insanity, you know what  
24 I mean, but it is what it is, you know.

MR. FEY: Thank you, Your Honor.



1 STATE OF NEVADA, )  
2 CARSON CITY. )

3

4 I, KATHY JACKSON, do hereby certify:

5 That a sentencing was held in the within-entitled  
6 matter in Carson City, Nevada;

7 That said sentencing was recorded by a recording  
8 system, and said recording was delivered to me for  
9 transcription;

10 That the foregoing transcript, consisting of  
11 pages 1 through 33 is a full, true and correct transcript of  
12 said recording performed to the best of my ability.

13

14 Dated at Carson City, Nevada, this 20th day of  
15 November, 2021.

16

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Kathy Jackson  
KATHY JACKSON, CCR

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CASE NO. 20-CR-00121 1B

DEPT. NO. 1

CERTIFIED  
COPY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

BEFORE THE HONORABLE DISTRICT COURT JUDGE, BILL MADDOX

THE STATE OF NEVADA,

Plaintiff,

vs.

DAVID EDWARD ELLISTON,

Defendant.

\_\_\_\_\_ /

JAVS TRANSCRIPT OF PROCEEDINGS

STATUS

MARCH 1, 2021

Transcribed By:

Kathy Jackson CSR  
Nevada CCR #402  
California CCR #10465

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APPEARANCES:

For the State:

GARRIT PRUYT, ESQ.  
Deputy District Attorney  
Carson City, Nevada

For the Defendant:

WALTER FEY, ESQ.  
Attorney at Law  
Carson City, Nevada

1 MARCH 1, 2021, CARSON CITY, NEVADA

2 -oOo-

3 THE COURT: Next case is Case Number 20CR00121  
4 1B, State of Nevada versus David Edward Elliston Junior.

5 MR. FEY: Good morning, Your Honor. Walter Fey  
6 representing Mr. Elliston.

7 THE COURT: Mr. Pruyt on behalf of the State of  
8 Nevada. Mr. Ricco on behalf of the division of parole and  
9 probation.

10 Is Mr. Elliston here?

11 MR. FEY: He's in custody, Your Honor.

12 THE COURT: Okay. Let the record reflect the  
13 presence of David Edward -- David Edward Elliston Junior.  
14 This is the time and place set I think for a status check.  
15 This is set for trial April 6th for four days.

16 Are we going to trial?

17 MR. FEY: Yes, Your Honor. We're going to  
18 confirm trial on April 6th.

19 THE COURT: Okay.

20 MR. PRUTY: The State is prepared as well, Your  
21 Honor.

22 THE COURT: Okay. We'll go to trial.

23 MR. FEY: Thank you, Your Honor.

24 THE COURT: Have a good day.

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STATE OF NEVADA,       )  
                                  )  
CARSON CITY.            )

I, KATHY JACKSON, do hereby certify:

That a status hearing was held in the  
within-entitled matter in Carson City, Nevada;

That said hearing was recorded by a recording  
system, and said recording was delivered to me for  
transcription;

That the foregoing transcript, consisting of  
pages 1 through 4 is a full, true and correct transcript of  
said recording performed to the best of my ability.

Dated at Carson City, Nevada, this 20th day of  
November, 2021.



KATHY JACKSON, CCR

REC'D & FILED

2021 JUN 15 PM 2:44

AUGREY EDLATT  
CLERK  
BY M. L. L. L.  
DEPUTY

**In The First Judicial District Court of the State of Nevada  
In and for Carson City**

STATE OF NEVADA,

Plaintiff,

vs.

DAVID EDWARD ELLISTON, JR.,  
Defendant.

Case No.: 20 CR 00121 1B

Dept. No.: I

**JUDGMENT OF CONVICTION**

On the 6<sup>th</sup> day of April, 2021, the Defendant above-named appeared before this Court with his counsel, Walter Fey, and entered a plea of guilty pursuant to North Carolina v Alford to the crime of **Trafficking in a Schedule I Controlled Substance -14 Grams to 28 Grams, Counts I and II, a category B felony; and Ex-Felon in Possession of a Firearm, a category B felony, Count III**, committed May 30, 2020, in violation of NRS 453.3385(1)(b) and 202.360.

On the 14<sup>th</sup> day of June, 2021, the Defendant appeared before the Court for sentencing with his counsel, Walter Fey, and the State was represented by Melanie Brantingham. No sufficient legal cause was shown by the Defendant as to why judgment should not be pronounced against him. The Court adjudged the Defendant guilty of **Trafficking in a Schedule I Controlled Substance -14 Grams to 28 Grams, Counts I and II, a category B felony; and Ex-Felon in Possession of a Firearm, a category B felony, Count III**.

The Court then sentenced the Defendant on Count I to imprisonment on in the Nevada Department of Corrections for a period of twenty-four (24) months minimum to one hundred

1 eighty (180) months maximum. The Court then sentenced the Defendant on Count II to  
2 imprisonment in the Nevada Department of Corrections for a period of twenty-four (24) months  
3 minimum to one hundred eighty (180) months maximum. The Court then sentenced the  
4 Defendant on Count III to twenty-four (24) months minimum to sixty (60) months maximum.  
5 Counts II and III will run consecutive to Count I, for an aggregate sentence of seventy-two (72)  
6 months minimum to four hundred twenty (420) months maximum. A \$3.00 genetic marker,  
7 \$25.00 administrative assessment fee and \$60.00 chemical analysis fee were imposed. The  
8 Defendant was ordered to reimburse Carson City the sum of Five Hundred (\$500.00) Dollars for  
9 legal representation by court appointed conflict counsel. The Defendant was ordered to report to  
10 the Fines and Fees Office immediately upon release to pay and/or make arrangements to pay the  
11 fines/fees imposed upon him. The Court enters judgment against the Defendant for the  
12 assessments and fees imposed. The Defendant was given credit for 381 day(s) pre-sentence  
13 confinement time.  
14  
15

16  
17 Dated this 15<sup>th</sup> day of June, 2021.

18  
19   
20 DISTRICT JUDGE  
21

22  
23 RECEIVED of \_\_\_\_\_, Sheriff of Carson City, State of  
24 Nevada, on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, one \_\_\_\_\_.

25  
26  
27 DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS  
28

By: \_\_\_\_\_

BWKO

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AUBREY ASHLANT  
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BY *[Signature]*  
DEPUTY

**In The First Judicial District Court of the State of Nevada  
In and for Carson City**

STATE OF NEVADA,  
  
Plaintiff,  
  
vs.  
  
DAVID EDWARD ELLISTON, JR.,  
Defendant.

Case No.: 20 CR 00121 1B

Dept. No.: I

**CORRECTED  
JUDGMENT OF CONVICTION**

On the 6<sup>th</sup> day of April, 2021, the Defendant above-named appeared before this Court with his counsel, Walter Fey, and entered a plea of guilty pursuant to North Carolina v Alford to the crime of **Trafficking in a Schedule I Controlled Substance -14 Grams to 28 Grams, Counts I and II, a category B felony; and Ex-Felon in Possession of a Firearm, a category B felony, Count III**, committed May 30, 2020, in violation of NRS 453.3385(1)(b) and 202.360.

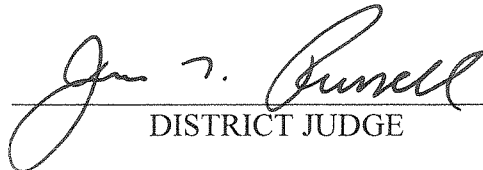
On the 14<sup>th</sup> day of June, 2021, the Defendant appeared before the Court for sentencing with his counsel, Walter Fey, and the State was represented by Melanie Brantingham. No sufficient legal cause was shown by the Defendant as to why judgment should not be pronounced against him. The Court adjudged the Defendant guilty of **Trafficking in a Schedule I Controlled Substance -14 Grams to 28 Grams, Counts I and II, a category B felony; and Ex-Felon in Possession of a Firearm, a category B felony, Count III**.

The Court then sentenced the Defendant on Count I to imprisonment on in the Nevada Department of Corrections for a period of twenty-four (24) months minimum to one hundred



1 eighty (180) months maximum. The Court then sentenced the Defendant on Count II to  
2 imprisonment in the Nevada Department of Corrections for a period of twenty-four (24) months  
3 minimum to one hundred eighty (180) months maximum to run consecutive to Count I, for an  
4 aggregate sentence of (48) forty-eight months minimum to (360) three hundred sixty months  
5 maximum. The Court then sentenced the Defendant on Count III to twenty-four (24) months  
6 minimum to sixty (60) months maximum, to run consecutive to Count II, for an aggregate  
7 sentence of seventy-two (72) months minimum to four hundred twenty (420) months maximum.  
8 A \$3.00 genetic marker, \$25.00 administrative assessment fee and \$60.00 chemical analysis fee  
9 were imposed. The Defendant was ordered to reimburse Carson City the sum of Five Hundred  
10 (\$500.00) Dollars for legal representation by court appointed conflict counsel. The Defendant  
11 was ordered to report to the Fines and Fees Office immediately upon release to pay and/or make  
12 arrangements to pay the fines/fees imposed upon him. The Court enters judgment against the  
13 Defendant for the assessments and fees imposed. The Defendant was given credit for 381 day(s)  
14 pre-sentence confinement time.  
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18 Dated this 13<sup>th</sup> day of October, 2021.

19  
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21 DISTRICT JUDGE  
22

23 RECEIVED of \_\_\_\_\_, Sheriff of Carson City, State of  
24 Nevada, on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, one \_\_\_\_\_.  
25  
26

27 \_\_\_\_\_  
DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS

28 By: \_\_\_\_\_

1 WALTER B. FEY, ESQ.  
2 Nevada Bar No. 3317  
3 1601 Fairview Drive, Suite H  
4 Carson City, NV 89701  
5 Telephone 775-329-1101  
6 Facsimile 775-329-1103  
7 Email [wbfey1@gmail.com](mailto:wbfey1@gmail.com)  
8 Attorney for Defendant David Elliston

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AUBREY ROWLATT  
CLERK

BY C. COOPER DEPUTY

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10  
11 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
12 **IN AND FOR CARSON CITY**

13 \* \* \*

14 THE STATE OF NEVADA,

15 Plaintiff,

Case No. 20 CR 00121 1B

16 vs

Dept. No. 1

17 DAVID EDWARD ELLISTON JR,

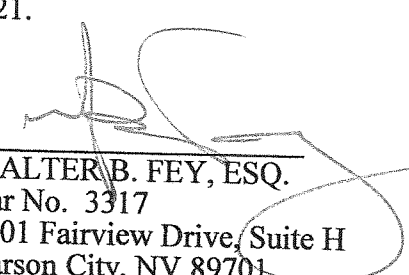
18 Defendant.  
19 \_\_\_\_\_ /

20 **MOTION FOR DISCLOSURE OF**  
21 **INFORMANTS AND IMPEACHING INFORMATION**

22 COMES NOW, defendant, by and through his undersigned counsel, WALTER B.  
23 FEY, ESQ., and Moves this Court to order the Disclosure of Informants and Impeaching  
24 Information.

25 This Motion is based upon the Attached Memorandum of Points and Authorities,  
26 upon all pleadings and papers on file in these proceedings, and upon all evidence to be adduced  
27 at hearing on this Motion.

28 DATED this 10th day of March, 2021.

  
WALTER B. FEY, ESQ.  
Bar No. 3317  
1601 Fairview Drive, Suite H  
Carson City, NV 89701  
Telephone (775) 329-1101  
Attorney for defendant

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Analysis and Discussion**

3 On May 30, 2020, at approximately 2:00 p.m. defendant was driving a vehicle  
4 eastbound on 10<sup>th</sup> Street approaching the intersection with Curry Street. At that same time and in  
5 the same general area, members of the Special Enforcement Team (SET) were conducting  
6 surveillance on the Griffin House Apartments located on South Nevada Street. At least one  
7 deputy assigned to the SET has testified that there was an "ongoing investigation to a drug  
8 activity at the Griffin House apartments." Transcript of Preliminary Hearing (TPH), at page 46.  
9 Defendant became a target of interest to law enforcement when several deputies observed him  
10 leave the [Griffin Street] complex. TPH, at page 80.

11 When defendant's vehicle left the apartment complex, Deputy Bindley of the  
12 Carson City Sheriff's Office made a radio call indicating this. TPH, at page 105. Prior to that  
13 radio call, deputies were informed by "several sources" that defendant's vehicle was in town and  
14 they were to set up in the area of the apartment complex for surveillance until the vehicle was to  
15 leave the area. This information was provided by a "confidential informant." TPH, at page 106.  
16 Deputy Bindley was the deputy who apprised other members of the SET team that the  
17 defendant's vehicle was a target of interest. Per Deputy Bindley, the confidential informant had  
18 advised that defendant's vehicle "was supposed to have a large amount of quantity of narcotics in  
19 it. TPH, at page 106. Notably, while the defendant's identity was not known before the vehicle  
20 stop, the deputies were looking for defendant's vehicle. TPH, at page 108.

21 Even before the vehicle was stopped by Deputy Granata of the Carson City  
22 Sheriff's Office, Deputy Pullen, the deputy with the K9 unit, had been advised by the SET team  
23 "to be ready in case they din make the traffic stop [of defendant's vehicle]." TPH, at page 23.  
24 Prior to being dispatched, Deputy Pullen had received a call that the team "might need the  
25 assistance of the dog to the vehicle." Id.

26 While there was generalized information bringing the SET team to the area  
27 around the Griffin House apartments, it also appears that there was specific information provided  
28 from one or more confidential informants who allegedly alerted deputies about the defendant's

1 vehicle, and which made the vehicle a target of interest.

2 As a result of the stop of defendant's vehicle, these proceedings were commenced  
3 by the Carson City District Attorney's office, charging defendant with two counts of Trafficking  
4 in a Controlled Substance and other offenses.

5 It appears that there was at least one, and possibly more than one, confidential  
6 informant(s) who provided information to law enforcement which led directly to the detaining  
7 and arrest of defendant. Such an informant was a material witness to events and actions which  
8 took place before defendant's arrest and which contributed to the increased interest in defendant  
9 and his vehicle before that arrest.

10 Defendant is entitled to disclosure of the involvement, identity, and an opportunity  
11 to cross examine an "informant" who is a material witness to an accused's alleged crimes. The  
12 STATE OF NEVADA must either disclose his identity or incur a dismissal. *Sheriff vs Vasile*, 95  
13 Nev. 5 (1980); *People vs Borunda*, 113 Cal. Rptr. 825 (Cal. App. 1976). *See, also, Roviario vs*  
14 *United States*, 353 U.S. 53, 60-61 (1957), *Miller vs State*, 86 Nev. 503 (1970).

15 Because of the nature of possible information provided by the confidential  
16 informant(s), it is vital that defendant have all possible information concerning such informant(s)  
17 prior to trial so that cross examination of such material witness(es) may be made at trial. The  
18 Confrontation Clause of the 6<sup>th</sup> Amendment is at issue. While the Confrontation Clause is  
19 properly invoked at trial, it will serve the interests of justice if the information is revealed before  
20 trial to allow defendant a meaningful opportunity to prepare for such examination.

21 If an informant's identity is not disclosed until court proceedings are in progress,  
22 then a continuance would be mandated to permit the defense an opportunity to adequately  
23 prepare for the cross examination of the informant(s). *Routhier vs Sheriff*, 93 Nev. 149 (1977).  
24 In order to avoid the necessity of a delay caused by a possible continuance which would need to  
25 be taken in the midst of a jury trial, the Court should direct the prosecution to disclose this  
26 information in advance.

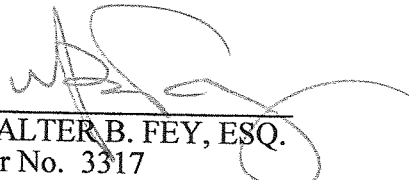
27 Most notably, however, the failure of the STATE OF NEVADA to disclose the  
28 information concerning any informants is a violation of its obligations pursuant to *Brady vs*

1 *Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), and its progeny. *See, e.g. Roberts vs State*, 110  
2 Nev. 1121 (1994); *Lisle vs State*, 131 Nev. 356 (2015).

3 **Conclusion**

4 For the reasons set out herein, this Court should order the STATE OF NEVADA  
5 to provide full disclosure of confidential informants and other informers to defendant without  
6 delay in order to allow defendant an opportunity to prepare for cross examination of those  
7 individuals.

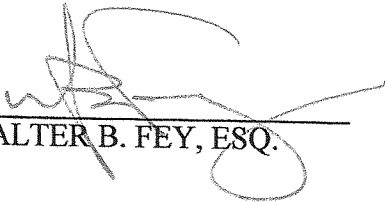
8 DATED this 10th day of March, 2021.

10  
11   
12 WALTER B. FEY, ESQ.  
13 Bar No. 3317  
14 1601 Fairview Drive, Suite H  
15 Carson City, NV 89701  
16 Telephone (775) 329-1101  
17 Attorney for defendant

18 **AFFIRMATION PURSUANT TO NRS 239B.030**

19 The undersigned does hereby affirm that the preceding document does not contain  
20 the social security number of any person.

21 DATED this 10th day of March, 2021.

22   
23 WALTER B. FEY, ESQ.  
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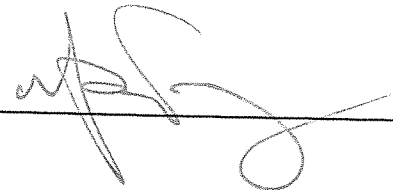
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above document was served on the individuals  
or entities shown below, by hand delivering a copy of said document to the address shown below.

SARAH WHITE, ESQ.  
Deputy Carson City District Attorney  
885 E. Musser, Suite 2030  
Carson City, NV 89701

DATED, this 11th day of March, 2021.

  
\_\_\_\_\_

JASON D. WOODBURY  
DISTRICT ATTORNEY  
Nevada Bar No. 6870  
885 E. Musser Street, Suite 2030  
Carson City, NV 89701  
(775) 887-2072  
Attorney for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

STATE OF NEVADA,

Plaintiff,

v.

DAVID EDWARD ELLISTON JR.,

Defendant.

Case No. 20 CR 00121 1B

Dept. No. I

**OPPOSITION TO MOTION FOR DISCLOSURE OF INFORMANTS AND  
IMPEACHING INFORMATION**

COMES NOW, the Plaintiff, STATE OF NEVADA, by and through counsel,  
JASON D. WOODBURY, District Attorney and Sarah E. White, Deputy District  
Attorney in and for Carson City, State of Nevada, and herein enters its OPPOSITION  
TO MOTION FOR DISCLOSURE OF INFORMANTS AND IMPEACHING  
INFORMATION in the above-captioned case wherein the Defendant above-named is  
represented by Counsel, Walter B. Fey Esq.

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1 This motion is based upon the points and authorities set forth below, all  
2 pleadings and papers heretofore filed in this case, and the arguments to be heard at  
3 any hearing upon this matter.

4  
5 DATED this 22nd day of March, 2021.

6 JASON D. WOODBURY  
7 District Attorney

8  
9 By:  \_\_\_\_\_

10 SARAH E. WHITE  
11 Deputy District Attorney  
12 Nevada Bar No. 14643  
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## POINTS AND AUTHORITIES

### I. STATEMENT OF FACTS

On May 30, 2020, Deputy Lizzeth Granata of the Carson City Sheriff's Office, assigned to the Special Enforcement Team (SET)<sup>1</sup>, observed a white Chevy Colorado traveling eastbound on Tenth Street in Carson City toward a four-way stop intersection at Curry Street. Prelim. Hrg. Transcript. (T) 35:5-22. July 24, 2020<sup>2</sup>. Deputy Granata observed the white Chevy proceed through the intersection without stopping. *Id.* As a result, Deputy Granata initiated a traffic stop on the white Chevy for a stop sign violation pursuant to Carson City Municipal Code (CCMC) 10.12.030. *Id.*; Booking Sheet. 2020-2877. May 30, 2020<sup>3</sup>. Upon stopping the white Chevy, Deputy Granata approached the driver, David Elliston, the Defendant in this matter. T at 36:18-24. She then discussed the reason for the stop and requested a copy of the Defendant's driver's license, insurance, and registration. *Id.* The Defendant appeared nervous and was unable to produce insurance. *Id.* at 37:1-2. Deputy Granata then requested that Carson City Dispatch confirm the Defendant's identification and vehicle registration. *Id.* at 37:9-24.

That same day, SET Deputies were investigating drug activity at the Griffin House Apartments in Carson City, Nevada. *Id.* at 46:3-10. During their investigation, SET observed the white Chevy Colorado leave the Griffin House Apartments from the area of their investigation. *Id.* at 80:16-23; 81:2-9. Additionally, SET received information that the white Chevy was carrying a large quantity of controlled substances. *Id.* at 106:21-107:1. After the Chevy was observed leaving the Griffin House, Deputy Granata found the vehicle and witnessed the traffic infraction. *See id.*

<sup>1</sup> Also referred to as the Carson City Sheriff's Office Street Enforcement Team

<sup>2</sup> Attached hereto as Exhibit 1.

<sup>3</sup> Attached hereto as Exhibit 2.

1 At the scene of the traffic stop, while awaiting confirmation from Dispatch  
2 regarding the Defendant's identification and vehicle registration, Deputy Granata  
3 called for assistance from other SET deputies. *Id.* In response, SET Deputy Brett  
4 Bindley arrived at the scene of the traffic stop and observed Deputy Granata  
5 speaking with the Defendant. *Id.* at 47:19-24. Once there, Deputy Bindley requested  
6 a K9 Unit respond to the scene to perform an exterior sniff of the white Chevy. *Id.* at  
7 47:19-48:10. Deputy Jeff Pullen, a K9 Handler with the Carson City Sheriff's Office,  
8 then arrived with his K9, Blue. *Id.* at 11:5-15; 23:2-5.

9 Deputy Pullen then had Blue conduct an exterior sniff of the vehicle, which  
10 resulted in a positive alert, indicating a presence of controlled substances. *Id.* at  
11 24:17-28:7. Prior to his arrival, Deputy Pullen was patrolling an area nearby, having  
12 been asked by SET Deputies to be prepared in the event they made a traffic stop  
13 during their investigation at the Griffin House Apartments. *Id.* at 23:8-22. After Blue  
14 alerted to the presence of controlled substances, SET deputies conducted a search  
15 of the Defendant's vehicle. R.BB7383.20-2877 at 4.<sup>4</sup> As a result of their search, SET  
16 found approximately 100 grams of methamphetamine and 15 to 20 grams of heroin,  
17 as well as multiple items of drug paraphernalia and a firearm.

18 The Defendant was then arrested on multiple charges related to Trafficking a  
19 Controlled Substance, Possession of a Controlled Substance, Possession of Drug  
20 Paraphernalia, and Failure to Stop at a Stop Sign. Booking Sheet. 2020-2877. May  
21 30, 2020. The Defendant was charged by way of Criminal Complaint with: Trafficking  
22 in a Controlled Substance, 28 grams or more, a category A felony; Trafficking in a  
23 Controlled Substance, 14 to 28 grams, a category B felony; Ex-Felon in Possession  
24 of a Firearm, a category B felony, and Possession of a Controlled Substance for the  
25

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<sup>4</sup> Report included in Exhibit 1.

1 Purpose of Sale, a category D felony.

2 On July 24, 2020, the Defendant proceeded to Preliminary Hearing, and the  
3 State presented evidence including sword testimony from Deputy Granta, Deputy  
4 Bindley, and Deputy Pullen, and the Justice Court bound all counts over to District  
5 Court for further proceedings. Following the Preliminary Hearing, the Defendant,  
6 through counsel, filed a Motion to Suppress Evidence based upon the pretextual  
7 nature of the stop; the State opposed the Defendant's Motion, arguing the stop was  
8 based upon independent reasonable suspicion, and was not deemed illegal simply  
9 because SET deputies may have used the stop as a pretext for a narcotics search.  
10 The District Court denied the Defendant's Motion to Suppress Evidence.

11 On March 11, 2021, the Defendant, through counsel, then filed a Motion for  
12 Disclosure of Informants an Impeaching Information, requesting information  
13 regarding potential confidential informant(s) who alerted deputies about the  
14 Defendant's vehicle. The State now opposes this Motion, as such information is not  
15 relevant to the facts of this case, as the District Court previously found there was  
16 reasonable suspicion for deputies to initiate a traffic stop independent from any  
17 pretext.

## 18 II. ARGUMENT

### 19 i. Information regarding confidential sources is irrelevant to the 20 proceedings in this matter because Deputy Granata had an 21 independent reason to stop the Defendant's vehicle.

22 Deputy Granata had reasonable suspicion to stop the Defendant for  
23 committing a traffic infringement by failing to stop at a stop sign, a violation of CCMC  
24 10.12.030. If a law enforcement officer conducts a vehicle stop based upon  
25 reasonable suspicion of a traffic infraction, the stop is reasonable under the Fourth  
Amendment. *Gama v. State*, 112 Nev. 833, 836, 920 P.2d 1010, 1012-12 (1996);

1 *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868 (1968). Under Nevada Law, failure to  
2 stop at a stop sign is a traffic infraction under CCMC 10.12.030 and under NRS  
3 484B.257. As the Defendant failed to stop at a stop sign, Deputy Granata had  
4 reasonable suspicion to initial a traffic stop upon observing the Defendant violate  
5 Nevada law.

6 The District Court denied the Defendant's Motion to Suppress, wherein the  
7 Defendant argued Deputy Granata did not have reasonable suspicion to stop the  
8 Defendant. Therefore, the District Court has already found that Deputy Granata had  
9 independent, reasonable suspicion to stop the Defendant's vehicle after observing a  
10 traffic infraction. As such, any information that may exist regarding a confidential  
11 source in this case is irrelevant, as law enforcement came into contact with the  
12 Defendant based upon a valid, legal, traffic stop made after observing a violation of  
13 traffic laws.

14 Evidence regarding any confidential information is irrelevant and inadmissible  
15 at trial, and therefore does not need to be disclosed. NRS 48.025(2) states clearly,  
16 "Evidence which is not relevant is not admissible." Relevant evidence is that which  
17 has "any tendency to make the existence of any fact that is of consequence to the  
18 determination of the action more or less probable than it would be without the  
19 evidence." NRS 48.015. In this case, any information regarding a confidential source  
20 is irrelevant because such information would not make any fact of consequence more  
21 or less probable. Deputy Granata initiated a traffic stop after observing the Defendant  
22 commit a traffic infraction. And information regarding the Defendant or a confidential  
23 source prior to the traffic stop is not relevant.

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1                   ii. Nondisclosure of information regarding confidential sources does  
2                   not violate *Brady* because any confidential source is not a  
3                   material witness, and the State does not intend to call any  
4                   confidential sources to the stand.

5                   The State does not intend to call any confidential sources to testify at jury trial  
6                   in this case, as such individuals would not be material witnesses; therefore, the  
7                   identify of any confidential sources does not need to be disclosed. *See Palmer v.*  
8                   *State*, 131 Nev. 1330 (2015); *See Sheriff of Washoe Cty v. Vasile*, 96 Nev. 5, 604  
9                   P.2d. 809 (1980). Currently, the State is unaware of any identification of potential  
10                  confidential informants, and, if any were utilized prior to the traffic stop in this matter,  
11                  the State would need to request that information from law enforcement. In part, the  
12                  State does not have information about a confidential informant because such  
13                  information is irrelevant to the traffic stop and to the search in this matter. Such  
14                  information has no bearing on any fact of consequence or element of the crimes  
15                  which the State must prove at trial. Therefore, the State is not in violation of *Brady*;  
16                  any information regarding a confidential source is irrelevant, inadmissible, and not  
17                  discoverable.

18                  **III. CONCLUSION**

19                  For the reasons stated above, the State respectfully requests the Court DENY  
20                  the Defendant's Motion for Disclosure of Informants and Impeaching Information.

21                  DATED this 22nd day of March, 2021.

22                                   JASON D. WOODBURY  
23                                   District Attorney

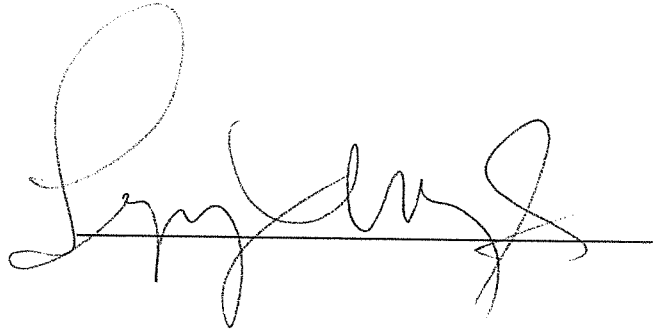
24                                   By: 

25                                   SARAH E. WHITE  
                                      Deputy District Attorney  
                                      Nevada Bar No. 14643

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Carson City District Attorney and that on this 22nd day of March, 2021, I caused to be served a copy of the foregoing document, titled: **OPPOSITION TO MOTION FOR DISCLOSURE OF INFORMANTS AND IMPEACHING INFORMATION** by faxing and delivering via Acme Messenger Service said document addressed to:

Walter B. Fey Esq.  
1601 Fairview Drive, Suite H  
Carson City, Nevada 89701  
(775) 329-1103



Fey

REC'D & FILED

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AUDREY ACHLATT  
CLERK

BY                       
DEPUTY

Case No. 20 CR 00121 1B

Dept. No. I

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

STATE OF NEVADA,

Plaintiff,

v.

DAVID EDWARD ELLISTON JR.,

Defendant.

**ORDER DENYING**  
**MOTION TO SUPPRESS**

This matter came before the Court by way of Motion filed by the Defendant, David Edward Elliston JR., by and through his attorney, Walter B. Fey, Esq. The Defendant filed a Motion to Suppress Evidence, to which the State filed an Opposition. The Defendant did not file a Reply to the State's Opposition. Now, being fully advised of all assertions set forth in the pleadings, this Court denies the Defendant's Motion to Suppress for the reasons set forth below.

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## I. FINDINGS OF FACT

On May 30, 2020, Deputy Lizzeth Granata of the Carson City Sheriff's Office, assigned to the Special Enforcement Team (SET)<sup>1</sup>, observed a white Chevy Colorado traveling eastbound on Tenth Street in Carson City toward a four-way stop intersection at Curry Street. Prelim. Hrg. Transcript. (T) 35:5-22. July 24, 2020. Deputy Granata observed the white Chevy proceed through the intersection without stopping. *Id.* As a result, Deputy Granata initiated a traffic stop on the white Chevy for a stop sign violation pursuant to Carson City Municipal Code (CCMC) 10.12.030. *Id.*; Booking Sheet. 2020-2877. May 30, 2020. Upon stopping the white Chevy, Deputy Granata approached the driver, David Elliston, the Defendant in this matter. T at 36:18-24. She then discussed the reason for the stop and requested a copy of the Defendant's driver's license, insurance, and registration. *Id.* The Defendant appeared nervous and was unable to produce insurance. *Id.* at 37:1-2. Deputy Granata then requested that Carson City Dispatch confirm the Defendant's identification and vehicle registration. *Id.* at 37:9-24.

That same day, SET Deputies were investigating drug activity at the Griffin House Apartments in Carson City, Nevada. *Id.* at 46:3-10. During their investigation, SET observed the same white Chevy Colorado leave the Griffin House Apartments from the area of their investigation. *Id.* at 80:16-23; 81:2-9. Additionally, SET received information that the white Chevy was carrying a large quantity of controlled substances. *Id.* at 106:21-107:1. After the Chevy was observed leaving the Griffin House, Deputy Granata found the vehicle and witnessed the traffic infraction. See *id.*

At the scene of the traffic stop, while awaiting confirmation from Dispatch regarding the Defendant's identification and vehicle registration, Deputy Granata

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<sup>1</sup> Also referred to as the Carson City Sheriff's Office Street Enforcement Team



1 called for assistance from other SET deputies. *Id.* In response, SET Deputy Brett  
2 Bindley arrived at the scene of the traffic stop and observed Deputy Granata  
3 speaking with the Defendant. *Id.* at 47:19-24. Once there, Deputy Bindley requested  
4 a K9 Unit respond to the scene to perform an exterior sniff of the white Chevy. *Id.* at  
5 47:19-48:10. Deputy Jeff Pullen, a K9 Handler with the Carson City Sheriff's Office,  
6 then arrived with his K9, Blue. *Id.* at 11:5-15; 23:2-5.

7 Deputy Pullen then had Blue conduct an exterior sniff of the vehicle, which  
8 resulted in a positive alert, indicating a presence of controlled substances. *Id.* at  
9 24:17-28:7. Prior to his arrival, Deputy Pullen was patrolling an area nearby, having  
10 been asked by SET Deputies to be prepared in the event they made a traffic stop  
11 during their investigation at the Griffin House Apartments. *Id.* at 23:8-22. After Blue  
12 alerted to the presence of controlled substances, SET deputies conducted a search  
13 of the Defendant's vehicle. R.BB7383.20-2877 at 4. As a result of their search, SET  
14 found approximately 100 grams of methamphetamine and 15 to 20 grams of heroin,  
15 as well as multiple items of drug paraphernalia and a firearm.

16 The Defendant was then arrested on multiple charges related to Trafficking a  
17 Controlled Substance, Possession of a Controlled Substance, Possession of Drug  
18 Paraphernalia, and Failure to Stop at a Stop Sign. Booking Sheet. 2020-2877. May  
19 30, 2020. The Defendant was charged by way of Criminal Complaint with: Trafficking  
20 in a Controlled Substance, 28 grams or more, a category A felony; Trafficking in a  
21 Controlled Substance, 14 to 28 grams, a category B felony; Ex-Felon in Possession  
22 of a Firearm, a category B felony, and Possession of a Controlled Substance for the  
23 Purpose of Sale, a category D felony.

24 On July 24, 2020, the Defendant proceeded to Preliminary Hearing, and the  
25 State presented evidence including sworn testimony from Deputy Granta, Deputy

1 Bindley, and Deputy Pullen. The Justice Court bound all counts over to District Court  
2 for further proceedings.

## 3 II. CONCLUSIONS OF LAW

### 4 1. Deputy Granata had reasonable suspicion to conduct a traffic stop upon 5 the Defendant's vehicle after observing a traffic infraction.

6 Deputy Granata had reasonable suspicion to stop the Defendant for  
7 committing a traffic infraction. An officer needs only reasonable suspicion to initiate a  
8 traffic stop and conduct a brief investigation. See *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.  
9 Ct. 1868 (1968); see also *United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct. 744,  
10 750 (2002); NRS 171.123. The Nevada Supreme Court defines reasonable suspicion  
11 as "requiring something more than a police officer's hunch," but clarifies it is not a  
12 stringent standard. *State v. Rincon*, 122 Nev. 1170, 1173-74, 147 P.3d 233, 235-36  
13 (2006). Reasonable suspicion "need not rise to the level required for probable cause,  
14 and it falls considerably short of satisfying a preponderance of the evidence  
15 standard." *United States v. Arvizu*, 534 U.S. 266, 273-74, 122 S.Ct. 744, 750-51  
16 (2002). Reasonable suspicion exists when there are specific, articulable facts that  
17 support an inference of criminal activity. *Id.* The evidence must be viewed in light of  
18 the totality of the circumstances, including the law enforcement officer's training and  
19 experience. *Rincon*, 147 P.3d at 233.

20 Deputy Granata had reasonable suspicion that the Defendant committed a  
21 traffic infringement by failing to stop at a stop sign, a violation of CCMC 10.12.030. If  
22 a law enforcement officer conducts a vehicle stop based upon reasonable suspicion  
23 of a traffic infraction, the stop is reasonable under the Fourth Amendment. *Gama v.*  
24 *State*, 112 Nev. 833, 836, 920 P.2d 1010, 1012-12 (1996); *Terry v. Ohio*, 392 U.S. 1,  
25 21, 88 S. Ct. 1868 (1968). Under Nevada Law, failure to stop at a stop sign is a traffic

1 infraction under CCMC 10.12.030 and under NRS 484B.257. As the Defendant failed  
2 to stop at a stop sign, Deputy Granata had reasonable suspicion to initial a traffic  
3 stop upon observing the Defendant violate Nevada law.

4 **2. Because Deputy Granata had reasonable suspicion to initiate a traffic**  
5 **stop, the stop was reasonable, legal, and valid.**

6 A traffic stop complies with the Fourth Amendment if the officer has  
7 reasonable suspicion to justify the intrusion. *Rincon*, 147 P.3d 233. The Fourth  
8 Amendment reasonableness requirement permits certain action under "certain  
9 circumstances, *whatever* the subjective intent." *Whren v. United States*, 517 U.S.  
10 806, 808, 116 S. Ct. 1769, 1771 (1996) (emphasis included). Regardless of whether  
11 an officer believes a driver may be engaged in additional illegal behavior, the officer  
12 may make a traffic stop so long as a reasonable officer under the same  
13 circumstances *could have* stopped the car for the suspected traffic infraction. *Id.* 517  
14 U.S. at 809, 116 S. Ct. at 1772 (emphasis included). Therefore, "a traffic-violation  
15 arrest...would not be rendered invalid by the fact that it was a 'mere pretext for a  
16 narcotics search.'" *Id.* 517 U.S. at 812-13, 116 S.Ct. at 1774 (citing *United States v.*  
17 *Robinson*, 414 U.S. 218, 38 L.Ed.2d 427, 94 S.Ct. 467 (1973)).

18 Deputy Granata had reasonable suspicion to stop the Defendant for violating  
19 CCMC 10.12.030 and NRS 484B.257. Consistent with the United States Supreme  
20 Court holding in *Whren*, Deputy Grantata legally stopped and detained the Defendant  
21 based upon a traffic infraction, and the stop is not deemed illegal simply because  
22 SET deputies may have used the stop as a pretext for a narcotics search. As any  
23 officer *could have* stopped the Defendant for failing to stop at a stop sign, Deputy  
24 Granata made an appropriate and legal stop.

25 ///

1  
2 **3. Deputies did not unlawfully delay the traffic stop because the Defendant**  
3 **was detained for having violated multiple Nevada laws and Deputy**  
4 **Granata was waiting to obtain additional information from Dispatch.**

5 The traffic stop in this matter was not unlawfully extended for Deputy Pullen to  
6 arrive with Blue and conduct an air sniff of the Defendant's vehicle. As a traffic stop is  
7 a seizure under the Fourth Amendment, if officers unreasonably prolong a traffic  
8 stop, the delay violates the driver's Fourth Amendment rights against unreasonable  
9 seizures. *See State v. Beckman*, 129 Nev. 481, 305 P.3d 912 (2013). The Nevada  
10 Supreme Court has held, however, that a prolonged stop is reasonable if the delay is  
11 de minimis, or if the officer "lawfully receives information during the traffic stop that  
12 creates a reasonable suspicion of criminal conduct." *Id.* at Nev. 488, P.3d 917.  
13 Accordingly, a "dog sniff during a lawful traffic stop does not violate the Constitution  
14 so long as the sniff does not prolong the length of the stop." *Id.* at Nev. 483, P.3d.  
15 914. If a canine unit arrives while the initial officer is "still processing the initial reason  
16 for the stop, the canine sniff [does] not run afoul of the constitution." *Id.* at Nev. 487,  
17 P.3d 917. During a stop, officers may legally complete multiple routine tasks, such as  
18 confirming a driver's license and vehicle registration, running a computer check,  
19 issuing a citation, or asking the driver about his destination and route. *Id.* at Nev. 486,  
20 P.3d 916.

21 Here, there is nothing that suggests the dog sniff prolonged the traffic stop.  
22 Deputy Bindley requested a canine unit while Deputy Granata was still processing  
23 the Defendant's identification information and vehicle registration through Dispatch.  
24 Deputy Pullen and his K9 were nearby, and quickly arrived on scene. Additionally,  
25 the dog sniff occurred prior to the conclusion of the traffic stop. Therefore, the delay  
was a de minimis, standard delay, as Deputy Granata was actively waiting to receive

1 information regarding both the Defendant and the vehicle. Further, the Defendant  
2 was unable to produce proof of insurance; driving without proof of insurance is  
3 prohibited by NRS 485.187. Thus, the Defendant could not legally leave the scene  
4 without proof of insurance and Deputy Granata could not legally permit the  
5 Defendant to continue to drive without first verifying whether he was insured. As a  
6 result, the dog sniff did not prolong the length of the stop.

7 **4. The search of Defendant's vehicle was legal and not a violation of his**  
8 **Fourth Amendment Rights because the search was subsequent to a**  
9 **positive drug detection dog's alert.**

10 It is well-established that a drug detection dog's alert on a vehicle provides an  
11 officer with probable cause to search the vehicle on the believe that controlled  
12 substances are present. See *State v. Lloyd*, 129 Nev. 739, 751, 312 P.3d 467, 474  
13 (2013). Additionally, the Nevada Supreme Court has made clear that an officer may  
14 search a vehicle without a warrant if he or she has probable cause to believe the car  
15 contains contraband or evidence of a crime. *Id.* at Nev. 750, P.3d 474. In this case,  
16 Deputy Pullen observed his drug detection dog, Blue, positively alert to the presence  
17 of controlled substances in the Defendant's vehicle. Therefore, SET deputies had  
18 probable cause to believe the Defendant's vehicle contained contraband and had  
19 probable cause to search the vehicle. As a result, all items discovered as a result of  
20 their search are admissible as evidence.

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III. CONCLUSION

Carson City Sheriff's Office Deputies legally stopped the Defendant's vehicle after observing the Defendant commit a traffic infraction and thereafter lawfully detained the Defendant during a dog sniff. The dog alerted to the presence of controlled substances, providing probable cause for deputies to legally search the Defendant's vehicle. Therefore, it is ORDERED that the Defendant's Motion to Suppress be DENIED.

Dated this 22<sup>nd</sup> day of March, 2021.

  
Honorable Judge James T. Russell  
District Court Judge

Submitted by:  
SARAH E. WHITE  
Deputy District Attorney  
Carson City District Attorney's Office  
885 E. Musser St.  
Carson City, NV 89701  
(775) 887-2072  
swhite@carson.org

1 **CERTIFICATE OF SERVICE**

2 The undersigned, an employee of the First Judicial District Court, hereby certifies that on  
3 the 22nd day of March, 2021, I served the foregoing Order, to counsel of record, as follows:


4 ☐ By depositing a copy thereof in the United States Mail at Carson City, Nevada, postage paid,  
5 addressed as follows:

6 ☐ By transmitting a copy thereof via facsimile, addressed as follows:  
7

8 Parole & Probation  
9 Fax: 684-2449

10 ☒ By depositing a copy thereof in the Departmental box for pick-up in the District Court Clerk's  
11 Office:

12 Jason D. Woodbury, District Attorney  
13 Walter B. Fey, Esq.

14   
15 Kimberly M. Carrubba, Esq.  
16 Law Clerk, Dept. 1  
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Fey

1 Case No. 20 CR 00121 1B

2 Dept. No. 1

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AUBREY ROWLATT  
CLERK

BY  DEPUTY

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5  
6 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF WASHOE**

8 \* \* \*

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs

12 DAVID EDWARD ELLISTON JR.,

13 Defendant.

14 \_\_\_\_\_ /

15 **ORDER**

16 THIS COURT, having considered defendant's Motion for Disclosure of  
17 Informants and Impeaching Information, the STATE OF NEVADA's Opposition to  
18 Motion, and defendant's Reply in Support of Motion, and Good Cause appearing,

19 The defendant's Motion for Disclosure of Informants and Impeaching  
20 Information is hereby GRANTED. The STATE OF NEVADA shall immediately provide  
21 to defendant and his counsel the names and contact information of any and all  
22 Informants and/or Confidential/Cooperating individuals who provided any information to  
23 members of law enforcement, and in particular to members of the Special Enforcement  
24 Team (SET) regarding activities which took place leading up to, during, and after the  
25 vehicle stop of Defendant on May 30, 2020.

26 In particular, the STATE OF NEVADA shall disclose such statements,  
27 conversations, recordings, and other communications which relate to or concern any  
28 alleged facts concerning the possession or possible sale or transport of controlled



1 substances by or to defendant and which relate to or concern any communications that  
2 defendant's vehicle may have been transporting any controlled substances on May 30,  
3 2021.

4 In addition, the STATE OF NEVADA shall disclose any impeachment  
5 evidence it may have, or by the exercise of reasonable efforts obtain, regarding any  
6 informant, Confidential/Cooperating individuals which may impact on the credibility or  
7 reliability of such individuals, including criminal record, record of previous cooperation  
8 with law enforcement, record of truthfulness or accuracy in any and all such prior  
9 associations with law enforcement, and any record of subsequent utilization of said  
10 individuals following defendant's May 30, 2021 arrest.

11 IT IS SO ORDERED, this 29<sup>th</sup> day of March, 2021.

12  
13   
14 DISTRICT COURT JUDGE  
15  
16  
17  
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19  
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21

22 Submitted by:  
23 WALTER B. FEY, ESQ.

24 Nevada Bar No. 3317  
25 1601 Fairview Drive, Suite H  
26 Carson City, NV 89701  
27 Telephone 775-329-1101  
28 Email [wbfey1@gmail.com](mailto:wbfey1@gmail.com)  
Attorney for Defendant.

1 **CERTIFICATE OF SERVICE**

2 The undersigned, an employee of the First Judicial District Court, hereby certifies that on  
3 the 29<sup>th</sup> day of March, 2021, I served the foregoing Order, to counsel of record, as follows:


4 ☐ By depositing a copy thereof in the United States Mail at Carson City, Nevada, postage paid,  
5 addressed as follows:

6 ☐ By transmitting a copy thereof via facsimile, addressed as follows:  
7

8 Parole & Probation  
9 Fax: 684-2449

10 ☒ By depositing a copy thereof in the Departmental box for pick-up in the District Court Clerk's  
11 Office:

12 Jason D. Woodbury, District Attorney  
13 Walter B. Fey, Esq.

14   
15 Kimberly M. Carrubba, Esq.  
16 Law Clerk, Dept. 1  
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AUBREY SCHLATT  
CLERK

BY \_\_\_\_\_  
DEPUTY

Case No.: 20 CR 00121 1B

Dept. No.: 1

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

STATE OF NEVADA,

Plaintiff,

vs.

DAVID EDWARD ELLISTON, JR.,

Defendant.

**ORDER DENYING MOTION TO  
BIFURCATE**

This matter comes before the Court on Plaintiff's Motion to Bifurcate Charges within the Same Trial filed on March 22, 2021.

This Court having reviewed the papers and pleadings on file this Court finds that the Court previously bifurcated Count III from the remaining counts in the Criminal Information on August 3, 2020 and in the Criminal Scheduling Order dated August 4, 2020. The Court set two trial dates: the first for Counts I, II, and IV; and the second for Count II, with different juries. Both trial dates were vacated due to a conflict of interest between Defendant and his previous counsel on January 4, 2021. The Court set the matter for a Status Check on January 19, 2021, where the trial date for Counts I, II, and IV was set for April 6, 2021. The trial date for Count III was not reset at that time, nor was it reset at the subsequent Status Check held by this Court on March 1, 2021. The Court finds there is no need to change the previously agreed-upon bifurcation method to have the same jury hear both matters. Therefore, the trial date for Count III will be set pending the outcome of the jury trial scheduled to begin on Tuesday, April 6, 2021 at 8:00 a.m.

**CERTIFICATE OF SERVICE**

The undersigned, an employee of the First Judicial District Court, hereby certifies that on the 31<sup>st</sup> day of March, 2021, I served the foregoing Order, to counsel of record, as follows:

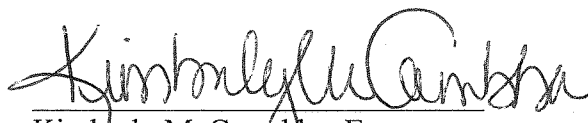
☐ By depositing a copy thereof in the United States Mail at Carson City, Nevada, postage paid, addressed as follows:

☐ By transmitting a copy thereof via facsimile, addressed as follows:

Parole & Probation  
Fax: 684-2449

☒ By depositing a copy thereof in the Departmental box for pick-up in the District Court Clerk's Office:

Sarah White, Deputy District Attorney  
Walter B. Fey, Esq.

  
Kimberly M. Carrubba, Esq.  
Law Clerk, Dept. I

1 JASON D. WOODBURY  
2 DISTRICT ATTORNEY  
3 Nevada Bar No. 6870  
4 885 E. Musser Street, Suite 2030  
5 Carson City, NV 89701  
6 (775) 887-2072  
7 Attorney for Plaintiff

8  
9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10  
11 IN AND FOR CARSON CITY

12 STATE OF NEVADA,

13 Plaintiff,

14 v.

15 DAVID EDWARD ELLISTON JR.,

16 Defendant.

Case No. 20 CR 00121 1B

Dept. No. I

17 NOTICE OF HABITUAL CRIMINALITY

18 COMES NOW, the Plaintiff, STATE OF NEVADA, by and through counsel, JASON D.  
19 WOODBURY, District Attorney and Sarah E. White, Deputy District Attorney in and for Carson  
20 City, State of Nevada, and hereby places the Defendant on notice, pursuant to NRS  
21 173.095(2)(b) of the State's intent to enhance the Defendant's punishment pursuant to the  
22 provisions of NRS 207.010(1) in the event of conviction of some or all of the counts charged in  
23 the Criminal Information on file in this action.

24 DATED this 2nd day of April, 2021.

25 JASON D. WOODBURY  
26 District Attorney

27 By: 

28 SARAH E. WHITE  
Deputy District Attorney  
Nevada Bar No. 14643



1 JASON D. WOODBURY  
2 DISTRICT ATTORNEY  
3 Nevada Bar No. 6870  
4 885 E. Musser Street, Suite 2030  
5 Carson City, NV 89701  
6 (775) 887-2072  
7 Attorney for Plaintiff

8  
9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10  
11 IN AND FOR CARSON CITY

12 STATE OF NEVADA,

13 Plaintiff,

14 v.

15 DAVID EDWARD ELLISTON JR.,

16 Defendant.

Case No. 20 CR 00121 1B

Dept. No. I

17 MOTION FOR LEAVE TO AMEND CRIMINAL INFORMATION

18 COMES NOW, the Plaintiff, STATE OF NEVADA, by and through counsel,  
19 JASON D. WOODBURY, District Attorney and Sarah E. White, Deputy District  
20 Attorney in and for Carson City, State of Nevada, and hereby gives this court  
21 notification of its intent to seek habitual criminality of the Defendant in the above  
22 entitled matter, and requests authorization to amend the Criminal Information to add  
23 a third count charging habitual criminality or, in the alternative, habitual felon.

24 ///

25 ///

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///

1 This motion is based upon the points and authorities and all papers, pleadings  
2 and exhibits on file herein.

3 DATED this 1st day of April, 2021.

4 JASON D. WOODBURY  
5 District Attorney

6 By:  \_\_\_\_\_

7 SARAH E. WHITE  
8 Deputy District Attorney  
9 Nevada Bar No. 14643

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Office of the District Attorney  
Carson City, Nevada  
895 East Musser St., Suite 2030, Carson City, Nevada 89701  
Tel.: (775) 887-2272 Fax (775) 887-2129



1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS.**

3 On or about May 30, 2020, David Elliston, the Defendant in this matter, was  
4 arrested and later charged by way of Criminal Complaint with: Trafficking in a  
5 Controlled Substance, 28 grams or more, a category A felony; Trafficking in a  
6 Controlled Substance, 14 to 28 grams, a category B felony; Ex-Felon in Possession  
7 of a Firearm, a category B felony, and Possession of a Controlled Substance for the  
8 Purpose of Sale, a category D felony. The Defendant was bound over to the First  
9 Judicial District Court on July 24, 2020, after preliminary hearing, on the same  
10 charges. A Criminal Information was filed on July 27, 2020. The State now seeks  
11 leave to amend the Amend Criminal Information to add a fifth count charging habitual  
12 criminality or, in the alternative, habitual felon.

13 **II. AUTHORITIES.**

14 Pursuant to NRS 173.095(1) and NRS 207.016(2), the State requests leave to  
15 amend the criminal information so as to add Count Five charging Habitual Criminality  
16 pursuant to NRS 207.010(1)(b) because the Defendant has previously been  
17 convicted of three (3) or more prior felonies. (See First Amended Criminal Information  
18 attached hereto and incorporated herein by express reference).

19 NRS 207.010(1)(b) provides:

20 Unless the person is prosecuted pursuant to NRS 207.012 or  
21 207.014, a person convicted in this state of:

22 (b) Any felony, who has previously been three  
23 times convicted, whether in this State or elsewhere, of any  
24 crime which under the laws of the situs of the crime or of  
25 this State would amount to a felony is a habitual criminal  
and shall be punished for a category A felony by  
imprisonment in the state prison:

///

1 (1). For life without the possibility  
2 of parole;

3 (2). For life with the possibility of  
4 parole, with eligibility for parole beginning  
5 when a minimum of 10 years has been  
6 served; or

7 (3). For a definite term of 25 years,  
8 with eligibility for parole beginning when a  
9 minimum of 10 years has been served.

10 2. It is within the discretion of the prosecution attorney whether  
11 to include a count under this section in any information . . .

12 In the alternative, the State moves to amend the criminal information so as to  
13 add Count Five charging Habitual Felon pursuant to NRS 207.012(1)(b) because the  
14 Defendant has previously been convicted of two (2) or more prior felonies constituting  
15 a violation of subparagraph (1) of paragraph (a) of subsection 1 of NRS 193.330,  
16 NRS 199.160, 199.500, 200.030, 200.310, 200.340, 200.366, 200.380, 200.390,  
17 subsection 3 or 4 of NRS 200.400, NRS 200.410, subsection 3 of NRS 200.450,  
18 subsection 5 of NRS 200.460, NRS 200.463, 200.4631, 200.464, 200.465, 200.467,  
19 200.468, subsection 1, paragraph (a) of subsection 2 or subparagraph (2) of  
20 paragraph (b) of subsection 2 of NRS 200.508, NRS 200.710, 200.720, 201.230,  
21 201.450, 202.170, subsection 2 of NRS 202.780, paragraph (b) of subsection 2 of  
22 NRS 202.820, paragraph (b) of subsection 1 or subsection 2 of NRS 202.830, NRS  
23 205.010, subsection 4 of NRS 205.060, subsection 4 of NRS 205.067, NRS 205.075,  
24 207.400, paragraph (a) of subsection 1 of NRS 212.090, NRS 453.3325, 453.333,  
25 484C.130, 484C.430 or 484E.010.

26 No additional or different offenses are being charged in Count V, and the  
27 Defendant's substantial rights are not prejudiced by the amended information. A  
28 habitual criminal proceeding, pursuant to NRS 207.010, does not charge a separate

Office of the District Attorney

Carson City, Nevada

845 East Musser St., Suite 2030, Carson City, Nevada 89701  
Tel.: (775) 887-2072 Fax: (775) 887-2729

1 offense, but is held solely to determine facts which, if true, will increase punishment.  
2 *State v. Bardmess*, 54 Nev. 84, 7 P.2d 817 (1932); *Carter v. State*, 79 Nev. 89, 378  
3 P.2d 876 (1963); *Lisby v. State*, 82 Nev. 183, 414 P.2d 592 (1966); *Hollander v.*  
4 *State*, 82 Nev. 345, 418 P.2d 802 (1966); *Graham v. West Virginia*, 224 U.S. 616  
5 (1912). It is not a separate offense to be a habitual criminal, but a status. *Howard v.*  
6 *State*, 83 Nev. 53, 56, 422 P.2d 548 (1967). The hearing is procedural, is not a  
7 separate crime, and does not increase punishment of the principal offense for which  
8 a defendant is on trial. *Id.* A judge, not a jury, receives the proof. *Id.* at 57. The  
9 statute simply allows enlarged punishment for one who cannot be rehabilitated, and  
10 who, as a recidivist, repeatedly violates the law. *Id.*

11 **III. CONCLUSION.**

12 Based upon the foregoing argument, the State of Nevada respectfully requests  
13 leave to amend defendant's criminal information, to the form attached hereto as  
14 Exhibit A.

15 DATED this 2nd day of April, 2021.

16 JASON D. WOODBURY  
17 District Attorney

18 By:   
19

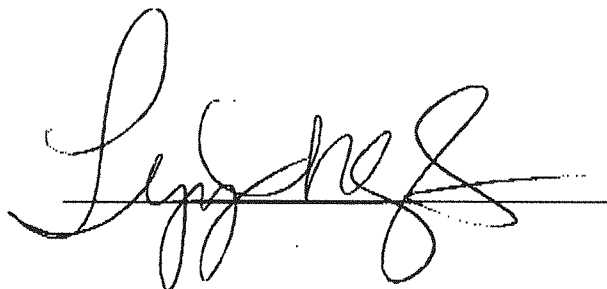
20 SARAH E. WHITE  
21 Deputy District Attorney  
22 Nevada Bar No. 14643  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Carson City District Attorney and that on this 2nd day of April, 2021, I caused to be served a copy of the foregoing document, titled: by faxing and delivering via Acme Messenger Service said document addressed to:

Walter B. Fey Esq.  
1601 Fairview Drive, Suite H  
Carson City, Nevada 89701  
(775) 329-1103



Office of the District Attorney

Carson City, Nevada

885 East Main Street, Suite 2000, Carson City, Nevada 89701

Tel.: (775) 687-2072 Fax: (775) 687-2129

1 JASON D. WOODBURY  
DISTRICT ATTORNEY  
2 Nevada Bar No. 6870  
885 E. Musser Street, Suite 2030  
3 Carson City, NV 89701  
(775) 887-2072  
4 Attorney for Plaintiff

5  
6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR CARSON CITY  
8

9 STATE OF NEVADA,

10 Plaintiff,

Case No.

11 v.

Dept. No. I

12 DAVID EDWARD ELLISTON JR.,  
13 PCN #NVCCSO6009598C,

14 Defendant.

15 **AMENDED CRIMINAL INFORMATION**

16 STATE OF NEVADA )

17 CARSON CITY )

)ss

18 JASON D. WOODBURY, District Attorney in and for Carson City, State of  
19 Nevada, by SARAH E. WHITE, Deputy District Attorney, in the name and by the  
20 authority of the State of Nevada, informs the Court that DAVID EDWARD ELLISTON  
21 JR., the Defendant, above-named, on or about the 30th day of May, 2020, and  
22 before the filing of this Information, at Carson Township, in Carson City, State of  
23 Nevada, has committed the crimes of **TRAFFICKING IN A SCHEDULE 1**  
24 **CONTROLLED SUBSTANCE – 28 GRAMS OR MORE**, a category A Felony as  
25 defined by NRS 453.3385(1) (c) (Count I); **TRAFFICKING IN A SCHEDULE 1**

1 **CONTROLLED SUBSTANCE – 14 GRAMS TO 28 GRAMS**, a category B Felony as  
2 defined by NRS 453.3385(1) (b) (Count II); **EX-FELON IN POSSESSION OF A**  
3 **FIREARM**, a category B Felony as defined by NRS 202.360 (Count III); and  
4 **POSSESSION OF A CONTROLLED SUBSTANCE FOR THE PURPOSE OF SALE**,  
5 a category D Felony as defined by NRS 453.337 (Count IV), in the manner following:

6 **Count I**

7 **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 28 GRAMS OR**  
8 **MORE**

9 **("A" Felony – NRS 453.3385(1) (c))**

10 That the Defendant, David Edward Elliston Jr., on or about May 30, 2020, did  
11 knowingly or intentionally, sell, manufacture, deliver, or bring into this State, or was  
12 knowingly or intentionally in actual or constructive possession of a schedule 1  
13 controlled substance, except marijuana, or any mixture which contains any such  
14 controlled substance, in a quantity weighing twenty-eight (28) grams or more, in the  
15 manner following, to-wit: The Defendant did possess within his vehicle more than  
16 100 grams of methamphetamine, all of which occurred at or near 2412 South Curry  
17 Street, Carson City, Nevada.

18 **Count II**

19 **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14 GRAMS TO**  
20 **28 GRAMS**

21 **("B" Felony – NRS 453.3385(1) (b))**

22 That the Defendant, David Edward Elliston Jr., on or about May 30, 2020, did  
23 knowingly or intentionally, sell, manufacture, deliver, or bring into this State, or was  
24 knowingly or intentionally in actual or constructive possession of a schedule 1  
25 controlled substance, except marijuana, or any mixture which contains any such

1 controlled substance, in a quantity weighing fourteen (14) grams or more but less  
2 than twenty-eight (28) grams, in the manner following, to-wit: the Defendant did  
3 possess within his vehicle approximately 15 to 20 grams of heroin, all of which  
4 occurred at or near 2412 South Curry Street, Carson City, Nevada.

5 **Count III**

6 **EX-FELON IN POSSESSION OF A FIREARM**

7 **("B" Felony – NRS 202.360)**

8 That the Defendant, David Edward Elliston Jr., on or about May 30, 2020, did  
9 willfully and unlawfully possess and/or have under his custody and control any  
10 firearm, in the manner following: the Defendant did possess a Hi-Point 9mm  
11 handgun within his vehicle having been convicted a Burglary, a category B felony,  
12 and/or Motor Vehicle Theft, a category B felony, and/or having otherwise been  
13 convicted of a felony, all of which occurred at or near 2412 South Curry Street,  
14 Carson City, Nevada.

15 **Count IV**

16 **POSSESSION OF A CONTROLLED SUBSTANCE FOR THE PURPOSE OF SALE**

17 **("D" Felony – NRS 453.337)**

18 That the Defendant, David Edward Elliston Jr., on or about May 30, 2020, did  
19 willfully and unlawfully possess and have within his dominion and control one or  
20 more schedule I controlled substance(s) for the purpose of and with the intent to sell,  
21 in the manner following: Defendant did possess methamphetamine and heroin within  
22 his vehicle along with a scale, large amount of cash in small bills, two separate  
23 cellular phones, and a handgun evidencing intent to engage in drug sales, all of  
24 which occurred at or near 2412 South Curry Street, Carson City, Nevada.

1 All of which is contrary to the form of the Statutes in such cases made and  
2 provided and against the peace and dignity of the State of Nevada.

3 DATED this 24th day of July, 2020.

4 JASON D. WOODBURY  
5 District Attorney

6 By: 

7 SARAH E. WHITE  
8 Deputy District Attorney  
9 Nevada Bar No. 14643  
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Office of the District Attorney

Carson City, Nevada

895 East Musser St., Suite 2050, Carson City, Nevada 89701  
Tel.: (775) 887-2072 Fax: (775) 887-2129



Office of the District Attorney

Carson City, Nevada

845 East Musser St., Suite 200, Carson City, Nevada 89701  
Tel: (775) 867-2072 Fax: (775) 867-2129

1           The following are the names of such witnesses for the State of Nevada as are  
2 known to me at the time of filing this Information:

3   Brett John Bindley  
4   Carson City Sheriffs Office  
5   911 E. Musser Street  
6   Carson City, NV 89701

7   Jeff J. Pullen  
8   Carson City Sheriffs Office  
9   911 E. Musser Street  
10   Carson City, NV 89701

11   Daniel Henneberger  
12   Carson City Sheriffs Office  
13   911 E. Musser Street  
14   Carson City, NV 89701

15   Jordan Hadlock  
16   Carson City Sheriffs Office  
17   911 E. Musser Street  
18   Carson City, NV 89701

19   Lizzeth Granata  
20   Carson City Sheriffs Office  
21   911 E. Musser Street  
22   Carson City, NV 89701

23   CCSO Dispatch Center  
24   4645 Snyder Avenue  
25   Carson City, NV 89701

26   Washoe County Sheriff Crime Lab  
27   911 E. Parr Blvd.  
28   Reno, NV 89512

29   Carson City Sheriffs Office Crime Lab  
30   Carson City Sheriff's Office 911 E. Musser Street  
31   Carson City, NV 89701

**UNDER NO CIRCUMSTANCES IS THE LANGUAGE CONTAINED HEREINAFTER  
TO BE READ TO A JURY HEARING THE PRIMARY OFFENSE  
FOR WHICH THE DEFENDANT IS PRESENTLY CHARGED.**

Defendant, DAVID EDWARD ELLISTON, above named, is placed on notice that, in accordance with the authorization of NRS 207.010(1) or, in the alternative, NRS 207.012, punishment imposed pursuant to the above-stated habitual criminal statute will be urged upon the Court if said Defendant is found guilty on the primary offenses of: **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 28 GRAMS OR MORE**, a category A Felony as defined by NRS 453.3385(1) (c) (Count I); **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14 GRAMS TO 28 GRAMS**, a category B Felony as defined by NRS 453.3385(1) (b) (Count II); **EX-FELON IN POSSESSION OF A FIREARM**, a category B Felony as defined by NRS 202.360 (Count III); or **POSSESSION OF A CONTROLLED SUBSTANCE FOR THE PURPOSE OF SALE**, a category D Felony as defined by NRS 453.337 (Count IV).

This page concerning the prior convictions hereinbelow set forth is to be considered by the Court in its discretion ONLY after the finding of guilty of Defendant on the primary charge herein.

That said Defendant, DAVID EDWARD ELLISTON has been four (4) times previously convicted of crimes which, under the laws of the situs of the crime and/or the State of Nevada, amount to felonies, to wit:

1. That on or about September 27, 2018, the Defendant was convicted in Case C-18-332953-1, in Clark County, Nevada, for the crime of Burglary, said crime committed on or between April 8, 2018 and April 9, 2018, and for which the Defendant was sentenced to a term of 12 to 48 months in the Nevada Department of Corrections.

2. That on or about October 14, 2014, the Defendant was convicted in Case CR936841, in Lake Superior Court, County of Lake, State of California, for the

1 crimes of Possession of a Controlled Substance, a felony pursuant to Section  
2 HS11377(a) of the statutes of California, said crime committed on or about August  
3 11, 2014, for which the Defendant was sentenced to a term of 16 months to 36  
4 months.

5 3. That on or about March 31, 2011, the Defendant was convicted in case  
6 CR923026 in Lake Superior Court, County of Lake, State of California, for the crimes  
7 of Second Degree Burglary, a felony pursuant to Section 459 of the California Penal  
8 Code, said crime committed on or about July 1, 2010, for which the Defendant was  
9 sentenced to a term of 3 years.

10 4. That on or about August 18, 2004, the Defendant was convicted in case  
11 CR901409 in Lake Superior Court, County of Lake, State of California, for the crimes  
12 of Assault with Deadly Weapon Other Than Firearm, a felony pursuant to Section  
13 245(a)(1) of the California Penal Code, said crime committed on or about May 10,  
14 2004, for which the Defendant was sentenced to a term of 3 years.

15 DATED this 2nd day of April, 2021.

16 JASON D. WOODBURY  
17 District Attorney

18 By: 

19 SARAH E. WHITE  
20 Deputy District Attorney

21 **DO NOT READ TO THE JURY**  
22  
23  
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Fey

1 Case No. 20 CR 00121 1B

2 Dept. No. 1

REC'D & FILED

2021 APR -5 PM 1:24

AUDREY PALATT  
CLERK

BY   
DEPUTY

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4  
5  
6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 \*\*\*

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs

12 DAVID EDWARD ELLISTON JR.,

13 Defendant.

14 \_\_\_\_\_ /  
15 ORDER

16 THIS COURT, having considered the Motion for Reconsideration  
17 Regarding Disclosure of Informants and Impeaching Information filed by Plaintiff  
18 STATE OF NEVADA, and defendant's Opposition thereto, and further Good Cause  
19 Appearing,

20 The Motion For Reconsideration Regarding Disclosure of Informants and  
21 Impeaching Information is hereby DENIED. The STATE OF NEVADA shall  
22 immediately provide to defendant and his counsel all information ordered in this Court's  
23 previous Order to Disclose.

24 IT IS SO ORDERED, this 5th day of April, 2021.

25  
26   
27 DISTRICT COURT JUDGE  
28

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1 Submitted by:  
2 WALTER B. FEY, ESQ.  
3 Nevada Bar No. 3317  
4 1601 Fairview Drive, Suite H  
5 Carson City, NV 89701  
6 Telephone 775-329-1101  
7 Email wbfey1@gmail.com  
8 Attorney for Defendant.  
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**CERTIFICATE OF SERVICE**

The undersigned, an employee of the First Judicial District Court, hereby certifies that on the 5th day of March, 2021, I served the foregoing Order, to counsel of record, as follows:

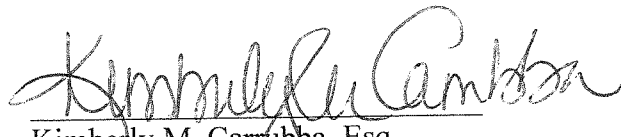
☐ By depositing a copy thereof in the United States Mail at Carson City, Nevada, postage paid, addressed as follows:

☐ By transmitting a copy thereof via facsimile, addressed as follows:

Parole & Probation  
Fax: 684-2449

☒ By depositing a copy thereof in the Departmental box for pick-up in the District Court Clerk's Office:

Sarah White, Deputy District Attorney  
Walter Fey, Esq.

  
Kimberly M. Carrubba, Esq.  
Law Clerk, Dept. 1

REC'D & FILED

April 7, 2021

Date

AUBREY ROWLATT

CLERK

By [Signature] Deputy

JASON D. WOODBURY  
DISTRICT ATTORNEY  
Nevada Bar No. 6870  
885 E. Musser Street, Suite 2030  
Carson City, NV 89701  
(775) 887-2072  
Attorney for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

STATE OF NEVADA,

Plaintiff,

v.

DAVID EDWARD ELLISTON JR.,  
PCN#NVCCSO6009598C,

Defendant.

Case No. 20 CR 00121 1B

Dept. No. I

**MEMORANDUM OF PLEA NEGOTIATION PURSUANT TO ALFORD**

I, DAVID EDWARD ELLISTON JR., by and through WALTER B. FEY ESQ.  
and SARAH E. WHITE, Deputy District Attorney in and for Carson City, State of  
Nevada, hereby agree to plead guilty, pursuant to North Carolina v. Alford, 400 U.S.  
25 (1970), **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14**  
**GRAMS TO 28 GRAMS**, a category B Felony as defined by NRS 453.3385(1) (b)  
(Count I); **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14**  
**GRAMS TO 28 GRAMS**, a category B Felony as defined by NRS 453.3385(1) (b)  
(Count II); and **EX-FELON IN POSSESSION OF A FIREARM**, a category B Felony  
as defined by NRS 202.360 (Count III), and as more fully alleged in the charging

1 document attached hereto as Exhibit "1".

2 My decision to plead guilty by way of Alford is based upon the plea agreement  
3 in this case which is as follows:

4 That the parties agree to recommend a stipulated sentence of incarceration in  
5 the Nevada Department of Corrections without probation as follows: on Count I, 24  
6 months to 180 months; on Count II, 24 months to 180 months, and on Count III, 24  
7 months to 60 months; each Count to run consecutive for an aggregate total of 72  
8 months to 420 months in the Nevada Department of Corrections. The State agreed to  
9 dismiss and/or not pursue all other charges arising from this specific criminal  
10 episode.

#### 11 CONSEQUENCES OF THE PLEA

12 By pleading guilty pursuant to the Alford decision, it is my desire to avoid the  
13 possibility of being convicted of more offenses or of a greater offense if I were to  
14 proceed to trial on the original charges and of also receiving a greater penalty. I  
15 understand that my decision to plead guilty by way of the Alford decision does not  
16 require me to admit guilt, but is based upon my belief that the State would present  
17 sufficient evidence at trial that a jury would return a verdict of guilty of a greater  
18 offense or of more offenses than that to which I am pleading guilty by way of Alford,  
19 as set forth in Exhibit "1."

20 I understand that as a consequence of my plea of guilty by way of the Alford  
21 decision to the charge of **TRAFFICKING IN A SCHEDULE 1 CONTROLLED**  
22 **SUBSTANCE – 14 GRAMS TO 28 GRAMS**, I may be imprisoned in the Nevada  
23 Department of Corrections for a period of not less than two (2) years and not more  
24 than fifteen (15) years and I may be fined not more than \$100,000.00. I understand  
25 that as a consequence of my plea of guilty by way of the Alford decision to the



1 charge of **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14**  
2 **GRAMS TO 28 GRAMS**, I may be imprisoned in the Nevada Department of  
3 Corrections for a period of not less than two (2) years and not more than fifteen (15)  
4 years and I may be fined not more than \$100,000.00. I understand that as a  
5 consequence of my plea of guilty by way of the Alford decision to the charge of **EX-**  
6 **FELON IN POSSESSION OF A FIREARM**, I may be imprisoned in the Nevada  
7 Department of Corrections for a period of not less than one (1) year and not more  
8 than six (6) years and I may be fined not more than \$5,000.00. I understand that  
9 restitution may be required. I understand that the law requires me to pay a \$25.00  
10 Administrative Assessment Fee.

11 I understand that, if appropriate, I will be ordered to make restitution to the  
12 victim of the offenses to which I am pleading guilty by way of Alford and to the victim  
13 of any related offense which is being dismissed or not prosecuted pursuant to this  
14 agreement. I will also be ordered to reimburse the State of Nevada for any expenses  
15 related to my extradition, if any.

16 I further acknowledge that I have been advised that if I am not a United States  
17 citizen, pursuant to Federal Immigration Law, conviction of this felony may result in  
18 deportation, revocation of resident alien status, visa or work permit, denial of re-  
19 admission to the United States, and denial of naturalization should I apply.

20 I understand that I am not eligible for probation for either Count I or Count II to  
21 which I am pleading guilty by way of Alford. However, I understand that I may be  
22 eligible for probation for Count III to which I am pleading guilty by way of Alford. I  
23 understand that, except as otherwise provided by statute, the question of whether I  
24 receive probation on Count III is in the discretion of the sentencing judge.

25 ///

1 I understand that information regarding charges not filed, dismissed charges,  
2 or charges to be dismissed pursuant to this agreement may be considered by the  
3 judge at sentencing.

4 I understand that if more than one sentence of imprisonment is imposed and I  
5 am eligible to serve the sentences concurrently, the sentencing judge has the  
6 discretion to order the sentences served concurrently or consecutively.

7 I have not been promised or guaranteed any particular sentence by anyone. I  
8 know that my sentence is to be determined by the court within the limits prescribed  
9 by statute. I understand that if my attorney or the State of Nevada or both  
10 recommend any specific punishment to the Court, the Court is not obligated to accept  
11 the recommendation.

12 I understand that the Division of Parole and Probation will prepare a report for  
13 the sentencing judge prior to sentencing. This report will include matters relevant to  
14 the issue of sentencing, including my criminal history. This report may contain  
15 hearsay information regarding my background and criminal history. My attorney and I  
16 will each have the opportunity to comment on the information contained in the report  
17 at the time of sentencing. Unless the District Attorney has specifically agreed  
18 otherwise, then the District Attorney may also comment on this report and its  
19 contents, including, but not limited to, all facts and circumstances of the offense.

20 I understand that if the State of Nevada has agreed to recommend a particular  
21 sentence or has agreed not to present argument regarding the sentence, or has  
22 agreed not to oppose a particular sentence, such agreement is contingent upon my  
23 appearance in court on the initial sentencing date and any subsequent date if the  
24 sentencing is continued. I understand that if I fail to appear for the scheduled  
25 sentencing date, or if I fail to appear at or am terminated from any counseling

1 program or specialty court program ordered prior to sentencing, or I commit a new  
2 criminal offense prior to sentencing, the State of Nevada would regain the full right to  
3 argue for any lawful sentence.

#### 4 WAIVER OF RIGHTS

5 By entering my plea of guilty pursuant to the Alford decision, I understand that  
6 I am waiving and giving up the following rights and privileges:

7 1. The constitutional privilege against self-incrimination, including the right  
8 to refuse to testify at trial, in which event the prosecution would not be allowed to  
9 comment to the jury about my refusal to testify.

10 2. The constitutional right to a speedy and public trial by an impartial jury,  
11 free of excessive pretrial publicity prejudicial to the defense, at which trial I would be  
12 entitled to the assistance of an attorney, either appointed or retained. At the trial the  
13 State would bear the burden of proving beyond a reasonable doubt each element of  
14 the offense charged.

15 3. The constitutional right to confront and cross-examine any witnesses  
16 who would testify against me.

17 4. The constitutional right to subpoena witnesses to testify on my behalf.

18 5. The constitutional right to testify in my own defense.

19 6. The right to appeal the conviction, with the assistance of an attorney,  
20 either appointed or retained, unless the appeal is based upon reasonable  
21 constitutional jurisdictional or other grounds that challenge the legality of the  
22 proceedings and except as otherwise provided in subsection 3 of NRS 174.035. I  
23 understand that if I wish to appeal, I must notify my attorney as soon as possible, and  
24 that the Notice of Appeal must be filed within thirty (30) days from the judgment of  
25 conviction.

VOLUNTARINESS OF PLEA

I have discussed the elements of the original charge against me with my attorney and I understand the nature of the charge against me.

I understand that the State would have to prove each element of the charge against me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty by way of Alford and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

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1 I am not now under the influence of any intoxicating liquor, a controlled  
2 substance or other drug which would in any manner impair my ability to comprehend  
3 or understand this agreement or the proceedings surrounding my entry of this plea.

4 My attorney has answered all my questions regarding the guilty by Alford plea  
5 agreement and its consequences to my satisfaction and I am satisfied with the  
6 services provided by my attorney.

7 DATED this 7th day of APRIL, 2021.

8  
9   
10 DAVID EDWARD ELLISTON JR.  
Defendant

11 AGREED TO BY:

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14 SARAH E. WHITE  
Deputy District Attorney  
Nevada Bar No. 14643

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Date <sup>SW</sup> 4/7/2021

1 CERTIFICATE OF COUNSEL

2 I, WALTER B. FEY ESQ., as the attorney for the Defendant named herein and  
3 as an officer of the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations contained in the  
5 charge to which guilty by Alford pleas are being entered.

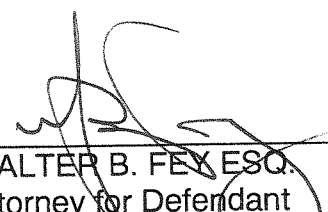
6 2. I have advised the Defendant of the penalties for each charge and the  
7 restitution that the Defendant may be ordered to pay.

8 3. All pleas of guilty by Alford offered by the Defendant pursuant to this  
9 agreement are consistent with the facts known to me, are made with my advice to the  
10 Defendant, and are in the best interest of the Defendant.

11 4. To the best of my knowledge and belief, the Defendant:

- 12 a. Is competent and understands the charges and the  
13 consequences of pleading guilty by Alford as provided in this  
14 agreement.
- 15 b. Executed this agreement and will enter all guilty by Alford pleas  
16 pursuant hereto voluntarily.
- 17 c. Was not under the influence of intoxicating liquor, a controlled  
18 substance or other drug at the time of the execution of this  
19 agreement.

20 Dated this 7th day of APRIL, 2021.

21   
22 WALTER B. FEY ESQ.  
23 Attorney for Defendant  
24 1601 Fairview Drive, Suite H  
25 Carson City, NV 89701  
(775) 329-1101  
Nevada Bar No. 3317



JASON D. WOODBURY  
DISTRICT ATTORNEY  
Nevada Bar No. 6870  
885 E. Musser Street, Suite 2030  
Carson City, NV 89701  
(775) 887-2072  
Attorney for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

STATE OF NEVADA,

Plaintiff,

v.

DAVID EDWARD ELLISTON JR.,  
PCN #NVCCSO6009598C,

Defendant.

Case No. 20 CR 00121 1B

Dept. No. I

**SECOND AMENDED CRIMINAL INFORMATION**

STATE OF NEVADA        )  
CARSON CITY            ):ss

JASON D. WOODBURY, District Attorney in and for Carson City, State of Nevada, by SARAH E. WHITE, Deputy District Attorney, in the name and by the authority of the State of Nevada, informs the Court that DAVID EDWARD ELLISTON JR., the Defendant, above-named, on or about the 30th day of May, 2020, and before the filing of this Information, at Carson Township, in Carson City, State of Nevada, has committed the crimes of **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14 GRAMS TO 28 GRAMS**, a category B Felony as defined by NRS 453.3385(1) (b) (Count I); **TRAFFICKING IN A SCHEDULE 1**



1 **CONTROLLED SUBSTANCE – 14 GRAMS TO 28 GRAMS**, a category B Felony as  
2 defined by NRS 453.3385(1) (b) (Count II); and **EX-FELON IN POSSESSION OF A**  
3 **FIREARM**, a category B Felony as defined by NRS 202.360 (Count III), in the  
4 manner following:

5 **Count I**

6 **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14 GRAMS TO**  
7 **28 GRAMS**

8 **("B" Felony – NRS 453.3385(1) (b))**

9 That the Defendant, David Edward Elliston Jr., on or about May 30, 2020, did  
10 knowingly or intentionally, sell, manufacture, deliver, or bring into this State, or was  
11 knowingly or intentionally in actual or constructive possession of a schedule 1  
12 controlled substance, except marijuana, or any mixture which contains any such  
13 controlled substance, in a quantity weighing fourteen (14) grams or more but less  
14 than twenty-eight (28) grams, in the manner following, to-wit: the Defendant did  
15 possess within his vehicle approximately 187 grams of Methamphetamine, all of  
16 which occurred at or near 2412 South Curry Street, Carson City, Nevada.

17 **Count II**

18 **TRAFFICKING IN A SCHEDULE 1 CONTROLLED SUBSTANCE – 14 GRAMS TO**  
19 **28 GRAMS**

20 **("B" Felony – NRS 453.3385(1) (b))**

21 That the Defendant, David Edward Elliston Jr., on or about May 30, 2020, did  
22 knowingly or intentionally, sell, manufacture, deliver, or bring into this State, or was  
23 knowingly or intentionally in actual or constructive possession of a schedule 1  
24 controlled substance, except marijuana, or any mixture which contains any such  
25 controlled substance, in a quantity weighing fourteen (14) grams or more but less

1 than twenty-eight (28) grams, in the manner following, to-wit: the Defendant did  
2 possess within his vehicle approximately 15 to 20 grams of heroin, all of which  
3 occurred at or near 2412 South Curry Street, Carson City, Nevada.

4 **Count III**

5 **EX-FELON IN POSSESSION OF A FIREARM**

6 **("B" Felony – NRS 202.360)**

7 That the Defendant, David Edward Elliston Jr., on or about May 30, 2020, did  
8 willfully and unlawfully possess and/or have under his custody and control any  
9 firearm, in the manner following: the Defendant did possess a Hi-Point 9mm  
10 handgun within his vehicle having been convicted a Burglary, a category B felony,  
11 and/or Motor Vehicle Theft, a category B felony, and/or having otherwise been  
12 convicted of a felony, all of which occurred at or near 2412 South Curry Street,  
13 Carson City, Nevada.

14 All of which is contrary to the form of the Statutes in such cases made and  
15 provided and against the peace and dignity of the State of Nevada.

16 DATED this 7th day of April, 2021.

17 JASON D. WOODBURY  
18 District Attorney

19 By: 

20 SARAH E. WHITE  
21 Deputy District Attorney  
22 Nevada Bar No. 14643  
23  
24  
25

1           The following are the names of such witnesses for the State of Nevada as are  
2 known to me at the time of filing this Information:

3 Det. Brett John Bindley  
4 Carson City Sheriffs Office  
5 911 E. Musser Street  
6 Carson City, NV 89701

7 Jeff J. Pullen  
8 Carson City Sheriffs Office  
9 911 E. Musser Street  
10 Carson City, NV 89701

11 Daniel Henneberger  
12 Carson City Sheriffs Office  
13 911 E. Musser Street  
14 Carson City, NV 89701

15 Jordan Hadlock  
16 Carson City Sheriffs Office  
17 911 E. Musser Street  
18 Carson City, NV 89701

19 Lizzeth Granata  
20 Carson City Sheriffs Office  
21 911 E. Musser Street  
22 Carson City, NV 89701

23 CCSO Dispatch Center  
24 4645 Snyder Avenue  
25 Carson City, NV 89701

Washoe County Sheriff Crime Lab  
911 E. Parr Blvd.  
Reno, NV 89512

Carson City Sheriffs Office Crime Lab  
Carson City Sheriff's Office 911 E.  
Musser Street  
Carson City, NV 89701

1 WALTER B. FEY, ESQ.  
2 Bar No. 3317  
3 1601 Fairview Drive, Suite H  
4 Carson City, NV 89701  
5 Telephone 775-329-1101  
6 Email [wbfey1@gmail.com](mailto:wbfey1@gmail.com)  
7 Attorney for Defendant

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2021 MAY 26 AM 10:16  
AUBREY ROWLATT  
CLERK  
BY C. COOPER  
DEPUTY

8  
9 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
10 **IN AND FOR THE COUNTY OF WASHOE**

11 \* \* \*

12 THE STATE OF NEVADA,

13 Plaintiff,

Case No. 20 CR 00121 1B

14 vs

Dept. No. 1


15 DAVID EDWARD ELLISTON JR.,

16 Defendant.  
17 \_\_\_\_\_/

18 **SUBMISSION OF SUBSTANCE ABUSE EVALUATION**

19 COMES NOW, defendant and Submits the attached Substance Abuse  
20 Evaluation prepared by the Community Counseling Center for use at the Sentencing  
21 hearing scheduled for June 7, 2021, before this Court.

22 DATED this 26th day of May, 2021.

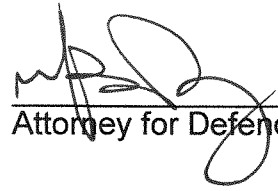
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**AFFIRMATION PURSUANT TO NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the Social Security Number of any person.

Dated, this 26th day of May, 2021.

  
\_\_\_\_\_  
Attorney for Defendant

## Exhibit 1



*Your Place for Recovery*  
**Accredited by the Joint Commission**  
**A Non-Profit Corporation of Professional Counselors**  
 205 S. Pratt Ave. • Carson City, Nevada 89701  
 (775) 882-3945 • Fax (775) 882-6126

June 18, 2020

The Honorable Thomas Armstrong  
 Carson City Justice/Municipal Court  
 885 E. Musser St.  
 Carson City, NV 89701

Chuck Ogden, Esq.  
 Carson City Public Defender  
 511 E Robinson St #1  
 Carson City, NV 89701

Re: Substance Abuse Evaluation  
 David Elliston, DOB 11/11/1982

#### Identifying Information:

David is a 37-year-old, never married, Caucasian male who is currently in custody at the Carson City Jail. He is currently homeless, though he has lived in weekly motels and small apartments for the past eight months. He is uninsured and states that he has never been in the military.

#### General Background:

David presented for a substance abuse evaluation on June 11, 2020 via video conferencing from the Carson City Jail. He reports that he has been in and out of prison for most of his adult life for theft-related crimes. He wishes to have a substance abuse evaluation due to his lifelong drug problem. He states that he has done extremely well when living and working with a high degree of structure and wants to live a lifestyle that is free from substance abuse and its consequences which, for David, has been years of incarceration. He is currently in custody on case #200002877.

David reports that he has been in treatment before. The first was at "The Jericho Project" in Brisbane, California. This program is designed to treat and rehabilitate criminal offenders with substance use disorders. He reports that he was involved with the program for two years as a client and one year as a staff member, living on site throughout his involvement with the program. He has participated in drug and alcohol counseling with the "RISE Program" and his most recent treatment was at Ridgehouse, which consisted of outpatient services. David reports his best outcomes with a high degree of structure rather

#### RESTRICTION ON REDISCLOSURE

This notice accompanies a disclosure of information concerning a client in a substance abuse treatment made to you with the consent of such client. This information has been disclosed to you from records whose confidentiality is protected by Federal Law (Federal Department of Health and Human Services, 45 CFR Part 2) and you are prohibited from any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by such regulations. A general authorization for the release of medical or other information is NOT sufficient for this purpose.

**Mary K. Bryan**  
 Administrator  
**Board of Directors**  
 Teri Zutter  
 Sev Carlson  
 Roger Williams  
 Sheriff Ken Furlong  
 Robert J. Flegler M.D.  
 John L. Ascuaga  
 Bill Richards

**Advisory Board**  
 Barbara Allison  
 Charlie Abowd  
 Father Jerry Hanley



than largely unstructured outpatient only services. He expresses a goal of returning to a structured program so he can grow in recovery and return to a purpose-driven life.

#### **Family History:**

David is one of seven children. He reports that he was raised primarily by his grandmother in Lake County, California. He reports that of the seven, six are still living, one sister having passed away suddenly at six months old in 1990. David was eight years old. He reports that while his mother was largely absent, his father and step mother were present in the home, though they were both regular users of methamphetamine, alcohol and pills. He reports some physical abuse present in the home as a youth.

David left home at age 16, moving between friends' houses and his girlfriend's house. He describes this time of his life as "running amok". He eventually moved in with his girlfriend, with whom he had a romantic relationship for approximately six years. They had one child together, who is now 18 years old. David states that he continues to have contact with his daughter approximately one time weekly when he is not using, but less when he is using.

David states that he has had a few long term or serious relationships, the most recent being with a woman he describes as "my fiancé". She is currently pregnant, though has moved to California for the time being.

David reports that substance use has been a part of all of his romantic relationships.

#### **Education/Employment History:**

David completed high school during his most recent incarceration at Warm Springs Correctional Center. He reports that he was studying to become a personal trainer at the time of his most recent relapse and that he aspires to a career working with alcohol and drug disorders, possibly in a counseling capacity once he has effectively restructured his life.

Most recently, David worked at Tesla, though he was a tattoo artist in the past. He reports that he does not have a stable employment history. However, while he was involved with the Jericho Project, he reports that he worked in several areas of construction and learned many marketable skills.

#### **Social, Environmental, Cultural, Spiritual Factors and Functioning:**

David reports that he has a Christian belief system and that he currently attends services for the same. He reports that when his life is purpose-driven, he finds meaning in what he does and is extremely successful. He believes that being involved in a faith-based program will be beneficial for him.

#### **Medical/Psychiatric history and current health status:**

David reports no history of hospitalization for medical purposes. He denies any acute or chronic conditions, with the exception of regular heartburn, for which he takes Prilosec regularly. He denies taking any other medications.



David reports no history of psychiatric hospitalizations. He denies any psychiatric diagnoses and denies ever being seen by a mental health practitioner. He denies taking medications for any psychiatric condition, either over the counter or prescribed.

While discussing the scores of the mental health screening instruments, David stated that his responses are completely different if he is talking about his mental state while abstaining from mood altering substances. His current responses are based on his state while under the influence of mood altering substances. Based on David's responses to mental health screening instruments, the need for referral for further mental health evaluation may be necessary, after it is determined that the issues raised are not solely related to the client's use of substances.

#### **Legal History:**

Client reports a lengthy criminal history beginning in his youth. His first arrest was in 1991 for shoplifting. He reports that since that time, he has been in and out of jail on numerous charges and it is difficult for him to recall what he was arrested for at which times. He has been in prison no less than seven times, all of which he reports are theft related. His most recent release from prison was in late 2019.

David is currently in custody at Carson City Jail, booked on multiple charges, including trafficking.

#### **Alcohol and Drug History:**

David first use methamphetamine at age 15. He reports that his desire to use (criterion #4), led him to immediate daily use (criterion #1, criterion #3). He reports that his preferred route of administration is intravenous, mixing with other drugs (criterion #8) and that he has experienced increased tolerance (criterion #10) and withdrawal symptoms when stopping (criterion #11). He has attempted to stop using on several occasions (criterion #2). He reports significant consequences to relationships, such as not being present, due in large part to his incarcerations (criterion #6), for his daughter and not knowing his daughter as well as he believes he should (criterion #5). He reports that he has lost jobs due to his substance use (criterion #7), and has medical issues due to his use (criterion #9).

David first used heroin at age 21, while in prison. He reports only occasional use, on-and-off during the years since. He reports that since his most recent relapse (criterion #2), his desire to use (criterion #4) has led him to daily IV use (criterion #1, criterion #3), mixing with methamphetamine regularly (criterion #8). He reports that his use has led him to behavior that led to arrest (criterion #6). He reports withdrawal when stopping use (criterion #11).

David first used cannabis at age 9. He reports that his desire to use was daily and that he was a daily user from the first time that he used (criterion #1, criterion #3, criterion #4). His daily use continued despite being in legal trouble (criterion #6) repeatedly throughout his use. He reports that this pattern of use continued until age 16-17, when his use dropped off drastically when he began using methamphetamine. Though he reports that he no longer enjoyed using cannabis, he continued to use during periods of relapse (criterion #2) until his most recent arrest. His last reported use was approximately May 30, 2020.

David first used alcohol at age 9. He reports that his use was limited to drinking only occasionally, and rarely to intoxication after his youth. He does not report a problematic pattern of use of alcohol and reports only occasional craving resulting in use (criterion #4). He does not report information sufficient to support a diagnosis of alcohol use disorder.

#### Screening Instruments:

**WHODAS 2.0 (World Health Organization Disability Assessment Schedule):** A 36-item version, self-administered measure that assesses health status and disability in adults age 18 years and older. Each domain is screened to determine health status functioning and disability in each domain and an overall score, on a scale where 100% is the highest level of disability and a 0% indicating no disability, and thus indicating a high level of functioning within the domain.

**Results & Interpretation:** The WHODAS 2.0 covers 6 Domains of Functioning, including:

- **Cognition** – understanding & communicating: Client had a domain score of 33.33%
- **Mobility** – moving & getting around: Client had a domain score of 0%
- **Self-care** – hygiene, dressing, eating & staying alone: Client had a domain score of 12.5%
- **Getting along** – interacting with other people: Client had a domain score of 40%
- **Life activities** – domestic responsibilities, leisure, work & school: Client had a domain score of 34.38%
- **Participation** – joining in community activities: Client had a domain score of 25%. Client's overall score of disability in function is of 24.20%.
- Client scores appear consistent with the interview. He reports that his answers were based upon his functioning while using mood altering substances, and that in the absence of mood altering substances, his answers would be completely different. As such, a new WHODAS screening would be appropriate to determine functioning after client has returned to baseline functioning without the influence of mood altering substances.

**Columbia-Suicide Severity Rating Scale (C-SSRS):** This tool supports suicide risk assessment through a series of simple, plain-language questions that anyone can ask. The answers help identify whether someone is at risk for suicide, assess the severity and immediacy of that risk, and gauge the level of support that the person needs.

**-Result & Interpretation:** Client's score indicates no suicide risk severity.

**Fagerstrom:** This is a self-reporting tool designed to assess for nicotine dependence.

**-Result & Interpretation:** Client scored a 7 which indicates a moderate level of nicotine dependence. Smoking cessation interventions should be discussed with the client.

**AUDIT:** This is a self-report screening tool that assesses misuse of alcohol.

**-Result & Interpretation:** Client scored a 1 which does not indicate harmful or hazardous drinking.

**DSM-5 Level 1 Cross-Cutting Symptom Measure:** This is a self-rated measure that assesses mental health domains that are important across psychiatric diagnoses. It is intended to help clinicians identify additional areas of inquiry that may have significant impact on the individual's treatment and prognosis.

**-Result & Interpretation:** Client had a score of Severe in the domain of Anger, a score of Severe in the domain of Mania, Severe in the domain of Anxiety, Mild in the domain of Sleep Problems, Mild in the domain of Repetitive Thoughts and Behaviors, and Severe in the domain of Substance Use, indicating the need for further inquiry in each of these domains.

Client reports the absence of many of these symptoms in the absence of substance use.

**Patient Health Questionnaire (PHQ-9):** The PHQ-9 is a multipurpose instrument for screening, diagnosing, monitoring and measuring the severity of depression.

**-Result & Interpretation:** Client had a score of 11 indicating a Moderate level of depression, for which client will be regularly monitored and appropriate interventions/referrals made for persistent symptoms.

#### **DSM-5 Diagnoses:**

Based on self-report, client meets the DSM-5 diagnostic criteria for the following:

**304.40 (F15.20) Methamphetamine Use Disorder, Severe**, as evidenced by: #1 substance is often taken in larger amounts or over a longer period than was intended; #2 there is a persistent desire or unsuccessful efforts to cut down or control substance use; #3 a great deal of time is spent in activities necessary to obtain, use substance, or recover from its effects; #4 craving, or a strong desire or urge to use substance; #5 recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home; #6 continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of substance; #7 important social, occupational, or recreational activities are given up or reduced because of substance use; #8 recurrent substance use in situations in which it is physically hazardous; #9 substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by substance; #10 tolerance; #11 withdrawal.

**304.00 (F11.20) Heroin Use Disorder, Severe**, as evidenced by: #1 substance is often taken in larger amounts or over a longer period than was intended; #2 there is a persistent desire or unsuccessful efforts to cut down or control substance use; #3 a great deal of time is spent in activities necessary to obtain, use substance, or recover from its effects; #4 craving, or a strong desire or urge to use substance; #6 continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of substance; #8 recurrent substance use in situations in which it is physically hazardous; #11 withdrawal.

**304.30 (F12.20) Cannabis Use Disorder, Moderate**, as evidenced by: #1 substance is often taken in larger amounts or over a longer period than was intended; #2 there is a persistent desire or unsuccessful efforts to cut down or control substance use; #3 a great deal of time is spent in activities necessary to obtain, use substance, or recover from its effects; #4 craving, or a strong desire or urge to use substance; #6 continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of substance.

#### **Recommendations:**

Client's risk ratings in domains specified by ASAM Criteria (American Society of Addiction Medicine Criteria) support a recommendation of treatment for a period of 12-18 months or longer, depending on client needs.

1. Treatment should be initiated at LOC 3.5 clinically managed, high intensity residential services for a period of 30 to 90 days. This could be extended depending on client needs and progress. This should be followed by level 2.1 Intensive Outpatient services for up to 120 days and level 1 outpatient services thereafter. Movement through the service levels should be determined by client's response to treatment and the ASAM criteria. In addition, client should attend at least one


monthly individual session for treatment plan review in order to determine progress and make treatment level adjustments according to progress.

2. Client should locate and engage with long-term recovery housing and/or a work program throughout his treatment episode due to the high degree of structure that he reportedly needs for recovery support. Consideration should be given to his reported efficacy while engaged with a live-in work program previously.
3. While engaged in treatment, client is recommended to attend 12-step meetings at least three times weekly, obtain a sponsor, and actively work the 12-steps.
4. Client should maintain abstinence from all mood-altering substances and to submit to random alcohol and other drug testing at least once weekly.

**Prognosis, Protective and Risk Factors:**

Client is in the contemplation stage of change as it relates to his substance use, as evidenced by his desire to find how to regain abstinence and restructure his lifestyle. LOC 3.5 is appropriate as an initial level of care recommendation due to his inability to control impulses while under the influence and a 24 hour setting is necessary to prepare David for community integration and continuing care. He has no recognition of the skills that are necessary for him to prevent continued use, and being an intravenous user who combines drugs, the consequences are imminently dangerous. Client does not have a place to live at this time and homelessness is openly hostile to addiction recovery. Client reports intrinsic motivation to improve his relationship with his daughter and his fiancé is currently pregnant. He reports extrinsic motivation in terms of the criminal justice system.

Respectfully Submitted,

  
Dustin Avera, BA, CADC 00760-C  
Certified Alcohol and Drug Counselor  
Community Counseling Center of Carson City  
205 S Pratt Avenue  
Carson City, NV 89701

*Mary K. Bryan*

6586

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6 Email [wbfey1@gmail.com](mailto:wbfey1@gmail.com)  
7 Attorney for Defendant

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8  
9 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
10 **IN AND FOR THE COUNTY OF WASHOE**

11 \* \* \*

12 THE STATE OF NEVADA,

13 Plaintiff,

Case No. 20 CR 00121 1B

14 vs

Dept. No. 1


15 DAVID EDWARD ELLISTON JR.,

16 Defendant.  
17 \_\_\_\_\_ /

18 **SUBMISSION OF LETTERS OF SUPPORT FOR DEFENDANT**

19 COMES NOW, defendant and Submits the attached Exhibit 1 Consisting  
20 of Letters of Support for Defendant for use at the Sentencing hearing scheduled for  
21 June 14, 2021, before this Court.

22 DATED this 11th day of June, 2021.

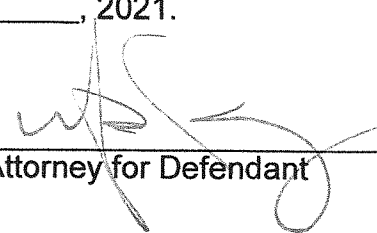
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**AFFIRMATION PURSUANT TO NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the Social Security Number of any person.

Dated, this 11th day of June, 2021.

  
\_\_\_\_\_  
Attorney for Defendant

## Exhibit 1

## INDEX TO LETTERS OF SUPPORT

- |   |         |
|---|---------|
| 1. Letter from Nila Lucas, Defendant's mother           | 1 page  |
| 2. Letter from David Elliston Sr., Defendant's father   | 4 pages |
| 3. Letter from Jamie Kapitan Elliston, Defendant's wife | 2 pages |
| 4. Letter from Richard Allen McCoy                      | 3 pages |
| 5. Letter from JJ McLaughlin, Co-worker                 | 1 page  |
| 6. Letter from Jim Sartor, Friend of Defendant          | 1 page  |





Walter Fey <wbfe1@gmail.com>

---

**David Elliston**

1 message

---

**David Elliston** <dellistonjr2@gmail.com>

Sat, Jun 5, 2021 at 6:34 PM

To: wbfe1@gmail.com

Dear Mr. Fey,

David has had a ruff road. his sister and I tried to get him here with us but when this all took place when Covid was shutting all modes of public transportation, we couldnt get him to us. He has a new son and his main concern along with ours is that he gets a break . another person desperate from the covid. He has his families support and a way to get away from ppl he knows that put the trouble in front of him. if i were to bring him here to Wisconsin all there is to do is work. no time for trouble. He can just start living a normal life where he can raise his son with a different kind of folks. His sister is a good option for setting a good example as well. She has been in the coast guard 12 yrs and just got a honorable medical retirement. she also did ROTC in highschool and took classes before she inlisted. she went to college for 2 yrs before inlisting. she is now working on becoming a food and beverage manager for a very elite resturant in Miami. my daughter and I can find work for him and his babies mother. I really want to impress on the judge that he has turned a new life and that he wants to prove to us how much he wants to be a productive part of society. he wants to be a husband a father, a son and a brother. He has a chance that other prisoners dont have. David knows I will not tolerate any illegal things happening in my home and there wont be. His sisters is never used drugs as well. she could really pull him up to his full potential. Either way he would be supervised from both of us . Ok if you could provide this info from me to the judge i would be greatful. Please let the judge know he has safe options. I could make sure he goes to some kind of program as well.

Nila Lucas

Thank You  
Meagan Phillips Sister

813-369-4260  
305-833-5622

March 28, 2021

Dear Judge,

While I'm not condoning his actions I would like to explain to you about some things I feel I need to be taking some of the responsibility for that have had a profoundly negative effect on my son David from a very early age. When David was born in San Francisco in 1982 both his mother Nila Norris and I were very young. His mother was in custody at a halfway house for pregnant teens in San Francisco after being sent there from Lake County Ca. for assaulting her probation officer. After David was born she came back home for a weekend visit. She was supposed to return to the halfway house after the weekend but instead we caught a late night flight to Orlando Florida. There we moved in with her aunt and were married several days later. After about six months Nila cheated on me so I took David and caught the first flight back home to California. I never attempted to contact his mother again nor did she and we never heard from her again.

When I got back home from Florida I began drinking and using many different kinds of drugs. I didn't have much time for David. I wasn't ready to be a father and I knew that I could rely on my mother and Nila's mother to take care of the baby so I would be free to drink and get high. My mother worked for the local elementary school full time so during the day David would be with Nila's mom and in the evening and weekends with my mom. My mother owned a small trailer park here in Nice, Ca. and though she didn't make much she provided me and David with a place to live, food, clothes, gas and cash.

After about a year and a half of nothing but using drugs and alcohol I met Jody Leeper. She seemed to think I was a great guy and we began a relationship though our relationship was very one-sided. I didn't

have any respect for anyone especially women. We drank and used drugs every day. I was very controlling and became violent. Within 6 months Jody became pregnant and thought I might settle down and become a caring partner and a good father to the babies. My mom hoped this new relationship and a child on the way might turn me around and start me down the right path. I did not change for the better however I became much worse. David was now living with us in one of the trailers my mom owned. My drug use had increased and so did my violent behavior. Through the 18 years of our relationship I assaulted Jody many times and I cheated on her the entire 18 years we were together. Jody and I had four children together. Only a few months after birth our first born daughter Tiffany died, the cause was Sudden Infant Death. I started using more than ever and so did Jody. We had another son Eric and two daughters Andrea and Kirstin. Then I also had a son Steven outside my relationship with another girl named Tammy Gilbert. The environment that my kids grew up in was an endless cycle of screaming, physical fighting, and drug abuse. I sold drugs so my house was the party place with lots of people coming and going, getting high and staying up for weeks at a time. I was in and out of jail my kid's entire life. Most nights the music could be heard several blocks away. People were in and out all the time. The endless stream of drugs and alcohol made fist fights and gunfire a regular occurrence. Quite often I would say I'm going to the store and not come back for days or even weeks. I would come home high and angry, ready to leave again as soon as I could get enough of whatever I needed to stay loaded and manipulate others.

Looking back I think that unfortunately David just wanted to be like his dad. He started acting out and getting into trouble when he was very young. He was getting in trouble at school and by about the age of eleven he was being brought home by the police for his behavior. He eventually ended up in juvenile hall. That was the beginning of a cycle of institutions for my son. Both his grandmothers had passed away leaving David no one to turn to for anything good or decent. David developed a drug habit after

getting locked up a couple of times. He had always "hated tweakers." He wanted my attention so badly that he was willing to do whatever it took including using drugs. I think he thought if he used drugs we would have something in common. He was right. I cared so much about drugs that if he offered, I would even get high with him. I can honestly say that I was the worst father that I could ever imagine. Even in the drug infested community that I grew up in and where I still reside today I stood out when it comes to being a lousy father, partner, and son. Your Honor, I haven't even scratched the surface when it comes to describing the horrible environment that was David's childhood. David didn't ever get a chance to grow up in a normal family. I used drugs for four decades. I am now 57 years old and have finally found not only sobriety but true recovery. I was 50 years old when I turned my life around. I have been through several court-ordered and county-run rehab programs yet I graduated each one using drugs throughout the mentire programs. I lied and cheated my way through them just as I had through everything my entire life. I have finally turned my life over to Christ's care and control.

It is my prayer that David will do the same. I don't know why I ignored Christ calling my name for all those years. My mother prayed for my salvation every day of her life. Her prayer has been answered. It is my prayer that David will have one more chance to turn his life around. I know that he will have to do some time first. I understand that. I also understand that there is a suggestion regarding his sentencing from the District Attorney's office. I hope that you will find this to be sufficient to serve justice for the people and give him yet another chance. David has only been to one program in his life the Jerico Project. While there he learned a lot about himself and his addiction. He was clean and sober for over two years. I believe that Jerico was good but fell a little short on providing ongoing resources after completion of their program. Upon David's release I am willing and able to provide a healthy and sober place for him to live. I can also provide him with employment and for the first time guidance in recovery and life as a productive member of society. I am very active in recovery here in our community. I am in

leadership at the Celebrate Recovery program that I have been attending for seven and a half years now here at our local church. I lead a step study group for men and am a sponsor for several in recovery. I have taken people into my home and through Christ I helped in leading them to recovery. Four of the five people who have stayed in our home are still sober today celebrating 4 years, 2 years, 18 months, and 5 months as of last Friday. There has also been a ripple effect through myself, my wife, and those whom I mentioned. We are a small community so when one of us chooses a different path it is quite noticeable. Everyone sees something is different about you. When they see that the difference is real and lasting they start asking questions. Next thing you know they are coming to Celebrate Recovery. It's amazing to see so many people that I used to do drugs with finding recovery. Praise the Lord for he is good. Your honor thank you for taking the time to read this and thank you for your consideration.

Sincerely,

David Elliston Sr.

Mrs. White,

This is Jamie Kapitan and I'm writing you in regard to David Elliston. He is my husband and son's father. We are not legally married but that's just a formality. In regards to what Hes done wrong, his actions are inexcusable, and his past is horrible but, I am writing you to let you know that that's the man he was, and even though he still has issues and shortcomings today, what he has overcome and the man he strives to be today are something completely different. I fell in love with him for a good reason.

What you don't know is that Ive known the old David, witnessed the progress, and have been his partner for the last two and a half years. David was not only the sole influence for myself, along with others I know, to start making our own personal changes in learning to lead better lives. I still have my own struggles so I know how hard it is and even though we're not going to experience long term success on the first attempt we will in time. Recovery and change are possible, and they are a process. In this and all else he does David is one of the hardest working men Ive ever met, and honest to a fault. Not perfect. Honest.

He is devoted to me and our son as anyone could ever ask and he is a provider. That's all David does is provide. From the moment he wakes up in the morning to the moment he goes to bed he cooks, cleans, studies, exercises, runs errands, and goes to work 12 hr. Shifts, rarely taking a day off. On his days off he handles other responsibilities, and he is a good role model to my other two sons. They miss him as well and benefit from his attention. The purpose of this letter is to let him know that we need him back desperately.

I know in my heart that had covid 19 never hit he would have continued to do exactly what he was doing prior far the rest of our lives. He loved doing it and it was clear to me and anyone else. It truly broke my heart to see the internal struggle he was faced with and watching him make the decisions he felt forced to make. He was trying to be a provider because that is what he does, and I also know he realizes that was never okay. I know that he never wanted any of this to begin with and has already punished himself more than any amount of jail time ever will. Hes extremely hard on himself.

As a struggling single parent I'm asking you please put my husband back in me and my life so he can continue the path he was on as soon as possible. You've never seen the good he does so we've done the best we can to prove it, through bank records showing solid employment, being enrolled as a student, gym memberships, and a steady climb in our living arrangements, car finances, etc... He obviously ran a clean parole and led a positive productive lifestyle up until a very specific date, barely prior to his arrest. This is very serious but, thankfully short lived and not to be repeated so I'm in hopes that the remainder of the consequence can somewhat match. The cost has already been devastating on a level that is controversial from any moral standpoint and I'm asking for clemency on no more than a humane level so please.

Covid 19 not only hit us, it hit globally, taking both lives and livelihoods. David responded poorly due to lack of life experience and regrets it. Not only has he learned his lesson but, again its come at such a cost. Please give my husband and my sons father back at the earliest opportunity.

God bless you!!

Sincerely,

Jamie Kapitan Elliston

5.15.2021

To: The honorable Judge Byssel

From: Richard Allen McCoy

I write to you today respectfully, truthfully, and from the heart. I am writing to you in regards to David Elliston and his character. Before I begin let me say, I understand I may be just another inmate or person whos information may be invaluable or even non credible to the courts, but I'd like to take a minute to express my genuine gratitude towards this man.

I was arrested at the beginning of January 2021 when I made it to the main housing unit of the jail. I met a man by the name of ~~the~~ David Elliston, as we began to talk I thought he was just going to be another one of those people who would preach to those younger than he, turns out I was half-way right. As this man spoke to me, the things he said were actually hitting home 670



What he was saying had meaning and brought a new perspective to the way of life I had been living. One of ~~my~~ the things he told me that has really stuck with me is that anything I obtain in an un-honest way will be taken back at some point in time one way or another by this world because I never had it coming in the first place, now on the other hand if I obtain something in an honest way and it is taken from me the world will repay it because it was honestly mine.

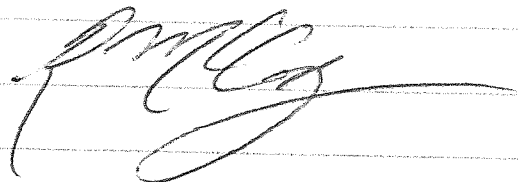
While being in jail with David Elliston I have seen this man attend every NA, AA, church group, and drug and ~~substance~~ substance abuse class this jail has in place without missing a single one, as well as stay in his cell an extra hour each morning to pray.

While talking to David he told me about this life changing program in San Francisco CA called the Jericho project. I was released from custody March 17<sup>th</sup>, 2021 and looked into 671

the Jericho Project called them  
and was accepted into the program.  
Unfortunately before making it down  
there I was violating DAS and was  
re-arrested. I am to be getting out  
of jail time served May 19<sup>th</sup> and  
will be heading straight to Jericho  
to get ~~the~~ ~~my~~ my life back on a good  
path to live a better and a ~~few~~ ~~more~~ more  
fulfilling life, and I owe it to David Elliston

So again I write to you  
today hoping this letter finds the courts  
and will shed a little ~~light~~ light on  
the character of David Elliston, a  
person I know and genuinely believe  
to be a good man who fell off during  
hard times. I know I have found a  
life long friend who has touched and  
changed my life for the better,

I write Respectfull, truthfull  
and from the heart

A stylized, cursive handwritten signature in black ink, likely belonging to the person who wrote the letter.

JJ McLaughlin

15630 Archery view, Truckee, California, 96161

(775) 721-5732

jj@athirdeye.consulting

Date: June 4 2021

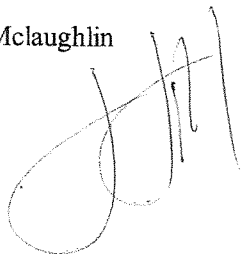
Honorable Judge Russel,

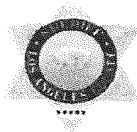
During my time working with Mr. Elliston I have come to have nothing but respect for him. I know that over the years I have watched the thinking in David change drastically. He was a hard worker and always had a clear vision of what he wanted to do with his life going forward. It was such a shock to me and my wife when we heard what happen.

We hope that you take into account the times that we all fell on with covid your honor and let David get home to his daughter in a descent amount of time so she can know him as a father.

Sincerely,

JJ McLaughlin

A handwritten signature in black ink, appearing to be 'JJ McLaughlin', with a large loop at the bottom left and a vertical line extending upwards on the right side.



*Los Angeles County*  
**Sheriff's Department**

Jim Sartor  
Retired Lieutenant - LASD  
10259 Dorset st, Rancho Cucamonga, California, 91730  
(909) 732-6802  
LAboys909@gmail.com

Date: June 5 2021

Dear Judge Russel,

My name is Jim Sartor and proud to offer my recommendation of Mr. Elliston to whom I have personally known for 10 years as my friend.

During my relationship with Mr. Elliston I have experienced an individual who shows up earlier than asked, works hard, and carries themselves in a polite, respectable manner. In addition, Mr. Elliston is a family-person who has always presented themselves with levelheadedness and grace.

It's with great confidence that I recommend Mr. Elliston as someone who, I truly believe, possesses the character and judgment for the betterment of our community.

Please do not hesitate to contact me if you should require any further information.

Sincerely,

Signature

Jim Sartor

Date:

6-5-21

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of Karla K. Butko, Ltd., P. O. Box 1249, Verdi, NV 89439, and that on this date I caused the foregoing document to be delivered to all parties to this action by

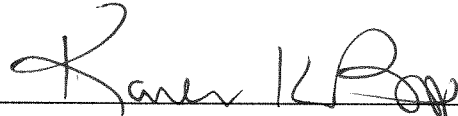
X placing a true copy thereof in a sealed, stamped envelope with the United States Postal Service at Reno, Nevada. (Client)

X E-Flex Delivery System of the Nevada Supreme Court

addressed as follows:

Carson City District Attorney's Office  
885 E. Musser, #2030  
Carson City, NV 89701  
ATTN: Melanie Brantingham

DATED this 13 day of January, 2022.

  
\_\_\_\_\_  
Karla K. Butko, Esq.