

**SECTION I: PUBLIC INFORMATION
(QUESTIONS 1 THROUGH 47)**

**Personal
Information**

1. Full Name: **David Dale Loreman**
2. Have you ever used or been known by any other legal name? No If so, state name and reason for the name change
3. Work Address: **445 Fifth Street, Suite 210, Elko, Nevada 89801**
4. How long have you been a continuous resident of Nevada?
20 years and 8 months
5. Age: **52**
(NRS 3.060 states that a district judge must be at least 25 years old.)

Employment History

6. Using the format provided in Attachment "A" please start with your current employment or most recent employment, self-employment, and periods of unemployment for the twenty years immediately preceding the filing of this Application .

See Attachment "A"

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.

**Eisenhower High School
702 South 40th Avenue
Yakima, Washington 98908
1974 - 1975 (Sophomore Year)
Family relocated to State of Oregon.**

**Stayton Union High School
757 West Locust Street
Stayton, Oregon 97383
1975 - 1977
Graduated**

**United States Air Force Academy
2304 Cadet Drive, Suite 2300
USAF Academy, CO 80840**

1977 - 1978

(Sick leave during school year due to injury)

After returning from the one year sick leave I was informed that my leg had not recovered from the injury and would require surgery or further sick leave. As I did not wish to prolong my college for another year I was given a 10% medical disability rating due to the injury and an honorable discharge from the United States Air Force.

**Pepperdine University
24255 Pacific Coast Hwy
Malibu, California 90263**

1977 - 1978 (Freshman Year during Sick leave status)

I attended Pepperdine University during the time away from USAFA with the anticipation that I would be returning to the Academy in 1978.

**Westminster College
1840 South 1300 East
Salt Lake City, Utah 84105**

1978 - 1981

Graduated May 23, 1981

Cum Laude

Bachelor of Science

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

High School:

- a. **Letterman in Football, Basketball, Baseball and Track**
- b. **High School was focused on obtaining an appointment from my Congressman or Senators to the United States Air Force Academy.**

College:

- a. **Served in student government at Westminster College.**
- b. **As student assistant in Continuing Education at Westminster College I worked with the Director of the Division to create the Paralegal Certificate Program and develop the curriculum to gain certification with the ABA.**
- c. **Served as student representative to the Tickton Task Force which was established to modify the school structure as well as the curriculum to make Westminster College a viable private college that could survive in the competitive market as well as rectify the massive deficit that existed at the time for the school.**
- d. **Intermural sports as Westminster College had dropped its sports program after the 1978 -1979 school year.**

- e. **Worked with Salt Lake City Rape Crisis Center as a presenter for an abuse awareness program that went to schools in the County to educate students on abuse and what avenues those being abused have to seek help.**

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.

**Willamette University
College of Law
Salem, Oregon
1981 - 1984
Rank: I was not ranked by the school.
Graduated May 13, 1984
Doctor of Jurisprudence**

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

**Approximate: Summer 1982 - October 1982
Hannible's Ice Cream Parlor
Salem, Oregon
Shift Manager - Counter Worker
Filed for Bankruptcy and went out of business at or about the time of my leaving.
Full time summer then part time during school.**

**October 1982 - April 1983
Skipper's Fish and Chowder House
Salem, Oregon
General Laborer
Part time**

**April 1983 - June 1984
Long, Delapoer, Koos and Healy
201 1st Avenue West
Albany, Oregon 97321
(541) 926-5504
Worked in excess of 30 hours per week during school and full time in summer months.
Law Clerk/Deputy City Attorney (Did all criminal trials for City under the Oregon third year appearance rule)
Handled all prosecutions for the City of Albany, Oregon.**

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

Member Phi Delta Phi Legal Fraternity

Magister - 1983 to 1984

1983 Representative to Biannual Convention in Washington, D.C.

Organized fund-raising activities as well as over sight on Fraternities Book Store that supplied all secondary materials for classes at the Law School.

Played slow pitch softball for the Police Officers and Lawyers team in Albany, Oregon.

Trial practice class – Moot Court Competition.

Law Practice

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

1989

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

Utah 1984

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 16-20 for the five years directly preceding your appointment or election to the bench.

95% litigation matters.

16. Estimate percentage of time spent on (1) domestic/family and juvenile law matters, (2) civil litigation, (3) criminal matters, and (4) administrative litigation.

- (1) 55% Domestic/family and Juvenile matters;**
- (2) 8% Civil Litigation;**
- (3) 30% Criminal Matters;**
- (4) 2% Administrative Litigation.**

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

- a. 27% set for Jury**
- b. 73% set for non-Jury**

18. 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.

- a. 1 Jury tried to conclusion
- b. 274 non-Jury tried to decision

Since July 16, 2008 I have received only two appointments from the Elko Justice of the Peace on any criminal conflict matters even though I am on the rotation. The majority of my appointed cases since July 16, 2008 have come from Department 2 in Juvenile and Welfare matters.

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

Nevada:

- a. United States District Court – Northern District of Nevada
- b. State of Nevada Supreme Court
- c. 2nd Judicial District Court - Washoe County
- d. 2nd Judicial District Court - Family Division
- e. 4th Judicial District Court - Elko County
- f. 4th Judicial District Court - Elko Family Master
- g. 5th Judicial District Court - Nye County
- h. 6th Judicial District Court - Humboldt County
- i. 6th Judicial District Court - Lander County
- j. 7th Judicial District Court - Eureka County
- k. 7th Judicial District Court - White Pine County
- l. 8th Judicial District Court - Clark County
- m. 9th Judicial District Court - Douglas County
- n. Elko County Justice Court
- o. Jackpot Justice Court - Elko County
- p. Nye County Justice Court - Nye County
- q. White Pine Justice Court - Ely No. 1
- r. Elko Municipal Court
- s. West Wendover Justice Court - Elko County
- t. Wells Justice Court - Elko County

Utah:

- a. 1st Judicial District Court - State of Utah
Box Elder County
- b. 3rd Judicial District Court - State of Utah
Salt Lake County

Louisiana:

- a. United States District Court – Eastern District of Louisiana

Florida:

b. United States District Court – Southern District of Florida

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), and list or describe:

- a. case name and date,
- b. court and presiding judge and all counsel
- c. the importance of each case to you and the impact of each case on you,
- d. your role in the case.

1. a. **Estate Landscape & Snow Removal Specialists, Inc. v. Mountain States Tel. & Tel. Co., 793 P.2d 415 (Utah Ct. App. 1990)**
Estate Landscape & Snow Removal Specialists, Inc. v. Mountain States Tel. & Tel. Co., 844 P.2d 322 (Utah 1993)

b. **Third Judicial District Court, Salt Lake County, Salt Lake City, Utah**
The Honorable Michael R. Murphy and Timothy R. Hanson - Trial Judges
David D. Loreman & Lowell V. Summerhays, Attorneys for Plaintiff
Floyd A. Jensen – Attorney for Defendant

c. **This was my first major trial after graduation from law school in 1984. It was also my first time before the Utah Appellate Court and was a great learning experience. Mr. Summerhays had numerous years of experience and as the former partner with Senator Orin Hatch, I felt it would allow me to gain a great deal of insight into the legal system in Utah. I argued the case before the Court of Appeals, but by the time it was in the Utah Supreme Court I had already relocated to Elko, Nevada. We prevailed in the Court of Appeals, however, the Supreme Court reversed on the issue of accord and satisfaction. After this case the Utah Legislature revised the Utah Law on accord and satisfaction to effectively overturn the Supreme Court's decision for future cases with similar facts. This case had a great impact on my view of my position in the system as my first trial was the basis for changing the law in the State of Utah.**

d. **Joint lead counsel, and primary counsel in the Court of Appeals.**

2. a. **Christensen v. Correctional Services Corporation**

b. **The Honorable H. Dale Cook**
United States District Court – Central Division Utah
Case No. 90-CV-712 – Filed 08/29/1990
United States Court of Appeals for the Tenth Circuit Court
Case No. 93-4078 – Filed 04/28/1993
David D. Loreman, Attorney for Plaintiff/Appellee
Erik Strindberg & Martha S. Stonebrook, Attorneys for Defendants/Appellants

c. **This case had very special meaning as it was my first Federal Court Jury trial. It was a very involved discrimination case which ended up in a Jury**

Verdict in favor of my client, the Plaintiff. This is also significant as I later found out that this case was the first Plaintiff verdict by jury in a discrimination case in Federal Court in Utah in the previous seven years.

- d. **I was sole counsel for Plaintiff.**
3.
 - a. **Gibellini, et. al. vs. Klindt et. al., 110 Nev. 1201; 885 P.2d 540 (1994)**
 - b. **The Honorable William P. Beko
Vaughan & Hull and David D. Loreman, Attorneys for Respondents
Stanley J. Steiber, Attorney for Appellants**
 - c. **This was my first extensive trial in the State of Nevada. The appeal in this case highlighted an issue that was changed in our statutes shortly after the decision. Although the appeal dealt with several aspects of costs on a judgement, one of the Supreme Court's rulings would cause the Nevada Legislature to change the law. The appeal held that electronic research costs were to be absorbed within attorneys fees and were not recoverable under *NRS 18.005* as costs. *NRS 18.005(17)* was amended by the 1995 Legislature to include electronic research costs within the items allowable to tax as costs. It was good to know that I was part of change in our laws to make way for the future of our profession.**
 - d. **I was trial and appellate counsel for Plaintiffs.**
4.
 - a. **Lewis v. District Court, 113 Nev. 106, 930 P.2d 770 (1997)**
 - b. **The Honorable Charles M. Mcgee
David D. Loreman, Attorney for Real Party in Interest
Martin Crowley, Attorney for Petitioner**
 - c. **This was a case that has maintained as a primary cite for those dealing with domestic cases that involve the UCCJA. I was happy in some respects, but disappointed in the result ultimately of the case. Prior to the Supreme Court granting the stay to hear the request for Writ my client was on the road to seeing his three children for the first time in over 5 years. Because the stay was granted my client was again thwarted by his x-wife from seeing his children. This continued even after the decision was received in 1997. My client was finally able to see his children about 1999. However, the damage had been done and based on information attributable to the x-wife the children hated their father even though they did not know him. I have had continued contact with my client and understand that he has no relationship with his children of any kind and that the children have not fared well with their own contact with the legal system. The impact on me was one that I wanted our system to work for my client and it seemed to fail miserably for not only him, but also the children. This is one of the things I desire to follow up with if given the opportunity to obtain the position in Department 2.**
 - d. **I was sole counsel for Real Party in Interest.**

5.
 - a. **Castle vs. Simmons, 120 Nev. 98; 86 P.3d 1042 (2004)**
 - b. **The Honorable J. Michael Memeo
David D. Loreman, Attorney for Appellant
Easterly Armstrong & Lambert and John E. Lambert, Attorneys for Respondent**
 - c. **This case changed prior law regarding what evidence could be presented in a domestic modification. The prior method of presentation of evidence was to have only that which existed after the prior order and before the present proceeding. This case determined that if the Court or other party was unaware of the evidence of domestic violence at the prior proceeding it could then be presented to the Court in a subsequent proceeding for modification of that prior order. Although I fervently disagree with the Courts conclusion that the Respondent was unaware of any facts in this case I feel vindicated by the fact that after several years with their father, based on the Court's decision to modify, the children were ultimately returned to their mother as the father had again abandoned them. In addition the older children of the parties later recanted their testimony regarding any abuse by my client and the children are rebuilding their relationship with their mother. This case was one where, in my opinion, the facts of the case were not carefully reviewed and the Court made a mistake. The impact of this case is one that anyone who is a judge of domestic cases must make sure they take care in the review of the facts so that children are not damaged by the decision that is made. Knowing the children involved in this case I have seen how this one ill advised modification effected all the children and not just the three children that went to live with their father.**
 - d. **I was sole trial and appellate counsel for Plaintiff.**

21. 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.

Yes

- a. **Between 1986 and 1991 I was a Judge Pro Tem for the Circuit Court, Murray Division, Salt Lake City, Utah handling various small claim matters.**
- b. **Presently I do private mediations in family law matters.**
- c. **Member of Rural Attorneys Arbitration Panel for Fee Disputes with the State Bar of Nevada.**

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

I have done work for reduced fee or no fee for the following:

1. **Elko County Teachers Association.**

2. **Committee Against Domestic Violence - Elko.**
 3. **Nevada Legal Services – Elko.**
 4. **Elko County Welfare Cases.**
 5. **Elko County Juvenile Cases.**
 6. **Elko County Criminal Conflict Cases.**
 7. **White Pine County Conflict Cases.**
 8. **Eureka County Conflict Cases.**
 9. **Judicial Requests on Guardianships as well as being appointed Guardian Ad Litem in matters.**
 10. **Assist with Estate Planning Seminars with the Gerber Law Offices.**
 11. **Volunteered time as counsel for United Way of the Great Basin.**
 12. **Office provided a Pro Bono Clinic prior to 2002 which offered a free legal consultation on various matters and then if parties qualified the office would represent them at a rate based on a sliding scale of their income.**
23. 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.

**American Bar Association – Member
Family Law Section**

Washoe County Bar Association - Member

**Elko County Bar Association – Member
Past President**

**Nevada Bar Association – Member
Fee Dispute Arbitrator
Family Law Section
Committee on Bar Member Insurance**

**Utah Bar Association – Member
MCLE committee creating rules and requirements prior to implementation.**

National Association of Criminal Defense Lawyers – Member

24. 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?
- a. **PowerPoint/Lawyers**
 - b. **Juvenile Defender**
 - c. **Domestic Violence**
 - d. **Live Ethics**
 - e. **Ethics Conflicts**
 - f. **Rule 1.6 Confident**
 - g. **Medicine Lawyers**

- h. **Short sales Foreclosures**
- I. **Estate Income Tax**
- j. **Bankruptcy Issues**
- k. **Ex Parte Communication**
- l. **2009 Legislative Civil**
- m. **Estate & Probate**
- n. **Business Valuations**
- o. **Mortgage Foreclosure**
- p. **SCV Need Intermediate App**
- q. **Military Law**
- r. **District Court Conference**
- s. **E-file - 2nd Judicial District**
- t. **Attorney Liability Insurance**
- u. **Ethics Call Hotline**
- v. **Consumer Law C.L.E.**
- w. **Successful Negotiations**
- x. **Criminal Procedure**
- y. **2011 Civil Legislation**
- z. **Mediation Advocacy**
- aa. **Preparing for Mediation and Conducting Open Session**
- bb. **Masters of Medication**
- cc. **Advocacy in Arbitration**
- dd. **From Law books to Facebook - Social Networking**
- ee. **Successful Mediation in a Nutshell**
- ff. **CIP Conference**

Yes, I am in compliance with continuing legal education as required.

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

I have Professional Liability Insurance.

Business and Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than judicial officer or the practice of law?

Yes, during school (High School thru Law School) prior receiving my license in the State of Utah.

- 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.

I am Trustee on Deeds of Trusts that I have created for my clients. I would only have responsibility if the matters go into a default status. I have no ownership interest in any of the property.

28. 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.
- a. **Law Practice**
 - b. **Owner**
 - c. **Oversight of 100% of the business**
 - d. **Professional Corporation – Only owner**
 - e. **100%**

Civic, Professional and Community Involvement

29. Have you ever held an elective or appointive public office in this or any other state? Have you been a candidate for such an office? If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

Yes.

Elko County Library Board Member – 1994 to 2006

**Appointed
Vice Chairman
Chairman**

Northeastern Nevada Development Authority – 1993 to 1997 (Approximate)

**Appointed
Vice Chairman
Chairman**

Candidate:

1994 – Elko Justice of the Peace

2008 – 4th Judicial District Court, Department 1

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

**Elko Desert Sunrise Rotary – Member since 1993
 President 1996-1997**

**Northeastern Nevada Development Authority – Member
 Chairman 1996-1997**

United Way of the Great Basin – Board Member

Chairman 1996-1998

Boy Scouts of America

Overland District Chairman (two 2 year terms) 1998 – 1999 and 2001 – 2002

Wood Badge Adult Leadership Course Director - 2011

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

None

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

United States Air Force – June 1977 to approximately July 1978 Rank: Cadet

Life Member of Phi Delta Phi

Stake Young Men's Secretary 2009-2011

Ward Mission Leader 2011- Present

Adjunct Professor, Westminster College Salt Lake City, Utah 1987-1990

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

Rotary Award: Paul Harris Fellow - 2011

**Boy Scouts of America – District Award of Merit 2006
Silver Beaver 2007**

Member Emeritus – Elko County Library and Law Library Board 2006

Elko Lions Club – Certificate of Appreciation for Service as Judge in the Family Traditions Elko County Fair and Livestock Show Parade

34. Have you at anytime 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 or 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? Have you voted in the general elections held in those years?

a. Yes

b. Yes

37. List avocational interests and hobbies.

Camping

Hiking

Refereeing High School

Football and Basketball

Boating

Scuba Diving

Wood Working

Scouting

Flying

Skiing

Snorkeling

Water Sports

Genealogy

Conduct

38. 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.

No

39. 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.

Yes. As this was 13 to 14 years ago to the best of my memory I received a private reprimand regarding my communication with my client approximately 1997 or 1998.

40. Have your 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

41. 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

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

Yes; 2008 tax lien from the business regarding tax payments during the 2003 tax year. The matter was resolved with the IRS and we have made the final payment on our installments and the lien is to be released within the next two months.

43. 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

Other

44. 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.

No

45. 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 particular education, experience, personality or character traits you possess or have acquired that you feel qualify you as a good district court judge. In so doing, address both the civil (including family law matters) and criminal processes (including criminal sentencing.)

See Attached Statement.

46. 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.

As anyone can see from my application, I have had many experiences – some positive and some negative. I certainly believe that my life has been much more positive than negative in my dealings with the individuals and the matters in which I have been involved. I will continue to strive to do the best I can for the people I serve. As a District Judge I would expect nothing less of myself than hard work for those within my District in order to do the absolute best job possible.

Our community needs a firm, but compassionate individual in this position as this person will be actively involved with the youth that are experiencing trouble at home as well as trouble with the legal system. Not only have I handled all legal issues involving youth, I have been active with youth activities outside the legal realm. My hope is always that we can reach the youth before they become part of our legal system. If we can do this, we will have the best chance that they will not become part of our legal system as adults.

47. 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.

See Attached. The full document is attached which is 13 pages total. However, the argument in the Brief is 7 pages. The remainder of the document is sent so as to give full information to the panel.

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(CONFIDENTIAL INFORMATION) ON NEW PAGE - -

Attachment A
Employment History

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: David D. Loreman, Chtd.

Phone Number: 775-738-6606

Address: 445 Fifth Street, Suite 210, Elko, Nevada 89801

From: 11/01/94 **To:** Present

Supervisor's Name: N/A

Supervisor's Job Title: N/A

Your Title: Owner

Specific Duties: Legal Services for Clients

Reason for Leaving: N/A

Previous Employer: Vaughan & Hull

Phone Number: No longer in service.

Address: 530 Idaho Street, Elko, Nevada 89801

From: 02/01/91 **To:** 10/31/94

Supervisor's Name: Robert Vaughan

Supervisor's Job Title: Senior Partner

Your Title: Associate Attorney

Specific Duties: Legal Service for Clients

Reason for Leaving: Partners were down sizing firm due to their pending retirement. Both partners are now deceased.

 I request that you do not contact my present employer

STATEMENT IN RESPONSE TO QUESTION 45

It is my belief that my background and experience with issues of abuse, education, my activities with the youth in our community, and my legal experiences will give me a unique perspective in performing the duties of District Court Judge for Department 2.

I was raised for the most part by a single mother who sought out education for herself to provide for my two sisters, brother and me. During the ten years when my mother was married to my stepfather the family suffered through a very abusive time. This was a period in our society, however, when not much was done to protect the spouses or children in abusive homes. During this time of my life, I strived not only to understand the effects of abuse, but to ask myself what I could do to change the cycle. This life experience has brought me great compassion for those who have suffered at the hands of an abuser.

My mother always taught me the benefit of education. To that end, I wanted to combine my passion for flying with my desire to obtain the best education possible. In my sophomore year in high school I focused on my desire and goal to be appointed to the United States Air Force Academy. Although I had more detractors than supporters, I credit my high school math teacher in my sophomore year for giving me the vision to be able to complete the task. After three years of hard work and being diligent in obtaining the appointment, I was honored to receive a call from the office of Congressman Al Ullman, (Chair of the House Ways and Means Committee in Washington, D. C.) offering me his appointment to the Air Force Academy.

The development of my character continued to be molded by roadblocks and trials in my life. Shortly after starting the Academy training, I was injured and my career aspirations suddenly took a tremendous turn in direction. Because of the extent of the injury, I now had to focus on my education and career in a different direction than what I had planned in the prior three years. My choice of law was one that was made shortly after starting my sophomore year at

Westminster College in Salt Lake City, Utah. I always had great respect for the legal profession and I desired to be a part of that profession.

My nature is to be involved in my community and to that end I took a very active role in my college. This included being a member of the student government and also being one of two student representatives on the Tickton Task Force Committee which was charged with implementation of a plan to restructure the school for accreditation. I was also a volunteer as a presenter for the Salt Lake Rape Crisis Center in the schools in the Salt Lake area. After I graduated with honors from college, I determined that I wanted to attend Willamette University College of Law in Salem, Oregon. This choice was made because of my desire to be closer to home as well as the reputation of the school.

As a young attorney, I involved myself with different bar assignments and was a member of the Young Lawyers Section in Utah. I was also on the committee to implement MCLE in Utah. I donated my time as a Judge Pro Tem to the Circuit Court in Murray, Utah. During this time, I also volunteered my services to Utah Legal Aid Service to assist the disadvantaged.

When I arrived in Elko over 20 years ago, I set out to become involved in my new community. I have had the opportunity and honor to be the head of many of the organizations listed in this application at one time or another. This certainly gives me a great and invaluable insight into our community and its needs.

Learning has never ended for me and my legal activities have and are still shaping my legal knowledge. My legal services to those through the Committee Against Domestic Violence program, who are not often trusting of a male based on their experiences, helped me to understand the suffering that can still go on even in today's society regarding treatment of abuse. The appointment by Judge Ames to represent a young boy who needed a guardianship, so that he could receive needed surgery on his hands from the Shriner's Hospital was very fulfilling. In

retrospect I feel strongly that my choice of the legal profession was a positive one because of the truly good things that could be done by an attorney with my background and life experience.

My practice has evolved into one where my primary work load has been representing parties in Juvenile Criminal, Welfare, and other Family Law matters before Department 2. From this I have developed a relationship with Juvenile Probation, CASA, DCFS, Support Enforcement, as well as the other attorneys that practice in Family Law. I was encouraged by individuals from within these organizations to apply for this position and I certainly respect their opinions as to my capacity to perform the duties of this office. I rely also on my activities with the youth in the community outside of my practice of law that allows a unique perspective for this position. I have been a referee in our community since 1995. I coached both of my sons throughout their youth in Baseball and AAU Basketball. I have been involved with the Boy Scouts of America as District Chairman for Overland District, Cub Master for Pack 85 and 850, Charter Representative for Pack 850, Youth Protection Trainer for Overland District, Rural Representative to the Nevada Area Counsel, Merit Badge Coordinator, Course Director for Wood Badge Training Course. Since I came to Elko in 1991 I have been in the front lines with the youth in our community and this I believe no other candidate for this position can state.

I've been married for over 30 years. I love my wife and two boys more than words can express. My life is a success because of them and I have always had their complete support. I desire the position of District Court Judge knowing that I will serve with the correct attitude as well as knowing that the temperament of judicial office takes a special person. Judge Puccinelli was a friend of mine and one of those special people. If appointed, I will certainly aspire to the level of judicial knowledge of my predecessor. The law is one of continuing learning throughout life and it will not cease, even when on the bench. I expect and will demand that attorneys who appear before me be well versed in their cases as well as their ability to teach the court the facts of the situation and the law that governs.

1 CASE NO. CR-6550

2 DEPT NO. 1

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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE**

7

8

9 **RANDY L. ROWLEY,**

10

Appellant,

OPENING BRIEF

11 vs.

12

STATE OF NEVADA,

13

Respondent.

14

15

COMES NOW, Appellant, **RANDY L. ROWLEY**, by and through his attorney
16 of record, **DAVID D. LOREMAN, ESQ.**, of David D. Loreman, Chtd., and hereby
17 submits the following Opening Brief on Appellant's Appeal.

18

DATED this ____ day of February, 2011.

19

20

DAVID D. LOREMAN, CHTD.
445 Fifth Street, Suite 210
Elko, Nevada 89801
(775) 738-6606

21

22

23

By: _____

DAVID D. LOREMAN, ESQ.
Bar No. 3867
Attorney for Appellant

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1 **POINTS AND AUTHORITIES**

2 **LAW:**

3 ***NRS 171.123*** states:

4 1. Any peace officer may detain any person whom the officer
5 encounters under circumstances which reasonably indicate that the
6 person has committed, is committing or is about to commit a
7 crime.

8 2. Any peace officer may detain any person the officer encounters
9 under circumstances which reasonably indicate that the person has
10 violated or is violating the conditions of the person's parole or
11 probation.

12 3. The officer may detain the person pursuant to this section only to
13 ascertain the person's identity and the suspicious circumstances
14 surrounding the person's presence abroad. Any person so detained
15 shall identify himself or herself, but may not be compelled to
16 answer any other inquiry of any peace officer.

17 4. A person must not be detained longer than is reasonably
18 necessary to effect the purposes of this section, and in no event
19 longer than 60 minutes. The detention must not extend beyond the
20 place or the immediate vicinity of the place where the detention
21 was first effected, unless the person is arrested.

22 ***NRS 502.120*** states:

23 1. Each person required to have a license or permit as provided in
24 this title who, while engaged in any activity regulated by this title,
25 refuses to exhibit the license or permit, any wildlife which the
26 person may have in his or her possession, or any weapon,
27 ammunition, device or apparatus in his or her possession which
28 may be used for any activity regulated by this title, upon the
demand of any officer authorized to enforce the fish and game laws
of this State, is guilty of a misdemeanor.

2. Each person required to have a license or permit as provided in
this chapter who, while engaged in any activity regulated by this
title, fails to have the license or permit in his or her possession is
guilty of a misdemeanor. A person charged with violating this
subsection may not be convicted if the person produces in court a
license or permit previously issued to the person and valid at the
time of his or her arrest.

NRS 501.385 states:

Except as otherwise provided by specific statute:

1. Any person who:

(a) Performs an act or attempts to perform an act made unlawful or
prohibited by a provision of this title;

1 (b) Willfully fails to perform an act required of the person by a
2 provision of this title;

3 (c) Obstructs, hinders, delays or otherwise interferes with any
4 officer, employee or agent of the Department:

5 (1) In the performance of any duty while enforcing or attempting to
6 enforce any provision of this title or any regulation adopted
7 pursuant thereto; or

8 (2) While lawfully obtaining or attempting to obtain biological
9 samples of wildlife, hunting, fishing or trapping data, or any other
10 biological data or information relating to wildlife;

11 (d) Violates any order issued or regulation adopted by the
12 Commission under the provisions of this title; or

13 (e) Having been granted a privilege or been licensed or permitted
14 to do any act under the provisions of this title, exercises the grant,
15 license or permit in a manner other than as specified,
16 is guilty of a misdemeanor. An officer, employee or agent of the
17 Department may not obtain or attempt to obtain biological samples
18 of wildlife, hunting, fishing or trapping data, or any other
19 biological data or information relating to wildlife on private
20 property without the consent of the owner of the property.

21 2. Every person who is guilty of a misdemeanor under this title
22 shall be punished by a fine of not less than \$50 nor more than
23 \$500, or by imprisonment in the county jail for not more than 6
24 months, or by both fine and imprisonment.

25 *NRS* 501.375 states:

26 1. Every game warden, sheriff and other peace officer of this State
27 and its political subdivisions shall enforce the provisions of this
28 title and seize any wildlife taken or held in possession in violation
of those provisions.

2. Such an officer may:

(a) With or without a warrant, conduct a reasonable search of any
camp, structure, aircraft, vessel, vehicle, box, game bag or other
package where the officer has reason to believe any wildlife taken
or held in violation of any of the provisions of this title is to be
found, and, for the purpose of such a search, may detain any
aircraft, vessel or vehicle for a reasonable time.

(b) Seize any such wildlife and any gun, ammunition, trap, snare,
tackle, or other device or equipment whose presence indicates that
a violation of any provision of this title has occurred. Except for
property described in *NRS* 501.3857, property seized pursuant to
this subsection may be held only for evidence and may be
recovered by the owner within 1 year after it is no longer needed

1 for that purpose. The Department shall, within 30 days after the
2 property is no longer needed, send a written notice to the owner of
3 the property that informs the owner of the owner's right to recover
4 the property.

3. A dwelling house may be searched only pursuant to a warrant or
as otherwise provided by law.

5 **FACTS:**

6 1. On January 5, 2010, Defendant, Randy Rowley, (hereinafter "ROWLEY") was
7 leaving his residence in Nye County to feed his cows located in Eureka County. (Transcript P.
8 74 LL. 21-24)

9 2. Prior to leaving his residence ROWLEY spent over an hour at his residence.
10 (Transcript P. 71 L. 22)

11 3. Prior to being at his residence ROWLEY had fed his cows located in Nye County
12 and also followed vehicle tracks that were going to various gates on his property. ROWLEY
13 testified that in the past he has found his gates left open which caused damage to a water system
14 on his property as well as allowed wild horses to roam without controls. ROWLEY testified that
15 he did find gates left open on the subject day knowing they had been closed. (Transcript P. 69)

16 4. ROWLEY also testified that he was not trapping on the day in question.
17 (Transcript P. 93 LL. 20-21)

18 5. The Warden Winward testified to checking various traps in the area. Warden
19 Winward also testified at the time he had no evidence that any of the traps he saw were those
20 belonging to ROWLEY. (State's Exhibit 1)

21 6. There was no testimony that any illegal trapping had taken place by Warden
22 Winward. Based on the evidence presented by the prosecution there was no illegal activity other
23 than the allegations found in the Complaint. (State's Exhibit 1 and Transcript)

24 7. Warden Winward never saw ROWLEY at any of the sites of trapping.
25 (Transcript P. 34 LL 17-19; State's Exhibit 1) ROWLEY was leaving his property and closing
26 his gate at the time of contact. Warden Winward testified that the road the ROWLEY was on
27 only had two directions and if traveling in the direction of ROWLEY's vehicle he would only be
28 going toward the property of ROWLEY and for no other reason. From this the only

1 determination is that Warden Winward specifically came to contact ROWLEY which was not
2 random. That he at no time prior to the contact with ROWLEY made any attempt to contact his
3 office to determine if ROWLEY had a license. The rational conclusion from the actions of
4 Warden Winward is that he was staking out ROWLEY for no specific reason. ROWLEY upon
5 seeing Warden Winward was attempting to reenter his property based on the admonition of the
6 lower Court to limit contact with the Warden Winward due to the personality conflict between
7 the two men. (Transcript PP. 79-80 LL 4 - 15)

8 8. Warden Winward stated “hey Randy you got your trappin’ license on you
9 here today?” (State’s Exhibit 1 Time :48 Seconds)

10 9. During the entire contact with ROWLEY, Warden Winward never requested to
11 see ROWLEY’s trapping licence. (State’s Exhibit 1) ROWLEY was not in physical possession
12 of his valid trapping licence on January 5, 2010, however, it was produced to the Court pursuant
13 to *NRS* 502.120 at the time of trial. (Transcript P. 77 LL 14-25; Defendant’s Exhibit 1)

14 10. Upon reentering his vehicle Warden Winward stated on his recording this about
15 the traps he viewed prior to his contact with ROWLEY “Pretty sure that they are his, but I have
16 no proof.” (State’s Exhibit 1 Time 8 minutes :03 seconds)

17 **ARGUMENT**

18 1. **ROWLEY was wrongfully charged and convicted under NRS 501.385.**

19 ROWLEY was charged with two counts filed in a Criminal Complaint on February 11,
20 2010. (Court File) The charges were as follows:

21 COUNT I – Failure to Possess or Refusal to Exhibit License,
22 Permit, Wildlife or Equipment on Demand, in violation of NRS
23 502.120, A Misdemeanor, committed in the following manner, to
24 wit: That on or about January 5, 2010, in Nye County Nevada, said
25 Defendant did willfully and unlawfully fail to have in his/her
26 possession or did refuse to exhibit a license or permit, any wildlife,
27 weapon, ammunition, device or apparatus in his/her possession,
28 upon the demand of any officer authorized to enforce the fish and
game laws of this state, **by failing to exhibit a trapping license;**

COUNT II – Obstructing a game warden, in violation of NRS
501.385, a misdemeanor, committed in the following manner, to
wit: That on or about January 5, 2010, in Nye County Nevada, said
Defendant did willfully and unlawfully obstruct, hinder, delay or
otherwise interfere with any officer, employee or agent of the

1 Department of Wildlife, **by not allowing Game Warden Levi**
2 **Winward to inspect his license;**

3 Both counts only refer to the exhibiting or inspection of the trapping license of ROWLEY. The
4 conviction under Count II is contrary to the legislative intent of the section. The first sentence of
5 *NRS* 501.385 states, "Except as otherwise provided by specific statute." Clearly the issue of
6 whether a license is to be given upon demand is found in *NRS* 502.120 which would preclude the
7 charge under *NRS* 501.385 for the same offense. The interpretation used in the present case
8 would allow a game warden to create a crime where none exists. *NRS* 502.120 provides that
9 should you not have the license on your person that by producing it to the Court the charge would
10 be dismissed. Under the interpretation of the lower Court a game warden could then charge,
11 based on the same facts of failing to produce a license, under *NRS* 501.385 and the holder of a
12 license would have a misdemeanor charge regardless if he showed a valid license to the Court.
13 The Nevada Supreme Court in *Washington, vs. The State of Nevada*, 117 Nev. 735, 738-739, 30
14 *P.3d* 1134 (2001) held that:

15 Generally, we interpret statutes based on their plain meaning,
16 which is intended to reflect legislative intent. Statutes within a
17 scheme and provisions within a statute must be interpreted
18 harmoniously with one another in accordance with the general
19 purpose of those statutes and should not be read to produce
20 unreasonable or absurd results. We also follow the doctrine of
21 lenity, whereby we interpret criminal statutes liberally and construe
22 inconsistencies or ambiguities in the defendant's favor.

23 Thus the second paragraph of *NRS* 502.120 would be a nullity based on the lower Court's
24 interpretation which violates the parameters set forth in *Washington, Supra*.

25 In *Wyman v. State*, 217 *P.3d* 572, 583, 2009 Nev. LEXIS 51, 125 Nev. Adv. Rep. 46
26 (2009) the Nevada Supreme Court stated:

27 This court has established that when it is presented with an issue of
28 statutory construction, it should give effect to the statute's plain
29 meaning. *State v. Catanio*, 120 Nev. 1030, 1033, 102 *P.3d* 588,
30 590 (2004). When this court interprets the plain language of a
31 statute, the court "presume [s] that the Legislature intended to use
32 words in their usual and natural meaning." *McGrath v. State. Dep't*
33 *of Pub. Safety*, 123 Nev. 120, 123, 159 *P.3d* 239, 241 (2007).
34 Thus, when the language of a statute is plain and unambiguous,
35 such that it is capable of only one meaning, this court should not
36 construe that statute otherwise. *Nevada Power Co. v. Public Serv.*
37 *Comm'n*, 102 Nev. 1, 4, 711 *P.2d* 867, 869 (1986).

1 *NRS* 501.375 states that “Except as otherwise provided by specific statute” in the very beginning
2 of the statute. The plain meaning is that if there is another specific statute on the subject matter
3 *NRS* 501.375 would not apply. This would give harmony to the interpretation of the two statutes
4 which is consistent with the decisions in *Washington* and *Wyman* and would make the reading
5 of these two statutes harmonious and not give an absurd result. Therefore, based on the statutory
6 construction and the appropriate application of the two statutes in question, the use of *NRS*
7 501.375 in these circumstances was improper and it is requested that the Appeal be upheld on
8 this issue.

9 2. **If *NRS* 501.375 requires detention the officer has to have reason to believe**
10 **that a crime is being committed or has been committed.**

11 The evidence adduced at trial demonstrated no conduct on the part of ROWLEY that was
12 in anyway illegal. The stop by Warden Winward had no purpose other than to check a license
13 pursuant to *NRS* 502.120. Under *NRS* 502.120, the statute requires that a person “exhibit” his
14 license while he/she is “engaged in any activity regulated by this title.” There was no evidence
15 presented by the State that ROWLEY was engaged in any activity regulated by the title.
16 Although, Warden Winward wanted to deny his own words at the trial, it was clear from the
17 recording of the incident entered as State’s Exhibit 1 at the 8:03 mark, Warden Winward states
18 he has no proof that the traps were in fact ROWLEY’s. Warden Winward also admits that
19 ROWLEY was not trapping at the time of the contact. Thus, the question remains what was
20 Warden Winward’s probable cause for his encounter with ROWLEY. The only issue that came
21 from the encounter was created by the State. To allow this conduct by Warden Winward would
22 be to give a game warden more police power than that of other law enforcement in the State.
23 ROWLEY has an expectation of privacy which was violated for no reason other than Warden
24 Winward wanted to harass ROWLEY under the circumstances of the situation. Warden
25 Winward had no evidence that ROWLEY was engaged in any activity that required Warden
26 Winward’s conduct. As there was no activity that provided for any contact with ROWLEY, there
27 was therefore, no legal basis for ROWLEY to produce, even if he could which he could not, the
28 trapping license at the time of the stop. As Warden Winward created the situation without proper

1 authority the actions of ROWLEY were not unreasonable nor was he in violation of the *NRS*
2 501.385 as has been set forth above. It is respectfully requested that the Appeal be upheld on the
3 grounds so submitted.

4 3. **The State and Defendant had a stipulated resolution filed with the Court that**
5 **was ignored by the Court for the purpose of obtaining the funds on a**
6 **suspended sentence which is on appeal in CR - 6551.**

7 On September 3, 2010, a stipulation to defer prosecution was entered into between
8 ROWLEY and the State, through its representative Andre Lawson. The terms of the Deferred
9 Prosecution Agreement (hereinafter "DPA") were as follows:

- 10 1. That Defendant shall have no new offences during this nine
11 month period that ultimately result in conviction regarding
12 the same or substantially the same acts as alleged in the
13 present case.
- 14 2. Upon successful completion of the nine month period, the
15 above entitled matter shall be dismissed.

16 (Court Records). On September 20, 2010 a conference call was held with the Assistant District
17 Attorney, the Court and Counsel. Within that contact Counsel was informed by the Court that he
18 would not allow the deferred prosecution if the suspended fine, which is the subject of Case No.
19 CR - 6551, was not paid.¹ The Court interfered with the prosecutorial executive powers in this
20 case. The Court has the power to reject recommendations for sentencing; however, the Court
21 does not have the authority to accept or reject DPA as the dismissal of a case is within the
22 executive powers granted to the prosecutors. This Court confronted a situation somewhat similar
23 in *Sandy, vs. The Fifth Judicial District Court*, 113 Nev. 435, 935 P.2d 1148 (1997). The
24 difference is that there would be no plea as upon completion of the terms of the subject DPA the
25 matter would be dismissed. The Court below failed to articulate any basis for its refusal to
26 recognize the DPA other than the fine from another case approximately one and a half years
27 earlier which was never placed on the record. The Court abused its discretion in not allowing the

28 ¹ This was disturbing as Counsel had be notified by the Court staff that the Court was to have a meeting with the District Attorney's
office over this case. As the Assistant District Attorney attempted to rescind his offer because of the same issue of fine, at that time blaming it
on the Division of Wildlife, prior to the meeting with the Court it causes Counsel concern that this was the subject of an exparte meeting with the
Court.

1 DPA to be effectuated. *See Also, United States v. Cowan, 524 F.2d 504, 513 (5th Cir. 1975);*
2 *see United States v. Armstrong, 517 U.S. 456, 464, 134 L. Ed. 2d 687, 116 S. Ct. 1480 (1996)*
3 (the Executive remains the absolute judge of whether a prosecution should be initiated and the
4 first and presumptively best judge of whether a pending prosecution should be terminated.) In
5 this case the DPA would have resulted in either a dismissal which was within the prosecutor's
6 executive power or a trial which then would subject ROWLEY to the sentencing authority of the
7 Judge. Therefore, the lower Court abused its discretion in its actions not allowing the DPA.

8 Upon successful completion of the deferred prosecution there would have been no
9 conviction. This was absolute under the terms of the stipulation. As no conviction would have
10 been entered the suspended sentence on the fine in Case No. CR - 6551 would have not been
11 reinstated. Therefore, the Court's refusal to abide by the terms of the stipulation appears to be
12 motivated by money. The conduct is not proper and it is requested that this Court grant the
13 Appeal herein and implement the stipulation of the parties if this case is not reversed on other
14 grounds.

15 4. **There were insufficient facts to render a conviction under NRS 501.385.**

16 The Criminal Complaint in this case charged two violations based on the same conduct.
17 The Court found insufficient facts to convict ROWLEY on the first charge. As the same conduct
18 would be required for both charges the fact that you are found not guilty on the first charge would
19 require that you can not be found guilty on the second charge. There was no differentiation
20 between the conduct nor were there any additional elements for either charge in the Criminal
21 Complaint. The State claimed ROWLEY to be guilty of violations of both statutes because he
22 did not show Warden Winward his trapping license. One fact that was established at trial and not
23 disputed was that ROWLEY did not have his license on his person. A second and critical fact
24 for the purpose of this case which was disputed by the State even though they presented the
25 evidence was that at no time in the entire conversation with ROWLEY did Warden Winward ask
26 for ROWLEY's license. The question then is how can ROWLEY be guilty of not producing the
27 license when he was not asked for it. This Court can review State's Exhibit 1 and the Court will
28 find at :48 seconds of the tape the only time that license is ever mentioned in the encounter.

1 Warden Winward did not say anything more regarding the license for the remaining 7 minutes.²
2 At 2 minutes 18 seconds in to the recording which is State's Exhibit 1 ROWLEY states "you tell
3 me what I have to give you." Warden Winward never stated anything about the license after the
4 :48 second point even when ROWLEY asked him what he wanted. There is no evidence that
5 Warden Winward ever asked for the license and there is certainly no evidence that ROWLEY
6 withheld the license.

7 The propriety of the stop is very questionable under the facts of this case. The State
8 makes a claim that for some reason Warden Winward is exempt from the provisions of *NRS*
9 171.123. There is no exemption as to any conduct of Warden Winward under *NRS* 171.123. In
10 addition *NRS* 501.375 which is within the statutory scheme of the charge is not only instructive,
11 but also has specific guidelines for searches without warrants. Under *NRS* 501.375 the detention
12 can only be for a reasonable time if the officer has reason to believe a person has been held or
13 taken in violation of the specific title. *NRS* 171.123 states it applies to "any" peace officer.
14 *NRS* 501.375 refers to game wardens, sheriffs or other peace officers in paragraph 1 of the
15 statute that have authority to act. The State's position that Warden Winward did not have to
16 comply with *NRS* 171.123 is contrary to the rules of statutory construction articulated above. By
17 way of an example. If a sheriff was to enforce the laws under the wildlife title as are set forth in
18 *NRS* 501.375 he would still have to abide by the provisions of *NRS* 171.123 and have a
19 reasonable indication that a crime has been committed, is being committed, or is going to be
20 committed prior to the detention. On the other hand if a game warden made the same stop he
21 would not have to have any basis for the detention of the party. This is the absurd result that the
22 Nevada Supreme Court was contemplating in *Washington*. The better reasoning is that all
23 peace officers must comply with *NRS* 171.123. At the time of the stop by Warden Winward
24 there was no evidence that ROWLEY was engaged in any activity for the purpose of *NRS*
25 502.120. The established facts that were not controverted were that ROWLEY was leaving his
26

27 ² Warden Winward never made a determination during his encounter with ROWLEY that ROWLEY had been trapping without a
28 license. If Warden Winward believed ROWLEY to be trapping at the time of the encounter for the purpose of asking for his license he would
then have the ability to arrest or cite for trapping without a license. No such arrest or cite was made which corroborates ROWLEY's position
that he was not engaged in any trapping activity.

1 residence and after seeing Warden Winward and complying with the Court's directive to avoid
2 any conflict was attempting at the time of contact to open his gate back up to return to his
3 residence. The testimony was that he was at his residence for an extended period of time. The
4 State's position would require a Court to determine that if an individual has traps out then he
5 would be subject to a license check at any time under *NRS* 502.102. The plain meaning of
6 "engaged" would then be in question under the statute. If there is an ambiguity it would be
7 interpreted in favor of ROWLEY in this case. *See, Washington, Supra* 739. It would bring
8 about an absurd result if the State's interpretation is followed on the present facts. The mere fact
9 that a license is not on a person is not a crime. i.e, a valid drivers license is not required for an
10 individual walking on the sidewalk or sitting at home. Therefore, it is respectfully requested that
11 the Court grant the Appeal in this case and dismiss the matter.

12 5. **The Court erred in its ruling on allowing the Defense to call a witness at the**
13 **time of trial.**

14 ROWLEY submitted a witness to the District Attorney on August 12, 2010. By way of
15 letter to ADA Lawson the name, address, and telephone number as well as a statement regarding
16 his testimony was mailed and faxed. (Attached hereto as Exhibit "A") *NRS* 174.234 states that a
17 witness maybe identified in two ways. The Defendant is to file and serve a list of witnesses to
18 the prosecutor not less than five days before the date of trial of all witnesses that have not been
19 identified pursuant to *NRS* 174.245. ROWLEY respectfully submits that the witness was
20 identified pursuant to *NRS* 174.245(a) by way of Exhibit "A" and it was error to prevent him
21 from testifying.

22 **CONCLUSION**

23 Therefore, based on the forgoing arguments it is respectfully submitted that the Court
24 herein grant ROWLEY's appeal and grant relief as has been requested in the various alterative
25 arguments as follows:

- 26 1. Dismissal of the criminal complaint;
27 2. Acquittal based on the facts presented and the statutory provisions; and
28

1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of **DAVID D.**
3 **LOREMAN, CHTD.**, and that on the ___ day of February, 2011, I deposited for mailing,
4 postage prepaid, at Elko, Nevada, a true and correct copy to the foregoing addressed to:

5
6 Honorable John P. Davis
District Judge of the Fifth Judicial District Court
7 PO Box 393
Tonopah, Nevada 89049

8 Nye County District Attorney
9 P.O. Box 593
Tonopah, Nevada 89049

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