

CASE NO.: CR-FP-16-9651
DEPT. NO.: 2

FILED

2021 NOV 17 PM 3:49

ELKO CO DISTRICT COURT

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

Electronically Filed
Nov 17 2021 04:08 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTHONY CHRIS ROBERT MARTINEZ,

Defendant.

CASE APPEAL STATEMENT

1. **Name of appellant filing this case appeal statement:** The name of the Appellant is ANTHONY CHRIS ROBERT MARTINEZ.

2. **Identify the judge issuing the decision, judgment, or order appealed from:** The judge who issued the Judgment of Conviction to be appealed from is the Honorable Alvin R. Kacin of the Fourth Judicial District Court of the State of Nevada, in and for the County of Elko.

3. **Identify each appellant and the name and address of counsel for each appellant:** The sole appellant in this case is ANTHONY CHRIS ROBERT MARTINEZ, Counsel for appellant is MATTHEW PENNELL, Public Defender, 571 Idaho St. (mailing) 569 Court St. (physical), Elko, Nevada, 89801. Counsel's telephone number is (775) 738-2521.

4. **Identify each respondent and the name and address of appellate counsel, if known, for each respondent:** The sole respondent in this case is the State of Nevada.

1 Counsel for the Respondent is TYLER J. INGRAM, District Attorney, 540 Court St., Elko,
2 Nevada 89801 (775) 738-3101, and Aaron Ford, Attorney General, 100 N. Carson Street,
3 Carson City, Nevada, 89701 (775) 684-1100.
4

5 **5. Indicate whether any attorney identified above in response to question 3**
6 **or 4 is not licensed to practice law in the State of Nevada:** Attorneys for the Appellant
7 and Respondent are licensed to practice law in the State of Nevada.
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9 **6. Indicate whether appellant was represented by appointed or retained**
10 **counsel in the district court:** Appellant was represented by appointed counsel in the
11 district court.
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13 **7. Indicate whether appellant is represented by appointed or retained**
14 **counsel on appeal:** Appellant is represented by appointed counsel on appeal.
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16 **8. Indicate whether appellant was granted leave to proceed in forma**
17 **pauperis, and the date of entry of the district court order granting such leave:** The
18 parties stipulated that appellant may proceed in forma pauperis on appeal. The Court signed
19 the order to proceed in forma pauperis on October 26, 2021.
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21 **9. Indicate the date the proceedings commenced in the district court:** The
22 Criminal Information was filed in the District Court on November 18, 2016.
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24 **10. Provide a brief description of the nature of the action and result in the**
25 **district court, including the type of judgment or order being appealed and the relief**
26 **granted by the district court:** The State of Nevada filed a Criminal Complaint which
27 charged the Defendant with COUNT 1: ATTEMPTED MURDER WITH THE USE OF
28 A DEADLY WEAPON, A CATEGORY B FELONY AS DEFINED BY NRS 193.330,
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1 NRS 200.010, NRS 200.030 AND 193.165 (NOC 50031); COUNT 2: ATTEMPTED
2 MURDER WITH THE USE OF A DEADLY WEAPON, A CATEGORY B FELONY AS
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4 DEFINED BY NRS 193.330, 200.010, 200.020, 200.030 AND 193.165; COUNT 3:
5 POSSESSION OF AN EXPLOSIVE OR INCENDIARY DEVICE IN OR NEAR
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7 CERTAIN PUBLIC OR PRIVATE AREAS, A CATEGORY D FELONY AS DEFINED
8 BY NRS.202.262. (NOC 51430).

9 After filing the Criminal Complaint, the State filed an Amended Criminal Complaint
10 which then charged the Defendant with COUNT 1: ATTEMPTED MURDER WITH THE
11
12 USE OF A DEADLY WEAPON, A CATERGORY B FELONY AS DEFINED BY NRS
13 193.330, 200.010, 200.020, 200.030 AND 193.165; COUNT 2: ATTEMPTED MURDER
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15 WITH THE USE OF A DEADLY WEAPON, A CATEGORY B FELONY AS DEFINED
16 BY NRS 193.330, 200.010, 200.020, 200.00 AND 193.165; COUNT 3: POSSESSION OF
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18 AN EXPLOSIVE OR INCENDIARY DEVICE IN OR NEAR CERTAIN PUBLIC OR
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20 PRIVATE AREAS, A CATEGORY D FELONY AS DEFINED BY NRS 202.262 (NOC
21 51430); COUNT 4: BATTERY WITH A DEADLY WEAPON, A FELONY AS
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23 DEFINED BY NRS 200.481(2)(e).(NOC 50223); COUNT 5: ASSAULT WITH A
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25 DEADLY WEAPON, A CATEGORY B FELONY AS DEFINED BY NRS 200.471.1,
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27 AND .2(B). (NOC 50201); COUNT 6: ASSAULT WITH A DEADLY WEAPON, A
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29 CATEGORY B FELONY AS DEFINED BY NRS 200.471.1 AND .2(B). (NOC 50201);
COUNT 7: ATTEMPTED ROBBERY, AS DEFINED BY NRS 200.380 AND NRS
193.330 (NOC 50144); COUNT 8: DISCHARGING A FIREARM WITHIN A
STRUCTURE IN A POPULATED AREA A CATEGORY B FELONY AS DEFINED BY

1 NRS 202.287; COUNT 9: ELUDING A POLICE OFFICE IN A MANNER POSING
2 DANGER TO PERSONS OR PROPERTY, A FELONY AS DEFINED BY NRS
3 484B.550. (NOC 53833); COUNT 10: POSSESSION OF A FIREARM BY A PERSON
4 PERVIOUSLY CONVICTED OF A FELONY OFFENSE, A CATERGORY B FELONY
5 AS DEFINED BY NRS 202.360.1. (NOC 51460); COUNT 11: POSSESSION OF A
6 FIREARM BY A PERSON PERVIOUSLY CONVICTED OF A FELONY OFFENSE, A
7 CATERGORY B FELONY AS DEFINED BY NRS 202.360.1. (NOC 51460); COUNT
8 12: POSSESSION OF A FIREARM BY A PERSON PERVIOUSLY CONVICTED OF A
9 FELONY OFFENSE, A CATERGORY B FELONY AS DEFINED BY NRS 202.360.1.
10 (NOC 51460); COUNT 13: POSSESSION OF A FIREARM BY A PERSON
11 PERVIOUSLY CONVICTED OF A FELONY OFFENSE, A CATERGORY B FELONY
12 AS DEFINED BY NRS 202.360.1. (NOC 51460); COUNT 14: POSSESSION OF A
13 FIREARM BY A PERSON PERVIOUSLY CONVICTED OF A FELONY OFFENSE, A
14 CATERGORY B FELONY AS DEFINED BY NRS 202.360.1. (NOC 51460).

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16 After filing the Amended Criminal Complaint, the State filed a Second Amended
17 Criminal Complaint which then added the charge COUNT15: KIDNAPPING, FIRST
18 DEGREE WITH THE USE OF A DEADLY WEAPON, A CATEGORY A FELONY AS
19 DEFINED BY NRS 203.10, NRS 200.320, AND NRS 193.165. (NOC 50055).

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21 The State filed notices of intent to use evidence of other crimes and wrongs, to use
22 an expert, and to impeach Defendant as a convicted felon.
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1 Defense filed a motion to consolidate Counts 10, 11, 12, 13 and 14 into a single count,
2 the prosecution then filed an opposition on this motion. The District Court granted the
3 motion to consolidate counts.
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5 The State filed a Writ of Mandamus with the Nevada Supreme Court, in which the
6 Supreme Court made a ruling on the matter. See; Docket 80093
7

8 The State filed an Amended Criminal complaint based off of Nevada Supreme
9 Court's decision which then charge the defendant with COUNT 1: ATTEMPTED
10 MURDER WITH THE USE OF A DEADLY WEAPON, A CATEGORY B FELONY
11 AS DEFINED BY NRS. 193.330, 200.010, 200.020, 200.030, AND 193.165. (NOC
12 50031); COUNT 2: ATTEMPTED MURDER WITH THE USE OF A DEADLY
13 WEAPON, A CATEGORY B FELONY AS DEFINED BY NRS 193.330, 200.010,
14 200.020, 200.030 AND 193.165. (NOC 50031); COUNT 3: POSSESSION OF AN
15 EXPLOSIVE OR INCENDIARY DEVICE IN OR NEAR CERTAIN PUBLIC OR
16 PRIVATE AREAS, A CATEGORY D FELONY AS DEFINED BY NRS 202.262. (NOC
17 51430); COUNT 4: BATTERY WITH A DEADLY WEAPON A CATEGORY B
18 FELONY AS DEFINED BY NRS 200.481(2)(e). (NOC 50223); COUNT 5: ASSULT
19 WITH A DEADLY WEAPON, A CATEGORY B FELONY AS DEFINED BY NRS
20 200.471.1, AND .2(b). (NOC 50201); COUNT 6: ASSAULT WITH A DEADLY
21 WEAPON, A CATEGORY B FEONY AS DEFINED BY NRS 200.471.1, AND .2(b).
22 (NOC 50201); COUNT 7: ATTEMPTED ROBBERY WITH THE USE OF A DEADLY
23 WEAPON, A CATEGORY B FELONY AS DEFINED BY NRS 200.380, NRS 193.165
24 AND NRS 193.330. (NOC 50145); COUNT 8: DISCHARGING A FIREARM WITHIN A
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1 STRUCTURE IN A POPULATED AREA, A CATEGORY B FELONY AS DEFINED
2 BY NRS 202.287 (NOC 51444); COUNT 9: ELUDING A POLICE OFFICER IN A
3 MANNER POSING DANGER TO PERSONS OR PROPERTY, A CATEGORY B
4 FELONY AS DEFINED BY NRS 484B.550. (NOC 53833); COUNT 10: POSSESSION
5 OF A FIREARM BY A PERSON PREVIOUSLY CONVICTED OF A FELONY
6 OFFENSE, A CATEGORY B FELONY AS DEFINED BY NRS 202.360.1. (NOC
7 51460); COUNT 11: KIDNAPPING, FIRST DEGREE, WITH THE USE OF A DEADLY
8 WEAPON, A CATEGORY A FELONY AS DDEFINED BY NRS 200.310, NRS 200.320,
9 AND NRS 193.165. (NOC 50055).

13 The State filed a Motion to Suppress Evidence due to the purported search of the
14 vehicle being illegal.

16 The State Attorney filed a second Amended Criminal Information based on the
17 District Court's Order in Motion to Dismiss, then charging the defendant with COUNT 1:
18 ATTEMPTED MURDER WITH THE USE OF A DEADLY WEAPON, A CATEGORY
19 B FELONY AS DEFINED BY NRS 193.330, 200.010, 200.020, 200.030 ND 193.165.
20 (NOC 50031); COUNT 2: ATTEMPTED MURDER WITH THE USE OF A DEADLY
21 WEAPON, A CATEGORY B FELONY AS DEFINED BY NRS 193.330, 200.010,
22 200.020, 200.030 AND 193.165. (NOC 50031); COUNT 3: BATTERY WITH A
23 DEADLY WEAPON, A CATEGORY B FELONY AS DEFINED BY NRS 200.481(2)(e).
24 (NOC 50223); COUNT 4: ASSAULT WITH A DEADLY WEAPON, A CATEGORY B
25 FELONY AS DEFINED BY NRS 200.471.1, AND .2(b). (NOC 50201); COUNT 5:
26 ASSAULT WITH A DEADLY WEAPON, A CATEGORY B FELONY AS DEFINED
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1 BY NRS 200.471.1, AND .2(b). (NOC 50201); COUNT 6: ATTEMPTED ROBBERY
2 WITH THE USE OF A DEADLY WEAPON, A CATEGORY B FELONY AS DEFINED
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4 BY NRS 200.380, NRS 193.165 AND NRS 193.330. (NOC 50145); COUNT 7:
5 DISCHARGING A FIREARM WITHIN A STRUCTURE IN A POPULATED AREA, A
6 CATEGORY B FELONY AS DEFINED BY NRS 202.287 (NOC 51444); COUNT 8:
7 ELUDING A POLICE OFFICER IN A MANNER POSING DANGER TO PERSONS OR
8 PROPERTY, A CATEGORY B FELONY AS DEFINED BY NRS 484B.550. (NOC
9 53833); COUNT 9: POSSESSION OF A FIREARM BY A PERSON PREVIOUSLY
10 CONVICTED OF A FELONY OFFENSE, A CATEGORY B FELONY AS DEFINED
11 BY NRS 202.360.1. (NOC 51460); COUNT 10: KIDNAPPING, FIRST DEGREE, WITH
12 THE USE OF A DEADLY WEAPON, A CATEGORY A FELONY AS DEFINED BY
13 NRS 200.310, NRS 200.320, AND NRS 193.165. (NOC 50055).

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17 State dismissed COUNT 7: DISCHARGING A FIREARM WITHIN A
18 STRUCTURE IN A POPULATED AREA, A CATEGORY B FELONY AS DEFINED
19 BY NRS 202.287 (NOC 5144), before close of evidence.
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22 State dismissed COUNT 9: POSSESSION OF A FIREARM BY A PERSON
23 PREVIOUSLY CONVICTED OF A FELONY OFFENSE, A CATEGORY B FELONY
24 AS DEFINED BY NRS 202.360.1. (NOC 51460), after Jury verdict on other counts.
25 Defendant was convicted on Count of the lesser included offense of KIDNAPPING IN THE
26 SECOND DEGREE WITH THE USE OF A DEADLY WEAPON, A CATEGORY B
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1 FELONY AS DEFINED BY NRS. 200.10, NRS 200.320, AND NRS 193.165 (NOC
2 50055).

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4 After the Jury Trial Defendant was found guilty COUNT 1: ATTEMPTED
5 MURDER WITH THE USE OF A DEADLY WEAPON, A CATEGORY B FELONY AS
6 DEFINED BY NRS 193.330, NRS 200.010, NRS 200.020, NRS 200.030 AND 193.165
7 (NOC 50031); COUNT 3: POSSESSION OF AN EXPLOSSIVE OR INCEDIARY
8 DEVICE IN OR NEAR CERTAIN PUBLIC OR PRIVATE EARAS, A CATEGORY D
9 FELONY AS DEFINED BY NRS 202.262. (NOC 51430); COUNT 4: BATTERY WITH
10 A DEADLY WEAPON, A CATEGORY B FELONY AS DEFINED BY NRS
11 200.4881(2)(e). (NOC 50223); COUNT 8: ELUDING A POLICE OFFICER IN A
12 MANNER POSING DANGER TO PERSONS OR PROPERTY, A CATEGORY B
13 FELONY AS DEFINED BY NRS 484B.550 (NOC 53833); AND COUNT 10:
14 KIDNAPPING IN THE SECOND DEGREE WITH THE USE OF A DEADLY
15 WEAPON, A CATEGORY B FELONY AS DEFINED BY NRS 200.310, NRS 200.320,
16 AND NRS 193.165 (NOC 50055).
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21 Defense filed a motion for new trial on Count 3 (Battery with a deadly Weapon) and
22 Count 4 (Assault with a Deadly Weapon). Prior to sentencing an opposition to a habitual
23 charge was filed and a new trial was granted. Prosecution then dismissed counts 3(Battery
24 with a deadly Weapon) and Count 4 (Assault with a Deadly Weapon) with prejudice.
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26 The District Court sentenced the Defendant on October 17, 2021, on Count 1 to a
27 minimum term of ninety-six (96) months in prison with 1208 days served as of October 1,
28 2021. For the consecutive deadly weapon enhancement for Count 1, Defendant shall serve a
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1 maximum term of 240 months and minimum term of 96 months in prison. Count 8
2 minimum term of seventy-two (72) months in prison with 1208 days served as of October
3 1,2021. Count 10 minimum term of seventy-two (72) months in prison, for the consecutive
4 deadly weapon enhancement for Count 10, Defendants shall serve a maximum term of 180
5 months and minimum term of 72 months in prison. It is further ordered that the sentence on
6 Count 8 shall be concurrent to the sentences on Count 1. It is Further ordered that the
7 sentences on Count 10 she be Consecutive to the Sentences on Count 1 and Count 8.
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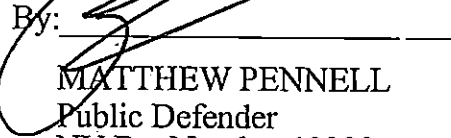
10 **11. Indicate whether the case has previously been the subject of an appeal to**
11 **or original writ proceeding in the Supreme Court and, if so, the caption and Supreme**
12 **Court docket number of the original proceeding:** This case has previously been the
13 subject of an appeal or original writ proceeding. The State of Nevada, Petitioner, The Fourth
14 Judicial District Court of the State of Nevada in and for the County of Elko; and The
15 Honorable Nancy Porter, District Judge Respondent, and Anthony Chris Robert Martinez
16 Real Party in Interest. Docket 80093.
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20 **12. Indicate whether this appeal involves child custody or visitation:** This
21 appeal does not involve child custody or visitation.
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23 **13. If this is a civil case, indicate whether this appeal involves the possibility**
24 **of settlement:** This case involves a criminal action.
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4 DATED this 17th day of November 2021.
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MATTHEW PENNELL
ELKO COUNTY PUBLIC DEFENDER
569 Court Street (Physical Address)
571 Idaho Street (Mailing Address)
Elko, NV 89801
(775) 738-2521

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11 By: 
12 MATTHEW PENNELL
13 Public Defender
14 NV Bar Number 13298
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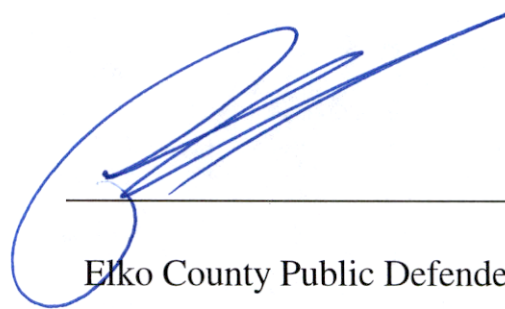
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CERTIFICATE OF E-FILING

I hereby certify that this document was electronically filed with the Nevada Supreme Court on the 17th day of November, 2021. I further certify that on the 17th day of November, 2021, electronic service of the foregoing document shall be made in accordance with the Master Service List to Aaron D. Ford, Nevada Attorney General; and Tyler J Ingram, Elko County District Attorney.

DATED this 17th day of November, 2021.



Elko County Public Defender