

No. 15-30012
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

JORDAN JAMES LAMOTT,

Defendant-Appellant.

OPENING BRIEF OF DEFENDANT-APPELLANT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

HONORABLE BRIAN M. MORRIS
UNITED STATES DISTRICT JUDGE, PRESIDING

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OPENING BRIEF OF DEFENDANT-APPELLANT

I. STATEMENT OF JURISDICTION

**A. STATUTORY BASIS OF SUBJECT MATTER
JURISDICTION OF THE DISTRICT COURT**

The United States District Court for the District of Montana has jurisdiction over this case in accordance with Article III, Section 2, Clause 1 of the United States Constitution and 18 United States Code § 3231 because Defendant-Appellant Jordan James Lamott (Mr. Lamott) was charged with the offenses of Count I: Assault by Strangling, in violation of Title 18 United States Code §§ 1153(a) and 113(a)(8), and Count II: Assault Resulting in Serious Bodily Injury, in violation of Title 18 United States Code §§ 1153(a) and 113(a)(6), within the District of Montana.

B. STATUTORY BASIS OF JURISDICTION OF THE COURT OF APPEALS

The Court of Appeals has jurisdiction over this case for the reason that Mr. Lamott has appealed from the final decision of the United States District Court. *See*, 28 United States Code §1291 and Fed.R.Crim.P. 32.

C. APPEALABILITY OF DISTRICT COURT ORDER AND TIMELINESS OF THE APPEAL

The District Court filed and entered its Judgment, as required by Rule 32 of the Federal Rules of Criminal Procedure, on January 6, 2015. (Excerpts of the Record (“ER”) 53-58). A Notice of Appeal was filed on January 20, 2015. (ER 59-61). Therefore, the appeal is timely as having been filed within fourteen days after the date of entry of judgment as required by Fed.R.App. 4(b).

II. STATEMENT OF THE ISSUES

- A. WAS MR. LAMOTT DENIED HIS CONSTITUTIONAL RIGHT TO REQUIRE THE GOVERNMENT TO PROVE EVERY FACT NECESSARY TO CONSTITUTE THE CRIME OF ASSAULT BY STRANGLING BECAUSE THE JURY DID NOT FIND BEYOND A REASONABLE DOUBT THAT HE ASSAULTED HIS GIRLFRIEND?
- B. WAS MR. LAMOTT DENIED HIS CONSTITUTIONAL RIGHT TO HAVE THE JURY CONSIDER EVIDENCE OF HIS VOLUNTARY INTOXICATION BECAUSE THE DISTRICT COURT ERRONEOUSLY INSTRUCTED THE JURY TO DISREGARD EVIDENCE OF HIS VOLUNTARY INTOXICATION?

III. STATEMENT OF THE CASE

A. NATURE OF THE CASE

1. Introduction

This is an appeal from a criminal conviction entered in United States District Court. Mr. Lamott was convicted of, and was sentenced for, the offense of Count I: Assault by Strangling, in violation of Title 18 United States Code §§ 1153(a) and 113(a)(8). The charge is alleged in the Indictment. (ER 1-4). Mr. Lamott presents two arguments on appeal.

First, the District Court failed to instruct the jury that the jury had to find beyond a reasonable doubt that Mr. Lamott “assaulted” his girlfriend. Second, although Count I: Assault by Strangling is a specific intent crime, the District Court, as requested by the Government, erroneously instructed the jury to disregard evidence of Mr. Lamott’s voluntary intoxication.

2. Course of the Proceedings

On July 10, 2014, Mr. Lamott was charged by Indictment filed in the United States District Court for the District of Montana, Great Falls Division, in Cause No. CR 14-053-GF-BMM, with the offenses of Count I: Assault by Strangling, in violation of Title 18 United States Code §§ 1153(a) and 113(a)(8), and Count II: Assault Resulting in Serious Bodily Injury, in violation of Title 18 United States Code §§ 1153(a) and 113(a)(6). (ER 1-2). These crimes are alleged to have occurred on March 28, 2014, at Blackfoot, in the State and District of Montana, and within the exterior boundaries of the

Blackfeet Indian Reservation. (ER 2).

On July 14, 2015, Mr. Lamott appeared in Court and pleaded “Not Guilty” to the alleged offenses. (Clerk of Court Docket Sheet; ER 64). He was detained pending trial. (*Id.*). No Pretrial motions were filed on behalf of Mr. Lamott.

A jury trial commenced on September 15, 2014 and lasted two days. (ER 66-67). The jury found Mr. Lamott guilty of Count I: Assault by Strangling, but was unable to reach a unanimous verdict as to Count II: Assault Resulting in Serious Bodily Injury. (ER 50). The District Court declared a mistrial with regard to Count II. (ER 68). At the Government’s request, the District Court dismissed Count II without prejudice. (ER 51-52).

The District Court held the Sentencing Hearing on January 6, 2015. (ER 70). The District Court sentenced Mr. Lamott to 32 months in prison. (ER 53-58). A Notice of Appeal was filed on January 20, 2015. (ER 59-61).

3. Disposition in the District Court

Mr. Lamott was sentenced to prison for a term of 32 months to be followed by 3 years of supervised release. (ER 54-55).

4. Bail Status of Defendant-Appellant

Mr. Lamott is presently incarcerated at the Federal Correctional Institution in Sheridan, Oregon. He is scheduled to be released on November 2, 2016.

B. STATEMENT OF THE FACTS

1. The Government's Case¹

On March 28, 2014, the victim, J.F., said that she was choked by her boyfriend, Mr. Lamott, on multiple occasions, one of which resulted in unconsciousness. J.F. was transported to the hospital for medical care. Law enforcement took pictures, and J.F. explained to nursing staff and the nurse practitioner that she was choked by her boyfriend, Mr. Lamott.

J.F. was eighteen years old at the time of the assault, and Mr. Lamott was approximately five years older. J.F. and Mr. Lamott had been dating for approximately eight months.

The fight began because J.F. and Mr. Lamott were bickering about mundane relationship issues. Mr. Lamott eventually lost his temper, and he walked over and began to choke J.F. She pushed Mr. Lamott away and ran into the bathroom. But he caught J.F. and grabbed her by the throat and began to choke her again. He then dragged J.F. into the living room and threw her on the bed, all while continuing to choke her. J.F. claimed that she lost consciousness.

J.F. slept until later in the day. After waking, Mr. Lamott asked, "Are you done being a little bitch about shit? Come over here and lay by me." Compliant with the request, J.F. laid down next to Mr. Lamott. When he began

¹

This summary was derived primarily from the Trial Brief of the United States. (See, Doc. 29 at 2-13 in District Court Cause No. CR 14-053-GF-BMM).

demanding sex, she refused. Mr. Lamott became angry and threw J.F.'s clothes out of the house.

At the hospital, J.F. explained that her pain level was a ten out of ten, with ten being the worst. She told nursing staff and the nurse practitioner, Michael McCormick, that Mr. Lamott choked her. McCormick testified that J.F.'s statements were consistent with her injuries. Specifically, the red marks on her neck were consistent with being choked.

When he was interviewed by law enforcement, Mr. Lamott acknowledged that he had been dating J.F. for approximately eight months. He admitted that he and J.F. had been intimate, and J.F. would even stay at his residence a few nights out of the week.

When the interrogation turned to the assault, Mr. Lamott told the agents that he remembered everything about the night. He said that he told J.F. to leave when she began to yell at him, but she refused. Mr. Lamott said that J.F. then went crazy and assaulted him. When J.F. refused to leave, Mr. Lamott stopped, hoping the whole thing would blow over by morning.

Agents then confronted Mr. Lamott with the fact that J.F. had red marks on her throat. Despite claiming to have a crystal clear memory of events, Mr. Lamott backtracked, suggesting that he could not remember some of the events in part because he was drunk. By the end of the interrogation, Mr. Lamott admitted it was possible that he choked his girlfriend.

Although he did not examine or treat J.F., Dr. Ernest Gray, the Clinical

Director for the Blackfeet Community Hospital, testified that strangulation is one of the most lethal forms of domestic violence. Dr. Gray explained how strangulation works, i.e., cuts off oxygen to the brain. Dr. Gray also testified that a victim of strangulation will most likely suffer a high level of pain. In this case, J.F. was given Toradol, which is a pain reliever usually given to patients after surgery.

2. The Jury Instructions at Issue on Appeal

a. As proposed by the Government:

1) United States' Proposed Instruction No. 16:

In order for the defendant to be found guilty of Strangulation as charged in Count I of the Indictment, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant is an Indian person;

Second, the offense was committed within the exterior boundaries of the Blackfeet Indian Reservation;

Third, the defendant assaulted J.F. by intentionally striking or wounding her;

Fourth, the defendant did so by strangling J.F.; and,

Fifth, the defendant is a dating or intimate partner of J.F.

(ER 3 [Source: 18 U.S.C. § 113(a)(8)]).

2) United States' Proposed Instruction No. 17 (first paragraph):

The term strangling means intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

(ER 4 [Source: 18 U.S.C. § 113(b)(4)]).

3) United States' Proposed Instruction No. 21:

Evidence has been admitted that the defendant may have been intoxicated at the time that the crimes charged were committed.

You may not consider evidence of the defendant's voluntary intoxication in deciding whether the government has proved beyond a reasonable doubt that the defendant acted with the intent required to commit Assault Resulting in Serious Bodily Injury or Strangulation.

Voluntary intoxication is not a defense to Assault Resulting in Serious Bodily Injury or Strangulation.

(ER 5 [Source: "'Intoxication,' Section 6.9, Manual of Criminal Jury Instructions for the Ninth Circuit (2010 Edition) (with edits); see also *United States v. Gracidas-Ulibarry*, 231 F.3d 1188, 1195 (9th Cir. 2000) (stating intoxication is only a defense to specific intent crimes); *United States v. Smith*, 520 F.3d 1097, 1101 (9th Cir. 2008) (holding assault with a dangerous weapon is a specific intent crime); *United States v. McInnis*, 976 F.2d 1226, 1233 (9th Cir. 1992) (holding assault resulting in serious bodily injury is a general intent crime); 18 U.S.C. § 113(a)(8); *United States v. Burdeau*, CR-13-101-GF-BMM (Doc. 44 at 10-11)."]]).

b. As given by the District Court:

1) Instruction No. 6:

In order for the defendant to be found guilty of Strangulation as charged in Count I of the Indictment, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant is an Indian person;

Second, the defendant intentionally wounded J.F. by strangling her;

Third, J.F. is a dating partner or intimate partner of the defendant;

Fourth, the defendant did not act in self-defense; and,

Fifth, the offense was committed within the exterior boundaries of the Blackfeet Indian Reservation.

(ER 27).

2) Instruction No. 7:

The term strangling means intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

(ER 28).

3) Instruction No. 15:

Evidence has been admitted that the defendant may have been intoxicated at the time that the crimes charged were committed.

You may not consider evidence of the defendant's voluntary intoxication in deciding whether the government has proved beyond a reasonable doubt that the defendant acted with the intent required to commit Assault Resulting in Serious Bodily Injury or Strangulation.

Voluntary intoxication is not a defense to Assault Resulting in Serious Bodily Injury or Strangulation.

(ER 36).

IV. SUMMARY OF ARGUMENT

Perhaps the most important duty of the trial judge is the careful, accurate instruction of the jury as to the law that they must apply to the facts that they find.

Mosher v. Speedstar Div. of AMCA Int'l, Inc.,
979 F.2d 823, 824 (11th Cir. 1992)

At trial, the District Court failed to carefully and accurately instruct the jury as to the law to apply to the offense of assault by strangling. As a result, the jury never determined that an assault occurred. Furthermore, the offense of assault by strangling was not treated as a specific intent crime.

The underlying statute defining the offense of assault by strangling, 18 U.S.C. § 113(a)(8), specifically requires that the accused “assault” the victim. The Government specifically alleged in Count I of the Indictment that Mr. Lamott “intentionally assaulted” his girlfriend, J.F. However, the jury was not instructed that it had to find beyond a reasonable doubt that Mr. Lamott assaulted J.F by strangling her. Therefore, the crime of assault by strangling was not proven.

The offense of assault by strangling is a specific intent crime. Voluntary intoxication is a defense to a specific intent crime. Nonetheless, the District Court erroneously instructed the jury that it “may not consider evidence of the defendant’s voluntary intoxication.” Thus, Mr. Lamott was denied his constitutional right to have the jury consider evidence of his voluntary intoxication.

V. ARGUMENT

- A. MR. LAMOTT WAS DENIED HIS CONSTITUTIONAL RIGHT TO REQUIRE THE GOVERNMENT TO PROVE EVERY FACT NECESSARY TO CONSTITUTE THE CRIME OF ASSAULT BY STRANGLING BECAUSE THE JURY DID NOT FIND BEYOND A REASONABLE DOUBT THAT HE ASSAULTED HIS GIRLFRIEND.

Standard of Review

Whether jury instructions omit or misstate elements of a statutory crime is a question of law reviewed *de novo*. *United States v. Hofus*, 598 F.3d 1171, 1174 (9th Cir. 2010); ; *United States v. Romo-Romo*, 246 F.3d 1272, 1274 (9th Cir. 2001) (“Whether a jury instruction misstates elements of a statutory crime is a question of law reviewed *de novo*.”).

Reviewability

The District Court never alerted counsel that it had deleted the term “assault”, an essential fact and element of the offense of assault by strangling, from its jury instruction setting forth the elements of the offense. For this reason, Defense Counsel had no reason to believe that error had been committed and was not required to object.

Argument

“[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *In re Winship*, 397 U.S. 358, 364 (1970). Mr. Lamott was charged with the crime of assault by strangling. Because the District Court omitted the critically essential element, “assault,” from the elements jury instruction, the jury did not find beyond a reasonable doubt that he committed an assault. Therefore, Count I: Assault by Strangling must be dismissed.

Count I alleges that Mr. Lamott “intentionally assaulted J.F., an intimate and dating partner of the defendant, JORDAN JAMES LAMOTT, by strangling J.F., in violation of 18 U.S.C. §§ 1153(a) and 113(a)(8).” (ER 2).

Assault is clearly one of the required elements of § 113(a)(8):

Whoever, within the special maritime and territorial jurisdiction of the United States, is guilty of an **assault** shall be punished as follows:

Assault of a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate, by a fine under this title, imprisonment of not more than 10 years, or both.

18 U.S.C. § 113(a)(8) (Emphasis added). Put another way, unless there is an assault, there is no crime.

The Government, with no objection from Defense Counsel, submitted a proposed jury instruction misstating the elements of Count I: Assault by Strangling which must be proven beyond a reasonable doubt:

Third, the defendant assaulted J.F. by intentionally striking or wounding her;

Fourth, the defendant did so by strangling J.F.;

(ER 3). Based on § 113(a)(8) and the allegations in Count I of the Indictment, the correct, proper and legal element would be: **the defendant intentionally assaulted J.F. by strangling her.**

Although there is no discussion of these elements in the record, the District Court apparently recognized that the Government’s proposed elements for Count I: Assault by Strangling were incorrect because it gave the following element to the jury in Instruction No. 6: “Second, the defendant intentionally wounded J.F. by strangling her.” (ER 27). The District Court clearly erred by omitting “assault” from the elements instruction. Indeed, “assault” is included,

not only in the statute and the Indictment, but in all the Ninth Circuit’s pattern jury instructions dealing with crimes of assault. *Compare*, 9TH CIR. CRIM JURY INSTR. 8.3, 8.4, 8.6, 8.7, 8.8, 8.9 and 8.10 (2010).

“[I]t has been said over and over again, that every essential ingredient of the crime must be proven to the satisfaction of the jury beyond a reasonable doubt.” *United States v. Gaudin*, 515 U.S. 506, 519 (1995). Instruction No. 6 relieved the Government of its essential burden of proving that Mr. Lamott assaulted J.F. This “critical question” was never decided by the jury. *Medley v. Runnels*, 506 F.3d 857, 864 (9th Cir. 2007) (*en banc*).

- B. MR. LAMOTT WAS DENIED HIS CONSTITUTIONAL RIGHT TO HAVE THE JURY CONSIDER EVIDENCE OF HIS VOLUNTARY INTOXICATION BECAUSE THE DISTRICT COURT ERRONEOUSLY INSTRUCTED THE JURY TO DISREGARD EVIDENCE OF HIS VOLUNTARY INTOXICATION.

Standard of Review

A party's claim that the district court's instructions did not adequately cover the theory of the defense is reviewed *de novo*. *United States v. Tucker*, 641 F.3d 1110, 1122 (9th Cir. 2011). "Whether the instructions, taken as a whole, adequately cover the defense theory is a question of law reviewed *de novo*." *United States v. Chao Fan Xu*, 706 F.3d 965, 988 (9th Cir. 2013). "[A] defendant is entitled to an instruction concerning his theory of the case if the theory is legally sound and evidence in the case makes it applicable, even if the evidence is weak, insufficient, inconsistent, or of doubtful credibility." *United States v. Washington*, 819 F.2d 221, 225 (9th Cir. 1987). Whether a district court deprives a defendant of his Fifth Amendment right to due process and his Sixth Amendment right to present a defense is a question of law reviewed *de novo*. *United States v. Kincaid-Chauncey*, 556 F.3d 923, 934-935 (9th Cir. 2009); *United States v. Lynch*, 437 F.3d 902, 913 (9th Cir. 2006) (*en banc*) (per curiam). "A criminal defendant has a constitutional right to have the jury instructed according to his theory of the case." *United States v. Anguiano-Martin*, 713 F.3d 1208, 1211 (9th Cir. 2013).

Reviewability

With the exception of a self-defense instruction, Defense Counsel relied on the Government to present proposed jury instructions to the District Court. Although correct for the offense of assault resulting in serious bodily injury, the Government mistakenly proposed that the jury be instructed to disregard evidence of Mr. Lamott's voluntary intoxication as it related to the offense of assault by strangling. Even though Defense Counsel did not object, the erroneous jury instruction infringes on Mr. Lamott's constitutional rights and must be reviewed by *de novo*.

Argument

Mr. Lamott was intoxicated at the time of the incident. Voluntary

intoxication is a defense to a specific intent crime, but not a general intent crime. *United States v. Sneezer*, 900 F.2d 177, 179-180 (9th Cir. 1990). At trial, the Government claimed that assault by strangling is a general intent crime and, therefore, that Mr. Lamott was prohibited from raising the defense of voluntary intoxication. (ER 5). The Government is wrong: assault by strangling is a specific intent crime.

The Government relied on three cases from this Circuit to support its proposed jury instruction that voluntary intoxication is not a defense to assault resulting in serious bodily injury (Count II) and assault by strangling (Count I). (ER 5). These cases support the argument that voluntary intoxication is not a defense to assault resulting in serious bodily injury but they do not support the argument that voluntary intoxication is not a defense to assault by strangling. Furthermore, these cases do not stand for the proposition that the jury specifically be instructed in the negative, i.e., that voluntary intoxication is not a defense. *Compare*, 9TH CIR. CRIM JURY INSTR. 6.9 (2010).

The first case, *United States v. Gracidas-Ulibarry*, 231 F.3d 1188 (9th Cir. 2000), actually supports Mr. Lamott. In *Gracidas*, this Court held that “a conviction for attempt to reenter the United States without the consent of the Attorney General under 8 U.S.C. § 1326” is a specific intent crime which “requires a finding that the defendant consciously desired to reenter the United States without consent.” 231 F.3d at 1198. Therefore, the Court concluded that “the district court committed constitutional error when it failed to instruct the jury as to specific intent.” *Id.*

Judge Morris, by using the mental state “intentionally” (as alleged by the Government in the Indictment) effectively instructed Mr. Lamott’s jury that assault by strangling is a specific intent crime. Purpose and intent mean the same thing and “a person acts purposely when it is his specific intent to cause a certain result.” *Hanna v. Ishee*, 694 F.3d 596, 621 (6th Cir. 2012). “[P]urpose’ corresponds loosely with the common-law concept of specific intent, while ‘knowledge’ corresponds loosely with the concept of general intent.” *United States v. Bailey*, 444 U.S. 394, 405 (1980).

United States v. Smith, 520 F.3d 1097 (9th Cir. 2008), the second case, also supports Mr. Lamott. The *Smith* Court recognized that one of the three elements of the crime of assault with a dangerous weapon is “that the defendant acted with the specific intent to do bodily harm.” *Id.* at 1101. Here, Mr. Lamott had to act with the specific intent to strangle J.F. Furthermore, the *Smith* Court recognized that it would be constitutional error to take a critical issue away from the jury. *Id.* at 1102.

The third case, *United States v. McInnis*, 976 F.2d 1226, 1233 (9th Cir. 1992), restates the settled law that “‘assault resulting in serious bodily injury is a general intent crime which does not require proof of specific intent to injure the victim.” However, *McInnis* did not mention the crime of assault by strangling.

If assault by strangling “is a ‘general intent’ crime, the Government would not need to prove anything about the defendant's [Mr. Lamott’s] state of mind at the time he acted.” *United States v. Jim*, 865 F.2d 211, 212-213 (9th

Cir. 1989). If assault by strangling “is a ‘specific intent’ crime, the Government would have to prove that the defendant [Mr. Lamott] subjectively intended” to strangle his girlfriend. *Id.*

The type of assault alleged here, as defined by common law, is “a willful attempt to inflict injury upon the person of another.” 865 F.2d at 213. Willfulness is defined as “specific intent to do an act forbidden by law.” *Id.* An attempt requires specific intent. *Sneezer*, 900 F.2d at 179-180. Thus, both the element of willfulness and the attempt part of assault combine to make the crime of assault by strangling a specific intent crime.

Specific intent is “[t]he intent to accomplish the precise criminal act that one is later charged with,” *Black's Law Dictionary* 882 (9th ed. 2009). In contrast, general intent is “intent to perform an act even though the actor does not desire the consequences that result[,]” and often “takes the form of recklessness ... or negligence.” *Black's Law Dictionary, supra*, at 882. Although the statutory definition of strangling includes the alternative mental states “intentionally, knowingly, or recklessly,” because the Government charged assault by strangling here as “intentionally,” it is a specific intent crime. (18 U.S.C. § 113(b)(3) and Count I of the Indictment (ER 2)).

Once evidence the accused’s intoxication is presented to the jury, “the capacity to form specific intent at the time of the offense becomes an element which, like all other elements of the crime, must be proved by the government beyond a reasonable doubt.” *United States v. Echeverry*, 759 F.3d 1451, 1454 (9th Cir. 1985). Furthermore, “there is a reasonable likelihood that the jury...

applied the challenged instruction [No. 15] in a way that prevent[ed] the consideration of constitutionally relevant evidence.” *Boyde v. California*, 494 U.S. 370, 380 (1990).

VI. CONCLUSION

“[A]n error in criminal jury instructions requires reversal unless there is no reasonable possibility that the error materially affected the verdict or, in other words, that the error was harmless beyond a reasonable doubt.” *United States v. Pierre*, 254 F.3d 872, 877 (9th Cir. 2001). The Government cannot show that the jury instruction errors here were harmless beyond a reasonable doubt. *United States v. Montoya-Gaxiola*, ___ F.3d ___, No. 14-10255, 2015 WL 4716903 (9th Cir. August 10, 2015) (“The Government’s burden in proving harmless error is a high one.”). The jury did not find Mr. Lamott to be guilty of assault. Therefore, Count I: Assault by Strangling must be dismissed. At a minimum, the case must be reversed and remanded for a new trial at which a new jury would consider Count I: Assault by Strangling as a specific intent crime.

RESPECTFULLY SUBMITTED this 9th day of September, 2015.

JORDAN JAMES LAMOTT

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Opening Brief is in compliance with Ninth Circuit Rule 32. The Brief's line spacing is double spaced. The brief is proportionately spaced, the body of the argument has a Times New Roman typeface, 14 point size and contains less than 14,000 words at an average of 194 words (or less) per page, including footnotes and quotations. (Total number of words: 4,261, excluding tables and certificates).

DATED this 9th day of September, 2015.

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STATEMENT OF RELATED CASES

The undersigned, counsel of record for the Defendant-Appellant, JORDAN JAMES LAMOTT, certifies, pursuant to Ninth Circuit Rule 28-2.6, that there are no related cases pending in this Court known to this Appellant to the best of counsel's knowledge, information and belief.

DATED this 9th day of September, 2015.

JORDAN JAMES LAMOTT

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CERTIFICATE OF SERVICE
When Not All Case Participants are Registered for the
Appellate CM/ECF System

I hereby certify that on September 9, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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