

COMMISSION ON JUDICIAL SELECTION APPLICATION

SEVENTH JUDICIAL DISTRICT  
DEPARTMENT 2

**By**

**(JANE MARGARET EBERHARDY)**



Personal Information
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1.	Full Name	Jane Margaret Eberhardy
2.	Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used.	No
3.	How long have you been a continuous resident of Nevada?	34 years
4.	City and county of residence	City of Ely, County of White Pine
5.	Age	64

Employment History
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6. Please start with your current employment or most recent employment, self-employment, and periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer	Jane Eberhardy Law LLC
Phone	775-717-9167
Physical Address & Website	705 Avenue K, Suite B, Ely, Nevada 89301
Date(s) of Employment	12/03/2013 to Present
Supervisor's Name and Title	Jane Eberhardy
Your Title	Owner
Describe Your Key Duties	<p>I have been a sole practitioner from December 2013 to the present. I employ one full-time paralegal. I handle all administrative duties including payroll, billing, client development, client retention, and firm procedures. I work closely with the Department of Indigent Defense Services (DIDS) to maintain compliance with their contract requirements.</p> <p>Under the DIDS contract, I receive indigent defense cases in rotation with the State Public Defender's Office. I have been assigned various types of criminal cases ranging from misdemeanors to murder. After the 48-hour bail hearing, the case is assigned to my office. I represent clients from their first appearance through sentencing. I appear at all court hearings including preliminary hearings, bail reduction hearings, pre-trial motion hearings, trials, and sentencings. I review all discovery and prepare for cross-examination of the state's witnesses at all preliminary and motion hearings. I coordinate defense witnesses, review discovery, and request all <i>Brady</i> materials. I consult and retain private investigators and various experts</p>

	<p>depending on the facts, charges, and defenses. I issue subpoenas, coordinate exhibits, and arrange for proper courtroom attire if the client is in custody. I prepare experts and defense witnesses for trial and represent my client at trial. I review all presentence investigation reports and prepare sentencing mitigation arguments.</p> <p>I meet with clients, some of whom are in custody either in jail or in prison. Where applicable, if a client has substance abuse issues or mental health concerns, I find a doctor, a program, and transportation to the program. This practice is in place because addiction and trauma are often root causes of the charges the client is currently facing.</p> <p>I represent juveniles charged with delinquent acts and families involved in NRS 432B cases, including Termination of Parental Rights. I filed appeals in two Termination of Rights cases on behalf of the mothers. In 2023, I managed a 14-day TPR trial involving numerous witnesses and a 3000-plus page trial transcript.</p> <p>I have considerable experience representing clients in bench trials, including numerous DUI and DV matters. I have defended hundreds of preliminary hearings and conducted evidentiary hearings related to probation violations; juvenile delinquency and 432B admit and deny hearings.</p> <p>I conduct extensive pretrial writ and motion practice. These motions are based on constitutional violations related to the Fourth and Sixth Amendments. Throughout each case, I look for discovery errors, constitutional errors, and alternative defenses for use in plea negotiations with the District Attorney and/or the Attorney General. This has benefited multiple clients facing high-level felony charges including trafficking, attempt murder and open murder.</p> <p>At trial, I obtained a not guilty verdict on one count of Kidnapping in the First Degree. I also achieved not guilty verdicts on two counts of Child Abuse Neglect or Endangerment and successfully argued a Motion for Judgment of Acquittal that led to the dismissal of six Child Abuse Neglect or Endangerment charges. I won a suppression motion based on the 4<sup>th</sup> Amendment involving a drug trafficking charge. These cases are further detailed in Question 19.</p>
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	<p>As part of my annual CLE requirements, I look for programs that are targeted toward aspects of my current case load. I have found certain programs to be of immense value like Pozner on Chapter Cross; courses in 4<sup>th</sup> and 6<sup>th</sup> Amendment motion work; and a three-day seminar on defending sex assault cases. I have attended national and state drug court conferences which aided in improving my knowledge of current best practices in specialty courts.</p> <p>I maintain a limited civil practice covering family law, breach of contracts, real estate, small business disputes, wills, and probate. I manage all aspects of these cases, including legal research, motion practice, negotiations, settlements, and trials.</p> <p>I served as arbitrator in the Court Annexed Arbitration Program deciding cases in the 8<sup>th</sup> Judicial District Court that have a probable jury award value not in excess of \$50,000.</p> <p>I currently have 100 open cases.</p>
Reason for Leaving	N/A

Previous Employer	The Marks Law Group
Phone	702-341-7870
Address & Website	1120 Town Center Drive, Suite 200, Las Vegas, Nevada 89144 www.markslg.com
Date(s) of Employment	July 2011 – December 2013
Supervisor's Name and Title	I was a partner with my own book of business.
Your Title	Partner
Describe Your Key Duties	My primary objective was to guide clients through the litigation process efficiently and effectively. I developed the litigation strategy to achieve the best possible outcome within their budgetary limits. I provided direction to associates working on my cases. I composed discovery, retained experts, conducted depositions, as well as drafting and arguing pre- and post-trial motions. I was responsible for new client development and current client retention. During my tenure at this firm, I represented the respondent in a Nevada Supreme Court civil appeal which was decided without oral argument.
Reason for Leaving	To establish my own firm and gain knowledge in criminal law.
Previous Employer	Law Offices of Arthur W. Tuverson, a Limited Liability Partnership – This firm is no-longer in business, Mr. Tuverson died in 2020.
Phone	702-631-7855 (last known)

Address & Website	7201 W. Lake Mead Blvd., Suite 410, Las Vegas, Nevada 89128 (last known)
Date(s) of Employment	July 2009 – July 2011
Supervisor's Name and Title	I was a partner with my own book of business.
Your Title	Partner
Describe Your Key Duties	I effectively managed multiple insurance defense cases involving issues such as insurance bad faith, breach of good faith and fair dealing, breach of contract, and negligence. I supervised two employees; an associate and a legal assistant. At any given time, I managed around 60 active insurance defense cases. My responsibilities encompassed legal research, drafting pleadings, motions, and discovery documents, conducting depositions, and preparing all cases for trial. In addition to this, I was tasked with developing new client relationships as well as maintaining existing ones. I represented clients in two distinct appellate cases, both of which were argued before the Nevada Supreme Court.
Reason for Leaving	Recruited by the Marks Law Group

Previous Employer	Kravitz, Schnitzer, Sloane, Johnson & Eberhardy
Phone	702-362-6666
Address & Website	8985 S. Eastern Ave., Suite 200, Las Vegas, Nevada 89123 www.ksjattorneys.com
Date(s) of Employment	February 1993 – July 2009
Supervisor's Name and Title	In February 1993 I was hired as an associate and when I left in July 2009 I was a name partner with twenty percent equity ownership.
Your Title	Named Partner
Describe Your Key Duties	I built my own client portfolio, offering legal representation to private individuals, small business owners, insurance companies, their insureds, and major commercial entities. I managed a broad spectrum of cases, including personal injury, commercial liability, contracts, real estate, probate, and divorce. For each case, I devised and implemented comprehensive legal strategies, ensuring alignment with clients' objectives and adherence to budgetary constraints.  I conducted numerous depositions with involved parties, medical experts, liability experts, and witnesses. Additionally, I

	<p>managed a significant number of civil arbitration and mediation cases, representing clients in personal injury or premises liability lawsuits. Notably, I successfully obtained dismissals for several personal injury cases by effectively pointing out procedural errors made by the opposing party.</p> <p>I won a favorable settlement for a client that sustained personal injuries in a product liability case involving a Japanese Corporation requiring International Judicial Assistance.</p> <p>I successfully represented a client in recovering property involving a deceased spouse, a family business, and setting aside a marital property agreement.</p> <p>I litigated a personal injury case from an automobile accident, achieving dismissal due to the plaintiff's discovery abuses, and secured a six-figure attorney's fees award for the client.</p> <p>During my tenure at this firm, three of my cases went before the Nevada Supreme Court, including two that involved oral argument.</p>
Reason for Leaving	<p>After building a strong portfolio with American Family Insurance; I planned to start my own law firm. However, they required me to partner with a firm that had sufficient resources and support staff. I became a partner at Tuverson Law Firm, enjoying both autonomy and support to manage my caseload for American Family.</p>

### Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

Sheboygan Falls High School - 220 Amherst Avenue, Sheboygan Falls, Wisconsin 53085

Dates Attended - August 1974 – June 1978

Degree - High School Diploma

Reason for Leaving - Graduated

Alverno College - 3400 South 43<sup>rd</sup> Street, Milwaukee, Wisconsin 53234

Dates Attended - August 1978 – May 1982

Degree - I graduated with a double major in communications and business management

Reason for Leaving – Graduated

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

During high school, I had a part-time job at the city library as a Page. Additionally, I was involved in Junior Achievement, played drums in the High School Marching Band, participated in the drama club, held positions in student government, and served on the yearbook staff.

During my college years, I participated in a work-study program. I worked 20 hours per week while maintaining the required course load to graduate in four years with a double major in Communications and Business Management.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

University of Wisconsin Law School, 975 Bascom Mall, Madison, Wisconsin 53706

Dates Attended - September 1988 – June 1991

Degree – J.D., not ranked

Reason for Leaving - Graduated

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

I did not work during law school because I commuted 70 miles each way from Milwaukee to Madison. In the summer between my second and third year, I worked full-time in Nevada at Jimmerson, Davis, Santore, and Hansen, a firm specializing in family law.

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities.

As noted in question 10, I made significant sacrifices for my family by commuting 70 miles each way from Milwaukee to Madison to attend the reputable University of Wisconsin – Madison Law School. In my third year of law school, I volunteered with a legal aid program on campus. Furthermore, I completed an internship for one semester with a federal bankruptcy judge in the Eastern District of Wisconsin.

## Law Practice

12. State the year you were admitted to the Nevada Bar.

I was admitted to the Nevada State Bar on September 30, 1991.

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission.

I was admitted to the Wisconsin Bar on June 17, 1991. I am an inactive member in good standing.

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.

No

15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 15-19 for the five years directly preceding your appointment or election to the bench.

Legal Discipline	Percentage of Practice
Domestic/family	03
Juvenile matters	07
Trial court civil	03
Appellate civil	02
Trial court criminal	85
Appellate criminal	0
Administrative litigation	0
Other: Please describe	

16. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

In the last five years, 85% of my cases were prepared for jury trials. The remaining 15% included misdemeanor bench trials and civil cases, such as family law, 432B, and guardianship matters. I tried several DUI cases and two highly contested 432B cases, with one TPR trial lasting 3 days and the other 14 days.

17. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

In the last five years, I have tried one case to verdict. Over my 34-year career, I have completed 10 jury trials to verdict where I was the lead/only counsel. Seven of these were civil jury trials in the Eighth Judicial District and one civil jury trial in the Fifth Judicial District Court. Additionally, three cases were felony trials in the Seventh Judicial District Court, White Pine County, Nevada.



In September 2024, I was scheduled to preside over an open murder case anticipated to last three weeks. However, the case ultimately settled on the first day of trial for voluntary manslaughter with the use of a deadly weapon.

The reduction in the number of jury trials can be attributed to several factors. First, I have efficiently resolved multiple cases by researching and drafting pretrial motions based on constitutional violations. For instance, one case resulted in the dismissal of a low-level trafficking charge due to a favorable ruling on a motion to suppress. This particular case is elaborated upon in question 19. Similarly, through meticulous review of all video evidence and consultation with appropriate experts, I successfully had an attempted murder charge involving the use of a firearm reduced to a misdemeanor domestic violence charge. Lastly, for two years the COVID-19 pandemic slowed arrests, prosecutions and judicial proceedings, thereby drastically impacting the number of jury trials conducted during this period.

In the past five years, I have had approximately 35 non-jury trials resulting in a decision. This figure encompasses juvenile evidentiary hearings and trials concerning DUI charges, driving with a suspended or revoked license, battery charges, and evidentiary hearings contesting 432B petitions and the creation and/or termination of guardianships.

18. List courts and counties in any state where you have practiced in the past five years.

I have practiced in the following courts:

**Municipal Court**

- City of Ely, Nevada
- City of Elko, Nevada
- City of Wells, Nevada

**Justice Court**

- White Pine County
- Elko County

**District Court**

- White Pine County
- Lincoln County
- Eureka County
- Elko County

**Nevada Supreme Court**

19. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), complete the following tables:

Case 1
Case name and date: The State of Nevada v. Salena Kay Hardie CR-2304077; Date of Incident – 10/17/22; Date of Complaint 3/23/23; Date of Appointment April 2023; Order Granting Withdrawal – 1/17/24

<p>Court and presiding judge and all counsel:  Seventh Judicial District Court Department 1- the Honorable Steven L. Dobrescu  White Pine County District Attorney James Beecher which prosecution was transferred to  Deputy District Attorney Melissa A. Brown who is now the White Pine County District  Attorney  Defense Counsel – Attorney Jane Eberhardy and after withdrawal Attorney David Scheick</p> <p>Importance of the case to you and the case’s impact on you:</p> <p>This case is an example of what can be accomplished when the prosecution and the defense stay true to their respective roles but also compromise to give an offender a second chance while enforcing laws, protecting the community, and ensuring justice.</p> <p>This was the first time I encountered a client who claimed harm by a jailer while she was in legal custody. Given the serious nature of the charges and her in custody status I had to balance my role as her advocate while reaching out to different law enforcement agencies including the District Attorney’s office asking for their help to ensure her safety and preserved the new evidence related to her allegations.</p> <p>This case started as a simple traffic stop on northbound US 93 in White Pine County, Nevada. The initial crime was speeding; the driver was traveling 5 miles over the speed limit. My client was a passenger in this vehicle with three other people. The vehicle contained approximately 9 lbs. of Methamphetamine. All occupants were charged with high level trafficking, a serious charge which could result in a life prison sentence. My client’s bail was set at \$500,000.</p> <p>Although I acknowledge the significant gravity of this crime and the devastating impact that drugs bring to a community, my role as her advocate made me question the level of her willing involvement in this crime. Specifically, during my first interview with her it became evident that my client was the least culpable of this crime. She was a passenger, not the driver or the owner of the car. However, more telling was the fact that her life, from early childhood and on, was significantly affected by severe trauma and neglect. By the time she turned 23 she had lost custody of her two young children and experienced unimaginable hardship related to addiction and abusive relationships. Consequently, at the time of the traffic stop she had control over nothing. In fact, my client was ordered into this vehicle by her “boyfriend” with no prior notice. She was hours from home with no resources and no means to communicate with anyone.</p> <p>In the course of the case, I attended an informal settlement meeting with the District Attorney. The trooper who initiated this traffic stop was also in the meeting. I learned that law enforcement had recently discovered that the man who was driving the vehicle at the time of the traffic stop had since been identified as a known member of a Mexican Cartel. Further, the trooper said that the driver had purportedly ordered someone to cut off the fingers of a person who presumably did not follow his orders.</p>
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This information further confirmed my belief that my client was far less to blame than the driver and/or the owner of the vehicle. Again, my client was an unemployed 23-year-old who did not have the means, resources, or opportunity to buy 9 lbs. of Methamphetamine; let alone have dominion and control over the drugs that were found in the vehicle.

To this end, I immediately filed a bail reduction motion, requesting an Own Recognizance release for my client based on the factors in *Valdez-Jiminez*. Specifically, any amount of bail was unattainable and therefore amounted to a *de facto* detention order. Due to the serious nature of the crime, the court correctly denied my request for an Own Recognizance release but lowered her bail to \$250,000. This amount was still too high, so she remained in jail.

As we prepared for trial, my client disclosed to me that she was being victimized by a jailer. Before I filed another motion requesting an Own Recognizance release, I conducted an investigation into her claims by interviewing other female inmates who were in custody during the relevant incidents. My primary concern was my client's safety while also ensuring that potential evidence was preserved. Consequently, I filed another motion for her release. Given the serious allegations and the information gathered during my interviews, the court granted the motion. This enabled her to obtain essential treatment for substance use disorder, trauma, and PTSD. I am certain that this treatment was crucial in saving her life and was a likely factor in the District Attorney's decision to propose a lesser charge with probation, which ultimately prevented her from going to prison.

This case is an example of the good that is accomplished and the lives that are saved when the prosecution and the defense work together for the benefit of the community and in this case my client. This case also emphasizes the connection between poverty, trauma, abuse, addiction, and crime. It highlights the vulnerability of individuals within the criminal justice system and illustrates how poverty can impede a person's ability to secure release from jail, thereby limiting access to essential treatment. In this case the district attorney recognized my client's success at learning to manage her substance abuse disorder and at sentencing jointly recommended that this defendant be placed on probation.

I do not know what happened to the jailer but recently I was in court to witness the defendant being granted an early release from probation.

Your role in the case: Defense attorney from April 2023 to January 2024 when attorney David Scheick took over her representation.

## Case 2

Case name and date:

The State of Nevada v. Eric Lyle Cato CR-2008092; Date of Incident 2019 and 2020; Date of Complaint 8/27/2020; Date of Trial 3/2/21 (Jury Venire, too small- trial continued); Date of Trial 5/25/21 (Defendant COVID exposure, trial continued); Date of Trial 6/22/21-7/2/21; Verdict Not Guilty On Both Counts.

Court and presiding judge and all counsel:  
Seventh Judicial District Court Department 2 – the Honorable Gary Fairman  
White Pine County Chief Deputy District Attorney McKinzie Hilton  
Defense Counsel – Attorney Jane Eberhardy

Importance of the case to you and the case's impact on you:

This case highlights the truth of the adage “justice delayed is justice denied”; even though the case ended with a verdict of not guilty. This trial was postponed twice due to circumstances beyond the parties' control. Nonetheless, the continuances had a detrimental impact on both the defendant and his daughter, the alleged victim whose escalating behavioral issues necessitated intervention by law enforcement. Here, the court denied my on-going motions to lift or modify a no-contact order between the defendant and his daughter causing lasting harm to their relationship.

The case involved two counts of child abuse and neglect (B Felonies). The child's mother accused the father of physically abusing their daughter. The parents were unmarried and had a history of unsubstantiated abuse accusations, often linked to custody modification motions. This case and the allegations against my client were consistent with this pattern.

This charge arose because the mother wanted the child over Easter weekend and came to the father's house unannounced to pick her up. When the father denied the mother access because of prior Easter plans, she called the sheriff's office and accused him of abusing their daughter by pulling her hair, pushing her down and pulling her off a trampoline. No evidence of injury to the child was produced. The trial lasted 6 days and at the end of the testimony it was acknowledged by the Sheriff's Department they did not have photos of the trampoline, did not have measurements of the trampoline, did not know the location of the trampoline nor if the trampoline ever existed.

During the course of this case, the forced separation from his child had a significant negative impact on my client's life. My client had been the primary custodial parent since his daughter was three years old. The effects of this separation on the child were also severe, as it disrupted an extremely close bond between father and daughter that had existed for years. The unfortunate situation that befell this family could have been prevented.

As a judge, I will issue orders that address and safeguard the concerns of all parties involved. In this case, an order could have been issued to allow supervised contact between my client and his daughter. This type of order would maintain the parent-child relationship while also addressing the concerns of the Chief Criminal Deputy District Attorney regarding potential manipulation or undue influence by my client over his child the victim/witness.

I am dedicated to making sure all parties receive unbiased and timely resolutions to their cases. As a judge, I will entertain argument on motions for modification of my orders if

the motion is properly brought before the court; as these type of orders can have profound impact on the parties and the case as a whole.

Finally, this case was rigorously contested by both the prosecution and the defense. Although the verdict favored the defense, I recognize the rarity of such an outcome and appreciate the fact the jurors remained engaged throughout the arduous and often contentious trial.

Your role in the case:  
Attorney for the Defendant

### Case 3

Case name and date:

The State of Nevada v. Anthony Scott Robinson CR-2109089; Date of Incident 8/22/21; Date of Appointment 8/25/21; Date of Complaint 8/25/21; Date of Dismissal Criminal Information 4/20/22

Court and presiding judge and all counsel:

Seventh Judicial District Court Department 1 – the Honorable Steve Dobrescu  
White Pine County Deputy District Attorney Melissa Brown who is now the White Pine County District Attorney  
Defense Counsel – Attorney Jane Eberhardy

Importance of the case to you and the case’s impact on you:

As a defense attorney, I have had many spirited discussions with friends, family, and colleagues who question how I could represent a person facing certain types of felony charges. I typically explain that my responsibility is to safeguard the Constitutional Rights of my clients throughout the legal process. As a judge I will uphold the Constitutional Rights of every person who appears before me. This case resonated with me because like the judge who decided this case, I too will adhere to the law and the Constitution, even if it involves reaching unpopular decisions which could potentially jeopardize my ability to be reelected.

This case was a Fourth Amendment warrantless search of a vehicle which was owned by my client. It was late at night and a White Pine County Deputy noticed a parked SUV vehicle at a convenience store. The Deputy ran the registration and learned it was current and registered to my client, Mr. Robinson.

The Deputy was unable to see inside the vehicle due to the dark window tint but saw a man in the store wearing a face bandana and a hoodie that was pulled over his head. The Deputy did not know if this person was the driver of the SUV because he did not know what Mr. Robinson looked like. However, the Deputy knew that Mr. Robinson’s name was linked to illegal drug activity. Consequently, the Deputy followed the vehicle as it left

the parking lot and ran a “wants and warrants” check on Mr. Robinson, discovering that Robinson’s driver's license was revoked.

The Deputy called for back-up, activated his overhead lights, and followed the vehicle to Motel 6. By the time the Deputy arrived and parked, Robinson – the presumed driver was already in the lobby of Motel 6. Because of the dark window tint the Deputy opened the driver door and recognized the passenger who had an active arrest warrant. The Deputy did not look in the back seat to see if other people were in the vehicle.

Two of the back-up officers arrested the passenger and opened all the rear passenger doors. The Deputy motioned for my client to step outside. The Deputy did not activate his bodycam, nor did he pat down my client for potential weapons. Instead, the Deputy requested license, registration, and insurance. My client went to the opened passenger side door and searched the glove box, the center console and the passenger seat looking for the requested documents. At this point, the Deputy stood behind my client near the vehicle’s opened back door. The Deputy activated his bodycam which recorded my client's actions inside the vehicle. The bodycam footage also showed the back-up Deputies casually talking and standing a few feet from the vehicle seemingly unconcerned as to my client’s actions inside the vehicle.

After Robinson provided all the requested documents, the Deputy closed all the vehicle doors and approached the driver's side. The Deputy informed Robinson that, for officer safety reasons, he would place Robinson back into the vehicle but first needed to check inside the vehicle for weapons. Upon reopening the previously closed door, the Deputy observed a scale with white residue, which provided probable cause for a vehicle search that led to the discovery of methamphetamine. I filed an extensive motion to suppress arguing that the search of the vehicle was unconstitutional; specifically citing the finding of the scale under the pretext of officer safety.

The judge granted my motion to suppress the drugs, leading to the dismissal of charges against my client who was then released out into the community. Despite this unpopular outcome, this is an example of the Judge’s commitment to the justice system and the rule of law. As a judge in the 7th Judicial District, I will uphold the standards set by these current judges. I will listen to arguments, apply the law impartially, and render clear, direct, and unbiased decisions, regardless of public perception or the nature of the offense.

Your role in the case:

Attorney for the Defendant

Case 4
<p>Case name and date:  State of Nevada v. Mark Anthony Aguilar CR-1606071; Date of Incident 2016; Date of Trial 3/21/17 to 3/23/17; Date of Order Granting in Part and Denying in Part Motion for Acquittal 5/31/17</p>
<p>Court and presiding judge and all counsel:  Seventh Judicial District Court Department 1 – the Honorable Steve Dobrescu  White Pine County Chief Deputy District Attorney James Beecher and White Pine County Special Prosecutor Melissa Brown who is now the White Pine County District Attorney  Defense Counsel – Attorney Jane Eberhardy</p>
<p>Importance of the case to you and the case’s impact on you:</p> <p>I will always remember this case and continue to draw upon this experience when deciding cases before me.</p> <p>This was my first “A” felony criminal jury trial. I represented a 21-year-old client who was charged with Kidnapping in the First Degree resulting in substantial bodily harm (“SBH”), carrying a maximum penalty of life without the possibility of parole, or life with parole eligibility after 15 years, or a maximum of 40 years with parole eligibility after 15 years. In addition to the First Degree Kidnapping charge, my client faced 13 additional counts including Burglary, which has a maximum penalty of 10 years with parole eligibility after 1 year; two counts of Domestic Battery with SBH and Strangulation, each carrying a maximum penalty of 5 years with parole eligibility after 1 year; one count of Coercion with a maximum penalty of 6 years with parole eligibility after 1 year; and nine counts of child abuse and endangerment, each having a maximum penalty of 6 years with parole eligibility after 1 year.</p> <p>This case involved an evening of drinking and drug use which culminated in a domestic dispute. My 21-year-old client and his ex-wife and her girlfriend left nine children under the age of 12, in the care of the ex-wife’s mother. My client and his ex-wife had the three youngest children aged two, four, and five.</p> <p>Throughout the evening, the nine children were under the supervision of the ex-wife’s mother who was facing her own challenges of staying clean and sober. As the night progressed, the ex-wife’s mother grew increasingly angry and agitated because her daughter promised they only would be gone for 15 minutes, which was the only reason she agreed to watch all nine children. The ex-wife refused to answer her mother’s repeated phone calls causing the mother to become even more incensed and frustrated. After five hours of drinking my client, his ex-wife and her best friend returned home intoxicated and likely under the influence of other drugs. Unfortunately, they encountered the irate mother who took all her anger out on my client, blaming him for the entire night and accusing him of being a poor parent among other things. The ex-wife, not wanting to deal with her own mother, locked herself in the bathroom, while her mother became increasingly confrontational with my client, hitting him with a stroller and forcing him out of the house.</p>

My client left the residence but remained outside, which led to continued loud and verbally aggressive fighting. This outside disturbance attracted the attention of neighbors, who created more chaos when they brought their firearms to intervene. During this period, all nine children woke up and were in some form of distress.

Eventually, my client re-entered the house, resulting in an argument with his ex-wife that again spilled into the street. The White Pine Sheriff's office was called, and my client left the scene. The mother, her daughter, and the friend later provided statements portraying my client as the primary aggressor. Early the next morning, my client returned to the house and was arrested for the crimes listed above.

At trial, seven witnesses testified for the State: the ex-wife, two deputies, the neighbors, and two of the children. The ex-wife's mother (who failed drug court and was sent to prison) and the best friend were not called to testify, nor did they appear at the trial. After a three-day jury trial, my client was acquitted of kidnapping in the first degree but convicted of burglary, coercion, nine counts of child abuse and neglect, and lesser misdemeanor charges for the two domestic batteries which were originally charged as category C felonies.

Following the verdict, I felt a rush of relief that my client was acquitted of the kidnapping charge and received two misdemeanors instead of two C felonies. I considered this outcome a success. However, my client did not share this sentiment and was more afraid of going to prison on the nine child abuse convictions.

The next day, I reviewed the verdicts, jury instructions, and relevant laws, then promptly filed a motion for acquittal on the nine counts of child abuse. Due to the strict seven-day deadline, I had to rely exclusively on my notes that I took during the trial, drawing specific factual information from the testimony of the witnesses.

This experience shows that a judge must be as prepared as lawyers and/or litigants at trial. Like the judge in this case, I too want to anticipate the issues and thoroughly know the applicable law while also taking meticulous notes documenting the testimony of the parties and witnesses. In the 7<sup>th</sup> Judicial District, the importance of clear and accurate note taking cannot be underscored because there are no court reports in the courtroom who can readily read back testimony. Consequently, when there is an objection by the parties the judge must be able to timely and accurately rule based on the court's notes. This experience also highlights the significance of providing juries with clear and legally accurate jury instructions that they can comprehend and apply to their factual findings.

In this case the court granted in part my motion and acquitted my client on six of the nine child abuse charges. However, my client was found guilty on child abuse and neglect as to his three children who were in the home at the time of the incident.

I will always remember the anxiety and stress of representing a young client facing a potential life sentence. As a judge, it is essential to be mindful of the anxiety that a jury trial can cause for attorneys and litigants. A judge who demonstrates compassion,



addresses all parties with respect, and extends courtesy to everyone in the courtroom can significantly reduce the tension present during the proceedings.

Finally, having a clear record is an integral part of successfully litigating post-trial motions and appeals. As a judge, I will make a conscious effort to remind the lawyers to maintain a clear record especially when referencing documents or introducing exhibits. This practice can be crucial in maintaining a clear, understandable, and unambiguous record for appeal.

Your role in the case:  
Attorney for the Defendant

#### Case 5

Case name and date:

In the Matter of K.C. a child under 18 JV-0702017; Date of TPR Trial 10/1/19 to 10/3/19; Order Terminating Parental Rights 11/21/19; Nevada Supreme Court Order Affirming 80388 12/16/2020.

Court and presiding judge and all counsel:

Seventh Judicial District Court – Lincoln County Department 2 – the Honorable Gary Fairman;

Nevada Attorney General Arron Ford and Deputy Attorney General Izaac Rowe; Attorney Kelly Brown for the Father; Attorney Matthew Carling for K.C.; and, Attorney Jane Eberhardy for the mother Kourtney Carrington

Importance of the case to you and the case’s impact on you:

When a lawyer enters a courtroom with their client, they expect a neutral environment where the judge will objectively consider the evidence and render a decision based on the law and facts of the case. As the presiding judge, I will ensure impartiality towards both the attorneys and their clients, as well as neutrality concerning the case itself. This principle is paramount In a Termination of Parental Rights (“TPR”) case brought pursuant to a 432B action because the judge is now deciding whether the mother and/or the father will lose their child forever. These cases are so serious that the Nevada Supreme Court has likened a TPR case to a civil death penalty.

Before the case gets to the TPR stage there are many hearings and opportunities allowing either parent to make changes usually tied to the issue which prompted the initial removal of the child. For example, if a child is removed because the parent is not managing their substance abuse disorder, the child may be temporarily removed, and the Division will step in and offer the parent treatment services while facilitating sometime of visitation.

Sometimes these cases have an ebb and flow where things are going well, the child is returned, then there is a relapse, the child is again removed, and more services are offered to the parent. Because of this type of positive negative history, a judge may develop an unconscious bias against the parent. However, when a TPR trial is before a judge who has

a long-standing history with the case the judge must take extra precautions to exercise neutrality and impartiality. I have handled a number of TPR cases and understand the difficulty to remain neutral until all the evidence is presented and the arguments made. Nonetheless, that is the judge's role and what is expected and what the parent is entitled to.

This was a 432B matter where my client's child was removed from her custody on two separate occasions. I was appointed to represent the mother after the child was removed for the second time. Approximately one day after receiving the balance of the file there was an Interim Review Hearing where the State orally moved to change the reunification plan from reunification to termination. A hearing ensued, and I requested a continuance because I had not had sufficient time to review the extensive file which was well over a year old. I was also not afforded the opportunity to arrange for witnesses to testify at this Interim Review Hearing.

Ten days after this hearing the court issued its order which amounted to a *de facto* termination of my client's parental rights because the court ordered that she have no contact, communication, or visits with her child. Four months later, the Attorney General filed the Motion for Termination. The three-day Termination Trial was conducted almost one year after the *de facto* Termination Order which denied my client any access to her child. The court formally terminated her parental rights, and I appealed because, during the year between the *de facto* Order and the actual Termination Order, my client made meaningful changes and progress. She successfully engaged in ongoing substance abuse and mental health treatment, secured a stable and safe residence, obtained employment, and furthered her education.

I was disheartened when I lost at trial, however what really stayed with me was the feeling that the judge was frustrated because I continued to present evidence of my client's sustained change. This frustration by the court, whether real or imagined by me, was not lost on my client. For three days I had to repeatedly encourage her to present evidence of her change while downplaying the court's attitude about how time-consuming our defense was.

I anticipated that the judge would terminate my client's parental rights. However, if the court had shown more patience and encouragement towards my client, she might not have appealed the decision when the termination occurred.

It is devastating to lose at trial and then later on appeal. However, in retrospect I viewed all my work on this file as an avenue to highlight the effects of trauma, mental health, and substance abuse on families.

I understand the importance of balancing the paramount concern of the child's best interests in a 432B case. Nonetheless, it is well-established that substance abuse disorder is a lifelong condition that requires ongoing management rather than being cured. In my opinion, the court did not adequately consider this chronic nature of substance abuse disorder. While the district court judge acknowledged that my client had made substantial progress, the court's decision was influenced by the bonding that occurred between the

baby and the foster family during the year of no-contact. This bonding period coincided with the time my client was denied all access to her baby.

Since this case, I have observed significant changes by the Department of Child and Family Services (DCFS) in identifying domestic abuse and substance use disorders. On several occasions, DCFS has assisted one or both parents in obtaining treatment. Additionally, I have noted that our District Court Judges are more sensitive to enforcing orders that may negatively impact the bond between parent and child. In our District, the Judges ensure that, as long as the child is safe, supervised contact is the norm rather than the exception.

My extensive experience in working with clients who struggle with trauma and substance disorders has enhanced my awareness in 432B cases. In our district, we also hold monthly staff meetings attended by DCFS and the attorneys involved in the case. These informal meetings have proven invaluable as they often alert the attorneys to issues their clients may be facing, enabling them to provide necessary assistance before serious problems arise. Additionally, these meetings foster creative problem-solving approaches and collaborative thinking to devise solutions that support the reunification process. I am committed to continuing my participation in these valuable discussions.

I remained in sporadic contact with this client following the termination of her rights and in late 2023 I was saddened to learn that she had been murdered. Her mother and sister continue to stay in contact with me.

Your role in the case:

Attorney for the mother, Kourtney Carrington

20. Do you now serve, or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

I have not served as a judicial officer however, I have served as an arbitrator in the court annexed arbitration program, deciding civil personal injury cases with probable jury awards under \$50,000.00. To be eligible for the arbitration selection list, I attended a comprehensive seminar on effective arbitration practices and the roles and responsibilities of an arbitrator. My experience as an arbitrator was invaluable in teaching the importance of thorough preparation, meticulous notetaking, and delivering fair, well-reasoned decisions. I dealt with situations involving unprepared and upset lawyers, where it was essential to maintain order throughout the proceedings. Additionally, I managed contentious arbitrations by exercising control and rendering impartial decisions, regardless of the lawyers' behavior. I adjudicated approximately 30 arbitration cases before relocating to Ely and requesting removal from the selection list in Clark County.

21. Describe any pro bono or public interest work as an attorney.

As a civil attorney in Las Vegas, I am embarrassed to say that I represented a limited number of pro-bono clients. However, since relocating to Ely, I have offered my legal services at a reduced rate. Ely is a small, isolated rural community where many residents require legal assistance for various matters, ranging from simple wills to intricate child custody issues. The court frequently appoints attorneys for custody, divorce and guardianship cases, and I willingly accept these appointments as part of my commitment to serving the community. Additionally, since 2015, I have served as a private contract public defender, representing indigent clients in criminal cases for White Pine, Lincoln, Eureka, and Elko County, performing all work under these contracts at a reduced rate.

22. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

I am a member of the following professional associations:

- NACJ – Nevada Attorneys For Criminal Justice – 2015 to Present
- NACDL - National Association of Criminal Defense Lawyers – 2015 to Present
- SNAWA - Southern Nevada Association of Women Attorneys from 1991 to 2014 and from 2020 to Present. Past President in 1993 and Past Board Member 2013 – 2014
- DRI – Defense Research Institute 2000 - 2014
- Past Barristers, Howard D. McKibben Chapter of American Inns of Court unsure of years
- Member of Nevada State Bar – 1991 to Present
- Member of Wisconsin State Bar (non-resident lawyer division - license inactive) 1991 to Present
- Member of Clark County Bar Association 1991 to Present
- Member of Elko County Bar Associate 2024 to Present

23. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

I am in compliance with the continuing legal education requirements applicable to me as a lawyer. The courses that I attended in the past five years include:

**2025**

- Supreme Court Year in Review

**2024**

- Ethics Lessons from HBO & #39- Succession
- Worry Less, Defend Better: Mindfulness and Self-Compassion Tools for Indigent Defense
- Legal Update and Practice Pointers for Criminal Practitioners in the Nevada Court of Appeals
- DIDS 4<sup>th</sup> Annual Conference

**2023**

- Mental Health/Wellness for Criminal Defense: Vicarious Trauma, Burnout, and Stress Management
- How to Speak with the Press When They Call

**2022**

- Supreme Court Year In Review
- DPBH's Rural Clinics and Service Delivery Options
- How to Read an Autopsy Report
- Ethical Issues in Criminal Defense
- Appellate Year in Review
- First 100 Days of Homicide Representation
- Investigating the Scene of the Alleged Crime
- NADCP RISE 22 National Association of Drug Court Professionals
- Ignorance of the Law is No Excuse: the 2019 Rules of Civil Procedure and Competent Ethical Practice

**2021**

- (Don't Fear) the Reaper: How to be a Zealous Advocate
- Traffic Stops and the Fourth Amendment
- The Importance of Pre-Trial Motion Work
- Pozner of Cross-Advance Techniques Using the Chapter Method
- Anatomy of a Case Fighting the Good Fight from Appointment to Trial
- Representing the Challenged Client: Identifying, Raising and Challenging
- Juvenile Law in Nevada 2021
- Nevada Rules of Criminal Procedure -A Primer
- Bodily Injuries Case Reviews: What your Forensic Nurse Expert Can Do
- DUI Basics – a Webinar for Litigators

**2020**

- Implicit Bias Against Females in the Judicial System
- Navigating the Practice of Law in a Pandemic While Endeavoring to...
- Cross Examining a Remote Witness
- Nevada Specialty Court 2020 a Virtual Conference
- Breath Alcohol Testing – a Webinar for Litigators
- The Interplay Between Stickland's Deficiency Performance Prong
- Arguing for Pretrial Release after Valdez- Jimenez

24. Do you have Professional Liability Insurance, or do you work for a governmental agency?

I do not work for a governmental agency, and I have always carried Professional Liability Insurance: Hanover Insurance Group - my current policy is 1M/2M

<b>Business &amp; Occupational Experience</b>
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25. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

In 2017 my husband, Tony DeFelice opened a small coffee shop in Ely, Nevada. The name of the business is Artic Café LLC, dba Hunters Drive-Thru. The business is in good standing with the Secretary of State. The Nevada Business Identification Number is: NV20151731282 and the Certificate Number is B202411065168139. I am the resident agent for this company and a 50% owner. I have no involvement in the operations or day-to-day management of this business.

26. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:
- a. the nature of the business
  - b. the nature of your duties
  - c. the extent of your involvement in the administration or management of the business
  - d. the terms of your service
  - e. the percentage of your ownership

**Jane Eberhardy Law LLC – a sole proprietorship**

The nature of the business: Jane Eberhardy Law, LLC.

Duties: I handle all administrative duties including payroll, billing, client development, client retention, and firm procedures. Also see more information in response to question six- Employment History.

Involvement in administration – I am solely responsible for the administration and management of the business.

Terms of Service – I am the owner and sole proprietor.

Percentage of ownership – 100 percent.

**Kravitz, Schnitzer, Sloane, Johnson & Eberhardy LLP**

The nature of the business: a Limited Liability Partnership – Law Firm.

Duties: I was a named partner and owned 20% of the firm. I had a vote on management, operations and firm procedures. Also see more information in response to question six – Employment History.

Involvement in Administration – minimal although I had a vote on administrative duties.

Terms of Service – I was a 20 percent partner until 2009 when I resigned.

Percentage of ownership – 20 percent until 2009.

27. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.

None.

Civic Professional & Community Involvement
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28. Have you ever held an elective or appointive public office in this or any other state?

No

29. Have you been a candidate for such an office?

No

If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

I am a member of Ely Rotary, where I attend regular meetings, participate in the Annual Ice Fishing Derby and volunteer at our annual Golf Tournament. Both the Fishing Derby and the Golf Tournament are our primary fundraisers that support the college scholarship program for White Pine County students. For the last three years I have chaired the committee for the Rotarians annual Valentine party.

For several years I was involved with the Great Basin Service Club, which is responsible for maintaining holiday ornaments in our community. I volunteered on the Fourth of July fireworks committee and helped set up and dismantle the fireworks platforms. Additionally, I served as a board member of the Ely Learning Bridge Charter School but resigned from the position due to time constraints.

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

Over the course of 23 years working in Clark County, I delivered several lectures on topics including Insurance Defense, Insurance Bad Faith, Defending Auto Injury Claims, and Debt Collection. Many of these Continuing Legal Education (CLE) sessions were organized through the National Business Institute (NBI). Due to the passage of time, I am unable to recall the exact dates or precise titles of these conferences and lectures.

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

I have been an active board member of Ely Learning Bridge Charter School. During my tenure, I addressed significant challenges, such as when the main school building experienced a damaging flood. This incident necessitated weekly meetings with stakeholders to develop alternative plans for student accommodations. The Board also convened weekly to monitor the progress of remediation and mold removal, ensuring the safety of all upon reopening. In addition, I represented the school in its efforts to secure financing for a new building. This involved attending budget meetings, reviewing contracts, and examining loan documents with various financial institutions. My role required a thorough understanding of financial processes and diligent oversight to support the school's goals.

33. List honors, prizes, awards, or other forms of recognition.

Initially, I believed that I had not received any formal recognition. However, upon further reflection, I realized that I have indeed been acknowledged by my clients through various gestures of appreciation. These forms of recognition include thank you cards, phone messages, and personal letters. While this may not be the traditional form of recognition anticipated by this question, I consider receiving these expressions of gratitude from former clients as a significant honor and validation of my work.

34. Have you at any time in the last 12 months belonged to, or do you currently belong to, any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

None

36. During the past ten years, have you been registered to vote?

Yes

Have you voted in the general elections held in those years?

Yes



## 37. List avocational interests and hobbies.

I enjoy reading and listening to audible books. My husband and I appreciate our e-bikes; the support of a battery significantly enhances our cycling experience by eliminating concerns about the return trip and steep hills. I also enjoy walking and playing with my Portuguese Water dog, Lucie. I love traveling, attending concerts, fine dining, and entertaining at home. I also practice yoga and meditation when I have the time.

Conduct
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## 38. Have you read the Nevada Code of Judicial Conduct and are you able to comply if appointed?

Yes

## 39. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.

Yes

I received a citation for basic speed in the City of Wells, County of Elko in 2024. I pled guilty to a rural speeding ticket and paid the fine. Additionally, I was cited for basic speed in White Pine County in 2023 for going 10 miles over the limit. I also pled guilty to that speeding ticket and paid the fine.

## 40. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to the corresponding question in the confidential section.

No

## 41. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

No

## 42. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No

## 43. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

No

44. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No

45. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.

According to the Revised Nevada Code of Judicial Conduct, specifically Rule 2.11 Disqualifications, I am required to disqualify myself if my impartiality might reasonably be questioned. Disqualification issues clearly arise if I previously represented a party that is now before me on the same matter in controversy. Specifically, under Rule 2.11(A)(6)(a), if I served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer during such association, I would be subject to disqualification. For example, if I represented a client who was sentenced and subsequently committed a probation violation related to that sentence, I would have to disqualify myself. However, if there is no bias or prejudice on my part, I must disclose on the record the basis of my disqualification. I may then ask the parties and their lawyers to consider, outside my presence and without influence from court staff or others under my direction and control, whether they wish to waive my disqualification. If the parties and their lawyers agree, without any participation from me or staff under my control, that I should not be disqualified, then I may proceed with participating in the proceedings. The agreement by the lawyers and parties must be formally placed on the record.

Other

46. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

N/A

47. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify you as a supreme court justice. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

Personal Statement Attached as Exhibit "A"

48. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

I have litigated over 1000 criminal cases in the Seventh Judicial District, averaging about 100 cases per year. This experience has allowed me to interact with a significant

number of individuals, primarily residents of White Pine County. Many defendants have co-occurring disorders, where treatment was an appropriate response. Conversely, I have represented an equal number of defendants for whom incarceration in the Nevada Department of Corrections was the necessary and correct outcome for their case.

As a judge, I will not hesitate to impose prison sentences when required. I am committed to performing my duties in a fair and balanced manner, taking into account protection of the public, punishment, and rehabilitation of the offender. My observations of numerous sentencing hearings have reinforced that for some defendants' incarceration offers their best opportunity for potential rehabilitation. Judges are sometimes mandated by law to impose prison sentences based on charges and verdicts. Although such decisions can be challenging, I am dedicated to adhering to the law and assigning prison sentences when justified.

Additionally, I have presented arguments before the Nevada Supreme Court on three occasions and currently have a case under appeal. I have also been involved in several matters before the Nevada Supreme Court including appeals, Writs of Mandamus, Writs of Prohibition, and either filing or responding to appeals. I was the respondent in two published opinions: *Costello v. Casler*, 127 Nev. 436, 254 P.3d 631 (July 2011) and *Seput v. Laycayo*, 122 Nev. 499, 134 P.3d 733 (May 2006). My appellate practice has given me a thorough understanding of the importance of maintaining a clear record in the courtroom for future appellate review. While I prefer not to be appealed, it is the right of the litigants and a fundamental aspect of the checks and balances in the legal process. In my professional experience, I have observed that appeals can influence the handling of similar cases in the future. Although I did not prevail in a particular appeal, the Supreme Court's ruling on the matter ultimately led to procedural modifications and heightened awareness of the rights of individuals involved in similar cases.

49. Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

Writing Sample Attached as Exhibit "B".

# EXHIBIT “A”

QUESTION 47. PERSONAL STATEMENT - QUALIFICATIONS  
FOR DISTRICT COURT JUDGE

# EXHIBIT “A”

I love the law and have been a successful attorney in the state of Nevada for over 34 years. I am highly qualified to fill the appointment to the prestige 7<sup>th</sup> Judicial District Court. I possess decades of experience across the entire legal spectrum. I have represented litigants in both civil and criminal cases in multiple jurisdictions and counties including, White Pine, Eureka, Lincoln, Elko and Clark. I have the respect and admiration of many of my peers who serve our communities in the Judicial system. I am known for being a dedicated, unbiased attorney who is open-minded and well-liked.

My strong communications skills have enabled me to effectively interact with clients from many different socioeconomic backgrounds. I have been certified by the Department of Indigent Defense Services to litigate cases ranging from high level “A” felonies down to misdemeanors. Since 1991, I have handled cases from civil to quasi-criminal and criminal. Currently my practice includes family law, 432B child neglect, guardianship, juvenile delinquency and criminal defense; which include attempted murder, second degree murder, open murder and murder with the use of a deadly weapon.

I represented many parties in 423B cases in every county within the 7<sup>th</sup> Judicial District. I also represented parties in 432B cases in Elko County. These cases gave me an insight into various community resources and how our District can leverage and/or adapt certain programs to benefit the communities within the 7<sup>th</sup> Judicial District. This is just one of many experiences I will bring as a judge to the 7<sup>th</sup> Judicial District Court. I also maintain a significant juvenile delinquency caseload in both White Pine and Elko Counties. This work has enhanced my skills in adjudicating juvenile cases and expanded my knowledge of rehabilitation programs and treatments for juvenile offenders.

I am a strong advocate for specialty courts and have witnessed their benefits for both offenders and our community. I have participated in several drug court conferences and am an active member of the drug court team. This experience has provided me with valuable insights and a deep sense of empathy for the communities I will serve, as well as for the community where my family and I reside.

Another key strength of mine is my ability to manage a diverse client base. Many of my clients are often at their lowest point in their life. I routinely take the time to explain the legal process and their legal rights which can help maintain efficient courtroom operations. When

clients feel heard by the judge, they are more likely to be satisfied with their day in court, regardless of the outcome. Throughout my career I have retained my ability to express compassion, empathy and understanding; qualities I admire and have observed in our current District Court Judges.

In addition to the forementioned legal experiences I have also served as a civil litigator in Clark County from 1991 to 2014. I represented private citizens, small business owners, insurance companies, their insureds and large commercial institutions. In my 24 years of legal practice in Las Vegas, I had the opportunity to litigate against some of Nevada's most skilled lawyers. This experience has highlighted the significance of meticulous preparation and the necessity of consistently applying my best efforts in all professional undertakings. These are qualities that I am committed to bringing to my role as a judge. I also served as an arbitrator in the Court Annexed Arbitration Program which decided civil disputes under \$50,000. The skills and insights I gained as an arbitrator will be useful experience in my role as a judge. For instances, as an arbitrator, my peers acknowledged my measured responses and my direct, timely, and legally sound decisions. I also found that demonstrating mutual respect to the lawyers and their clients was simple, took little effort and was greatly valued.

In 2014 a career opportunity presented itself and my husband and I moved from Las Vegas to Ely. I moved my law firm and continued working as a sole practitioner, while my husband purchased a building and opened a restaurant called Hunters Drive-thru. We are part of this community and have invested everything into our life here. We purchased a home in Ely. I am actively involved in the Ely Rotary, the Great Basin Service Club, and the Ely Learning Bridge Charter School. People in the community know and like me and my family, which is significant because the majority of citizens within the 7<sup>th</sup> Judicial District reside in White Pine County, where most cases are filed. Citizens want to know and trust their elected officials; which can only happen if the judge is part of their community. My long residency and strong community ties make me an electable candidate for the 2026 election.

Applying for the judicial appointment and continuing the legacy of previous judges is an honor. However, I am ready for the greater responsibility to serve the citizens of the 7th Judicial District with integrity, honesty and hard work. The people in White Pine County have welcomed my family and I into their community and it is time for me to give back by serving as their next

District Court Judge. I have a good reputation in my community and people in the 7<sup>th</sup> Judicial District know that I am honest, fair and trustworthy. I have high ethical standards which have earned me the respect of my colleagues including those who are often my adversaries in the courtroom. Having the respect of my legal peers is noteworthy because it demonstrates their belief that I have proven myself to be fair, unbiased, and ethical; three traits that I will bring to my role as the next judge.

Finally, I have had a long and successful legal career and having the Governor place confidence in my abilities to fulfill this vacancy would be the pinnacle of my professional journey. I thank this committee for their time and dedication to ensuring the right applicant is selected to be the next District Court Judge. I am that applicant and am ready to serve.

# EXHIBIT “B”

QUESTION 49. WRITING SAMPLE

# EXHIBIT “B”



**II. POINTS AND AUTHORITIES**

Mr. Robinson strongly disputes how the State has construed the testimony of Deputy Overson. Robinson also challenges the State's interpretation of the events which occurred in the early morning hours of August 22, 2021 leading to the violation of his Constitutional Rights.

As is detailed in Mr. Robinson's Suppression Motion, and in contrast to the State's Opposition, Keith Smith requested that Deric Jackson be trespassed. Smith called dispatch and made his report. The written report produced by the State is silent as to an SUV. (See Exhibit B attached to Defendant's Motion to Suppress and PHT PG 28).

Deputy Overson's testimony can easily be interpreted as though he met with Smith and took his trespass report. Deputy Overson testified that he was interested in this SUV because Keith Smith provided a description of the vehicle and it was the: "...earlier report that I received from Keith Smith..." that convinced [me] to run the registration check. (PHT PG 12, 25). However, we learned from Overson's subsequent testimony that he knew Robinson was not the person that Smith wanted trespassed and in fact he never even talked to Smith about this incident which again was a call taken by dispatch. Deputy Overson ultimately admits that Robinson had no connection to the Smith trespass report. (PHT PG 27).

The State overlooks Deputy Overson's inconsistent testimony on these subjects and simply reasons that the "enforcement stop" was justified because it started with a trespass call and the description of an SUV.

Likewise, the State claims that Overson ran the registration check before he went into R Place 5, however Overson unequivocally testified that he ran the registration after he left R Place 5. Compounding the confusion around Overson's actions and inconsistent testimony is Overson's decision to either turn off his body camera at critical moments or simply not turn the camera on. Under either scenario, the Deputy's credibility and his actions should be carefully scrutinized.

We know the SUV was legally parked at R Place 5 and later at Motel 6. At both places, Overson observed and noted the SUV had no driver and at least one passenger. Overson did not see who drove the SUV to R Place 5 and did not know who drove the SUV to Motel 6. These facts are extremely important

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1 since the State argues that the genesis of the stop was: "...an enforcement stop regarding the driver's  
2 license issue." (Opposition PG 3 LN 14-15). Moreover, Overson had no probable cause to conduct a traffic  
3 enforcement stop since **he admitted that he did not witness the SUV commit any traffic violations.**

4 How could there be an enforcement stop when Overson did not know who was driving the vehicle.

5 By Brown: Did you approach the vehicle?

6 By Overson: Yes I did.

7 By Brown: When you did what did you see?

8 By Overson: I saw that Mr. Robinson was in the lobby of Motel 6 and there was nobody seated  
in the driver's seat of the vehicle and there was still a -a-somebody seated in the  
front passenger seat.

9 By Brown: **Did you see who they were at that time?**

10 By Overson: **No I did not.** PHT PG 14 – Emphasis added.

11 The Deputy knew one thing, the SUV was properly registered to Anthony Robinson whose license  
12 may be revoked. However, even this fact was not confirmed until much later after the Deputy arrested  
13 Robinson on the paraphernalia charge – a scale. Overson testified that he arrested Robinson for:  
14 "...possession of drug paraphernalia and then I knew there was – I guess there was a possibility of him  
15 being charged with driving revoked pending on the the details of his revocation status but I was still  
16 waiting to get those." (PHT PG 23).

17 Deputy Overson did not have probable cause to open and enter the driver side of the SUV to:  
18 "...maintain observation of both subjects..." since he had no evidence of a crime, no evidence of who was  
19 driving, no evidence of the identity of the passenger and he had no evidence of any traffic laws being  
20 broken.

21 Deputy Overson is unable to justify his actions especially when there was nothing stopping the  
22 Deputy from entering Motel 6 lobby and asking Robinson for some identification. Obviously, the Deputy  
23 wanted to get inside Mr. Robinson's vehicle. Unfortunately, the Deputy's stated reason (that he had to  
24 watch both subjects) is disingenuous since he did not know who these "subjects" were or why he believed  
25 they were suspects when no criminal activity was afoot. (State's Opposition PG 3 LN 20).

26 The Deputy violated both Mr. Robinson's and Ms. Mears Fourth Amendment Constitutional  
27 Rights. The passenger did not break any laws.

28

1 Besides, it is hard to comprehend that a Deputy, fearing he was in danger, would decide that his  
2 safest course of action is to open and enter a legally parked vehicle that has unknown people in it. The  
3 Deputy's actions at Motel 6 as well as his wavering testimony on this subject are questionable and should  
4 be meticulously examined because they do not ring true. There is nothing about the Deputy's actions or his  
5 testimony that support the State's contention that this was a legitimate traffic enforcement stop.

6 Equally problematic is the State's assertions that it took both Deputy Archambault and Deputy  
7 Sommervold to arrest Ms. Miears. Here again, a cursory review of the dashcam video from Deputy  
8 Overson's vehicle and the bodycam video from both Deputy Archambault and Deputy Sommervold clearly  
9 dispels this claim. Granted, Miears wanted to know why she was being arrested and she also questioned  
10 the legitimacy of the warrant. However, Miears was not acting aggressively which is supported by the fact  
11 that she was not patted down or handcuffed until placed in Deputy Archambault's vehicle. Further, while  
12 Deputy Archambault was talking to Miears and Deputy Overson had Robinson preoccupied with producing  
13 his registration and insurance; Deputy Sommervold was strolling around the SUV opening the rear  
14 passenger doors and looking inside the vehicle.  
15

16 The video of Deputy Overson with Robinson completely erases the notion that a "weapons search"  
17 needed to be performed for "officer safety." First, both the Deputy and Robinson were huddled around the  
18 front passenger door with Robinson leaning into the vehicle in order to obtain his phone that was charging  
19 inside the vehicle. At no time did the Deputy request that Robinson not enter the vehicle until he "checked  
20 the immediate area for access". Instead, Overson's video shows both the Deputy and Robinson standing in  
21 close proximity to each other with Robinson having unfettered access to the front seat of the vehicle.  
22 Remember, at this moment the Deputy had yet to pat-down Robinson for weapons.

23 Consequently, the Deputy's justification for the "weapons search" is simply not believable  
24 especially since minutes before Robinson had unrestricted access to the front seat. It is hard to comprehend  
25 why the Deputy would decide to do a "weapons search" after all the doors of the vehicle were closed<sup>1</sup>; and,  
26

27 <sup>1</sup> Deputy Overson closed both the front and rear passenger doors after Robinson provided proof of insurance, registration and his  
28 Nevada Identification card. Robinson closed the rear driver's side door.

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1 when Robinson told the Deputy he was not getting back into the vehicle but was headed inside Motel 6 to  
2 get a room.

3 It was at this point the Deputy detained Robinson for a “revoked license” and then proceeded to do  
4 a check of the front seat for “access”. The State suggests that the Deputy actually put Robinson back into  
5 the vehicle because the Deputy testified that he needed to control Robinson’s movements for “officer  
6 safety”. However, the video shows while Overson is checking the area for “access” the other officers were  
7 simply standing next to the vehicle watching the search. Here too, it is important to note, that Robinson  
8 had yet to be patted down or handcuffed even though he was being “detained”.

9 Next, Robinson did not admit to driving the vehicle; did not admit to owning the scale that was  
10 tested; and, did not consent to the test. First the exchange surrounding driving the vehicle, although not  
11 verbatim went more like:

12 **Overson:** So you drove over here?

13 **Robinson:** huh?

14 **Overson:** So you drove over here then!

15 **Robinson:** Uh I came to see her.

16 **Overson:** You just came to see her – you came to see Kyria?

17 **Robinson:** Ya.

18 **Overson:** That’s what brought you up here?

19 At no time did Robinson actually admit to driving the vehicle. True, one could probably infer that  
20 he drove based on the above conversation; still, the more salient point is the above interchange proves that  
21 the Deputy did not know who was driving at the time he entered the vehicle to watch both “subjects”.  
22 Consequently, the Deputy had no probable cause for the “traffic enforcement stop” and no reason to enter  
23 the SUV. Therefore, any evidence discovered after this act must be suppressed.

24 Overson’s bodycam and/or his dash cam establish that Robinson did not see what scale Overson  
25 took from the vehicle. Before Overson removed the scale he asked Robinson: “...what’s the scale for....”  
26 Here, Robinson admits to having “a” scale for weighting marijuana concentrate. The Deputy had no  
27 probable cause to believe a crime was being committed by the existence of a scale. Deputy Overson  
28 testified that no criminal activity was afoot; no traffic laws were broken; and, Overson did not witness any  
impaired driving by Robinson. To put it differently, the Deputy had no reason to enter the vehicle for a

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1 second time and no reason to seize a scale and test for further substances since marijuana concentrate is not  
2 illegal to possess. At the time the scale was seized, the only charge Robinson was facing was a possible  
3 misdemeanor driving while revoked. However, by the Deputy's own admission, at the time Robinson was  
4 arrested the Deputy had not confirmed the revoked license charge.

5 Robinson challenges the presumptive test by Overson because the photos which were produced on  
6 February 3, 2022 were not labeled and do not establish that the presumptive was positive. The photos also  
7 fail to support Overson's testimony that he retested the scale and it was positive for meth. There is no  
8 video of the retest and no way to determine if the retest turned inconclusive supporting a theory that the test  
9 kits used by Overson were compromised or faulty. Again, the most recent photos do not identify what case  
10 they relate to, what scale it is, whose gloved hands are in the photos or who took the photos. No video was  
11 provided to document the chain of custody with the first presumptive, the retest and/or the scale itself.

### 12 III. ARGUMENT

#### 13 I. ROBINSON'S FOURTH AMENDMENT RIGHTS WERE VIOLATED WHEN DEPUTY 14 OVERSON OPENED AND ENTERED THE SUV ON TWO SEPARATE OCCASIONS 15 WITHOUT PROBABLE CAUSE OR REASONABLE SUSPICION OF CRIMINAL 16 ACTIVITY

17 Although stated previously, Robinson had broken no laws; there was no arrest warrant; he was not  
18 a suspect in any crime; no criminal activity afoot; no traffic laws were being broken; and, no impaired or  
19 suspicious type of driving. (PHT PG 29, 30, 31, 32, 34). While Robinson agrees that: "...suspects in  
20 vehicles are especially fraught with danger to police officers" we must take exception because the  
21 undisputed facts of this case establish that neither the driver or the passenger were suspects. Deputy  
22 Overson had no knowledge of any crime having occurred. Therefore, the State's reliance of *Michigan v.*  
23 *Long* 463 U.S. 1032, 1047 (1983) is misplaced and not relevant to the facts or circumstances of the case  
24 presently before this court.

25 Likewise, *Pennsylvania v. Mimms* 434 U.S. 106 (1977) is also inapplicable because the testimony  
26 of Overson does not support an investigative detention. As far as Deputy Overson was concerned the  
27 passenger was not a suspect or committed any crimes. It was unreasonable for the Deputy to open the door  
28 of the vehicle to simply look at the passenger because of the "window tint". First, we live in a State with

1 lots of sunshine and some parts have extremely hot temperatures. Consequently, most vehicles have some  
2 form of window tint not only to protect the interior of the vehicle but also to protect the people inside the  
3 vehicle. Common sense dictates that an officer is not allowed to enter a legally parked vehicle simply  
4 because the window tint prevents him from see inside the vehicle. If this was the case then every vehicle  
5 with window tint would be subject to a warrantless search.

6 The Fourth Amendment protects all citizens from unreasonable and unnecessary search and  
7 seizure. *U.S. Const. Amend. IV*. One must have a legitimate expectation of privacy in the place or thing  
8 searched or seized in order to assert the protection. *Katz v. United States*, 389 U.S. 347, 351-53 (1967). A  
9 legitimate expectation of privacy is one that 'society is prepared to recognize as reasonable.' *Rakas v.*  
10 *Illinois*, 439 U.S. 128, 151 (1978) (quoting *Katz* 389 U.S. 347). Mr. Robinson has a property or a  
11 possessory interest in his vehicle and has a legitimate expectation of privacy sufficient to invoke the Fourth  
12 Amendment's protections to be free from unreasonable searches and seizures – tint or no tint.

13 Furthermore, the passenger did not motion or indicate to the Deputy that she was in trouble. In  
14 reviewing Overson's vehicle dashcam, Overson approaches the vehicle from the driver side rear and  
15 proceeds to enter the driver's side door<sup>2</sup>. Overson never attempted to communicate with the passenger, he  
16 never motioned for the passenger to exit the vehicle or to roll down the window. There is no evidence that  
17 the keys were not in the vehicle or that the windows did not roll down as is suggested by the State.

18 Beyond this, the bodycam of the Deputies belies the State's claim that Overson put Robinson back  
19 into the vehicle. Contrary to the State's contention, there was no concern for officer safety or the safety of  
20 others. The Deputy told Robinson that he was going to "check the immediate area for access"; however,  
21 when Overson made this statement, the vehicle doors were all closed and Robinson stated he was going  
22 back into Motel 6. The Deputy told Robinson that he was being detained but Robinson was not patted  
23 down for weapons, was not handcuffed and instead was asked to sit on the SUV's rear bumper while the  
24 other two Deputies stood and watched. Prior to the Deputy entering the vehicle for a second time, both  
25

26  
27 <sup>2</sup> The dashcam does not capture Overson entering the driver's side door and there is no video from Overson's bodycam, which he  
28 turned off and/or failed to turn on. Overson testified that he opened the door and one can presume that he leaned his body into the  
vehicle.

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1 Robinson and Overson were standing together with Robinson having unlimited access to the front area of  
2 his vehicle. Deputy Overson never restricted Robinson's movement and never suggested that he first do a  
3 protective sweep of the vehicle.

4 Finally, Mears was already placed in Archambault's vehicle and thus no concerns were express for  
5 officer safety or to restrict the movements of Robinson. Robinson was calm, compliant and cooperative.  
6 Overson told Robinson to "walk with me" and instructed Robinson at one point to sit on the rear bumper of  
7 his vehicle. Interestingly, Overson never searched the "area for access". Instead, Overson opened the door,  
8 saw the scale, closed the door, put gloves on, reopened the door and removed the scale. Overson never  
9 searched for any weapons.

10 Robinson does not challenge the holding in *Michigan v. Long* but instead argues that this was not a  
11 protective sweep of the vehicle. Overson's second entry into the driver's side area under the guise of a  
12 "weapons search" or "protective sweep" was a ruse. Overson did not look for any weapons and within  
13 seconds of opening the door and seizing the scale the "protective sweep" was over.

14  
15 II. THIS WAS NOT A TRAFFIC ENFORCEMENT STOP AND THERE WAS NO REASONABLE  
16 SUSPICION THAT A TRAFFIC VIOLATION HAD OCCURRED

17 The Supreme Court has established that a traffic stop constitutes a seizure protected by the Fourth  
18 Amendment. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). It has been held that a traffic stop is lawful  
19 so long as an objectively reasonable foundation is present for the stop. *Whren v. United States* 517 U. S.  
20 806 (1996). To put it differently, the validity of a stop depends on whether the officer's actions were  
21 objectively reasonable in the circumstances. *United States v. Smart* 393 F.3d 767, 770 (8<sup>th</sup> Cir. 2005).

22 The Defendant challenges the validity of every single fact the State uses to support its argument  
23 that this was a legitimate traffic stop. First, Deputy Overson did not know who was driving the SUV.  
24 Second, Deputy Overson did not recognize Robinson at R Place 5 and did not know if Mr. Robinson was  
25 even in the vehicle or driving the vehicle. Third, the SUV was never described in a prior call for service.  
26 Fourth, Overson conducted the registration check **after** leaving R Place 5 and not before he entered the  
27 store. Fifth, Overson activated his lights on a legally parked vehicle at Motel 6. There was no driver in the  
28 vehicle when Overson activated his lights. Sixth, Overson entered the vehicle before Robinson exited

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1 Motel 6. Seventh, Overson testified that he observed no impaired driving and no traffic laws had been  
2 broken. Finally, Overson testified that he witnessed no criminal activity afoot and that Robinson was not  
3 under any criminal investigation. Therefore, Overson lacked reasonable suspicion to support the stop and  
4 detain Robinson thereby violating his Fourth Amendment Rights from unreasonable and unnecessary  
5 search and seizure.

6 III. THIS WAS AN UNLAWFUL TRAFFIC STOP BECAUSE DEPUTY OVERSON DID NOT  
7 HAVE AN OBJECTIVE REASONABLE FOUNDATION TO SUPPORT THE STOP

8 The State has the burden to prove a traffic stop is justified at its inception. See, *United States v.*  
9 *Sharpe* 470 U.S. 675, 682 (1985). (citing *Terry v. Ohio*, 392 U.S.1, 20 (1968). Absent an articulable,  
10 individualized, and reasonable suspicion of specific criminal activity, or probable cause of a traffic  
11 violation, a stop violates the Constitution when based merely on a pretextual nature, such as a hunch or  
12 profile. *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000) (citing *Chandler v. Miller* 520 U.S. 305,  
13 308 (1997)).

14 It is evident that Deputy Overson's "enforcement stop" was conducted with a premediated motive  
15 and although an officer's subjective motivations are not relevant under *Whren*, the obligation for an  
16 objective basis was not met. While the State accuses the Defendant of engaging in "rhetoric" it also  
17 ignores the undisputed testimony of Deputy Overson that he observed no traffic violations, no suspicious  
18 criminal activity, no impaired driving and, finally no knowledge of who was driving the vehicle. Thus, the  
19 Deputy had no reasonable suspicion of criminal activity and no probable cause for a traffic violation when  
20 he opened and entered the driver's side door of the SUV under the guise of watching both the man inside  
21 Motel 6 and the unknown person sitting in the passenger seat of the SUV.

22 Due to the lack of reasonable suspicion required by *Terry v. Ohio* the entirety of the traffic stop and  
23 subsequent actions between Mr. Robinson and Deputy Overson are unconstitutional and thus require the  
24 suppression of all evidence, statements and information arising from this encounter going forward. *Terry v.*  
25 *Ohio*, 44 Ohio Op. 2d 383 (U.S. June 10, 1968).

26 ...

27 ...



1 IV. DEPUTY OVERSON'S CONTINUED DETENTION OF ROBINSON WAS UNJUSTIFIED  
2 BECAUSE THERE WAS NO "REASONABLE SUSPICION" TO WARRANT DETAINING  
3 DEFENDANT OR ENTERING THE DEFENDANT'S VEHICLE WITHOUT PROBABLE  
4 CAUSE

5 Deputy Overson was not conducting a traffic stop when he pulled behind the parked SUV. The  
6 issue that the State continues to avoid, ignore and overlook is the Deputy had no probable cause to enter the  
7 SUV to watch both the man inside Motel 6 and the passenger. If the deputy wanted to conduct a traffic  
8 enforcement stop re: no driver's license, he needed to enter Motel 6 and ask Mr. Robinson for his  
9 identification and whether he was driving. Instead, the Deputy decides to enter Robinson's vehicle without  
10 any probable cause since at the moment of entry the Deputy did not know the identity of the driver. The  
11 Deputy might have surmised the driver was in the lobby of Motel 6 he nevertheless did not know if this  
12 man was Mr. Robinson or someone else. Further, if the Deputy had not illegally entered the SUV, then he  
13 would not have discovered Ms. Mears and she would not have been arrested. If the Deputy was really  
14 conducting a traffic enforcement stop, he would have first sought the driver's license of the purported  
15 driver, which was not done.

16 The Deputies bodycam does not support the State's claim that Overson was trying to restrict Mr.  
17 Robinson's movements and thus wanted him back in the vehicle. It is the Defendant's contention that  
18 when the Deputy illegally entered the vehicle the first time, he saw the scale and knew that he did not have  
19 probable cause to enter the vehicle. Consequently, the Deputy has created this story that he wanted to  
20 control Robinson's movements so he needed to put him back into the vehicle but before that happened, he  
21 would have to search the vehicle for weapons. However, Robinson foiled the Deputy's plan when he  
22 informed Overson that he was not going back into his vehicle but instead was going into Motel 6 to  
23 complete his room registration. **It was at this time the Deputy told Robinson that he was detained for a**  
24 **revoked license, which had not yet been confirmed.** Oddly enough, the Deputy did not handcuff  
25 Robinson and did not pat him down for weapons. Instead, the Deputy told Robinson that he needed to do a  
26 weapons search of the "access" area in the vehicle for officer safety. This is illogical since Robinson was  
27 not even patted down while standing next to Overson; and Overson did not restrict Robinson's access to  
28 the front seat of his vehicle while he was gathering his insurance, registration and identification. The traffic

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1 encounter should have ended and all interaction between Robinson and Overson should have ceased at the  
2 conclusion of Robinson providing his information. The vehicle doors were closed and Robinson was not  
3 going back into the vehicle. There was no reason to search the vehicle for weapons when five minutes  
4 before it was not a concern. The Court has established that a law enforcement officer must have further  
5 “reasonable articulable suspicion” for detaining a motorist beyond the preliminary traffic stop. Deputy  
6 Overson had no right to reenter the closed vehicle because there was no reasonable articulable suspicion for  
7 detaining Robinson beyond the preliminary stop of asking for his license, insurance, and identification.  
8 *United States v. Salazar* 454 F.3d 843 (8<sup>th</sup> Cir. 2006). Such suspicion must be articulable due to specific  
9 fact and cogent conclusions that sufficiently suggest that criminal conduct has occurred, is occurring or is  
10 forthcoming. *Id.* Preemptive hunches and curious suspicions are inadequate in meeting this criterion.  
11 *United States v. Halls* 40 F. 3d 275 (8<sup>th</sup> Cir. 1994). Once Overson had confirmed the revoked status, he  
12 should have issued a ticket to Robinson and left. The lack of a license was not an arrestable offense and  
13 did not warrant a reentry into a closed vehicle to look for weapons when officer safety and or reasonable  
14 suspicion and or probable cause was absent. Based on the preliminary interactions with Robinson,  
15 Overson did not have sufficient foundation for entering his closed vehicle to do a “weapons search” for  
16 “officer safety”. Overson’s suspicions of Robinson were rooted in a premeditated motive and were not  
17 enhanced to an articulable and specific manner following his interaction with Robinson.  
18

19 V. THE SCALE DOES NOT MEET THE PLAIN VIEW EXCEPTION TO THE WARRANT  
20 REQUIREMENT

21 The “plain view” exception to the warrant requirement applies when (1) an officer is lawfully  
22 present in a place where evidence can be viewed, (2) the item is in plain view, and (3) the item’s  
23 incriminating nature is immediately apparent. *Horton v. California* 496 US 128, 136, 110 S. Ct. 2301  
24 (1990). On two occasions Overson unlawfully entered the SUV. The first time he had no probable cause or  
25 reasonable suspicion of criminal activity. Oddly enough, Overson claims that he only saw the scale “in  
26 plain view” during the second illegal entry when he was “searching the access area for weapons”. It is  
27 Robinson’s contention that if the item was in plain view on the second entry it would be in plain view on  
28

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1 the first illegal entry which is why Overson insisted on doing a weapons search even though officer safety  
2 was not a concern. The third requirement is that the items incriminating nature, here the scale is  
3 immediately apparent. Having a scale to weigh marijuana concentrate is not illegal. A scale in a vehicle is  
4 not illegal. Here the deputy tested some residue on the scale and claims that it was presumptive positive,  
5 however this test was not conclusive nor was it preserved and sent out for further testing. Therefore, the  
6 incriminating nature of the scale was not immediately apparent and thus the plain view exception to the  
7 warrant requirement does not apply.

8 VI. THERE WAS NO PROBABLE CAUSE TO SEARCH THE VEHICLE

9 The State claims that since the scale tested presumptively positive probable cause existed to search  
10 the vehicle. However, there was no probable cause to enter the vehicle to watch the "subjects" and there  
11 was no probable cause to enter the closed vehicle a second time to check the access area for weapons since  
12 five minutes before Deputy Overson allowed Robinson unrestricted access to the front seat area of the  
13 vehicle. Deputy repeatedly testified that there was no suspicion of criminal activity involving Mr.  
14 Robinson and the license status was a misdemeanor at best and not an arrestable offense. Consequently,  
15 the Deputy should have written Mr. Robinson a ticket for driving without a license. No further interaction  
16 was warranted.

17 VII. THE EXCLUSIONARY RULE APPLIES

18 There was no suspicion of criminal activity which would warrant the entry into the vehicle under  
19 the guise of watching the passenger and the man in Motel 6. The State conveniently ignores the fact that  
20 Overson did not know who was driving the vehicle or that Mr. Robinson was the man in Motel 6. In other  
21 words, the deputy had no probable cause to enter the vehicle the first time. Next, the Deputy never had  
22 Robinson sit inside the vehicle nor did he instruct Robinson that he was going to place him inside the  
23 vehicle after he completes his "weapons search of access area". Instead, Deputy Overson tells Robinson to  
24 follow him and then to sit on the rear bumper of his vehicle. There are no facts to support Overson's  
25 testimony that he put Robinson in the vehicle or he was going to put Robinson in the vehicle.  
26  
27  
28

1 The Exclusionary Rule forbids the use of evidence derived as a direct product of an unlawful  
2 search and seizure. *Silverthorne Lumber Co. v. United States* 251 U.S. 385, 392 (1920). All evidence  
3 seized as an indirect result of the unlawful detention must also be suppressed under the doctrine of "the  
4 fruit of the poisonous tree." *Wong sun v. United States*, 371 U.S. 471, 491 (1960).

5 The State has failed to meet its burden justifying the stop, detention, search and seizure in  
6 Defendant's case. It follows that any and all evidence derived from Deputies Overson, Sommervold and  
7 Archambault encounters with Robinson on or about August 22, 2021 must be suppressed.

8 DATED this 8 day of February 2022

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By: 

JANE EBERHARDY, #4254

CERTIFICATE OF SERVICE

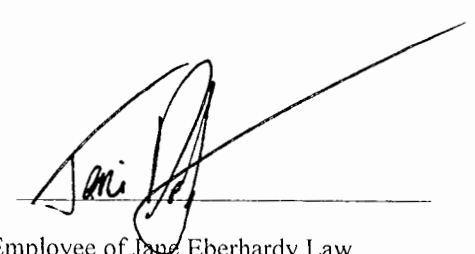
16 Pursuant to NRCP 5(b), I certify that I am an employee of JANE EBERHARDY LAW LLC and that on this  
17 8 day of February 2022, I served a copy of DEFENDANTS REPLY IN SUPPORT OF MOTION TO SUPPRESS  
18 as follows:

19 ☐ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which  
20 first class postage was prepaid in Las Vegas, Nevada: and/or

21 ☐ Pursuant to EDCR 7.26, to be sent via facsimile; and/or

22 ☒ To be hand-delivered to the attorneys listed below at the address and/or facsimile number indicated  
23 below:

24 Attorney Melissa Brown, Esquire  
25 Deputy District Attorney  
26 Ely, Nevada 89301

  
Employee of Jane Eberhardy Law

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