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COURT OF APPEALS

STATE OF NEW YORK

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PEOPLE,

Respondent,

-against-

No. 133

ANTONIO ARAGON,

Appellant.

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20 Eagle Street  
Albany, New York 12207  
September 07, 2016

Before:

CHIEF JUDGE JANET DIFIORE  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE EUGENE M. FAHEY  
ASSOCIATE JUDGE MICHAEL J. GARCIA

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE DIFIORE: Next appeal on the  
2 calendar is number 133, People v. Antonio Aragon.

3 MR. FERGUSON: Good afternoon, Your Honors;  
4 Harold Ferguson for Appellant Antonio Aragon. We'd  
5 like to reserve two minutes for rebuttal.

6 CHIEF JUDGE DIFIORE: You may.

7 MR. FERGUSON: Your Honor, this is what you  
8 would characterize as an ipse dixit complaint.  
9 They're charging him with possession of medical - - -  
10 metal knuckles because the officer says it's metal  
11 knuckles.

12 JUDGE ABDUS-SALAAM: Well, the officer said  
13 it was brass knuckles, right?

14 MR. FERGUSON: It's brass knuckles, metal  
15 knuckles. But there is no physical description of  
16 it. There is nothing in the complaint that indicates  
17 - - -

18 CHIEF JUDGE DIFIORE: How would you  
19 describe it, counsel, to make it sufficient?

20 MR. FERGUSON: A physical description of  
21 what - - - what it looked like. And I don't know  
22 what it looked like because we don't have any  
23 description in it.

24 JUDGE ABDUS-SALAAM: Well - - -

25 JUDGE FAHEY: Well, isn't brass a metal?

1 MR. FERGUSON: Brass is a metal, but it  
2 doesn't indicate that - - - there's nothing in it  
3 that says, other than his conclusion, that this is  
4 brass knuckles. There's no physical description as  
5 to the size of it, whether it was wearable on the  
6 hands.

7 JUDGE ABDUS-SALAAM: Is that required?

8 MR. FERGUSON: I believe it - - - yeah,  
9 some type of physical description is required. And  
10 even if it isn't descr - - - isn't required, there  
11 had to be something that indicated how this police  
12 officer indicated that he knew that this was metal  
13 knuckles. There is not the standard - - -

14 CHIEF JUDGE DIFIORE: And what would that  
15 be based on?

16 MR. FERGUSON: That would be based on his  
17 training, his expertise, his experience with it.

18 CHIEF JUDGE DIFIORE: And recognizing what  
19 a brass knuckle is?

20 MR. FERGUSON: Recognizing what a brass  
21 knuckles is.

22 JUDGE STEIN: Is that required if - - - if  
23 it's common knowledge, it's not a - - - it's not  
24 something that requires special training, whereas  
25 here it is?

1                   MR. FERGUSON: I don't believe this is  
2 common knowledge.

3                   JUDGE STEIN: Well, no, but if it was, then  
4 would you require in - - - in the accusatory  
5 instrument that the officer say how he knew?

6                   MR. FERGUSON: If it was something that was  
7 within common knowledge, then no. But this - - -

8                   JUDGE STEIN: So isn't that really the  
9 question, whether it was or wasn't within common  
10 knowledge?

11                  MR. FERGUSON: And, Your Honor, as my  
12 appendix shows you, if - - - if I was so certain as  
13 to what constituted medical - - - metal knuckles, I  
14 wouldn't have produced an appendix of pictures of  
15 items that are sold as metal knuckles. I would have  
16 brought a display of items here, laid them out before  
17 the court, and said some of these might be medical -  
18 - - metal knuckles, some of them aren't. I can't  
19 tell you, based on what I pulled up from Amazon.com,  
20 what of those items constitute weapons and what don't  
21 because there is no definition.

22                  JUDGE RIVERA: Well, it - - - it's an icon  
23 - - - it's sort of iconic, right? I mean all you  
24 pointed out is that there's familiarity with metal  
25 knuckles, that they get used for all different kinds

1 of - - -

2 MR. FERGUSON: They're used for all - - -

3 JUDGE RIVERA: - - - things on bags, on  
4 boots, on belts, on whatever. But for purposes of  
5 the statute and what the statute means, brass is  
6 telling you - - -

7 MR. FERGUSON: It's brass.

8 JUDGE RIVERA: - - - it's metal and it's a  
9 particular type of metal. It's telling you knuckles,  
10 which is referring to a part of the body, is it not?

11 MR. FERGUSON: But then again, Your Honor,  
12 all of the items in the appendix are listed as brass  
13 knuckles. They're listed and they're sold under that  
14 description. Some of them have things that could be  
15 worn on the hand. Some of them aren't. Some of them  
16 have holes in them, some of them don't. Some of them  
17 could fit in a pocket, some don't. We don't know  
18 from this particular complaint what this item looked  
19 like, other - - -

20 JUDGE GARCIA: Counsel, counsel, this is a  
21 sufficiency case, right, for a complaint?

22 MR. FERGUSON: That is correct.

23 JUDGE GARCIA: Not - - - not an  
24 information. It's not really an issue, as some of  
25 these other cases are, Talbert, I think, or the

1 others, of is this a lampshade or are these brass  
2 knuckles? I mean you can make that motion, you can  
3 have the things examined, and that's - - - you could  
4 see does this fall within the definition of the  
5 statute. This is a pure sufficiency of the document  
6 case, right.

7 MR. FERGUSON: It's pure sufficiency of the  
8 document - - -

9 JUDGE GARCIA: It's not really a question  
10 of if we put these things on the table is it an  
11 earring or are they brass knuckles. So in that  
12 context of this complaint, which is a different  
13 standard than information, right? Is this  
14 sufficient? Why isn't it?

15 MR. FERGUSON: It isn't for there - - -  
16 there is no physical description of the item.  
17 There's nothing that indicate how this officer came  
18 to the conclusion that this item constituted medical  
19 (sic) knuckles, and there's nothing talking about his  
20 training, experience, or expertise in - - -

21 JUDGE ABDUS-SALAAM: Well, what would have  
22 said, that it weighed, you know, something? I picked  
23 it up and it weighed like it was metal instead of,  
24 you know, plastic - - -

25 MR. FERGUSON: That - - - that it - - -

1 JUDGE ABDUS-SALAAM: - - - that was painted  
2 to look like metal or - - -

3 MR. FERGUSON: That it was something that  
4 was wearable on the hand that fingers could fit  
5 through the holes, that it could be used as a weapon,  
6 something of that type of description. I mean you -  
7 - - you see the distinction between - - -

8 JUDGE ABDUS-SALAAM: Well, there are  
9 probably some fingers on some really small people  
10 that would fit through small holes, you know. So  
11 whether it would fit on anybody's hand or just a  
12 hand?

13 MR. FERGUSON: I think that it would fit on  
14 a hand, a sort of standard hand.

15 JUDGE ABDUS-SALAAM: Well, what's a  
16 standard hand?

17 MR. FERGUSON: Well, yeah, that - - - that  
18 could - - -

19 JUDGE RIVERA: Well, why isn't that  
20 standard brass knuckles? That's the point.

21 JUDGE ABDUS-SALAAM: Right.

22 MR. FERGUSON: Because there - - - again,  
23 there's nothing in here that tells that that's what  
24 it is other than it's - - -

25 JUDGE RIVERA: Because Amazon.com sells you

1 boots that have brass knuckle little iconic graphs on  
2 it?

3 MR. FERGUSON: But they're all sorts of  
4 items. In other words, you're - - -

5 JUDGE FAHEY: The thing is, though - - -

6 MR. FERGUSON: - - - referring to something  
7 that no stat - - - that has never been defined by an  
8 appellate court, that was not defined by the  
9 legislature, and things change over time. What  
10 constituted something a hundred years ago and was  
11 known as that is not what it looks like today. A  
12 hundred years ago, none of the items that I have in  
13 my appendix would have existed. They all exist now,  
14 and they're sold under the term brass knuckles. We  
15 do not know what the item looked like that was in  
16 his, my client's pocket. And going back to Judge  
17 Garcia's question, we don't know how he came to that  
18 conclusion. Did he have any experience?

19 JUDGE GARCIA: But going back to  
20 sufficiency point as opposed to is this really this  
21 or is not, right, as some of these other cases like  
22 that, sufficiency seems, to me, aimed at two things,  
23 right, double jeopardy, and I don't think the  
24 argument here - - - one, it's a complaint, so he  
25 would never be tried on this, I think. It could

1 never go to trial on this complaint. But double  
2 jeopardy, there's time, there's place, there's item.

3 MR. FERGUSON: Right.

4 JUDGE GARCIA: And - - - and notice to  
5 prepare a defense, so he - - - I mean it couldn't go  
6 to trial on this, so the notice to prepare a defense  
7 claim, I don't know where that fits in here, but  
8 don't you have enough notice to prepare a defense,  
9 and don't you have enough information to protect the  
10 - - - the defendant against double jeopardy issues  
11 based on this complaint?

12 MR. FERGUSON: I don't - - - I don't  
13 believe so, Your Honor. And I think the distinction  
14 is if you take a look at this court has required an  
15 explanation in - - - in Dreyden of - - -

16 JUDGE ABDUS-SALAAM: That - - - that  
17 involved - - -

18 MR. FERGUSON: - - - what was the officer's  
19 expertise - - -

20 JUDGE ABDUS-SALAAM: Counsel, counsel.

21 MR. FERGUSON: - - - in an area.

22 JUDGE ABDUS-SALAAM: Well, that - - - that  
23 involved a different type of - - -

24 MR. FERGUSON: It offers - - -

25 JUDGE ABDUS-SALAAM: - - - per se weapon,

1 right, the gravity knife. And that is something that  
2 you can't look at and say whether it's a gravity  
3 knife. Most people can't look at it and say that.  
4 You have to do something with it. You have to flick  
5 it; you have to do something to make sure that it  
6 does come out like a gravity knife. And so someone  
7 like a police officer who might have some experience  
8 with that - - - I don't think I could just look at  
9 somebody's knife and say, oh, that's a gravity knife.

10 MR. FERGUSON: And my position is you can't  
11 look at something and tell - - - I can't look at  
12 something and tell you whether it is or isn't brass  
13 knuckles. But, Your Honor, taking the gravity knife  
14 away, I think all of Your Honors, if a package of  
15 marijuana was laying in front of you, you would be  
16 able to say that's marijuana by looking at it.

17 JUDGE PIGOTT: Not me.

18 JUDGE ABDUS-SALAAM: Not me.

19 MR. FERGUSON: All right, but you're - - -  
20 the courts have all - - -

21 JUDGE FAHEY: I'm - - - I'm taking the  
22 fifth on that. I'm not - - - I'm not admitting that,  
23 you know.

24 MR. FERGUSON: But consistently the courts  
25 have - - - the courts throughout this state have

1 required an accusatory instrument concerning drugs  
2 that there has to be something that indicates that by  
3 the officer's training, expertise, and experience  
4 that he can say that this item constituted drugs.  
5 That's what we're asking for here. There is nothing  
6 in this particular complaint - - -

7 JUDGE RIVERA: Right. Well - - - well, but  
8 the word marijuana doesn't tell you what any of the  
9 nature or characteristics of it. So it's not going  
10 to help you to just say that, right? If you just see  
11 the bag, it's not going to help you. But knuckles is  
12 telling you something about the item and brass is  
13 telling you the type of metal alloy.

14 MR. FERGUSON: But that's - - - that's - -  
15 -

16 JUDGE RIVERA: Why isn't that enough?

17 MR. FERGUSON: But that's simply a  
18 conclusory term. All it is is a conclusory term  
19 here. It's something that hasn't been defined. If  
20 this court had provided the definition as to what  
21 this item was, then maybe it's different. But we  
22 don't have that, and all you have here is a complaint  
23 that makes a conclusory assertion that what I  
24 recovered was brass knuckles and - - -

25 JUDGE ABDUS-SALAAM: Counsel, what if - - -

1 what if the complaint said that I recovered a silver  
2 chalice? What would that require? What - - - what  
3 description, other than it's a chalice and it's  
4 silver, would that require?

5 MR. FERGUSON: First of all, that - - -  
6 it's not - - - that's not a - - -

7 JUDGE ABDUS-SALAAM: I know it's not a  
8 weapon, but, you know - - -

9 MR. FERGUSON: It's not a weapon, but that  
10 - - - a chalice has a specific term and a chalice is  
11 a chalice. Here, there are many things that have  
12 been characterized as metal knuckles or brass  
13 knuckles that don't constitute a weapon.

14 CHIEF JUDGE DIFIORE: Thank you, sir.

15 MR. FERGUSON: Thank you, Your Honor.

16 CHIEF JUDGE DIFIORE: Counsel.

17 MR. MORROW: May it please the court,  
18 Philip Morrow for the People. In light of  
19 defendant's waiver of prosecution by information, the  
20 misdemeanor complaint here is judged against the  
21 reasonable cause standard. The officer's factual  
22 allegation that he recovered one set of brass metal  
23 knuckles from defendant's front pants pocket  
24 satisfies the standard as it provided reasonable  
25 cause to believe the defendant committed criminal

1 possession of a weapon in the fourth degree by  
2 possessing prohibited brass metal knuckles.

3 Defendant claims that the misdemeanor  
4 complaint was deficient because it did not include  
5 more detail about the brass metal knuckles, but metal  
6 knuckles has a commonly understood and obvious  
7 meaning, such that little more need be or could be  
8 said.

9 CHIEF JUDGE DIFIORE: What about counsel's  
10 point about all these different iterations of metal  
11 knuckles when you - - - he goes on the internet and  
12 pulls up all these things?

13 MR. MORROW: Your Honor, the - - - the  
14 printout in defendant's appendix, I think the - - -  
15 several of the judges pointed out that all of these  
16 different products actually have the same motif or  
17 image on them, such that, you know, it actually  
18 reinforces the idea that people understood what is  
19 meant by metal knuckles. And another important thing  
20 to consider is that these things aren't being sold as  
21 brass knuckles. It's a brass knuckles luggage tag or  
22 handbag or shoe, and, you know, I don't think there's  
23 any risk of, you know, people confusing, you know, a  
24 bar of soap with an actual set of metal knuckles.  
25 And, you know, the fact that - - -

1                   JUDGE FAHEY: I - - - I kind of viewed the  
2 items as similar to items you would see where there  
3 are knives and then there are plain knives. And  
4 these are - - - these things seem to be combs,  
5 luggage tags, bottle openers, iPhone cases, and then  
6 fashion items like boots, shoes, belt buckles, and  
7 cufflinks. Those are the things I saw and those  
8 items for sufficiency purposes, as Judge Garcia was  
9 saying, seem to be clearly not what we're talking  
10 about here.

11                   MR. MORROW: Exactly. And as Judge Garcia  
12 pointed out, this - - - this case concerns the  
13 sufficiency of the misdemeanor complaint.

14                   JUDGE PIGOTT: If - - - if he had one of  
15 these luggage tags in his right front pocket and he  
16 was arrested for possessing brass knuckles, would  
17 that be sufficient?

18                   MR. MORROW: Well, if he - - - if he was -  
19 - - if he possessed the luggage tag in his pocket,  
20 the complaint would be sufficient as it would allow  
21 him to prepare a defense and it would protect against  
22 double jeopardy. But the solution there would be for  
23 him to, you know, have the court inspect the item and  
24 say this is clearly not a weapon. It's not a set of  
25 metal knuckles. And then, ultimately, whether

1 something is metal knuckles is a question for the  
2 fact finder. So here, we're at the beginning - - -

3 JUDGE PIGOTT: Could he go to trial?

4 MR. MORROW: Yes, he would go to trial.

5 JUDGE PIGOTT: On - - - on a luggage tag.

6 MR. MORROW: And he - - - you know, he  
7 would almost certainly win.

8 JUDGE PIGOTT: Almost certainly. Well, I  
9 mean, this is - - - to pick up on your opponent's  
10 point, I mean, jurisdictionally you've got to  
11 describe it sufficiently so that I'm going to trial  
12 on something that's a real crime, not something that  
13 I've got to make an affirmative defense of.

14 MR. MORROW: Exactly, but, you know, here,  
15 given that metal knuckles has a well-understood  
16 meaning, you know, I think that that was enough to  
17 allow - - - allow the case to proceed. You know,  
18 this - - - this case is different than a gravity  
19 knife where you have a - - - you know, a technical  
20 and complicated penal law definition. You can't tell  
21 whether a knife's a gravity knife unless you test it,  
22 so, you know, there really - - - without, you know,  
23 that additional detail in the complaint, you wouldn't  
24 be able to tell whether it was a legal knife that  
25 anyone could have or an illegal knife.

1           And, you know, the controlled substance  
2 cases, if you just had a white powder in a bag, that  
3 doesn't give you reasonable cause to believe that,  
4 say, it was cocaine. There might have to be a little  
5 bit more to - - - to meet that standard. And, you  
6 know, the fact that there's no definition of metal  
7 knuckles in the penal law reinforces the idea that  
8 people - - - people understand what it is. And, you  
9 know, when the - - - the legislature amended the  
10 penal code - - - code to ban the metal knuckle knives  
11 and plastic knuckles, they used the term metal  
12 knuckles in the definition of those other weapons,  
13 you know, understanding that people would know what  
14 they meant.

15           And I would say, too, that the absence of  
16 authority, you know, from the appellate courts  
17 reinforces the idea that people understood what is  
18 meant by this term. But, you know, the - - - the  
19 bottom line here is that the complainant had to give  
20 defendant notice of the charges and protect against  
21 his right to double jeopardy.

22           CHIEF JUDGE DIFIORE: If the defendant had  
23 exercised his right to go to trial, you would have  
24 converted that accusatory instrument into an  
25 information?

1                   MR. MORROW: The accusatory instrument  
2 actually was converted to an information before  
3 defendant pled guilty. He waived his right to  
4 prosecution by information at the plea proceeding so  
5 that actually did happen here.

6                   CHIEF JUDGE DIFIORE: And did the  
7 description remain the same?

8                   MR. MORROW: The description did remain the  
9 same, yes. But, you know, in the cases that are  
10 discussed in the briefs, Singleton and Laguna, I  
11 believe, the defendants in those cases challenged  
12 that what they possessed was actually metal knuckles,  
13 and the court inspected the item and then rendered a  
14 decision. So there were options available here to  
15 the defendant if he - - -

16                   CHIEF JUDGE DIFIORE: Were they available  
17 for inspection?

18                   MR. MORROW: They - - - in his demand to  
19 produce defense counsel requested the right to  
20 inspect them, yes, and that would have been an option  
21 available to him.

22                   JUDGE RIVERA: Why - - - why isn't the  
23 defendant correct that it's insufficient because the  
24 officer failed to give a - - - a reason why the  
25 officer was certain that these were brass knuckles

1 within the meaning of the statute? Why - - - why  
2 doesn't the officer have to make a reference to  
3 training or experience? That it's just so common  
4 everybody knows what this is?

5 MR. MORROW: I think that's it. There's no  
6 particular training or experience that an officer  
7 would need to make that determination because it has  
8 a well-understood and common meaning. And just to  
9 take an example, if - - - you know, if it was illegal  
10 to possess a tennis ball and an officer said I  
11 recovered a tennis ball, you wouldn't need to  
12 describe it because everybody knows what it looks  
13 like. It's, you know, yellow, fuzzy, it's got the  
14 lines on it. And here, people understand metal  
15 knuckles as, you know, a metal weapon that's worn  
16 across the knuckles. So I don't think that you would  
17 - - - I don't know what training or experience you  
18 could even have to - - - to make that in the - - - in  
19 the complaint. It's definitely not like a gravity  
20 knife. But if Your Honors have no further questions,  
21 we rest on the brief. Thank you.

22 CHIEF JUDGE DIFIORE: Thank you, sir.

23 Mr. Ferguson.

24 MR. FERGUSON: Just two points. What's  
25 coming up next is the billy club case that you're

1 dealing with, and there, there was a physical  
2 description that was contained, and that was another  
3 undefined weapon in the particular statute. And yet,  
4 there there was a physical description. We're asking  
5 for the same thing too.

6 And the other thing is when Your Honors go  
7 back to chambers, if you would look through my  
8 appendix, each of you individually, and look at the  
9 hundred items and ask yourselves which of these items  
10 are a weapon and which aren't, if there would be a  
11 unanimity amongst that you could determine that each  
12 of those items was or wasn't a brass knuckle weapon,  
13 then I would have no issue.

14 JUDGE STEIN: Doesn't that - - - doesn't  
15 that go to - - - to the People's argument that if you  
16 - - - if you question as to whether that specific  
17 item was, you could have it inspected and challenge  
18 that item?

19 MR. FERGUSON: No, Your Honor. I think  
20 what it goes down to, there had to be some type of  
21 description so that he was able to defend himself,  
22 and we didn't have that here. All we had was the  
23 conclusion of an officer with nothing else. He said  
24 it's metal knuckles because I say so. Your Honors, I  
25 don't believe that's sufficient.

1                   JUDGE RIVERA:  If he just describes it, if  
2                   the officer just describes it without referring to  
3                   training, would that have been enough?

4                   MR. FERGUSON:  It would be a lot - - -

5                   JUDGE RIVERA:  Or gives more of a  
6                   description than what he - - - they gave here?

7                   MR. FERGUSON:  More than the description,  
8                   we'd be in a lot tougher position, but I think you  
9                   needed both, that he has to have some type of  
10                  experience so that he could indicate this was or  
11                  wasn't.  But I believe you needed at least a  
12                  description and something that indicated how he knew.  
13                  Thank you, Your Honor.

14                  JUDGE RIVERA:  So some - - - someone  
15                  without law enforcement training will not know what  
16                  brass knuckles are?  Is that what you're saying?

17                  MR. FERGUSON:  I know for a fact that as I  
18                  went through all of this I can't tell you which of  
19                  those items are weapons and which aren't.  I can have  
20                  a pretty good idea as to some of them - - -

21                  JUDGE RIVERA:  Well, many things can be  
22                  used as weapons.  Of course - - -

23                  MR. FERGUSON:  Many things are - - -

24                  JUDGE RIVERA:  - - - these per se brass  
25                  knuckle weapons, right?

1 MR. FERGUSON: Right. But I mean even  
2 things like what are carried that you can have as  
3 your iPhone cover I can envision sticking my fingers  
4 through and using it as a weapon and yet it's  
5 marketed as a brass knuckles iPhone case. So if I  
6 after looking through - - -

7 JUDGE ABDUS-SALAAM: Counsel, can - - -  
8 counsel - - -

9 MR. FERGUSON: - - - and becoming an expert  
10 - - -

11 JUDGE ABDUS-SALAAM: Counsel, following up  
12 on what Judge Rivera just mentioned, if you were the  
13 victim of a crime that was committed by someone with  
14 brass knuckles and you - - - you described what you  
15 were hit with, you would say they wouldn't know what  
16 the brass knuckles were because they don't have  
17 experience and training with that because they've  
18 never been a victim of brass knuckles - - -

19 MR. FERGUSON: No, because it was how it  
20 was used. It was something that was worn on the hand  
21 that he was able to use in an offensive manner that  
22 had no other reasonable use. Here, we don't know  
23 whether it did or did not have a reasonable use. We  
24 did not - - - we do not know whether this particular  
25 item was wearable on the hands. In the situation,

1 Judge Abdus-Salaam, that you're talking about, you  
2 were struck by the person wearing the metal device on  
3 that person's hand. You know how it was used. You  
4 would be able to describe it. Here, we don't know  
5 whether this item fit on his hand or not.

6 CHIEF JUDGE DIFIORE: Thank you, sir.

7 MR. FERGUSON: Thank you, Your Honor.

8 (Court is adjourned)

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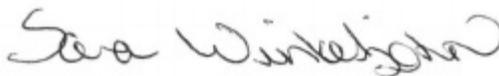
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C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Antonio Aragon, No. 133 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: \_\_\_\_\_

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Date: September 13, 2016