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5 United States Court Reporter  
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9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF MONTANA**  
**HELENA DIVISION**

11 UNITED STATES OF AMERICA, )  
Plaintiff,) No. CR 15-7-H-DWM  
12 vs. )  
 ) **VOLUME 4**  
13 JOSEPH DAVID ROBERTSON, ) **TRANSCRIPT OF JURY TRIAL**  
Defendant.) **AND VERDICT**  
14 \_\_\_\_\_ )

15  
16 **BEFORE THE HONORABLE DONALD W. MOLLOY**  
**UNITED STATES DISTRICT COURT JUDGE**  
17 **FOR THE DISTRICT OF MONTANA**

18 Russell Smith United States Courthouse  
19 201 East Broadway  
Missoula, Montana 59802  
20 Thursday, April 7, 2016  
09:08:01 to 10:18:10  
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24 Proceedings recorded by machine shorthand  
25 Transcript produced by computer-assisted transcription

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**APPEARANCES**

For the Plaintiff:

MR. BRYAN R. WHITTAKER  
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Federal Defenders of Montana  
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Helena, Montana 59624

REPORTER'S NOTE: "Uh-huh" and "Um-hmm" indicate affirmative responses. "Huh-uh" and "Hm-umm" indicate negative responses.

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PROCEEDINGS

(Open court.)

(Defendant not present.)

(Jury not present.)

THE COURT: Good morning. Please be seated.

(Mr. Donahoe exited the courtroom.)

THE COURT: We have a departing lawyer.

(Mr. Donahoe entered the courtroom.)

MR. DONAHOE: Please come in. Please come in.

THE COURT: So we have a question from the jury, and the question is, "Can we get the large map that was put on the tripod with Ponds 1 through 9 indicated on it?"

I think that's Exhibit 42.

MR. WHITTAKER: Forty-two, yep.

(Defendant present.)

THE COURT: Any problem with that?

MR. DONAHOE: No. It's electronically, I know it's in; I think, yeah.

THE COURT: Right.

MR. WHITTAKER: We're happy to send it back, Your Honor.

THE COURT: All right. Well, sorry to get you over here for that, but we need to make the record.

So we will send that in with an instruction from me that says -- repeats the question and says the exhibit is the



1 same as electronic exhibit -- or Exhibit 42.

2 MR. NELSON: Yes.

3 THE COURT: Any problem with that?

4 MR. DONAHOE: No, Your Honor. Thank you.

5 THE COURT: All right. Thank you.

6 We'll be in recess until we get the next note.

7 (Recess taken from 09:09:27 to 09:16:45.)

8 (Open court.)

9 (Defendant present.)

10 (Jury not present.)

11 THE COURT: Be seated, please.

12 Mr. Donahoe, I have been advised that Mr. Robertson  
13 has some matter he wants to address to the Court. I indicated  
14 through my law clerk I would not have any *ex parte*  
15 communication with him in the courtroom or the entire  
16 prosecuting team, Mr. Robertson, and you. Anything he says is  
17 fair game for the government, so I don't know what it is he  
18 wants to say or why he wants to say it.

19 MR. DONAHOE: Well, it's something that I was  
20 advised of this morning in the past -- it's something I was  
21 advised of this morning in the past five minutes or ten  
22 minutes. And Mr. Robertson is insistent that the Court be  
23 made aware of it, and I think that --

24 THE COURT: Well, you know what it is.

25 MR. DONAHOE: I do.

1 THE COURT: Are you concerned at all that he may be  
2 treading in areas that he shouldn't go if he were to accept  
3 your advice?

4 MR. DONAHOE: Well, it's not that kind of concern.  
5 I understand Your Honor's question. It's more I have an  
6 opinion on it. But Mr. Robertson is insistent.

7 It's in the nature of being observed or watched by a  
8 government agent through the course of the proceeding,  
9 something of which I was not aware because my attention was  
10 focused on the trial taking place. He wants to register a  
11 complaint.

12 THE COURT: All right. Well, I am advising  
13 Mr. Robertson that I don't know what you've discussed with  
14 your attorney. I'm not interested in knowing what you've  
15 discussed with your attorney. But I will tell you that it is  
16 highly unusual and that I think if you say something that  
17 might be incriminating, there is no protection afforded to you  
18 at this time.

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: So having said that, if you want to  
21 use -- speak into the microphone.

22 THE DEFENDANT: Thank you, Your Honor.

23 Agent Marsden, the gentleman here --

24 THE COURT: I know who he is.

25 THE DEFENDANT: -- he's been sitting where Carri is

1 sitting now --

2 THE COURT: Yes.

3 THE DEFENDANT: -- leaning forward, taking notes.

4 THE COURT: Yes.

5 THE DEFENDANT: And we have great listening devices.

6 My attorney is sitting 7 feet away from him.

7 This area over here is for these people. This area  
8 over here, I understand, is for the defense team.

9 THE COURT: You have a mistaken understanding.

10 THE DEFENDANT: Okay. I'm sorry, then. I just  
11 wanted --

12 THE COURT: It's an open courtroom, and anybody can  
13 be here except those who are excluded.

14 THE DEFENDANT: Okay.

15 THE COURT: And Mr. Marsden was not a witness in the  
16 case --

17 THE DEFENDANT: No, sir.

18 THE COURT: -- so he was not excluded from the  
19 courtroom.

20 THE DEFENDANT: No, sir.

21 THE COURT: I watched him. When there would be an  
22 exhibit, he would move over and look at whatever the exhibit  
23 was, and then he'd move back to where he was. I don't think  
24 you have a conspiracy theory, and I don't think we need to be  
25 concerned about that. Is that what you had to say?

1 THE DEFENDANT: It is, Your Honor. As long as it  
2 goes on the record.

3 THE COURT: Well, it's on the record. But the  
4 courtroom is open, and --

5 THE DEFENDANT: I understand that.

6 THE COURT: -- I did not observe anything that  
7 Mr. Marsden was doing that was either unusual or improper.

8 THE DEFENDANT: Okay. There is monitors on this  
9 side, the same as ours. I am not aware of -- they don't have  
10 anything separate on their screens than we do, do they?

11 THE COURT: No.

12 THE DEFENDANT: Okay. Thank you, Your Honor.

13 THE COURT: And, in fact, when something is up on  
14 their screen and your screen, it's on those two big screens  
15 and on my screen and on her screen and on her screen.

16 THE DEFENDANT: Thank you, Your Honor, for your  
17 time.

18 THE COURT: All right. Is that it?

19 MR. DONAHOE: That's it.

20 THE COURT: All right. We're in recess.

21 (Recess taken from 09:21:18 to 09:58:28.)

22 (Open court.)

23 (Defendant present.)

24 (Jury not present.)

25 THE COURT: Be seated, please.

1           So we have been advised by the foreperson that the  
2 jury has arrived at a verdict.

3           So I'll explain to you what we'll do. We'll come  
4 in. We'll have the jury come in. We'll all stand while they  
5 come in. Once we're here and seated, I'll ask the foreperson  
6 if they have arrived at a unanimous verdict. And assuming the  
7 answer to that question is yes, I'll ask the foreperson to  
8 hand the verdict form to the bailiff, who, in turn, will give  
9 it to me. And I will read it over to make sure it is  
10 completed in its entirety.

11           If it is not, I will tell them, "The verdict form  
12 hasn't been completed. You'll have to go back and finish."  
13 If it is dated and signed and completed, then I'll ask the  
14 clerk to publish the verdict, and what she will do is read the  
15 verdict in its entirety, the pertinent parts.

16           And after she reads the verdict, she will ask them,  
17 "Ladies and gentlemen of the jury, is that your verdict as  
18 read?"

19           Assuming they say yes, or all of them say yes, then  
20 I will ask either Mr. Nelson or Mr. Whittaker, "Do you want to  
21 have the jury polled?"

22           If the answer is yes, then the clerk will call each  
23 individual juror by name and ask, "Is that your verdict as  
24 read?" If the government doesn't want to have the jury  
25 polled, then, Mr. Donahoe, I'll ask you if you want to have

1 the jury polled.

2 Any question about the procedure?

3 MR. DONAHOE: No.

4 MR. NELSON: (Shook head negatively.)

5 THE COURT: Okay. There should be no reaction,  
6 please, to the reading of the verdict form.

7 And unless there is some question, we will get the  
8 jury in at this time.

9 So please stand.

10 (Jury present.)

11 THE COURT: Please be seated.

12 Madam Foreperson, it's my understanding that the  
13 jury has arrived at a unanimous verdict in this case; is that  
14 correct?

15 FOREPERSON: We have. We have, Your Honor.

16 THE COURT: All right. If you would hand the  
17 verdict form to the bailiff, he'll give it to me, and I'll  
18 tell you how we're going to proceed here.

19 I'm going to read it over to make sure that it is  
20 completed, dated and signed. And, assuming that it is, then I  
21 will ask the clerk to publish the verdict.

22 And what she will do is read the verdict in its  
23 entirety, and, at the conclusion of reading it, she will ask  
24 you a collective question to which you must give an oral  
25 response, "Ladies and gentlemen of the jury, is that your

1 verdict as read?" And collectively, you'll have to respond.

2 Then I will ask Mr. Whittaker or Mr. Nelson, "Do you  
3 want to have the jury polled?"

4 And if the answer is yes, then your name would be  
5 called individually, and you would be asked, "Is that your  
6 verdict as read?" And you would have to give an oral  
7 response. If the government doesn't want to have the jury  
8 polled, then I will ask Mr. Donahoe the same question, and if  
9 he says yes, then we'll go through the same process.

10 (Pause.)

11 THE COURT: The verdict form is completed in its  
12 entirety, dated, and signed.

13 Would you please publish the verdict?

14 THE CLERK: Ladies and gentlemen of the jury, this  
15 is your verdict.

16 In the United States District Court for the District  
17 of Montana, Helena Division, *United States of America,*  
18 *plaintiff, versus Joseph David Robertson, defendant,*  
19 CR 15-7-H-DWM, verdict:

20 No. 1. We, the jury in the above-entitled matter,  
21 unanimously find the defendant, Joseph David Robertson, guilty  
22 of unauthorized discharge of pollutants into waters of the  
23 United States, as charged in Count I of the indictment.

24 No. 2. We, the jury in the above-entitled matter,  
25 unanimously find the defendant, Joseph David Robertson, guilty

1 of malicious mischief/injury to property of the United States,  
2 as charged in Count II of the indictment.

3 No. 3. We, the jury in the above-entitled matter,  
4 unanimously find the defendant, Joseph David Robertson, guilty  
5 of unauthorized discharge of pollutants into waters of the  
6 United States, as charged in Count III of the indictment.

7 Dated this 7th day of April, 2016.

8 Signed by Marcia Kmetz, Foreperson.

9 Ladies and gentlemen of the jury, is that your  
10 verdict as read?

11 (Jurors responded affirmatively.)

12 THE COURT: Mr. Nelson, Mr. Whittaker, do you want  
13 to have the jury polled?

14 MR. WHITTAKER: No, Your Honor.

15 THE COURT: Mr. Donahoe?

16 MR. DONAHOE: Yes, please, Your Honor.

17 THE COURT: All right. So I'm going to ask the  
18 clerk to call your name individually and ask the question, "Is  
19 that your verdict as read?" And if you would, please give an  
20 oral response.

21 THE CLERK: Jerry Christofferson?

22 JUROR CHRISTOFFERSON: Yes.

23 THE CLERK: Georgia Ann Evans?

24 JUROR EVANS: Yes.

25 THE CLERK: Walter Stewart?



1 JUROR STEWART: Yes.

2 THE CLERK: Jennifer Edwards?

3 JUROR EDWARDS: Yes.

4 THE CLERK: Scott Dolan?

5 JUROR DOLAN: Yes.

6 THE CLERK: Benjamin Tiffin?

7 JUROR TIFFIN: Yes.

8 THE CLERK: Harry Puryer?

9 JUROR PURYER: Yes.

10 THE CLERK: Kyle Brosten?

11 JUROR BROSTEN: Yes.

12 THE CLERK: Carla Boehmler?

13 JUROR BOEHMLER: Yes.

14 THE CLERK: Jennifer Ringer?

15 JUROR RINGER: Yes.

16 THE CLERK: Brandi Oligee?

17 JUROR OLIGEE: Yes.

18 THE CLERK: Marcia Kmetz?

19 JUROR KMETZ: Yes.

20 THE COURT: All right. Well, ladies and gentlemen

21 of the jury, I want to thank you for your participation in  
22 this case and for the attention that all of you paid during  
23 the course of the proceedings.

24 I had mentioned when we were picking the jury that  
25 this process is really, for me, and I think if you think about

1 it, it's the essence of self-government. I mean, we have  
2 asked you, as the community, to decide the facts of a legal  
3 dispute, and it is a difficult task, I know, from visiting  
4 with other jurors, but your service is greatly appreciated.

5 Now there are a couple of things. I'm going to have  
6 you go back to the jury room for a few minutes. I have a  
7 couple of things to take care of here, and then I will come  
8 back for just a brief moment.

9 But in the event that you happen to be called for  
10 jury service again in the federal court within the next two  
11 years, you do not have to serve. You can simply say that, "I  
12 served on the *Robertson* case," and you will be excused.

13 I don't think your name will come up, but, then,  
14 again, with computers, I don't know what happens. So if it  
15 does come up -- and I will send you a notification of the name  
16 of the case and other pertinent data in here.

17 So again, thank you very much for your service, for  
18 your attention. And if you would, I'm going to ask the  
19 bailiff to take you back to the jury room. I will take care  
20 of some things here, and then I'll be in for a brief visit.

21 (Jury not present.)

22 THE COURT: Be seated, please.

23 Before I discharge the jury, is there any issue?

24 MR. WHITTAKER: No, Your Honor.

25 THE COURT: Mr. Donahoe, is there anything, before

1 we discharge the jury, that has to be taken up by the jury?

2 MR. DONAHOE: No, Your Honor.

3 THE COURT: All right.

4 Well, Joseph David Robertson, you have been  
5 convicted by a jury of your peers, and the next thing that  
6 happens is you're going to have to meet with the probation  
7 office, and you will make sure you meet with them when they  
8 schedule it.

9 And what will happen is they're going to prepare a  
10 presentence investigation report. And that report will be  
11 very detailed, and you will have to, when you visit with them,  
12 give them truthful, honest, and candid answers to their  
13 questions. Do you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And you can go ahead and be seated.

16 And by telling you that, if you lie to them or try  
17 and mislead them, Mr. Robertson, that could be construed as  
18 obstructing justice. And if it is so construed, then when  
19 they are calculating the guideline range for any sentence or  
20 any reasonable sentence, it could cause the guidelines to go  
21 up. And if the guidelines go up, the recommended time for  
22 incarceration goes up.

23 Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now having told you that you have to

1 give them truthful, honest, and candid answers, you have the  
2 absolute right to have Mr. Donahoe there, or somebody from his  
3 office, anytime that you are asked questions by the probation  
4 officer, and you have the unfettered right to rely on  
5 Mr. Donahoe's advice. And if he says, "Joe, don't answer the  
6 question," you can refuse to answer the question, and that  
7 will not be held against you in any manner.

8 Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: So what happens, Mr. Robertson, is they  
11 will get everything about your background, about the offense  
12 conduct, and once they've done their investigation and  
13 completed it, they type up a presentence investigation report.  
14 That will be sent out to Mr. Nelson and Mr. Whittaker, as well  
15 as Mr. Donahoe, before I ever see it. You will have the  
16 opportunity to read it over before I see it.

17 You must read it, and you must read it in its  
18 entirety. Is that clear?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: There's two reasons:

21 At sentencing, I will ask if you have read the  
22 report in its entirety, so you have to read it. That's in the  
23 rules of criminal procedure.

24 Perhaps more importantly is there may be information  
25 contained in the presentence report draft that is not

1 accurate, and only you would know whether it's accurate or  
2 not. So it's important that you read it and you communicate  
3 with Mr. Donahoe if you think there's any problems.

4 Understood?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: So if there's something that you think  
7 is inaccurate or you don't agree, or Mr. Donahoe doesn't agree  
8 with the way the law is applied in the presentence report,  
9 work those problems out on an informal basis with  
10 Mr. Whittaker and Mr. Nelson in the U.S. attorney's office.

11 Will you do that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: That works most of the time. Sometimes  
14 there are just things people just can't agree to resolve. So  
15 if that occurs and there are legal issues, I will resolve  
16 legal or factual questions about the presentence report before  
17 imposing any sentence.

18 At the time of sentencing, I'll give you an  
19 opportunity to speak on your own behalf. I'll give  
20 Mr. Donahoe an opportunity to speak or allocute on your  
21 behalf. And then either Mr. Whittaker or Mr. Nelson will be  
22 given an opportunity to speak on behalf of the United States.

23 When that is all completed, I will impose what I  
24 think is a sufficient but not greater than necessary sentence,  
25 and judgment will be entered.

1 I will tell you at sentencing that if you intend to  
2 appeal, within 14 days of the day that you are sentenced you  
3 must file a written notice of appeal with the clerk of the  
4 United States District Court for the District of Montana. And  
5 if you don't file a written notice of appeal on time at the  
6 right place, then you're out of luck. You lose, you waive,  
7 you give up the right to appeal, and there is only a 14-day  
8 period.

9 Understood?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And, at sentencing, after I tell you  
12 that, you should discuss with Mr. Donahoe how you want to  
13 proceed, but you can ask that I direct the clerk to enter a  
14 notice of appeal on your behalf if that is what your desire is  
15 in consultation with Mr. Donahoe.

16 I am going to set sentencing for July 20, 2016 at  
17 10 o'clock in the morning here in the Russell Smith Courthouse  
18 in Missoula, Montana.

19 Mr. Donahoe, do you want to be heard on the question  
20 of whether or not I should remand Mr. Robertson?

21 MR. DONAHOE: We would pray that he remain free,  
22 pending sentencing.

23 THE COURT: What is the government's position?

24 MR. WHITTAKER: We'll leave it to the discretion of  
25 the Court. I certainly think there's basis to do it under

1 3143. Our calculation of the guidelines show that there is a  
2 term of imprisonment that would be recommended under the  
3 guidelines, and Mr. Robertson certainly has shown -- even  
4 throughout this trial, the Court almost had to hold him in  
5 contempt for not following the rules. I think there is  
6 probably some basis to do that if the Court was inclined, but  
7 we leave it up to the discretion of the Court whether that  
8 standard is met or not.

9 THE COURT: Two things, Mr. Robertson:

10 If I allow you to remain on your own recognizance  
11 pending sentencing, are you going to comply with all of the  
12 requirements that are imposed on you?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Is that a yes?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: All right.

17 Then I'm going to ask you another question. Do you  
18 have firearms?

19 THE DEFENDANT: I do.

20 THE COURT: You will have to get rid of those  
21 firearms, because, as a convicted felon, you do not have a  
22 right to have or keep, in your possession or your constructive  
23 possession, any kind of firearm.

24 Do you understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: How are you going to get rid of them?

2 THE DEFENDANT: They'll be in Carri's home. I live  
3 down by the ponds, Your Honor.

4 THE COURT: Will you have access to them?

5 THE DEFENDANT: No, sir, Your Honor. No. They'll  
6 be in her home. We have separate residence.

7 THE COURT: Mrs. Robertson, do you understand that  
8 Mr. Robertson can no longer have firearms or have access to  
9 them?

10 MS. ROBERTSON: I do.

11 MR. DONAHOE: Judge --

12 MS. ROBERTSON: I do.

13 MR. DONAHOE: Maybe I can help out with that. I  
14 can -- I'll make sure and work with probation, and we'll, to  
15 probation's satisfaction, collect those firearms and put them  
16 somewhere where he has no access.

17 THE COURT: All right.

18 Well, Mr. Robertson, I will allow you to remain  
19 unincarcerated during the period between now and July 20 as  
20 long as you comply with the directions of the probation office  
21 and meet any of the obligations that you have and that you get  
22 rid of any firearms that you have.

23 How many firearms do you have?

24 THE DEFENDANT: I just have one, one pistol.

25 THE COURT: No long rifles?



1 THE DEFENDANT: And I have a hunting rifle, but I  
2 haven't used that for years. Carri uses it now.

3 THE COURT: And you have a shotgun?

4 THE DEFENDANT: I think I have one on the boat.  
5 It's like a flare shotgun.

6 THE COURT: Any kind of shotgun or firearm.

7 THE DEFENDANT: All right.

8 THE COURT: You'll have to get rid of it, and if  
9 it's in a boat that you have access to, you'll have to get it  
10 out of the boat. If it's in trucks or vehicles of any kind,  
11 you'll have to get it out. And make sure that they are not in  
12 your possession. Mr. Donahoe indicated he would work with you  
13 and the probation office.

14 Is there any question from the government?

15 MR. WHITTAKER: No, Your Honor.

16 THE COURT: Mr. Donahoe?

17 MR. DONAHOE: No. Thank you.

18 THE COURT: All right.

19 Counsel, I've signed an order that you should take  
20 the exhibits. Keep them in your possession. I think you're  
21 likely to have an appeal in the case.

22 And if there is nothing further, Mr. Robertson, you  
23 go downstairs to the probation office before you leave the  
24 building, and once you've completed whatever work they have  
25 there, then you go directly to the marshal's office on the

1 main floor and complete whatever work they have to do with  
2 you.

3 Understood?

4 THE DEFENDANT: Everything is in this building, Your  
5 Honor?

6 THE COURT: Yes, they are. The probation office --  
7 Mr. Donahoe can tell you where that is. It's on the very  
8 first floor, which is actually the basement. And then the  
9 Marshals Service is right to the left as you're coming in the  
10 building.

11 THE DEFENDANT: (Nodded head affirmatively.)

12 THE COURT: All right.

13 Thank you, Counsel. We will be in recess.

14 (Discussion off the record.)

15 THE COURT: Michael, make sure there's no effort to  
16 contact anybody on the jury or any witnesses in the case.

17 MR. DONAHOE: Okay.

18 (Proceedings were concluded at 10:18:10.)

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VOLUME 4 REPORTER'S CERTIFICATE

I, JoAnn Corson Bacheller, a Registered Diplomat Reporter and Certified Realtime Reporter, certify that the foregoing transcript is a true and correct record of the proceedings given at the time and place hereinbefore mentioned; that the proceedings were reported by me in machine shorthand and thereafter reduced to typewriting using computer-assisted transcription; that after being reduced to typewriting, a certified copy of this transcript will be filed electronically with the Court.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys to this action, nor financially interested in this action.

IN WITNESS WHEREOF, I have set my hand at Missoula, Montana this 16th day of April, 2016.

/s/ JoAnn Corson Bacheller

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JoAnn Corson Bacheller  
United States Court Reporter