

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA
Plaintiff,

vs.

FRANK PECK,
Defendant.

Sup. Ct. Case No. 65691
Case No. CR06-2580
Dept. 6

RECORD ON APPEAL

VOLUME 12 OF 13

EXHIBITS

APPELLANT

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RESPONDENT

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COUNSEL/PARTIES OF RECORD

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COUNSEL/PARTIES OF RECORD
OCT 3 2005
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: [Signature] DEPUTY

FRANK MILFORD PECK
Name #57106
Prison Number
H.D.S.P.
Place of Confinement

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FRANK MILFORD PECK, Petitioner,)
(Full Name))
vs.)
WARDEN NEVEN, Respondent,)
(Name of Warden, Superintendent, jailor or)
authorized person having custody of petitioner))
and)
The Attorney General of the State of Nevada)

CV-S-05-1186-KJD-RJJ

PETITION FOR A
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY
(NOT SENTENCED TO DEATH)

- Name and location of court, and name of judge, that entered the judgment of conviction you are challenging: 2nd JUD DISTRICT COURT, RENO, NV. DEPT 8, STEVEN KOSACH
- Full date judgment of conviction was entered: 03 / 17 / 98 (month/day/year)
- Did you appeal the conviction? Yes No. Date appeal decided: 08 / 24 / 00
- Did you file a petition for post-conviction relief or petition for habeas corpus in the state court? Yes No. If yes, name the court and date the petition was filed: 2nd JUD DISTRICT DEPT 8 RENO, NV 09 / 19 / 01. Did you appeal from the denial of the petition for post-conviction relief or petition for writ of habeas corpus? Yes No. Date the appeal was decided: 03 / 04 / 01. Have all of the grounds stated in this petition been presented to the state supreme court? Yes No. If no, which grounds have not? 6, 7, & 8
- Date you are mailing (or handing to correctional officer) this petition to this court: 9 / 12 / 05.
Attach to this petition a copy of all state court written decisions regarding this conviction.



6. Is this the first federal petition for writ of habeas corpus challenging this conviction? Yes
 No. If no, what was the prior case number? _____ And in what court was the
 prior action filed? _____
 Was the prior action denied on the merits or dismissed for procedural reasons (check
 one). Date of decision: ____/____/____. Are any of the issues in this petition raised in the
 prior petition? Yes No. If the prior case was denied on the merits, has the Ninth
 Circuit Court of Appeals given you permission to file this successive petition? Yes No.
7. Do you have any petition, application, motion or appeal (or by any other means) now pending in
 any court regarding the conviction that you are challenging in this action? Yes No.
 If yes, state the name of the court and the nature of the proceedings: _____

8. Case number of the judgment of conviction being challenged: CR-96-2687

9. Length and terms of sentence(s): TWO CONSECUTIVE 10yr TO LIFE SENTENCES.

10. Start date and projected release date: 11/16/96 - NONE

11. What was (were) the offense(s) for which you were convicted: SEXUAL ASSAULT
ONE COUNT DIGITAL PENETRATION, ONE COUNT PENILE PENETRATION

12. What was your plea? Guilty Not Guilty Nolo Contendere. If you pleaded guilty
 or nolo contendere pursuant to a plea bargain, state the terms and conditions of the agreement:

13. Who was the attorney that represented you in the proceedings in state court? Identify whether
 the attorney was appointed, retained, or whether you represented yourself *pro se* (without counsel).

	Name of Attorney	Appointed	Retained	<i>Pro se</i>
arraignment and plea	<u>VAUGHN HALL</u>	<u>X</u>	<u>_____</u>	<u>_____</u>
trial/guilty plea	<u>DENNIS WIDDIS</u>	<u>_____</u>	<u>X</u>	<u>_____</u>
sentencing	<u>DENNIS WIDDIS</u>	<u>_____</u>	<u>X</u>	<u>_____</u>
direct appeal	<u>JULIUS DIX & DAVID AMESBURY</u>	<u>_____</u>	<u>X</u>	<u>_____</u>
1st post-conviction petition	<u>ROBERT GLENNEN</u>	<u>_____</u>	<u>X</u>	<u>_____</u>
appeal from post conviction	<u>ROBERT GLENNEN</u>	<u>_____</u>	<u>X</u>	<u>_____</u>
2nd post-conviction petition	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
appeal from 2nd post-conviction	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 1

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my 4th, 5th, 6th, 11th, & 14th Amendment right to FAIR TRIAL

based on these facts:

DEFENDANT'S CONVICTION OF COUNT ONE MUST BE REVERSED BASED ON THE DOUBLE JEOPARDY CLAUSE AND THE PRINCIPLE OF MERGER OF OFFENSE.
THE DOUBLE JEOPARDY CLAUSE INCORPORATES THE DOCTRINE OF COLLATERAL ESTOPPEL, THE JURY HAD ALREADY SIGNED THE VERDICT FORMS ACQUITTING THE DEFENDANT OF THE DIGITAL PENETRATION OFFENSE. THE CONVICTION ON COUNT ONE MUST ALSO BE REVERSED ON THE BASIS OF MERGER OF OFFENSE IN THAT THIS COUNT OCCURRED JUST PRIOR TO THE GENITAL PENETRATION AND THAT THIS WAS ONE CONTINUOUS ACT WITH [NO] PAUSE TO REMOVE CLOTHING AS WAS MIS STATED BY THE SUPREME COURT.
IN THIS CASE, THE FIRST TRIAL OF DEFENDANT FOR THE SAME OFFENSES AT ISSUE HERE ENDED IN A MISTRIAL. THE JURY, HOWEVER, HAD ALREADY SIGNED THE VERDICT FORM ACQUITTING DEFENDANT OF THE DIGITAL PENETRATION OFFENSE. EVEN IF, AS A RESULT OF THE MISTRIAL, THIS VERDICT FORM DOES NOT TECHNICALLY CONSTITUTE AN ACQUITTAL OF THIS OFFENSE WHICH WOULD BAR HIS RETRIAL FOR THIS SAME OFFENSE, IT SHOULD BE DEEMED TO CONSTITUTE A NEGATIVE FINDING ON THE ULTIMATE FACT OF WHETHER DIGITAL PENETRATION OCCURRED. ACCORDINGLY PURSUANT TO THE PRINCIPLE OF COLLATERAL ESTOPPEL OR ISSUE PRECLUSION, THAT ISSUE COULD NOT AGAIN BE LITIGATED IN THE SECOND TRIAL. THUS THE FIRST JURYS FINDING THAT DIGITAL PENETRATION DID NOT OCCUR PRECLUDED THE RETRIAL OF DEFENDANT FOR THE OFFENSE OF SEXUAL ASSAULT BASED ON DIGITAL PENETRATION.

ALSO THE FACT THAT THE PROSICUTREX SAID ON THE RECORD IN THE FIRST TRIAL THAT I PLACED MY FINGER [ON] NOT IN HER VAGINA. THEN HER TESTIMONY WAS EMBELISHED IN THE SECOND TRIAL TO INDICATE PENATRATION OCCURED.

(PREJUDICE SHOWN BY ADDITIONAL 10 YEARS TO LIFE SENTENCE HANGING OVER PETITIONERS HEAD)

Exhaustion of state court remedies regarding Ground 1:

▶ **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: _____

▶ **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: _____

If yes, name of court: NEVADA SUPREME COURT date petition filed 09 / 19 / 01

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ____ / ____ / ____

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

Exhaustion of state court remedies regarding Ground 2:

▶ **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: _____

▶ **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: I HAVE NO IDEA.

If yes, name of court: _____ date petition filed ____ / ____ / ____

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ____ / ____ / ____

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 3

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my 4th, 5th, 6th, 11th, 14th, Amendment right to FAIR TRIAL

based on these facts: THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ALLOWING THE DEFENDANTS WIFE TO TESTIFY AGAINST HIM.

DURING TRIAL, THE STATE CALLED DEFENDANT'S WIFE AS A WITNESS AGAINST DEFENDANT. MRS PECK TESTIFIED CONCERNING THE EVENTS SURROUNDING HER HUSBAND'S CONDUCT AND ARREST AT THEIR APARTMENT ON THE NIGHT OF NOVEMBER 16, 1996. SHE ALSO TESTIFIED AS TO STATEMENTS MADE TO HER BY HER HUSBAND. MRS. PECK WAS ALSO CALLED BY THE STATE TO TESTIFY AT THE SUPPRESSION HEARING. REQUIRING MRS. PECK TO TESTIFY CONSTITUTED A VIOLATION OF THE SPOUSAL PRIVILEGE AS SET FORTH IN NRS 49.295. NRS 49.295 (1) PROVIDES IN PERTINENT PART THAT, (a) A HUSBAND CANNOT BE EXAMINED AS A WITNESS FOR OR AGAINST HIS WIFE WITHOUT HIS CONSENT, NOR A WIFE FOR OR AGAINST HER HUSBAND WITHOUT HER CONSENT.

(b) NEITHER A HUSBAND NOR A WIFE CAN BE EXAMINED, DURING THE MARRIAGE OR AFTERWARDS, WITHOUT THE CONSENT OF THE OTHER, AS TO ANY COMMUNICATION MADE BY ONE TO THE OTHER DURING MARRAGE. MRS. PECK DID NOT CONSENT TO TESTIFY AGAINST HER HUSBAND. SHE WAS SUBPOENAED BY THE STATE. THE DEFENDANT ALSO ENJOYED THE PRIVILEGE TO PREVENT HIS WIFE FROM TESTIFYING REGARDING ANY STATEMENTS MADE IN RELIANCE ON MARITAL CONFIDENCE. DEFENDANT DID NOT CONSENT TO ALLOWING HIS WIFE TO TESTIFY CONCERNING SUCH STATEMENTS.

THUS, THE PROVISIONS OF NRS 49.295 (1) (a) and (b) APPLY TO THIS CASE.

THEREFOR, IT WAS ERROR TO REQUIRE MRS. PECK TO TESTIFY AGAINST HER HUSBAND.

AND IN LIGHT OF HER TESTIMONY, SUCH ERROR IS NOT HARMLESS.

ATTORNEY VAUGHN HALL FAILED TO INFORM CLIENT AT ARRAINGMENT THAT THERE WAS A PRIVELEDGE TO ASSERT.

(PREJUDICE SHOWN BY TOTAL BREAKDOWN BETWEEN ATTORNEY AND CLIENT)

Exhaustion of state court remedies regarding Ground 3:

▶ **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: _____

▶ **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: I don't know

If yes, name of court: ^{WASH. DISTRICT COURT} ~~NEVADA SUPREME COURT~~ dept 8 date petition filed 9 / 19 / 01

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ____ / ____ / ____

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND FOUR

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my 4th, 5th, 6th, 11th, 14th Amendment right to FAIR TRIAL

based on these facts: THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FAILING TO GIVE THE REQUESTED JURY INSTRUCTIONS ON LESSER-INCLUDED AND LESSER-RELATED OFFENSES.

DEFENDANT REQUESTED THE TRIAL COURT TO INSTRUCT THE JURY ON VARIOUS LESSER RELATED OR LESSER-INCLUDED OFFENSES. THESE INCLUDED INDECENT EXPOSURE, OPEN AND GROSS LEWDNESS, AND BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT. THE TRIAL COURT DENIED THIS REQUEST, STATING: I DON'T THINK THERE'S ANY OPEN OR GROSS LEWDNESS ISSUE HERE BASED ON HIS THEORY OF THE CASE, AS TO WHAT HE TESTIFIED TO. I DON'T THINK HE FELT ANY CRIMINAL INTENT AT THE TIME THAT HE WAS AS-FAR-AS TO EXPOSE HIMSELF. AS FAR AS THE ISSUE OF OPEN AND GROSS LEWDNESS, THE SAME THING. AS FAR AS THE CRIME OF BATTERY WITH INTENT TO COMMIT SEXUAL ASSAULT, I DON'T FEEL THAT--I THINK IT'S A FALLBACK POSITION THAT CONFUSES THE JURY IN THIS CASE. I DON'T THINK I'M COMPELLED TO GIVE IT UNDER THE FACTS OF THIS CASE.

"THE COURTS RULING CONSTITUTED REVERSIBLE ERROR.

CITATION OF AUTHORITY IS NO LONGER NECESSARY FOR THE PROPOSITION THAT A DEFENDANT IN A CRIMINAL CASE IS ENTITLED TO HAVE THE COURT INSTRUCT THE JURY ABOUT HIS THEORY OF DEFENSE IF THERE IS EVIDENCE TO SUPPORT IT...A DEFENDANT IN A CRIMINAL CASE IS ENTITLED TO HAVE THE JURY INSTRUCTED ON HIS THEORY OF THE CASE AS DISCLOSED BY THE EVIDENCES, NO MATTER HOW WEAK OR INCREDIBLE THAT EVIDENCE MAY APPEAR TO BE. THE JURY BY ITS VERDICT WILL DECIDE WHETHER THE TRUTH RESTS WITH THE STATE OR THE DEFENSE.

MOORE V STATE, 105 NEV. 378, 776 P.2d 1235, 1239 (1989), THE COURT MADE CLEAR THAT A DEFENDANT IS ENTITLED, UPON REQUEST, TO JURY INSTRUCTIONS ON NOT ONLY "LESSER-INCLUDED" OFFENSES, BUT ALSO "LESSER-RELATED" OFFENSES, WHEN THREE CONDITIONS ARE MET. AS THE COURT EXPLAINED, FAIRNESS TO DEFENDANT REQUIRES INSTRUCTIONS ON RELATED BUT NOT NECESSARILY INCLUDED OFFENSES. THE COURT HELD THAT, ALTHOUGH A DEFENDANT HAS NO GENERAL RIGHT TO HAVE THE JURY PRESENTED WITH A SHOPPING LIST OF ALTERNATIVES TO THE CRIMES CHARGED, THE JURY SHOULD RECEIVE INSTRUCTIONS ON LESSER-RELATED OFFENSES WHEN THREE CONDITIONS ARE SATISFIED: (1) THE LESSER OFFENSE IS CLOSELY RELATED TO THE OFFENSE CHARGED; (2) DEFENDANT'S THEORY OF DEFENSE IS CONSISTENT WITH A CONVICTION FOR THE RELATED OFFENSE; AND (3) EVIDENCE OF THE LESSER OFFENSE EXISTS.

RATHER THAN REVERSING MY CONVICTIONS, THE SUPREME COURT MODIFIED

MOORE V STATE, AND APPLIED IT TO MY CASE AS MODIFIED, INSTEAD OF ALLPYING IT TO MY CASE AS IT EXISTED WHEN I WENT TO TRIAL.

Exhaustion of state court remedies regarding Ground ~~III~~ FOUR

▶ **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: _____

▶ **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: NOT SURE, JUDICIAL DECISION?

If yes, name of court: _____ date petition filed ____ / ____ / ____

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ____ / ____ / ____

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND ~~X~~ FIVE

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my 4th, 5th, 6th, 11th, 14th. Amendment right to FAIR TRIAL

based on these facts: FUNDAMENTAL JUDICIAL ERROR OUTSIDE THE RECORD

ON 9/6/97, THE COURT FAILED TO ACCEPT THE NOT GUILTY VERDICT ON
COUNT 1, FAILED TO PRESERVE THAT VERDICT BY WRITING ON IT, FAILED TO
SUA APONTE POLL THE JURY ON ITS VERDICT, AND FAILED TO PRESERVE A
VALID UNANIMOUS VERDICT OF A JURY.

THE TRANSCRIPT REVEALS THAT THE JURY REACHED VERDICTS ON BOTH COUNTS
AND THAT ONE JUROR WAS HUNG ON THE VOLENTARY QUESTION AND THAT HE
SAID THAT MY STATEMENTS TO POLICE WERE INVOLENTARY.

THE NOT GUILTY VERDICT ON COUNT ONE SHOULD HAVE BEEN ACCEPTED BY THE
TRIAL JUDGE AS THE VOLENTARY QUESTION WAS ONLY MATERIAL TO A GUILTY
VERDICT. THE MISTRIAL SHOULD HAVE ONLY BEEN DECLAIRED AS TO COUNT TWO.
THE STATEMENTS TO POLICE WERE, IN PART, THE SUBJECT OF A SUPPRESSION
HEARING AND WERE ADMITTED INTO EVIDENCE, AND IN THE PETITIONERS VIEW
THE VOLENTARY VERDICT WAS ERRONEOUSLY GIVEN, AND THEREFOR THE MISTRIAL
WAS ERRONEOUS, NOR WAS I AFFORDED THE RIGHT TO AN ALLEN CHARGE
BEFORE DECLAIRING A MISTRIAL.

(PREJUDICE SHOWN BY THE ILLEGAL ADMITTANCE OF FABRICATED EVIDENCE
AND ALLOWING EMBELLISHED TESTIMONY IN THE SECOND TRIAL)

Exhaustion of state court remedies regarding Ground ~~8~~ FIVE

▶ **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: _____

▶ **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: _____

If yes, name of court: NEVADA SUPREME COURT date petition filed 9 / 19 / 01

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ____ / ____ / ____

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND SIX

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my 4th, 5th, 6th, 11th, 14th. Amendment right to FAIR TRIAL

based on these facts: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL TRIAL COUNSEL FAILED TO INVESTIGATE THE VICTIM'S MOTIVE FOR LYING AT TRIAL, AND HER RELEVANT PRIOR HISTORY FOR IMPEACHMENT PURPOSES.

FAILED TO INVESTIGATE FACTS SURROUNDING THE ADDITIONAL EVIDENCE THAT WAS ADMITTED INTO THE SECOND TRIAL, THAT ALLEGEDLY HAD BEEN AT THE HOSPITAL FOR OVER A YEAR. HAD NEVER BEEN IN THE CHAIN OF CUSTODY, DEFENSE NEVER HAD AN OPPERTUNITY TO EXAMINE THE "RED WAIST LENGTH COAT" COUNSEL WAS NOT TRUTHFUL WITH CLIENT, WHEN HE TOLD CLIENT THAT HE HAD GONE TO THE HOSPITAL TO SEE THE COAT, BECAUSE IF HE HAD SEEN THE COAT HE WOULD NOT HAVE MADE A FOOL OF HIMSELF IN FRONT OF THE JURY BY HIS THEATRICALS WITH WHAT HE THOUGHT WAS A KNEE LENGTH COAT, UNTIL HE PULLED IT OUT OF THE EVIDENCE BAG MUCH TO EVERYONES SUPPRISE IT WAS A WAIST LENGTH COAT. THIS WAS A VERY IMPORTANT PIECE OF EVIDENCE FOR THE PROSECUTION, AS IT EXPLAINED AWAY WHY THERE WAS NO DIRT ON THE COMPLAINET'S SWEATER. IF SHE HAD BEEN ON THE GROUND LIKE SHE CLAIMS.

Exhaustion of state court remedies regarding Ground ~~8~~ SIX

▶ **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: CANNOT RAISE ON DIRECT APPEAL

▶ **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: _____

If yes, name of court: NEVADA SUPREME COURT date petition filed 9 / 19 / 01

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ____ / ____ / ____

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 7 SEVEN

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my
6th Amendment right to COUNSEL

based on these facts: INEFFECTIVE ASSISTANCE OF APPEAL COUNSEL.

APPEAL COUNSEL FAILED TO MEET ADEQUATELY WITH DEFENDANT TO FORMULATE
ISSUES ON APPEAL, FAILED TO PREPARE THE TRANSCRIPTS AND EXHIBITS FOR
APPEAL, FAILED TO PREPARE AN ADEQUATE RECORD ON APPEAL, AND FAILED TO
EVEN ONCE CITE TO THE RECORD ON APPEAL DURING HIS OPENING BRIEF.

PETITIONER FOUND OUT FROM HIS ATTORNEY ROBERT GLENNEN, THAT HIS

APPELATE ATTORNEY NEVER PURCHASED [ANY] TRANSCRIPTS FROM THE COURT.

FOR WHICH THE PETITIONER WAS CHARGED \$4000.00, IT IS ALLEDGED BY

PETITIONER THAT APPELLATE ATTORNEY TOOK TRIAL ATTORNEY'S LETTER TO

CLIENT AND NEW ATTORNEYS REGARDING APPELLATE ISSUES, AND FRAMED THOSE

ISSUES AS A OPENING BRIEF. ALL WITHOUT ANY TRIAL TRANSCRIPTS.

PETITIONER HAD TO PURCHASE TRANSCRIPTS AGAIN FOR POST CONVICTION.

Exhaustion of state court remedies regarding Ground ~~6~~ SEVEN

▶ **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: INEFFECTIVE CLAIM

▶ **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: _____

If yes, name of court: SECOND JUDICIAL COURT, WASHOE COUNTY date petition filed 9 / 19 / 01

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ____ / ____ / ____

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 8 EIGHT

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my
6th Amendment right to COUNSEL

based on these facts: INEFFECTIVENESS OF APPELLATE COUNSEL IN ARGUING THE
DOUBLE JEOPARDY ISSUE.

APPELLATE COUNSEL FAILED TO PROPERLY RESEARCH THE FACTS AND LAW
SURROUNDING THE FACT THAT THE FIRST JURY RETURNED A NOT GUILTY
VERDICT ON COUNT ONE OF THE INFORMATION, AND THE FACT THAT THE COURT
FAILED TO DETERMINE WHETHER THE JURY WAS ACTUALLY HUNG ON COUNT
ONE, FAILED TO ARGUE WHETHER THE COURT HAD MANIFEST NECESSITY FOR
SUCH MISTRIAL, AND FAILED TO PRESENT ANY LEGAL, DOCUMENTARY OR
TRANSCRIPTUAL BASIS FOR THE DOUBLE JEOPARDY ARGUMENT.

"PROBABLY BECAUSE HE DIDNT HAVE ANY TRANSCRIPTS"

Exhaustion of state court remedies regarding Ground ~~3~~ EIGHT

▶ **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: POST CONVICTION ISSUE

▶ **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: _____

If yes, name of court: Washoe District Court Dept 8 date petition filed 9 11 10

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Second Post Conviction:**

Did you raise this issue in a second petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed / /

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND NINE

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my
6th Amendment right to COUNSEL

based on these facts: COUNSELS FAILURE TO FORWARD AN OFFER WAS INEFFECTIVE. VIOLATIONS OF ETHICAL RULES ALSO MAY CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL. MR.WIDDIS RECEIVED AN OFFER OF ONE COUNT OF SEXUAL ASSAULT, WHICH HE REJECTED BEFORE TELLING PETITIONER, COUNSEL HAS AN ABSOLUTE DUTY TO FORWARD OFFERS OF SETTLEMENT,OR PLEA BARGAINS TO THEIR CLIENT. EVEN IF HE BELIVES THERE IS NOCHANCE OF HIS CLIENT ACCEPTING THAT OFFER, HE IS STILL DUTY BOUND TO FORWARD IT. HERE,EVIDENCE SUPPORTS THAT HE DID NOT DO SO BEFORE REJECTING THAT OFFER. THEREFORE,INEFFECTIVE ASSISTANCE IS SHOWN AND THE PREJUDICE IS AGAIN SHOWN BY THE EXTRA 10 YEARS TO LIFE HANGING OVER PETITIONERS HEAD.

Exhaustion of state court remedies regarding Ground ~~3~~ NINE

▶ **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: It was not known at the time

▶ **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: I didnt find out About ANY

DEAL UNTIL MY EVIDENTIARY HEARING. ON 12/3/03

If yes, name of court: _____ date petition filed 1 / 1

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed 1 / 1

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

WHEREFORE, petitioner prays that the court will grant him such relief to which he is entitled in this federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 by a person in state custody.

(Name of person who wrote this complaint if not Plaintiff)

Frank M. Pugh
(Signature of Plaintiff)

9/12/05
(Date)

(Signature of attorney, if any)

(Attorney's address & telephone number)

DECLARATION UNDER PENALTY OF PERJURY

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.**

See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Executed at Hughes Detention Center, State Prison on 9/12/05
(Location) (Date)

Frank M. Pugh
(Signature)

57106
(Inmate prison number)

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FRANK MILFORD PECK,

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Petitioner,

CASE NO.: CR96P2687

11

vs.

DEPT. NO.: 8

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THE STATE OF NEVADA,

13

Respondent.

14

15

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

16

Frank Milford Peck (hereinafter "Petitioner") petitions this Court for a **Writ of Habeas Corpus (Post-Conviction)**. This Court, having considered all papers and pleadings on file herein, concludes as follows.

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Petitioner was sentenced to two consecutive sentences of life in prison, each with the possibility of parole after ten years, on two counts of Sexual Assault. The Nevada Supreme Court affirmed the conviction and sentence on appeal. Petitioner now asks the Court to grant his Petition for a Writ of Habeas Corpus (Post-Conviction).

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Petitioner argues that he received ineffective assistance of counsel at trial. Specifically, Petitioner argues that his trial counsel failed to object when the Court declared a mistrial upon the jury's unanimous decision for an acquittal on Count I, for which he was later convicted. Petitioner argues that it was fundamental judicial error outside the record when the Court failed to accept the "Not Guilty" verdict on Count I. Petitioner also asserts that his trial counsel failed to object to the testimony of

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FILED
2001 OCT 19 PM 1:07
ATTORNEY AT LAW
BY P. Cronney CLERK

1 Petitioner's spouse as privileged, and, in fact, failed to tell Petitioner that such a privilege existed. In
2 addition, Petitioner argues that his trial counsel failed to adequately investigate the alleged victim's
3 motives for lying at trial, and her relevant prior history for impeachment purposes.

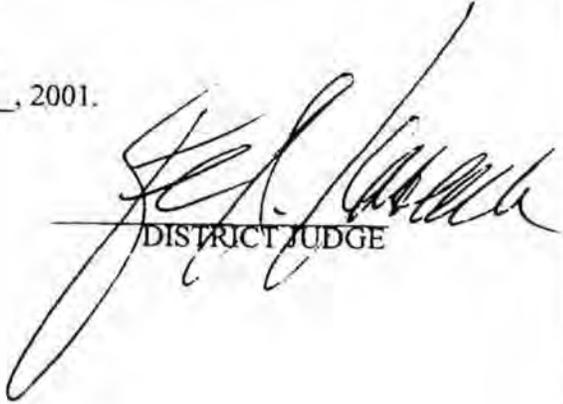
4 Petitioner also argues that he received ineffective assistance of counsel on appeal. Specifically,
5 Petitioner asserts that appeal counsel failed to formulate and prepare issues and exhibits for appeal, and
6 failed to cite the record in the appellate brief. In addition, Petitioner argues that appeal counsel failed
7 to properly pursue the issue of the hung jury on Count I. For these reasons, Petitioner argues, he is
8 entitled to a hearing on his Petition for Writ of Habeas Corpus (Post-Conviction).

9 NRS 34.810 provides in pertinent part: "The Court shall dismiss a petition if the court determines
10 that...(b) the petitioner's conviction was the result of a trial and the grounds for the petition could have
11 been...(2) raised on direct appeal."

12 This Court is persuaded that Petitioner has failed to properly raise any new issues in his Petition
13 for Writ of Habeas Corpus (Post-Conviction). Petitioner's conviction was reviewed on appeal, and he
14 admits that he asserts no new grounds in his Petition. In addition, Petitioner fails to explain why he is
15 raising no new issues. For these reasons, Petitioner's Writ is insufficient. Accordingly, Petitioner's Writ
16 of Habeas Corpus (Post-Conviction) is hereby DENIED.

17 IT IS SO ORDERED.

18 DATED this 19 day of October, 2001.

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DISTRICT JUDGE

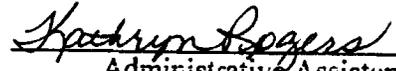
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CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 19 day of October, 2001, she mailed
copies of the foregoing ORDER in Case No. CR96P2687 to the following:

Robert E. Glennen, III
141 S. Frontage Road, Ste. B
Pahrump, Nevada 89048

Richard A. Gammick, Esq.
District Attorney


Administrative Assistant

1 CODE: 2540

2003 DEC 31 PM 3:13

3
4  JR.

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 ***

9 FRANK MILFORD PECK,

10 Petitioner,

CASE NO: CR96P2687

11 VS.

DEPT. NO.: 6

12 STATE OF NEVADA,

13 Respondent,
14 _____

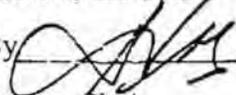
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16 **NOTICE OF ENTRY OF ORDER**

17 PLEASE TAKE NOTICE that on December 31, 2003, the Court entered a decision or
18 Order in this matter, a true and correct copy of which is attached to this notice.

19 You may appeal to the Supreme Court from the decision or order of the Court.
20 If you wish to appeal, you must file a notice of appeal with the Clerk of this Court within thirty-
21 Three (33) days, after the date this notice is mailed to you. This notice was mail on December 31
22 2003.

23
24
25 RONALD A. LONGTON, JR.

26 Clerk of the Court

27 By 

28 Deputy Clerk

ORIGINAL

FILED

2005 DEC 31 AM 9:41

RECEIVED BY

BY *[Signature]*
DEPUTY

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE

* * *

FRANK MILFORD PECK,

Petitioner,

v.

Case No. CR96P2687

THE STATE OF NEVADA,

Dept. No. 6

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT

This cause is before the court upon a petition for writ of habeas corpus (post-conviction). Petitioner Peck was represented by experienced and zealous attorney Dennis Widdis when he was charged with two counts of sexual assault. The case was tried twice. The evidence included Peck's statements to police. During the first trial, the court not only instructed the jurors that they could not consider a statement by the defendant unless they found that the statement was voluntary, the court also provided the jurors with a special verdict form concerning the voluntariness question. Thus, the court implied

1 to the jurors that they must unanimously agree that the
2 statements were voluntary before any juror could consider the
3 statements. As the jurors were deliberating, Widdis came to
4 believe that the jurors had agreed about the disposition of the
5 two counts of sexual assault, but that they disagreed only on the
6 question of whether the defendant's statements to police were
7 voluntary.

8 Eventually, the jury foreman informed the court that
9 the jurors were deadlocked. The court inquired of the foreman
10 who assured the court that there was no point in further
11 deliberations. Accordingly, the court declared a mistrial and
12 the cause was again set for trial some months later. Prior to
13 that trial, Widdis brought a motion to dismiss based on the
14 assertion that the jurors had in fact agreed to acquit on one
15 count of sexual assault. That motion was denied and Peck was
16 convicted of two counts of sexual assault. He appealed, but the
17 judgment was affirmed. Peck v. State, 116 Nev. 840, 7 P.3d 470
18 (2000). Among other things, the court addressed the claim that
19 the jury had in fact found Peck to be not guilty of one count.
20 The court ruled that the record as it existed did not support
21 that conclusion. A concurring opinion, however, suggested that
22 the record might be made more clear by a claim that counsel
23 rendered ineffective assistance in failing to ask that the jury
24 be polled to determine if they had reached any partial verdicts.

25 Peck then filed his petition for writ of habeas corpus.
26 He raised a variety of claims, including the claim that counsel

1 was ineffective in failing to ask that the jury be polled
2 regarding partial verdicts. The State moved to dismiss the
3 petition and that motion was granted. Peck again appealed. The
4 Supreme Court affirmed in part and reversed in part. Peck v.
5 State, Docket No. 38835, Order Affirming in Part, Reversing in
6 Part and Remanding, (March 4, 2003). The Supreme Court ordered
7 that the case be re-assigned because the trial judge, Judge
8 Steven Kosach, might be a witness in the hearing. In the Order,
9 the Supreme Court addressed the manner of proof and noted that
10 the jurors from the first trial would not be prohibited from
11 testifying to how they would have responded if the court had
12 inquired about partial verdicts at the end of the first trial.

13 The case was assigned to this department and was set
14 for a hearing on December 3, 2003. At that hearing, the court
15 heard testimony from Mr. Widdis, Judge Kosach and from the
16 bailiff in the first trial, retired Deputy Earl Walling.¹ After
17 presenting the testimony of those witnesses, petitioner rested
18 his case. The State then moved for involuntary dismissal for
19 failure of petitioner to present any evidence of prejudice
20 stemming from Widdis's failure to ask that the jury be polled.
21 Peck's counsel argued that the evidence was sufficient but did
22 not object to consideration of the motion. Nor did he indicate

23
24 _____
25 ¹Peck alleged in his petition that he had urged Widdis to try
26 to poll the jury regarding a partial verdict. The court notes that
Peck did not testify in the habeas corpus hearing and Widdis had no
recollection of any such interchange. Thus, that allegation remains
unproven.

1 that he wished to present any additional evidence or witnesses.

2 The court finds that Peck failed to adduce any evidence
3 tending to show that the jurors in the first trial, if they had
4 been polled, would have informed the court that they had reached
5 a unanimous and final decision concerning any charge or any other
6 issue. Although Peck showed that Widdis believed that the jury
7 had at some point reached an agreement, each time that evidence
8 was introduced the court ruled that the evidence would be
9 admitted to show the state of mind of Widdis, but not to prove
10 how the jury would have responded if polled.

11 No juror testified in the habeas corpus hearing, even
12 though counsel for Peck had been provided with the names and
13 addresses of each of the jurors. The only evidence was that
14 Dennis Widdis believed that the jurors had reached an agreement,
15 but there was no evidence showing that the jurors in fact had
16 reached a final and unanimous agreement on any subject.

17 A party who asserts ineffective assistance of counsel
18 bears the burden of producing evidence showing that the specific
19 decisions of counsel fell below an objective standard of
20 reasonableness and that but for the failings of counsel, a
21 different result was likely. Kirksey v. State, 112 Nev. 980, 923
22 P.2d 1102 (1996). Where the claim is failure to file a motion to
23 suppress, for instance, prejudice may be shown by showing that
24 the motion would have been successful and that the exclusion of
25 the evidence would have changed the result of the trial. Id. By
26 analogy, in the instant case, the petitioner was required to show

1 that polling would have resulted in a judgment of acquittal of
2 one count. However, the court finds that Peck failed to adduce
3 any evidence tending to show how the jurors would have responded
4 if they had been polled. Therefore, the motion for involuntary
5 dismissal, as described in NRCP 41(b), is granted.

6 The court also notes the lack of evidence showing that
7 the failure of Widdis to request polling amounted to ineffective
8 assistance of counsel. Widdis was aware that his client had no
9 interest in being convicted of one count of sexual assault and
10 yet he believed that the jury had agreed to acquit on one count
11 but to convict on the other. Thus, he would reasonably believe
12 that polling the jury would result in a judgment which his client
13 did not desire. Furthermore, the court notes the absence of
14 evidence tending to show that prevailing professional norms would
15 lead reasonable attorneys to ask for polling under the
16 circumstances. Finally, the court finds that if Widdis had
17 consulted with his client, and informed the client that polling
18 could result in a judgment of conviction of one count, then Peck
19 would have instructed Widdis not to ask that the jury be polled.
20 The court notes that Widdis testified without contradiction that
21 Peck declined both a prior and a subsequent plea bargain offer
22 calling for a conviction on one count. From that evidence, the
23 court infers that Peck would have instructed Widdis to avoid a
24 judgment of acquittal of one count at the potential cost of being
25 convicted of the other count.

26 Because Peck failed to adduce evidence tending to show

1 that polling the jury in the first trial would have resulted in a
2 judgment of any sort, the petition for writ of habeas corpus is
3 dismissed.

4 DATED this 27th day of Rebels, 2005.

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7 _____
8 DISTRICT JUDGE
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Robert E. Glennen, Esq.
601 E. Charleston Blvd.
Las Vegas, NV 89104

Frank Milford Peck #57106
Lovelock Correctional Center
P.O. Box 359
Lovelock, NV 89419

DATED: December 31, 2003

W Jones

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Washoe County District Attorney

RICHARD A. GAMMICK
DISTRICT ATTORNEY

December 26, 2003

The Honorable Brent Adams
District Judge, Dept. 6
Washoe County Courthouse
Reno, Nevada 89501

Re: Frank Milford Peck vs. The State of Nevada
Case No. CR96P2687

Dear Judge Adams:

Attached is the proposed Findings of Fact, Conclusions of Law and Judgment regarding the Frank Peck post-conviction matter. A copy has been faxed to and approved by opposing counsel.

If you would like me to make any corrections or changes, please give me a call.

Respectfully,

RICHARD A. GAMMICK
DISTRICT ATTORNEY

By 
TERRENCE P. MCCARTHY
Appellate Deputy

TPM/sm
Attachment

cc: Robert Glennen III, Esq.

CERTIFICATE OF MAILING

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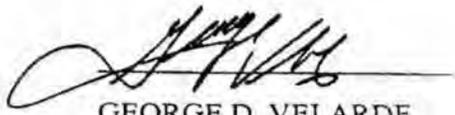
Pursuant to NRCP 5 (b), I hereby certify that I am an employee of The Second Judicial District Court and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

WASHOE COUNTY DISTRICT
ATTORNEY'S OFFICE
APPELLATE DIVISION
(Inter-office mail)

ATTORNEY GENERAL'S OFFICE
100 N. CARSON STREET
CARSON CITY, NV 89701-4717

ROBERT E. GLENNEN, ESQ.
601 E. CHARLESTON BLVD.
LAS VEGAS, NV 89104

FRANK MILFORD PECK #57106
LOVELOCK CORRECTIONAL CENTER
P.O. BOX 359
LOVELOCK, NV 89419



GEORGE D. VELARDE

CRIMINAL CLERK

December 31, 2003.

EXHIBITS

Plaintiff: State of Nevada

PATY: David Clifton

Defendant: Frank M. Peck

DATY: Pro Per

Case No: CR06-2580

Dept. No: 6

Clerk: B. Johnson

Date: 5/6/09

Exhibit #	Party	Description	Marked	Offered	Admitted
1	Pltf	Large diagram of 445 Sullivan Lane #94	5/6	x	5/6
1-a	Pltf	8x11 of Exhibit 1	5/6	x	5/6
2	Pltf	Photograph – Candace Inman, cheek injury	5/6	x	5/7
3	Pltf	Photograph – Candace Inman	5/6	x	5/7
4	Pltf	Photograph – window screen, curtain, chair	5/6	x	5/7
5	Pltf	Photograph – pathway to apartment/lamp post	5/6	x	5/7
6	Pltf	Photograph - bathtub	5/6	x	5/7
7	Pltf	Birth Certificate of Frank Peck	5/6	x	5/7
8	Pltf	Envelope containing Blood Sample of Candace Inman	5/6		withdrawn
9	Pltf	Envelope containing Sexual Assault Evidence Kit	5/6		withdrawn
9a	Pltf	Stains on Skin	5/6		withdrawn
9b(1-3)	Pltf	Vaginal/Penile Swabs and Slides	5/6		withdrawn
9c	Pltf	Pubic Hair Brushing	5/6		withdrawn
9d	Pltf	Reference Head Hair	5/6		withdrawn
9e	Pltf	Reference Pubic Hair	5/6		withdrawn
9f	Pltf	Saliva Sample	5/6		withdrawn
9g	Pltf	History of Assault, page 1	5/6		withdrawn
9h	Pltf	History of Assault, page 2	5/6		withdrawn
9i	Pltf	Sexual Assault Protocol	5/6		withdrawn

EXHIBITS

Plaintiff: State of Nevada

PATY: David Clifton

Defendant: Frank M. Peck

DATY: Pro Per

Case No: CR06-2580

Dept. No: 6

Clerk: B. Johnson

Date: 5/6/09

Exhibit #	Party	Description	Marked	Offered	Admitted
10	Pltf	Envelope containing swab box, buccal swabs (2) of Peck	5/6		withdrawn
11	Pltf	Envelope containing buccal swabs (2) of Peck	5/6		withdrawn
12	Pltf	Photograph – bathroom	5/6	x	5/6
13	Pltf	Composite sketch by Det Asher	5/7	x	5/8
14	Pltf	Copy photo lineup	5/7	stip	5/7
15	Pltf	1996 Photograph – Frank Peck	5/7	x	5/7
16	Deft	St Mary's Emergency Record, Candace Inman	5/7	x	5/7
17	Pltf	Photograph – Frank Peck, left side, mole, taken by L. Brown	5/7	x	5/8
18	Pltf	Photograph – Frank Peck, left side, rib area, taken by L. Brown	5/7	x	5/8
19	Pltf	Photograph – Frank Peck, left side, scar feature	5/7	x	5/8
20	Pltf	Photograph – Frank Peck, left side, raised defect	5/7	x	5/8
21	Pltf	Photograph – Frank Peck taking measurements	5/7	x	5/7
22	Pltf	Envelope with 2 swab tips (cut)	5/7		withdrawn
23	Pltf	Envelope with DNA extracts vaginal swabs	5/7		withdrawn
24	Deft	WCSO Report of Maria Fassett, Analyst	5/7	x	5/7
25	Deft	AT&T Statement	5/8		

EXHIBITS

Plaintiff: State of Nevada

PATY: David Clifton

Defendant: Frank M. Peck

DATY: Pro Per

Case No: CR06-2580

Dept. No: 6

Clerk: B. Johnson

Date: 5/6/09

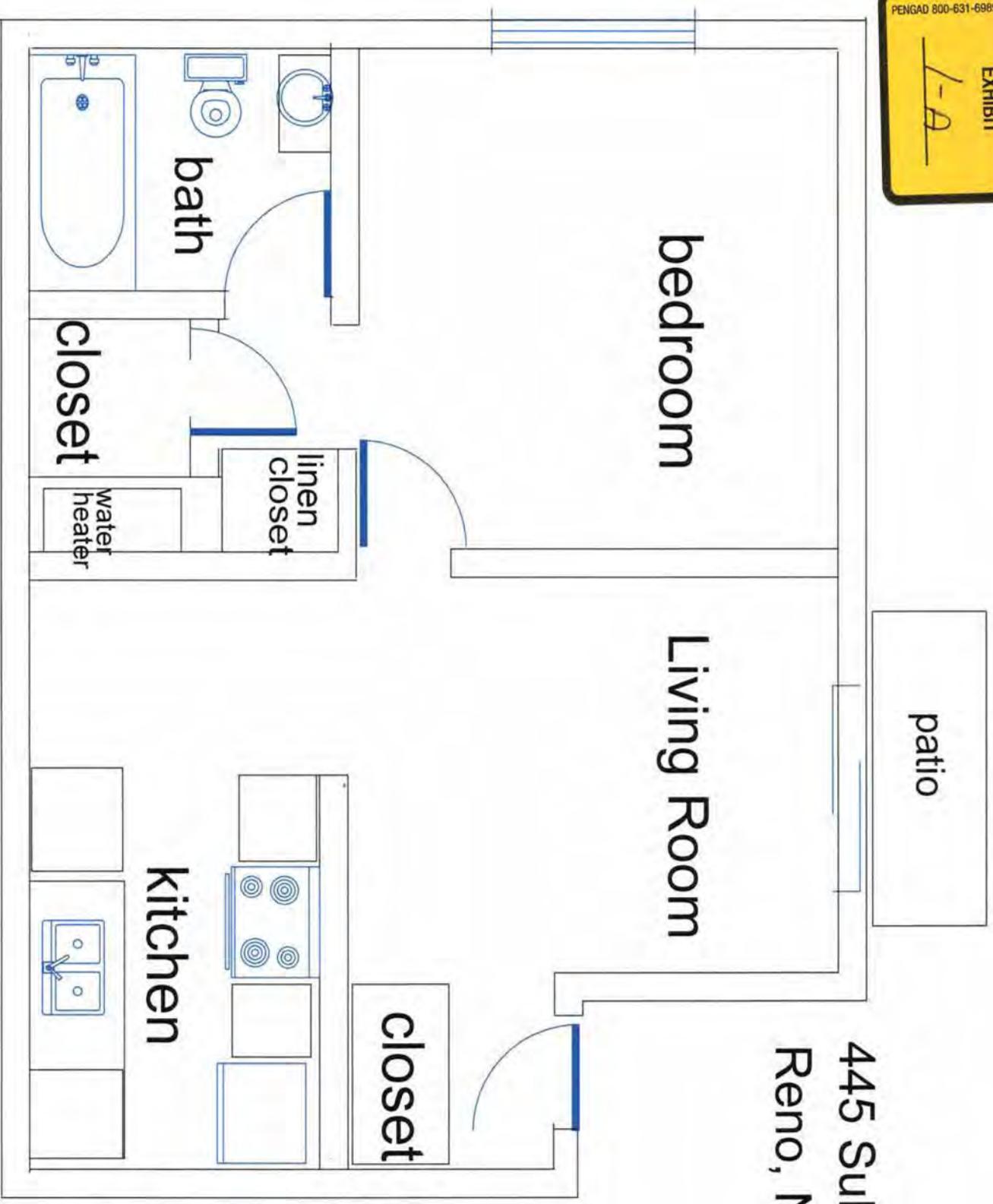
Exhibit #	Party	Description	Marked	Offered	Admitted
26	Deft	Invoice, Johnstone Supply from Las Vegas NV	5/8		
27	Deft	BofA Transaction Record, Donald J. Peck	5/8		
28	Deft	Check register belonging to Donald J. Peck	5/8		



PENGAD 800-631-6989

EXHIBIT

1-A



445 Sullivan Lane #981
Reno, Nevada

v12

NORTH



NO. UK06-258U
STATE OF NEVADA vs. FRANK PECK

_____ Exhibit 1-a

Admitted May 6, 2009.
HOWARD W. CONYERS, CLERK

By:  _____
Deputy Clerk

STATE OF CALIFORNIA

DEPARTMENT OF PUBLIC HEALTH

STATE FILE NUMBER **E-047273** **CERTIFICATE OF LIVE BIRTH** LOCAL REGISTRATION DISTRICT AND CERTIFICATE NUMBER **3318 1152**

THIS CHILD	1a. NAME OF CHILD—FIRST NAME Frank	1b. MIDDLE NAME Melford	1c. LAST NAME Peck
	2. SEX Male	3a. THIS BIRTH SINGLE, TWIN, OR TRIPLET? Single	3b. IF TWIN OR TRIPLET, THIS CHILD BORN 1ST, 2ND, 3RD?
PLACE OF BIRTH	5a. PLACE OF BIRTH—NAME OF HOSPITAL Parkview Memorial Hospital	5b. STREET ADDRESS—E STREET OR RURAL ADDRESS OR LOCATION (DO NOT USE P. O. BOX NUMBERS) 3865 Jackson Street	5c. CITY OR TOWN Riverside
	5d. COUNTY Riverside	5e. COLOR OR RACE OF MOTHER Caucasian	
MOTHER OF CHILD	6a. MAIDEN NAME OF MOTHER—FIRST NAME Bessie	6b. MIDDLE NAME Pauline	6c. LAST NAME Gilleland
	8. AGE OF MOTHER (AT TIME OF THIS BIRTH) 34 YEARS	9. BIRTHPLACE (STATE OR FOREIGN COUNTRY) Arizona	11. MAILING ADDRESS OF MOTHER—IF DIFFERENT FROM USUAL RESIDENCE—FOR NOTIFICATION OF BIRTH Same as residence
USUAL RESIDENCE OF MOTHER (WHERE DOES MOTHER LIVE?)	11a. USUAL RESIDENCE OF MOTHER—STREET ADDRESS (IF APPLICABLE) OR RURAL ADDRESS OR LOCATION (DO NOT USE P. O. BOX NUMBERS) 3474 - 8th Street	11b. IF INSIDE CORPORATE LIMITS CHECK ONE <input checked="" type="checkbox"/> CHECK HERE	IF OUTSIDE CITY CORPORATE LIMITS CHECK ONE <input type="checkbox"/> ON A FARM <input type="checkbox"/> NOT ON A FARM
	11c. CITY OR TOWN Riverside	11d. COUNTY Riverside	11e. STATE California
FATHER OF CHILD	12a. NAME OF FATHER—FIRST NAME Donald	12b. MIDDLE NAME James	12c. LAST NAME Peck
	14. AGE OF FATHER (AT TIME OF THIS BIRTH) 39 YEARS	15. BIRTHPLACE (STATE OR FOREIGN COUNTRY) Iowa	16a. PRESENT OR LAST OCCUPATION T.V. Repairman
INFORMANT'S CERTIFICATION	17a. PARENT OR OTHER INFORMANT—SIGNATURE OF INFORMANT <i>Bessie P. Peck</i>		17b. DATE SIGNED BY INFORMANT March 2, 1962
ATTENDANT'S CERTIFICATION	18a. PHYSICIAN (OR OTHER PERSON WHO ATTENDED THE BIRTH) SIGNATURE <i>Walter R. Woodcock</i>		18b. ADDRESS Arlington, California
REGISTRAR'S CERTIFICATION	19. DATE ON WHICH NAME ADDED BY SUPPLEMENTAL NAME REPORT		20. LOCAL REGISTRATION DISTRICT AND CERTIFICATE NUMBER 3318 1152

EXHIBIT
7

This is to certify that this document is a true copy of the official record filed with the Office of Vital Records.

Teresita Trinidad

TERESITA TRINIDAD STATE REGISTRAR OF VITAL RECORDS

07 SEP 18 PM 3:37

DATE ISSUED



002510025

This copy not valid unless prepared on engraved border displaying seal and signature of Registrar.



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No. C106-2580

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vs.

J. Pick

Ex. 7

Admitted: 5/7, 20 09

HOWARD W. CONYERS, CLERK

By [Signature]
Deputy

V12.41





SPARKS POLICE DEPARTMENT

1125 "C" Street
Sparks, Nevada 89431
702 356-2279

Offense: SEXUAL ASSAULT

Case #: 94-9292

Date/Time of Occurrence: 8-9-94

Location of Occurrence: 445 Sullivan #94

SUSPECT DESCRIPTION

Race: W Sex: M Build: Thin

Height: 5'6" Weight: 150 Age: 20-25

Complexion: Light Eyes: DARK

Hair Color: DARK Length: UNK

Identifying Marks: SCAR ON ~~LF~~ ^{LF} SHOULDER
BRIDE

Accent/Speech: N/A

Clothing: Purple
SILK SHIRTS, WHITE SHIRTS Boo.
BOOTS

Jewelry: GOLD BAND ON PINKY FINGER

SUSPECT VEHICLE DESCRIPTION

Make: _____ Model: _____

Year: _____ Color: _____

License No.: _____ State: _____

Other Vehicle Characteristics: _____

Property Taken by Suspect: _____

Weapon Used by Suspect: NONE

Suspect Comments: DONT SCREAM OR
FIGHT ME & I WILL HURT YOU

Patrol Officer: STOUT

Telephone: _____

Detective: NEUBARTH

Telephone: _____



Foil #'s: COMPUSKETCH

Fill-In Work Done To Composite: EYE BROWS

MUSTACHE WORE I-SHIRT OVER HEAD

Victim Comments: _____

Remarks/Other Info.: _____

Composite By: ASHER 4534

Telephone: _____

EXHIBIT

13

No. 0106-2580

De

vs.

J. Peck

Ex. 13

Admitted: 5/8, 2009
HOWARD W. CONYERS, CLERK

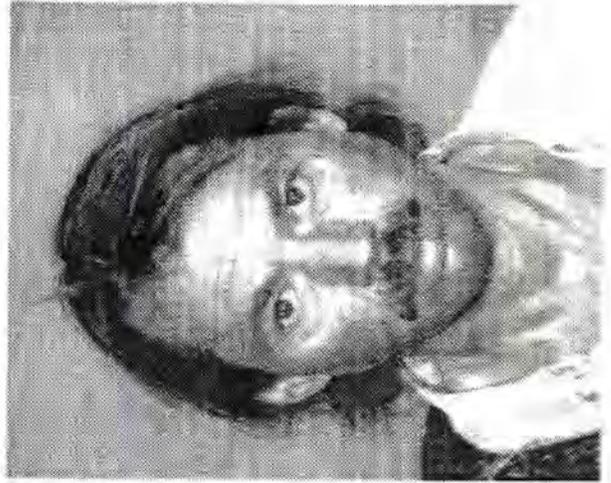
By [Signature]
Deputy

V12.43

94-529



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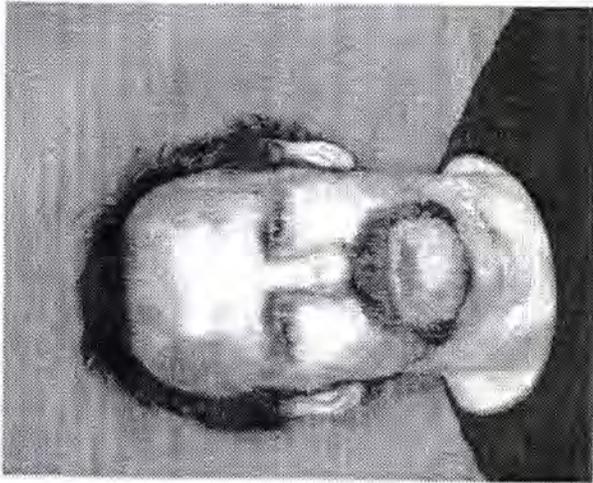
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EXHIBIT
124
PENGAD 800-631-6989

V12.44

No. 0106-258D

De
vs.

Paul

Ex. 14

Admitted: 5/7, 2009
HOWARD W. CONYERS, CLERK

By [Signature]
Deputy



Candice

EMERGENCY RECORD

EMERGENCY DEPT.
235 West Sixth Street
Reno, Nevada 89520-0108
(702) 789-3188

TREATMENTS Spracks PD here.	APPROVED 0029	TRIAGE 0029	IN ROOM 0029	IN M.D. BOX 0075	SEEN
	DRUG ALLERGIES EEL			LAST TETANUS Koyes	SMOKER YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
	CHIEF COMPLAINT Sexual assault tonic				
	CURRENT MEDICATIONS Omeprazole, Plavix				
	V/S	TIME 2032	BP 128/78	T 98°	P 108
				R 20	TRIAGE RN [Signature]
Dr. D. Dennis 0029 admitted [Signature] PT	PHYSICIAN [Signature]	CALLLED	CALLLED	RESPONDED	ARRIVED
Remsa arrival.	CONSULT	CALLLED	CALLLED	RESPONDED	ARRIVED

SOC Alleged sexual assault ^{HPI} by single male in household bathroom. vaginal intercourse only.	RESULTS	CBC	INIT. TIME
		LYTES	
		GLU	
PMH: <input checked="" type="checkbox"/>		BUN	
ROS:	SH/FH: <input checked="" type="checkbox"/> Hb	CREAT	
O VIS: GENERAL: <u>normal</u>	MENTAL STATUS: <u>normal</u>	CPK	
HEENT: head - normal eyes - PERRL. EOMV. ears - d		ISO	
NECK: NT	cardiac to [Signature] check	PT	
CHEST: NT	CVS:	PTT	
ABD: all NT		AMYL	
GU: extnd BUN of various small amount of blood, placenta on		Bil	
BACK: <input checked="" type="checkbox"/> waist, stream	urine - NT	SGOT	
EXT: s trauma	adrenal	SGPT	
NEURO: clt, ax, d sac		alk phos	
SKIN: cl, oxeph		BHCG	00202
PROCEDURAL NOTES		UA	
			#111+ 0202 facial series

RE-EVALUATION	E.R. PHYSICIAN STAT INTERPRETATION	ABG _s
	→ wet mount. <u>no sperm</u>	EKG
DIFF. DX.	<u>seen ROY014 - CR (Candice Phillips)</u>	
IMPRESSION alleged sexual assault facial contusion	X-ray - nt, sdx	
	CONSULTS	
	PHYSICIAN SIGNATURE [Signature]	SCRIBE SIGNATURE
COORDINATION CARE: <input type="checkbox"/> DISCUSSED	RX Suprax Doxycycline	
TIME 0300	DISPOSITION ADMIT	CONDITION IMPROVED
	DISCHARGE NUMBER [Signature]	UNIT COORDINATOR [Signature]
	INMAN, CANDACE C PT: 0003718931 AD: 08/10/94 PH: (702) 855-1778	ERM 39-11-37 FC: 1 27Y F DOB: 12/17/66

EXHIBIT
16
PENGAD 800-631-6569

V12.46 ★

No. Q106-2580

vs.

vs.

J. Peck

Ex. 14

Admitted: 5/7, 20 09
HOWARD W. CONYERS, CLERK

By [Signature]
Deputy

V12.47

WASHOE COUNTY SHERIFF'S OFFICE
VINCENT G. SWINNEY, SHERIFF
FORENSIC SCIENCE DIVISION
911 PARR BLVD.
RENO, NV 89512-1000

09/15/94

LABORATORY NUMBER: L2145-94-1
AGENCY: SPARKS P.D.
AGENCY CASE #: 94-9292
SUSPECT: MCNAUGHT, DAVIS
VICTIM: INHAM, CANDACE
PERSON REQUESTING: DET. NEUHARTH
DATE OF SUBMISSION: 08/24/94
OFFENSE: SEXUAL ASSAULT

Received from WCSO EVIDENCE SECTION, on 08/30/94

The submitted items were identified as:

W020120:

PS01: Sexual Assault Evidence Kit #R04014 containing items obtained from Candace INMAN on August 10, 1994

PS02: One liquid blood sample obtained from INMAN

RESULTS OF EXAMINATION:

PS01: The presence of semen was identified on the vaginal smear; the vaginal swabs tips were removed and will be retained in the Laboratory. The "stains on skin" gauze was examined for the presence of semen with none detected. No hairs or fibers were observed in the pubic hair brushing packet. The remaining items in the Kit were not examined at this time.

PS02: A stain was prepared from the liquid blood sample and will be retained in the Laboratory.

The vaginal swabs may be sufficient in quantity for limited blood grouping analysis. Should additional examination become necessary, please contact the Undersigned regarding the submission of reference blood samples of any suspects that may be identified in the future.

Maria Fassett

ANALYST

MARIA FASSETT, CRIMINALIST



V12.48

5/12 evidence

No. C206-2580

De

vs.

G. Peck

Ex. 24

Admitted: 5/7, 20 09
HOWARD W. CONYERS, CLERK

By [Signature]
Deputy

V12.49

Dad's calls

Account Number
702 173-2109 921 N 5176

Statement Date
Jul 17, 1994

Page 7

AT&T billing questions on this page:
300-325-0138

For changes to your service or advice on
Long Distance call: 800-222-0400



AT&T Calls Charged to a Nevada Bell Calling Card

• Calling Card 702 173-2109 (continued)

Date	Time	Place and Number Called	Type	Rate	Minutes	Amount
1. Jul16	9:05pm	ROSAMOND CA 805 256-8355	Card	Night	9	1.45
Called from		JUNE LAKE CA 619 648-9981				
2. State Tax						
3. Jul17	8:12pm	FERNLEY NV 702 575-5677	Card	Eve	3	.10
Called from		PALMDALE CA 805 269-1385				1.34

*

Total AT&T Calls Charged to a Nevada Bell Calling Card

\$122.84

This portion of your bill is provided as a service to AT&T. There is no connection between Nevada Bell and AT&T. You may choose another company for your long distance calls while still receiving your local telephone service from Nevada Bell.

DAD & FRANK AT my HOUSE.

OK
LAD
FRANK
ALBUQUE



JOHNSTONE SUPPLY of LAS VEGAS
 =====
 2314 SO. WESTERN AVENUE
 LAS VEGAS, NEVADA 89102-4800
 (702) 387-6940

 INVOICE

INVOICE NO.: 283465

INVOICE DATE: 8/02/94

PAGE: 1

B A/C SVC. S CASH
 I H
 L I
 F P

=====

CUST. #	TERMS	SHIPPED VIA	CUSTOMER PO#	S/P
99	CASH CA	WILL CALL		HOU EGL

=====

ITEM	ORD	RD	DESCRIPTION	QTY	SHF	U/M	PRICE	AMOUNT
3TK4B	1		F-4 TORCH KIT	1		EA	60.85	60.85
353-412	1		F-1 15% SILV. 1 LB TUBE	STK1		EA	29.37	29.37
392-085	1		X-1 REFRIG R22-30LB	1		EA	61.68	61.68
493-015	1		C-1 DV85C VAC PUMP	1		EA	285.00	285.00

pk. 8/2/94

check # 222
check # 522

There is a ten day waiting period
 for refund of payment made by
 check in excess of \$100.00.

SUB TOTAL	TAX	TOTAL DUE
436.90	30.58	467.48



V12.51

BANK OF AMERICA, #0173
PALMDALE BRANCH

Transaction Record

Time	Current Date	Business Date	Seq
11:37	08-05-94	08-05-94	113653
Type	Account Number		
CHECKING	24362-02119		

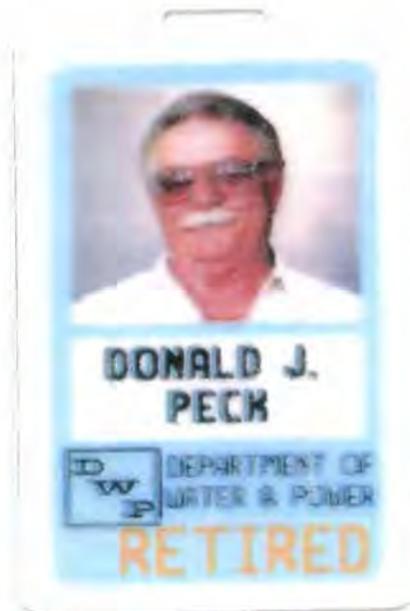
Deposit Total: \$3,000.00

Thank You,
MARY
005

*This would
have been
money from
Larry's job*

*Larry must have
shared some
proceeds w/Dad*

*08/05/94
Dad & Frank
here with
us.*



*Dad was
retired and
his pension
w/ not the
amount on
deposit record.*

EXHIBIT

27

CR06-2580

V12.52

RECORD ALL CHARGES OR CREDITS THAT AFFECT YOUR ACCOUNT

INV. #
283465 →
8-02-94

NUMBER	DATE	DESCRIPTION OF TRANSACTION	PAYMENT/ DEBIT (-)	✓	FEE (IF ANY) (-)	DEPOSIT/ CREDIT (+)	BALANCE	
							\$	
221	7/16	Tires repair	129	✓				
222	7/2	John Deere	300	✓				Johnstone Fly to Dad's purchase
223	8/16	Prep Bag	141	✓				
224	8/16	K Mart	87	✓				
225	7/22	Dis story	145	✓				Discount from Palmdale CA
226	7/23	Maple	175	✓				
227	7/24	K Mart	10	✓				
228	7/20	Southwest	92	✓				Airline fare Frank flew home
229		Diamonds	137	✓				
230		Over the top	420					
1155	7/29	Lucky	52	✓				
1156	7/29	Hardware	96	✓				
1157	7/2	Lucky	74	✓				
1158	7/2		68	✓				

REMEMBER TO RECORD AUTOMATIC PAYMENTS/DEPOSITS ON DATE AUTHORIZED



IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA
Plaintiff,

vs.

FRANK PECK,
Defendant.

Sup. Ct. Case No. 65691
Case No. CR06-2580
Dept. 6

RECORD ON APPEAL

VOLUME 11 OF 13

POST DOCUMENTS

APPELLANT

Frank Peck #57106
H D S P - P O Box 650
Indian Springs, Nevada 89070

RESPONDENT

Washoe County District Attorney's
Office
Terrance McCarthy, Esq.
P O Box 11130
Reno, Nevada 89502-3083

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FRANK M. PECK 57106

HDSP Box 650
Indian Springs, NV. 89070
Petitioner, pro se.

FILED

2013 MAY 28 PM 4:48

JOEY CRONIN HASTINGS
CLERK OF THE COURT

BY [Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK, CASE NO CR-06-P-2580
Petitioner, DEPT No. 6

vs.

WARDEN NOOL,
THE STATE OF NEVADA,
Respondent's.

SUPPLEMENTAL PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION) RELIEF # 4.

Comes Now, the Petitioner, Frank M. Peck
pro se with # 4 supplemental Petition for
Writ of Habeas Corpus (post-conviction) relief.

This supplement is made and based on all
papers and pleadings on file in this case as
well as NEWLY DISCOVERED EVIDENCE the
attached points and authorities and Affidavit of
Petitioner. And Exhibits 1, 2, 3, 4.

Dated May 18th 2013.

[Signature]
Frank M. Peck, Pet pro se

CR06P2580
DC-9900046059-009
POST FRANK MILFORD PECK (D 13 Pages
District Court 05/28/2013 04 48 PM
Washoe County
4100
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Ground One

INEFFECTIVE ASSISTANCE OF COUNSEL:

FAILURE TO INVESTIGATE AND PREPARE FOR TRIAL

Petitioner's counsel was ineffective in failing to conduct a reasonable pre-trial investigation. This violated Petitioner's right to counsel, as guaranteed by Amendments 6 and 14 to the US Constitution. See *Wiggins v. Smith*, 123 Sct 2527, 539 U.S. 510 (2003). *Strickland, Wfca*

Shortly after Robert Bruce Lindsay was appointed to represent petitioner at the very first meeting at UNCC (Northern Nevada Correctional Center) between Mr. Peck and Mr. Lindsay. Mr. Peck presented Mr. Lindsay with his Pre-trial petition for a Writ of Habeas Corpus that he immediately read and discussed with Mr. Peck, that outlined specific prejudice to Mr. Peck's case and ALIBI witness' to investigate.

As such, it was at this very first meeting that Mr. Lindsay was made aware of the Alibi Defense for Petitioner.

Prior to the conclusion of said meeting, Mr. Lindsay told Mr. Peck that he would file the Pre-trial Petition for Writ of Habeas Corpus. After Mr. Peck repeatedly requested a file stamped copy from his counsel, Mr. Peck requested a copy of the Court docket at which time Mr. Peck realized that Mr. Lindsay was not telling Mr. Peck the truth. It was upon learning that his counsel failed to file the petition is when Mr. Peck was forced to file it as a fugitive document. SEE (EX-2, 3).

Yet, on May 1st, 2009 Mr. Lindsay told this Court: "It is the first time I've heard their NAMES, their phone numbers or their addresses in my entire life right this second!" SEE T.T. PAGE 39, lines 14-21. EX-5. Then SEE: EX-2 pg 3, 5 (a), (b) and pg 2 (d). Then SEE EX-6.

Mr. Peck has recently learned that close to the same time period when Mr. Lindsay thought he had cancer SEE: May 1st 2009 transcript page 44 lines 5-24.

That Mr. Lindsay represented A Mr. Bradley Dwight Heinz case no. CRO3-P-1571 wherein he failed to read the entire file rendering his representation to Mr. Heinz ineffective. SEE: transaction # 2512707. (Ex-1).

WHEREAS here, Mr. Lindsay failed to read and or remember reading Mr. Peck's Pre-trial Petition for writ of Habeas Corpus that "specifically set forth Alibi witnesses for investigation". Additionally, Mr. Peck filed his own NOTICE OF ALIBI witness/DEFENSE on April 14th, 2009, (Ex-2).

Mr. Lindsay failed his duty towards his client; he did not read the entire file that was provided to him let alone do ANY investigation of the facts/evidence, AS A RESULT this Court cannot be satisfied that the states evidence was adequately tested by Mr. Lindsay's perfunctory pre-trial performance, forcing Mr. Peck to proceed in proper person to trial with (4) days to prepare for trial.

This Court may recall that Petitioner Peck complained that Mr. Lindsay failed to answer ANY of Mr. Peck's correspondence.

Mr. Lindsay showed no indication that he intended to challenge the States case to the degree expected of a Lawyer in this community and is why Mr. Peck was compelled / forced to even consider representing himself @ Trial.

In Avery v. Alabama, 308 US, 444 at 446 The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment. There must be investigation, consultation and preparation of the client and consultation with an expert and meaningful materials for that expert's review. Whereas here nothing meaningful was provided to Dr. Llevellyn as subsequent discovery revealed that Cimclab director Rene Romero failed to run required blank controls rendering her analysis unreliable under Federal rules of evidence rule 702. In re Paoli R.R. Yard PCB litig, 35 F.3d 717, 745 (3rd Cir 1994).

Had Mr Lindsay conducted a proper investigation he would have located John L. Sullivan Metro Police Officer who would have testified that the PETITIONER WAS IN LAS VEGAS NV AT the precise time that the crime was committed.

Had Mr Lindsay investigated the witnesses provided to him (Doctors And Nurses) at the LANCASTER CA Clinic, Mr. Peck would have had very compelling witnesses to impeach the states so-called evidence proving that the evidence was planted or manipulated.

Had Mr. Lindsay investigated, he would have located a superior court Judge that would have testified that the Petitioner could not have been in Northern Nevada when the crime took place.

Strickland v Washington, 466 US 668, 691;
80 L. Ed. 2d 674 (1984) ("Counsel has a
duty to make reasonable investigations
or to make a reasonable decision that
makes particular investigations unnecessary.")

Not only was Mr Lindsay's investigation
unreasonable, it was non-existent as he
did absolutely no investigation.

Mr. Lindsay spoke to NOONE with
regard to his client's case.

NEWLY DISCOVERED EVIDENCE

McLemore v State, 94 Nev 237, 577 P.2d. 871 (1978).

Necessary showing. Newly discovered
evidence must be: (1) Newly discovered.

On March 25th, 2013 Mr. Peck purchased
an Order Granting Post Conviction Petition
in Heinz v State, case no. CR03P1571

From this District Court (see: Ex-1)

finding Robert Bruce Lindsay in-
effective. (2) material to movant's defense.

Mr. Lindsay was pre-trial counsel to Mr.
Peck in the instant case.

(3) such that it could not with reasonable diligence have been discovered and produced for the trial. The evidence that Robert Bruce Lindsay was an ineffective attorney was filed after Mr. Peck's trial on October 5, 2011 but committed before Mr. Peck's trial around 2005, (4) not cumulative.

This new evidence may well have had an effect on this court's decision on whether to grant Mr. Peck's motion for substitute counsel preventing Mr. Peck from having to represent himself at trial, (5) such as to render a different result probable upon retrial. This new evidence combined with other new evidence set forth in Mr. Peck's (Third supplemental petition) would "most definitely have a different result on retrial". (6) such that it does not attempt only to contradict a former witness or impeach or discredit him, unless the witness to be impeached is so important that a different result must follow. Had Mr. Peck had a competent lawyer with the now known information, no jury would have found Mr. Peck guilty.

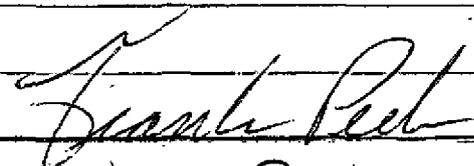
(7) that these facts be shown by the best evidence the case admits. Robert Bruce Lindsay failed, as he did in Heinz, supra, to remember reading Mr. Peck's Petition for Writ of Habeas Corpus that specifically set forth alibi witnesses to investigate and prejudice to Mr. Peck's case that was totally ignored by Counsel. Robert Bruce Lindsay's preparation for trial amounted to a total failure to actively advocate his client's cause Rickman v Bell, 131 F.3d 1150, 1157 (6th Cir 1997).

If Mr. Lindsay would have researched and prepared for trial and communicated with his client he would have learned inter alia that "the PCR Polymerase Chain Reaction is the literal manufacture of evidence at a molecular scale, literally cooked up in an oven/ Thermal Cycler at 201°F". (SEE EX-4) All said information was readily available to Mr. Lindsay had he put forth the due diligence to obtain it.

Conclusion

Therefore, the ISSUES RAISED HEREIN AND IN THE PRECEDING SUPPLEMENTAL PETITIONS, this court should find that Mr. PECK has indeed satisfied both deficiency and prejudice prongs of Strickland by a preponderance of the evidence AND ORDER A NEW TRIAL, OR AT A MINIMUM ORDER AN EVIDENTIARY HEARING SO MR. PECK CAN PROVE HIS CASE.

Dated this 21st day of May 2013.



Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV, 89070

Petitioner, pro se.

AFFIDAVIT OF FRANK M. PECK

I Frank M. Peck do hereby swear under the penalty of perjury that:

1. I am the Petitioner in case no. CR-06-P-2580.

2. all assertions in the attached Supplement #4

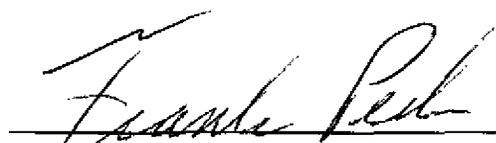
are true based upon personal knowledge and I am competent to testify to all matters contained therein.

3. I bring this Supplement in good faith and for no improper reason.

4. further affiant sayeth naught.

Signed under the penalty of perjury N.R.S. 208.165 and 28 U.S.C. section 1746.

Dated this 22nd day of May 2013.



Frank M. Peck #57106
H.D.S.P. Box 650
Indian Springs, Nv. 89070

Certificate of Service and Affirmation

Pursuant to NRS 239B 030 the attached supplemental petition for writ of Habeas Corpus # 4 contains no social security numbers of any person and a true and correct copy was mailed this date to:

District Attorney
75 Court Street
Reno, NV. 89501

Dated this 22nd day of May 2013.

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.

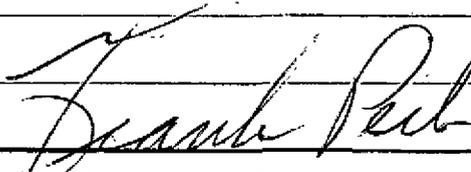

Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner, pro se.

Exhibit number 1 Pages 14

Exhibit description Order Granting Post-Conviction Petition
Showing Ineffective Assistance of Robert Bruce Lindsay

Exhibit number 2 Pages 8

Exhibit description Pre trial Petition for writ of Habeas
Corpus. re: Alibi witnesses

Exhibit number 3 Pages 5

Exhibit description Memorandum points and Authorities
in support of Petition for writ of Habeas Corpus.

Exhibit number 4 Pages 1

Exhibit description DNA Research Inescapable facts
Dated Jan 1, 2013.

Exhibit number 5 Pages 1

Exhibit description Transcript pg 39 May 1 2009

Exhibit number 6 Pages 2

Exhibit description Notice of Alibi Defense
filed by Mr. Peck.

Exhibit number _____ Pages _____

Exhibit description _____

Exhibit number _____ Pages _____

Exhibit description _____



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EXHIBIT 1

EXHIBIT 1

1 **CODE: 3370**
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **BRADLEY DWIGHT HEINZ,**

10 **Petitioner,**

Case No. CR03P1571

11 **vs.**

Dept. No. 3

12 **STATE OF NEVADA,**

13 **Respondent.**
14

15 **ORDER GRANTING POST CONVICTION PETITION**
16

17 The matter before the Court is a timely filed petition for post-conviction relief by
18 petitioner Heinz on July 29, 2008. Hearings were held on the petition on September 23,
19 September 24, December 1 and December 2, 2010 followed by extensive post-hearing
20 briefing by both parties. Petitioner was represented by Richard F. Cornell, Esq. and the
21 State was represented by Joseph R. Plater, Deputy Dist. Atty. Appellate Division.
22

23 The Court having carefully considered the grounds for the petition, the evidence
24 adduced at the hearings and the arguments of counsel, and good cause appearing, now
25 renders its findings and conclusion:

- 26 1. This action involved 6 counts of lewdness with a minor child and one count of sexual
27 assault against the petitioner's 3 children (2 adopted - Heidi and Anthony, and
28 1biological – Sophia). The case went to jury trial on January 18 and 19, 2005 after

1 which the jury found petitioner guilty on all counts. He was sentenced to a term of 10
2 years to life for lewdness with a child, Count 1, 4 concurrent terms of 40 to 120
3 months for lewdness with a child, Counts 2, 3, 4, 5, a consecutive term of 10 to life for
4 sexual assault on a child, Count 6, and a consecutive term of 40 to 120 months for
5 lewdness, Count 7.
6

7 2. Robert Bruce Lindsay, Esq. was retained trial counsel for the petitioner. Mr. Lindsay
8 accepted and took the case in December of 2004, after it had been pending for over a
9 year. The evidence showed that there had been little trial preparation by the
10 attorneys who preceded Mr. Lindsay. Nevertheless, he accepted the case with a trial
11 date already previously set for January 18, 2005 and acted on the presumption that
12 the then-presiding Judge Hardesty would not have granted him a continuance had he
13 asked for one. The case was ultimately assigned to Department 3 because Judge
14 Hardesty became Justice Hardesty that January and on January 7, 2005 Mr. Lindsay
15 appeared in Department 3 on a motion to confirm and announced that he was ready
16 for trial. Although he sought to withdraw a week later as counsel of record, that was
17 on a payment issue and when he was paid, he withdrew his motion to withdraw 4
18 calendar days and 1 working day before the beginning of trial. From the time of his
19 retention to the start of trial was less than 2 months.
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23 3. Mr. Lindsay's theory of defense was that Mr. Heinz's wife, Mrs. Heinz, formerly known
24 as Mrs. Balikian, went to the children and got them to institute the charges based on
25 the fact that petitioner was divorcing her. In other words the criminal charges evolved
26 out of a retaliatory action by a divorcing wife against a divorcing husband.
27
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1 4. Mr. Lindsay had a copy of the divorce file in his office at the time he was retained
2 since it was provided to him by Mr. Heinz. Had he read it carefully he would have
3 realized that Mrs. Heinz brought the divorce action after, not before, the children
4 made the allegations. That is, petitioner did not file the divorce action, nor did the
5 children make the allegations in retaliation to the divorce action. The theory
6 espoused by trial counsel cannot be said to have been a tactical decision by a
7 professional, competent counsel. By stating his theory of defense to be a 'retaliation,'
8 he demonstrated that he had not read the complete file provided to him by the
9 defendant.
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11
12 5. In any event, the actual theory of defense as was pled in the petition and as was
13 brought out in the evidentiary hearing was similar, and was to the effect that: the
14 children lied; they lied to please their mother, who had decided to divorce the
15 petitioner; their mother had an enormous, controlling influence over them; two of the
16 children (Heidi and Anthony) were angry at their father over unrelated issues; the
17 children knew from the family dynamic and from all of the things Mrs. Heinz had told
18 them over the years that they would 'please their mother' and get 'positive attention' if
19 they claimed petitioner molested them; that Mrs. Heinz's motivation for creating such
20 an atmosphere primarily was 'child alienation syndrome'; that Mrs. Heinz had made
21 and fostered a previous accusation against petitioner relative only to Heidi 3 years
22 prior in front of the children, which Mrs. Heinz who was a social worker involved in the
23 placement of abused children, did not report and which Mrs. Heinz later, on behalf of
24 Heidi, recanted; that at or about the time of the April, 2003 accusations, petitioner had
25 become the children's 'primary psychological parent', even though he was the
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adoptive father of Anthony and Heidi; that after Mrs. Heinz recanted the earlier allegation, Mrs. Heinz encouraged petitioner to have interaction with young children; by encouraging an atmosphere where the children would create such stories, Mrs. Heinz would become the 'primary psychological parent'; and that Mrs. Heinz had in fact engaged in the same kind of process previously, alienating the children against their natural father, one Sarkis Balikian, to the point where Mr. Balikian agreed to terminate his parental rights rather than 'deal with Mrs. Heinz .'

6. In the very limited amount of time that Mr. Lindsay had prior to trial, he did not hire an investigator and he did no or virtually no pretrial investigation of his own; he filed no pre-trial motions, other than the motion to withdraw when he wasn't getting paid; and his 'investigation' consisted of cursory interviews during trial of some character witnesses whom he put on the stand for Mr. Heinz. Although counsel did consult with and retain an expert witnesses he failed to properly notify the State of his intention to call the expert and thus lost the opportunity to present certain psychological testimony to the jury. Mr. Lindsay apparently did not study the videotapes containing the interviews of the children and failed to conduct an effective cross-examination of the children. He explained that his cross-examination was strategic in that he wanted them off the stand as he felt they were impressive! He conducted no cross-examination of Detective Stephanie Moen, the investigating detective. His cross-examination of Mrs. Heinz was limited to obtaining conflicting testimony on whether Mrs. Heinz had restricted her ex-husband, Sarkis, from seeing the children and whether she had restricted Mr. Heinz's parents from visiting the children after her separation from Mr. Heinz. The only discernable consistent thread put forth by Mr.

1 Lindsay at trial was his entreaty to the jury to be fair. The Court had problems with
2 accepting Mr. Lindsay's testimony as to his reasons for conducting the defense as he
3 did.

4
5 7. Petitioner and Mrs. Heinz were the adoptive father and mother to 4 children, not 3.

6 The 4th child's name was Fabien. He was described as the most 'independent-
7 thinker' of the 4 by family witnesses who knew the 4 children well. When Detective
8 Moen interviewed Fabien, he told her that nothing happened to him, and the only one
9 of the other 3 children he heard anything happening to was his sister Heidi. If the
10 theory of the defense concerned Mrs. Heinz's control and manipulation as the reason
11 for the inculpatory stories, this seems to be important information to disclose at trial.
12 However, Mr. Lindsay neither called Fabien as a witness nor inquired of Detective
13 Moen concerning the statement he made to her. While Mr. Lindsay claimed to have a
14 'gut feeling' that such an examination would not go well, he in fact had no factual basis
15 to so conclude since he had not investigated the matter. Absent investigation, he had
16 no reasonable basis to suppose that Fabien would recant his statement to Detective
17 Moen and admit to knowingly giving a false statement to the police. Had Fabien
18 testified consistently with his statement to Detective Moen, such would have been
19 consistent with the defense theory of the case, i.e., the accusations were falsely
20 prompted by Mrs. Heinz.

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24 8. An example of Mrs. Heinz's manipulation and control over her children, which Mr.
25 Lindsay testified was his theory, was when they testified before the grand jury. Mrs.
26 Heinz was not present when Heidi testified, yet she was present in the grand jury
27 room when Anthony started to testify. Supposedly, Anthony wanted her there was the
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1 State's explanation for her presence. Yet, Anthony was a 17-year-old boy at that time
2 and Mrs. Heinz remained in the grand jury room for Sophia's testimony. All of those
3 facts were in the record of the Grand Jury proceedings and in Mr. Lindsay's
4 possession, yet he failed to contest any of those facts in pretrial motion work. The
5 position of the state is that Mrs. Heinz was permitted to be in the grand jury room
6 pursuant to NRS 172.235 (g), although the record is ambiguous as to whether the
7 grand jury actually requested Mrs. Heinz to be there and there is nothing in the record
8 reflecting a divulgement to the grand jury of Mrs. Heinz's vested interest in the
9 outcome of the grand jury proceeding. In any case, trial counsel had an argument to
10 make to the jury that Mrs. Heinz did that because she was confident that Heidi would
11 give inculpatory testimony, but she was not confident that Anthony or Sofia would do
12 so, and felt she had to be there in order to make sure that those 2 children testified
13 according to her plan. However, Mr. Lindsay did not bring out that information or make
14 that argument because he did not investigate the facts. That testimony and argument
15 were consistent with the defense theory of the case however. As another example of
16 Mrs. Heinz's manipulation and control that should have been known and utilized by
17 Mr. Lindsay was the fact that both Diane Christensen and Wendy Chavez could have
18 testified as follows: when Wendy separated from her husband, Pete, in 2003 the 2
19 women went to Mrs. Heinz's home to get advice from her. Mrs. Heinz advised Wendy
20 to get a restraining order against Pete, and that would keep Pete from seeing the
21 children. Wendy told Mrs. Heinz that Pete had not been abusive to her or to the
22 children but Mrs. Heinz responded: "it doesn't matter, all you have to say is that you're
23 afraid. You don't have to have evidence. And when the TPO issues, the courts are
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1 more lenient with the mother than with the father." From those facts, trial counsel had
2 an argument to make that Mrs. Heinz was the type who, upon having her mind set on
3 winning in a divorce situation, would counsel her children to come up with false
4 inculpatory stories in order to obtain a victory, and the finder of fact naturally would
5 believe the children. However even though Mr. Lindsay called Diane Christensen as a
6 character witness at trial, he did not direct her to this testimony. Mr. Lindsay admitted
7 that he would have wanted to confront Mrs. Heinz with that information had he known
8 of it, as it was.
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11 9. As another example, Mr. Lindsay knew that a psychological angle to this case was
12 important and he listed Dr. Duane Varble, petitioner's therapist, as a witness. However
13 because he listed him so late, Mr. Lindsay could not call Dr. Varble as an expert
14 witness consistent with NRS 174.245. Thus although he called Dr. Varble, he did not
15 ask Dr. Varble for any probative, relevant and helpful opinions to support his defense.
16

17 10. At the post-conviction evidentiary hearing Dr. Earl Nielsen testified. He specializes in
18 the psychological aspects of child sex abuse cases. He testified that this case has
19 elements that are recognizable as patterns of child alienation. He opined that this case
20 has signs that Mrs. Heinz had manipulated the children. He further testified that the
21 claims of the children do not match up with what the psychological profession sees in
22 incest cases; it is an oddity that a father would molest children of both sexes, and that
23 he would molest one son but not the other. He also testified that in incest cases the
24 perpetrator often stops when the child reaches puberty and goes to the next youngest
25 child, with the children being threatened into silence; yet none of that happened here.
26 He further testified that a molestation claim that does not involve the father touching
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1 the children, other than a claim of a one time attempted penetration, is inconsistent
2 with what psychologist typically see in incest cases. Further, he testified that the fact
3 that the children could not self describe an emotional response to their father's sexual
4 activity was another red flag from a psychological point of view. He further testified
5 that the fact that the children would be comfortable in being nude around their mother,
6 but not their father, is an odd situation that could be a factor of 'child alienation' and
7 that another red flag is that the children were used to nudity in the home, resisted
8 going into the hot tub as they say, yet never claimed that any sexual contact occurred
9 in the hot tub.
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12 11. In the Court's opinion he did not challenge the State's case in an appropriate
13 professional and effective manner. The first obvious step in an appropriate
14 representation would have been to obtain a continuance so that the necessary trial
15 preparation could get accomplished, however he neglected to move for one!
16

17 12. The Court finds that there was available evidence that could have been probative of
18 the defense theory of the case: that Mrs. Heinz manipulated and control the children
19 into making false allegations. However even though counsel knew that there was a
20 psychological angle to the case, he did not present any of this information through a
21 properly qualified expert. Mr. Lindsay could not articulate a reasonable sounding
22 strategy for failing to do so.
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28 1 Mr. Lindsay candidly admitted that if he had to defend the case over again, under the circumstances he
would've sought a continuance, studied the divorce file, and would have been better prepared.

1 13. Accordingly, the Court concludes that Mr. Lindsay's representation fell below the
2 standard of reasonable counsel in failing to investigate and present the above
3 information. His representation of Mr. Heinz was deficient.
4

5 14. There were other facts that could and should have been brought out by counsel that
6 could have at least tested the State's evidence and theory in this case: Mrs. Heinz's
7 divorce lawyer, Gary Silverman, sent a letter to Mr. Heinz's lawyer, Sandra Unsworth,
8 threatening him or assisting him in the event he gave up all of his property rights to
9 Mrs. Heinz and complete custody of the children. Counsel did not bring this out in
10 cross-examination of Mrs. Heinz or anyone else. Also in the divorce file there was an
11 allegation of bestiality with the family dog made by Mrs. Heinz which came to light
12 when the petitioner requested custody of the dog. Mr. Lindsay admitted that he could
13 have used that information had he been aware of it, yet those facts were contained in
14 the divorce file which he had from day 1 of his representation of Mr. Heinz.
15

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17 Additionally, Mr. Balikian, Mrs. Heinz's ex-husband was not interviewed by the
18 defense or called as a witness at trial. His history with dealing with Mrs. Heinz could
19 have been helpful in establishing Mrs. Heinz as a 'controller' and to the degree to
20 which she went when she wanted something. The reason he terminated his parental
21 rights was relevant to Mrs. Heinz's methods, yet this information was not produced by
22 Mr. Lindsay because he did not investigate the case and in fact, he did not have
23 sufficient time in which to fully investigate this life-sentence case. Anthony testified
24 that *Petitioner made him watch pornography and masturbate while watching it with*
25 *him when he was a young child. Detective Moen searched petitioner's home and*
26 *failed to discover any pomography or anything else of evidentiary value on the*
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1 premises yet Mr. Lindsay did not present this information to the jury. He admitted that
2 his decision to not to ask about the search results was not a strategic decision. The
3 issue of Heidi having been sexually assaulted by Petitioner when she was younger
4 was subject to challenge by medical expert opinion, yet Mr. Lindsay did not attempt to
5 produce such testimony. Dr. Patricia Crane, called at the evidentiary hearing, is a
6 qualified sexual abuse diagnostician. She testified that if a full grown man's penis
7 penetrated a pre-estrogen vagina, she would expect to see some damage to the
8 tissue. There was some information that a jury could have heard to help them
9 evaluate the State's evidence, yet none such was produced.

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12 15. For the most part of his testimony, Mr. Lindsay could not recall what he did or why he
13 neglected to do some things on behalf of his client. The timing of the divorce action
14 ought to have made him rethink his theory of defense, yet he was unaware of the
15 timing and its inconsistency with his argued theory because he failed to investigate:

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17 16. He failed to investigate the 'no door' house where some of the acts were claimed to
18 have occurred. Mr. Heinz advised that there was a time when one of their homes had
19 no inside doors and if that were so, then there was no privacy in that house and his
20 client's sexual activity would have been visible to all. He did not know the timing of
21 the allegations and which residence was involved at those times. He failed to
22 investigate this aspect of the case.

23
24 17. All of these points demonstrated to the Court that the effort put forth by Mr. Lindsay
25 brings into question the correctness of the verdict in this case.

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27 18. When selecting the jury Mr. Lindsay basically asked the prospective jurors whether
28 they could be fair to the State and to his client. He did not ask if any of them had

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trouble with the nature of the case or with the charges. The family's life style included nudity in the home, with and in front of the children, admittedly an uncommon life style, yet counsel did not ask whether that fact would influence the prospective jurors or create bias against his client. The Court finds that omission highly unreasonable and without a strategic basis. The stakes were extremely high for his client yet Mr. Lindsay did not take the opportunity to fully explore the people who he would be selecting to sit in judgment of his client. He failed to inquire if any of the prospective jurors or any of their family members had been sexually abused. He failed to ask if they could accept the proposition that serious false accusations can be made by children. He failed to pursue his defense theory of parental domination of the children. Like it has been said of death penalty cases, sexual abuse of children cases also are different. The stakes are high – life imprisonment- and they are highly emotional for all involved. The jurors ought to be educated about what they will hear and how they would react to such testimony and what their reactions would be to a defense attorney cross-examining children. Counsel did not ask any such questions and his cross-examination of the children was merely perfunctory, not at all pertinent to his defense theory, although he claimed that it was his strategy to handle the children as he did.

This Court did not accept his explanation

19. Notwithstanding all of the above the jury during deliberations indicated to the court that it was unable to decide the matter and they requested a re-reading of the children's testimony. With something more provided to the jury the result of the trial may have been different.

1 The Court is not satisfied that the State's evidence was adequately tested by Mr.
2 Lindsay as representative for Petitioner. The Court is very aware that convictions should
3 not easily be set aside and is also aware that the petitioner may be good for the crimes
4 and perhaps he deserves to remain in prison for the duration of his life, but such a
5 consequence ought to follow a thorough and professional contest of the allegations, but
6 this Court, having witnessed the trial and hearing the facts produced at the post-conviction
7 hearings can emphatically say that such was not the case in this matter.
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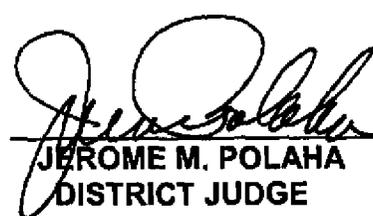
9 The United States Supreme Court in Avery v. Alabama, 308 U.S. 444 at 446, in
10 discussing an appointed counsels' deficient representation in a 6th Amendment case noted
11 .."[B]ut the denial of opportunity for appointed counsel to confer, to consult with the
12 accused and to prepare his defense, could convert the appointment of counsel into a sham
13 and nothing more than a formal compliance with the Constitution's requirement that an
14 accused be given the assistance of counsel. The Constitution's guarantee of assistance of
15 counsel cannot be satisfied by mere formal appointment." The same situation
16 constitutionally and logically applies to retained counsel: they cannot just show up in court
17 and go through the machinations of a lawyer and have it held that their mere retention and
18 appearance at trial satisfies the 6th Amendment's guarantee to assistance of counsel.
19 There must be investigation; there must be consultation with and preparation of the client;
20 there should be at least a consultation with an expert in the field to test the anticipated
21 testimony and if helpful, the expert should be called to present his opinion to the jury.
22 There must be a planned trial strategy based upon the expected facts. Unfortunately, for
23 whatever reasons, Mr. Lindsay failed in his duty towards his client: he did not read the
24 entire file that was provided to him let alone do any investigation of the facts and as a
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1 result the Court finds that he did not challenge the State's case to the degree expected of
2 a lawyer in this community.

3 In light of the above findings, the Court concludes that both the deficiency and the
4 prejudicial prongs of Strickland have been satisfied by a preponderance of the evidence.
5 Petitioner was denied effective assistance of counsel and deserves another trial. That will
6 be the order.
7

8 IT IS SO ORDERED.

9 Dated this 5th day of October, 2011.
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12 JEROME M. POLAHA
13 DISTRICT JUDGE
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CERTIFICATE OF MAILING

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The undersigned hereby certifies that on the 5 day of October ~~September~~, 2011, she

served copies of the foregoing ORDER in Case No. CR03P1571 to the following:

The following were served electronically:

JOSEPH PLATER, ESQ. for STATE OF NEVADA

The following were served via USPS:

**RICHARD F. CORNELL, ESQ.
150 Ridge Street, 2nd Floor
Reno, NV 89501**

Jovanne Gillespie
JUDICIAL ASSISTANT

R.E.C.E.I.P.T.

Second Judicial District Court

Receipt Number: DCDC401370
Date: 25-MAR-2013
Cashier: JYOST
Comment: FDR CR03P1571 BRADLEY HEIN
Z

Payor: CKHR204641160625 FRANK PECK
Address:

Qty	Description	Amount
14	Copy \$1 Per P	14.00
	Check Pay - F	14.00
Total Fees:		14.00
Total Payment:		14.00

DC-9900046059-011
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District Court 05/28/2013 04 48 PM 4100
Washoe County 1Y05T
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EXHIBIT 2

EXHIBIT 2

File Copy

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

PETITION FOR WRIT OF HABEAS CORPUS

IN THE MATTER OF THE APPLICATION
OF FRANK MILFORD PECK
FOR A WRIT OF HABEAS CORPUS

CASE: CR-06-158
DEPT 6

FILED
2009 MAR 25 AM 10:35
NORBERT M. CHAMBERS
C. Galindo

To: The Honorable Judge of the Second Judicial District
Court of the State of Nevada, in and for the County of Washoe.

The Petition of Frank Milford Peck, Petitioner In Proper
Person, respectfully shows:

1. That Petitioner is not learned in matters of law and is
acting In Proper Person.

2. That Petitioner makes application herein on his own behalf
for a writ of Habeas Corpus; that the cause of Petitioners
restraint of liberty is charges filed by Sparks Police Dept
and the Washoe County Deputy District Attorney David Clifton;
Petitioner is presently imprisoned at the Northern Nevada
Correctional Center in Carson City, Nevada for unrelated
charges.

3. That the restraint of the Petitioner is unlawful due to
the constitutional violations of:

A. INTENTIONAL PREJUDICIAL PREACCUSATION DELAY

1) The crime in question could have been discovered with
reasonable diligence in 1996 or earlier.

a) During an unrelated investigation in 1996 a DNA profile
of the Petitioner's DNA was ran through all available
databases yealding no matches.

b) DNA profile collected from the victim in the instant case
was entered into the database and available in 1994.(exh A)

2) Prejudice suffered by the Petitioner is loss of witnesses
that would have substantiated and supported an alibi defense
and loss of physical and documentary evidence in support of
such a defense.

EX-2

V11.520

- 1 a) Petitioners deceased father, Donald James Peck who would
2 have testified that the Petitioner was not in the State
3 at the time the crime was committed. He would have been
4 found credible and withstood cross-examination.
5 The factors that support this claim are (1) The witness
6 had no criminal history; (2) The witness was an upstanding
7 member of the community; (3) Credit card and phone records
8 would have further supported his exculpatory testimony.
9
- 10 b) Petitioner's deceased Mother, Bessie Pauline Peck who would
11 have testified that the Petitioner was not in the area or
12 in the State at the time the crime was committed, she would
13 have been found credible and withstood cross-examination.
14 The factors that support this claim are (1) The witness had
15 no criminal history; (2) The witness was an upstanding
16 member of the community; and (3) Phone and Credit card
17 records would have supported this exculpatory testimony.
18
- 19 c) Petitioner's deceased friend, Nocholas Ponce who would have
20 testified to the fact that Petitioner was not in the area
21 or in the state at the time the crime was committed. He
22 would have been found credible and withstood cross-examination.
23 The factors that support this claim are; (1) The witness
24 had no criminal history; and (2) The witness was an upstanding
25 member of the community. His testimony would have supported
26 the other exculpatory testimony.
27
- 28 d) Larry Peck, the Petitioner's brother, can substantiate and
support Alibi, that petitioner was not in the area or in
the state at the time this crime occurred. Prior to 2001
this witness would have been found credible and would have
withstood cross-examination.
Factors that support this claim are (1) He would have
provided exculpatory testimony supporting petitioner's
actions and whereabouts at the time the crime occurred
because he was with the petitioner and; (2) He would have
been able to provide Credit card and phone records which
support his testimony, and; (3) Extreme prejudice exists
by virtue of the loss of a valid Alibi Defense caused by
the dilatory actions of Sparks Police Department and D.A.
David Clifton.
3. The loss of these witnesses has caused extreme prejudice
by way of preventing petitioner from presenting a valid
Alibi Defense.
- a) Loss of Documentary evidence, including Telephone records
Credit card records Banking records, Credit card records and
Medical records from these witnesses has created extreme
undue prejudice to the Petitioner and prevented him from
presenting a Valid Defense.

- 1 b) The extreme passage of time in this case has violated
2 Due Process in that the 12 year Pre-Indictment Delay,
3 in and of itself creates extreme undue prejudice to the
4 petitioner in the form of **Laches**.
- 5 c) Petitioner has been deprived of any defenses available
6 to him at the time the crime was committed and the
7 punishment has been made more burdensome due to the changes
8 in statutes between 1994 and present. Thereby creating
9 undue prejudice to the petitioner.
- 10 d) The incessant coaching, prodding and questioning of the
11 Victum by Sparks Police Department and the Washoe County
12 District Attorney has created inaccuracies in the Victim's
13 testimony causing extreme and deliberate prejudice to the
14 petitioner.
- 15 4. The District Attorney gained a tactical advantage over
16 the petitioner by his access and availability to the
17 witnesses and evidence throughout the 12 year period.
- 18 a) The District Attorney and Sparks Police Department had
19 complete control and access to all evidence without any
20 Court supervised controls.
- 21 b) Only 30 days after the crime occurred, Sparks Police Dept
22 and Washoe County crime lab suspended and closed this case
23 for lack of evidence.
- 24 c) The Police and Medical reports of the Victum are contrary
25 to the crime lab findings in 2001.
- 26 d) The late Expost Facto application of NRS 171.083 gave the
27 prosecution a decided advantage in that the original
28 Statute of Limitations would have expired more than 6 years
before an arrest was made in this case giving the
prosecution a decidedly unfair tactical advantage and
causing extreme prejudice to the petitioner.
5. The extreme delay precluded the discovery of and the
petitioner's ability to call witnesses in support of his
defense.
- a) One potential witness is a retired Superior Court Judge
whose testimony would support the fact that the petitioner
was not in the area or in the state at the time of this
crime.
- b) Other potential witnesses are the Doctors and Nurses who
administered an MRI to Donald Peck and would verify the
presence of the petitioner at the clinic located in
Lancaster California on or about the date in question.

1 B. POST-ACCUSATION DELAY

- 2 1) The length of the delay after arrest/formal accusation was
3 over two years.
- 4 a) At no time did the Courts or the prosecution show good
5 cause for the length of the delay.
- 6 b) There was no plausible reason for the delay between the
7 arrest and actual indictment.
- 8 c) The evidence used to make the arrest is the same as was
9 used to support Grand Jury Indictment two years later.
10 No new evidence has been collected between arrest and
11 Indictment.
- 12 d) The petitioner was clearly prejudiced by the additional
13 Post-accusation delay as it only served to compound the
14 previously listed violations of his constitutional rights.
15 The federal Courts generally holds that a delay in excess
16 of 1 year is presumptively prejudicial.
- 17 e) However a showing of prejudice is not a necessary
18 prerequisite to the finding of a deprivation of the right
19 of speedy trial.

20 C. ARRAIGNMENT

- 21 1. The Petitioner did not receive a timely Arraignment as required by the
22 Fourth Amendment of the U.S. Constitution.
- 23 a) State and Federal Law requires that the petitioner be brought before
24 a magistrate within 72 hours after arrest. This was not done. Petitioner
25 was never formally charged aside from the charges he was arrested for.
26 This failure was a clear violation of his due process rights, that
27 extended for a peroid of over Two Years between arrest and indictment.

28 D. SPEEDY TRIAL

1. The Petitioner did not at any time prior to the actual indictment:
- a) Pursuant to federal law the information or indictment must be filed
within 30 days of arrest or the service of a summons on the defendant, in
the instant case there was a Two year peroid between arrest ans indictment.
- b) On or about April 2004, Detective Greta Fye placed the petitioner
under arrest for the charges now before the court. Petitioner was not
notified at any time of his release on the present charges or in any
change of statis regarding this case until the indictment was handed
down in 2006.

1 c) The court did not afford the petitioner his Constitutional right to
2 a Speedy Trial under the Sixth Amendment to the U.S. Constitution, therefore
3 Dismissal is Mandatory under these provisions.

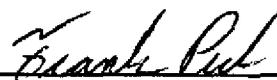
4 4. That no other Petition for writ of Habeas Corpus has heretofore been
5 filed by this Petitioner or his representatives.

6 5. The defendant waives his 60-day limitation for bringing him to trial
7 only for the purpose of adjudication of this petition.

8 6. If the Petition is not decided within 15 days before the date set for
9 trial, the petitioner consents that the Court may continue the trial to
10 an alternate date designated by the court.

11 Wherefore, the petitioner prays that this Honorable court make an Order
12 directing the County Clerk to issue a Writ of Habeas Corpus directed to the
13 Sparks Police Department and Deputy District Attorney David Clifton and
14 The Nevada Department of Corrections, commanding them to bring the petitioner
15 before your Honor and return the cause of his continued restraint with
16 regards to the above-named case number.

17 Dated this 31st day of october, 2008

18 
19 _____
20 Frank M. Peck
21 Petitioner, In Proper Person
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PURSUANT TO N.R.S. 208.165, I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF NEVADA THAT THE FOREGOING IS TRUE AND CORRECT. See N.R.S. 208.165.

Signed at NACC
(Location)

[Signature]
(Signature)

11/4/08
(Date)

57106
(Inmate number)

CERTIFICATE OF SERVICE BY MAIL

Pursuant to N.R.C.P. Rule 5 (b), I hereby certify that I am the petitioner/Defendant named herein and that on this 4th day of Nov 2008, I deposited in the United States Mails in Carson City, Nevada a true a correct copy of the foregoing addressed to:

District Attorney
Washoe County
75 Court Street
Reno Nv, 89501



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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

PETITION FOR WRIT OF HABEAS CORPUS

(Title of Document)

filed in District Court Case No. CR-06-2580

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-OR-

B. For the administration of a public program or
for an application for a federal or state grant.


(Signature)

11-4-08

(Date)



CR08P2580 DC-9900046059-012
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EXHIBIT 3

EXHIBIT 3

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of the
Application of
Frank Milford Peck
for a Writ of Habeas Corpus /

2009 MAR 25 AM 10:35
FILED
HOWARD W. CERRY
BY C. Galindo
DEPUTY

Memorandum of points and Authorities in support of
Petition for Writ of Habeas Corpus

Comes Now, Frank Milford Peck, In Proper Person
submitting the following statement of facts and points
and Authorities in support of the attached Petition for
a Writ of Habeas Corpus.

POINTS AND AUTHORITIES

The following points and authorities and arguments are
used in support of the preceding petition:

A. PREACCUSATION DELAY

Pursuant to both State and Federal law there are specific
time limits between Arrest, indictment and Trial and permissible
delays within each peroid. 18 USC § 3161-3174 (2000).

In the instant case there are numerous delays between not
only discovery through reasonable diligencs but also between
discovery, arrest and indictment.

The compounded delays clearly have violated the petitioners
due process and he clearly meets all standards of showing that
actual prejudice has resulted. see, U.S V GOVEA 467 U.S 180 182
(1984).

In addition FRCP 48 (b) authorizes Courts to dismiss
indictments for governments unnessary pre-indictment or post-
indictment delay. NRS. 34.500 (1,3,8) provides in pertinent
part; Grounds for discharge in certian cases; If it appears
on the return of the Writ of Habeas Corpus that the petitioner
is in custody by virtue of process from any court of this
state, or judge or officer thereof, the petitioner may be
discharges in any one of the following cases:

1. When the jurisdiction of the court or officer has been
exceeded.

Σx-3

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1 3. When the process is defective in some manner of substance
2 required by law, rendering it void.

3 8. Where the petitioner has been committed or indicted on
4 any criminal charge under a statute or ordinance that is un-
5 constitutional, or if constitutional on its face is un-
6 constitutional in its application.

7 In the instant case, based upon the unconstitutional pre-
8 accusation delay and the actual prejudice shown the instant
9 case and indictment should be dismissed. Further, in State
10 v. Autry 746 P2d 637 (1987) the Nevada Supreme Court has
11 stated "some showing must be made that the delay entailed intent
12 ional or reckless disregard by the State of the appreciable
13 risks of impairment to the accuseds defense." There has been
14 a more than sufficient showing herein by the petitioner.

15 Whereby the instant petition should be granted by the Court.

16 **B. POST ACCUSATION DELAY**

17 Both State and Federal law establishes that if arrest
18 precedes Indictment or Arraignment, time must be calculated
19 from the date of arrest. Dillingham v. U.S. 423 U.S.64,65
20 (1975).

21 In the instant case there is a more than (2) Two year delay
22 from the petitioner's arrest in April 2004 and his actual
23 indicment in November 2006. This delay has caused substantial
24 prejudice to the petitioner as clearly established in the
25 original petition. In keeping with Barker v. Wingo 407, U.S.514,
26 534 (1972). The petitioner has shown and alleged more than
27 mere speculative harm.

28 The deliberate dilatory actions of the State between Arrest
and indictment are inexcusable especially since they cannot
even claim investigation time because they had 10 years to
investigate prior to Arrest.

The prejudice to the petitioner is incontravertable.

The Constitutional right to a Speedy resolution of charges
against an accused is contained in the Sixth Amendment of the
U.S. Constitution, made applicable to the States by the due
process clause of the Fourteenth Amendment. Barker v. Wingo 407
U.S. 514 (1972). Barker is the seminal case on unreasonable
delay in prosecution. In that decision, the Court established
a balancing test to determine whether an accused had been
denied his right to a speedy trial. The Court indicated that
four factors should be considered: the length of the delay;
the reason for the delay; the defendants assertion of his right
and prejudice to the defendant. Id 407 U.S. at 530 The Court
also noted, however, that "the rule we announce today, which
comports with constitutional principles, places the primary
burden on the courts and the prosecutors to assure that cases
are brought to trial. Id at 529. Additionally, as noted
previously, "a defendant has no duty to bring himself to trial,
the State has that duty as well as the duty of insuring that
the trial is consistent with due process.

1 The decision was refined by the Court's subsequent decision
2 in Doggett v. U.S. 505 U.S. 647 (1992), especially regarding
3 the necessary showing of prejudice to the defendant.
4 Specifically, In Doggett the Court observed that "depending
5 on the nature of the charges, the lower Courts have generally
6 found post-accusation delay 'presumptively prejudicial' at
7 least as it approaches one year".

8 In the instant case, the delay between arrest and indictment
9 is over two years and in keeping with federal standards should
10 warrant immediate dismissal.

11 In addition, NRS 187.556 gives the Court authority to
12 dismiss charges which are not pursued to trial in a timely
13 fashion and State in relevant part that:

14 1. If no indictment is found or information filed against a
15 person within 15 days after he has been held to answer for
16 a public offense which must be prosecuted by indictment or
17 information, the Court may dismiss the complaint.

18 Additionally, the Second Judicial District Court Rules of
19 Practice concerning caseload management State in relevant part
20 that;

21 The Court recognizes that 100% of all cases must be resolved
22 within 60 months from the date of filing. Obviously, the
23 Prosecutors and the Courts have not kept up with these
24 requirements.

25 Therefore, based on all Federal and State standards the
26 instant case should be dismissed forthwith as a result of the
27 inexcusable post-accusation delay.

28 C. ARRAIGNMENT

The State and Federal law requires that the petitioner was
arraigned in a timely manner not to exceed 72 hours after
arrest. This did not occur. No effort was made to comply with
the requirements of NRS 171.186, NRS 171.178 and 171.338 after
the petitioner was arrested in April of 2004.

This failure is violative of the petitioner's right to due-
process of law under the fifth, sixth and fourteenth amendments
of the U.S. Constitution and Article 1, section 8 of the Nevada
Constitution thereby warranting dismissal of the instant case
forthwith.

D. SPEEDY TRIAL

The previously stated points and Authorities are similarly
applied herein as they also deal with Speedy trial issues.

The Petitioners's 6th Amendment speedy trial right attached
after the State served the arrest warrant on the petitioner
in April of 2004. see, U.S. v Woolfork 399 F3d 590 (4th cir
(2005)).

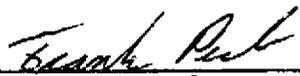
Therefore, the Court should dismiss the instant case with
prejudice forthwith.

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CONCLUSION

In conclusion, based upon the foregoing points and Authorities the attached petition for Pre-trial Writ of Habeas Corpus should be granted forthwith.

Respectfully submitted this 31st day of October, 2008.



Frank M. Peck
Petitioner Pro se

TABLE OF AUTHORITIES

1
2 18 USC § 3161-3174 (2000).
3 U.S. v. Govea 467 U.S. 180,182 (1984).
4 Federal Rules of Criminal Procedure 48 (b).
5 Nevada Revised Statute 34.500 1,3,8.
6 State v. Autry 746. P2d 637 (1987).
7 Dillingham v. U.S. 423 U.S. 64,65 (1975).
8 Barker v. Wingo 407 U.S. 514,534 (1972).
9 Doggett v. U.S. 505 U.S. 647 (1992).
10 Nevada Revised Statute 187.556
11 Nevada revised Statute 171.083
12 Nevada Revised Statute 171.186
13 Nevada Revised Statute 171.178
14 Nevada Revised Statute 171.338
15 U.S. v. Woolfork 399 F3d 590 (4th cir 2005).
16 Article 1 section 8 of the Nevada Constitution.
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EX4

EXHIBIT 4

EXHIBIT 4

INESCAPABLE FACTS

THE POLYMERASE CHAIN REACTION IS THE LITERAL MANUFACTURE OF EVIDENCE AT A MOLECULAR SCALE LITERALLY COOKED UP IN AN OVEN / THERMAL CYCLER AT 201 DEGREES FARENHEIGHT

DNA Testing : RFLP V. PCR-STR.

Whereas the (non PCR) RFLP protocol is a direct analysis of the physical DNA evidence "PCR-STR is not".

Complementary DNA ("**cdDNA**") is man made **synthetic DNA**.

Complementary DNA ("**cdDNA**") is synthesized from Messinger RNA ("**mRNA**").

The product of the PCR protocol and subsequent STR analysis is of 100% synthetic man made materials "completely devoid of Human DNA".

The synthetic DNA molecule is complementary DNA ("**cdDNA**"). cDNA is synthesized from mRNA using complementary base paring in a manner analogous to RNA transcripion. The process results in a double-stranded DNA molecule with a sequence corresponding to the sequence of an mRNA produced by the body. Because it is synthesized from mRNA, cDNA contains

only the exon sequences and thus none of the intron or intein sequences from a native gene sequence. ("cdDNA's) are chemically manipulated and are markedly different from that which exists in the body and are even, "patent-eligible material".

For all the same reasons that cDNA's are patent-eligible cDNA's cannot be considered as evidence in a criminal trial, because the product of the PCR protocol and the subsequent analysis is of "synthetic man-made materials devoid of Human DNA" brought into the process from an outside source, literally off the shelf, manipulated, than referred to as "direct evidence".

See:

THE ASSOCIATION FOR MOLECULAR PATHOLOGY .

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

653 F.3d 1329; 2011 US App LEXIS 156492011 U.S. App. LEXIS 15649; 99 USPQ2D (BNA) 139899 U.S.P.Q.2D (BNA) 1398

2010-1406 July 29, 2011, Decided.

id

THE STATE OF WASHINGTON, Respondent, v. GEORGE W. RUSSELL, Appellant.

SUPREME COURT OF WASHINGTON

125 Wn2d 24125 Wn.2d 24; 882 P2d 747 882 P.2d 747; 1994 Wash LEXIS 6351994 Wash. LEXIS 635; 63 USLW 2291 63 U.S.L.W. 2291

No. 60673-1 (**Synthesis of evidence**)

October 13, 1994, Filed Summary

{125 Wn.2d 101} The quote, the experts and the court opinions cited to by the majority all refer to the RFLP technique of DNA identification and not to PCR amplification analysis.

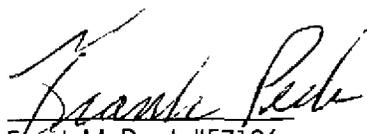
The majority states "the report acknowledges the admissibility of DNA evidence, without distinguishing between the PCR and RFLP methodology" (italics mine), majority, at 46, and then quotes to a section of the report that in fact appears to me to be discussing RFLP and not PCR when it states it is unnecessary to hold admissibility

hearings on the scientific techniques. In fact, the missing middle section of the majority's quote, majority, at 46, from pages 145-46 of the report clearly discusses RFLP analysis. Additionally, on the previous page of the report, the NRC states that "(t)he use of PCR amplification for sample preparation might require a pretrial hearing on the properties of the technique, because it introduces a novel issue considered by only a few courts thus far --

the synthesis of evidence by amplification." DNA Technology, at 144. If page 145 of the report is referring to PCR evidence when it says no hearing is necessary, then it conflicts with the statement about PCR on the prior page.

My interpretation is congruent with the report's conclusion that "(t)he current laboratory procedure for detecting DNA variation (specifically, single-locus probes analyzed on Southern blots without evidence of band shifting) is fundamentally sound, . . ." (Italics mine.) DNA Technology, at 149. The parenthetical material

describes the RFLP technique of DNA analysis, not PCR analysis.



Frank M. Peck #57106

H.D.S.P. Box 650

Indian Springs, Nv.89070

Dated January 1st 2013.

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EXHIBIT 5

EXHIBIT 5

1 THE COURT: I don't know what you're doing. But I
2 just want you to -- when all is said and done, you are the
3 person who decides, subject to the Court's approval, if you
4 want to represent yourself.

5 THE DEFENDANT: I have.

6 THE COURT: And I just want you to tell me if
7 you've thought about it for five months, maybe there's
8 nothing else to add on the subject. I've done my best to ask
9 you questions about a range of issues that I think are
10 pertinent to the Court's consideration, and we'll leave it at
11 that. Is there anything else you want to tell me on the
12 subject?

13 THE DEFENDANT: No. I have to represent myself.

14 THE COURT: Okay. Thank you. You may step down.

15 And, Mr. Lindsay, let me just ask a few questions
16 of you as an officer of the Court. As to the alibi witnesses
17 that Mr. Peck mentioned, have those been contacted or
18 interviewed, do you know?

19 MR. LINDSAY: It is the first time I've heard their
20 names, their phone numbers or their addresses in my entire
21 life right this second. As to the charge that he did not
22 tell me to not file the notice of appeal, I don't care that
23 it's frivolous. I would have filed it anyway. That came
24 from the Nevada State Prison so it's a matter of record.

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EXHIBIT 6

EXHIBIT 6

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CASE No. CR-06-2580

Dept No. 6

2009 APR 14 PM 3:42

HOWARD W. DEWITTS
S. STINCHFIELD

In the Second Judicial District Court of the State of Nevada
IN AND FOR the County of Washoe

FRANK M PECK
Defendant,

Notice of Alibi
DEFENSE

- vs -

STATE OF NEVADA
Plaintiff

Comes Now, Defendant, FRANK M. PECK, prose
gives Notice of Alibi Defense pursuant to
the District Court Rules. the Defense intends
on calling the following witness:

LARRY PECK # 77562

NSP Box 607

C.C., NV. 89702

William CARNAHAN

Box 334

Geysterville, CA. 95441

1-707-894-4939

SHERRY GRAY

5448 Wallaby St

Yucca Valley, CA 92284

1-760-369-9740

Dated this 10th day of April 2008.

Frank Peck

FRANK PECK, prose

CERTIFICATE OF SERVICE AND AFFIRMATION pursuant to
NRS 239 B, 030 the attached Notice of Alibi Defense
do not contain social security numbers of any person
and a true and correct copy has been mailed to:

District Attorney
David Clifton
75 Court Street
Reno, NV. 89501

Dated this 10th day of April 2009.

Frank Peck
Frank Peck pro se

FILED

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Joey Orduna Hastings
Clerk of the Court
Transaction # 3760636

1 Code 3370

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3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF WASHOE
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7 FRANK M. PECK,

Case No. CR06P2580

8 Petitioner,

Dept. No. 6

9 v.

10 WARDEN NEVIN, THE STATE OF NEVADA,

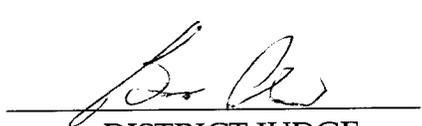
11 Respondent(s),
12 _____/

13 ORDER

14
15 On May 3, 2013, Petitioner filed an "Ex Parte Judicial Notice and Motion" requesting
16 an order granting Petitioner" the ability to possesses and/or purchase a laptop computer
17 for the sole purpose of word processing and legal research, compliant with security
18 requirements of NDOC." Although Petitioner claims he has arthritis and therefore has
19 difficulty compiling his Petition for Writ of Habeas Corpus (Post-Conviction) he has cited
20 no legal authority for such a proposition, nor has he submitted any evidence of his arthritis.

21 Accordingly, Petitioner's "Ex Parte Judicial Notice and Motion" requesting an order
22 granting Petitioner the ability to possess or purchase a laptop computer is DENIED.

23
24 DATED: This 31st day of May, 2013.

25
26 
27 _____
28 DISTRICT JUDGE

CERTIFICATE OF SERVICE

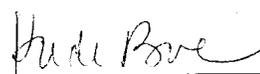
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I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 3rd day of June, 2013, I electronically filed the foregoing with the Clerk of
the Court:

TERRENCE MCCARTHY, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows:

Frank M. Peck, 57106
HDSP, PO Box 650
Indian Springs, NV 89070



Judicial Assistant

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 06-03-2013:09:08:10
Clerk Accepted: 06-03-2013:09:10:05
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ord Denying Motion
Filed By: Heidi Boe

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This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

File Copy

Code 1050
FRANK M. PECK 57106

FILED

HDSP Box 650

2013 JUN -3 PM 4:38

Indian Springs, NV. 89070

JRC
CLERK OF THE COURT

Petitioner/Plaintiff

BY: *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK,

No. CR-06-P-2580

Petitioner/Plaintiff,

DEPT 6

vs.

The State of Nevada, et al,

Respondents.

AFFIDAVIT OF PREJUDICE

NOTICE is hereby given to the State of Nevada Attorney General's Office, Office of the District Attorney's Office and Office of the Public Defender's of this State that:

Evidence derived by the PCR-STIR protocol is prejudicial. (SEE EX-1).

Dated May 25th 2013

[Signature]
FRANK M. PECK

CR06P2580 DC-9900046233-016
POST: FRANK MILFORD PECK (D6 5 Pages
District Court 06/03/2013 04 38 PM
Washoe County 1050
VNET

NOTICE OF ELECTRONIC SERVICE

Pursuant to NEER rule 9(e) The following are to be electronically served with the attached:

AFFIDAVIT OF PREJUDICE

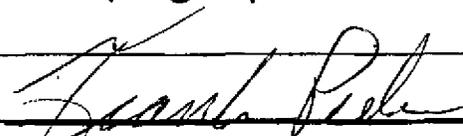
Attorney General Catherine Cortez-Masto
100 N. Carson Street
Carson City, NV, 89701

District Attorney Richard Gammick
75 Court Street
Reno, NV, 89501

Public Defender Paige A. Dollinger
P.O. Box 30083
Reno, NV, 89520

Mailed to the Clerk of the Court, 75 Court Street Reno, NV, 89501 this 29th day of May 2013.

Signed under penalty of perjury NRS 208.165
AND 28 USC 1746.


FRANK M. PECK 57106

HD SP Box 650

(2) Indian Springs, NV, 89070
111.545

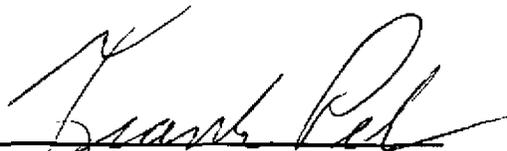
AFFIDAVIT OF FRANK M. PECK

I Frank M. Peck do hereby swear under the penalty of perjury that:

1. I am the Petitioner, Plaintiff in case no. CR-06-P-2580 ~~CR-06-P-2580~~.
2. all assertions in the attached Affidavit of Prejudice (Ex-1) are true based upon personal knowledge and I am competent to testify to all matters contained therein. And information believed to be true.
3. I bring this Affidavit in good faith and for no improper reason.
4. further affiant sayeth naught.

Signed under the penalty of perjury N.R.S. 208.165 and 28 U.S.C. section 1746.

Dated this 29th day of May 2013.



Frank M. Peck #57106
H.D.S.P. Box 650
Indian Springs, Nv. 89070

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Affidavit of Prejudice
(Title of Document)

filed in District Court Case number CR-06-P-2580 AND CV13-00580

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Frank M. Peck
Signature

5/29/13
Date

FRANK M. PECK
Print Name

Petitioner/Plaintiff
Title

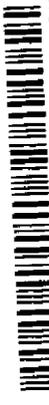
Index of exhibits

Exhibit number 1 Pages 1

Exhibit description INESCAPABLE FACTS - THE POLYMERASE CHAIN REACTION IS LITERAL MANUFACTURE OF EVIDENCE

Exhibit number _____ Pages _____

Exhibit description _____



DC-9900046233-017
CR06P2580
POST FRANK MILFORD PECK (D6 2 Pages
District Court 06/03/2013 04 38 PM
Washoe County 1050
CY1

EXHIBIT 1

EXHIBIT 1

INESCAPABLE FACTS

THE POLYMERASE CHAIN REACTION IS THE LITERAL MANUFACTURE OF EVIDENCE AT A MOLECULAR SCALE LITERALLY COOKED UP IN AN OVEN / THERMAL CYCLER AT 201 DEGREES FARENHEIGHT

DNA Testing : RFLP V. PCR-STR.

Whereas the (non PCR) RFLP protocol is a direct analysis of the physical DNA evidence "PCR-STR is not".

Complementary DNA ("cDNA") is portrayed as evidence in the Courtroom.

Complementary DNA ("cDNA") is man made **synthetic DNA.**

Complementary DNA ("cDNA") is synthesized from Messenger RNA ("mRNA").

The product of the PCR protocol and subsequent STR analysis is of 100% synthetic man made materials "completely devoid of Human DNA".

The synthetic DNA molecule is complementary DNA ("cDNA"). cDNA is synthesized from mRNA using complementary base paring in a manner analogous to RNA transcription. The process results in a double-stranded DNA molecule with a sequence corresponding to the sequence of an mRNA produced by the body. **Because it is synthesized from mRNA, cDNA contains**

only the exon sequences and thus none of the intron or intein sequences from a native gene sequence. ("cDNA's) are chemically manipulated and are markedly different from that which exists in the body and are even, "patent-eligible material".

For all the same reasons that cDNA's are patent-eligible cDNA's cannot be considered as evidence in a criminal trial, because the product of the PCR protocol and the subsequent analysis is of "synthetic man-made materials devoid of Human DNA" brought into the process from an outside source, literally off the shelf, manipulated, then referred to as "direct evidence".

See:

THE ASSOCIATION FOR MOLECULAR PATHOLOGY .

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

653 F.3d 1329; 2011 US App LEXIS 156492011 U.S. App. LEXIS 15649; 99 USPQ2D (BNA) 139899 U.S.P.Q.2D (BNA) 1398

2010-1406 July 29, 2011 Decided.

id

THE STATE OF WASHINGTON, Respondent, v. GEORGE W. RUSSELL, Appellant.

SUPREME COURT OF WASHINGTON

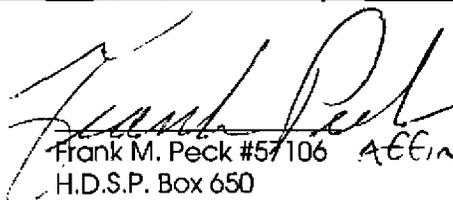
125 Wn2d 24125 Wn.2d 24; 882 P2d 747 882 P.2d 747; 1994 Wash LEXIS 6351994 Wash. LEXIS 635; 63 USLW 229163 U.S.L.W. 2291

No. 60673-1 (**Synthesis of evidence**)

October 13, 1994, Filed Summary

{125 Wn.2d 101} **The quote, the experts and the court opinions cited to by the majority all refer to the RFLP technique of DNA identification and not to PCR amplification analysis.**

The majority states "the report acknowledges the admissibility of DNA evidence, without distinguishing between the PCR and RFLP methodology" (italics mine), majority, at 46, **and then quotes to a section of the report that in fact appears to me to be discussing RFLP and not PCR when it states it is unnecessary to hold admissibility hearings on the scientific techniques.** In fact, the missing middle section of the majority's quote, majority, at 46, from pages 145-46 of the report clearly discusses RFLP analysis. Additionally, on the previous page of the report, the NRC states that "(f)he use of PCR amplification for sample preparation might require a pretrial hearing on the properties of the technique, because it introduces a novel issue considered by only a few courts thus far -- **the synthesis of evidence by amplification.**" DNA Technology, at 144. **If page 145 of the report is referring to PCR evidence when it says no hearing is necessary, then it conflicts with the statement about PCR on the prior page.** My interpretation is congruent with the report's conclusion that "(f)he current laboratory procedure for detecting DNA variation (specifically, single-locus probes analyzed on Southern blots without evidence of band shifting) is fundamentally sound, . . ." (italics mine.) DNA Technology, at 149. **The parenthetical material describes the RFLP technique of DNA analysis, not PCR analysis.**

 28 USC 1746.
Frank M. Peck #57106 *Attendant*
H.D.S.P. Box 650
Indian Springs, Nv.89070

Dated January 1st 2013.

EX-1

Code 4105
Frank M. Peck 57106

FILED

HDSP Box 650

2013 JUN -6 PM 2:57

Indian Springs, NV. 89070

JUDICIAL DISTRICT COURT
INDIAN SPRINGS
BY 

Petitioner, pro se.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CR06P2580 DC-9900049360-007
POST FRANK MILFORD PECK (D6 3 Pages
District Court 06/06/2013 02 57 PM
Washoe County 4105
DOC ASMTIP

Frank M. Peck,

CASE NO. CR-06-P-2580

Petitioner,

DEPT NO. 6

vs.

Warden NDOC,

The State of Nevada,

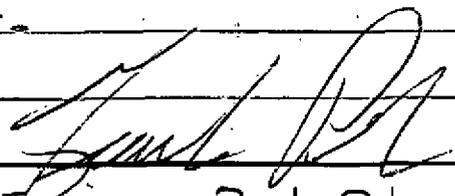
Respondent.

SUPPLEMENTAL EXHIBIT IN SUPPORT OF MOTION FILED
ON MAY 3RD, 2013.

Comes now, Petitioner, Frank M. Peck with supplemental
exhibit.

This supplemental exhibit is filed in support of
EX PARTE JUDICIAL NOTICE AND motion filed on
May 3, 2013 in the instant case.

Dated 5-30-13


Frank M. Peck Pet, pro se.

Certificate of electronic service and Affirmation

Pursuant to NEFR rule 9 (e) service is directed to

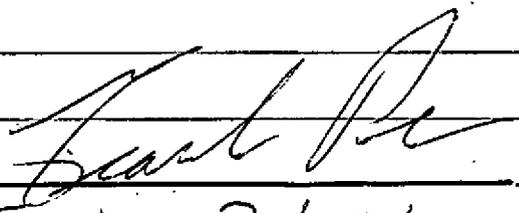
District Attorney
75 Court St
Reno NV 89501

Dated this 30th day of May 2013.

Affirmation

Contains no social security numbers of any person NRS 239 B 030.

Signed under penalty of perjury NRS 208.165
28 USC 1746.


Frank M. Peck Pet. prose

Index of Exhibits

Exhibit number 1 Pages 1

Exhibit description Affidavit of Stanley Riner

Exhibit number _____ Pages _____

Exhibit description _____

Exhibit number _____ Pages _____

Exhibit description _____

Exhibit number _____ Pages _____

Exhibit description _____

Exhibit number _____ Pages _____

Exhibit description _____

Exhibit number _____ Pages _____

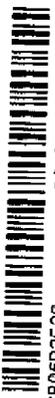
Exhibit description _____

Exhibit number _____ Pages _____

Exhibit description _____

Exhibit number _____ Pages _____

Exhibit description _____



CR06P2580 DC-990046360-008
POST FRANK MILFORD PECK (D6 2 Pages
District Court 06/06/2013 02:57 PM
Washoe County 4105
EX1 ASMITL

EX 1

V11.554

AFFIDAVIT

I the Affiant, Stanley Rimer (NDC # 106924) hereby Depose under oath through this Affidavit, the facts and/or circumstances described herewith are true to the best of my knowledge as it relates to Mr. Frank Peck # 57106.

Over the last 18 months that I have gotten to know Mr. Peck who is an inmate incarcerated at High Desert State Prison, I've become personally aware of and have seen the astronomical amount of legal work Frank Peck has had to hand write and/or produce (approx 8-10 thousand pages) of material that is shocking to the conscience that anyone who lives in society of technological advancement would be forced by a legal justice system or prison system to use such ancient methods to produce the necessary documents to address the numerous issues of Due Process, trial errors, ineffective counsel, and/or legal claims, grievances, Prisoner mis-treatment, as well the many valid claims for relief, or other legal pleadings still needing to be addressed.

In the time period of 18 months, it has been my observation of Mr. Peck's physical impairment and/or disability, that the manner in which Peck is forced to address his legal issues via the ancient method of hand writing all these legal documents has taken a toll on Peck by fact he (Peck) suffers from what is fairly evident a combination of physical impairments and/or disabilities of carpal tunnel, arthritic and/or tendonitis that is affecting Peck's ability to do his legal work without having to suffer with pain and discomfort to such degree a reasonable person would find this inhumane and unjust to therefore subject a prisoner to unbearable chronic physical pain and suffering that is re-occurring, visible evident, and Deliberately Indifferent.

Mr. Peck has confided in me a number of times since I've known him (Peck) that his disability of Arthritis in his hands and wrist(s), and/or tendonitis, carpal tunnel highly effects his ability to address all his legal issues by fact he (Peck) can not write for long periods of time, and therefore forces him (Peck) to produce incomplete and/or brief pleadings, habeas, post-conviction arguments, supplements, ect., while suffering through the physical pain and mental distress of his (Peck) disability.

It is my observation and personal experience as a business professional-executive for over 25 years that this ancient method of producing documents by hand is highly taxing on the body and contributes undoubtedly to the various types of disabilities described herewith by fact the same symptoms and and chronic physical pain and suffering are now starting to effect me in the same manner when even drafting hundreds of documents on my own issues, thus causing the high risk of permanent long-term injury.

At this time we have 1-2 hours access per week to a typewriter or word processor at the law library, however highly insufficient by fact there are hundreds of hours needed to address on-going legal matters that take months on a type writer - word processor, and ten times the effort and pain to produce such by hand. I the affiant further sayeth not.

5/25/13 Stanley Rimer # 1069241
Signed under penalty of Perjury - 28 U.S.C. Section 1746
SAV 11555

FILED

Electronically

06-13-2013:11:28:36 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3786286

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE; AND THE
HONORABLE BRENT T. ADAMS, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

Supreme Court No. 62908
District Court Case No. CR062580

CR062580
DL

NOTICE IN LIEU OF REMITTITUR

TO THE ABOVE-NAMED PARTIES:

The decision and Order of the court in this matter having been entered on May 13th, 2013, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: June 07, 2013

Tracie Lindeman, Clerk of Court

By: Sally Williams
Deputy Clerk

cc: Hon. Brent T. Adams, District Judge
Washoe County District Attorney
Attorney General/Carson City
Frank Milford Peck
Joey Orduna Hastings, Washoe District Court Clerk ✓

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 06-13-2013:11:28:36
Clerk Accepted: 06-13-2013:11:32:10
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Ct Not/Lieu/Remittitur
Filed By: Deputy Clerk JYost

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

DC-990046620-011
CRO6P2580
POST FRANK MILFORD PECK (06 7 Pages
District Court 06/14/2013 03:51 PM
Washoe County
NVC

Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner, pro se.

FILED
2013 JUN 14 PM 3:51
JOEY GREUNA HASTINGS
CLERK OF THE COURT
BY: [Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Frank M. Peck, CASE NO. CRO6P2580
Petitioner, DEPT. NO. 6

vs.

Warden Nevin,
The State of Nevada,
Respondents.

MOTION AND ADDENDA FOR RECONSIDERATION

Comes Now, the Petitioner, Frank M. Peck pro se
hereinafter Mr Peck with his Motion and Addenda
for Reconsideration.

This Motion is made and based upon all papers
and pleadings on file in this case as well as the
Attached points and authorities, Nevada District Court
Rules, Nevada Rules of Civil procedure and Affidavit
of Mr Peck.

Dated 6-7-13

[Signature]
Frank M. Peck Plaintiff pro se.
11558

Points And Authorities

Mr. Peck seeks reconsideration of this Courts Order filed on 6-3-13 transaction # 3760636 Denying Mr. Pecks Ex Parte Judicial Notice and Motion filed on May 3, 2013.

In this courts Order, it is stated that Mr. Peck provided NO evidence of his Arthritis. Mr. Peck provided "sworn statements" in his Motion that is the best and only evidence available to him as he is not allowed to possess his medical records.

Mr. Peck has also subsequently filed an Affidavit in support of his Motion from a Stanley Rimer for this courts reconsideration.

Additionally, due to the technical nature of Mr. Peck's DNA issue, it will be absolutely critical to Mr. Peck's Petition for a writ of habeas corpus (post-conviction) relief to present to this court (as evidence), a Power-point presentation proving Mr. Peck's Assertions that ("c DNA") presented as DNA evidence to juries is "Fraud" and the literal manufacture of evidence @ a molecular scale.

See attached INESCAPABLE FACTS EX-1.

Mr. Peck pleads with this court for a little fairness at a fundamental level.

Access to courts for prison inmates entails not only freedom to file pleadings, but also freedom to employ those accessories without which, legal claims cannot "effectively be asserted," Toolasprashad v. Bureau of Prisons, 286 F.3d 576 (DC Cir 2002). id. Bribiesca v. Galaza, 215 F.3d 1015 (9th Cir 2000)

Because of Mr. Peck's current circumstances of being segregated in P.C. protective custody Mr. Peck has only a few hours one day a week to use the note-pad to perfect pleadings on the computer in the law library when he is able to use it, considering there are 8 terminals for 30 inmates.

Mr. Peck was told by Dr Swider a MSP in response to Mr Peck's inquiry to ease Mr. Peck's pain in his hands and wrists was "DONT WRITE SO MUCH" and that i could buy ibuprofen from the canteen for the pain. That was 7 years ago.

All typewriters were confiscated in 2006 due to a subsequent attack on a correctional officer after an inmate was killed at Ely State Prison, a Maximum Security Facility, where a typewriter with (2) 14" steel rods should not have been in the first place. Yet, all typewriters from all security levels were confiscated as an exaggerated response and excuse to confiscate under guise of security need.

The Pain in Mr Peck's hands and wrists directly effect his ability to thoroughly explain in detail issues and support for those issues as brevity is less painful and much less persuasive and should not be a factor when fighting for ones life.

Mr. Peck cannot over emphasize enough, the dire need for what now days amounts to a "childs toy" is absolutely essential to Mr Peck's efforts.

It is absolutely cruel and unusual to ignore pain and suffering incurred while attempting to compete in the legal arena, on a playing field that is neither level nor fair.

Conclusion

Therefore, for the foregoing reasons Mr. Peck respectfully requests and prays that this court Grant Mr. Peck's reasonable request that he be afforded a fair opportunity to defend himself against the State with any and all resources needed or desired at their disposal.

To deny Mr. Peck's request would seriously diminish his efforts as a Pro se litigant and unfairly subject him to the dread and anxiety of authoring painfully long pleadings.

Dated this 9th day of June 2013.

Frank Peck

FRANK M PECK 57106

HDSP Box 650

Indian Springs, NV. 89070

Petitioner, pro se.

Affidavit, certificate of electronic service and Affirmation

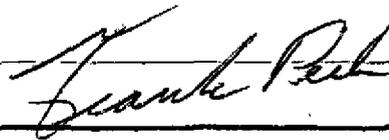
I Frank M. Peck do hereby swear under penalty of perjury that:

1. I am the Petitioner in case no CR06P2580.
2. All assertions in the attached motion and Addenda for Reconsideration are true based upon personal knowledge and I am competent to testify to all matters contained therein.
3. I bring this motion in good faith and no improper reason.
4. A true and correct copy was mailed to the clerk of the Court this date for electronic service per NER rule 9 (c) on Deputy District Attorney Terrance McCarthy, 75 Court St Reno, NV, 89501.
So Pursuant to NRS 239 B 030 contains no social security numbers of any person.

further Affiant says that might

Dated this 9th day of June 2013.

Signed under penalty of perjury NRS 208.165 and 28 USC 1746.



Frank M. Peck 57106

HO SP Box 650

Indian Springs, NV 89070

Petitioner, pro se.

Index of Exhibits

Exhibit # 1

Pages 1

Description: Inescapable facts that ("cDNA")
is fabricated @ molecular scale.

Exhibit # 2

Pages 1

Description: Prisoner Reform - Rehabilitation
Official Request.

Exhibit # 3

Pages 1

Description: Affidavit of Stanley Rimer

CR06P2580 DC-9900046620-012
POST FRANK MILFORD PECK (D6 2 Pages
District Court 05/14/2013 03 51 PM
Washoe County 2490
CX1 .YVOST

EXHIBIT 1

EXHIBIT 1

" INESCAPABLE FACTS "

THE POLYMERASE CHAIN REACTION IS THE LITERAL MANUFACTURE OF EVIDENCE AT A MOLECULAR SCALE LITERALLY COOKED UP IN AN OVEN / THERMAL CYCLER AT 201 DEGREES FARENHEIGHT

DNA Testing : RFLP V. PCR-STR.

Whereas the (non PCR) RFLP protocol is a direct analysis of the physical DNA evidence **"PCR-STR is not".**

Complementary DNA ("cDNA") is portrayed as evidence in the Courtroom.

Complementary DNA ("cDNA") is man made **synthetic DNA.**

Complementary DNA ("cDNA") is synthesized from Messenger RNA ("mRNA").

The product of the PCR protocol and subsequent STR analysis is of 100% synthetic man made materials **"completely devoid of Human DNA".**

The synthetic DNA molecule is complementary DNA ("cDNA"). cDNA is synthesized from mRNA using complementary base paring in a manner analogous to RNA transcription. The process results in a double-stranded DNA molecule with a sequence corresponding to the sequence of an mRNA produced by the body. **Because it is synthesized from mRNA, cDNA contains only the exon sequences, and thus none of the intron or intein sequences from a native gene sequence, ("cDNA's) are chemically manipulated and are markedly different from that which exists in the body and are even, "patent-eligible material".**

For all the same reasons that cDNA's are patent-eligible cDNA's cannot be considered as evidence in a criminal trial, because the product of the PCR protocol and the subsequent analysis is of "synthetic man-made materials devoid of Human DNA" brought into the process from an outside source, literally off the shelf, manipulated, then referred to as "direct evidence".

See:

THE ASSOCIATION FOR MOLECULAR PATHOLOGY .

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

653 F.3d 1329; 2011 US App LEXIS 156492011 U.S. App. LEXIS 15649; 99 USPQ2D (BNA) 139899 U.S.P.Q.2D (BNA) 1398.

DNA molecules can (653 F.3d 1339) also be synthesized in the laboratory. **One type of synthetic DNA molecule is complementary DNA ("cDNA").**

2010-1406 **July 29, 2011**, Decided.

id

THE STATE OF WASHINGTON, Respondent, v. GEORGE W. RUSSELL, Appellant.

SUPREME COURT OF WASHINGTON

125 Wn2d 24125 Wn.2d 24; 882 P2d 747 882 P.2d 747; 1994 Wash LEXIS 6351994 Wash. LEXIS 635; 63 USLW 229163 U.S.L.W. 2291

No. 60673-1 (**Synthesis of evidence**)

October 13, 1994, Filed Summary

{125 Wn.2d 101} **The quote, the experts and the court opinions cited to by the majority all refer to the RFLP technique of DNA identification and not to PCR amplification analysis.**

The majority states "the report acknowledges the admissibility of DNA evidence, without distinguishing between the PCR and RFLP methodology" (italics mine), majority, at 46, and then quotes to a section of the report that in fact appears to me to be discussing RFLP and not PCR when it states it is unnecessary to hold admissibility hearings on the scientific techniques. In fact, the missing middle section of the majority's quote, majority, at 46, from pages 145-46 of the report clearly discusses RFLP analysis. Additionally, on the previous page of the report, the NRC states that "(t)he use of PCR amplification for sample preparation might require a pretrial hearing on the properties of the technique, because it introduces a novel issue considered by only a few courts thus far -- **the synthesis of evidence by amplification.**" DNA Technology, at 144. **If page 145 of the report is referring to PCR evidence when it says no hearing is necessary, then it conflicts with the statement about PCR on the prior page.** My interpretation is congruent with the report's conclusion that "(t)he current laboratory procedure for detecting DNA variation (specifically, single-locus probes analyzed on Southern blots without evidence of band shifting) is fundamentally sound, . . ." (italics mine.) DNA Technology, at 149. **The parenthetical material describes the RFLP technique of DNA analysis, not PCR analysis.**

Dated this 29th day of May 2013.



Frank M. Peck # 57106

H.D.S.P. Box 650

Indian Springs, Nv. 89070

Ex - 1

V11.566

CR06P2580 DC-9900046620-013
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District Court 06/14/2013 03 51 PM
Washoe County 2490
CY2

EXHIBIT 2

EXHIBIT 2

PRISONER REFORM - REHABILITATION

OFFICIAL REQUEST

(Ref. No. 2120)

This Official Request is hereby made to the Nevada Department of Corrections, Prison Commissioners Brian Sandoval, Brian Miller, Cathrine Cortez-Masto, High Desert State Prison Director James G. Cox, HDSP Warden Dwight Neven, E.K. Williams, NDOC Dep. Director, in reference to the purchase and/or possession of a Lap-Top Computer, or in the alternative, an I-Pad-Electronic Notebook & Thumb Drive.

Fact 1: The LT-Computer - Electronic Notebook or I-Pad poses no cost to NDOC.

Fact 2: The LT-Computer - Electronic Notebook or I-Pad is that comparable to an Electronic Notebook that a 7-yr old would possess in grade school.

Fact 3: The LT-Computer - Electronic Notebook or I-Pad serves a practical purpose for prisoner reform and development in the area of education, personal journal, language (Spanish, English, German, French, Japanese) literary development, legal applications w/pleading wizard, and other applications approved by NDOC.

Fact 4: The LT-Computer - Electronic Notebook or I-Pad will meet all security requirements implemented by NDOC/HDSP.

a. Clear Casing w/seal as comparable to approved TV's distributed already for purchase.

b. No Modem or Communication Interface.

c. Will be subject to inspection at anytime as with any other device/appliance.

d. Computer shall be pre-loaded with the approved programs.

e. Prisoners will not have access to programs-applications from outside sources except those specifically approved by NDOC-HDSP.

f. No CD/DVD Drive which eliminates the possibility of loading pornographic materials.

g. No document shall be printed at the law library unless it is of legal content.

Fact 5: The LT-Computer - Electronic Notebook or I-Pad poses no liability to NDOC by fact the prisoner must sign a release.

Fact 6: Programs shall include the following: College Correspondence Courses, Paralegal Courses, Educational Studies, Dictionaries-Thasaurus, Vocational Material as approved by NDOC, Microsoft Office, Professional Applications related to business training or development (construction, clerical, tax preparation, psychology, criminal law, civil law, insurance, grants, acquisitions).

Fact 7: Community Interest - The LT-Computer - Electronic Notebook or I-Pad is in the community interest by fact the prisoner is better prepared to enter back into society as a result of that made available to the prisoner to develop a trade, or further personal study.

Fact 8: Constructive Development; The LT-Computer - Electronic Notebook or I-Pad serves NDOC with many positive and constructive aspects of Prisoner Reform, Activities, rehabilitation, education, reduction of negative idle time to detour aggressiveness, the ability for inmates to keep personal journals, to effectively develop job skills.

Submitted by: Stanley Rimer #1069241

FRANK PECK 57106

EX-2

V11.568



CR06P2580 DC-9900046620-014
POST FRANK MILFORD PECK (D6 2 Pages
District Court 06/14/2013 03:51 PM
Washoe County 2490
5X3 1Y0ST

EXHIBIT 3

EXHIBIT 3

AFFIDAVIT

I the Affiant, Stanley Rimer (NDC # 106924) hereby Depose under oath through this Affidavit, the facts and/or circumstances described herewith are true to the best of my knowledge as it relates to Mr. Frank Peck # 57106.

Over the last 18 months that I have gotten to know Mr. Peck who is an inmate incarcerated at High Desert State Prison, I've become personally aware of and have seen the astronomical amount of legal work Frank Peck has had to hand write and/or produce (approx 8-10 thousand pages) of material that is shocking to the conscience that anyone who lives in societies of technological advancement would be forced by a legal justice system or prison system to use such ancient methods to produce the necessary documents to address the numerous issues of due process, trial errors, ineffective counsel, and/or legal claims, grievances, prisoner mis-treatment, as well the many valid claims for relief, or other legal pleadings still needing to be addressed.

In the time period of 18 months, it has been my observation of Mr. Peck's physical impairment and/or disability, that the manner in which Peck is forced to address his legal issues via the ancient method of hand writing all these legal documents has taken a toll on Peck by fact he (Peck) suffers from what is fairly evident a combination of physical impairments, and/or disabilities of carpal tunnel, arthritic and/or tendonitis that is affecting Peck's ability to do his legal work without having to suffer with pain and discomfort to such degree a reasonable person would find this inhumane and unjust to therefore subject a prisoner to unbearable chronic physical pain and suffering that is re-occurring, visible evident, and deliberately indifferent.

Mr. Peck has confided in me a number of times since I've known him (Peck) that his disability of Arthritis in his hands and wrist(s), and/or tendonitis, carpal tunnel highly effects his ability to address all his legal issues by fact he (Peck) can not write for long periods of time, and therefore forces him (Peck) to produce incomplete and/or brief pleadings, habeas, post-conviction arguments, supplements, ect., while suffering through the physical pain and mental distress of his (Peck) disability.

It is my observation and personal experience as a business professional-executive for over 25 years that this ancient method of producing documents by hand is highly taxing on the body and contributes undoubtedly to the various types of disabilities described herewith by fact the same symptoms and and chronic physical pain and suffering are now starting to effect me in the same manner when even drafting hundreds of documents on my own issues, thus causing the high risk of permanent long-term injury.

At this time we have 1-2 hours access per week to a typewriter or word processor at the law library, however highly insufficient by fact there are hundreds of hours needed to address on-going legal matters that take months on a typewriter-word processor, and ten times the effort and pain to produce such by hand. I the affiant further sayeth not.

5/25/13 Stanley Rimer # 106924

Signed under penalty of Perjury - NRS 165, 28 U.S.C. Section 1746
Saw 15310 Ex-3

DC-990046620-015
CR06P2586
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Washoe County
NV

Code 4105
FRANK M. PECK 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner, Prose.

FILED
2013 JUN 14 PM 3:51
JOEY CEDUNA HASTINGS
CLERK OF THE COURT
BY *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK, CASE NO. CR-06-P-2580
Petitioner, DEPT. NO. 6

vs.

Warden Nevins,
The State of Nevada, SUPPLEMENTAL EXHIBIT
Respondents, INESCAPABLE FACTS

Comes Now, the Petitioner, Frank M. Peck pro se
hereby files his SUPPLEMENTAL EXHIBIT in
support of his issues regarding DNA.

Dated this 9th day of June 2013

[Signature]
Frank M. Peck Pet, pro se.

Certificate of electronic service

Pursuant to NEFR rule 9(e) The following are to be electronically served with the attached supplemental exhibit (INESCAPABLE FACTS):

DDA Terrence McCarthy Esq
75 Court Street
Reno, NV, 89501

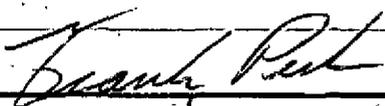
Mailed this date to the Clerk of the Court:

Clerk, 2nd Jud Dist Ct
75 Court Street
Reno NV 89501

Dated this 9th day of June 2013.

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.

Affirmation per NRS 239.030 contains NO
social security numbers


Frank N. Peuk 57106
HOSP Box 650
Indian Springs, NV, 89070
Petitioner, pro se.

Index of Exhibits

Exhibit # 1

Pages 1

Description: INESCAPABLE FACTS
PCR is manufacture of evidence at a
molecular scale.

DC-9500046628-016
CRO6P2580 MILFORD PECK (06 2 Pages
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District Court 06/14/2013 03 51 PM 4105
Washoe County NV05T
EX1

EXHIBIT /

EXHIBIT 1

" INESCAPABLE FACTS "

THE POLYMERASE CHAIN REACTION IS THE LITERAL MANUFACTURE OF EVIDENCE AT A MOLECULAR SCALE LITERALLY COOKED UP IN AN OVEN / THERMAL CYCLER AT 201 DEGREES FARENHEIGHT

DNA Testing : RFLP V. PCR-STR.

Whereas the (non PCR) RFLP protocol is a direct analysis of the physical DNA evidence **"PCR-STR is not".**

Complementary DNA ("cDNA") is portrayed as evidence in the Courtroom.

Complementary DNA ("cDNA") is man made **synthetic DNA.**

Complementary DNA ("cDNA") is synthesized from Messenger RNA ("mRNA").

The product of the PCR protocol and subsequent STR analysis is of 100% synthetic man made materials **"completely devoid of Human DNA".**

The synthetic DNA molecule is complementary DNA ("cDNA"). cDNA is synthesized from mRNA using complementary base pairing in a manner analogous to RNA transcription. The process results in a double-stranded DNA molecule with a sequence corresponding to the sequence of an mRNA produced by the body. **Because it is synthesized from mRNA, cDNA contains**

only the exon sequences and thus none of the intron or interin sequences from a native gene sequence. ("cDNA's) are chemically manipulated and are markedly different from that which exists in the body and are even, "patent-eligible material".

For all the same reasons that cDNA's are patent-eligible cDNA's cannot be considered as evidence in a criminal trial, because the product of the PCR protocol and the subsequent analysis is of "synthetic man-made materials devoid of Human DNA" brought into the process from an outside source, literally off the shelf, manipulated, then referred to as "direct evidence".

See:
THE ASSOCIATION FOR MOLECULAR PATHOLOGY, .
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT
653 F.3d 1329; 2011 US App LEXIS 156492011 U.S. App. LEXIS 15649; 99 USPQ2D (BNA) 139899 U.S.P.Q.2D (BNA) 1398.
DNA molecules can **{653 F.3d 1339}** also be **synthesized** in the laboratory. **One type of synthetic DNA molecule is complementary DNA ("cDNA").**
2010-1406 **July 29, 2011** Decided.

See:

THE ASSOCIATION FOR MOLECULAR PATHOLOGY, .

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

653 F.3d 1329; 2011 US App LEXIS 156492011 U.S. App. LEXIS 15649; 99 USPQ2D (BNA) 139899 U.S.P.Q.2D (BNA) 1398.

DNA molecules can **{653 F.3d 1339}** also be **synthesized** in the laboratory. **One type of synthetic DNA molecule is complementary DNA ("cDNA").**

2010-1406 **July 29, 2011** Decided.

id

THE STATE OF WASHINGTON, Respondent, v. GEORGE W. RUSSELL, Appellant.

SUPREME COURT OF WASHINGTON

125 Wn2d 24125 Wn.2d 24; 882 P2d 747 882 P.2d 747; 1994 Wash LEXIS 6351994 Wash. LEXIS 635; 63 USLW 229163 U.S.L.W. 2291

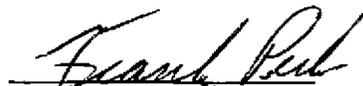
No. 60673-1(**Synthesis of evidence**)

October 13, 1994, Filed Summary

{125 Wn.2d 101} **The quote, the experts and the court opinions cited to by the majority all refer to the RFLP technique of DNA identification and not to PCR amplification analysis.**

The majority states "the report acknowledges the admissibility of DNA evidence, without distinguishing between the PCR and RFLP methodology" (italics mine), majority, at 46, and then quotes to a section of the report that in fact appears to me to be discussing RFLP and not PCR when it states it is unnecessary to hold admissibility hearings on the scientific techniques. In fact, the missing middle section of the majority's quote, majority, at 46, from pages 145-46 of the report clearly discusses RFLP analysis. Additionally, on the previous page of the report, the NRC states that "(t)he use of PCR amplification for sample preparation might require a pretrial hearing on the properties of the technique, because it introduces a novel issue considered by only a few courts thus far – **the synthesis of evidence by amplification.**" DNA Technology, at 144. **If page 145 of the report is referring to PCR evidence when it says no hearing is necessary, then it conflicts with the statement about PCR on the prior page.** My interpretation is congruent with the report's conclusion that "(t)he current laboratory procedure for detecting DNA variation (specifically, single-locus probes analyzed on Southern blots without evidence of band shifting) is fundamentally sound, . . ." (italics mine.) DNA Technology, at 149. **The parenthetical material describes the RFLP technique of DNA analysis, not PCR analysis.**

Dated this 29th day of May 2013.



Frank M. Peck # 57106

H.D.S.P. Box 650

Indian Springs, Nv. 89070

Notice and proof of electronic service

Pursuant to NEFR rule 9 (e) the following are to be electronically served with the attached exhibit (News for immediate release - June 5 2013) (DNA Fraud on a molecular scale):

Attorney General Catherine Cortez-Masto
100 N. Carson Street
Carson City, NV. 89701

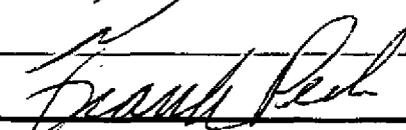
District Attorney Terrance McCarthy
75 Court Street
Reno NV 89501

Mailed this date to the Clerk of the Court
75 Court Street Reno, NV. 89501.

Dated this 13th day of June 2013

Affirmation Per NRS 239B.030 contains no social security numbers of any person.

Signed under penalty of perjury NRS 208.165
? 28 USC 1746.


FRANK M. PECK 57106

HDSP Box 650

Indian Springs, NV 89070
711-577

Index of Exhibits

Exhibit # 1

PAGES 2

Description: NEWS for immediate release

JUNE 5, 2013 DNA Fraud at a molecular scale



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Washoe County 4105
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EXHIBIT 1

EXHIBIT 1

A recent discovery uncovered by various DNA researchers and forensic experts reveal new facts of fraud relating to cDNA. When cDNA (a synthetic Complimentary DNA) is portrayed as evidence in a criminal trial, the representation that cDNA is "Human DNA", or "Crime-Scene DNA", or in many cases, "Direct Evidence" as a means to gain conviction, is **DNA Fraud on a molecular scale**. Such misrepresentations are fraudulent in our legal justice system by fact the cDNA is manufactured through a heat process, and distinctively different than naturally occurring DNA.

A jury is kept absolutely clueless by prosecutors that cDNA is manufactured with man-made compounds provided in a kit, whereby the various chemical compounds used to manufacture the cDNA are literally taken from off the shelf, are mixed, and cooked up in a thermal cycler / oven at 201 degrees farenheight.

This synthetic DNA is formulated with chemical compounds A,T,G,C devoid of any human biological substance, and then potrayed to a jury as **direct evidence** (the cDNA itself) is used by the State as the means to gain a conviction, thus hiding the extrinsic make-up of the cDNA from the Jury. The Jury assumes the cDNA is human DNA and that such is the defendant's biological DNA.

This manufactured cDNA as used by the courts is kept secret from the public, and rarely challenged by defense attorneys in a criminal case by fact the cDNA process is shrouded in secrecy and complexities that go beyond the immediate understanding of those defending a client, as well those serving on a jury who have no clue as to what process' are used to create the cDNA. **Thus, a jury ends up convicting a defendant with the manufactured cDNA as a result of fraud and candors of silence in our legal justice system.**

Manufactured cDNA is a subject of government abuses, prosecutor misrepresentations, mishandling and the planting of evidence and corruption throughout the legal arena. Recent reports released by MBA DNA Consulting, LLC, headquartered in Beverly Hills, California reveal factual scientific information about "PCR" (Polymerse Chain Reaction) which is a biological technique commonly used by the forensic community, and other facts relating to cDNA, including the fact that DNA can easily by "**transferred with a swab**" onto whatever substraits or materials officials may want to *taint* should there be any motive to do so without detection.

MBA DNA Consulting, LLC confirms that DNA molecules can {653 F.3d 1339} be synthesized in the laboratory, and documents further, that this type of synthetic DNA molecule is Complementary DNA ("cDNA"). cDNA is synthesized from mRNA using complementary base pairing in a manner analogous to RNA transcription. The process results in a double-stranded DNA molecule with a sequence corresponding to the sequence of mRNA produced by the body. **Because cDNA is synthesized from mRNA, cDNA contains only the exon sequences, and thus none of the intron or intein sequences from a native gene sequence.** "cDNA" is **chemically manipulated and markedly different** from that which exists in the body and is even "**patent-eligible material**". For all the same reasons that cDNA's are patent-eligible, cDNA cannot be considered as evidence in a criminal trial because the product of the PCR protocol (extrinsic material) and the subsequent analysis is of "**synthetic man-made materials devoid of Human DNA**", brought into the process from an outside source, **literally off the shelf, manipulated, then referred to as "direct evidence"**.

The (non PCR) RFLP protocol is a direct analysis of the physical DNA evidence "**PCR-STR is not**". The product of the PCR protocol and subsequent STR analysis is of 100% synthetic man made materials "**completely devoid of Human DNA**".

Essentially, State Labs and Agencies are set in place by governemet officials throughout the United States to process crime scene evidences that are subjected to chemical DNA-Manipulation. These labs controlled by government officials are used as a means to alter the naturally occuring biological DNA samples of a defendant in a criminal trial. The PCR Process (**Polymerase Chain Reaction**) produces the cDNA that closeley resembles a defendant's natuaral DNA and is the subject of controversy in this story and the facts presented to the public. **The end result is a manufactured sample of a defendant's DNA** which is **marketably different** than the defendant's natuarally occurring DNA.

cDNA may be used to produce probes and primers, where naturally occurring DNA can not. Though officials have created a means to "manufacture" ones DNA in a synthetic process (PCR), bottom line, **cDNA is not Human DNA, and can not be portrayed in a criminal trial as a Defendant's DNA**, however, to the contrary, many defendant's are convicted with the use of cDNA.

Utilization of the PCR Process does not mean that defendants are innocent of the crimes that they may or may not have committed, however, **when government officials utilize "manufactured evidence" such as cDNA and present such as "evidence" in a criminal trial, such acts of "fraud" violate and corrupt the foundation of the entire legal justice system, be it on a State or Federal level.**

See: National Academy of Sciences, National Research Counsel (NRC) 1992 Reports - DNA Technology and Forensic Science, and the 1996 Report - The Evaluation of Forensic Evidence.

See **THE ASSOCIATION FOR MOLECULAR PATHOLOGY**, UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT 653 F.3d 1329; 2011 US App LEXIS 156492011 U.S. App. LEXIS 15649; 99 USPQ2D (BNA) 139899 U.S.P.Q.2D (BNA) 1398. DNA molecules can {653 F.3d 1339} also be *synthesized* in the laboratory. **One type of synthetic DNA molecule is complementary DNA ("cDNA")**. 2010-1406 **July 29, 2011**, Decided. THE STATE OF WASHINGTON, Respondent, v. GEORGE W. RUSSELL, Appellant.

See: SUPREME COURT OF WASHINGTON 125 Wn2d 24125 Wn.2d 24; 882 P2d 747 882 P.2d 747; 1994 Wash LEXIS 6351994 Wash. LEXIS 635; 63 USLW 229163 U.S.L.W. 2291 - No. 60673-1 (**Synthesis of evidence**) October 13, 1994, Filed Summary {125 Wn.2d 101} **The quote, the experts and the court opinions cited to by the majority all refer to the RFLP technique of DNA identification and not to PCR amplification analysis. The majority states "the report acknowledges the admissibility of DNA evidence, without distinguishing between the PCR and RFLP methodology"** majority, the Justice at 46 stating, **"and then quotes to a section of the report that in fact appears to me to be discussing RFLP and not PCR when it states it is unnecessary to hold admissibility hearings on the scientific techniques"**. In fact, the missing middle section of the majority's quote, majority, at 46, from pages 145-46 of the report clearly discusses RFLP analysis. Additionally, on the previous page of the report, the NRC states that "[t]he use of PCR amplification for sample preparation might require a pretrial hearing on the properties of the technique, because it introduces a novel issue considered by only a few courts thus far -- **the synthesis of evidence by amplification**." DNA Technology, at 144. **If page 145 of the report is referring to PCR evidence when it says no hearing is necessary, then it conflicts with the statement about PCR on the prior page.** "My interpretation is congruent with the report's conclusion that "[t]he current laboratory procedure for detecting DNA variation (specifically, single-locus probes analyzed on Southern blots without evidence of band shifting) is fundamentally sound, . . ." DNA Technology, at 149. **The parenthetical material describes the RFLP technique of DNA analysis, not PCR analysis.**



FRANK M. PECK #57106

NEWS RELEASE CORRESPONDENT

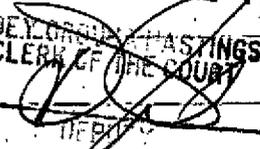
P.O. Box 650 - Indian Springs, Nevada. 89070

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Washoe County 2610
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Code 2610
FRANK M. PECK 57106

FILED

HDSP Box 650
Indian Springs, NV, 89070
Petitioner, pro se.

2013 JUN 27 PM 12:19
JOE L. GRAY HASTINGS
CLERK OF THE COURT
BY 

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK CASE NO. CR-06-P-2580
Petitioner DEPT No. 6

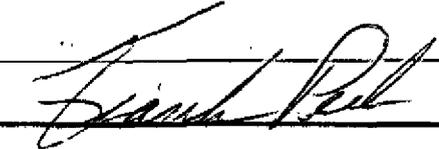
vs.
Warden NDOC,
The State of Nevada,
Respondent.

JUDICIAL NOTICE OF ADJUDICATIVE FACTS

Comes Now, the Petitioner, Frank M. Peck
pro se hereinafter Mr. Peck with his Judicial
Notice of Adjudicative Facts.

This Notice is made and based upon all
papers and pleadings on file in this case as
well as the attached points and authorities,
District Court Rules and Affidavit of Mr Peck.

Dated 6-23-13


Frank M. Peck Pet, pro se.

Points and Authorities

These facts are presented in support of Mr. Peck's Petition for Writ of Habeas Corpus (Post-Conviction) Relief and to Aid this Court.

Fact No. 1

National Academy of Sciences National Research Council's DNA Technology in Forensic Science (1992 Report) at Page 70 lines 9, 10 and 11 acknowledges: "The theory of PCR analysis, even though it is the analysis of synthetic DNA, as opposed to the natural sample,

Fact No. 2

In the face of fact No. 1 in United States v. Beasley, 102 F.3d 1440 (1996) at (102 F.3d 1445) Circuit Judges Bowman, Heaney and Beam relied on testimony from District Judge David S. Doty's Daubert hearing wherein an un-named government witness testified and the Court wrote in its order:

The PCR method is based upon the natural DNA replication process. by utilizing the PCR method, one can produce a substantial number of

specific segments of human DNA which can then be typed.

Fact No. 3

The "false facts" set forth in Beasley supra, have been relied on in hundreds of subsequent cases regarding the admissibility of the PCR method. See: United States v Gaines, 979 F. Supp 1429 (1997) at 2 Facts B. and C. at (979 F. Supp 1432 and 1433).

Fact No. 4

DNA evidence as it is referred to at trial is factually (cDNA) Complementary DNA. This fact is hidden from the Jury as Mr. Peck's Jury was.

Fact No. 5

In: The Association for Molecular Pathology v. United States PTO and Myriad Genetics 653 F.3d 1329 (2011) at 653 F.3d 1339 (cDNA) is shown to be synthetic and lacking the intron sequences. This factor contributes to (cDNA) being "patent-eligible" material. See also III. THE FACTS 2. Extracted and purified DNA, 3. RNA, 4. cDNA.

Fact No. 6

National Academy of Sciences National Research Council's (The evaluation of Forensic DNA evidence) (1996 NRC Report) @ 6-5 FN-12 Quotes "DNA Analysis" is defined broadly to mean "the process through which deoxyribonucleic acid (DNA) in a "human biological specimen" is analyzed and compared with DNA from another biological specimen for identification purposes".

Websters Dictionary defines:

1. Biological, 1: of, relating to, or produced by biology or life and living processes 2: connected by direct genetic relationship rather than by adoption or marriage.
2. Biology, 1: a science that deals with living beings and life processes 2: the life processes of an organism or group.
3. Synthetic, 1: produced artificially especially by chemical means; also : NOT GENUINE - synthetic.

Fact No. 7

THE Supreme Court of Oregon in:
STATE V. LYONS, 324 Ore. 256; 924 P.2d 802 (1996)
at 324 Ore. 272 and again at 924 P.2d 812
and footnote # 22 intentionally omitted crucial
facts of the synthetic nature of the
theory of PCR with "three asterisks"
omitting "even though it is the analysis
of synthetic DNA, as opposed to the
natural sample", which was crucial
facts intrinsic to Robert Wallace Lyons'
case and amounted to concealment of
facts that the PCR protocol is indeed
the literal manufacture of evidence at
a molecular scale and a gross abuse
of power and conspiracy to conceal
favorable facts from the Petitioner and
the Public. The National Research Council's
1992 and 1996 Reports are NOT part of
Prison Law Libraries and inmates can
not easily obtain copies. The Oregon
Supreme Courts lack of candor is
reprehensible and part of a much larger
effort to conceal truth's exposing the
DNA FRAUD ON A MOLECULAR SCALE.

See: 1992 DNA Technology page 70.

Fact No. 8

Neither Report by the National Research Council: (1992 DNA Technology in Forensic Science) or the (1996 The Evaluation of Forensic DNA Evidence) addresses or analyzes the implications of the synthetic nature of (c DNA) in the legal context.

Fact No. 9

Pursuant to the United States Supreme Court in: Association for Molecular Pathology, et al., Petitioners vs. Myriad Genetics, Inc., et al., — U.S. — 2013.
"(c DNA) is patent-eligible".

Conclusion

Petitioner Peck respectfully requests that this Court take Judicial Notice of the above indisputable facts with respect to the issues raised within the instant Habeas proceedings. And that these facts be considered in the adjudication of the instant action.

Dated 6-23-13


Frank M. Peck Pet, pro se.

Affidavit, certificate of service and affirmation

I Frank M. Peck do hereby swear under penalty of perjury that:

1. I Am the Petitioner in case NO CR-06-P-2580.
2. All Assertions in the attached Judicial Notice of Adjudicative facts are true based on personal knowledge and information believed to be true and I am competent to testify to all matters contained therein.
3. I bring this Notice in good faith and for NO improper reason.
4. A true and correct copy was mailed this date to the Clerk of the Court @ 75 Court St, Reno, NV. 89501 for electronic service upon DDA Terrance McCarthy per NEFR rule 9(e) @ 75 Court St Reno NV 89501.
5. DOES NOT contain social security numbers of any person NRS 239 B 030.

Dated 6-23-13. Signed under penalty of perjury NRS 208.165 and 28 USC 1746.



Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV 89070

(7)

CR06P2580 DC-9900047351-003
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District Court 07/10/2013 12:48 PM
Washoe County 3860
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No. CR-06-P-2580

FILED
Dept. No.

2013 JUL 10 PM 12:48

JOEY ORLANDO, CLERK OF THE COURT

IN THE 2nd JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF Washoe

Frank M. Peck

Petitioner/Plaintiff,

Warden Nevin
State of Nevada

Respondent/Defendant.

REQUEST FOR SUBMISSION OF MOTION

It is requested that the Motion entitled Motion and Addenda
for reconsideration, which was submitted/filed on the
14th day of JUNE, 2013 in the above-entitled matter, be submitted to the Court for
it's consideration.

The undersigned Petitioner/Plaintiff, certifies that a copy of the motion noted above and this
pleading, have been served upon the Respondent/Defendant.

Dated this 3rd day of July, 2013.

Frank M. Peck
Frank M. Peck 57106
HDSV Box 650
Indian Springs, NV 89070
Petitioner, pro se.

Certificate of electronic service and Affirmation

Pursuant to NEFR 9 e the attached request for submission of motion is to be electronically served on:

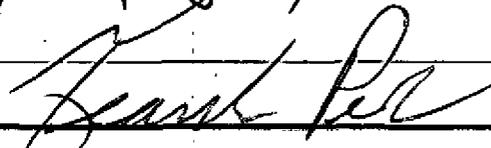
DDA Terrance Mc Carthy Esq -
75 Court Street
Reno, NV. 89501

Mailed this date to the Clerk of the
2nd Jud Dist Court 75 Court Street
Reno, NV. 89501.

Dated this 3rd day of July 2013.

Affirmation - Contains no social security numbers of any person NRS 239 B.030

Signed under penalty of perjury NRS 208.165
and 28 USC 1746

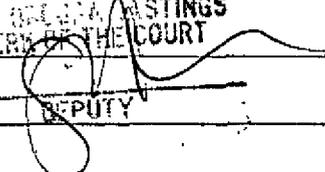

FRANK PECK 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner, pro se.

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Washoe County 3373
CLM0007

FRANK M. PECK 57106
HDSP Box 650
Indian Springs, NV, 89070
Petitioner, pro se.

FILED

2013 JUL 12 PM 4:54

JOEY DELEENA STINGS
CLERK OF THE COURT
BY 
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK, CASE NO. CR-06-P-2580
Petitioner, DEPT NO. 6

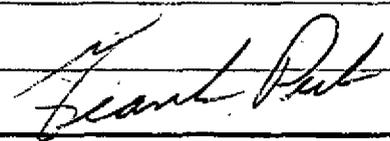
vs.
WARDEN NEVIN,
The State of Nevada,
Respondent.

CLARIFICATION OF SCIENTIFIC TERM (cDNA)

Comes Now, the Petitioner, Frank M. Peck pro se
with clarification of term (cDNA).

The term Complementary DNA (cDNA) is as derived
by ANY enzymatic synthesis method regardless
of the ENZYME used via the PCR method of
Forensic complementary base-pairing.

Dated July 8th 2013.


Frank M. Peck

Certificate of electronic service and Affirmation

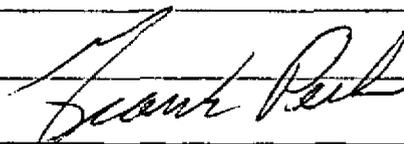
Pursuant to NEFR rule 9(e) the attached clarification of scientific terms are to be served electronically on:

DDA Terrance McCarthy Esq.
75 Court Street
Reno, NV. 89501

Dated July 8th 2013 and mailed to the clerk of the Court at 75 Court Street
Reno, NV. 89501

Affirmation, - Contains no social security numbers of any person NRS 239 B 030.

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.



Frank M. Peck 57106
HIDSP Box 650
Indian Springs, NV. 89070
Petitioner, pro se.

DC-990047952-047
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Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner, pro se.

FILED

2013 JUL 30 PM 2:33

JUDITH M. HASTINGS
CLERK OF THE COURT
BY *M. O'Neil*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK, CASE NO. CR-06-P-2580
Petitioner, DEPT NO. 6

vs.
WARDEN NDOL,
STATE OF NEVADA,
Respondents.

SUPPLEMENTAL PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION) RELIEF # 5 NRS 34 et seq.

Comes now, the Petitioner, Frank M. Peck pro se
hereinafter Mr. Peck with his Supplemental Petition
for writ of habeas corpus (post-conviction) relief, no 5.

This supplement is made and based upon all
papers and pleadings on file in this case as
well as the attached points and authorities and
affidavit of Mr. Peck.

Dated July 22nd 2013.

Frank Peck
Frank M. Peck, Pet. 593 sc

Points And Authorities

Ground One

BRADY VIOLATION

The State failed to disclose evidence favorable to the accused in violation of the 5th Amendment due-process clause to the US Constitution Brady v. Maryland, 373 U.S. 83 (1963).

On April 14th 2009 Mr. Peck's counsel Robert Bruce Lindsay filed a Motion for Brady Material (evidence favorable to the defense and material to their guilt or innocence).

The State failed to disclose that the theory of PCR analysis is the analysis of synthetic DNA as opposed to the natural sample.
DNA Technology at 70.

A structural discovery error occurs when the government withholds material evidence favorable to the defendant
Brady v. Md, 373 U.S. 83, 87 (1963)

SEE ALSO U.S. V. BAGLEY, 473 US 667, 682 (1985). EVIDENCE IS MATERIAL AND REQUIRES REVERSAL OF CONVICTION WHEN THERE IS A REASONABLE PROBABILITY THAT DISCLOSURE WOULD HAVE ALTERED THE RESULT OF THE TRIAL; A MERE POSSIBILITY IS NOT ENOUGH. U.S. V. AGURS, 427 US 97, 112-13 (1976). IN SUCH A CIRCUMSTANCE, A FINDING THAT THE ERROR WAS HARMLESS BEYOND A REASONABLE DOUBT IS NECESSARILY PRECLUDED. SEE: KYLES V WHITLEY, 514 US 419 435 (1995).

WHEREAS HERE, THERE IS NO DOUBT THAT HAD THE STATE DISCLOSED THAT DNA TOUTED AS "DIRECT EVIDENCE", IS ACTUALLY A MANUFACTURED, SYNTHETIC, PATENT-ELIGIBLE, MAN-MADE INVENTION, LITERALLY COOKED UP IN AN OVEN (THERMAL CYCLER) @ 201° F WOULD HAVE PRODUCED A DIFFERENT OUTCOME. SEE, EG., SILVA V BROWN 416 F.3d 980, 986 (9th Cir 2005) (ONCE MATERIALITY OF SUPPRESSED EVIDENCE IS ESTABLISHED, "NO FURTHER HARMLESS ERROR ANALYSIS IS NECESSARY").

REVERSAL IS REQUIRED

Affidavit, certificate of electronic service and Affirmation

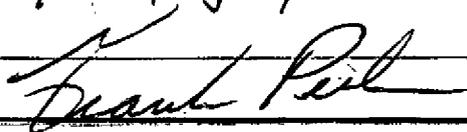
I Frank M. Peck do hereby SWEAR under penalty of perjury that:

1. I am the Petitioner in case CR-06-P-2580
2. All Assertions in the attached Supplemental petition for writ of Habeas Corpus (post-conviction) relief #5 are true based on personal knowledge and I am competent to testify to all matters contained therein.
3. I bring this supplement in good faith and for no improper reason.
4. I mailed a true and correct copy to the clerk of the 2nd Jud Dist Court 75 Court St Reno NV 89501 for electronic service pursuant to NEER 9(e) on DDA Terrance McCarthy 75 Court St Reno NV 89501.

Dated July 22, 2013.

Contains no social security numbers of any person
NRS 239 B 030.

Signed under penalty of perjury NRS 208.165 and
28 USC 1746.



Frank M. Peck HDSP Box 650

(4) Indian Springs, NV 89070 VPA 598 JE

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK,

Case No. CR06P2580

Petitioner,

Dept. No. 6

v.

WARDEN NEVIN, THE STATE OF NEVADA,

Respondent(s),

ORDER

On June 14, 2013, Petitioner filed a "Motion for Addenda for Reconsideration" requesting that this Court reconsider its Order entered on June 3, 2013 denying his "Ex Parte Judicial Notice and Motion" filed on May 3, 2013 requesting an order granting Petitioner the ability to possess or purchase a laptop computer. Petitioner has provided no legal authority justifying reconsideration of this Court's previous order or his request to possess or purchase a laptop computer.

Accordingly, Petitioner's "Motion for Addenda for Reconsideration" is DENIED.

DATED: This 14 day of July, 2013.


DISTRICT JUDGE

CERTIFICATE OF SERVICE

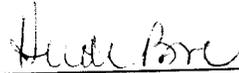
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I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 16th day of August, 2013, I electronically filed the foregoing with the Clerk of
the Court system which will send a notice of electronic filing to the following:

TERRENCE MCCARTHY, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows:

Frank M. Peck, #57106
HDSP, PO Box 650
Indian Springs, NV 89070



Judicial Assistant

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 08-01-2013:11:37:27
Clerk Accepted: 08-01-2013:11:39:25
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ord Denying Motion
Filed By: Judicial Asst. HBoe

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

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Washoe County
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FRANK M. PECK 57106

HDSP Box 650

Indian Springs, NV 89070

Petitioner, pro se.

REGISTERED MAIL - FIRST CLASS PERMIT NO. 1099 LAS VEGAS, NV

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JERRY ORNELIA HASTINGS
CLERK OF THE COURT

BY

[Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK

CASE NO. CR-06-P-2580

Petitioner

DEPT NO. 6

VS.

Warden Nevin

NEWLY DISCOVERED

State of Nevada

EVIDENCE AND

Respondents,

SUPPLEMENTAL EXHIBIT AND
REPORT OF OBSERVATIONS OF
DNA-EXPERT MEHUL B. ANJARIA

Comes Now, the Petitioner, Frank M. Peck
prose hereinafter Mr. Peck with his Supplemental
Exhibit and Report of Observations of DNA
Expert, Mehul B. Anjaria. (SEE EX-1).

This Report is submitted in support of the
pending Petition for Writ of Habeas Corpus
(Post-Conviction) relief on file herein.

V11.600

Dated August 1st 2013.

Frank Peck

FRANK M. PECK PET, pro se.

Points and Authorities

The attached Final Report of DNA expert Mehul B. Anjaria dated July 27 2013 directly contradicts Mary bu Wilsons NOTICE OF NO SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) Writ,

To wit:

Though not specifically highlighted by Mr. Anjaria the extremely sloppy work performed by the Director AND Senior Analyst of the WASHOE County Crimlab in the failures (inter alia) to run and document Blank/Blind controls that are required to have the correct results for the case to be reported." U.S. v. GIPSON, 2002 US DIST LEXIS 27650. (TWGDAM) The working group on DNA ANALYSIS methods.

Additionally, due to the failures to document duration and temperature it is impossible to determine if stringent conditions were adhered to within the thermal cycler that can result in a "false positive result".

It is also clear that Rene Romero and Jeffrey Riolo gave "false testimony" when they both testified that they did not have a DNA sample from Mr. Peck until March of 2002. see Report, pg 3 lines 11-12.

Additionally, according to chain of custody records from Mr. Peck's original case CR-96-2687 (PI9920) reference standards from Leslie Nummer, Tim Billings and Frank Peck [AND] the stain from the parties (PI9790) were apparently not returned to the agency until 9-27-11.

This begs the question: Why and who was doing what with the evidence from Mr. Peck's original case?

Clearly, Mr. Anjarinas Report supports Mr. Peck's claims of evidence tampering - AS clearly the evidence from Mr. Peck's original case should not have been accessed in any manner whatsoever.

Mr. Peck was threatened by a Washoe Co Sheriff's Deputy and a Sparks PD officer on August 25 2001 for testimony against Mr. Peck's Brother Larry Peck in that [they] would make sure Mr. Peck never got out of Prison if he refused to testify.

" Law Enforcement also threatened Larry Peck's Attorney Kenneth McKenna in the hallway of this Court!"

Various investigators have Motive, Means and opportunity to plant and or manipulate evidence in Mr. Peck's case and was only just revealed by Mr. Anjarina and thus could not have been discovered any sooner by the Petitioner and was unknown previously.

Obviously for the foregoing, Mary Lou Wilson is ineffectual as Mr. Peck's IRCP Counsel.

Respectfully submitted

Dated this 1st day of August 2013.

Frank Peck

Frank M. Peck Pet, pro se.

Affidavit, certificate of electronic service, Affirmation.

I Frank M. Peck do hereby swear under penalty of perjury that:

1. I am the Petitioner in case CR 96-P-2687, and CR-06-P-2580.
2. All assertions in the attached document are true based on personal knowledge and information believed to be true and I am competent to testify to all matters contained herein.
3. I bring this document in good faith and for no improper reason.
4. A true and correct copy was mailed this date to the Clerk of the Court for electronic service on DDA Terrance Mc Carthy 75 Court Street Reno, NV. 89501.

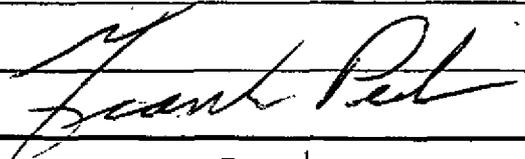
Affirmation

5. Contains No social security numbers
of any person NRS 239 B.030

Further Affiant says the truth.

Dated this 1st day of August 2013.

Signed under penalty of perjury NRS
208.165 and 2805C.1746.



Frank M. Peck 57106

HDSID Box 650

Indian Springs, NV. 89070

Petitioner, pro se.

Exhibit index

Exhibit 1

PAGES 4

Exhibit description: MBA DNA

Report of observations July 27, 2013



CR06P2580 DC-9900048254-007
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Exhibit 1

Exhibit 1

MBA DNA CONSULTING, LLC



LEGAL AND CONFIDENTIAL

July 27, 2013

Frank M. Peck, 57106
HDSP Box 650
Indian Springs, NV 89070

REPORT OF OBSERVATIONS

Frank Peck v. Warden, N.D.O.C; and State of Nevada
Case No: CR06P2580

In regards to review of DNA testing discovery from the Washoe County Sheriff's Office on the following cases:

Sparks Police Department Case # 94-9292
Laboratory Number L2145-94

And,

Reno Police Department Case # 257920-96
Laboratory Number L2807-96

Sparks Police Department Case # 94-9292 - Laboratory Number L2145-94

Renee Romero sampled 75% of one of two vaginal swabs from Candace Inman for DNA testing.

The "extraction description" worksheet describes that an organic/differential extraction was performed on the vaginal swab, however no information was provided in the discovery regarding lot numbers of chemicals, duration and temperature of extraction, and volume of extracted DNA recovered. It is noted that a "Blank" was included in the extraction.

The "DNA yield" worksheet describes the approximate yield of DNA recovered from the epithelial and sperm fractions of the extracted vaginal swab, however no information on the method of quantitation or notes regarding the quantitation step that resulted in the approximate yield data was provided in the discovery.

The "extraction description" worksheet for the reference sample from Inman does not list a "Blank", however a "Blank" for this extraction set is noted on the "DNA yield" form and on the amplification form. The worksheet indicates that an organic extraction was performed, however no information was provided in the discovery regarding lot numbers of chemicals, duration and temperature of extraction, and volume of extracted DNA recovered.

The "DNA yield" worksheet describes the approximate yield of DNA recovered from the reference sample from Inman, however no information on the method of quantitation or notes regarding the quantitation step that resulted in the approximate yield data was provided in the discovery.

433 North Camden Drive, Suite 600 Beverly Hills, CA p|310-801-1848 f|310-295-2161
MBADNACONSULTING.COM

Frank Peck v. Warden, N.D.O.C; and State of Nevada

Jeffrey Riolo analyzed the convicted offender sample NN03100 from Frank Peck after a CODIS hit to the sperm fraction profile of the vaginal swab from Candace Inman.

The "extraction description" worksheet for sample NN03100 notes that a Qiagen extraction procedure was used, however no information was provided in the discovery regarding lot numbers of chemicals, duration and temperature of extraction, and volume of extracted DNA recovered. A "Blank" is not listed on the "extraction description" worksheet. An approximate yield of DNA for sample NN03100 is listed on the amplification worksheet, however no information on the method of quantitation or notes regarding the quantitation step that resulted in the approximate yield data was provided in the discovery.

A "Ref. Blk" (Blank) is listed on the amplification sheet for sample NN03100, though it was not listed on the "extraction description".

Renee Romero analyzed gauze from sampling of stains on skin from Candace Inman as well as a reference sample from Frank Peck.

The "extraction description" worksheet for the extraction of the stains on skin gauze indicates that a Qiagen extraction method was used however no information was provided in the discovery regarding lot numbers of chemicals, duration and temperature of extraction, and volume of extracted DNA recovered. A Blank was included on the "extraction description" worksheet.

The "extraction description" worksheet for the reference sample from Frank Peck indicates that a Qiagen extraction method was used however no information was provided in the discovery regarding lot numbers of chemicals, duration and temperature of extraction, and volume of extracted DNA recovered. A Blank was included on the "extraction description" worksheet.

Real-time PCR data was provided to substantiate the quantitation of DNA recovered from the stains on skin gauze and the reference sample from Frank Peck.

After the amplification on 12-28-04, DNA typing of the stain on skin gauze was attempted with no results, despite a sufficient quantity of human DNA being previously detected. The amplification was repeated on 1-23-05 using more input DNA, and DNA typing was successful.

The reference sample from Frank Peck was amplified on 1-13-05. On the DNA typing data (electropherograms), the negative amplification control is correctly labeled "amp-11305" however the positive amplification control is labeled "amp+ 11205". The actual date of the amplification was 1-13-05 according to the amplification worksheet.

From the transcript of testimony from Jeffrey Riolo Friday, May 8, 2009:

Q: What type of examination or investigation did you do in that laboratory number in this case?

A: I looked at the DNA profile from Frank Peck

Q: Okay. Did you have that in your lab, to your knowledge, in 1996, when you started? The sample.

A: No, we did not.

Q: Did you have it, to your knowledge, in your lab in the year 2000 or 2001 when PCR was starting?

A: No.

Q: When did you receive at the lab that sample from Frank Peck, to your knowledge?

A: His DNA sample was received in the lab in March of 2002.

Frank Peck v. Warden, N.D.O.C; and State of Nevada

From the transcript of testimony from Renee Romero Monday, May 11, 2009:

Q: I guess what I'm getting at is that there had to have been some sort of contamination to implicate me in this case. In your mind at any point during your analysis with the controls that are in place now, you can't say definitively 100 percent that there wasn't contamination. You cannot say that.

A: I can say that the vaginal swab was not contaminated by a reference sample from Frank Peck, because we didn't have one in the lab. I can say it based on a lot of other things but it's not possible. We didn't have the sample.

Inspection of the chain of custody records verify that convicted offender sample NN03100 from Frank Peck was received in March 2002.

Evidence from another case involving Frank Peck, Reno Police Department Case # 257920-96 Laboratory Number L2807-96, was at the laboratory prior to March 2002.

Reno Police Department Case # 257920-96 - Laboratory Number L2807-96

A report dated 12-3-96 by Maria Fassett states that Item C-016965, a sexual assault kit from Leslie Nummer, was received from WCSO Evidence Section on 12/2/96. This item included a pair of panties on which Fassett states "semen was detected in a stain to the front crotch area of the panties. This stain was removed and will be retained in WCSO Evidence under control #19790."

A report by Jeffrey Riolo on May 6, 1997 concludes that "Frank Peck is consistent with being the dominant source of the DNA pattern obtained from the sperm fraction of the stain on the panties (P19790)."

According to chain of custody records, the stain from the panties (P19790) was apparently not returned to the agency until 9-27-11.

According to a report dated 3-14-97 by Criminalist Maria Fassett items including the following were received from the WCSO Evidence Section on 3-12-97:

Q08522: two vials of liquid blood obtained from Frank Peck
Q08523: sexual assault evidence kit obtained from Frank Peck

The report states "As per DA investigator, Mike Neville, the above-listed items were sent back without examination at this time."

Frank Peck v. Warden, N.D.O.C; and State of Nevada

On April 24, 1997 Jeffrey Riolo processed a vial of blood from Frank M. Peck. Information on the blood tube included "Name: Peck, Frank M.", "Date: 4/21/97", and "Place: 911 Parr Blvd" The prepared bloodstain from the vial was packaged under P19920.

According to chain of custody records, P19920 (reference standards form Leslie Nummer, Tim Billings, and Frank Peck) was not returned to the agency until 9-27-11.

-There were no documents regarding QC issues (contamination logs, corrective actions, discrepancy reports, unexpected results, etc.) provided with the discovery for either of the DNA cases reviewed, and no written statement that none exist.



Mehul B. Anjaria, MS, D-ABC
Founder and Chief Consultant

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Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV, 89070

Petitioner, pro se.

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CLERK OF THE COURT
BY: *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK, CASE NO. CR-06-P-2580
Petitioner, DEPT NO. 6

vs.

Warden NEVIN,
State of Nevada,
Respondents,

SUPPLEMENTAL PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION) RELIEF #6 NRS 34 et seq
AND MOTION FOR NEW TRIAL

Comes Now, the Petitioner, FRANK M. PECK pro se
hereinafter Mr. Peck with his 6th supplemental
And Motion for New Trial.

This supplement and Motion is made and based
on all papers and pleadings on file in this case as
well as the attached points and authorities affidavit
of Mr. Peck and exhibit (EX-1).

Dated 8-6-13

[Signature]
Frank M. Peck Pet, pro se.

V11.612

Points and Authorities

GROUND ONE

PERJURY SUBORNED BY PROSECUTOR

Prosecutor Dave Clifton knowingly suborned perjured testimony to obtain a conviction, the prosecution knew or should have known the testimony was false and prejudice resulted, violating Mr Peck's USCA 14 § 5 rights to a fair trial NAPUE V. Illinois, 360 U.S. 264 (1959) Id USCA 5 § 14 rights to due-process and fair trial Darden V. Wainwright, 477 U.S. 168 (1986) Id Berger V U.S. 295 U.S. 78 (1935) -

Prosecutor Dave Clifton knew or should have known that Crimelab Analyst Jeffrey Riolo's May 8, 2009 testimony was FALSE and that Crimelab Director Rene Romero's May 11, 2009 testimony was FALSE. See Attached Report of Observations of MBA DNA consultant Mebel B. Anjaria (EX-1).

The knowing use of perjured testimony by a prosecutor generally requires that the conviction be set aside. See United States v. Agurs, 427 U.S. 97, 103, 49 L. Ed. 2d 342, 96 S. Ct. 2392 (1976) (conviction must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgement of the jury.

Whereas here "there is a reasonable probability that [without all the perjury] the result of the instant proceeding would have been different." United States v. Young, 17 F.3d 1201 1204 (9th Cir 1994) (citing United States v. Bagley, 473 U.S. 667 682, 87 L. Ed. 2d 481, 105 S.Ct. 3375 (1985). Killian v. Poole, 282 F.3d 1204 (9th Cir 2002).

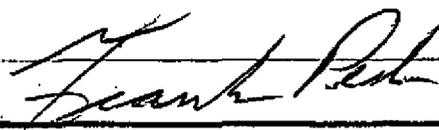
The use of false testimony by the prosecutor, whether known at the time it is offered or uncorrected after it is discovered violates USCA #14 Hays v. Farwell, 482 F Supp. 2d 1180; 2007 U.S. Dist. LEXIS 22141.

GROUND TWO

CUMULATIVE ERROR

The collective presence of All the errors presented in Mr. Peck's petition are substantial errors and require reversal for their cumulative effect. United States v. De Cruz, 82. F.3d 856 868 (9th Cir 1996) See Also MAK v. Blodgett, 970 F.2d 614. 622 (9th Cir 1992). Taylor v. Ky 436 US 478 488 n.15 (1978) See Also FN-1.
REVERSAL IS REQUIRED

Dated this 6th day of August 2013.



Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV. 89070

Petitioner, pro se.

FN-1, U.S. v. CANALES, 744 F2d 413 430
(5th Cir 1984).

Affidavit, certificate of electronic service, Affirmation.

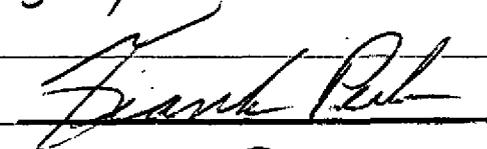
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3. I bring this supplement in good faith and for no improper reason.
4. I mailed a true and correct copy this date to the Clerk of the court @ 75 Court St Reno NV 89501 for electronic service on DDA Terrance Mc. Carthy @ same.

Contains no social security numbers of any person NRS 239B 030.

Dated this 6th day of August 2013.

Signed under penalty of perjury NRS 208.165 and 28 USC 1746.



FRANK M. PECK 57106
HDSP Box 650
Indian Springs, NV 89070
Pet, pro se V11.616

INDEX OF EXHIBITS

Exhibit # 1

Pages 4

Exhibit description: MBA DNA Consulting
Report of Observations dated July 27 2013.

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Exhibit 1

Exhibit 1

MBA DNA CONSULTING, LLC



LEGAL AND CONFIDENTIAL

July 27, 2013

Frank M. Peck, 57106
HDSP Box 650
Indian Springs, NV 89070

REPORT OF OBSERVATIONS

Frank Peck v. Warden, N.D.O.C; and State of Nevada
Case No: CR06P2580

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Laboratory Number L2145-94

And,

Reno Police Department Case # 257920-96
Laboratory Number L2807-96

Sparks Police Department Case # 94-9292 - Laboratory Number L2145-94

Renee Romero sampled 75% of one of two vaginal swabs from Candace Inman for DNA testing.

The "extraction description" worksheet describes that an organic/differential extraction was performed on the vaginal swab, however no information was provided in the discovery regarding lot numbers of chemicals, duration and temperature of extraction, and volume of extracted DNA recovered. It is noted that a "Blank" was included in the extraction.

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433 North Camden Drive, Suite 600 Beverly Hills, CA p|310-801-1848 f|310-295-2161
MBADNACONSULTING.COM

Frank Peck v. Warden, N.D.O.C; and State of Nevada

Jeffrey Riolo analyzed the convicted offender sample NN03100 from Frank Peck after a CODIS hit to the sperm fraction profile of the vaginal swab from Candace Inman.

The "extraction description" worksheet for sample NN03100 notes that a Qiagen extraction procedure was used, however no information was provided in the discovery regarding lot numbers of chemicals, duration and temperature of extraction, and volume of extracted DNA recovered. A "Blank" is not listed on the "extraction description" worksheet. An approximate yield of DNA for sample NN03100 is listed on the amplification worksheet, however no information on the method of quantitation or notes regarding the quantitation step that resulted in the approximate yield data was provided in the discovery.

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The "extraction description" worksheet for the reference sample from Frank Peck indicates that a Qiagen extraction method was used however no information was provided in the discovery regarding lot numbers of chemicals, duration and temperature of extraction, and volume of extracted DNA recovered. A Blank was included on the "extraction description" worksheet.

Real-time PCR data was provided to substantiate the quantitation of DNA recovered from the stains on skin gauze and the reference sample from Frank Peck.

After the amplification on 12-28-04, DNA typing of the stain on skin gauze was attempted with no results, despite a sufficient quantity of human DNA being previously detected. The amplification was repeated on 1-23-05 using more input DNA, and DNA typing was successful.

The reference sample from Frank Peck was amplified on 1-13-05. On the DNA typing data (electropherograms), the negative amplification control is correctly labeled "amp-11305" however the positive amplification control is labeled "amp+ 11205". The actual date of the amplification was 1-13-05 according to the amplification worksheet.

From the transcript of testimony from Jeffrey Riolo Friday, May 8, 2009:

Q: What type of examination or investigation did you do in that laboratory number in this case?

A: I looked at the DNA profile from Frank Peck

Q: Okay. Did you have that in your lab, to your knowledge, in 1996, when you started? The sample.

A: No, we did not.

Q: Did you have it, to your knowledge, in your lab in the year 2000 or 2001 when PCR was starting?

A: No.

Q: When did you receive at the lab that sample from Frank Peck, to your knowledge?

A: His DNA sample was received in the lab in March of 2002.

433 North Camden Drive, Suite 600 Beverly Hills, CA p|310-801-1848 f|310-295-2161
MBADNACONSULTING.COM

Frank Peck v. Warden, N.D.O.C; and State of Nevada

From the transcript of testimony from Renee Romero Monday, May 11, 2009:

Q: I guess what I'm getting at is that there had to have been some sort of contamination to implicate me in this case. In your mind at any point during your analysis with the controls that are in place now, you can't say definitively 100 percent that there wasn't contamination. You cannot say that.

A: I can say that the vaginal swab was not contaminated by a reference sample from Frank Peck, because we didn't have one in the lab. I can say it based on a lot of other things but it's not possible. We didn't have the sample.

Inspection of the chain of custody records verify that convicted offender sample NN03100 from Frank Peck was received in March 2002.

Evidence from another case involving Frank Peck, Reno Police Department Case # 257920-96 Laboratory Number L2807-96, was at the laboratory prior to March 2002.

Reno Police Department Case # 257920-96 - Laboratory Number L2807-96

A report dated 12-3-96 by Maria Fassett states that Item C-016965, a sexual assault kit from Leslie Nummer, was received from WCSO Evidence Section on 12/2/96. This item included a pair of panties on which Fassett states "semen was detected in a stain to the front crotch area of the panties. This stain was removed and will be retained in WCSO Evidence under control #19790."

A report by Jeffrey Riolo on May 6, 1997 concludes that "Frank Peck is consistent with being the dominant source of the DNA pattern obtained from the sperm fraction of the stain on the panties (P19790)."

According to chain of custody records, the stain from the panties (P19790) was apparently not returned to the agency until 9-27-11.

According to a report dated 3-14-97 by Criminalist Maria Fassett items including the following were received from the WCSO Evidence Section on 3-12-97:

Q08522: two vials of liquid blood obtained from Frank Peck
Q08523: sexual assault evidence kit obtained from Frank Peck

The report states "As per DA investigator, Mike Neville, the above-listed items were sent back without examination at this time."

Frank Peck v. Warden, N.D.O.C; and State of Nevada

On April 24, 1997 Jeffrey Riolo processed a vial of blood from Frank M. Peck. Information on the blood tube included "Name: Peck, Frank M.", "Date: 4/21/97", and "Place: 911 Parr Blvd" The prepared bloodstain from the vial was packaged under P19920.

According to chain of custody records, P19920 (reference standards form Leslie Nummer, Tim Billings, and Frank Peck) was not returned to the agency until 9-27-11.

-There were no documents regarding QC issues (contamination logs, corrective actions, discrepancy reports, unexpected results, etc.) provided with the discovery for either of the DNA cases reviewed, and no written statement that none exist.



Mehul B. Anjaria, MS, D-ABC
Founder and Chief Consultant

1005
1905
District Court
Washoe County
NVC
DC-990048641-001
CR06P2580
POST FRANK MILFORD PECK (D6 5 Pages
08/22/2013 12:43 PM
District Court
Washoe County
NVC

Code 4105
Frank M. Peck 57106
HDS P Box 650

Indian Springs, NV, 89070
Petitioner, pro se

FILED

2013 AUG 22 PM 12:43

JOEY ORDINA HASTINGS
CLERK OF THE COURT
BY *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Frank M. Peck, CASE NO CR-06-P-2580
Petitioner, DEPT NO. 6

vs.

Warden Nevin, SUPPLEMENTAL
State of Nevada, NRS 34 et seq
Respondents,

NEWLY DISCOVERED FACTS IN SUPPORT
OF PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION) RELIEF

Comes Now, the Petitioner, Frank M. Peck
pro se hereinafter Mr. Peck with the above
entitled NEWLY DISCOVERED FACTS.

This supplement is made and based upon
all papers and pleadings on file in this case
as well as the attached points and authorities
and affidavit of Mr. Peck.

Dated 8-18-13

[Signature]
Frank M. Peck
V11.623

Points and Authorities

The following facts are set forth in support of Mr. Peck's claims of ineffective assistance of pre-trial counsel Robert Bruce Lindsay.

Robert Bruce Lindsay has a documented history of failing to abide by his professional responsibilities as a lawyer. For example, in *Middleton v Warden*, 98 P.3d 694 (NEV. 2004), the Nevada Supreme Court removed Lindsay as appellate counsel because of bizarre unprofessional behavior, which included deleting the last eight pages of the appellate brief he filed in order to fit the brief within the court's page limit requirement.

Lindsay's "amended" opening brief was simply the original submitted brief with the final eight pages excised, ... abruptly ending the discussion of one issue and completely omitting any discussion of four other issues listed in the brief's table of contents." *Id.* at 696-97. The court chastised Lindsay's disregard for "the obligations incumbent upon him as

counsel for a client facing a death sentence." Id. at 697. As a result of Middleton Lindsay received a public reprimand. The Nevada Supreme Court has sanctioned Lindsay # in two other appeals (SEE NSC docket numbers 33643, 38126), and has threatened sanctions in at least (9) nine others (SEE NSC docket numbers 35298, 35300, 36885, 37086, 37956, 37957, 38671, 40518/40519, 43223).

The docket sheets are available through the Nevada Supreme Court's website: <http://caseinfo.nvsupremecourt.us/public/caserearch.do>. See also Bradley Dwight Heinz v. State, 2nd Jcd Dist Ct, County of Washoe, Case No CRO3P1571 (order dated October 5, 2011, granting habeas petition based on Lindsay's deficient performance at trial) attached as exhibit # 1 in Mr Peck's # 4 supplemental petition for writ of habeas corpus (post-conviction) relief filed in the instant action on May 28, 2013.

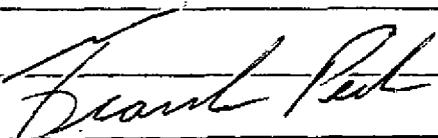
Mr. Peck would also like to present the following supplemental Authority in support of the "VERBAL ASSAULT" committed by Robert Bruce Lindsay against his client Frank M. Peck as presented in his 2nd supplemental petition for writ of habeas corpus (post-conviction) relief Ground # 5 being that of FRAZER V. U.S., 18 F.3d 778 (9th Cir 1994) (if defendant was verbally assaulted by defense counsel, prejudice would be presumed).

Conclusion

Therefore, this Court should be able to clearly see that in hindsight Mr. Peck's complaints about counsel Robert Bruce Lindsay were not only valid but deserving of the substitution of counsel instead of what can be clearly seen as forcing ineffective counsel OR self representation on Mr. Peck.

Reversal is warranted

Dated 8-18-13


Frank M. Peck Pet, pro se.

(4)

V11.626

Affidavit, certificate of electronic service, Affirmation

I Frank M. Peck do hereby swear under penalty of perjury that:

1. I am the Petitioner in case NO CR-06-P-2580.

2. All assertions in the attached newly discovered facts are true based upon personal knowledge and information believed to be true and I am competent to testify to all matters contained therein.

3. I bring this supplement in good faith and for no improper reason.

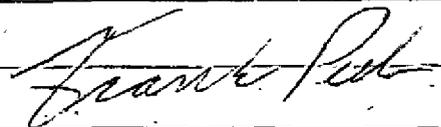
4. I mailed a true and correct copy this date to the clerk of this Court for electronic service on DDA Terrance McCarthy pursuant to NEFR rule 9(e).

further affirm sayeth unalight

Dated this 18th day of August 2013.

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.

Contains no social security numbers of any person NRS 239 B.030.



Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV 89070

(5)

11.027

Code 2515
Frank M. Peck 57106
HDSP Box 650

FILED

AUG 30, 2013

JOEY HASTINGS, CLERK
By [Signature]
DEPUTY CLERK

Indian Springs, NV, 89070
Petitioner/Appellant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Frank M. Peck,
Petitioner/Appellant, CASE NO. CR-06-P-2580
vs. DEPT NO. 6
Warden Nevins,
State of Nevada,
Respondents,

NOTICE OF APPEAL

Notice is hereby given that Petitioner/
Appellant Frank M. Peck hereby Appeals from
the ORDER of this Court filed on 8-1-13
Denying reconsideration of its previous
Order of 6-3-13 "Denying Mr. Peck of an
adequate and fair opportunity to defend
himself Pro se since counsel provided by
the State is/was ineffective". (Pro forma)

LAKE V. LAKE, 18 NEV 361 4 P. 711 (1884)

Dated August 23, 2013.

[Signature]
Frank M. Peck

Petitioner/Appellant

CR06P2580 DC-9900048982-002
POST FRANK MILFORD PECK (D6 2 Pages)
District Court 08/30/2013 09 02 AM
Washoe County DCC
2515
ASMITT

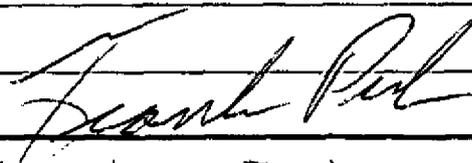
Certificate of electronic service and Affirmation

I Frank M. Peck hereby certify that a true and correct copy of the enclosed Notice of Appeal dated August 23 2013 was mailed this date to the Clerk of the Court at 75 Court Street Reno, Nv, 89501 for electronic service on DDA Terrance Mc Carthy. NEFR 9(e).

Dated this 25th day of August 2013.

Signed under penalty of perjury NRS 208.165
And 28 USC sec 1746.

Contains no social security numbers of any person NRS 239B.030.



FRANK M. PECK 57106

HDSP Box 650

Indian Springs, Nv. 89070

Petitioner / Appellant

Code 1310

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

FRANK M PECK,

Petitioner,

Case No. CR06P2580

vs.

Dept. No. 6

**WARDEN NEVIN,
THE STATE OF NEVADA,**

Respondents.

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to NRAP 3(2).

1. This appeal is from an order entered by the Honorable Brent Adams.
2. Appellant is Frank M. Peck. Appellant is representing himself in Proper Person on appeal:
3. Appellant's address is:
Frank M. Peck #57106
HDSP Box 650
Indian Springs, Nevada 89070
4. Respondent is the State of Nevada. Respondent is represented by the Washoe County District Attorney's Office:
Terrance McCarthy, Esq.
P.O. Box 11130
Reno, Nevada 89520
5. Respondent's attorney is licensed to practice law in Nevada.

6. Appellant was not represented by appointed counsel in District Court.
7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was not leave to proceed in forma pauperis in District Court.
9. Proceeding commenced by the filing of an Indictment filed November 8, 2006.
10. This is a criminal proceeding and the Appellant is appealing Order filed June 3, 2013 and Order filed August 1, 2013.
11. The case has been the subject of a previous appeal to the Supreme Court:
Supreme Court No. 51948; 53403; 53826; 53947; 54168; and 54875.
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 6th day of August, 2013.

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By: /s/ Annie Smith
Annie Smith
Deputy Clerk

Code 1350

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

FRANK M PECK,

Petitioner,

vs.

Case No. CR06P2580

**WARDEN NEVIN,
THE STATE OF NEVADA,**

Dept. No. D6

Respondent.

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 6th day of September, 2013, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 6th day of September, 2013

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By /s/ Annie Smith
Annie Smith
Deputy Clerk

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 09-06-2013:11:25:01
Clerk Accepted: 09-06-2013:11:27:05
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Case Appeal Statement
Certificate of Clerk
Filed By: Deputy Clerk ASmith
You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

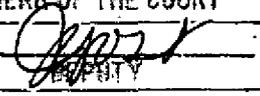
CR06P2580 DC-9900049071-005
POST FRANK MILFORD PECK (06 2 Pages
District Court 09/06/2013 03 02 PM
Washoe County 3860
100

Code 3860
Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV, 89070
Petitioner, pro se.

FILED

2013 SEP -6 PM 3:02

JOEY CROUNA HASTINGS
CLERK OF THE COURT

BY: 

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK, CASE NO. CR-06-P-2580
Petitioner, DEPT NO. 6

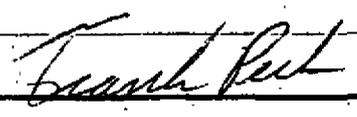
VS.

WARDEN NEVIN,
STATE OF NEVADA
Respondents

REQUEST FOR SUBMISSION OF MOTION

Petitioner requests that the Motion for
A New trial filed on August 12, 2013 be
submitted for decision in light of the fact
that Respondents have failed to serve
or file any opposition, as such this
failure may be construed as an admission
that the motion is meritorious and a
consent to granting the same, DCR 13 3.

Dated 9-1-13


Frank M. Peck Pet, pro se.

V11.635

Certificate of electronic service and Affirmation

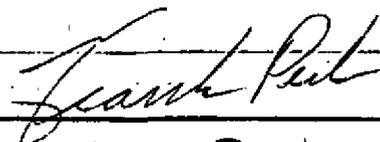
I Frank M. Peck hereby swear under penalty of perjury that:

1. A true and correct copy of the attached Request for submission of Motion was mailed this date to the Clerk of the Court at 75 Court St Reno, NV, 89501 for electronic service per NEFR 9(e) on DDA Terrance McCarthy @ same.

Dated this 2nd day of September 2013.

Signed under penalty of perjury NRS 208.165 and 28 USC 1746.

Contains no social security numbers of any person NRS 239 B.030.



FRANK M. PECK 57106

HOSP Box 650

Indian Springs, NV. 89070

Petitioner, pro se.

1 CODE #2650
RICHARD A. GAMMICK
2 #001510
P. O. Box 30083
3 Reno, Nevada 89520-3083
(775)328-3200
4 Attorney for Respondent

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 FRANK MILFORD PECK,

10 Petitioner,

11 v.

Case No. CR06P2580

12 THE STATE OF NEVADA,

Dept. No. 6

13 Respondent.
14 _____/

15 OPPOSITION TO REQUEST FOR SUBMISSION OF MOTION

16 Petitioner Peck has asked that a prior motion for a new trial, allegedly filed on August 12,
17 2013, be submitted for decision by this court, as the State has failed to respond. The actual
18 document filed on August 12 appears to be a pleading previously unknown to the law, captioned
19 as "Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) Relief #6 NRS 34 et seq
20 AND MOTION FOR NEW TRIAL".

21 If the document is intended to be some sort of supplemental petition, the State is not
22 required to answer until ordered to answer. If it was intended to be a motion, the caption is
23 incorrect.

24 The State also notes that Peck appears to have filed some sort of Notice of Appeal from
25 something. Whatever it is, that divests this court of jurisdiction until such time as the Supreme
26 Court issues its remittitur. Accordingly, even if this court is going to allow Peck to make up

1 procedural devices, and decide for himself what procedural rules apply, this Court should still
2 decline to issue any sort of ruling as the notice of appeal has vested jurisdiction in the Supreme
3 Court.

4 AFFIRMATION PURSUANT TO NRS 239B.030

5 The undersigned does hereby affirm that the preceding document does not contain the
6 social security number of any person.

7 DATED: September 9, 2013.

8 RICHARD A. GAMMICK
9 District Attorney

10 By /s/ TERRENCE P. McCARTHY
11 TERRENCE P. McCARTHY
12 Chief Appellate Deputy
13
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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County
3 District Attorney's Office and that, on September 9, 2013, I deposited for mailing through the U.S.
4 Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing
5 document, addressed to:

6 Frank Milford Peck, #57106
7 High Desert State Prison
8 P.O. Box 650
9 Indian Springs, NV 89070-0650

10 /s/ EARLEEN RUSSELL
11 EARLEEN RUSSELL
12
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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 09-09-2013:15:43:58
Clerk Accepted: 09-09-2013:15:48:00
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Opposition to
Filed By: TERRENCE MCCARTHY, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 09-13-2013:15:32:05
Clerk Accepted: 09-13-2013:15:32:42
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Sealed Order
Filed By: Judicial Asst. SParke

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

FILED

Electronically

09-16-2013:08:50:16 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3997309

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

FRANK MILFORD PECK,

Appellant,

vs.

DWIGHT NEVEN, WARDEN; AND THE

STATE OF NEVADA,

Respondent.

Supreme Court No. 63974

District Court Case No. CR062580

*CR062580
JL*

RECEIPT FOR DOCUMENTS

TO: Frank Milford Peck

Washoe County District Attorney \ Terrence P. McCarthy

Joey Orduna Hastings, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

09/10/2013 Appeal Filing fee waived. Criminal.

09/10/2013 Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day.

DATE: September 10, 2013

Tracie Lindeman, Clerk of Court

lh

V11.642

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 09-16-2013:08:50:16
Clerk Accepted: 09-16-2013:08:51:19
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Receipt for Doc
Filed By: Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

CRO6P2580 DC-9900049449-013
POST: FRANK MILFORD PECK (D6 6 Pages
District Court 09/18/2013 04:25 PM
Washoe County 3790
70C

Code 3790
FRANK M. PECK 57106
H DSP Box 650
Indian Springs, NV 89070
Petitioner, pro se.

FILED
2013 SEP 18 PM 4:25
JOEY BRUNER, CLERK OF THE COURT
BY: [Signature] DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Frank M. Peck, CASE NO. CRO6-P-2580
Petitioner, DEPT NO. 6
VS.

Warden Nevin,
State of Nevada,
Respondent.

REPLY TO / IN OPPOSITION TO RESPONDENTS
OPPOSITION TO PETITIONERS REQUEST FOR
SUBMISSION OF MOTION

Comes Now, the Petitioner, Frank M. Peck pro se
hereinafter Mr. Peck with the above entitled Reply
IN OPPOSITION.

This Reply is made and based upon all papers and
pleadings on file in this case as well as the attached
points and authorities and Affidavit of Mr. Peck.

Dated Sep 12, 2013.

[Signature]
Frank M. Peck V#11644
Pet, pro se.

Points And Authorities

This Court Ordered Counsel Mary Lu Wilson appointed to supplement Mr. Peck's Petition for writ of habeas corpus (post-conviction) relief on 7-21-2010.

This is the second attorney appointed to Mr. Peck's case that "absolutely refuse to abide by professional norms in communication with their clients."

As a result of this failure to communicate and the ensuing breakdown counsel Mary Lu Wilson (out of spite) filed a "NOTICE OF NO SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)" on 9-18-12.

Out of fear that this court may make a ruling without a petition having been filed on Mr. Peck's behalf Mr. Peck immediately began supplementing his own petition (piece-meal) again out of fear that this court may close the pleadings at any time. This court has broad authority to order supplemental pleadings. State v Powell, 138 P3d 453 (2006); Barnes v. 8th Jud Dist Ct ex rel CtV clark, 103 Nev 679 748 P2d 483 (1987) Standley v Warden, 990 P2d 783 (1999); Barnhart v. State, 130 P3d 650 (2006). NRS 34.750 3(a).

It is extremely painful for Mr. Peck to litigate by hand due to arthritis in his hands.

Mr. Peck has shown that counsel Mary Lou Wilson "failed Mr. Peck" see: Supplemental Exhibit filed on Aug 8, 2013 (MBA DNA Report of observations).

It is a fact that Mr. Peck did indeed file Supplemental Petition for writ of Habeas Corpus Post-Conviction Relief #6 NRS 34. et seq AND MOTION FOR NEW TRIAL on Aug 12, 2013, and the pleading was "exactly styled after a pleading drafted by Attorney Cal J. Potter III Esq Bar No 1988 and could hardly be said to be previously unknown to the law". Said exact document was filed in Clark Co case no C241873 in dept 17 on 3-13-13 by Mr. Potter.

Respondent's Attorney Mr. McCarthy should have opposed the Motion instead of now that he is out of time claiming that a Notice of appeal filed on August 30th 2013 excuses his failure.

Mr. Peck appealed this court's Order of 8-1-13 to see if the order is appealable.

Mr. Peck is severely restricted from law library access (2 1/2 hr a WEEK)!

Mr. Peck is keenly aware that his challenge to the theory of PCR is not going to be popular, however Mr. Peck is left with no choice. Mr. Peck has had to overcome misinformation from his counsel and others in an attempt to dissuade and deceive Mr. Peck.

There is nothing wrong with Mr. Peck's caption. Counsel just does not have a good answer for failing to respond.

Mr. Peck is unclear on just what procedural devices or rules he has "made up".

What is clear is that Mr. Peck due to his circumstances and the issues he has raised it may be best if this court not involve another attorney and allow Mr. Peck to present his case at Evidentiary Hearing.

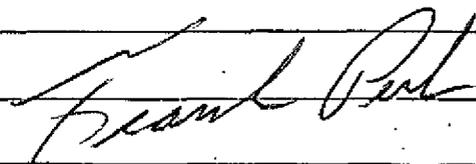
Mr. Peck's issue regarding PCR is the most substantial challenge to the theory (EVER). And the facts speak for themselves.

Conclusion

Therefore, this Court should Order a NEW TRIAL so a Dobert/Hallmark hearing can be had.

Dated this 12th day of September 2013.

Respectfully submitted



Frank M. Peck Pet, prose.

Affidavit, certificate of electronic service and
Affirmation

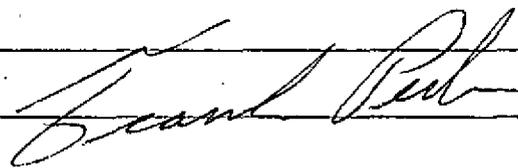
I Frank M. Peuk do hereby swear under penalty
of perjury that:

1. I am the Petitioner in CR-06-P-2580.
2. All assertions in the attached Reply are true
based upon personal knowledge and I am
competent to testify to all matters contained therein.
3. On this date I mailed a true and correct copy
to the clerk of the Court 75 Court St Reno NV
89501 for electronic service on DDA Terrance Mc
Carthy Esq pursuant to NFR rule 9(e).
4. I bring this Reply in good faith and for no
improper reason.

Dated this 12th day of September 2013.

Signed under penalty of perjury NRS 208.165
§ 28 USC 1746.

Contains No social security numbers of
any person NRS 239 B.030.



FRANK M. PEUK 57106

HDSP Box 650

Indian Springs, NV, 89470

Petitioner, pro se.

CR06P2580
DC-9900049786-017
POST FRANK MILFORD PECK (DG 4 Pages
District Court 10/01/2013 03 30 PM
Washoe County NV02

Code 4105
Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner/ pro se.

FILED

2013 OCT -1 PM 3:30

JOEY DEBRA HASTINGS
CLERK OF THE COURT

BY [Signature]
CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Frank M. Peck,

Petitioner/

CASE NO. CR-06-P-2580

vs.

DEPT NO. 6

WARDEN WDOC,

State of NEVADA,

Respondents,

SUPPLEMENTAL EXHIBIT IN SUPPORT OF
EVIDENTIARY HEARING

Comes now, the Petitioner, Frank M. Peck
pro se hereinafter Mr. Peck with the above entitled
exhibit.

The attached exhibit is filed in support
of Mr Peck's (post-conviction) matters above.

Dated 9-10-13

[Signature]

Frank M. Peck Pet, pro se.

V11.650

Points and Authorities

The attached exhibit (Motion to Reconsider Order Denying Motion to Dismiss) Filed by Deputy District Attorney Herbert B. Kaplan Esq. "acknowledges" "SAME issue of fabricated evidence" a) pg 5 line 17 that a) pg 6 lines 9-10 "It is clear that if successful, Plaintiff's claim would necessarily imply the invalidity of his conviction". As such, Mr. Peck has satisfied the requirement of NRS 34.770 3 Hargrave v State id Gebers v. State, 118 Nev 500 50 P3d 1092 (2002) Stanley v. Warden 990 P2d 783 (1999), Williams v. Taylor, 529 US 420 437 (2000) id Stanley v. Schirra, 598 F.3d 612 624 (9th Cir 2010). See EX-1.

Therefore, this Court should find that AS Acknowledged by the State, Mr. Peck is entitled to evidentiary hearings on his claims of false fabricated DNA evidence in the above numbered actions.

Dated this 10th day of September 2013.

Frank Peck 7P

FRANK M. PECK Pet, pro se.
V11.651

Certificate of electronic service and Affirmation
I Frank M. Peck do hereby swear under penalty
of perjury that on this date I mailed a
true and correct copy of the Attached Supplemental
exhibit in support of evidentiary hearings to
the Clerk of the 2nd Jud Dist Court 75 Court
Street Reno, NV. 89501 for electronic service
on DDA Terrance McCarthy Esq pursuant
to NEFR rule 9(e).

Dated this 10th day of September 2013.

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.

Contains no social security numbers of
any person. NRS 239 B.030.



Frank M. Peck 57106
HOSP Box 650
Indian Springs, NV. 89070
Petitioner, pro. se.

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Exhibit 1

Pages 8

Exhibit description: Motion to Reconsider
Order Denying Motion to Dismiss



CR06P2580 DC-9900049786-018
POST FRANK MILFORD PECK (06 9 Pages
District Court 10/01/2013 03:30 PM
Washoe County
EX1

Exhibit 1

Exhibit 1

1 2175
HERBERT B. KAPLAN
2 Deputy District Attorney
Nevada State Bar Number 7395
3 P. O. Box 11130
Reno, NV 89520
4 (775) 337-5700
ATTORNEY FOR DEFENDANTS

5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

8 * * *

9 FRANK M. PECK,

10 Plaintiff,

11 vs.

Case No. CV13-00580

12 THE STATE OF NEVADA, et al., WASHOE
13 COUNTY, WASHOE COUNTY CRIME LAB, et
al., RENE ROMERO, Director, JEFFREY RIOLO,
14 Sr. Analyst, JOHN DOES I THROUGH X,

Dept. No. 9

15 Defendants.
16 _____/

17 **MOTION TO RECONSIDER ORDER DENYING MOTION TO DISMISS**

18 COME NOW Defendants, WASHOE COUNTY, RENE ROMERO, and JEFFREY
19 RIOLO, by and through counsel, Herbert Kaplan, Deputy District Attorney, and moves this
20 Honorable Court for its Order reconsidering its Order entered on August 20, 2013, in which the
21 Court denied the Motion to Dismiss filed on behalf of Defendants.

22 //

23 //

24 //

25 //

26 //

1 This Motion is made pursuant to Nevada Rules of Civil Procedure, and is based on the
2 following Memorandum of Points and Authorities, and any and all papers and pleadings on file
3 herein.

4 Dated this 30th day of August, 2013.

5 RICHARD A. GAMMICK
6 District Attorney

7 By /s/ Herbert B. Kaplan
8 HERBERT B. KAPLAN
9 Deputy District Attorney
10 P. O. Box 11130
11 Reno, NV 89520
12 (775) 337-5700

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ATTORNEYS FOR DEFENDANTS

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Plaintiff filed his Complaint in this matter in March 2013. In that complaint, Mr. Peck
4 alleges a single cause of action for fraudulent misrepresentation. Mr. Peck claims that
5 testimony in connection with Plaintiff's 1) convictions in 1997 for 2 felony counts of sexual
6 assault, and 2) 2009 felony conviction for sexual assault, resulted in him not receiving a fair
7 trial and violated his constitutional rights. Plaintiffs claim in this case is that the testimony of
8 Ms. Romero and Mr. Riolo was confusing and misleading. The testimony in question is as
9 follows:

10 1) Mr. Riolo testified in 1997 that "There's a technique we use to do this. It's called
11 PCR, polymerase chain reaction. Just a name that says we can start out with a small amount of
12 DNA and make a large amount of DNA from that small amount." Complaint at p. 4.

13 2) On November 8, 2006, Ms. Romero testified "I developed a DNA profile from that
14 sample." Complaint at p. 6.

15 3) On May 8, 2009, Mr. Riolo testified that the PCR protocol is "almost like growing
16 the DNA." Complaint at p. 6.

17 Plaintiff claims these statements are false and that "the misleading term amplify,
18 amplified or amplification, this term misleads that the mass of the evidence itself is increased."
19 Complaint at p. 7.

20 Plaintiff attaches a letter dated October 12, 2012 from MBA DNA Consulting, LLC in
21 support of his claim that the foregoing statements were fraudulent. That letter states in
22 pertinent part as follows:

23 DNA present in the evidence sample is a template from which the copies
24 are made. The synthetic PCR primers from the particular DNA typing kit being
25 used are incorporated into the copied or 'amplified' DNA, and are fluorescently
26 labeled. . .

Where a photocopier makes copies of an original page, the PCR process
gets started by making copies of the original DNA and then essentially uses the
copies to make more copies. The final product that is generated and contains

1 fluorescent primers is synthetic in nature, however it is a faithful replication of
2 the DNA that was originally present in the sample.

3 See Exhibit 2 attached to Plaintiff's Complaint.

4 Defendants filed a motion to dismiss on May 31, 2013.

5 This Court entered its Order Denying Defendant's Motion to Dismiss on August 20,
6 2013, finding that Plaintiff has met his burden to set forth sufficient facts to support his claim,
7 and that the action is not barred under *Heck v. Humphrey*.

8 For the reasons set forth below, Defendants believe that there is a reasonable probability
9 that the Court may have arrived at an erroneous conclusion and that the same must be
10 reconsidered.

11 **II. LEGAL AUTHORITY**

12 The primary purpose of a motion for reconsideration or rehearing is to inform the court
13 that it has overlooked an important argument or fact or misread or misunderstood a statute,
14 case or fact in the record.

15 Reconsideration of an order is proper if upon motion the Court consents to a rehearing.
16 *Harvey's Wagonwheel, Inc. v. MacSween*, 96 Nev. 215, 606 P.2d 1095 (1980); DCR 13(7).
17 Reconsideration is not granted as a matter of right and is not allowed for the purpose of
18 reargument unless there is a reasonable probability that the court may have arrived at an
19 erroneous conclusion. *Geller v. McCowan*, 64 Nev. 106, 178 P.2d 380 (1947).

20 **III. THE COURT ARRIVED AT AN ERRONEOUS CONCLUSION**

21 Defendants believe that the Court has arrived at an erroneous conclusion with regard to
22 the argument that Plaintiff's case is barred under *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct.
23 2364, 129 L.Ed.2d 383 (1994).

24 While this Court properly found that Mr. Peck's convictions have not been overturned,
25 the Court applied an inappropriate standard to find that the entire action is not barred under
26 *Heck*. Specifically, the Court analyzed this issue as follows:

1 [T]he Court finds that denying Defendant's Motion to Dismiss would not
2 necessarily imply the invalidity of the current sentence he is serving in Indian
3 Springs, Nevada because the merits of Plaintiff's fraud claim has yet to be
4 addressed at this early stage of the proceedings.

5 Order at p. 8.

6 In so concluding, the Court has applied the wrong standard.

7 The issue is not whether or not the grant of a motion to dismiss would necessarily imply
8 the invalidity of the conviction, but rather whether or not granting relief to the plaintiff based
9 on his complaint, and the fraud claim, at any point in this litigation would necessarily imply the
10 invalidity of the conviction. *Heck* bars a plaintiff from bringing suit if "a judgment in favor of
11 the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Id.* at 487,
12 114 S.Ct. 2364. "[T]he sole dispositive question is whether a plaintiff's claim, if successful,
13 would imply the invalidity of his conviction." *Whitaker v. Garcetti*, 486 F.3d 572 (9th Cir.
14 2007).

15 The answer to that question is yes.

16 Plaintiff himself, in his Opposition to the Motion to Dismiss, acknowledges that he
17 believes that the grant of his claim will necessarily invalidate his conviction. He states that this
18 "same issue of fabricated evidence" is before the Second Judicial District Court in his pending
19 post-conviction writ of habeas corpus. Opposition at p. 7. Furthermore, Plaintiff, in his
20 Complaint, states that based on the presentation of this alleged "fabricated evidence" his "Due
21 Process and rights to a fair trial were violated under the 5th and 14th Amendments to the US
22 Constitution." Complaint at p. 4. Plaintiff further alleges that his right to refuse to testify and
23 remain silent were undermined by the allowance of the introduction of the "fabricated
24 evidence." Complaint at p. 5. Finally, Plaintiff states that the damages he seeks are based on
25 the number of years of incarceration, Complaint at p. 5, implying that the incarceration would
26 necessarily be deemed to have been wrongful. Complaint at p. 8. In fact, this Court

//

1 acknowledges that Plaintiff claims the presentations of the “fabricated evidence” resulted in the
2 violation of his liberty interests. Order at p. 2, ll. 15-16.

3 The Court in its Order acknowledged that Plaintiff has a pending post conviction writ of
4 habeas corpus. If Plaintiff is not of the opinion that the alleged “fabricated evidence”
5 necessarily invalidates the underlying conviction, then he should be willing to dismiss that
6 pending post conviction writ. Clearly, Plaintiff is of the opinion that the grant of relief would
7 necessarily imply the invalidity of the underlying conviction, as Plaintiff has a pending petition
8 for writ of habeas corpus based on the very same issue.

9 Based upon what is before the Court at this time, it is clear that if successful, Plaintiff’s
10 claim would necessarily imply the invalidity of his conviction.

11 Furthermore, a review of the facts involved in Heck reveal that they are strikingly
12 similar to those here. In *Heck*, while the appeal from his conviction was pending, Mr. Heck
13 filed a suit for damages alleging in part that “an illegal and unlawful voice identification
14 procedure” was allowed to be used at his trial. The complaint sought, among other things,
15 compensatory and punitive monetary damages. It did not ask for injunctive relief, and
16 petitioner has not sought release from custody in this action. *Id.* at 478-479. The Court in
17 *Heck* found that the damages claim was barred because granting Mr. Heck’s relief would
18 necessarily imply the invalidity of the underlying conviction regardless of the fact that the
19 damages sought were monetary.

20 Likewise, in this case, Plaintiff alleges that there was testimony in his criminal trials
21 that knowingly misrepresented the DNA process known as Polymerase Chain Reaction
22 (“PCR”). By Plaintiff’s own admissions, a finding in his favor in this case necessarily
23 challenges the invalidity of his conviction, as he has a pending writ of habeas corpus based on
24 the same issue.

25 The damages claim here, as was the case in *Heck*, is barred.

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IV. CONCLUSION

Based upon the foregoing, Defendants respectfully request this Court to reconsider it's Order Denying Defendant's Motion to Dismiss entered herein on August 20, 2013, as it was based on an erroneous standard. Washoe County further requests that this Court such other relief as it deems appropriate under the circumstances.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 30th day of August, 2013.

RICHARD A. GAMMICK
District Attorney

By /s/ Herbert B. Kaplan
HERBERT B. KAPLAN
Deputy District Attorney
P. O. Box 30083
Reno, NV 89520-3083
(775) 337-5700

ATTORNEYS FOR DEFENDANTS

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CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I certify that on this date, I deposited for mailing in the U. S. Mails, with postage fully prepaid, a true and correct copy of the foregoing MOTION TO DISMISS in an envelope addressed to the following:

Frank M. Peck, #57106
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070-0650

Dated this 30th day of August, 2013.

/s/ Tina Galli
TINA GALLI

CR06P2580 DC-9900050084-033
POST FRANK MILFORD PECK (D6 5 PAGES
District Court 10/10/2013 03 01 PM 4105
Washoe County JY05T
NOT

Code 4100
Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV. 89070

Petitioner, pro se.

FILED

2019 OCT 10 PM 3:01

JOSEY GREGINA HASTINGS
CLERK OF THE COURT
BY *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Frank M. Peck,
Petitioner,

CASE NO. CR06-P-2580
DEPT NO. 6

vs.

Warden Nevin,
State of Nevada,
Respondents,

SUPPLEMENTAL PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION) RELIEF #7 NRS 34 ET SEQ

Comes now, the Petitioner, Frank M. Peck pro se
hereinafter Mr. Peck with his 7th supplement to
his Petition for writ of habeas corpus (post-
conviction) relief.

This Petition/Supplement is made and based upon
all papers and pleadings on file in this case as well
as the attached points and authorities and Affidavit
of Mr. Peck.

Dated 9-21-13

Frank Peck

Frank M. Peck 57106

HOSP Box 650

Indian Springs, Nv. 89070

Points and Authorities

The issues presented herein are raised under the United States Constitutions 4th, 5th, 6th and 14th Amendments.

GROUND ONE

Want of Probable Cause

Probable Cause was obtained by the use of fraudulent procedure, Perjury and intentional misrepresentations by use of un-constitutional process of manufacture of evidence by (PCR) Polymerase Chain Reaction.

Ornelles v. U.S. 517, US 690 695 (1996);

Ill v. Gates 462 US 213 238 (1983);

Beck v Ohio 379 US 89 91 (1964);

Wong Sun v U.S., 371 US 471 479 (1963);

Brinegar v. U.S. 338 US 160 175-77 (1949)

GROUND TWO

ACTUAL INNOCENCE

Here Mr. Peck makes clear that all his Tacit Assertions in his Supplemental Petitions are in furtherance of the claim of "ACTUAL INNOCENCE" specifically claimed herein.

Mr. Peck's issues present a prima facie showing of "ACTUAL INNOCENCE".

Schlup v. Delo, 513 US. 130 (Ed 2d 808, 115 S Ct. 1995. Id (513 US. 298 & 327 (1995))

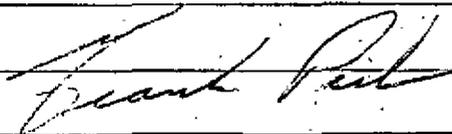
In light of all the NEW EVIDENCE that Mr. Peck has presented to this Court this Court should be persuaded that "in light of the NEW EVIDENCE, no juror, acting reasonably would have voted to find him guilty beyond a reasonable doubt," see also McCoy v. Norris, 958 F Supp. 420 (ED Ark 1996).

Additionally, the NEW EVIDENCE presented to this Court is likely to result in the forensic PCR method being found to be AN UNCONSTITUTIONAL manufacture of EVIDENCE @ A MOLECULAR SCALE AND inadmissible AS EVIDENCE AT A criminal trial.

Conclusion

Therefore, for the REASONS stated in Mr Peck's supplemental petitions AND the NEW EVIDENCE presented therein. This Court should dismiss the Charge AGAINST Mr Peck or at the very least order AN evidentiary hearing so Mr. Peck can prove his case.

Dated 10-6-13



Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV 89070
Petitioner, pro se.

Affidavit, certificate of electronic service
and Affirmation

I Frank M. Peck do hereby swear under
penalty of perjury that:

1. I am the Petitioner in CR-06-P-2580.

2. All assertions in the attached supplemental
Petition for writ of Habeas Corpus (post-conviction)
relief #7 are true based upon personal knowledge
and I am competent to testify to all matters
contained therein.

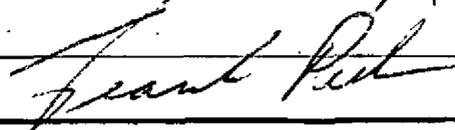
3. I bring this supplement in good faith and for
no improper reason.

4. A true and correct copy was mailed this date
to the Clerk 2nd Jud Dist Court 75 Court St
Reno, Nv. 89501 for electronic service on ODA
Terrance McCarthy Esq per NEF R rule 9 (e).
Further affiant sayeth naught

Dated 10-6-13

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.

Contains NO social security numbers of any person
NRS 239B.030.



Frank M. Peck Pet prose

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA
Plaintiff,

vs.

FRANK PECK,
Defendant.

Sup. Ct. Case No. 65691
Case No. CR06-2580
Dept. 6

RECORD ON APPEAL

VOLUME 10 OF 13

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APPELLANT

Frank Peck #57106
H D S P - P O Box 650
Indian Springs, Nevada 89070

RESPONDENT

Washoe County District Attorney's
Office
Terrance McCarthy, Esq.
P O Box 11130
Reno, Nevada 89502-3083

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1 CODE #
2 MARY LOU WILSON
3 Attorney At Law, Bar Number 3329
4 333 Marsh Ave.
5 Reno, Nevada 89509
6 775-337-0200
7 Attorney for Petitioner

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
9
10 IN AND FOR THE COUNTY OF WASHOE

11 FRANK PECK,

12 Petitioner,

13 vs.

14 Case No. CR06P2580

15 Dept. No. 6

16 WARDEN, N.D.O.C. and
17 THE STATE OF NEVADA,

18 Respondents.

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25
NOTICE OF NO SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS
(POST CONVICTION)

COMES NOW MARY LOU WILSON, counsel for Petitioner, and provides Notice of no Supplemental Petition for Writ of Habeas Corpus (Post Conviction) to be filed.

Counsel does not waive any of the grounds presented in the Petitioner's Original Petition.

Counsel has investigated Petitioner's claims of DNA tampering and chain of custody violations by the Washoe County Sheriff's Office, even employing the DNA expert, Mehul Anjaria, MS, D-ABC, requested by Petitioner.

On August 22, 2012, Mehul Anjaria, MS, D-ABC, provided a preliminary finding to counsel, which counsel provided to the Court as an exhibit in a Notice filed on August 24, 2012. Exhibit

1.

//

1 On August 24, 2012, counsel spoke with Anjaria on the telephone about his report. Anjaria
2 concluded that, "The examination of the chain of custody reveals nothing that would rise to the
3 level needed to prove that Peck is innocent." Exhibit 2.

4 Additionally, during counsel's investigation of Petitioner's witnesses, it was discovered that
5 John Sullivan Jr., the son of a former Clark County Sheriff listed in the original petition, has
6 since passed away, thereby leaving Petitioner with no witnesses to potentially corroborate his
7 whereabouts at the time of the sexual assault.
8

9 Therefore, counsel will not file a supplement to Petitioner's petition.

10 DATED this 18th day of September, 2012.

11 By: s/s: MARY LOU WILSON
12 MARY LOU WILSON
Attorney for Petitioner Peck

13 Affirmation:

14 I, Mary Lou Wilson, hereby affirm that there is no social security number of any person in the
aforementioned document.

15 DATED this 18th day of September, 2012.

16 By: s/s: Mary Lou Wilson
17 Mary Lou Wilson

Exhibits in Support of Notice

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Exhibit 1, Mehul Anjaria’s Report

Exhibit 2, Memorandum of conversation with Mehul Anjaria

FILED

Electronically

09-18-2012:02:32:04 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3224756

EXHIBIT 1

EXHIBIT 1

V10.257

August 22, 2012

To:
Mary Lou Wilson
John Whittaker
Frank Peck

This document is not intended to be a formal report. Rather it is a summary of my observations, explanations, and recommendations. The document is intended to present underlying details of the DNA testing and chain of custody such that the defense team can better understand the issues and decide on what further action or court filings may be required. The intended audience is only the individuals mentioned above. Based on review of this document and further discussion, a formal report may be prepared for legal purposes if requested.

LESLIE NUMMER CASE

Report Dated 12-3-96 by Maria Fassett, WCSO Crime Lab

Sexual Assault Evidence from Leslie Nummer:

- no semen detected on vaginal swabs
- semen was detected in a stain on the front crotch area of the panties. Stain removed for retention.
- no hairs observed on panties
- brown hair observed in pubic brushing packet

"The victim's clothing will be examined at a later date. The suspect's evidence kit, liquid blood sample and clothing are not listed in WCSO Evidence under this case number."

Laboratory Notes for this Report:

- 4 vaginal swabs present, they tested negative with AP

(AP stands for Acid Phosphatase, a presumptive chemical color test for seminal fluid. A positive result indicates the likely presence of semen, and further confirmatory testing is warranted)

-underwear: multicolored (jewel tones) satin bikini style. Sketch indicates that a positive AP test was found in inside front panel of crotch. An area of the crotch of the panties was excised and labeled "T1 panties"

-small portion of crotch was excised for microscopic exam: positive for sperm, quant ~1+, uneven distribution

(When microscope slides are examined for sperm cells, the number of cells present is generally recorded on a scale of 1 to 4. 1 is the least amount of sperm and 4 is the greatest. It is a subjective rating system, meant to document the approximate density of sperm cells present).

Report Dated 12-5-06 by Maria Fassett, WCSO Crime Lab

-No semen detected on Leslie Nummer's bra, sweater, and turtleneck. Loose hair and fibers were collected off of the sweater and turtleneck.

-Positive presumptive results for semen were obtained for the inside of the center crotch area of the jeans. A stain was removed for retention.

(presumptive positive means that semen is indicated, but it was not confirmed and cannot be said to be definitively present without further, confirmatory testing.)

-Hairs and fibers were collected off the jeans. Green stains and dried leaves observed on jeans.

Laboratory Notes for this Report:

-small area of discoloration to inside center crotch, tested positive with AP. Stain removed as 'T1 jeans'.

(here, no microscopic exam was performed for sperm thus it could not be concluded that semen was definitively present. Perhaps the size of the stain was judged too small to sample for microscopic exam at this stage)

Report Dated 3-14-97 by Maria Fassett, WCSO Crime Lab

"As per DA investigator, Mike NEVILLE, the above-listed items were sent back without examination at this time"

"The blood samples were not examined due to their excessive age"

The items listed in the report (received from WCSO Evidence Section 3-12-97) were:

- CAMEL T-shirt
- green towel, yellow towel, razor
- one pair grey sweats, one pair underwear, two pair of white socks, one tee shirt, numerous hair/fibers
- one black jacket, one pair NIKE black tennis shoes
- one orange towel from top of living room
- one petri dish with hair/fiber form bathroom sink drain
- piece of lint, two leaves, one white tissue with red stain, one white tissue, empty razor package, two razor caps, numerous hairs/fibers form contents of trash container.
- two vials of liquid blood obtained from Frank Peck
- sexual assault kit obtained from Frank Peck

Report Dated 5-6-97 by Jeffrey Riolo, WCSO Crime Lab

This is the first DNA report issued in the case. It uses a variation of PCR-based DNA testing known as 'PM+DQA1 and D1S80'. It was more sensitive but not as discriminating as the prior type of testing (see below).

The predecessor to this type of testing was called 'RFLP'. RFLP required a larger amount of DNA than PCR based techniques. A bloodstain about the size of a dime was required to have enough DNA for RFLP.

In later years, another type of PCR-based testing known as 'STR' came into use. This testing was even more sensitive than PM+DQA1 and D1S80, and offered even greater discrimination than RFLP.

All DNA testing systems after RFLP are PCR-based. However, there are different varieties of PCR-based testing (such as STR and PM+DQA1 and D1S80).

-A DNA profile was determined for the sperm fraction of T1 panties. It was a mixture of DNA from at least 2 people. The major (stronger profile) was consistent with Frank Peck. The minor (weaker) DNA types were consistent with Leslie Nummer, but it also appears that they could be consistent with Tim Billings.

-"Due to insufficient quantity and/or quality, no DNA results were obtained from Item #6: T1 Jeans (P19798).

Laboratory Notes for this Report:

"A blood stain and .5 ml tube was made from 1 of 2 vials of Frank M. Peck. The other vial was left unopened and along with the empty vial was returned to WCSO evidence."

Information on the blood tube is as follows:

Name: Peck, Frank M.

Date: 4-21-97

Officer: Ferguson, J #2248

Time: 0910

Place: 911 Parr Blvd.

Envelope No.: _____

Case #: 257920-96

Sampling of evidence:

T1 Panties: multi-colored fabric (purple, black, blue, etc). Whitish stain observed in two areas of panties. Took 2 cuttings (5mm and 2mm) of apparently 1/2 of the stained areas for DNA extraction

T1 Jeans: Blue denim fabric, no stain observed, took a 3mm squared cutting from around the +AP area.

(since he could not observe a visible stain, he sampled where Fasset had marked as being presumptive positive for semen).

Microscopic exam:

T1 Panties: +1 for sperm with tails and possibly a +4 for sperm without tails (tough to say what 'possibly' exactly means. If tails are observed, that generally means that a sample was collected relatively quickly after an assault as the tails easily break off of the sperm body with time. According to notes, the exam occurred 2.5 hours after the alleged assault-a time frame in which you might still observe tails)

The notes provided regarding the DNA extraction are rather scarce. It lists a Chelex method as being used, but does not provide details such as times, temperatures, lot numbers, etc. It does say that the reference samples from Nummer, Billings, and Peck were extracted 3 days after the extraction of the questioned samples.

Basic steps in DNA analysis are extraction, quantitation, amplification, and typing.

It appears that a type of extraction known as a differential extraction was used. The idea is to separate any DNA profiles coming from sperm, from the DNA profile of the female. Thus each sample has a non-sperm fraction and a sperm fraction after extraction. The separation is not always 100%.

For the quantitation step (which tells you the approximate amount of DNA present after extraction), the results are in the notes, but there is no actual data or worksheets or pictures from the lab procedure.

-No DNA was detected in either the non-sperm or sperm fractions from the jeans

-Suitable amounts of DNA were recovered from the reference samples and non-sperm and sperm fractions of the panties. The amount of DNA recovered from the sperm fraction of the panties (1.25 ng/ul) is consistent with a significant amount of sperm being present.

-Appropriate notes/data were provided for the amplification step

-Appropriate notes/data were provided for the typing steps.

Results for this type of DNA typing were documented via photograph and I'm looking at photocopies of photographs, but as far as I can tell the results were reported correctly. The sperm fraction of the panties did have to be tested in various amounts to get a result. This is not necessarily uncommon.

-samples from jeans were concentrated further in attempt to get typing result-no results obtained.

The presumptive positive for semen initially performed on the jeans may have been a false positive or indicative of a trace amount of semen. For example, high amounts of vaginal secretions, or bacteria I believe can cause an AP test to be positive. DNA testing did not detect semen on the jeans.

Candace Inman Case

Emergency Record, Saint Mary's Regional Medical Center (signed by physician)

Difficult to read most of document

"wet mount. No sperm seen. R04014-CR (Carole Phillips)"

In my review of cases I frequently see situations where the wet mount taken at the time of exam is negative, and when smears are later examined in the crime lab they

are positive for sperm. It appears that the wet mount is a more 'quick and dirty' screen and seems to have limited use. Not finding sperm at this stage is technically inconsistent with the finding of sperm at the crime lab, but based on my experience there appears to be a reason for this.

Carole Phillips Testimony:

"I'm handed a slide with a drop on it and asked to scan the slide for motile sperm or sperm, period."

Showing her the motile sperm slide:

A: "That's a microscopic slide with a small cover slip on"

Q: "Do you use small cover slips or the large"

A: "I would have used the large"

Speaking about the apparent inconsistency with the motile sperm slide being negative and the crime lab later finding sperm:

Q: Is that unusual?

A: No

Q: Give me some reasons why it might not be

A: Small, low sperm count, sperm like to stick to the swabs, possibly the swab wasn't totally swabbed onto that little bitty slide

Q: Well enough, you mean?

A: It's even possible that it could have been on the slide, but simply not in any of the fields I looked at even though I would have gone across, you know, quite a ways across it

Report Dated 9-15-94 by Maria Fassett, WCSO Crime Lab

-The presence of semen was identified on the vaginal smear. The vaginal swabs tips were removed and will be retained in the laboratory.

-The "stains on skin" gauze was examined for the presence of semen with none detected.

-No hairs or fibers were observed in the pubic hair brushing packet.

Laboratory Notes for this Report:

- "exam ~1-1.5 hours post"

Appears to refer to the hospital exam occurring quickly after the alleged assault

-stains on skin "collection site?". 2, 2x2 gauze pc's, one with brown/grey stain.
Negative AP test.

-vaginal swabs x2. Each with light brown staining. Positive AP " ~slow rxn mod color dev.

This would imply a weak positive result, possibly indicating a low level of semen.

-vaginal smears x2: microscopically examined for sperm, 3 heads observed, "rare"
At this point, based on the swabs having a weak AP result, and micro exam of the smears having a low level of sperm, there is indication that a relatively low level of semen was present.

-the motile sperm slide (presumably the one prepared at the hospital) was also included in the kit.

-The vaginal swab tips were taken for frozen storage.

In 1994, it is unclear which type of DNA technology the WCSO lab had available. We know that in 1996 from the Nummer case, they were using PM+DQA1 + D1S80 testing. Although PM+DQA1 testing could have been attempted in 1994 (if available), it likely was not since there was not a named suspect and no one to compare any results too. Based on the AP and sperm search results, there would not have been enough DNA to perform RFLP testing.

The National CODIS DNA database in its current form was not created until 1998. Prior to that, some databasing of DNA was occurring however it was not unified among laboratories and did not contain a large number of DNA profiles. In 1990 there was a pilot CODIS program for RFLP. From personal experience, PM+DQA1 and D1S80 markers could be searched in the late 1990's, but it was not a well-developed tool. Until STR technology and the national database in 1998, the CODIS system was of limited use.

Report Dated 12-17-01 by Renee Romero, WCSO Crime Lab

First DNA testing in Inham case. At this point, the lab has STR testing on-line and the National CODIS database is being heavily used to attempt to resolve criminal matters.

If Frank Peck's DNA had been profiled for the database in other technologies such as PM+DQA1 and D1S80, it would be irrelevant to the case, since the testing now being performed in 2001 is based on STR technology.

-A DNA profile was developed from the sperm fraction of the vaginal swab. The profile was searched against the State DNA database with no matching profile found. The profile will be forwarded to the National DNA database where it will be searched monthly.

Laboratory Notes for this Report:

-75% of one of 2 vaginal swabs was used for DNA extraction. A differential extraction was used to separate sperm fraction DNA from non-sperm fraction DNA.

-The notes on the extraction indicate which samples were extracted and by what method, however they are scarce in details such as times of extraction, temperatures, lot numbers, and volume of final extraction.

Apparently the following samples were extracted together:

- 2145-94 Vaginal swab (Inman Case)
- 8820-01 Vaginal swab
- 5841-01 nylons
- 3928-01 vag swab
- Blank

A blank should be included in each extraction, it is basically a tube to which no DNA is added, however it contains all of the chemicals used in the extraction process and goes through all of the steps that other samples do. At the end of the analysis there should be no DNA present, if there is, then the chemicals used or the extraction environment is contaminated with DNA.

-Romero did not perform microscopy during her extraction, which is perhaps not the best protocol, but is fairly common. The idea is that sperm was previously identified, so it is known that a differential extraction should be used. She thus did not have an opportunity to physically look for sperm cells in the material she was extracting. Because male DNA was however found in the sperm fraction of the sample, the earlier finding of sperm cells on the swabs is confirmed by the DNA testing.

-Inman's reference sample was also extracted along with other reference samples from different cases.

No blank is listed for this extraction in the notes. Again, details such as times, temperatures, lot #'s, and volumes are not present.



-DNA quantitation results are provided however, there is no data on the quantitation step. It is unclear as to even what technique was used.

A blank associated with the reference extraction is listed under the quantitation results. As mentioned above, no blank was listed with the reference sample extraction initially.

-We are not provided with the final volume of extracted DNA. The quantitation values are as follows:

Vaginal swab (non-sperm fraction)=4 ng/ul

Vaginal swab (sperm fraction) = 156 pg/ul

We know the concentration of DNA obtained, however we do not know the volume of liquid extracted DNA, so we don't know the total amount of DNA recovered. 156 pg/ul is a relatively low yield of sperm DNA, that is consistent with the prior AP and microscopic exam results.

-The amplification step appears to be properly documented. The specific variety of STR testing used was the Profiler Plus and COfiler kits.

1.56 ng of DNA was amplified for the sperm fraction of the vaginal swab, an appropriate amount. One ng(nanogram) = 1,000 pg (picograms).

The STR typing process generates raw electronic data from an instrument. That raw data is then run through software programs that interpret the data. I was provided with the raw data for this typing and was able to run it through my software.

The types that I determine agree with the types that Romero obtained.

The non-sperm fraction was a single source profile that matched Inman.

The sperm fraction was a mixture of DNA. There was a clear major (stronger) male profile that was used to enter in the database, and a minor DNA profile consistent with Inman. This is an example of the less than 100% separation of a differential extraction, which is more likely to occur with low levels of sperm.



The following DNA profile was determined for the sperm fraction of the vaginal swab and entered in the database:

D3S1358	15
vWA	18, 19
FGA	19, 21
Amelogenin	XY
D8S1179	11, 13, 14*
D21S11	28, 31
D18S51	15, 20
D5S818	12
D13S317	9, 12
D7S820	11, 12
D16S539	12, 13
TH01	6,8
TPOX	8,12
CSF1P0	12

*Inman is a 13, so the likely male profile is an 11,14, however the 13 was added to the search presumably in the rare even that the male also had a 13

-This DNA profile was entered in a 'keyboard search' of the State database on 12-6-01. It was searched against 2,921 profiles in the database. A keyboard search is a manual search performed prior to officially uploading the profile to be searched. No matches occurred.

This is the first time the profile from the sperm fraction of the vaginal swab was searched (12-6-01). The question (to be addressed later in this document is whether Frank Peck's STR profile was in the database at this time).

-On 12-17-01 the major profile from the vaginal swab was entered in the State database. On the same day it was released to be made available for the next upload to the National database.

Report Dated April 23, 2003 by Jeffrey Riolo, WCSO Crime Lab

-Search of State database of dominant profile of sperm fraction of vaginal swab matched Frank Peck.

-Requests a new reference sample from Frank Peck to confirm the match
Anytime there is a hit, a new reference sample taken from the individual is tested for confirmation.

Laboratory Notes for this Report:

-'State Match Result Report' shows a match of Convicted Offender STR profile NN03100 and Sample 214594 (profile for major profile of sperm fraction of vaginal swab)

-Photocopy of envelope with sticker "NN03100"

"State of Nevada Convicted Offender DNA Collection Kit

Type of offense: 200.366

County of conviction: Washoe

Date of conviction: 3-17-98

Name: Peck, Frank

State ID#: NV00515546

Social Security#: 549-08-5867

Dept of Prisons/P&P#: 57106

Male: X

Date of Birth: 03-02-1962

Collected by: Paula Houston (can't quite make out handwriting)

On: 3-20-02 at LCC"

-It appears that the Convicted Offender sample from Peck was re-analyzed to confirm that the DNA type of that sample matches the DNA type previously entered for the sample in the database. Typically CODIS labs will re-test the sample along with a few samples that were processed next to it to ensure that a mix-up did not occur when typing the Convicted Offender sample and entering it in the database.

-On 4-15-03 Jeff Riolo obtained the Convicted Offender sample from Peck (envelope described above).

-Notes on the extraction were provided, but like other notes seem incomplete. Information such as times, temperatures, and lot numbers are not included. Notes indicate that on 4-15-03 the following samples were extracted:

Q46077-L0654-03 Rose
NN03100 Peck
NN03468 Battle
NN03386 Rotunno

-No data was provided regarding the quantitation step, just the final quantitation values.

-The amplification notes appear to be sufficient.

-I have printouts of the final typing that appear to show that the re-typing of the Peck sample gave the expected DNA result on April 18, 2003.
The electronic raw data was not provided to me.

After a subsequent discovery request I was provided with raw electronic data from what appears to be the initial testing of Peck's database sample. The dates that the samples were run according to the electronic data were 12-2-2002 and 1-8-2003.

In that same discovery request I had asked for :"

-Documentation establishing the date that the DNA profile for the sperm fraction from the vaginal swab (Target ID: 214594) was entered into the State and National DNA databases and became searchable.

-Documentation establishing the date that the DNA profile of Frank Peck was first entered into the State and National DNA databases and when it became searchable."

As noted above, the documents I received in discovery indicated that the DNA profile from the sperm fraction of the vaginal swab was entered in the database on 12-17-01.

With regard to the first time Peck's sample was entered into the database and became searchable, the document provided to me shows that it was 4-3-03. This is also the date of the hit to the sperm fraction of the vaginal swab which makes sense.

The raw data that I was provided that pertained to typing Peck's sample on 12-2-2002 and 1-8-2003 is therefore likely the data from the original database typing of Peck's sample that resulted in his profile being uploaded on 4-3-03.

While I did not have the bench notes that went along with this raw data, I was able to run it through my software and obtain a DNA profile consistent with what has been reported for Peck.

Report Dated 2-14-05 by Renee L. Romero, WCSO Crime Lab

Received from WCSO Evidence Section on 12-2-04:

W112837: PS1-Sexual assault evidence kit R04014 containing envelope #3 "stains on skin"

W112602: LB1-Reference saliva sample from Frank Peck

The foreign deduced DNA profile from the stain on skin matches Frank Peck.

The major profile from the sperm fraction of the vaginal swab (previously typed) matches Frank Peck.

This looks to be the confirmation of the CODIS hit achieved by collecting a new sample from Peck.

Laboratory Notes for this Report:

- 2 ~2 square in pieces of gauze material. One is marked '-AP' and has some discoloration (received 12-22-04 from WCSO evidence)
- LB1 swab box labeled Frank M. Peck containing 2 swabs (received 1-4-05 from WCSO evidence)
- Extraction notes indicate that 50% of the discolored area of the gauze was sampled for DNA analysis.
- Extraction notes indicated that the sample from Peck was analyzed with no other case samples
- This time, quantitation data was provided, and showed a relatively high amount of DNA on the gauze.
- The amplification notes appear to be adequate.
- Apparently the first time the sample from the skin was tested, no DNA types were detected, despite a sufficient quantity of DNA being recovered.
- The skin sample was re-analyzed using more input DNA and results were obtained.

-I was provided with the raw electronic data for the analysis of the skin sample and Peck's reference sample. This typing of Peck's sample is consistent with the DNA profile for his Convicted Offender Sample and is consistent with the DNA from the sperm fraction of the vaginal swab.

-It looks like the positive amplification control for Peck's reference sample typing was mislabeled 'amp +11205' when it apparently should have been 'amp + 11305' which reflects the date his reference sample was amplified.

-The results from the skin sample show a mixture of DNA from at least 2 individuals. The results are consistent with an approximate 50:50 mix of 2 people. If you subtract out the DNA types of Inman, the deduced foreign DNA profile is consistent with Peck.

We don't know what type of cellular material is responsible for the DNA that is consistent with Peck. We just know that semen was not detected due to the negative AP result originally obtained.

Report Dated 2-6-06 by Renee Romero, WCSO Crime Lab

Received from Washoe County Sheriff's Office Evidence Section on 1-24-06:

W204210: Buccal swabs from Frank Peck (LB3)

Peck matches sperm fraction from vaginal swab (typed earlier)
Unclear in the report itself why another reference sample is being tested.

Laboratory Notes for this Report:

-On WCSO Lab Number Submission Sheet:

"This sample was sent in again due to the previous sample having "legally obtained" issues.

-Analysis notes look OK

-I was provided with raw electronic data, ran it through my software and agree with the types obtained for Frank Peck.

Report Dated 7-6-06 by Richard Berger, WCSO Crime Lab

-blood indicated on small stain from corner of bed sheet

- semen indicated in a sizeable stain present near middle of bed sheet
- five hairs recovered from bathtub, appear to be suitable for DNA
- 20 cigarette butts of 13 different brands recovered
- soda can was swabbed

I did not receive any laboratory notes with this report. In subsequent discovery requests I did not pursue them since no DNA testing was apparently performed.

If there are doubts about the authenticity of the vaginal swab and skin results from the Inman case, perhaps additional items listed in this report can be tested.

Jeffrey Riolo Testimony (Inman Case)

Q: What type of examination or investigation did you do in that laboratory number in this case?

A: I looked at the DNA profile from Frank Peck

Q: Okay. Did you have that in your lab to your knowledge in 1996, when you started? The sample

A: No, we did not

Q: Did you have it, to your knowledge, in your lab in the year 2000 or 2001 when PCR was starting?

A: No

Q: When did you receive at the lab the sample from Frank Peck, to your knowledge?

A: His DNA sample was received in the lab March of 2002

--->

The sample that he refers to that was received in March of 2002 is the Convicted Offender Sample NN03100, but obviously a reference sample from Peck was in the possession of the lab in conjunction with the Nummer case previously.

On 3-11-97 the lab received 2 vials of blood from Frank Peck, however per Neville they were sent back without being analyzed on 3-13-97.

It looks like blood was drawn from Peck on 4-2-97 and Riolo took possession of the blood vials on 4-24-97 to create a dried bloodstain perform DNA testing. As far as I can the blood vials were sent back.



Here is the chain of custody information on dried bloodstain prepared:

Lab #: L2807-96

Agency: Reno PD

Control #: P19920

Case #: 257920-96

Description: Reference standards from Leslie Nummer, Tim Billings, Frank Peck

Source: Control Chain of Custody Sheet

Date	Released By	Received By
4-28-1997	LAB	DG
9-27-11	MAM	Returned to Agency

Q: In your investigation in this case, you received Mr. Peck's DNA sample for the first time in—did you say March of '02?"

A: Yes

Q: What did you do with it or were you assigned to do with it, if anything?

A: When that sample—it was received in the laboratory, and it basically sat on the shelf until we were able to get a DNA profile from that or work on that sample. And that DNA profile was obtained on that sample in April of 2003

Q: Why the year delay or backlog?

A: This portion of the DNA section—our main focus in the laboratory is to do casework, and the samples that come in to be put into the database are second priority. And we just have a backlog where it takes us a little while to get to those samples.

Q: You put it in the computer in April of '03. How long was it before you get the match, do you know?

A: The match actually happened in April of '03, and that's what led to the reanalysis of the reference—the sample from Frank Peck, when then led to me writing a report

indicating that a new reference standard needed to be obtained from Frank Peck to confirm this match.

Renee Romero Testimony (Inman Case)

Q:.....do you have any opinion, base upon your education and training, as to whether or not DNA would have been a possibility to test on either or both of those samples, the three sperm heads or this vaginal swab, that may be sufficient in quantity for limited blood grouping analysis in 1994 under the state of the technology in Washoe County Lab?

A: No. At that time a sample that only indicated three sperm heads from the swabbing would not indicate there was enough to do the RFLP DNA-type test that we were using at the time.

→The amount of DNA recovered from the vaginal swabs was definitely not enough for RFLP analysis. It would have been enough for a decent try at PM+DQA1 and D1S80 typing which we know was available in 1996 since it was used in the Nummer case. However, according to Romero, the lab was only doing RFLP in 1994.

Q: So in any event or for whatever reason, this sample was not tested until when, for DNA, to your knowledge?

A: Until the technology changed to technology that has the acronym PCR testing, and areas of DNA that we're looking at are called STR's

→PCR-based testing was available earlier (PM+DQA1 and D1S80 used in Nummer case), but the specific application of STR, PCR-based testing did not come online until 2000 at the Washoe lab.

Q: Now, seven years have gone by from '94 to 2001. Does it indicate what's been done with that sample since Maria Fassett placed it in a refrigerator in '94?

A: No. There is just a chain of custody here.

Q: Right. Where were you on that list? Where has it gone to from '94 to 2001?

A: To evidence and to me

Q: So it doesn't go back to Sparks Police Department or to the agency or anything like that?

A: No. We kept the sample



Q: I guess what I'm getting at is that there had to have been some sort of contamination to implicate me in this case. In your mind at any point during your analysis with the controls that are in place now, you can't say definitively 100 percent that there wasn't contamination. You cannot say that.

A: I can say that the vaginal swab was not contaminated by a reference sample from Frank Peck, because we didn't have one in the lab. I can say it based on a lot of other things but it's not possible. We didn't have the sample.

Testimony of Diane Hackworth

Q: Handing you Exhibit Number 9a, what type of envelope would that be used for?

A: It's marked "stains on skin"

Q: Are you familiar with that type of label?

A: Yes, I am. I cannot recall exactly what type of medium, but that's where we would rub some -either a strip or something on to collect evidence if the victim noted that they were kissed or licked or somehow had evidence that may be on other parts of their body.

Q: Could it be a gauze swabbing of something like a cheek?

A: It could be.

.....

A: According to my documentation, the victim was kissed on her face and on her vagina, so I would have used collection material for her face.

Q: But you wouldn't make it with the vagina?

A: No

Q: All right. So this means stains on skin, not genitalia?

A: Correct

Chain of Custody

Ref std of Candace Inman and 2 vaginal swabs were repackaged from the original sexual assault kit. As Romero testified to, they were in the possession for the entire time prior to her analysis in 2001. The chain records show the following:

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Frank Peck, CR06P2580



Lab #: L2145-94

Agency: Sparks PD

Control #: **P18948**

Case #: 94-9292

Description: Ref Std: Candace INMAN; R04014; vaginal swabs x 2

Source: Control Chain of Custody Sheet

Date	Released By	Received By
1-19-95	Laboratory	IM
11-26-01	IM	Romero
12-6-01	Romero	DG
4-23-09 (Court)	IM	Romero

Nummer case: stained area of panties found to have semen present has the following chain of custody record:

Lab #: L2807-96

Agency: Reno PD

Control #: **P19790**

Case #: 257920-96

Description: C-016965; T1 panties

Source: Control Chain of Custody Sheet

Date	Released By	Received By
12-2-96	LAB	DG
4-24-97	IM	Riolo
4-28-97	Riolo	DG
12-17-97	IM	Fassett
12-17-97	Fassett	IM
9-7-11	MAM	Returned to agency

It appears that the stained area from the panties was in possession of the lab until 2011.

Nummer case: stained area of jeans that screened positive for semen, but were negative for DNA has the following chain of custody record:

Lab #: L2807-96

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Frank Peck, CR06P2580



Agency: Reno PD
Control #: **P19798**
Case #: 257920-96
Description: Item #6; TI jeans
Source: Control Chain of Custody Sheet

Date	Released By	Received By
12-6-96	LAB	IM
4-24-97	IM	Riolo
4-28-97	Riolo	DG
12-17-97	IM	Fassett
12-17-97	Fassett	IM
9-7-11	MAM	Return to Agency

It appears that the stained area from the jeans was in possession of the lab until 2011.



Here is the complete summary of the chain of custody that I prepared after reviewing all documents provided to me:

Summary of Chain of Custody Documentation Provided

1994 Case

Lab #: L2145-94

Agency: Sparks PD

Control #: **W020120**

Case #: 94-9292

Description: Sexual Assault kit with blood

Source: Control Chain of Custody Sheet

Date	Released By	Received By
8-24-94	Sparks PD	IM
8-30-94	IM	Fassett
8-30-94	Fassett	IM
8-30-94	IM	Return to Agency

Maria Fassett's exam notes:

"items rec'd from WCSO Evid in 2 sealed manila env's"

"items ret'd to WCSO Evid on 30 Aug 94"

Property Section printout shows release from Matthews to ~Bartlett 8-30-94

Property Section printout shows release from IM (Matthews?) to M. Fasset 8-30-94

Lab #: L2145-94

Agency: Sparks PD

Control #: **P18948**

Case #: 94-9292

Description: Ref Std: Candace INMAN; R04014; vaginal swabs x 2

Source: Control Chain of Custody Sheet

Date	Released By	Received By
1-19-95	Laboratory	IM
11-26-01	IM	Romero
12-6-01	Romero	DG
4-23-09 (Court)	IM	Romero

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According to Romero's Exam notes:

"Item number P18948 received on 11-26-01 from WCSO Evidence"
Tape sealed envelope

Chain info in notes: Romero to Gallagher 12-6-01 (form states "temporary release on case # 94-9292"
Lab #: L2145-94

Agency: Sparks PD
Control #: **W112837**
Case #: 94-9292
Description: Sexual Assault Kit-Candace Inman
Source: Control Chain of Custody Sheet

Date	Released By	Received By
12-17-04	Evidence Clerk	Darla Gallagher
12-22-04	Darla Gallagher	Renee L. Romero
1-4-05	Renee L. Romero	Irene Matthews
1-4-05		imathew
10-20-06	IM	Return to Agency

WCSO Lab Number Submission sheet lists date of submission as "12-17-04", requested by G.FYE.

Romero notes say received from WCSO evidence 12-22-04

Lab #: L2145-94

Agency: Sparks PD
Control #: **W112602**
Case #: 94-9292
Description: Buccal Swabs from Frank Peck
Source: Control Chain of Custody Sheet

Date	Released By	Received By
12-23-04	Evidence Clerk	Darla Gallagher
1-4-05	Darla Gallagher	Renee L. Romero
1-12-05	Renee L. Romero	Irene Matthews
10-24-06	IM	Return to Agency

Romero notes say received from WCSO evidence 1-4-05

Lab #: L2145-94

Agency: Sparks PD

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Control #: **W204210**

Case #: 94-9292

Description: Buccal Swabs from Frank Peck

Source: Control Chain of Custody Sheet

Date	Released By	Received By
12-15-05	Evidence Clerk	Irene Matthews
1-24-06	Irene Matthews	Renee L. Romero
1-24-06	Renee L. Romero	Darla Gallagher
10-24-06	IM	Return to Agency

Lab Number Submission Sheet shows Date of Submission 12-15-05, requested by Detective Fiore.

Hand written notes "new collection" and "This sample was sent in again due to the previous sample having "legally obtained" issues.

Romero lab notes: received 1/24/06 from WCSO evidence

Lab #: L2145-94

Agency: Sparks PD

Control #: **P36889**

Case #: 94-9292

Description: DNA Extracts Vag Swab

Source: Control Chain of Custody Sheet

Date	Released By	Received By
5-21-02	Romero	DG
4-23-09 (court)	IM	Romero

Lab #: L2145-94

Agency: Sparks PD

Control #: **W102174**

Case #: 94-9292

Description: CODIS sample

Source: Form in notes

Date requested 4-4-03

Evidence received by Riolo 4-15-03

Evidence examined by Riolo 4-18-03

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1996 Case

Case #: 257920-96

Lab #: 2807-96

C-016965

Victim Sexual Assault Kit

Date obtained: 11-19-96

Chained between Fassett and Gallagher 12-2-96

Source: Forensic Science Division Internal Use Only Evidence Form

Lab #: L2807-96

Agency: Reno PD

Control #: **C-016965**

Case #: 257920-96

Description: Victim Sexual Assault Kit

Source: Control Chain of Custody Sheet

Date	Released By	Received By
11-19-96	Evidence Clerk	DG
12-2-96	DG	M Fassett
12-2-96	M Fassett	DG
12-2-96	DG	Return to Agency

M. Fassett notes say received from WCSO on 12-2-96

Temporary release form shows Gallager to Fassett back to Gallager on 12-2-96

Temporary release form shows Gallagher to ? 12-3-96 (Released by WCSO)

Case #: 257920-96

Lab #: 2807-96

C-016966

Victim Blood

Date obtained: 11-19-96

Chained between Fassett and Gallagher 12-2-96

Source: Forensic Science Division Internal Use Only Evidence Form

Lab #: L2807-96

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Agency: Reno PD
 Control #: **C-016966**
 Case #: 257920-96
 Description: Victim Blood
 Source: Control Chain of Custody Sheet

Date	Released By	Received By
11-19-96	Evidence Clerk	IM
12-2-96	DG	M Fassett
12-2-96	M Fassett	DG
12-2-96	DG	Return to Agency

M. Fassett notes say received from WCSO on 12-2-96
 Temporary release form shows Gallager to Fassett back to Gallager on 12-2-96
 Temporary release form shows Gallagher to ? 12-3-96 (Released by WCSO)

Case #: 257920-96
 Lab #: 2807-96
C-016964
 White bra, white sheet, b/w striped sweater, blu denim pants w/ brown belt, white shirt
 Date obtained: 11-19-96
 Rec'd by Fassett 12-4-96
 Rec'd by Matthews 12-5-96
 Source: Forensic Science Division Internal Use Only Evidence Form

Lab #: L2807-96

Agency: Reno PD
 Control #: **C-016964**
 Case #: 257920-96
 Description: W039622: white bra, white sheet, b/w striped sweater, blue denim pants
 Source: Control Chain of Custody Sheet

Date	Released By	Received By
11-19-96	Evidence Clerk	IM
12-4-96	IM	Fassett
12-5-96	Fassett	IM
12-5-96	IM	Return to Agency

Printout shows Fassett received 12-4-96

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MF notes show recd from WCSO 12-4-96
Temporary release form shows Matthews to Fassett on 12-4-96 and back to Matthews 12-5-96
Temporary release form shows Matthews to ? 12-6-96 (Released by WCSO)

Case #: 257920-96
Lab #: 2807-96
W43412
2 vials of blood collected from Frank Peck
Date obtained: 04-02-97
Chained between Riolo and Matthews 4-24-97
Source: Forensic Science Division Internal Use Only Evidence Form

Riolo notes show receipt of samples 4-24-97
Temporary release form shows Gallagher to Riolo to Matthews 4-24-97
Form shows Matthews to Mitchell 4-25-97 (Released by WCSO)

Case #: 257920-96
Lab #: 2807-96
W43414
Blood sample from Leslie Nummer; Blood sample from Tim Billings
Date obtained: 04-22-97
Chained between Riolo and Matthews 4-24-97
Source: Forensic Science Division Internal Use Only Evidence Form

Riolo notes show receipt of samples 4-24-97
Temporary release form shows Gallagher to Riolo to Matthews 4-24-97
Form shows Matthews to Mitchell 4-25-97 (Released by WCSO)

Lab #: L2807-96

Agency: Reno PD
Control #: **Q08521**
Case #: 257920-96
Description: camel T-shirt, bl sweat pants, pair whit shorts (all suspect)
Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"

Confidential Consultant Observations, Mehul B. Anjaria
Frank Peck, CR06P2580



Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD

Control #: **Q08518**

Case #: 257920-96

Description: green towel, yellow towel, razor

Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"

Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD

Control #: **Q08513**

Case #: 257920-96

Description: pr grey seats, pr underwear, 2 pr whit socks, t-shirt, numerous hair/fibers

Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"

Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD

Control #: **Q08512**

Case #: 257920-96

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Frank Peck, CR06P2580



Description: Miller Genuine Draft black jacket, nike black pair tennis shoes
Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"
Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD
Control #: **Q08514**
Case #: 257920-96
Description: orange towel from top of living room hamper
Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"
Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD
Control #: **Q08519**
Case #: 257920-96
Description: Petri dish w/hair/fiber from bathroom sink drain
Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"
Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD

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Frank Peck, CR06P2580



Control #: **Q08520**

Case #: 257920-96

Description: piece lint, 2 yw leaves, wh tissue with red stain, wh tissue, empty razor pkg, 2r

Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"

Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD

Control #: **Q08522**

Case #: 257920-96

Description: 2 vials bloods

Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"

Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD

Control #: **Q08523**

Case #: 257920-96

Description: sexual assault kit from suspect

Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"

Mitchell received 3-13-97

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Frank Peck, CR06P2580



Lab #: L2807-96

Agency: Reno PD

Control #: **P19920**

Case #: 257920-96

Description: Reference standards from Leslie Nummer, Tim Billings, Frank Peck

Source: Control Chain of Custody Sheet

Date	Released By	Received By
4-28-1997	LAB	DG
9-27-11	MAM	Returned to Agency

Lab #: L2807-96

Agency: Reno PD

Control #: **P19790**

Case #: 257920-96

Description: C-016965; T1 panties

Source: Control Chain of Custody Sheet

Date	Released By	Received By
12-2-96	LAB	DG
4-24-97	IM	Riolo
4-28-97	Riolo	DG
12-17-97	IM	Fassett
12-17-97	Fassett	IM
9-7-11	MAM	Returned to agency

Temp release form shows Matthews to Riolo 4-24-97 and Riolo to Gallatgher 4-28-97

Lab #: L2807-96

Agency: Reno PD

Control #: **P19798**

Case #: 257920-96

Description: Item #6; TI jeans

Source: Control Chain of Custody Sheet

Confidential Consultant Observations, Mehul B. Anjaria
Frank Peck, CR06P2580



Date	Released By	Received By
12-6-96	LAB	IM
4-24-97	IM	Riolo
4-28-97	Riolo	DG
12-17-97	IM	Fassett
12-17-97	Fassett	IM
9-7-11	MAM	Return to Agency

Temp release form shows Matthews to Riolo 4-24-97 and Riolo to Gallatgher 4-28-97

Considerations on co-mingling of evidence

If the source of Frank Peck's DNA on the vaginal swabs in the Inman case is thought to be contamination from the Nummer case, then it has to be from semen since sperm cells and DNA testing results consistent with semen were obtained. Blood reference samples collected from Peck therefore could not have been used to create the DNA profile on the vaginal swabs from Inman.

The only semen positive sample determined in the Nummer case was the panties (T1). There was a significant sperm count associated with the panties. The test results from the panties were not actually fully reported in the report from Riolo 5-6-97. The results of the non-sperm fraction of the panties was not reported. The DNA in the non-sperm fraction matched Leslie Nummer, as might be expected. Presumably, this was not reported since the question of the analysis was the sperm donor.

So, if for example material from the panties was placed onto the vaginal swabs in the Inman case, the DNA profile of Nummer would be expected to be transferred along with the sperm fraction profile of Peck. In looking at the results from the vaginal swab from Inman, there is no indication of any DNA foreign from Inman in the non-sperm fraction.

If the vaginal swab from Inman were 'spiked' with extracted DNA from the sperm fraction of the panties, traces of Nummer's DNA would likely be seen as well since there was some carry-over of her DNA profile into the sperm fraction of the panties.



Other Analysis

The report dated 7-6-06 by Richard Berger reveals that there are other items that are suitable for DNA testing in the Inman matter.

Semen was detected in the middle of the bed sheet. If this were tested, and the DNA did not come back to Peck, and the semen profile could not be explained by a consensual partner (husband, boyfriend, etc.) it seems like some questions would be raised.

There were also some hairs reportedly collected from the bathtub. Assuming they are not visually consistent with anyone who lives in the house, the finding of an unexplained male DNA profile from the hairs could aid Mr. Peck.

There are other items in the report such as cigarette butts and a soda can of unknown significance, but they sound like potential sources of DNA.

Since I currently do not maintain a laboratory, I am not able to personally test any items however I can recommend a private laboratory and liaison with them.

Although we asked for the chain of custody information for the items tested, there may be more documentation/logs, etc. maintained on-site that were not turned over. However, I would imagine that any nefarious activity would not leave behind a paper trail.

The evidence packages themselves could be reviewed in person to see if there are any irregularities.

FILED

Electronically

09-18-2012:02:32:04 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3224756

Exhibit 2

V10.291

Exhibit 2

Memorandum

Subject: Telephone conversation with Mr. Mehul Anjaria regarding his evaluation of the DNA evidence for Frank Peck

Date: August 24, 2012

Present: Mr. Anjaria, Mary Lou Wilson, and Assistant, John Whittaker, over the telephone

The following is a summary of the conversation:

Mr. Anjaria's report was reviewed page by page, reviewing all relevant points presented.

The last two pages of Mr. Anjaria's report were particularly focused upon and the expert was asked to formulate his opinion and conclusion.

Regarding the co-mingling of evidence:

The cells of an attacker mix with the cells of the victim are difficult to interpret with regard to the mixture. Therefore, there was a process whereby they separate the sperm cells from all the other cells.

The procedure was not a 100% separation and it was possible to see a female contribution after the mixture was separated.

Peck's assertion was that the Washoe County Crime Laboratory or the Washoe County Sheriff's Office used his DNA from the other sexual assault case (Nunmer) and contaminated the evidence in the present petition case (Inman).

Mr. Anjaria disputed that possibility because if the Washoe County Crime Laboratory had done that, then some DNA from the victim in the Nunmer case (1996) would have transferred to the evidence in the (Inman) case (1994) and the contamination would have been evident.

Also, according to Mr. Anjaria, you could not plant blood cells and get sperm cell results.

Regarding the testimony that the Washoe County Sheriff's Office did not have a reference standard for Peck when, in fact, they did:

According to Mr. Anjaria, the Washoe County Sheriff's Office's Office had a reference standard for Peck back in 1997, but it was from another case (Nunmer) and not for the petition case (Inman).

According to Mr. Anjaria, the testimony was misleading but was probably was an honest mistake.

Other observations from Mr. Anjaria:

Mr. Anjaria found “nothing fishy” in the chain of custody.

He just does not see “foul play.”

According to Mr. Anjaria, there were explanations for the results and all weaknesses in the DNA evidence and chain of custody could have been explained.

The documentation in the case, “Were not that great” but Mr. Anjaria explained that was probably due to the times.

In other words, the techniques and documentation that were used back then would be different than what would be employed today.

DNA samples that Peck would have given earlier in time would have been irrelevant as technology had changed and the DNA testers would have required new samples.

Motile sperm was not found in the hospital examination but was later found in the sample taken by the Washoe County Sheriff’s Office.

According to Mr. Anjaria, this was probably because the way samples were collected at the hospital was not the way they were collected at the Washoe County Crime Laboratory.

The examination of the chain of custody revealed nothing that would have risen to the level needed to prove that Peck was innocent.

According to Mr. Anjaria, “We could look for other things, but we’d just be fishing.”

Therefore, it was concluded that Peck’s ground regarding DNA was weak and should not be pursued.

A Notice of Evaluation was filed right before we had spoken to Anjaria and a copy was mailed to Peck.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 09-18-2012:14:32:04
Clerk Accepted: 09-18-2012:14:52:33
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Notice
- **Continuation
- **Continuation
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 09-21-2012:15:37:47
Clerk Accepted: 09-21-2012:15:55:13
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
Filed By: MARY LOU WILSON, ESQ.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

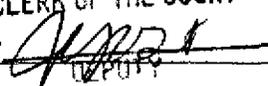
CR06P2580 DC-9900039026-089
POST: FRANK MILFORD PECK (06 2 Pages
District Court 09/24/2012 04 47 PM
Washoe County 2610
DOC JYoc

Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV 89070
Petitioner,

FILED

2012 SEP 24 PM 4:47

JOEY GRINA HASTINGS
CLERK OF THE COURT

BY 
DEPUTY

In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe

Frank M. Peck,
Petitioner,

CASE No. CR-06-P-2580

Dept No. 6

vs.

NOTICE

The State of Nevada,

OF

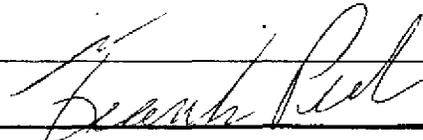
Respondent,

CONFLICT

Comes now, the Petitioner, Frank M. Peck pro se
hereinafter Mr. Peck with NOTICE OF CONFLICT.

NOTICE is hereby given that legal conflict
exists between Mr. Peck and counsel Mary Lou
Wilson by virtue of Civil Action filed against
counsel in case no CV12-01897 in dept 9 of this
Court, as such, this Court must remove counsel
as counsel of record in the above numbered case.

Dated this 18th day of September 2012.


Frank M. Peck
Petitioner, PRV10.296

Certificate of Service and Affirmation

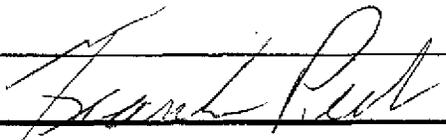
Pursuant to NRS 739.13030 the attached NOTICE does not contain social security numbers of any person and a true and correct copy has been mailed this date to:

District Attorney
75 Court Street
RENO, NV. 89501

Mary Lou Wilson Esq.
333 Marsh Ave
RENO, NV. 89509

Dated this 19th day of September 2012.

Signed under penalty of perjury NRS 208.165 and 28 USC 1746.


Frank M Peck 57106
HDSP Box 650
Indian Springs, NV 89070
Petitioner, pro se.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 10-04-2012:16:02:41
Clerk Accepted: 10-04-2012:16:03:31
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Sealed Order
Filed By: MaryBeth Stackhouse

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File Copy

code 4100
FRANK M. PECK 57106

HDSP Box 650

Indian Springs, NV. 89070

Petitioner, pro se.

2012 OCT -9 PM 1:18

JOHN J. ...
CLERK OF THE COURT

BY [Signature]

CR06P2580 DC-9900039496-016
POST FRANK MILFORD PECK 10 16 Pages
District Court 10/09/2012 01 18 PM
Washoe County 4105
nv

In the Second Judicial District Court of the State of Nevada

In and for the County of Washoe

FRANK M. PECK,

CASE No. CR-06-P-2580

Petitioner,

Dept No. 6

vs.

The State of Nevada,

Respondent.

SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS

Comes Now, the Petitioner, FRANK M. PECK pro se
hereinafter Mr. Peck with his Supplemental Petition
for Writ of Habeas Corpus.

This Petition is made and based upon all papers
and pleadings on file in this case as well as the
attached points and authorities and Affidavit
of Mr. Peck.

Dated September 18th 2012

[Signature]

FRANK M. PECK Petitioner, pro se.

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF THE SUPPLEMENTAL PETITION
FOR WRIT OF HABEAS CORPUS

JUDICIAL NOTICE

This supplemental petition is presented in accordance with Haines v. Kerner, 92 Sct 594 at 596, wherein / Pro se pleadings are to be held to a less stringent standard than those pleadings drafted by Attorneys.

The issues presented are raised under the Federal Constitution and particularly the federal guarantee of due process and 28 USC Ss 2254.

PROCEDURAL HISTORY

Mr. Peck was convicted of one count of sexual assault following a jury trial held on May 6-12 2009. In Washoe District Court, dept 6, Brent T Adams.

LEGAL ARGUMENT

INEFFECTIVE ASSISTANCE OF COUNSEL

1. DEFENSE COUNSEL'S DISCOVERY REQUEST WAS UNTIMELY AND DEFENSE COUNSEL FAILED TO REQUEST DISCOVERY OF UNDERLYING LABORATORY RECORDS CRITICAL TO DEFENSE OF DNA ONLY CASE IN VIOLATION OF THE 5th, 6th AND 14th AMENDMENTS TO THE US CONSTITUTION. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064-74, 80 L.Ed2d 674 (1984).

Counsel's failures to request proper discovery of Laboratory records and to employ a qualified DNA expert, who also failed to request proper discovery fell below an objective standard of reasonableness.

Prejudice is shown by the subsequent discovery of a serious mislabeling error as well as failures to run and document controls, skipping steps and failing to document thermo cycler times and temperatures and failing to document lot numbers and the most disturbing failure is that "the safety net for all these errors failed as well, when the 'PEER REVIEW' did not catch any of these errors." DNA expert Mehul B. Anjaria agrees that these errors are serious deviations from established procedures as set forth by the technical working group on DNA analysis methods (TWGDAM) and contrary to crimelab Director Rene Romero's testimony that "she made no errors." Had the jury known of these errors the result would have been different. But for counsel's unprofessional errors the results of the proceedings would have been different.

2. DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO MAKE ANY PRE TRIAL CHALLENGES TO THE DNA EVIDENCE IN VIOLATION OF THE 5th, 6th and 14th AMENDMENT TO THE U.S. CONSTITUTION. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064-74 80 LEd2d 674 (1984).

A REASONABLY COMPETENT LAWYER WOULD HAVE MADE A PRE-TRIAL CHALLENGE TO THE EVIDENCE.

A REASONABLY COMPETENT LAWYER WOULD HAVE RESEARCHED THE SUBJECT AND MOUNTED THE CHALLENGE THAT DNA EVIDENCE IS REPRESENTED TO JURIES AS MR. PECK'S WAS, AS AN AMPLIFICATION OF THE EVIDENCE ITSELF. "WHEN IN REALITY, THE ACTUAL EVIDENCE IS USED AS A TEMPLATE OR GUIDE TO CREATE A SYNTHETIC FACSIMILE MULTIPLIED ENOUGH TIMES TO ANALYZE AND IS NOT HUMAN DNA."

AN EFFECTIVE ATTORNEY WOULD HAVE OR SHOULD HAVE BEEN AWARE OF THESE FACTS AND CHALLENGED THE HIGHLY PREJUDICIAL EVIDENCE AS BEING PORTRAYED AS SOMETHING IT IS NOT - HUMAN DNA. SEE: Miller v. Pate, 386 U.S. 1 AT 5-7 (1967) (Bloody under-pants used to convict were actually red paint).

BUT FOR COUNSELS UNPROFESSIONAL ERRORS FOR FAILING TO CHALLENGE FALSE AND MISLEADING EVIDENCE THERE EXISTS A REASONABLE PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME OF THE PROCEEDINGS.

3. DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO FILE PETITIONERS PRE TRIAL PETITION FOR WRIT OF HABEAS CORPUS Strickland v. Wash. supra VIOLATIONS OF USCA 5, 6 AND 14.

Petitioner's Pre-Trial Petition for Writ of Habeas Corpus WAS MERITORIOUS AND SPECIFICALLY SET FORTH SPECIFIC DETAILS OF PREJUDICE TO MR. PECK'S CASE FROM THE INTENTIONAL PRE-INDICTMENT DELAY AND THAT THE STATE INTENTIONALLY DELAYED FILING THE COMPLAINT TO GAIN A TACTICAL ADVANTAGE. COUNSEL'S FAILURE AND OUBRIGHT REFUSAL AND LYING TO HIS CLIENT THAT THE PETITION HAD BEEN FILED, CAN ONLY BE SEEN AS COLLUSION AND CONSPIRACY AGAINST HIS CLIENT AND COUNSEL'S ACTIONS FALL OUTSIDE THE RANGE OF PROFESSIONALLY COMPETENT ASSISTANCE AND BUT FOR COUNSEL'S UNPROFESSIONAL DEFICIENT PERFORMANCE THE STATE WAS NOT REQUIRED TO ANSWER THE PETITION. WHO, COULD NOT HAVE EXPLAINED AWAY THE bad faith 'delay'. THEREFORE, THE CASE AGAINST PETITIONER WOULD HAVE BEEN DISMISSED.

EVIDENCE OF COUNSEL'S ERROR IS SPECIFICALLY NOTED IN THE NEVADA SUPREME COURT'S ORDER OF AFFIRMANCE WHEREIN THE COURT RECOGNIZES THE REQUIREMENT OF Wyman v. State THAT PETITIONER WOULD HAVE SATISFIED HAD COUNSEL FILED MR. PECK'S PETITION. SEE: ATTACHED AFFIRMANCE. PG 2. EX-A.

4. DEFENSE COUNSEL WAS ENEFFECTIVE FOR FAILING TO ADDRESS POLICE/ PROSECUTORIAL MISCONDUCT VIOLATING PETITIONERS 5th, 6th and 14th AMENDMENT RIGHTS UNDER THE US CONSTITUTION Strickland v. Washington, 466 US. 668, 104 S.CT. 2052, 2064-74, 80 LEd2d 674 (1984).

Mr. Peck's Due Process and rights to a fair trial were violated by Prosecutor Dave Clifton by not providing notice to counsel or Mr. Peck that Mr. Peck would be subjected to an in court pre-trial lineup on or about May 1-5th, 2009 in violation's defined in U.S. V. WADE, 388 US 218 Id Stovall v. Denno, 388 US 293 Id Gilbert v. California, 388 US. 263. Counsel knew or should have known of the requirement under the above US Supreme Court authority and this tainted voice identification was highly prejudicial and is reversible error SEE: Darden v. Wainwright, 477 US. 168 (1986)

5. APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE POLICE / PROSECUTORIAL MISCONDUCT ON DIRECT APPEAL IN VIOLATION OF PETITIONERS 5th, 6th and 14th AMENDMENT RIGHTS TO THE US. CONSTITUTION Strickland v Washington, 466 US 668 104 S.Ct. 2052, 2064-74 80 LEd 2d 674 (1984), Evitts v Lucy, 469 US 387 105 S.Ct. 830 (1985).

Petitioner Peck's Appellate counsel should have raised Dave Clifton's prosecutorial misconduct on Direct Appeal for failing to notify counsel or Mr. Peck that he would be subjected to pre-trial in court identification procedures. Counsel knew or should have known of the requirements of US v. WADE, 388 US 218; Stovall v. Denno, 388 US 293 Id Gilbert v. California 388 US 263

Prejudice to petitioner is loss of reversible error issue presented to the Nevada Supreme Court Darden v. Wainwright, 477 US 168 (1986) And irreparable harm in front of the Jury for suggestive identification.

6. PRE TRIAL COUNSEL, DIRECT APPEAL COUNSEL AND POST-CONVICTION COUNSEL ARE INEFFECTIVE FOR FAILING TO INVESTIGATE LAW ENFORCEMENTS INVESTIGATION OF PETITIONER CONDUCTED PRIOR TO PURPORTED PROBABLE CAUSE OR COMPUTER DNA PROFILE MATCH Strickland, Lucy Id Martinez supra. VIOLATIONS OF USCA 5.6 AND 14.

Petitioner Peck requested that counsels obtain Nevada Department of corrections photographs taken of Petitioner Peck's Back by the NDOC at the request of Law enforcement in an attempt to see if Mr. Peck had any scars on his back consistent with the victims description of her attacker having a 2" scar that "Petitioner Peck does NOT HAVE". The significance of this investigation conducted by the NDOC is that it was conducted prior to any purported finding of probable cause or so called DNA Match.

Prejudice to Petitioner is the failure of ALL of his counsels to obtain documentary evidence that would prove Mr. Peck was being set up for the instant offense by investigators. Evidence that would have benefited Mr. Peck's case.

7. DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO PURSUE ANY PLEA NEGOTIATIONS IN VIOLATION OF THE 5th 6th AND 14th AMENDMENTS TO THE US CONSTITUTION Strickland v Washington SUPRA. LAFIER V COOPER, 566 US — 2012 Id. MISSOURI V FRYE, 566 US. — 2012.

The state offered Mr. Peck's Counsel 5 years to 30 years.

8. THE DISTRICT COURT COMMITTED JUDICIAL ERROR BY CONSTRUCTIVELY DENYING PETITIONER THE TOOLS AND TIME TO CONSTRUCT A DEFENSE VIOLATING PETITIONERS DUE PROCESS 14th AMENDMENT RIGHTS TO THE US CONSTITUTION AKE V. OKLAHOMA, 470 US 68, 105 S. Ct. 1087 (1985).

The District Court Judge erred in failing to allow Petitioner the opportunity to even consult even the unqualified expert that defense counsel retained. And but 4 days to prepare for trial.

DNA EVIDENCE IS A CONTESTED ISSUE REQUIRING EXPERT ASSISTANCE ON WHICH THERE MAY BE DIFFERING OPINIONS ESTABLISHING A RIGHT TO EXPERT ASSISTANCE AKE V. OKLAHOMA, 470 U.S. 68, 105 S. Ct. 1087 (1985). Rey V State, 897 S.W. 2d 333 Tex Cr App 1995.

ONCE A DEFENDANT ESTABLISHES A RIGHT TO EXPERT ASSISTANCE, GENERALLY NO SHOWING OF HARM IS REQUIRED SEE. Rey V State, 897 S.W. 2d 333 (Tex Cr App 1995).

9. KNOWING USE OF FALSE EVIDENCE VIOLATED
PETITIONERS DUE PROCESS RIGHTS OF 5TH AND
14TH AMENDMENTS TO US CONSTITUTION
Giglio v. United States, 405 U.S. 150, 92 Sct 763 (1972).

False, misleading material evidence was admitted
into evidence at trial and this false evidence
affected the jury's decision United States v. Agurs,
427 U.S. 97, 96 S.Ct. 2392 (1976) Napue v. Illinois, 360
U.S. 264, 79 S.Ct. 1173 (1959). Prosecutor, Dave Clifton
asked DNA Analyst Jeffrey Riolo if the PCR
protocol was like growing the DNA evidence.
When asked by Prosecutor Dave Clifton if that was
a fair statement, Jeffrey Riolo replied sure. T.J. May 8, 2009 pg 22.

This assertion and statement is totally false
as "no direct evidence in the PCR protocol is
amplified". Synthetic copies are made until enough
synthetic materials STR'S exist to analyze.
"DNA expert Mebul B. Anyaria will testify to this fact."

Obviously the false evidence was considered as such
Brecht v. Adamson, 507 U.S. 619 113 Sct. 1710 1993 NO
Additional proof of prejudice is necessary Kyles v.
Whitley, 514 U.S. 419 115 Sct. 1555 (1995).

10. PETITIONERS RIGHTS TO A FAIR AND IMPARTIAL JURY WERE VIOLATED BY THE NEWS ARTICLE DISPLAYING PRIOR BAD ACT EVIDENCE TO JURORS VIOLATING PETITIONERS 5th and 14th Amendment RIGHTS TO THE US CONSTITUTION
Sheppard v. Maxwell, 384 US 333 351 (1966).

"A highly prejudicial news article was admitted by seen by two Jurors and no curative instruction could have cured the harm." Krulewitch v. UNITED STATES, 336 US. 440, 444-45 1949
Strickland v. Washington, 466 US 668, 696 (1984)

POST-CONVICTION RELIEF COUNSEL WAS INEFFECTIVE BY NOT RAISING ANY OF THE FOREGOING GROUNDS OR CLAIMS VIOLATING PETITIONERS RIGHTS TO DUE PROCESS UNDER THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION AS DEFINED BY THE U.S. SUPREME COURT IN MARTINEZ V. RYAN, U.S. S.Ct. 2012 U.S. LEXIS 2317.

On or about July 21, 2010 Attorney Mary Lou Wilson was appointed in Petitioner's post-conviction case in Washoe County Court. During this time Ms. Wilson refused to confirm or discuss or fully investigate these claims supra. And when demanded to withdraw refused to do so.

Eventually, on or about September 13, 2012 Petitioner Peck sued Ms. Wilson. However, Ms. Wilson still refused to withdraw or inform the Court of this and filed adverse filings to Petitioner's post-conviction relief on September 18th, 2012.

Ms. Wilson's conduct prejudiced Mr. Peck by subjecting him to potential procedural Default and deprived him of Due Process on valid issues for relief.

Standard on review

In this case it cannot be said that the Constitutional violations did not contribute to the verdict and therefore were not harmless beyond a reasonable doubt. Chapman v. Calif., 386 U.S. 18, 87 S.Ct. 824 (1967).

Counsel's errors not only caused the waiver of counsel, but also had substantial injurious effect and influence on the verdict by virtually no defense being presented to the Jury due to counsel's total lack of attention to the case or his client, or by formulating a defense whatsoever.

Mr. Peck's case was prejudiced by counsel's failure to obtain lab records showing a multitude of mistakes and errors committed by crimelab Director Rene Romero, that testified she made no mistakes or errors.

Mr. Anjarias agreeing with conclusions is irrelevant, if the Jury didn't believe the evidence was legitimate, as was exhibited by the Jury's Questions -

#1 We want to see chain of custody documents.

#2 We want to see DNA test graphs.

#3 We want to see article about strangers having the same DNA profile.

CONCLUSION

Mr. Peck respectfully requests that this Honorable Court Grant the instant Writ of Habeas Corpus and vacate the conviction and sentence.

Dated this 3rd Day of October 2012.

Frank Peck

Frank Peck Petitioner, prosc.

State of Nevada
County of Washoe ⁵ Affidavit of Frank M. Peck

I Frank M. Peck do hereby swear under penalty of perjury that:

1. I am the Petitioner in WDC case no CR-06-P-2580.
2. All assertions in the attached Supplemental Petition for writ of Habeas Corpus are true based on personal knowledge and information believed to be true and I am competent to testify to all matters contained therein.

Dated October 3, 2012. Signed under penalty of perjury NRS 208.165 and 28 USC 1746.

Frank Peck
Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV 89070

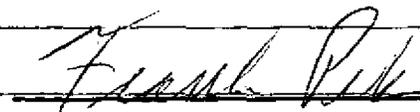
Certificate of service and Affirmation

Pursuant to NRS 239 B.030 the attached supplemental petition for writ of habeas corpus does not contain social security numbers of any person and a true and correct copy was mailed this date to:

District Attorney
75 Court Street
Reno, NV, 89501

Dated this 3rd Day of October 2012.

Signed under penalty of perjury NRS 208.165 and
28 USC 1746.



FRANK M. PECK 57106

HDSP BOX 650

Indian Springs, NV 89070

Petitioner, pro se.



DC-9900099496-017
CROGP2580
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District Court 10/09/2012 01:18 PM
Washoe County 4105
FX1 JY0c-

EXHIBIT A

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54168

FILED

MAY 07 2010

CLERK OF SUPREME COURT
BY: A. Lindeman
CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of sexual assault. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. Appellant Frank Milford Peck challenges his conviction on ten grounds, none of which warrant relief.

First, Peck argues that insufficient evidence supports his conviction. The evidence shows that although the victim could not identify Peck as her assailant, she provided a general physical description matching Peck's appearance. And Peck's DNA was found on matter collected from the victim during a medical examination performed after the sexual assault. Despite Peck's challenge to the DNA evidence as confusing and suspect, the inability of the victim to identify him, and the lack of other physical evidence, considering all the evidence in the light most favorable to the prosecution, we conclude that a rational jury could find him guilty of the charged offense beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

Second, Peck contends that unreasonable governmental delay in arresting and prosecuting him violated his Fifth Amendment and

speedy trial rights. As to the pre-indictment delay, we conclude that he failed to show with adequate specificity any prejudice from the delay or that the State intentionally delayed filing a complaint to gain a tactical advantage. See Wyman v. State, 125 Nev. ___, ___, 217 P.3d 572, 577-78 (2009). As to the speedy trial claim, we conclude that it similarly lacks merit. Peck was indicted on November 8, 2006, and shortly thereafter waived his right to a speedy trial. Trial commenced on May 6, 2009. During that period, several defense-related delays occurred, including a five-month continuance, withdrawal of counsel, Peck's removal of another counsel and motion to represent himself, and a motion to recuse the trial judge. Based on the record, we conclude that Peck failed to demonstrate a violation of his speedy trial rights. See Barker v. Wingo, 407 U.S. 514, 515 (1972); NRS 178.556; Furbay v. State, 116 Nev. 481, 485, 998 P.2d 553, 555-56 (2000).

Third, Peck asserts that the application of NRS 171.083, extending the statute of limitations for sexual assault, violated the Ex Post Facto Clause. "Before the statute of limitations for a criminal offense expires, a legislature may amend the statute and extend the limitations period without violating the ex post facto clause." Murphy v. State, 110 Nev. 194, 199, 871 P.2d 916, 919 (1994), overruled on other grounds by State v. District Court, 114 Nev. 739, 964 P.2d 48 (1998); State v. Merolla, 100 Nev. 461, 464, 686 P.2d 244, 246 (1984). Here, the sexual assault occurred on August 9, 1994. NRS 171.083 became effective on July 1, 1997, well before the statute of limitations expired for the charged

offense.¹ See 1997 Nev. Stat., ch. 248, § 1, at 890; *id.* § 5, at 891. Accordingly, Peck's prosecution was not constitutionally infirm.

Fourth, Peck argues that the district court should have considered his proper person petition for a writ of habeas corpus because of his strained relationship with counsel. We discern no error.

Fifth, Peck complains that his waiver of his right to counsel under Faretta v. California, 422 U.S. 806 (1975), was not unequivocal as he was compelled to forgo that right due to his strained relationship with counsel. The record shows, however, that the district court conducted a commendably thorough canvass, including exploring the nature of Peck's displeasure with counsel, and appointed counsel to advise Peck during trial. See O'Neill v. State, 123 Nev. 9, 17, 153 P.3d 38, 43-44 (2007); Graves v. State, 112 Nev. 118, 124, 912 P.3d 234, 237-38 (1996). Moreover, despite Peck's displeasure with counsel, he allowed stand-by counsel to examine most of the witnesses and present opening statement and closing argument. Therefore, we conclude that this claim lacks merit.

Sixth, Peck argues that his motion to recuse the trial judge based on bias was erroneously denied because the trial judge had presided over the murder trial of Peck's brother, who testified at Peck's trial. Having reviewed the record, we conclude that Peck failed to show that the trial judge should have been removed or any indication of bias. See NRS 1.230(2)(c).

¹An indictment for sexual assault "must be found, or an information or complaint filed within 4 years after the commission of the offense." NRS 171.085.

Seventh, Peck contends that the State failed to collect and preserve exculpatory evidence—the victim’s pubic hairs and fingerprints and a boot print found at the crime scene. Other than asserting a general claim of prejudice, Peck fails to show that the challenged evidence was material or that the State acted in such a manner as to warrant reversal of his conviction. See Randolph v. State, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001); Daniels v. State, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998).

Eighth, Peck asserts that the victim’s pretrial voice identification of him was unduly suggestive because the State requested her attendance at a pretrial hearing where she heard Peck speak and then testified at trial that she recognized his voice, despite the 15 years that had elapsed since the offense. Even assuming error, see generally Wright v. State, 106 Nev. 647, 650, 799 P.2d 548, 550 (1990) (providing that exclusion of pretrial identification evidence (police lineup) is warranted if procedures are unnecessarily suggestive such that identification is unreliable), we discern no prejudice considering the evidence establishing Peck’s guilt.

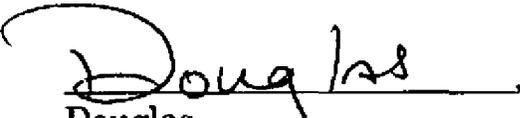
Ninth, Peck contends that the prosecutor committed misconduct by: (1) advising the jury during voir dire that the State did not have to prove Peck’s guilt beyond any doubt or to an absolute certainty, (2) arguing that Peck’s alibi defense “failed miserably,” and (3) expressing a personal opinion about the evidence. Because Peck failed to object to any of the challenged comments, we review for plain error affecting his substantial rights. Valdez v. State, 124 Nev. ___, ___, 196 P.3d 465, 477 (2008). Because none of the challenged comments were improper, Peck failed to show plain error.

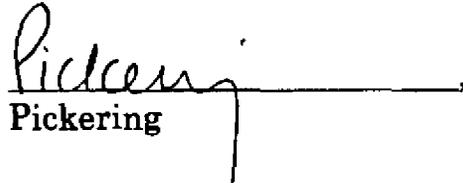
Tenth, we reject Peck's argument that cumulative error warrants reversal of his conviction. See Rose v. State, 123 Nev. 194, 211, 163 P.3d 408, 419 (2007).

Having considered Peck's contentions and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

 J.
Hardesty

 J.
Douglas

 J.
Pickering

cc: Hon. Brent T. Adams, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

1 CODE 3880
RICHARD A. GAMMICK
2 #001510
P. O. Box 30083
3 Reno, Nevada 89520-3083
(775) 328-3200
4 Attorney for Respondent

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 FRANK MILFORD PECK,

10 Petitioner,

11 v.

Case No. CR06P2580

12 THE STATE OF NEVADA,

Dept. No. 6

13 Respondent.

14 _____/

15 RESPONSE TO NOTICE OF CONFLICT

16 The State has received various documents concerning the relationship between petitioner
17 Peck and attorney Mary Lou Wilson. The most recent is a Notice that Peck has sued his lawyer.
18 The State guesses that Peck wants a new lawyer. Why he has not come out and filed such a motion
19 is not altogether clear. The State recommends that this court treat the Notice, filed on September
20 25, 2012, as a motion to discharge counsel and appoint a new lawyer. As to how the court should
21 rule, the State has no comments. The State notes, however, that the two issues are separate. Peck

22 ///

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24 ///

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26 ///

1 has no absolute right to counsel and if the court allows the discharge of counsel, the decision to
2 appoint yet another lawyer should be considered separately.

3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the preceding document does not contain the
5 social security number of any person.

6 DATED: October 9, 2012

7 RICHARD A. GAMMICK
8 District Attorney

9 By /s/ TERRENCE P. McCARTHY
10 TERRENCE P. McCARTHY
11 Chief Appellate Deputy

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that this document was filed electronically with the Second Judicial District
3 Court on October 9, 2012. Electronic Service of the foregoing document shall be made in
4 accordance with the Master Service List as follows:

5 Mary Lou Wilson, Esq.
6 for Petitioner Frank M. Peck

7 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County
8 District Attorney's Office and that, on October 9, 2012, I deposited for mailing through the U.S.
9 Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing
10 document, addressed to:

11 Frank M. Peck, #57106
12 High Desert State Prison
13 P.O. Box 650
14 Indian Springs, NV 89070

15 /s/ EARLEEN RUSSELL
16 EARLEEN RUSSELL
17
18
19
20
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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 10-09-2012:15:07:08
Clerk Accepted: 10-09-2012:15:09:51
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Response
Filed By: JOSEPH PLATER, III, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

Points and Authorities

Mr. Peck's counsel's assertions in her notice and abstract un-sworn memorandum are not true, incomplete and perfunctory at best.

The "Report" counsel refers to is NOT a Report as stated on page 1.

Mr. Peck was not included in the August 24, 2012 Telephone conversation.

Mr. Peck's conversation with DNA expert resulted in Mr. Anjaria acknowledging that a pure semen sample could have been obtained from the Panties in the 1996 Nummer case without carryover from Nummer # that Rene Romero testified falsely that the sample wasn't in the lab. see summary pg 18.

We are not talking about a blood reference sample. We are talking about a pure semen sample from the Panties in the Nummer case. Contrary to Mary Lou Wilson's assertions.

co-mingling

Mr. Anjaria also acknowledged that carry-over from Nummer was because a cutting of the Panties was processed and that a swab touched to the semen sample that was directly deposited onto the Panties would likely have no carry over from Nummer.

Mr. Anjaria also acknowledged that contrary to Rene Romero's testimony, she has made very serious deviations from established procedures set forth by The Technical Working Group on DNA Analysis Methods, (TWGDAM) by skipping steps, failing to run and document blank controls, failing to quantify the DNA evidence and failing to document thermo cycler times and temperatures and to document lot numbers. Mr. Anjaria also discovered a mislabeled amplification. What is of the greatest concern is that the "Peer Review" that is in place to detect these errors did NOT detect these and who knows what other errors went ~~und~~ detected and that these failures are indicative of serious problems in the lab.

Mr. Anjaria made no such conclusion that tampering did not occur, in fact in his May 12, 2012 letter to Mr. Peck he stated "The sad truth is that unfortunately it is possible to taint evidence without being detected."

Also stated in Mr. Anjaria's May 12, 2012 letter in response to Mr. Peck's question of: What are the DNA copies specifically made of? Mr. Anjaria replied: "In the PCR process, the new copies of DNA are made entirely from the building blocks (A, T, C, G) in the kit used to perform the PCR." "The existing DNA in the sample is merely a template or guide to create the DNA copies."

With that, it is clear, that the product of PCR and subsequent analysis of STR's are of totally synthetic materials completely devoid of any human DNA whatsoever and contrary to the holdings in U.S. v. Beasley, 102 F3d 1440 (8th cir 1996) Id U.S. v. Gaines, 979 F. Supp. 1429 (S.D. Fla 1997) and is an issue not addressed by counsel.

What is of greater importance is the fact that Mr. Peck's Jury was misled into believing that the DNA evidence was "Amplified."

Specifically, Prosecutor Dave Clifton asked DNA Analyst Jeffery Riolo if, "like growing the DNA was a fair statement" and Mr. Riolo answered sure. "This testimony was false and very misleading". See: T.I. May 8th, 2009 pg 22.

With specific regard to counsels un-sworn Exhibit 2 memorandum to which Mr. Peck was NOT invited to participate, reads not like that of a "loyal Advocate", but that of a "hostile Attorney" who is used to NOT HAVING A telephone that NON PAYING pesky clients can call, so that she can collect tens of thousands of dollars from tax payers and claim she is too poor to pay for collect calls for clients.

Counsel is clearly out of touch with the facts of Mr Peck's case and does not have the specialized understanding necessary to develop a DNA expert. Mr. Peck does.

Conclusion

Counsel Mary Lou Wilson has provided NO EVIDENCE, NO SWORN TESTIMONY, NOTHING TO SUPPORT HER ASSERTIONS. Counsel plainly put is mad at her client because Mr Peck insists on his counsel doing the job she is being paid to do. This does not set well with Mary Lou Wilson.

Therefore, Mr. Peck respectfully requests that this Honorable Court remove Mary Lou Wilson AS counsel of record AND issue AN ORDER GRANTING Mr. Peck A telephonic hearing with Mr. Anjaria to finalize A formal Report and funding for same AS well AS GRANTING Mr. Peck pro se status to supplement his own petition for Writ of habeas corpus.

Dated this 24th day of September 2012.

Respectfully Submitted

Frank Peck

FRANK M. PECK 57106

HDSP Box 650

Indian Springs, NV 89070

Petitioner V10.330

State of Nevada
County of Clark ^{ss.} Affidavit of Frank M. Peck

I Frank M. Peck do hereby swear under penalty of perjury that:

1. I am the Petitioner in WDC case CR-06-P-2580.

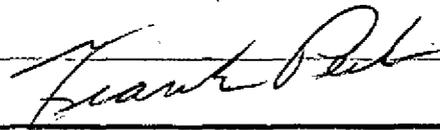
2. All assertions in the attached OPPOSITION and Motion are true based on personal knowledge, official correspondence from Mr. Mehul B. Anjaria of MBA DNA consulting and I am competent to testify to all matters contained therein.

3. I bring this opposition and Motion in good faith and for no improper reason.

Further affidavit Sayeth Naught

Dated this 24th day of September 2012.

Signed under penalty of perjury NRS 208.165 and 28 USC 1746.



FRANK M. PECK 57106

HDSP BOX 650

Indian Springs, NV 89070

Petitioner

Certificate of service and Affirmation

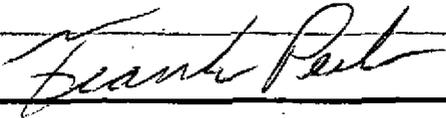
Pursuant to NRS 239B.030 the attached
opposition and motion does NOT contain social
security numbers of any person and a
true and correct copy was mailed this date
to:

District Attorney
75 Court St
Reno, NV, 89501

Mary Lou Wilson Esq
333 Marsh Ave
Reno, NV, 89509

Dated this 25th of September 2012.

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.


FRANK M. PECK 5706
HDSP Box 650
Indian Springs, NV 89070
Petitioner.

1 CODE NO.
2 MARY LOU WILSON
3 Attorney At Law
4 333 Marsh Ave.
5 Reno, Nevada 89509
6 775-337-0200
7 Attorney for Petitioner

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

10 FRANK M. PECK,

11 Petitioner,

12 vs.

13 Case No. CR06P2580

14 Dept. 6

15 WARDEN, N.D.O.C. and
16 THE STATE OF NEVADA,

17 Respondents.

18 _____/
19 MOTION FOR WITHDRAWAL OF COUNSEL

20 COMES NOW MARY LOU WILSON, and hereby requests this Honorable Court withdraw
21 me as counsel because counsel has had to defend a Bar Complaint and a Civil Complaint filed
22 against her, creating a conflict of interest.

23 DATED this 15th day of October, 2012.

24 By: s/s: MARY LOU WILSON
25 MARY LOU WILSON

AFFIRMATION

I, Mary Lou Wilson, hereby affirm that there is no social security number of any person in the
aforementioned document.

Dated this 15th day of October, 2012.

By: s/s: Mary Lou Wilson
Mary Lou Wilson

1 CERTIFICATE OF SERVICE

2 I, Mary Lou Wilson, hereby affirm that on the 15th day of October, 2012, I e-filed the
3 aforementioned document and sent it to the Master List of e-filers and sent a copy of the same to
4 Petitioner Peck through the U.S. Mail to the following:

5 The Honorable Judge Brent T. Adams (e-file)

6 Appellate Deputy District Attorney Terrence P. McCarthy (e-file)

7 Frank M. Peck (U.S. Mail)

8 Inmate Number 57106

9 H.D.S.P.

10 Post Office Box 650

11 Indian Springs, Nevada 89070

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 10-15-2012:10:44:30
Clerk Accepted: 10-15-2012:11:26:13
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Mtn to Relieve Counsel
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

1 CODE 2610
RICHARD A. GAMMICK
2 #001510
P. O. Box 30083
3 Reno, Nevada 89520-3083
(775) 328-3200
4 Attorney for Respondent

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 FRANK MILFORD PECK,

10 Petitioner,

11 v.

Case No. CR06P2580

12 THE STATE OF NEVADA,

Dept. No. 6

13 Respondent.
14 _____/

15 NOTICE OF NON-OPPOSITION TO REQUEST TO DISCHARGE COUNSEL

16 Petitioner Peck has continued his habit of filing pleadings with captions that are unrelated
17 to the text. Recently, he filed an “opposition to a notice of no supplemental petition. . .” That
18 pleading was previously unknown to the law. In the text, however, he finally reveals that he wants
19 attorney Mary Lou Wilson off his case, and that he wants to proceed without counsel. The State
20 has no objection to that request.

21 He also asks that this court allow him to file his own supplemental petition. NRS 34.750
22 allows for one petition by the prisoner and one supplement by an attorney. Peck has filed his
23 petition. If he wants to raise additional claims, he can make his motion, but must show why the
24 claim could not have been included in his original petition. *See generally, Barnhart v. State*, 122
25 Nev. 301, 130 P.3d 650 (2006).

26 Peck also asks for funding for a “telephonic hearing” with a potential witness. A “hearing”

1 would involve all the parties and the court, and there is no need for that. However, he is also
2 asking for "funding" for a phone call. There is no statutory authority for advancing funds to proper
3 person prisoners. The need for investigation weighs in favor of appointing counsel, but Peck has
4 made it clear that he does not want counsel. Going without counsel has many affects and one of
5 them will involve the ability to conduct investigations. Still, that is Peck's choice.

6 This court ought to allow Mary Lou Wilson to withdraw. Allow Peck to file a motion seeking
7 leave to raise additional claims and deny his motion for funding.

8 AFFIRMATION PURSUANT TO NRS 239B.030

9 The undersigned does hereby affirm that the preceding document does not contain the
10 social security number of any person.

11 DATED: October 18, 2012

12 RICHARD A. GAMMICK
13 District Attorney

14 By/s/ TERRENCE P. McCARTHY
15 TERRENCE P. McCARTHY
16 Chief Appellate Deputy
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that this document was filed electronically with the Second Judicial District
3 Court on October 18, 2012. Electronic Service of the foregoing document shall be made in
4 accordance with the Master Service List as follows:

5 Mary Lou Wilson, Esq.
6 for Petitioner Frank M. Peck

7 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County
8 District Attorney's Office and that, on October 18, 2012, I deposited for mailing through the U.S.
9 Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing
10 document, addressed to:

11 Frank M. Peck, #57106
12 High Desert State Prison
13 P.O. Box 650
14 Indian Springs, NV 89070

15 /s/ EARLEEN RUSSELL
16 EARLEEN RUSSELL
17
18
19
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21
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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 10-18-2012:13:21:54
Clerk Accepted: 10-18-2012:13:33:22
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Notice
Filed By: TERRENCE MCCARTHY, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

File Copy

CR06P258D DC-9900039839-025
POST FRANK MILFORD PECK (D6 3 Pages
District Court 10/19/2012 03 53 PM
Washoe County NV027
RNC

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FILED

OCT 19 PM 3:54

JUDICIAL DISTRICTS
CLERK OF THE COURT
BY *[Signature]*
CLERK

Frank M. Peck,
Petitioner,
vs.
The State of Nevada,
Respondent.

Case No. CR-06-P-2580
Dept No. 6

MOTION TO PROCEED
IN PRO SE

Comes Now, Petitioner Frank M. Peck pro se hereinafter Mr. Peck with his
Motion to Proceed in Pro se.

This Motion is made and based upon all papers and pleadings
on file in this case as well as the attached points and authorities and
affidavit of Mr. Peck.

Dated this 10th day of October 2012.

Frank Peck
Frank M. Peck 57105
HDSP Box 650
Indian Springs, Nv. 89070

POINTS AND AUTHORITIES

Mr Peck's Counsel Mary Lou Wilson has filed what is the equivalent to an anders brief, Anders v. California, 386 U.S.738 (1967)

Mr. Peck has filed a Petition for Writ of Habeas Corpus and a supplement to that Petition.

Mary Lou Wilson has not provided a means for Mr.Peck to communicate with counsel nor has she conferred with her client.

Counsel even went so far as to hold a conference call with Mr. Mehul B. Anjaria and intentionally did not include Mr.Peck in the discussion.

Mr. Peck has had discussions with Mr.Anjaria and has developed issues for review that Counsel didn't even bother to discuss with Mr.Peck.Nor did she even bother to raise in a Petition for Mr.Peck

Mr.Peck has on several occasions has notified this court about problems with his counsel and has been ignored each time.

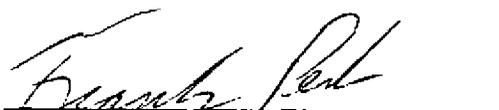
Mr Peck has had to go so far as to **sue** counsel to get her to remove herself from Mr.Peck's case and as of this writing counsel has still not removed herself from Mr.Peck's case.

Mr.Peck has meritorious issues that must be raised in the District Court.

Therefore, Mr. Peck should be allowed to raise issues in the District Court since Mr.Peck's counsel has attempted to sabotage Mr.Peck's case.

Dated this 10th day of October 1012.

Respectfully Submitted



Frank M. Peck 57106
HDSP Box 650
Indian Springs,Nv.89070
Petitioner, Pro se.

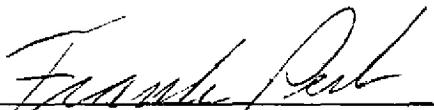
State of Nevada
County of Washoe Affidavit of Frank Milford Peck

I Frank M. Peck do hereby swear under penalty of perjury that :

1. I am the petitioner in case no.cr-06-p-2580.
2. All assertions in the attached Motion to proceed in Pro se are true based upon personal knowledge and i am competent to testify to all matters contained therein.
3. I bring this motion in good faith and for no improper reason.
4. further affiant sayeth naught.

Dated this 10th day of October 1012.

Signed under penalty of perjury NRS 208.165 ans 28 USC 1746.



Frank M Peck 57106
HDSP Box 650
Indian Springs,Nv.89070

CR06P2580 DC-9900039860-018
POST FRANK MILFORD PECK (D6 5 Pages
District Court 10/22/2012 @ 1 59 PM
Washoe County 3795
SHEMBRIG

Frank M. Peck #57106
HDSP Box 650
Indian Springs, Nv. 89070
Petitioner, Pro se.

FILED
2012 OCT 22 PM 1:59
CLERK OF DISTRICT COURT
BY 

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NEVADA

Frank M. Peck,
Petitioner,
vs.
The State of Nevada,
Respondent.

Case No. CR-06-P-2580
Dept No. 6

REPLY TO RESPONSE TO NOTICE OF CONFLICT

Comes Now, the Petitioner, Frank M. Peck, Prp se hereinafter Mr. Peck with his Reply to the Respondents Response to Mr. Peck's NOTICE OF CONFLICT.

This Reply is made and based upon all papers and pleadings on file in this case as well as the attached points and authorities and affidavit of Mr. Peck and the attached exhibits.

Dated this 12th day of October 2012.


Frank M. Peck #57106
HDSP Box 650
Indian Springs, Nv. 89070

POINTS AND AUTHORITIES

The state has indeed received various documents from Mr. Peck regarding his counsel and if the state had actually looked at the documents from Mr. Peck they may have noticed a **Motion for Substitute Counsel** filed on May 11th, 2012 and another, **Notice of Termination of Counsel and Request for Documents** filed on May 23, 2012 and a **Reply to Response to Counsel's Response** to letter apparently responding to Mr. Peck's **Motion for Substitute Counsel** filed on June 5, 2012. Then Mr. Peck filed a **Motion for Telephonic Hearing** regarding substitution of Counsel in an attempt to explain to the court the fundamental differences drawn from DNA Expert Mehul B. Anjaria's summary and the way in which to proceed. Instead, Counsel "out of spite" just filed Mr. Anjaria's summary as a final report, without including Mr. Peck in the one and only telephone conference discussing Mr. Anjaria's summary. See attached October 8, 2012 letter from Mr. Anjaria. EX-1.

Mr. Peck being faced with his complaints being once again ignored by the court was left with no choice but to **file suit** against counsel as this court was advised in Mr. Peck's **NOTICE OF CONFLICT** that was filed on August 2, 2012 and finally responded to on September 24, 2012.

This Court should also note that Mary Lou Wilson was **served with a summons on September 13, 2012**. On September 18, 2012 Mary Lou Wilson filed an adverse **NOTICE OF NO SUPPLEMENT** out of spite and in violation of the rules of professional conduct and ethics.

This court should also note that Mr. Anjaria was not aware that his summary and his comments from the conference call would be filed in court. Please see attached letter from Mr. Anjaria **EX-2**.

Mr. Peck recently mailed a Motion to proceed Pro se to this court as Mr. Peck does not wish to be saddled with another Attorney who refuses to communicate as is Ms. Wilson's practice and it should be stated was Mr. Peck's Trial Attorney's practice as well.

CONCLUSION

Therefore, Mr. Peck requests that Counsel Mary Lou Wilson be removed as counsel of record and that she be ordered to provide Mr. Peck with all documents from Mr. Peck's trial as well as any investigative reports discovery and her work product so that Mr. Peck can proceed with his case. It is also requested that funding for Mr. Anjaria be provided to test items of potentially exculpatory value consistent with his suggestions. Mr. Peck also requests an Order from this court granting Mr. Peck conference calls with Mr. Anjaria to finalize a formal report. Mr. Peck also requests additional time to prepare a comprehensive supplement to his Petition for Writ of Habeas Corpus

Dated this 12th day of October 2012.



Frank M. Peck # 57106
HDSP Box 650
Indian Springs, Nv. 89070
Petitioner, Pro se.

State of Nevada
County of Washoe

AFFIDAVIT OF FRANK M. PECK

I Frank M. Peck do hereby swear under penalty of perjury that:

1. I am the Petitioner in WDC case no. CR-06-P-2580.
2. All assertions in the attached Reply are true based on personal knowledge and i am competent to testify to all matters contained therein.
3. I bring this Reply in good faith and for no improper reason.

further affiant sayeth naught

Dated thid 12th day of October 2012.

Signed under penalty of purjury NRS 208.165 and 28 USC sec 1746.



Frank M. Peck # 57106
HDSP Box 650
Indian Springs, Nv. 89070
Petitioner, Pro se.

CERTIFICATE OF SERVICE AND AFFIRMATION

Pursuant to NRS 239.B 030 the attached REPLY does not contain social security numbers of any person and a true and correct copy was mailed this date to :

DDA Terrance Mc Carthy Esq.
75 Court Street
Reno, Nv 89501

Dated this 12th day of October 2012.

Signed under penalty of perjury NRS 208.165 and 28 USC sec 1746.



Frank M. Peck # 57106
HDSP Box 650
Indian Springs, Nv. 89070

INDEX OF EXHIBITS

Exhibit Number 1 Number of Pages 1

Exhibit Description: MBA DNA LETTER

Exhibit Number 2 Number of Pages 1

Exhibit Description: MBA DNA LETTER

Exhibit Number _____ Number of Pages _____

Exhibit Description: _____

Exhibit Number _____ Number of Pages _____

Exhibit Description: _____

Exhibit Number _____ Number of Pages _____

Exhibit Description: _____

Exhibit Number _____ Number of Pages _____

Exhibit Description: _____

Exhibit Number _____ Number of Pages _____

Exhibit Description: _____

Exhibit Number _____ Number of Pages _____

Exhibit Description: _____

Exhibit Number _____ Number of Pages _____

Exhibit Description: _____



CR06P2580 DC-9900039880-019
POST FRANK MILFORD PECK 106 2 Pages
District Court 10/22/2012 01 59 PM
Washoe County 3795
-v1 CHAMRPTC

EXHIBIT 1

EXHIBIT 1

MBA DNA CONSULTING, LLC
Official Correspondence



LEGAL AND CONFIDENTIAL

October 8, 2012

Frank M. Peck, 57106
HDSP Box 650
Indian Springs, NV 89070

Mr. Peck,

August 30, 1994 is when Fassett first noted the results of her microscopy in which she detected 3 sperm heads. As far as any type of detection of ink being added to the page at a later date, I have no expertise in that area.

I understand you are at odds with your current attorney and wished she would have fought harder. Unfortunately, based on my review there simply is not anything that screams foul play and I had to report that to them as per my appointment on the case. I'm sorry to hear that they did not consult with you about my review prior to 'giving up'.

Quite frankly, I was not aware that my consultant observations and details of our phone call were going to be submitted to the court. I also understand that you have different strategies and ideas about your case.

I think that ultimately you may want to try to have the semen stains on the sheet and the hairs from the bath tub tested, as well as other miscellaneous items that were not tested. The problem is that you would likely first have to justify foul play in the analysis of the original items tested in order to have that type of testing approved.

If and when you are able to gain pro per status on your case, and obtain additional funding I will work further with you. I think you have a pretty clear sense now of what I can and cannot do for you.

If you do regain control of your case and want additional input or a report from me, please obtain a minimum of 7 hours of funding at \$215 per hour.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mehul B. Anjaria', written over a white background.

Mehul B. Anjaria, MS, D-ABC
Founder and Chief Consultant

Beverly Hills: 433 North Camden Drive, Suite 600, Beverly Hills, CA 90210 (fax) 310-295-2161
Chicago: One Miracle Mile, 980 Michigan Avenue, Suite 1400, Chicago, IL 60611 (fax) 312-448-9170
MBADNACONSULTING.com (p) 310-801-1848

V10.349



CR06P2580 DC-9900039880-020
POST FRANK MILFORD PECK (D6 2 Pages
District Court 10/22/2012 01 59 PM
Washoe County 3795
-Y? SHAMRIG

EXHIBIT 2

EXHIBIT 2

MBA DNA CONSULTING, LLC
Official Correspondence



LEGAL AND CONFIDENTIAL

October 8, 2012

Frank M. Peck, 57106
HDSP Box 650
Indian Springs, NV 89070

Re: PCR PROCESS

Mr. Peck,

The Polymerase Chain Reaction (PCR) is a molecular biology technique commonly used by the forensic community. The goal of PCR is to isolate relevant areas of DNA, make copies of those areas, and mark the copies so that they can be detected in DNA analysis. The PCR process is what has allowed forensic DNA testing to be much more sensitive than original methods which were based on Restriction Fragment Length Polymorphisms (RFLP).

DNA present in the evidence sample is a template from which the copies are made. The synthetic PCR primers from the particular DNA typing kit being used are incorporated into the copied or 'amplified' DNA, and are fluorescently labeled. Thus, when the PCR products are run through the capillary electrophoresis instrument in the final typing step, it is the copies of DNA that were made in the PCR process that are being detected. Detection is achieved by the instrument applying a laser to the tagged primers, which give off fluorescence that the instrument detects as signal.

Whereas a photocopier makes copies of an original page, the PCR process gets started by making copies of the original DNA and then essentially uses the copies to make more copies. The final product that is generated and contains fluorescent primers is synthetic in nature, however it is a faithful replication of the DNA that was originally present in the sample.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mehul B. Anjaria', with a long horizontal flourish extending to the right.

Mehul B. Anjaria, MS, D-ABC
Founder and Chief Consultant

DC-9900040132-004
CR06P2580
POST FRANK MILFORD PECK (D6 3 Pages
District Court 10/30/2012 10:47 AM
Washoe County 4105
JYOS
DOC

FRANK PECK 57106
HDSP Box 650
Indian Springs, NV, 89070
Petitioner, pro se.

2012 OCT 30 AM 10:47

JOE
CL
BY *[Signature]*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK, CASE No. CR-06-P-2580
Petitioner, Dept No. 6

vs.
THE State of Nevada,
Respondent.

SUPPLEMENTAL
EXHIBITS IN SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS

Comes Now, the Petitioner with the
Attached Exhibits in support of his
Petition for Writ of Habeas Corpus.

Dated this 18th day of October 2012.

[Signature]
Frank Peck Pet, pro se.

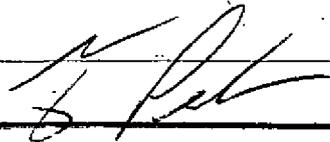
Certificate of service and Affirmation

Pursuant to NRS 239 B 030 the attached supplemental exhibits in support of Petition for Writ of Habeas Corpus does not contain social security numbers of any person and a true and correct copy was mailed this date to:

District Attorney
75 Court Street
Reno, NV. 89501

Dated this 18th day of October 2012.

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.



Frank Peck 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner, pro se.

INDEX OF EXHIBITS

Exhibit #1

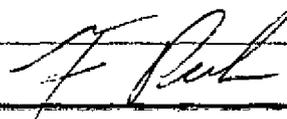
1 page

Exhibit description: Oct 8, 2012 letter from MBA DNA expert Mehul B. Anjaria affirming that he was UNAWARE his summary and details of conversation were going to be submitted to the court.

Exhibit #2

1 page

Exhibit description: Oct 8, 2012 letter from MBA DNA expert Mehul B Anjaria affirming that the product of the Polymerase Chain Reaction and subsequent analysis of STR'S is of totally synthetic materials containing NO HUMAN DNA contrary to testimony given to Mr. Peck's Jury.



Frank Peck 57106

Petitioner, prose.

DC-9900040132-005
CR06F2580
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District Court 10/30/2012 10:47 AM
Washoe County JY05
EX1

Exhibit 1

Exhibit 1

MBA DNA CONSULTING, LLC
Official Correspondence



LEGAL AND CONFIDENTIAL

October 8, 2012

Frank M. Peck, 57106
HDSP Box 650
Indian Springs, NV 89070

Mr. Peck,

August 30, 1994 is when Fasset first noted the results of her microscopy in which she detected 3 sperm heads. As far as any type of detection of ink being added to the page at a later date, I have no expertise in that area.

I understand you are at odds with your current attorney and wished she would have fought harder. Unfortunately, based on my review there simply is not anything that screams foul play and I had to report that to them as per my appointment on the case. I'm sorry to hear that they did not consult with you about my review prior to 'giving up'.

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If and when you are able to gain pro per status on your case, and obtain additional funding I will work further with you. I think you have a pretty clear sense now of what I can and cannot do for you.

If you do regain control of your case and want additional input or a report from me, please obtain a minimum of 7 hours of funding at \$215 per hour.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mehul B. Anjaria', written over a horizontal line.

Mehul B. Anjaria, MS, D-ABC
Founder and Chief Consultant

CR06P2580 DC-9900040132-005
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District Court 10/30/2012 10 47 AM
Washoe County 4105
EX2 JY087

Exhibit 2

Exhibit 2

MBA DNA CONSULTING, LLC
Official Correspondence



LEGAL AND CONFIDENTIAL

October 8, 2012

Frank M. Peck, 57106
HDSP Box 650
Indian Springs, NY 89070

Re: PCR PROCESS

Mr. Peck,

The Polymerase Chain Reaction (PCR) is a molecular biology technique commonly used by the forensic community. The goal of PCR is to isolate relevant areas of DNA, make copies of those areas, and mark the copies so that they can be detected in DNA analysis. The PCR process is what has allowed forensic DNA testing to be much more sensitive than original methods which were based on Restriction Fragment Length Polymorphisms (RFLP).

DNA present in the evidence sample is a template from which the copies are made. The synthetic PCR primers from the particular DNA typing kit being used are incorporated into the copied or 'amplified' DNA, and are fluorescently labeled. Thus, when the PCR products are run through the capillary electrophoresis instrument in the final typing step, it is the copies of DNA that were made in the PCR process that are being detected. Detection is achieved by the instrument applying a laser to the tagged primers, which give off fluorescence that the instrument detects as signal.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Mehul B. Anjaria', written over a horizontal line.

Mehul B. Anjaria, MS, D-ABC
Founder and Chief Consultant

1 CODE 2075
RICHARD A. GAMMICK
2 #001510
P. O. Box 30083
3 Reno, Nevada 89520-3083
(775) 328-3200
4 Attorney for Respondent

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 FRANK MILFORD PECK,

10 Petitioner,

11 v.

Case No. CR06P2580

12 THE STATE OF NEVADA,

Dept. No. 6

13 Respondent.
14 _____/

15 MOTION FOR EXTENSION OF TIME IN WHICH TO ANSWER

16 The post-conviction action has its genesis in a pleading filed before petitioner Peck was
17 convicted, that seems to have been treated like a post-conviction habeas corpus petition. It
18 includes none of the information required by NRS 34.735.

19 On September 18, 2012, the latest lawyer for petitioner Peck filed a notice that there would
20 be no supplement to the petition. Thus, if the petition had named the confining officer, the answer
21 of that confining officer would now be due. However, since the notice that there would be no
22 supplement, Peck has filed quite a few different documents with this court. Most recently, he
23 seemed to indicate that he wished to proceed in proper person (to which the State does not object)
24 and that he wishes to prepare his own supplement (to which the State objects). This court has yet
25 to rule on the efforts to discharge counsel, or whether Peck will be allowed to represent himself or
26 whether the court will appoint new counsel or whether a pro-per supplement would be allowed.

1 It seems, therefore, that a response at this time would be meaningless.

2 The State seeks an extension of time in which to respond. More specifically, the State moves
3 for an extension until 45 days after the date for any supplement, or 30 days after the court rules
4 that the pleadings are closed.

5 If the court orders the State to answer now, the State will move to dismiss on several
6 different grounds, including arguments based on the fact that when the petition was filed Peck was
7 not a convicted person. It seems more efficient to first decide if there are to be more pleadings
8 before requiring a response to the pleadings. Hence, this motion.

9 AFFIRMATION PURSUANT TO NRS 239B.030

10 The undersigned does hereby affirm that the preceding document does not contain the
11 social security number of any person.

12 DATED: November 2, 2012

13 RICHARD A. GAMMICK
14 District Attorney

15 By/s/ TERRENCE P. McCARTHY
16 TERRENCE P. McCARTHY
17 Chief Appellate Deputy
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26

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that this document was filed electronically with the Second Judicial District
3 Court on November 2, 2012. Electronic Service of the foregoing document shall be made in
4 accordance with the Master Service List as follows:

5 Mary Lou Wilson, Esq.
6 for Petitioner Frank M. Peck

7 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County
8 District Attorney's Office and that, on November 2, 2012, I deposited for mailing through the U.S.
9 Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing
10 document, addressed to:

11 Frank M. Peck, #57106
12 High Desert State Prison
13 P.O. Box 650
14 Indian Springs, NV 89070

15 /s/ SHELLY MUCKEL
16 SHELLY MUCKEL
17
18
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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 11-02-2012:14:25:31
Clerk Accepted: 11-02-2012:14:39:09
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Mtn for Extension of Time
Filed By: TERRENCE MCCARTHY, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

DC-9900040305-0036
CROSSPOST MILFORD PECK (06 3 PAB) 11/06/2012 02 15 PM
POST District Court 4105
Washoe County
NOR

Code 1695
FRANK M. PECK 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner, pro se.

2012 NOV 6 PM 3:14
CLERK COURT
BY *[Signature]*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Frank M. Peck, Case No. CR-06-P-2580
Petitioner, Dept No. 6

vs.

The State of Nevada, SUPPLEMENTAL EXHIBITS
Respondent.

SUPPLEMENTAL
EXHIBITS IN SUPPORT OF SUPPLEMENTAL PETITION FOR
WRIT OF HABEAS CORPUS FILED ON OCTOBER 9 2012

Comes now, the Petitioner, Frank M. Peck pro se,
hereinafter Mr. Peck with SUPPLEMENTAL EXHIBITS
in support of his Petition for writ of Habeas Corpus.

Dated this 26th day of October 2012.

[Signature]
Frank M. Peck 57106
Petitioner, pro se,
V10.363

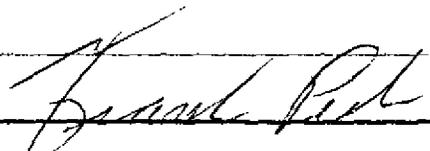
Certificate of service and Affirmation

Pursuant to NRS 239B.030 the attached supplemental exhibits do not contain the social security numbers of any person and a true and correct copy was mailed this date to:

DDA Terrance Mc Carthy ESO
75 Court Street
Reno, NV. 89501

Dated this 31st day of October 2012.

Signed under penalty of perjury NRS 208.165
and 28 USC sec 1746.


FRANK M. PECK 57106
HDSP Box 650
Indian Springs, NV, 89070
Petitioner, pro se.

Index of Exhibits

Exhibit # 1

1 page

Exhibit description: October 8, 2012 letter from Mr. Peck's DNA expert, Mehul B. Anjaria of MBA-DNA consulting, specifically stating that Mr. Anjaria was unaware that his Confidential Consultant Observations and details of his phone call were going to be submitted to the court. And recommendations for further testing.

Exhibit # 2

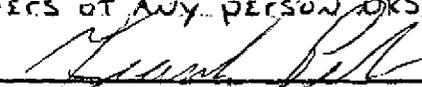
1 page

Exhibit description: October 8, 2012 letter from Mr. Peck's DNA expert, Mehul B. Anjaria of MBA-DNA consulting, specifically stating, that the product of the PCR Process and subsequent Analysis of the Short tandem Repeats "STR'S" are of synthetic materials and NOT HUMAN DNA. "Contrary to the testimony given to Mr. Peck's Jury".

Dated October 26th 2012.

Affirmation.

Contains no social security numbers of any person ORS 239B.030.


FRANK PECK 57106

HDSR Box 650

Indian Springs NV 89070

Petitioner, RV10365

CR06P2580
POST FRANK MILFORD PECK (D6 2 Pages
District Court 11/06/2012 02 15 PM
Washoe County 4:05
PM

Exhibit 1

Exhibit 1

MBA DNA CONSULTING, LLC
Official Correspondence



LEGAL AND CONFIDENTIAL

October 8, 2012

Frank M. Peck, 57106
HDSP Box 650
Indian Springs, NV 89070

Mr. Peck,

August 30, 1994 is when Fassett first noted the results of her microscopy in which she detected 3 sperm heads. As far as any type of detection of ink being added to the page at a later date, I have no expertise in that area.

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If you do regain control of your case and want additional input or a report from me, please obtain a minimum of 7 hours of funding at \$215 per hour.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mehul B. Anjaria', written over a horizontal line.

Mehul B. Anjaria, MS, D-ABC
Founder and Chief Consultant



CR06P2580 DC-9900640305-008
POST FRANK MILFORD PECK (06 2 Pages
District Court 11/06/2012 02 15 PM 4105
Washoe County 1Yac-
FX?

Exhibit 2

Exhibit 2

MBA DNA CONSULTING, LLC
Official Correspondence



LEGAL AND CONFIDENTIAL

October 8, 2012

Frank M. Peck, 57106
HDSP Box 650
Indian Springs, NV 89070

Re: PCR PROCESS

Mr. Peck,

The Polymerase Chain Reaction (PCR) is a molecular biology technique commonly used by the forensic community. The goal of PCR is to isolate relevant areas of DNA, make copies of those areas, and mark the copies so that they can be detected in DNA analysis. The PCR process is what has allowed forensic DNA testing to be much more sensitive than original methods which were based on Restriction Fragment Length Polymorphisms (RFLP).

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Sincerely,

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Mehul B. Anjaria, MS, D-ABC
Founder and Chief Consultant

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 12-10-2012:16:36:10
Clerk Accepted: 12-10-2012:16:50:20
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
- **Continuation
- **Continuation
- **Continuation

Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

Code 1977
Frank M. Peck # 57106
HDSP Box 650
Indian Springs, Nv. 89070

2013 JAN -9 PM 12:48

ST
CLERK
GPOST

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Frank M. Peck,

Case No. CR-06-P-2580

Petitioner,

Dept No. 6

vs.

State of Nevada,

Respondent.

Comes Now, The Petitioner, Frank M. Peck Pro se hereinafter, Mr. Peck with his
Motion for evidentiary hearing.

This Motion is made and based upon all papers and pleadings on file in this case as well as the attached points and authorities, district court rules and affidavit of Mr. Peck and any attached exhibits.

Dated this 29 day of Dec 2012.

Frank Peck
Frank M. Peck # 57106
HDSP Box 650
Indian Springs, Nv. 89070

V10.371

DC-9900042045-002
POST FRANK MILFORD PECK (D6 5 Pages
District Court 01/09/2013 12 48 PM
Washoe County 2490
NVC

Points and Authorities

It is unclear from the docket if counsel Mary Lou Wilson made a request for an evidentiary hearing.

Initial-review collateral proceeding counsel Mary Lou Wilson appointed by this Court is "obviously ineffective" under the standards of Strickland, 466 U.S. 668 (1984). For filing a "Notice of No Supplemental Petition for Writ of Habeas Corpus Post-Conviction" when in fact meritorious issues and newly discovered evidence exist.

Should this court refuse to appoint effective counsel for Mr. Peck and refuse Mr. Peck time to prepare a comprehensive petition. This court should grant Mr. Peck an evidentiary hearing to develop his claims already filed and supplemented in the pleadings already on file and allow Mr. Peck to correct clerical errors to conform to NRS 34 et seq, per NRCR 60(b).

Mr. PECK has many meritorious ISSUES yet to raise, such AS, this court's constructive denial of counsel to Mr. Peck Altogether, for its failure to substitute counsel or grant Mr. Peck's "Motion for continuance to prepare a defense". Strickland, 466 US. 668 (1984) Id Peuson v. Ohio, 488 US. 75 (1988) Colgain v State, 102 NEV. 220 219 P.2d 1263 (1986).

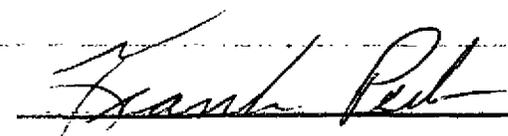
WHEREAS IN this case, Mr PECK has made extensive allegations of ineffective assistance, evidence of which are necessarily outside the record, AS SUCH AN EVIDENTIARY hearing is required. Bolden v. State, 99 NEV. 181, 654 P.2d 886 (1983) Id Grandin v. State, 97 NEV. 454, 634 P.2d 456 (1981) SEE Hargrove v State, 100 NEV. 498, 686 P.2d 222 (1984).

In addition to NRS 34.770, The Due Process Clause of the U.S. Constitution requires a full and fair hearing Kirksey, 112 NEV. 980, 923 P.2d 1102 (1996) Id Strickland supra.

A claim of ineffective assistance of counsel presents a mixed question of law and fact and is therefore subject to independent review. State v. Love, 109 NEV. 1136 1138 865 P.2d 322 323 (1993) Strickland v Washington, 466 US 668 (1984).

Therefore, for the foregoing reasons and diligence by Mr Peck to protect his rights, an evidentiary hearing is respectfully requested in the above entitled matter.

Dated this 29th day of December 2012.



FRANK M. PECK 57106

HDSP Box 650

Indian Springs, NV, 89070

Petitioner, pro se.

State of Nevada ss

County of Washoe

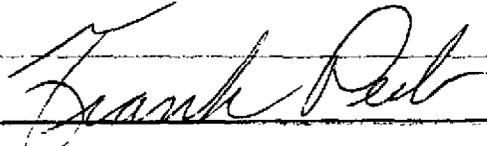
Affidavit, Certificate of service, Affirmation
of FRANK M. PECK

I, Frank M. Peck do hereby swear under penalty of perjury that:

1. I am the Petitioner in case no. CR-06-P-2580, Dept 6.
2. All assertions in this Motion for evidentiary hearing are true based on personal knowledge and I am competent to testify to all matters contained therein.
3. I bring this motion in good faith and for no improper reason.
4. A true and correct copy was mailed this date to:
District Attorney: Mary Lou Wilson
75 Court Street 333 Marsh Ave
Reno, NV, 89501 Reno, NV, 89509
5. Contains no social security numbers of any person
NRS 239 B 030.

Dated this 2nd day of JANUARY 2013.

Signed under penalty of perjury NRS 208.165
AND 28 USC SEC 1746.



FRANK PECK 57106

HDSP BOX 650

INDIAN SPRINGS NV 89070

PETITIONER, PRO SE.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 01-11-2013:15:10:24
Clerk Accepted: 01-11-2013:15:13:03
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Sealed Order
Filed By: Kaili Lane

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

CR06P2580 DC-9900042424-011
POST FRANK MILFORD PECK (D6 3 Pages
District Court 01/23/2013 02:53 PM
Washoe County 4105
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Code 4105
Frank M. Peck #57106
H.D.S.P. Box 650
Indian Springs, Nv, 89070

FILED
2013 JAN 23 PM 2:53
JOEY ANN HASTINGS
CLERK OF THE COURT
BY JMDK
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Frank M. Peck,
Petitioner,
vs.
The State of Nevada
Respondent.

Case No. CR-06-P-2580
Dept No. 6

Comes Now, the Petitioner, Frank M. Peck prose hereinafter Mr. Peck
with his Supplemental Exhibits

This Supplement is made and based upon all papers and pleadings
on file in this case as well as the attached points and authorities, the District
Court Rules, affidavit of Mr. Peck and any attached exhibits.

Dated this 14th day of January 2013.

Frank Peck
Frank M. Peck # 57106
H.D.S.P. Box 650
Indian Springs, Nv, 89070

Certificate of Service and Affirmation

Pursuant to NRS 239 B 030 the attached Exhibits
does not contain social security numbers of any person and a true and correct
copy was mailed this date to:

District Attorney _____
75 Court Street
RENO, NV. 89501

Signed under penalty of perjury NRS 208.165 and 28 U.S.C. sec 1746.

Dated this 14th day of JAN 2013.

Frank Peck
Frank M. Peck # 57106
HDSP Box 650
Indian Springs, Nv 89070

INDEX OF EXHIBITS

Exhibit Number 1 Number of Pages 3

Exhibit Description: MAY 12th 2017 MRA DNA LETTER

Exhibit Number 2 Number of Pages 1

Exhibit Description: RFLP v. PCR Facts

Exhibit Number _____ Number of Pages _____

Exhibit Description: _____

Exhibit Number _____ Number of Pages _____

Exhibit Description: _____

Exhibit Number _____ Number of Pages _____

Exhibit Description: _____

Exhibit Number _____ Number of Pages _____

Exhibit Description: _____

Exhibit Number _____ Number of Pages _____

Exhibit Description: _____

Exhibit Number _____ Number of Pages _____

Exhibit Description: _____

Exhibit Number _____ Number of Pages _____

Exhibit Description: _____



DC-9900042424-012
CR06P2580
POST FRANK MILFORD PECK (D6 4 Pages
District Court D1/23/2013 02 53 PM 4105
Washes County .jvnc-
EX1

Exhibit 1

Exhibit 1

MBA DNA CONSULTING, LLC
Official Correspondence



LEGAL AND CONFIDENTIAL

May 12, 2012

Frank Peck, 57106
HDSP Box 650
Indian Springs, NV 89070

Frank,

Thank you for your recent letters regarding the issues with your attorneys. I understand your wishes to not share anything with them until this matter is resolved. I do not intend to generate written materials until I have seen the remaining discovery items. At that point, it would be an informal write up and then we can decide if it merits a formal report. I did previously share the chain of custody breakdown that I sent you with Mr. Whittaker.

I appreciate your patience during this process. It is a bit like looking for a needle in a haystack. The sad truth is that unfortunately it is possible to taint evidence without being detected. I will continue to do my best to review the materials I have and think through best strategies as to what to do next. Looking at recent letters, you have a number of questions that I'll try to address in this letter.

The last e-mail communication I had with Mr. Whittaker was roughly a month ago when I sent him a request for additional discovery.

-Semen is composed of seminal fluid and in some cases sperm cells. If a male has been vasectomized or has a medical issue that prevents sperm production, then his semen will not contain sperm cells. Acid Phosphatase (AP) is a test used to detect the presence of seminal fluid.

-Semen without sperm cells will still contain DNA, but in much less quantity than semen with sperm cells.

-Crime labs perform what is called a differential extraction on samples believed to contain semen. Any sperm cells are physically separated from any type of non-sperm cells. After a DNA analysis, you then have a sperm fraction (which will contain any DNA from sperm cells, and potentially a trace level of non-sperm DNA), and a non-sperm fraction (which contains DNA from any non-sperm cell type, again with the potential of some sperm DNA leaking through if a lot of sperm was present).

-If a vaginal swab is collected from a female who had intercourse with a vasectomized male, it is expected that any male DNA will actually be in the non-sperm fraction since no sperm cells are present in the semen. White blood cells and other bodily cells in the semen are the source of the DNA in this scenario.. Since a vaginal swab many times has much more female DNA on it than male DNA, sometimes the male DNA from a vasectomized male is essentially "swamped out" and not detected. In this case, Y-STR (male specific DNA testing) can be used to filter out the female DNA to determine a profile of the male donor.

-Looking at Fassett's notes dated Aug 30, 1994 it looks like there were 2 vaginal smears 'micro: + sperm only 3 heads observed'. Typically only one of the 2 smears would be looked at. It also says 'motile sperm slide in kit'

-I think I shared with you earlier my thoughts on the utility of the 'motile sperm slide' and how often I see it being negative while a smear is positive. The motile sperm slide as I understand it is really just a quick and dirty screening. Since my experience is that the motile sperm slide carries little weight, there is no way for me to scientifically argue that since it was negative, then any sperm on the smear is questionable. The smear is simply a more comprehensive way to look for sperm cells.

-When Romero did the DNA testing on the vaginal swab in 2001, I don't see any mention of microscopy in her notes. While I don't think this is the best practice, it is actually common. The idea is that by looking at the slides you know that sperm are likely to be on the swab, and therefore a differential extraction should be conducted. If you get male DNA in a sperm fraction after a differential extraction, then it follows based on the technology that sperm was in fact present.

-It may be the best course of action to view the evidence packages themselves, but there again if someone was engaged in foul play, they likely wouldn't date and initial where they opened the evidence.

-I'm looking forward to receiving the information on the dates of entry into the CODIS database. That will allow us to determine the timing of events and determine if anything was out of order.

-The DNA testing on the Nummer case was conducted using a PCR-based technology. PCR is not a specific DNA testing methodology, it is simply a way to prepare DNA for testing. RFLP testing was the original DNA method and did not use PCR.

In the Nummer case a PCR-based method called 'PM+DQA1 and D1S80' was used. While there was a limited database for this technology, it was nowhere near as powerful as today's database. I do not believe that the DNA profiles in 1996 were entered into a database (pretty common). In 1998 a National CODIS database was created based on PCR-based 'STR' technology.

If your reference DNA profile was typed originally in PM+DQA1 and D1S80, that would have no bearing on the ability to match to the STR results in the Inham matter. The DNA testing in Inham was all STR based. Hopefully, the discovery will tell us when your sample was first typed for STR's and therefore available for database search.

-I also found it interesting that the lab kept the evidence from the 1996 case until 2011.

-On page 10 of 11 of my chain of custody breakdown, I'm not finding any info on exactly who "MAM" is. Presumably he/she is the lab property person that released the evidence to Reno PD.

-As far as to whether Fye was ever in the evidence locker...it's unlikely they had a sophisticated key card system, etc. to track every entry/exit.

-If you had a dried stain that you wanted to contaminate a piece of evidence with, you would not have to necessarily take a cutting from it. You could use something like a wet swab to do the transfer.

-In the PCR process, the new copies of DNA are made entirely from the building blocks (A,T,C,G) in the kit used to perform the PCR. The existing DNA in the sample is merely a template or guide to 'create' the DNA copies. I've included a basic article that I wrote a while back that will hopefully help you in understanding the process.

-From reviewing the chain of custody records, it looks like the panties and jeans from the Nummer case were at the crime lab up until 2011.

-Control #W020120 'sexual assault with blood' (Inman case) was examined by Fasset on 8-30-94. The vaginal swabs were removed from the kit and a dried bloodstain was prepared from the liquid blood vial. The vaginal swabs and bloodstain were packaged under Control # 'P18948'. It looks like this control number was released from the Laboratory to the Property section on 1-19-95. All other items including the empty blood vial and the vaginal smears were apparently placed back into the original packaging, control # 'W020120'. This was then returned to agency on the same day, 8-30-94.

Control #P18948 with the vaginal swabs was apparently in the possession of the lab until Romero checked it out for court on 4-23-09. Presumably the court still has this evidence?

Sincerely,



Mehul B. Anjaria, MS, D-ABC
Founder and Chief Consultant

CR06P2580 DC-9900042424-013
POST FRANK MILFORD PECK (06 3 Pages
District Court 01/23/2013 02 53 PM 4:05
Washoe County 1946-
E72

Exhibit 2

Exhibit 2

RFLP vs PCR-STR

Whereas the RFLP protocol is a direct analysis of the physical DNA evidence, "PCR-STR is not".

Facts:

1. Complementary DNA ("cDNA") is man made synthetic DNA.
2. Complementary DNA ("cDNA") is synthesized from Messenger RNA ("mRNA").
3. **The product of the PCR protocol and subsequent STR analysis is of 100% synthetic man made materials completely devoid of Human DNA.**

The synthetic DNA molecule is complementary DNA ("cDNA"). cDNA is synthesized from mRNA using complementary base pairing in a manner analogous to RNA transcription. The process results in a double-stranded DNA molecule with a sequence corresponding to the sequence of an mRNA produced by the body. **Because it is synthesized from mRNA, cDNA contains only the exon sequences, and thus "none of the intron sequences" from a native gene sequence.**

("cDNA's) are" chemically manipulated and are markedly different from that which exists in the body" and are even, "patent-eligible".

For all the same reasons that cDNA's are patent-eligible cDNA's cannot be considered as direct evidence in a criminal trial, because the product of the PCR protocol and the subsequent analysis is of **"synthetic man-made materials devoid of Human DNA"** brought into the process from an outside source, literally, off the shelf, manipulated, then referred to as "direct evidence".

See:

THE ASSOCIATION FOR MOLECULAR PATHOLOGY, THE AMERICAN COLLEGE OF MEDICAL GENETICS, THE AMERICAN SOCIETY FOR CLINICAL PATHOLOGY, THE COLLEGE OF AMERICAN PATHOLOGISTS, HAIG KAZAZIAN, MD, ARUPA GANGULY, PHD, WENDY CHUNG, MD, PHD, HARRY OSTRER, MD, DAVID LEDBETTER, PHD, STEPHEN WARREN, PHD, ELLEN MATLOFF, M.S., ELSA REICH, M.S., BREAST CANCER ACTION, BOSTON WOMEN'S HEALTH BOOK COLLECTIVE, LISBETH CERIANI, RUNI LIMARY, GENAE GIRARD, PATRICE FORTUNE, VICKY THOMASON, AND KATHLEEN RAKER, Plaintiffs-Appellees, v. UNITED STATES PATENT AND TRADEMARK OFFICE, Defendant, and MYRIAD GENETICS, INC., Defendant-Appellant, and LORRIS BETZ, ROGER BOYER, JACK BRITAIN, ARNOLD B. COMBE, RAYMOND GESTELAND, JAMES U. JENSEN, JOHN KENDALL MORRIS, THOMAS PARKS, DAVID W. PERSHING, AND MICHAEL K. YOUNG, IN THEIR OFFICIAL CAPACITY AS DIRECTORS OF THE UNIVERSITY OF UTAH RESEARCH FOUNDATION, Defendants-Appellants,
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT
653 F3d 1329653 F.3d 1329; 2011 US App LEXIS 156492011 U.S. App. LEXIS 15649; 99 USPQ2D (BNA) 139899 U.S.P.Q.2D (BNA) 1398
2010-1406 - July 29, 2011, Decided

Dated this 3rd day of January 2013.



Frank M. Peck # 57106
H.D.S.P. Box 650
Indian Springs, Nv. 89070

V10.385

State of Nevada

SS

County of Washoe

AFFIDAVIT OF FRANK M. PECK

I Frank M. Peck do hereby swear under penalty of perjury that:

1. I am the Petitioner in case no. CR-06-P-2580.
2. All assertions in the attached Exhibits are true based on personal knowledge and i am competent to testify to all matters contained therein.
3. I bring the attached Exhibits in good faith and for no improper reason.

FURTHER AFFIANT SAYETH NAUGHT

Dated this 14th day of Jan 2013.

Signed under penalty of perjury NRS 208.165 and 28 USC sec 1746.

Frank Peck

Frank M. Peck # 57106
HDSP Box 650
Indian Springs, Nv. 89070

V10.386

FRANK PECK 57106

12-11-12

HDSP BOX 650

Indian Springs, NV. 89070

Washoe District Court

Chief Judge

75 Court Street

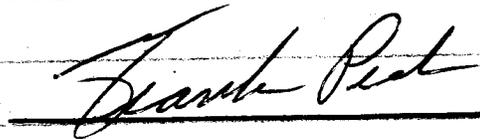
Reno, NV. 89501

re: Appointed Attorneys

Dear Chief Judge

Could you please tell me who, if any, is responsible for ensuring that Attorneys in this district comply with not only ethical standards but standards recommended by the Supreme Court in ADKT 411 filed Sep 16, 2008, as the State Bar will not and the NEVADA Supreme Court keeps referring me to the State Bar. Who exactly is responsible for the registration and actual appointment of Attorneys in this district?

Thank you for your time



Frank Peck Pltff, prose.

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 29 day of January, 2013, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

Terrence McCarthy, Esq.
Deputy District Attorney

Mary Lou Wilson, Esq.
Court Appointed Attorney

Further, I certify that I deposited in the county mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing addressed to:

Frank Peck, #57106
HDSP Box 650
Indian Springs, NV 89070


Department 15 Court Clerk

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 01-29-2013:11:51:53
Clerk Accepted: 01-29-2013:11:52:59
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Not/Doc/Rc'd/Not/Cons/by Crt
Filed By: Kaili Lane

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

1 CODE #
2 MARY LOU WILSON
3 Attorney At Law, Bar Number 3329
4 333 Marsh Ave.
5 Reno, Nevada 89509
6 775-337-0200
7 Attorney for Petitioner Peck

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
9
10 IN AND FOR THE COUNTY OF WASHOE

11 FRANK PECK,

12 Petitioner,

13 vs.

14 Case No. CR06P2580

15 Dept. No. 6

16 WARDEN, N.D.O.C. and
17 THE STATE OF NEVADA,

18 Respondents.

19
20 _____ /
21 REQUEST FOR SUBMISSION

22 COMES NOW appointed counsel, MARY LOU WILSON, and requests submission of this
23 case regarding the MOTION TO RELIEVE COUNSEL which was filed on October 15, 2012.

24 Peck has filed two civil actions against counsel, which continues to create a conflict. Therefore,
25 counsel requests to be relieved at this time.

DATED this 5th day of February, 2013.

By: s/s: MARY LOU WILSON
MARY LOU WILSON
Attorney for Petitioner

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Affirmation:

I, Mary Lou Wilson, hereby affirm that there is no social security number of any person in the
aforementioned document.

Dated this 5th day of February, 2013.

By: s/s: Mary Lou Wilson
Mary Lou Wilson

1 CERTIFICATE OF MAILING

2 I, Mary Lou Wilson, hereby affirm that on the 5th day of February, 2013, the aforementioned
3 document was e-filed according to the Master List of e-filers and a hard copy of the same
4 provided through the U.S. Mail to Petitioner Peck as follows:

5 The Honorable Judge Brent Adams Dept. 6, (e-filing)

6 Terrence McCarthy, Chief Appellate Deputy District Attorney, (e-filing)

7 Frank Peck (U.S. Mail)

8 Inmate Number #57106

9 Southern Desert Correctional Center

10 P.O. Box 208

11 Indian Springs, Nevada 89070

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 02-05-2013:15:37:38
Clerk Accepted: 02-05-2013:15:47:26
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Request for Submission
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

1 CODE NO.
2 MARY LOU WILSON
3 Attorney At Law
4 333 Marsh Ave.
5 Reno, Nevada 89509
6 775-337-0200

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE

9 FRANK M. PECK,
10 Petitioner,
11 vs.

Case No. CR06P2580
Dept. 6

12 WARDEN, N.D.O.P. and
13 THE STATE OF NEVADA,
14 Respondents.
15 _____ /

16 OPPOSITION TO MOTION FOR SANCTIONS

17 COMES NOW MARY LOU WILSON, and hereby files this Opposition to Motion for
18 Sanctions.

19 A Motion to Withdraw counsel was filed on October 15, 2013 and Request for Submission on
20 February 5, 2013. Peck has filed two civil actions against counsel and Bar Complaints based
21 upon activity in the above-entitled action.

22 Defendant Wilson is court-appointed and pursuant to NRS 41.032(2), no action may be
23 brought against an officer of the state which is: Based upon the exercise or performance or the
24 failure to exercise or perform a discretionary function or duty on the part of the state or any of its
25 agencies or political subdivisions or of any officer, employee or immune contractor of any of
these, whether or not the discretion involved is abused. A "public officer" or "officer" includes "
[a] public defender and any deputy or assistant attorney of a public defender." *Ramirez*, 105
Nev. at 220, 773 P.2d at 344 (quoting NRS [110 Nev. 1028] 41.0307(4)(b)). A public defender is

1 immune from suit for malpractice arising out of discretionary decisions made pursuant to his or
2 her duties as a public defender. Id. at 220, 773 P.2d at 344-45. This rule is not implicated in these
3 appeals, nor does our decision today in any way affect this rule as it applies to public defenders.
4 Court-appointed counsel - Since the time of our decision in *Ramirez v. Clark Co. Public*
5 *Defender*, 105 Nev. 219, 773 P.2d 343 (1989), NRS 41.0307(4)(b) has been amended. A "public
6 officer" or "officer" now includes not only a public defender but also "an attorney appointed to
7 defend a person for a limited duration with limited jurisdiction." See 1993 Nev.Stat., ch. 547, § 3
8 at 2261 (effective July 1, 1993). Thus, court-appointed attorneys now enjoy the same degree of
9 immunity as is extended to public defenders.
10

11 Peck alleges ineffective post conviction counsel for failure to include him in the conversation
12 with expert witness, Anjaria. However, it is objectively reasonable conduct for counsel to
13 conference with an expert witness absent Petitioner who resides in prison. Additionally, counsel
14 cannot be held liable for malpractice arising out of discretionary decisions made pursuant to their
15 duties as court-appointed defense counsel. Cf. *Ramirez*, 105 Nev. at 220, 773 P.2d at 344-45.
16 Also, *McKague v. Whitley*, 112 Nev. 159 (Nev., 1996) stands for the proposition that there is no
17 statutory right to counsel in a post conviction proceeding. Because of the foregoing, it is
18 requested that the Court deny sanctions against counsel and relieve her of her representation of
19 Peck.
20

21 DATED this 5th day of February, 2013.

22 By: s/s: MARY LOU WILSON
23 MARY LOU WILSON
24
25

1 AFFIRMATION

2 I, Mary Lou Wilson, hereby affirm that there is no social security number of any person in the
3 aforementioned document.

4 DATED this 5th day of February, 2013.

5 By: s/s: MARY LOU WILSON
6 MARY LOU WILSON
7 Attorney at Law

1 **CERTIFICATE OF SERVICE**

2 I, Mary Lou Wilson, hereby affirm that on the 5th day of February, 2013, the aforementioned
3 document was e-filed according to the Master List of e-filers and a hard copy of the same
4 provided through the U.S. Mail as follows:

5 The Honorable Judge Janet Berry, Department 1 (e-filed)

6 Frank Peck, Inmate Number 57106
7 High Desert State Prison
8 Post Office Box 650
9 Indian Springs, Nevada 89070
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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 02-05-2013:16:02:16
Clerk Accepted: 02-05-2013:16:06:24
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Opposition to Mtn
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

File Copy

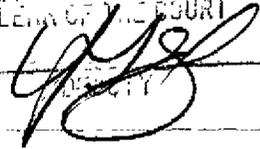
Code 2185
FRANK PECK 57106
HDSP Box 650
Indian Springs, NV, 89070
Petitioner

FILED

2013 FEB -5 PM 4:16

JUDY A. WILSON
CLERK OF THE COURT

BY



IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK, CASE NO. CR 06-P-2580
Petitioner, Dept No. 6

vs.

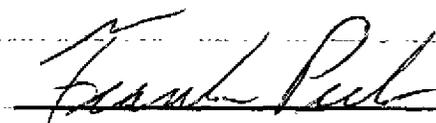
The State of Nevada,
Respondent

MOTION FOR SANCTIONS

Comes Now, the Petitioner, Frank M. Peck
pro se hereinafter Mr. Peck with his
Motion for Sanctions.

This Motion is made and based upon all
papers and pleadings on file in this case as
well as the attached points and authorities,
NRCR rule 11. Affidavit of Mr. Peck.

Dated 1-27-13


FRANK PECK Pet, pro se

CR06P2580 DC 9900042889-011
POST FRANK MILFORD PECK (06 5 Pages
District Court 02/05/2013 04 16 PM
Washoe County 2185
nrc

Points And Authorities

Counsel Appointed for Mr. Peck intentionally excluded Mr. Peck from their one and only conference call with Mr. Peck's DNA expert Mehul B. Anjaria. If, Mr. Peck would have been included, counsel Mary Lou Wilson would have learned about Mr. Peck's challenge to the PCR-STR protocol, she also would have learned that the errors found by Mr. Anjaria, for example, the failure of Ms. Romero to document times and temperatures of the thermo cycler could reveal a false positive result, due to cross-hybridization.

Counsel, Mary Lou Wilson has misrepresented facts based upon incomplete information to this Court in her Notice of NO supplemental petition, intentionally damaging Mr. Peck's case.

Mr. Peck has set forth specific allegations supported by documentary evidence of misconduct by Mary Lou Wilson in his Reply to response to letter filed in this case on June 5th, 2012.

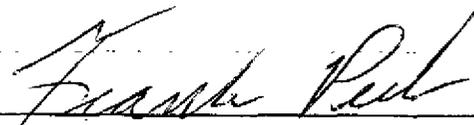
Counsel Mary Lou Wilson has violated a valid Court Order to supplement Mr. Peck's petition for writ of Habeas Corpus, she has wasted two years of everyone's time and fleeced the County for thousands and thousands of taxpayers dollars.

PLEASE SEE: exhibits exhibited in Mr. Peck's Reply to Response to letter filed in the instant case on JUNE 5th, 2012 that Mr. Peck cannot timely obtain copies to exhibit here.

Conclusion

Therefore, for the misrepresentations and intentional misconduct of Counsel Mary Lou Wilson this honorable Court should sanction counsel with appropriate sanctions.

Dated this 27th day of January 2013.



Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV 89070

3 Petitioner, pro V10.402

State of Nevada

ss

County of Washoe

AFFIDAVIT OF FRANK M. PECK

I Frank M. Peck do hereby swear under penalty of perjury that:

1. I am the Petitioner in case no. CR-06-P-2580.
2. All assertions in the attached Motion for Sanctions are true based on personal knowledge and i am competent to testify to all matters contained therein.
3. I bring the attached Motion for Sanctions in good faith and for no improper reason.

FURTHER AFFIANT SAYETH NAUGHT

Dated this 27 day of JANUARY 2013.

Signed under penalty of perjury NRS 208.165 and 28 USC sec 1746.


Frank M. Peck # 57106
HDSP Box 650
Indian Springs, Nv. 89070

V10.403

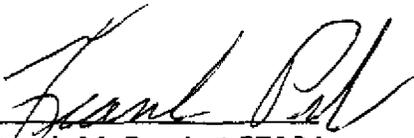
Certificate of Service and Affirmation

Pursuant to NRS 239 B 030 the attached Motion for Sanctions
does not contain social security numbers of any person and a true and correct
copy was mailed this date to:

MARY LOU WILSON
333 MARSH AVE
RENO, NV. 89509

Signed under penalty of perjury NRS 208.165 and 28 U.S.C. sec 1746.

Dated this 30th day of JAN 2013.


Frank M. Peck # 57106
HDSP Box 650
Indian Springs, Nv 89070

FILED

Electronically
02-08-2013:08:26:38 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3519201

1 Code 3370

2

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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FRANK PECK

Case No. CR06P2580

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Petitioner,

Dept. No. 6

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v.

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WARDEN, N.D.O.C. and
THE STATE OF NEVADA

13

Respondents.

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ORDER

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On October 15, 2012, MARY LOU WILSON filed a Motion for Withdrawal of Counsel on the basis that counsel has had to defend a Bar Complaint and Civil Complaint filed against her by the Petitioner, creating a conflict of interest. No opposition was filed. The Court finds that, pursuant to Nevada Supreme Court Rule 46, withdrawal of Ms. Wilson as the attorney of record is warranted.

Accordingly, the Motion for Withdrawal of Counsel is GRANTED.

DATED: This 6th day of February, 2013.


DISTRICT JUDGE

CERTIFICATE OF SERVICE

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I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 8th day of February, 2013, I electronically filed the foregoing with the Clerk
of the Court system which will send a notice of electronic filing to the following:

MARY LOU WILSON, ESQ.

TERRENCE MCCARTHY, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows:

Frank Peck 57106
HDSP Box 650
Indian Springs, NV 89070



Judicial Assistant

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 02-08-2013:08:26:38
Clerk Accepted: 02-08-2013:08:27:05
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ord Granting Mtn
Filed By: Heidi Boe

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

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PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 02-15-2013:20:30:18
Clerk Accepted: 02-19-2013:08:28:36
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
- **Continuation
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

Code 3790
Frank M. Peck 57106

FILED

HDSP Box 650

2013 FEB 19 PM 2:33

Indian Springs, NV, 89070

DEWANN L. LASTINGS
CLERK OF THE COURT

Petitioner, pro se.

[Signature]

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

Frank M. Peck,

CASE NO. CR-06-P-2580

Petitioner,

DEPT NO. 6

vs.

WARDEN NDOP AND

The State of Nevada,

Respondents.

REPLY TO OPPOSITION TO MOTION FOR SANCTIONS

Comes Now, the Petitioner, Frank M. Peck pro se
hereinafter Mr. Peck with his Reply to opposition
to Motion for sanctions.

This Reply is made and based upon all papers and
pleadings on file in this case as well as the attached
points and authorities and Affidavit of Mr. Peck.

Dated Feb 8th 2013.

[Signature]

Frank M. Peck Pet pro se
VPO.409

CR06P2580 DC-990003185-009
POST FRANK MILFORD PECK (D6 7 Pages
District Court 02/19/2013 02:32 PM
Washoe County
NV

Points and Authorities

COUNSEL Mary Lou Wilson must know that she is NOT IMMUNE from sanctions from this Court.

After being appointed in Mr Peck's case on 7-21-2010 the very first motion filed by counsel on 8-11-2010 for telephonic conference counsel misrepresented her call capabilities and actually lied to this Court as Mr Peck has pointed out in his Motion for sanctions.

COUNSEL Mary Lou Wilson NEVER ONCE visited Mr. Peck to discuss this case.

Mary Lou Wilsons ASSISTANTS obviously NEVER CONVEYED ANY information to counsel from Mr. Peck.

Mary Lou Wilsons Assistant John Whittaker had NO idea what PCR or BFLP was much less the difference between protocols, nor did Mr Whittaker know what the AEDPA was!

Mary Lou Wilson caused this situation
Not Mr. Peck.

Mr. Peck had a good experience with
professional counsel Karla Butko because
she communicates with her clients she also
personally visited with Mr. Peck traveling all
the way to Ely to do so.

This is very unfortunate that Ms. Wilson
chooses to do business in this fashion.

Mr. Peck has had to go to extreme
lengths to get her attention.

As this Court can see from the Supplemental
Petition that Mr. Peck has filed, Mr. Peck has
meritorious issues and deserves effective counsel
for (I R C P) initial review collateral proceeding
or substantial time to file a comprehensive
petition prose.

Mr. Peck knows that this Court has a pre-conceived notion that Mr Peck is trying to "Derail proceedings" This is "NOT NOR HAS IT EVER BEEN Mr. Pecks intent".

"Mary Lou Wilson refused to work with Mr. Peck". "As did Mr. Lindsay".

Mr. Peck NEVER saw his counsel. Mr Peck had two (2) 15 min now privileged telephone calls TOTAL.

Conclusion

To be blunt. Mary Lou Wilson intentionally lied to this Court to cover up her call capabilities. Counsel must communicate with her clients and not leave that to her assistants.

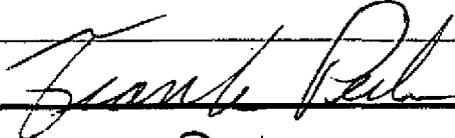
Ms Wilson intentionally harmed Mr Peck's case by refusing to file meritorious issues and filing a notice of no supplemental petition out of spite after being served a summons and complaint and all after NOT notifying this Court of the suit.

Therefore

This Honorable Court should sanction Mary Lou Wilson by repayment of County funds less investigative fees for wasting Mr. Peck's and this Courts time and ORDER All Attorneys who accept public appointments to have a telephone subscription to Jail and Prison telephone systems to accept collect calls from clients consistent with the Nevada Supreme Court Order ADKT-411 Oct. 16, 2008.

Dated this 8th day of February 2013.

Respectfully submitted


FRANK M. PECK 57106
HDSP Box 650
Indian Springs, NV, 89070
Petitioner, pro se.

State of Nevada ss
County of Washoe Affidavit of Frank M. Peck

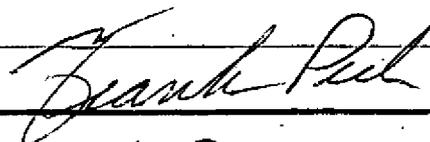
I Frank M. Peck do hereby swear under penalty of perjury that:

1. I am the Petitioner in WDC case CR-06-P-2580.
2. All assertions in the attached Reply are true based upon personal knowledge and I am competent to testify to all matters contained therein.
3. I bring this Reply in good faith and for no improper reason.

further Affiant sayeth naught

Dated this 8th day of February 2013.

Signed under penalty of perjury NRS ^{208.165} ~~239.13-03~~ ^{MD} 60
and 28 USC 1746.



Frank M. Peck 57106

HDSP Box 660

Indian Springs, NV, 89070

Petitioner, pro se.

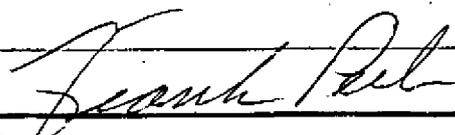
Certificate of service and Affirmation

PURSUANT TO NRS 239 B 030 THE ATTACHED
REPLY DOES NOT CONTAIN SOCIAL SECURITY NUMBERS
OF ANY PERSON AND A TRUE AND CORRECT COPY
WAS MAILED THIS DATE TO:

MARY LOU WILSON ESQ.
333 MARSH AVE
RENO, NV. 89509

DATED THIS 10TH DAY OF FEBRUARY 2013.

SIGNED UNDER PENALTY OF PERJURY NRS 208.165
AND 28 USC 1746.


FRANK PECK 57106
HDSP BOX 650
INDIAN SPRINGS, NV. 89070
PETITIONER

CR06P2580 DC-9900043227-026
POST: FRANK MILFORD PECK (D6 4 Pages
District Court 02/20/2013 02:35 PM
2490
Washoe County NVNS
nr

Code 2490
1 Frank M. Peck #57106
2 H.D.S.P. Box 650
3 Indian Springs, Nv, 89070
4

FILED
2013 FEB 20 PM 2:35

CLERK OF THE COURT
[Signature]

5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6 **IN AND FOR THE COUNTY OF WASHOE**

7 Frank M. Peck,
8 Petitioner,
9 vs.
10 The State of Nevada
11 Respondent.
12 _____/

Case No. CR-06-P-2580
Dept No. 6

13
14 Comes Now, the Petitioner, Frank M. Peck prose hereinafter Mr. Peck
15 with his MOTION TO RENEW ALL MOTIONS AND PLEADINGS

16 This motion is made and based upon all papers and pleadings
17 on file in this case as well as the attached points and authorities, the District
18 Court Rules, affidavit of Mr. Peck and any attached exhibits.

19 Dated this 12th day of Feb 2013.

20
21 *Frank Peck*
22 Frank M. Peck # 57106
23 H.D.S.P. Box 650
24 Indian Springs, Nv. 89070
25

Points and Authorities

Petitioner moves this court to RENEW
All Motions and Pleadings filed by Petitioner
since the appointment of Mary Lou Wilson
on 7-21-2010.

Conclusion

Therefore, Petitioner requests that this
Court renew All Motions and Pleadings
filed by Petitioner during the
intentional communication breakdown caused
by initial review collateral proceeding counsel
Mary Lou Wilson filed by Petitioner since
her appointment on 7-21-2010.

Dated this 13th day of February 2013.

Frank M. Peck

Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV. 89070

Petitioner, pro se.

State of Nevada

SS

County of Washoe

AFFIDAVIT OF FRANK M. PECK

I Frank M. Peck do hereby swear under penalty of perjury that:

1. I am the Petitioner in case no. CR-06-P-2580.
2. All assertions in the attached Motion to Renew are true based on personal knowledge and I am competent to testify to all matters contained therein.
3. I bring the attached Motion in good faith and for no improper reason.

FURTHER AFFIANT SAYETH NAUGHT

Dated this 13th day of Feb 2013.

Signed under penalty of perjury NRS 208.165 and 28 USC sec 1746.


Frank M. Peck # 57106
HDSP Box 650
Indian Springs, Nv. 89070

V10.418

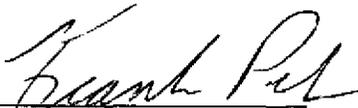
Certificate of Service and Affirmation

Pursuant to NRS 239 B 030 the attached Motion to Review
does not contain social security numbers of any person and a true and correct
copy was mailed this date to:

District Attorney _____
Terrance Mc Carthy
75 Court st
Reno NV 89501

Signed under penalty of perjury NRS 208.165 and 28 U.S.C. sec 1746.

Dated this 13th day of Feb 2013.


Frank M. Peck # 57106
HDSP Box 650
Indian Springs, Nv 89070

CR06P2580 DC-9900043227-027
POST: FRANK MILFORD PECK (06 4 Pages
District Court 02/20/2013 02:35 PM
Washoe County 2610
nnc

FRANK M. PECK 57106
HDSP Box 650
Indian Springs, Nv, 89070
Petitioner

FILED
2019 FEB 20 PM 2:35
CLERK OF THE COURT
JMP

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Frank M. Peck,
Petitioner,

CASE NO. CR-06-P-2580
DEPT NO. 6

vs.

Warden Nevin,
The State of Nevada,
Respondents.

EX PARTE
JUDICIAL NOTICE
AND REQUEST TO SEAL SAME

Comes Now, the Petitioner, Frank M. Peck prose
hereinafter Mr Peck with his Ex parte Judicial
NOTICE AND request to seal same.

This NOTICE is made AND based upon all
PAPERS AND pleadings on file in this CASE
AS well AS the attached points and Authorities
and Affidavit of Mr. Peck.

Dated 2-12-13

Frank Peck
Frank M. Peck Pet, prose.

Points and Authorities

Mary Lou Wilson has abandoned her client and should not be privy to this document.

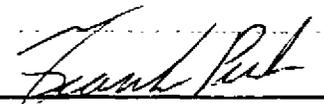
Mary Lou Wilson filed a Notice of NO supplemental petition because Mr. Peck's DNA expert Mr. Anjaria found no obvious signs of Foul Play.

However, the errors detected by Mr. Anjaria are clearly, some alone, or in conjunction with others, enough to render the analysis unreliable and therefore would have been inadmissible at trial and should be pursued in post-trial proceedings.

Additionally, this Court should be aware that Mr. Peck's DNA expert Mr. Anjaria is understandably reluctant and not fully supportive of Mr. Peck's challenge to the PCR-STR protocols, as it effects the very livelihood of Mr. Peck's DNA expert.

Mr. Peck also notices from the Docket that Mr. Peck's expert is being paid for a "formal Report". If this is so, then a "report" should be filed.

Dated this 12th day of Feb 2013.



Frank Peck, Petitioner
V10.421 pro se.

State of Nevada

SS

County of Washoe

AFFIDAVIT OF FRANK M. PECK

I Frank M. Peck do hereby swear under penalty of perjury that:

1. I am the Petitioner in case no. CR-06-P-2580.
2. All assertions in the attached Ex parte Jud notice are true based on personal knowledge and i am competent to testify to all matters contained therein.
3. I bring the attached Judicial notice in good faith and for no improper reason.

FURTHER AFFIANT SAYETH NAUGHT

Dated this 12th day of Feb 2013.

Signed under penalty of perjury NRS 208.165 and 28 USC sec 1746.



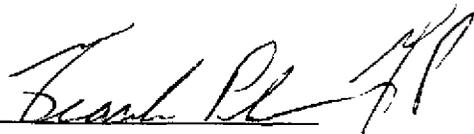
Frank M. Peck # 57106
HDSP Box 650
Indian Springs, Nv. 89070

Certificate of Service and Affirmation

Pursuant to NRS 239 B 030 the attached Judicial Notice
does not contain social security numbers of any person and a true and correct
copy was mailed this date to:

Signed under penalty of perjury NRS 208.165 and 28 U.S.C. sec 1746.

Dated this 12th day of Feb 2013.



Frank M. Peck # 57106
HDSP Box 650
Indian Springs, Nv 89070

4109

FRANK M. PECK 57106

HDSP Box 650

Indian Springs, NV. 89070

Petitioner, pro se.

FILED

2013 MAR -5 AM 10:57

JOEY ORRUNA HASTINGS
CLERK OF THE COURT

BY [Signature]
DEPUTY

CR06P2580 DC-6600043606-001
POST: FRANK MILFORD PECK (D 21 Pages
District Court 03/05/2013 10 47 AM
Washoe County 4109
Nor

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK,
Petitioner,

CASE NO. CR-06-P-2580
DEPT NO. 6

VS

WARDEN NEVIN,
State of Nevada,
Respondents.

SECOND

SUPPLEMENTAL TO PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION) RELIEF NRS 34 et seq.

Comes Now, the Petitioner, FRANK M. PECK pro se
hereinafter Mr. Peck with his supplemental.

This supplement is made and based upon all
PAPERS AND PLEADINGS ON FILE IN THIS CASE
AS WELL AS THE ATTACHED POINTS AND AUTHORITIES
AND AFFIDAVIT OF MR. PECK.

Dated 2-21-13

[Signature]
FRANK M. PECK Pet, pro se.

V10.424

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF 2ND SUPPLEMENTAL PETITION

All issues raised herein are claimed under the Constitutional protections set forth in the Due-Process and Fair-Trial clauses of the 5th, 6th and 14th Amendments to the U.S. Constitution 28 USC 2254. And the Constitutional protections guaranteeing the effective assistance of counsel under United States Supreme Court caselaw in Strickland v. Washington, 466 US 668, 691, 80 L Ed 2d 674 (1984); Faretta, 422 US 806 (1975), et al.

JUDICIAL NOTICE

This supplemental petition is presented in accordance with Haines v. Kerner, 92 S.Ct. 594 at 596, wherein pro se pleadings are to be held to a less stringent standard than those pleadings drafted by Attorneys.

"Petitioner does not have all transcripts to refer to."

PROCEDURAL HISTORY

Mr. Peck was convicted of one count of sexual assault following a jury trial held on May 6-12 2009 in Washoe District Court dept 6, Brent T. Adams. Direct Appeal Denied May 7, 2010.

IAC Failure to investigate

Gr-1.

Petitioner's USCA 5th 6th & 14th rights were violated by counsel Robert Lindsay's failure to investigate facts and evidence against his client and in fact only retained an investigator 15 days prior to trial to serve subpoenas, Wiggins v. Smith, 539 US 510 (2003).

Robert Lindsay failed to investigate facts and evidence against his client. If counsel would have investigated he would have learned that the only evidence against his client was totally fabricated, rendering the only evidence against his client inadmissible, in turn requiring dismissal of the charge against his client. Counsel would have learned that the product of the PCR-STR protocol is MAN MADE ie: fabricated evidence would have been irrelevant / inadmissible evidence and would have mandated dismissal of the charge. Strickland v Washington, 466 US 668 (1984) Nelson v Hargett, 989 F 3d 847 850 (5th Cir 1993) Id Rickman v Bell, 131 F3d 1150, 1157 (6th Cir 1997) Grossclaw v. Bell, 130 F.3d 1161-70 (6th Cir-97).

Robert Lindsay made "NO INVESTIGATION"

As such, there is nothing to judge the reasonableness, Strickland, supra, Wiggins v Smith, 539 US 510 (2003) Ramirez v. Berghuis, 490 F.3d 482 488 (6th Cir 2007) Id United States v. Barbour, 813 F2d 1232 1234 (DC Cir 1987) Id Thomas v. Lockhart, 738 F.2d 304 308 (8th Cir 1984).

IAC Failure to Investigate cont

Gomez v. Beto, 462 F.2d 596, 597 (5th Cir 1972)

"(When a defense counsel fails to investigate his client's only possible defense although requested to do so by him; and fails to subpoena witnesses in support of the defense, it can hardly be said that the defendant had the effective assistance of counsel").

GR-2

Petitioner's USCA 4th was violated by counsel Robert Lindsay for failing to move the Court to suppress evidence. Kimmelman Ed Green WFOA

There is no doubt that if counsel had litigated Petitioner's 4th Amendment claim to exclude the DNA evidence based on the fact that DNA derived from the PCR-STR protocols are irrelevant as being non-human, synthetic, man-made, "fabricated evidence" proving Petitioner's 4th Amendment claim meritorious and that there is a reasonable probability the verdict would have been different absent the excludable evidence demonstrating actual prejudice see: Kimmelman v. Morrison, 477 US 365, 375 91 L. Ed. 2d 305 (1986); Green v. Nelson, 595 F.3d 1245, 1248-52 (11 Cir 2010). Strickland, 466 US, 668 (1984). See: (EX-1).

DENIAL of COUNSEL

Gr-3.

Petitioners USCA 5, 6:14 were violated by the District Court Judge by leaving Petitioner unrepresented by counsel during adversarial farotta hearing. Strickland & Gideon infra.

During the 'Farotta' hearing, counsel Robert Lindsay became an adverse "witness" against his client during these proceedings, therefore during the hearing Petitioner was not represented by an attorney whose efforts were dedicated solely to the effective representation of his clients interests at a critical hearing, which resulted in the denial of representation at trial. United States v. Wadsworth, 830 F2d 1500 (9th Cir 1987). Strickland 466 US, 668 (1984).

Structural error is not harmless Fulminante, 499 US, at 310; US v. Annigoni, 96 F3d 1132 1144 (9th Cir 1996). Gideon v. Wainwright, 372 US 335 (1963).

DENIAL OF CONTINUANCE AND CONSTRUCTIVE
DENIAL OF COUNSEL

GR-4

Petitioners USCA 5th 6th & 14th were violated when the District Court Judge in granting the MOTION TO PROCEED PROSE ignored the "provision" for time and tools to prepare a defense, CONSTRUCTIVELY DENYING PETITIONER THE RIGHT TO COUNSEL AND TO PREPARE A DEFENSE

United States v. Wadsworth, 830 F2d 1500 (9th Cir 1987)

United States v. Rodgers, 775 F2d 533, 540 (7th Cir 1985)

("The denial of a continuance can sometimes be tantamount to the denial of counsel").

Such error is structural and cannot be considered harmless. Fulminante, 499 US at 310

SEE U.S. v. Anwarani, 96 F3d 1132 1144 (9th Cir 1996)

(ENBANC); Yarborough v. Keane, 101 F3d 894 897

(2 Cir 1996) (errors that undermine structural fairness may be structural errors even when lesser violation of same constitutional right is subject to harmless error review); U.S. v

Harbin, 250 F3d 532 544 (7th Cir 2001) (errors

that fall between structural and trial errors are presumptively prejudicial. Colgain v.

State, 102 Nev, 220; 719 P2d 1263 (1986).

GR 5

THE COUNTY COURT JUDGE AND
STANDBY COUNSEL INTERFERED AND
HARMED THE PETITIONERS CASE

PETITIONERS USCA 56314 rights to Due Process
AND A fair-trial were violated when the
court appointed standby counsel that had
just threatened Petitioner with bodily harm.

Standby Counsel Robert Bruce Lindsay took
control away from Mr. Peck and just began
questioning witnesses and even conceding
to the jury that Mr. Peck's Alibi defense
failed "All without permission or consulting Mr. Peck".
(No transcript to refer to)

The Supreme Court has held that while the
appointment of standby counsel can be a
very useful step in a case in which a defendant
wishes to represent himself, the proper role
of standby counsel is "quite limited". McKaskle v.
Wiggins, 465 U.S. 168 177-78, 104 S.Ct. 944, 950-51,
79 L.Ed. 2d 122 (1984). The Defendant preserves
actual control over the case he presents to the
jury: standby counsel cannot substantially
interfere with any significant tactical decisions,
cannot control the questioning of witnesses, and
cannot speak in place of the defendant on any
matter of importance. Id

Standby "counsel" is thus quite different from regular counsel. Standby counsel does NOT represent the defendant.

The Defendant represents himself, and may or may not seek or need the advise of the attorney "standing by", as such, the role of standby counsel is more akin to that of an observer, an attorney who attends the trial or other proceeding and who may offer advice, but who does not speak for the defendant or bear responsibility for his defense. Thus, as useful as standby counsel may be when a defendant wishes to represent himself, this Court holds that standby counsel is not "counsel" within the meaning of the Sixth Amendment. As such, Petitioner's Sixth Amendment rights to Counsel and his rights under Escobedo v. California, 472 U.S. 806 (1975) were "usurped" by the County Court Judge and Petitioner's Standby Counsel.

In other words, Mc. Peck was represented by Counsel who was "NOT COUNSEL".

If the Defendant had NO lawyer, prejudice is legally presumed in EVERY CASE, and the defendant is entitled to relief in EVERY CASE. Woodard v. Collins, 898 F.2d 1027 1028 (5th Cir 1990) (citing Cronic and Strickland). See ALSO Martin v. McCotter, 796 F.2d 813 819-20 (5th Cir 1986) ("if the Accused is denied counsel... the Adversary process becomes presumptively unreliable").

Reversal is Warranted

GR-6

"Faretta" error is structural

Petitioners USCA 5 rights to Due Process were violated as Faretta error is structural, and therefore is not susceptible to harmless error analysis. McKaskie v. Wiggins, 465 U.S. 168 (1984).

The County Court Judge refused to substitute counsel forcing Petitioner to trial with ineffective, unprepared counsel who had not requested proper Discovery crucial to the defense of a DNA only case from the crimelab where allegations of Scientific fraud had been made previously. "Or represent himself."

The Discovery that counsel did request would have taken weeks to review if he had retained a qualified expert to review the materials. See: Discovery request dated (15) days prior to trial and subpoena duces tecum (Ex 2, 3.)

After subsequent review of an incomplete Discovery request, Expert Mehul B. Anjania was able to determine that the Washoe Crimelab does indeed perform extremely shoddy and sloppy work. See "Confidential" summary of findings filed as a "formal Report" by Mary Lou Wilson.

GR-1

Judicial Bias

Petitioners USCA 5, 6 rights to due process and a fair trial were violated by Judicial bias contributing to Petitioners conviction ARIZONA v. FULMINANTE, 499 US 279 (1991).

The County Court Judge's bias is reflected in his handling of Petitioners motions.

Mr. Peck filed a Motion to proceed pro se. The County Court Judge granted the Motion, but ignored the included request for time and tools to perfect a defense. The County Court Judge also intentionally kept Petitioner at the County Jail where no legal research or services exist. The County Judge also by this prevented Petitioner from filing any pre-trial motions or pleadings to produce or subpoena witness also violating Petitioners right to compel witnesses for his defense violating Petitioner's 6th Amendment to the US Constitution Right to Compel witnesses, Holmes v. S. Cal., 127 S.Ct. 1727 (2006). Had Mr. Peck been allowed research materials, communication with the outside world or perhaps an investigator, Mr. Peck would have learned that the PCR-STC protocol is "Fabricated Evidence" and his case would have been dismissed. Tate v Wood 963 F.2d 20, 26 (2nd Cir 1992) 11 V10.434

furthermore, if Mr. Peck proceeding prose to trial would not have been deprived of all research materials, Mr. Peck would have had cause to object to the introduction of the DNA evidence at trial.

Thus the prejudice can be seen from Petitioner's inability to build a defense from his total restriction to send and receive information from the County Jail.

As such, the actual bias of the trial Judge and his lack of regard for Petitioner's rights to put on a defense cannot be ignored.
Arizona v. Fulminante, 499 US 279 (1991).

Brady Violation

GR-8

Petitioner's 5th Amendment to the USCA WERE violated by the State by failing to disclose evidence favorable to the accused.

Brady v. Maryland, 373 US 83 (1963)

The state failed to disclose favorable exculpatory evidence to the Defense by failing to provide fingerprint and bootprint evidence and analysis of same. Kyles v. Whitley, 514 US 419 (1995), Id Brady supra.

If Petitioner would have been provided the exculpatory evidence he could have shown the fingerprint evidence WAS NOT Petitioner's and that the shoe size WAS NOT Petitioner's.

These further exculpatory factors may well have in conjunction with the other doubt the Jury had, that was exhibited from their questions, could have made a difference in the outcome of the trial. Such intentional destruction of exculpatory evidence was in bad faith. Arizona v. Youngblood, 488 US 51 (1988). Washington v Texas, 388 US 14 (1967).

GR-9

PROSECUTORS USE OF PERJURED TESTIMONY/MISCONDUCT

Petitioners Right to due process and a fair trial under the 5th amend to the US Constitution were violated. when Prosecutor Dave Clifton knowingly used perjured testimony to obtain a conviction when the prosecution KNEW or should have known the testimony was false and prejudice resulted. Napue v. Illinois, 360 US 264 (1959).

Prosecutor solicited false testimony from crimelab analyst Jeffery Riolo that the PCR protocol is "like growing the DNA" and asked if that was a fair statement that Jeffery Riolo answered "sure". Prosecutor Dave Clifton knew or should have known that NO DIRECT EVIDENCE From the PCR Protocol is neither "grown" nor "Amplified". The direct evidence is copied with synthetic materials enough times to analyze and is "NOT HUMAN DNA". This testimony not only was misleading but FALSE. Berger v. U.S., 295 US 78 (1935) Id Darden v. Wainwright, 477 US 168 (1986). Thus, Petitioner's conviction was based on evidence known to be false. Miller v. Pate, 386 US 693, 694 (1967) "The reddish brown stains on the shorts were not blood, but paint." Whereas here, "Mr. Peck's 'DNA' was NOT analyzed nor Amplified".

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

GR-10

Petitioners USCA 6 rights were violated when Appellate Counsel failed to raise the "significant and obvious" issue that inter alia the PCR-STR protocol is the manufacture of evidence at a molecular scale, *Evitts v Lucey*, 469 US 387 L. Ed. 2d 821 (1985).

Clearly, this issue is strongest, as such Appellate Counsel was deficient.

Clearly, the omitted claim holds a reasonable probability that would have altered the outcome of the appeal had it been raised.

Hawkins v. Hannigan, 185 F.3d 1146, 1157 (10 Cir 1999) failure to raise "dead bang winner" on appeal constitutes ineffective assistance. *Neill v. Gibson*, 278 F.3d 1044 1057 n.5 (10th Cir 2001) *Smith v. Robbins*, 528 US 259 (2000).

STATE ERRORS DENIED A FAIR TRIAL

GR-11

Petitioner's USCA⁵ rights to due-process and a fair-trial were violated from State Court Errors which, when taken together, denied Petitioner a fair trial. . . Estelle v. McGuire, 502 US 62 (1991).

1. The State Court denied Petitioner time and tools to prepare a defense.
2. The State Court denied Petitioner's Meritorious Pre-trial Petition for writ of Habeas Corpus in the face of total Attorney-Client breakdown.
3. The State Court still refused to address or otherwise acknowledge Petitioner's Pre-trial Writ even after stating that it would be addressed at trial during a telephonic hearing held on or about May 5th, 2009.
4. The State Court denied Petitioner the right to file Pre-trial Motions from County Jail even after granting pro se status to the Defendant.

5. The State Court denied Petitioner Jury Questionnaires until the day of Jury selection.

6. The State Court denied Petitioner to communicate with his witnesses prior to their testimony.

7. The State Court denied Petitioner any access to any legal material or supplies whatsoever to build a defense.

8. The State Court denied Petitioner any access whatsoever to standby counsels assistance prior to trial.

9. The State Court denied Petitioner of his right to compel witnesses to aid in his defense from County Jail.

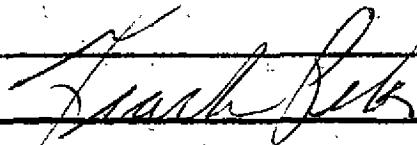
10. The State Court denied Petitioner's right to defend himself at trial. SEE: HOLMES V. S. CAR, 126 S.Ct. 1727 (2006).

Conclusion

Therefore, this Court should Grant
the instant writ and Dismiss the
Charge against Petitioner.

Dated this 26th day of February 2013.

Respectfully submitted



Frank M. Peck 57106

HDSP Box 650

Indian Springs, Nv. 89070

Petitioner, pro se.

STATE OF NEVADA ss
County of Washoe Affidavit of Frank M. Peck

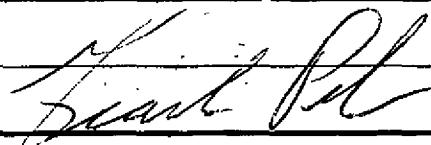
I Frank M. Peck do hereby swear under penalty of perjury that:

1. I AM the Petitioner in WDC case CR-06-P-2580.
2. All assertions in the attached 2nd supplemental to Petition for writ of habeas corpus post-conviction relief are true based on personal knowledge and I am competent to testify to all matters contained therein.
3. I bring this supplement in good faith and for no improper reason.

further affiant sayeth naught

Dated this 26th day of February 2013.

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.



Frank M. Peck 57106

HO SP Box 650

Indian Springs, NV. 89070

Petitioner, pro se.

Certificate of service and affirmation

2nd Supplemental to

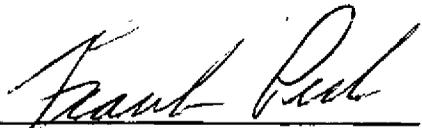
Pursuant to NRS 239 b.030 the attached HABEAS CORPUS Post-Conviction

does not contain social security numbers of any person and a true and correct copy was mailed this date to:

District Attorney _____
75 Court Street _____
RENO, NV. 89501 _____

Dated this 27th day of Feb 2013.

Signed under the penalty of perjury NRS 208.165 and 28 U.S.C. sec 1746.



Frank M. Peck #57106
H.D.S.P. Box 650
Indian Springs, Nv. 89070

Index of exhibits

Exhibit number 1 Pages 1

Exhibit description RFLP vs PCR-STR INESCAPABLE FACTS

Exhibit number 2 Pages 5

Exhibit description Discovery Motion filed approx 20 days
prior to Jury trial.

Exhibit number 3 Pages 3

Exhibit description Subpoena Duces Tecum "filed on the
Second day of trial".

Exhibit number _____ Pages _____

Exhibit description _____

Exhibit number _____ Pages _____

Exhibit description _____

Exhibit number _____ Pages _____

Exhibit description _____

Exhibit number _____ Pages _____

Exhibit description _____

Exhibit number _____ Pages _____

Exhibit description _____

CRD6P2580 DC-9900043606-002
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Washoe County 4105
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EXHIBIT 1

EXHIBIT 1

INESCAPABLE FACTS

RFLP vs PCR-STR

Whereas the RFLP protocol is a direct analysis of the physical DNA evidence, "PCR-STR is not".

Facts:

1. Complementary DNA ("cDNA") is man made synthetic DNA.
2. Complementary DNA ("cDNA") is synthesized from Messenger RNA ("mRNA").
3. The product of the PCR protocol and subsequent STR analysis is of 100% synthetic man made materials completely devoid of Human DNA.

The synthetic DNA molecule is complementary DNA ("cDNA"). cDNA is synthesized from mRNA using complementary base pairing in a manner analogous to RNA transcription. The process results in a double-stranded DNA molecule with a sequence corresponding to the sequence of an mRNA produced by the body. Because it is synthesized from mRNA, cDNA contains only the exon sequences, and thus "none of the intron sequences" from a native gene sequence.

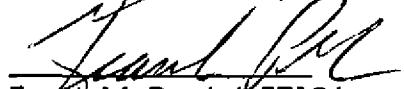
"cDNA's) are" chemically manipulated and are markedly different from that which exists in the body" and are even, "patent-eligible".

For all the same reasons that cDNA's are patent-eligible cDNA's cannot be considered as direct evidence in a criminal trial, because the product of the PCR protocol and the subsequent analysis is of "synthetic man-made materials devoid of Human DNA" brought into the process from an outside source, literally, off the shelf, manipulated, then referred to as "direct evidence".

See:

THE ASSOCIATION FOR MOLECULAR PATHOLOGY, THE AMERICAN COLLEGE OF MEDICAL GENETICS, THE AMERICAN SOCIETY FOR CLINICAL PATHOLOGY, THE COLLEGE OF AMERICAN PATHOLOGISTS, HAIG KAZAZIAN, MD, ARUPA GANGULY, PHD, WENDY CHUNG, MD, PHD, HARRY OSTRER, MD, DAVID LEDBETTER, PHD, STEPHEN WARREN, PHD, ELLEN MATLOFF, M.S., ELSA REICH, M.S., BREAST CANCER ACTION, BOSTON WOMEN'S HEALTH BOOK COLLECTIVE, LISBETH CERIANI, RUNI LIMARY, GENAE GIRARD, PATRICE FORTUNE, VICKY THOMASON, AND KATHLEEN RAKER, Plaintiffs-Appellees, v. UNITED STATES PATENT AND TRADEMARK OFFICE, Defendant, and MYRIAD GENETICS, INC., Defendant-Appellant, and LORRIS BETZ, ROGER BOYER, JACK BRITAIN, ARNOLD B. COMBE, RAYMOND GESTELAND, JAMES U. JENSEN, JOHN KENDALL MORRIS, THOMAS PARKS, DAVID W. PERSHING, AND MICHAEL K. YOUNG, IN THEIR OFFICIAL CAPACITY AS DIRECTORS OF THE UNIVERSITY OF UTAH RESEARCH FOUNDATION, Defendants-Appellants, UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT 653 F.3d 1329653 F.3d 1329; 2011 US App LEXIS 156492011 U.S. App. LEXIS 15649; 99 USPQ2D (BNA) 139899 U.S.P.Q.2D (BNA) 1398 2010-1406 - July 29, 2011, Decided

Dated this 3rd day of January 2013.



Frank M. Peck # 57106
H.D.S.P. Box 650
Indian Springs, Nv. 89070

V10.446



CR06P2580 DC-9900043606-003
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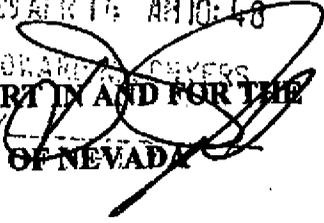
EXHIBIT 2

EXHIBIT 2

ORIGINAL

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Code ²⁰¹⁵
ROBERT BRUCE LINDSAY
Nevada State Bar #2237
595 California Avenue
Reno, Nevada 89509
(775) 378-9031

FILED
2009 APR 14 AM 10:48
HOWARD W. CHIVERS
BY 

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR THE
COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA

Plaintiff,

v.

Case No: CR- 06- 2580

FRANK PECK

Defendant,

Department 7

**MOTION FOR DISCOVERY AND FOR EXCULPATORY EVIDENCE
BRADY, GIGGLIO AND OTHER BAD ACTS EVIDENCE**

Comes now, Frank Peck, by and through his undersigned counsel, ROBERT BRUCE LINDSAY, and moves this Court for an Order regarding the **Brady Material**, fully recognizing that the district Attorney, David Clifton is going to make his entire file available to me this week and provide a CD of the protocol used by his Experts regarding the DNA and that such materials will be reviewed by Doctor Llewellyn, the Defense Expert, to review all aspects of the gathering of the initial vaginal swab and the original genetic markers from 1994 and the numerous checks which were run by the State over the years against the original 1994 markers. Pursuant to Brady and the case law:

Brady v. Maryland, 373 U.S. 83 (1963): **Brady** (evidence favorable to the defense and material to their guilt or innocence), **Giglio** (any promises, inducements or threats made to witnesses to gain cooperation in the investigation or prosecution), and **Jencks** (any witness statements required to be disclosed); This case has been set for May 5th, 2009, and the State, through David Clifton, has made his files available to this counsel; this Court is asked to simply remind the District Attorney that there is a continuing duty to update all discovery; and anticipates that all discovery will be made available to counsel; a review of the entire District Attorney's file is anticipated this week in Mr. Clifton's office as well as a CD that has

1 the DNA protocol used by the State's Experts and which will be reviewed by Dr. Llewellyn with defense
2 counsel: This should serve as a formal request to sit with trial counsel and make sure that all discovery
3 has been made available to the Defense, especially the DNA materials which are essential to .

4 To release to the Defense of any and all materials, any follow up statements that have been
5 made over the past year months, made to the police, The Nevada State Prison, the Sparks or Reno Police
6 Department, the District Attorney's Investigator, and any other statements that have been made by the
7 Defendant, Frank Peck, and are known by Law Enforcement; The video tape recordings of DNA testing,
8 to be made available, and a discovery stipulation has previously been entered by Counsel on behalf of
9 FRANK PECK..

10 ***OTHER BAD ACTS EVIDENCE***

11 Any Bad Acts Evidence that the District Attorney possesses or intends to use at Trial should
12 be heard outside the presence of the jury prior to the mention in any way before the jury: I ask the
13 State to please not mention in the Opening of the State to the Jury or at any time until the Court
14 has given its exact approval to any evidence the State intends to offer. Other Bad Acts evidence,
15 without prior court approval, at trial, is unnecessary, and can only make appellate issues abound.

16 WHEREFORE, Defendant respectfully requests this Court to direct the Washoe County
17 District Attorney to immediately disclose to Defendant, any evidence of alleged similar crimes,
18 acts, or wrongs it intends to offer at trial and the identities of those persons and the documentary
19 evidence, if any, through whom the Government will seek to produce such evidence. Similarly,
20 production of investigated and unsubstantiated OTHER BAD ACT allegations should likewise
21 be produced under the dictates of Brady v. Maryland, 373 U.S. 83 (1963): That is, any
22 exculpatory evidence possessed by the prosecution, regardless of the Prosecutor's intent to use
23 the same at trial, specifically all materials regarding the defendant and the Repeat Offender
24 Program or records kept by the Department of Prisons by the State of Nevada;

25 All the evidence the State intends to use at trial must be weighed for its probative
26 value versus its prejudicial effect.

1 The Court and the State is reminded that this counsel is saddled with a difficult
2 situation, my client has recently moved to remove me as counsel, although the last meeting we
3 had in Carson City went well, but my future ability to communicate with my client renders a
4 possible mistrial much greater on appellate review, the Court and the District Attorney are asked
5 to respect the Due Process Rights of Frank Peck and to insure that a fair trial is had for all
6 parties:

7
8 Dated this 14th of April, 2009;

9
10 Respectfully submitted,

11 
12 ROBERT BRUCE LINDSAY
13 ATTORNEY FOR FRANK PECK

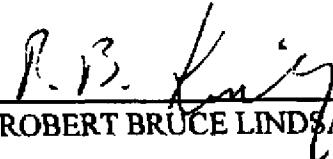
CERTIFICATE OF SERVICE

ROBERT BRUCE LINDSAY, April 14th, 2009, CR-06-2580; HAND DELIVERED to the Washoe County District Attorney's Office, Motion for Discovery and For Exculpatory Evidence and Other Bad Acts Evidence; Motion For DNA Expert and Notice of Expert Witness for Frank Peck of the above entitle cases to the Nevada Supreme Court;

AT THE FOLLOWING ADDRESS;

RICHARD A. GAMMICK
Washoe County District Attorney
GARY H. HATLESTAD
Chief Appellate Deputy
P.O. Box 11130
Reno, Nevada 89520

04/14/09
DATE


ROBERT BRUCE LINDSAY

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

Motion For Dismissal

(Title of Document)

filed in case number: _____

Document does not contain the personal information of any person

-OR-

Document contains the personal information of a person as required by:

A specific state or federal law, to wit:

(State specific state or federal law)

-or-

For the administration of a public program

-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 04/14/09

R. W. Lindsey
(Signature)

R. W. Lindsey
(Print Name)

Dependent
(Attorney for)



DC-9900043606-004
CROSP2580
POST FRANK MILFORD PECK (D6 4 Pages
District Court 03/05/2013 10 47 AM 4105
Washoe County JY05-
FX3

EXHIBIT 3

EXHIBIT 3

4065
CODE 4055

FILED

2009 MAY -7 AM 10:03

HOWARD W. CONYERS
BY [Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK PECK

Plaintiff,

vs.

Case No. CR06-2580

STATE OF NEVADA

Dept. No. 6

Defendant.

SUBPOENA DUCES TECUM

To: RENE ROMERO
(Name)

You are commanded to appear before the Second judicial District Court, State of Nevada, Washoe County, at the courtroom of said court, Department 6 at Reno, Nevada, on the 11th day of May 2009, at 10:00 AM, to testify on the part of DEFENDANT.

Any person failing to appear may be deemed in contempt of court, and shall be liable to the party injured in the sum of \$100.00, and for such damages as may be sustained by him/her on account of such neglect or refusal.

Dated this 6 day of May, 2009
HOWARD W. CONYERS

RONALD A. LONGIN, JR., CLERK OF THE COURT

STATE OF NEVADA
COUNTY OF WASHOE

by [Signature]
Deputy Clerk

I received the within Subpoena on the 6 day of May, 2009 and personally served a copy of the same upon Rene Romero.

Subscribed and sworn to before me this 7th day of May, 2009.

[Signature]

[Signature]
Signature of Person Making Service

Notary Public
LISA BARTELS
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 08-7522-2 - Expires August 6, 2012

Subpoena Duces Tecum requirements to be brought to court with this Subpoena:

1. S.D.T. on all of the lab techs and the experts that are being called by the State;
2. Rene Romero, Jeffrey Riolo, Maria Fassett, Richard Burger, Ronald Young, Ed Ship;
3. S.D.T. to bring with them all lab documentation from 1994 original samples, to all testing thereafter, including 2001, 2002, 2003, 2004, 2005, 2006 and any other years they may have tested;
4. S.D.T. all logs, drafted reports, peer review reports, internal review reports, make and model of all equipment used in the gathering, preservation or testing of the DNA samples from 1994 and the subsequent search for matches;
5. S.D.T. all, Storage protocols and any Bar code system used and all chain of custody documentation from 1994 forward;
6. S.D.T. all lab controls and raw data used, genophiler or genostat regarding the storage and possible degradation of the 1994 samples taken; all controls used by the lab mixtures, degradation, studder peaks, peak heights or imbalances, any blob noise or pull up, bleed through spikes, and data problems encountered in the storage or testing of the 1994 samples and all the matching that was attempted thereafter;
7. All population basis used and data base with dates, codis or offender data base, crime lab and caseload and personal inventory; any all quality control, with any verifying documents;
8. Rape Kit inventory, #R04014, with the chain of custody and index tracking cards and evidence logs; with any polymorphic probes used, and their origin, place of purchase, etcetera.
9. All audio and video recordings made of any of the DNA protocol or testing. over the years 1994 to the present regarding the Frank Peck case.

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

SUBPOENA

(Title of Document)

filed in case number: _____

Document does not contain the personal information of any person

-OR-

Document contains the personal information of a person as required by:

A specific state or federal law, to wit:

(State specific state or federal law)

-or-

For the administration of a public program

-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 5-7-2009

[Signature]

(Signature)

(Print Name)

(Attorney for)

3860

Frank M. Peck # 57106
H.D.S.P, Box 650
Indian Springs, Nv. 89070
Petitioner, prose.

FILED
2013 MAR -5 AM 11:26
JOEY ORDINA RASTINGS
CLERK OF THE COURT
BY *[Signature]*
DEPUTY

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

Frank M. Peck,
Petitioner,
vs.
Warden Nevin,
The State of Nevada,
Respondent's.

Case No. CR-06-P-2580
Dept No. 6

REQUEST FOR SUBMISSION OF MOTION TO RENEW ALL MOTIONS AND PLEADINGS

Comes Now, the Petitioner, Frank M. Peck prose hereinafter Mr. Peck with his request for submission of motion to renew all previously filed motions and pleadings filed by the petitioner during his representation by attorney Mary lou Wilson.

Points and Authorities

This motion is made and based upon all papers and pleadings on file in this case as well as the Nevada Rules of Civil Procedure and affidavit of Mr. Peck.

Dated this 25th day of Feb 2013.

[Signature]
Frank M. Peck #57106
H.D.S.P. Box 650
Indian Springs, Nv. 89070
Petitioner, prose.

DC--9900043606--020
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Washoe County
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NVC

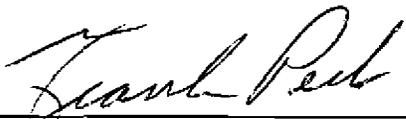
AFFIDAVIT OF FRANK M. PECK

I Frank M. Peck do hereby swear under the penalty of perjury that:

1. I am the Petitioner in case no. CR-06-P-2580.
2. all assertions in the attached request for submission are true based upon personal knowledge and i am competent to testify to all matters contained therein.
3. I bring this request in good faith and for no improper reason.
4. further affiant sayeth naught.

Signed under the penalty of perjury N.R.S. 208.165 and 28 U.S.C. section 1746.

Dated this 25th day of FEB 2013.



Frank M. Peck #57106
H.D.S.P. Box 650
Indian Springs, Nv. 89070

Certificate of service and affirmation

Pursuant to NRS 239 b.030 the attached request for submission

does not contain social security numbers of any person and a true and correct copy was mailed this date to:

District Attorney _____
75 Court St _____
Reno NV 89501 _____

Dated this 25th day of Feb 2013.

Signed under the penalty of perjury NRS 208.165 and 28 U.S.C. sec 1746.

Frank Peck
Frank M. Peck #57106
H.D.S.P. Box 650
Indian Springs, Nv. 89070

FILED
Electronically
03-13-2013:01:32:10 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3588526

EXHIBIT 1

EXHIBIT 1

V10.460

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 03-13-2013:13:32:10
Clerk Accepted: 03-13-2013:13:49:04
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
- **Continuation
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
THIRD SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION) RELIEF

NEWLY DISCOVERED EVIDENCE

- Counsel Robert Lindsay failed to develop or raise
- (1) Necessary showing. Newly discovered evidence must be: (1) newly discovered, see attached (exhibit-1) MBA DNA letter to Petitioner dated Oct 8, 2012 from DNA expert Mehul B. Anjaria wherein the fact that the final product of the PCR Polymerase Chain Reaction is synthetic replication of DNA that was originally present in the sample is (NEW EVIDENCE).
 - (2) The attached (EX-1) proves that contrary to Crimelab Director Rene Romero and forensic analyst Jeffrey Riolo's testimony that Petitioner's DNA was both "amplified" and "analyzed", is patently false. The fact that Petitioner's DNA was in fact NOT "amplified" or "analyzed" is obviously material to the movant's defense.

(3) The newly discovered evidence could not with reasonable diligence have been discovered and produced for the trial because pre-trial counsel knew nothing of the science of DNA nor did he care to learn in detail the procedures or protocols, nor did pre-trial counsel hire a qualified DNA expert with the candor to explain processes and materials compositions, nor could Petitioner have learned these facts from any other source as the Nevada Dept of corrections nor do the Washoe County Jail provide ANY MEANS to research DNA or its protocols.

(4) The evidence presented herein is not cumulative.

(5) There is little doubt that had this evidence been known at the time of trial the result would have been different.

(6) This evidence would have impeached the ONLY evidence against the Petitioner requiring a different result.

(7) The facts presented are such to render the only evidence against the Petitioner inadmissible and testimony thereof being false and misleading to the Jury.

Burton v State, 84 Nev 191, 437 P2d 861, (1968)

McLemore v. State, 94 Nev 237, 577 P2d 871,

(1978) Id. Hill v State, 91 Nev 654, 541 P2d 645, (1975).

Strickland v Washington, 466 US 668 (1984).

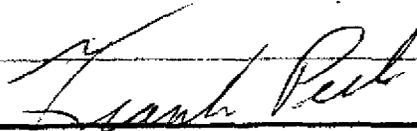
CONCLUSION

Therefore in consideration of the fact that the only evidence used to convict Petitioner is "totally fabricated" and RFLP is not an option due to lack of evidence, this case should be

DISMISSED, or at the very least, a NEW Trial should be ordered.

Dated this 7th day of March 2013.

Respectfully submitted



FRANK M. PECK 57106

HDSP Box 650

Indian Springs, NV. 89070

Petitioner, pro se.

AFFIDAVIT OF FRANK M. PECK

I Frank M. Peck do hereby swear under the penalty of perjury that:

1. I am the Petitioner in case no. CR-06-P-2580.

2. all assertions in the attached Supplement

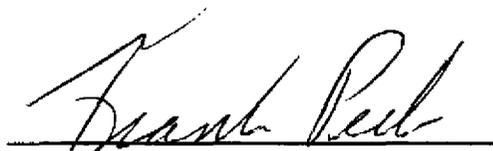
are true based upon personal knowledge and i am competent to testify to all matters contained therein.

3. I bring this Supplement in good faith and for no improper reason.

4. further affiant sayeth naught.

Signed under the penalty of perjury N.R.S. 208.165 and 28 U.S.C. section 1746.

Dated this 13th day of March 2013.



Frank M. Peck #57106
H.D.S.P. Box 650
Indian Springs, Nv. 89070

Certificate of service and affirmation

Pursuant to NRS 239 b.030 the attached Supp to Habeas

does not contain social security numbers of any person and a true and correct copy was mailed this date to:

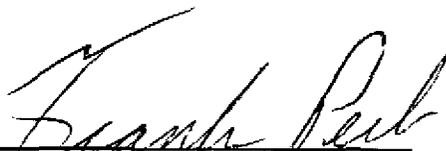
District Attorney _____

75 Court St _____

Reno, Nv. 89501 _____

Dated this 13th day of March 2013.

Signed under the penalty of perjury NRS 208.165 and 28 U.S.C. sec 1746.



Frank M. Peck #57106
H.D.S.P. Box 650
Indian Springs, Nv. 89070

Index of exhibits

Exhibit number 1 Pages 1

Exhibit description October 8th, 2012 MBA DNA Consulting
Confirming "Evidence is synthetic replication".

Exhibit number _____ Pages _____

Exhibit description _____



DC-990043954-007
CROB2580
POST: FRANK MILFORD PECK (06 2 Pages
District Court 03/18/2013 02:43 PM 4105
Washoe County Wnc
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EXHIBIT 1

EXHIBIT 1

MBA DNA CONSULTING, LLC
Official Correspondence



LEGAL AND CONFIDENTIAL

October 8, 2012

Frank M. Peck, 57106
HDSP Box 650
Indian Springs, NV 89070

Re: PCR PROCESS

Mr. Peck,

The Polymerase Chain Reaction (PCR) is a molecular biology technique commonly used by the forensic community. The goal of PCR is to isolate relevant areas of DNA, make copies of those areas, and mark the copies so that they can be detected in DNA analysis. The PCR process is what has allowed forensic DNA testing to be much more sensitive than original methods which were based on Restriction Fragment Length Polymorphisms (RFLP).

DNA present in the evidence sample is a template from which the copies are made. The synthetic PCR primers from the particular DNA typing kit being used are incorporated into the copied or 'amplified' DNA, and are fluorescently labeled. Thus, when the PCR products are run through the capillary electrophoresis instrument in the final typing step, it is the copies of DNA that were made in the PCR process that are being detected. Detection is achieved by the instrument applying a laser to the tagged primers, which give off fluorescence that the instrument detects as signal.

Whereas a photocopier makes copies of an original page, the PCR process gets started by making copies of the original DNA and then essentially uses the copies to make more copies. The final product that is generated and contains fluorescent primers is synthetic in nature, however it is a faithful replication of the DNA that was originally present in the sample.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mehul B. Anjaria', with a long horizontal flourish extending to the right.

Mehul B. Anjaria, MS, D-ABC
Founder and Chief Consultant

FILED

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Joey Orduna Hastings
Clerk of the Court
Transaction # 3606404

1 Code 3370

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

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IN AND FOR THE COUNTY OF WASHOE

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FRANK M. PECK

Case No. CR06P2580

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Petitioner,

Dept. No. 6

10

v.

11

THE STATE OF NEVADA,

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Respondent.

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ORDER

16

On February 20, 2013, Petitioner filed a Motion to Renew all Motions and Pleadings.

17

The Motion to Renew all Motions and Pleadings is DENIED.

18

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DATED: This 28th day of March, 2013.

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DISTRICT JUDGE

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CERTIFICATE OF SERVICE

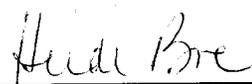
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I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 21 day of March, 2013, I electronically filed the foregoing with the Clerk of
the Court system which will send a notice of electronic filing to the following:

TERRENCE MCCARTHY, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows:

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070



Judicial Assistant

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 03-21-2013:09:03:06
Clerk Accepted: 03-21-2013:09:04:11
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ord Denying Motion
Filed By: Heidi Boe

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The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
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A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 03-28-2013:10:25:01
Clerk Accepted: 03-28-2013:10:25:40
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Sealed Order
Filed By: Kaili Lane

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A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 04-01-2013:14:09:36
Clerk Accepted: 04-01-2013:14:13:46
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Sealed Order
Filed By: Kaili Lane

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-

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FILED

Electronically

04-03-2013:04:40:00 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3636724

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

FRANK MILFORD PECK,

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE; AND THE
HONORABLE BRENT T. ADAMS, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

Supreme Court No. 62908

District Court Case No. CR062580

*(CR06-03580)
DL*

RECEIPT FOR DOCUMENTS

TO: Hon. Brent Adams, District Judge
Washoe County District Attorney
Frank Milford Peck
Joey Orduna Hastings, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

04/02/2013 Filing Fee waived. Criminal.

04/02/2013 Filed Proper Person Petition for Writ of Prohibition.

DATE: April 02, 2013

Tracie Lindeman, Clerk of Court

sw

V10.477

NO FEE

Electronically
04-03-2013:04:40:00 PM
Joey Orduna Hastings
Nevada Court
Transaction # 3636724

IN THE SUPREME COURT OF THE STATE OF NEVADA

Frank M. Peck,

D.C. CASE NO. CR-06-P-2580

Petitioner,

Dept. No. 6

FILED

vs.

Docket No.

2nd Jud Dist Court,

APR 02 2013

Brent T. Adams,

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

State of Nevada,

Respondents.

PETITION FOR WRIT OF PROHIBITION

Comes Now, the Petitioner, Frank M. Peck
pro se hereinafter Mr Peck with his Petition
for a writ of Prohibition.

This Petition is made and based upon all
papers and pleadings on file in this case
as well as the attached points and authorities,
NEVADA REVISED STATUTE 34.320 AND AFFIDAVIT
OF Mr. Peck.

Dated this 26th day of March 2013.

RECEIVED
APR 01 2013
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

Frank Peck
FRANK PECK 57106

HDSP Box 650

(1) Indian Springs, NV 89970

Points And Authorities

Prohibition is a proper remedy to restrain a District Judge from exercising a judicial function without or in excess of its jurisdiction. Smith v Eighth Jud Dist ex rel County of Clark, 107 Nev. 674 818 P2d 849 (Nev 1991).

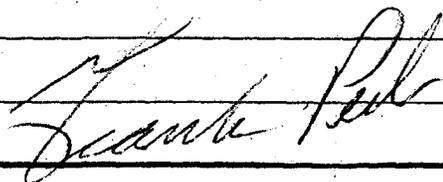
The District Court Judge Brent T. Adams has exceeded his jurisdiction by the filing of an order in the instant case on 3-21-13 (Transaction #3606404) after being a party to a lawsuit filed by the Petitioner in case no. CV12-02517 in dept 7 of the 2nd Judicial District Court.

Conclusion

Therefore; District Court Judge Brent T. Adams should be Prohibited from proceeding in the above entitled case.

Dated this 26th day of March 2013.

Respectfully submitted



Frank M. Peck 57106

HDSP Box 650

(2) Indian Springs, NV 89070
V10.479

Affidavit, Certificate of Service and Affirmation
of Frank M. Peck

I Frank M. Peck do hereby swear under penalty of perjury
that:

1. I am the Petitioner and Plaintiff in WDC CASES
CR-06-P-2580 AND CV12-02517.

2. All assertions in the attached Petition for writ of
Prohibition are true based upon personal knowledge
and I am competent to testify to all matters contained therein.

3. I bring this Petition in good faith and for no improper
reason.

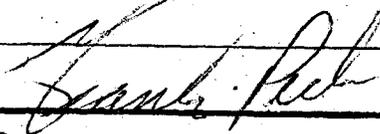
4. A true and correct copy was mailed this date to:
District Attorney Brent I Adams
75 Court Street 75 Court Street
RENO, NV. 89501 RENO, NV. 89501

5. Contains no social security numbers of any person
NRS 239 B. 030

Further affiant says nothing

Dated this 27th day of March 2013.

Signed under penalty of perjury NRS 208.165 AND
28 USC 1746.



Frank M. Peck 57106
HDSP Box 650

(3) Indian Springs, NV 89400

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 04-03-2013:16:40:00
Clerk Accepted: 04-03-2013:16:42:16
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Receipt for Doc
Petition
Filed By: Deputy Clerk MFernandez
You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

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The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

DC-9900045366-005
CRO6P2580
POST FRANK MILFORD PECK (D6 4 Pages
District Court 05/03/2013 03:50 PM
Washoe County 1670
NVDC

1670
Code 2490 and 2610
FRANK M. PECK 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner, pro se.

FILED
2013 MAY -3 PM 3:50
JOEY GROGAN HASTINGS
CLERK OF THE COURT
BY JMD
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK, CASE NO. CR-06-P-2580
Petitioner, DEPT NO. 6

vs.

Warden Nevin, EX PARTE
The State of NEVADA, JUDICIAL NOTICE
Respondent, AND MOTION (SEALED)

Comes Now, the Petitioner, Frank M. Peck
on his own behalf (pro se) unrepresented by
counsel; hereinafter Mr. Peck with his EX PARTE
JUDICIAL NOTICE AND MOTION.

This Notice and Motion is made and based upon
all papers and pleadings on file in this case as well
as the attached points and authorities, District Court
Rules and Affidavit of Mr. Peck.

Dated April 25th 2013.

Frank M. Peck
Frank M. Peck, Pet pro se.

Points and Authorities

Mr. Peck requests that this Court take judicial notice that Petitioner Peck is extremely disadvantaged in his efforts to effectively present ALL of his meritorious issues in pleadings forced to be written by hand. (Request to Seal)

Mr. Peck wishes to present a substantial amount of information pertaining to issues already on file in this case and also seeks to raise additional meritorious issues in his (Post-Conviction) Writ on file in the instant case.

Mr. Peck's pleadings suffer from Mr. Peck's inability to fully litigate in detail his claims due to painful arthritic hands and wrists causing Mr. Peck's pleadings to be incomplete and briefer than necessary sometimes due to the pain.

Mr. Peck was "Abandoned by counsel Mary Lou Wilson" forcing Mr. Peck to take action against her for her "Absolute refusal to personally communicate with her client" regarding meritorious issues. And excluding Mr. Peck from conference call with DNA expert Mr. Anjaria.

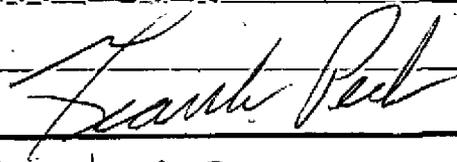
Mr. Peck cannot possibly convey to this court (via painful hand and wrist) the "very substantial amount of information that is crucial to support the issues relating to his DNA issues". Not to mention the fact that Mr. Peck is "currently segregated with only a few hours one day a week access to the institutions Law Library.

As this Court can clearly see that Mr. Peck has inter-alia the Mother of all DNA issues and should be afforded the ability to effectively pursue and litigate his claims without painful restriction of his efforts.

Conclusion

Therefore in the spirit of fundamental fairness and due-process, Mr. Peck respectfully requests and prays for an Order from this Court GRANTING Mr. Peck the ability to possess/purchase a laptop computer for the sole purpose of word processing and legal research, compliant with security requirements of NDOC, so Mr. Peck can "at least compete" on the not so level playing field.

Dated this 25th day of April 2013.



Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV. 89070

Petitioner, pro se.

Affidavit and Affirmation

I Frank M. Peck do hereby swear under penalty of perjury that:

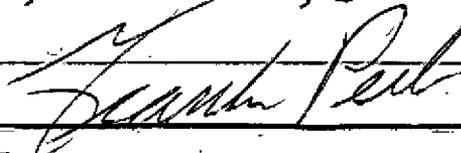
1. I am the Petitioner in case CR-06-P-2580.

2. All assertions herein are true based on personal knowledge and I am competent to testify to all matters.

3. I bring this notice/motion in good faith and for no improper reason.

4. NRS 239 B. 030 contains no social security numbers of any person.

Signed under penalty of perjury NRS 208.165, 28 USC 1741.



Frank M. Peck, Pet. pro se.

FILED

Electronically

05-15-2013:09:16:23 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3726398

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 62908

FRANK MILFORD PECK,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
BRENT T. ADAMS, DISTRICT JUDGE,
Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

CR06P258D

FILED

MAY 13 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER DENYING PETITION

This is a proper person petition for a writ of prohibition. Petitioner seeks an order prohibiting the district court from proceeding in his case. We have reviewed the documents submitted in this matter, and without deciding upon the merits of any claims raised therein, we decline to exercise original jurisdiction in this matter. NRS 34.320; NRS 34.330. Accordingly, we

ORDER the petition DENIED.

Gibbons, J.
Gibbons

Douglas, J.
Douglas

Saitta, J.
Saitta

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 05-15-2013:09:16:23
Clerk Accepted: 05-15-2013:09:16:48
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Order Denying
Filed By: Deputy Clerk SHambright

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

OC-9900045839-003
CROGP2580
POST FRANK MILFORD PECK (D6 2 Pages
District Court 05/20/2013 08:37 AM
Washoe County 3860
NOC

Code 3860
Frank M. Peck # 57106
HDSP Box 650
Indian Springs, Nv. 89070

FILED

2013 MAY 20 AM 8:37

JOEY GORDON HASTINGS
CLERK OF THE COURT

BY [Signature]
BERITY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Frank M. Peck,

Case No. CR-06-P-2580

Petitioner

Dept No. 6

vs.

Warden Nevins
State of Nevada
Respondents.

Comes Now, The Petitioner Frank M. Peck Pro se hereinafter, Mr. Peck with his

Request for submission of Motion filed on May 3, 2013.

This Request is made and based upon all papers and pleadings on file in this case as well as the attached points and authorities, district court rules and affidavit of Mr. Peck and any attached exhibits.

Dated this 11th day of May 2013.

[Signature]
Frank M. Peck # 57106
HDSP Box 650
Indian Springs, Nv. 89070

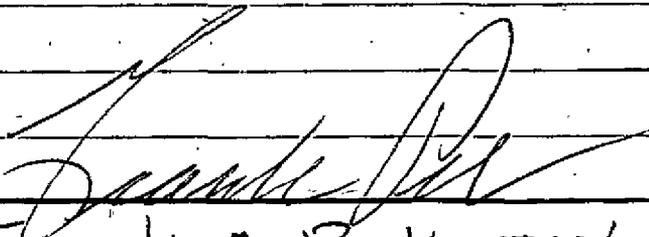
Certificate of service and Affirmation

Pursuant to NRS 239 B 030 the attached Request for submission of Motion does not contain social security numbers of any person and a true and correct copy was mailed this date to:

District Attorney
75 Court Street
Reno NV 89501

Dated this 12th day of May 2013

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.



FRANK M. PECK 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner, pro se.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA
Plaintiff,

vs.

FRANK PECK,
Defendant.

Sup. Ct. Case No. 65691
Case No. CR06-2580
Dept. 6

RECORD ON APPEAL

VOLUME 9 OF 13

POST DOCUMENTS

APPELLANT

Frank Peck #57106
H D S P - P O Box 650
Indian Springs, Nevada 89070

RESPONDENT

Washoe County District Attorney's
Office
Terrance McCarthy, Esq.
P O Box 11130
Reno, Nevada 89502-3083

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Case No. CR06-2580
 STATE vs FRANK PECK
 JULY 18, 2014

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 STATE vs FRANK PECK
 JULY 18, 2014

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Case No. CR06-2580
 STATE vs FRANK PECK
 JULY 18, 2014

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Case No. CR06-2580
 STATE vs FRANK PECK
 JULY 18, 2014

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1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

2 IN AND FOR THE COUNTY OF WASHOE **FILED**
JUN 18 PM 4:01

3 HOWARD W. CONYERS

4 PETITION FOR WRIT OF HABEAS CORPUS *[Signature]*
DEPUTY

5 IN THE MATTER OF THE APPLICATION
6 OF FRANK MILFORD PECK CASE:CR-06-2580
7 FOR A WRIT OF HABEAS CORPUS / DEPT 6

8 To: The Honorable Judge of the Second Judicial District
9 Court of the State of Nevada, in and for the County of Washoe.

10 The Petition of Frank Milford Peck, Petitioner In Proper
11 Person, respectfully shows:

12 1. That Petitioner is not learned in matters of law and is
13 acting In Proper Person.

14 2. That Petitioner makes application herein on his own behalf
15 for a writ of Habeas Corpus; that the cause of Petitioners
16 restraint of liberty is charges filed by Sparks Police Dept
and the Washoe County Deputy District Attorney David Clifton;
Petitioner is presently imprisoned at the Northern Nevada
Correctional Center in Carson City, Nevada for unrelated
charges.

17 3. That the restraint of the Petitioner is unlawful due to
18 the constitutional violations of:

19 A. INTENTIONAL PREJUDICIAL PREACCUSATION DELAY

- 20 1) The crime in question could have been discovered with
21 reasonable diligence in 1996 or earlier.
- 22 a) During an unrelated investigation in 1996 a DNA profile
23 of the Petitioner's DNA was ran through all available
databases yealding no matches.
- 24 b) DNA profile collected from the victim in the instant case
25 was entered into the database and available in 1994. (exh A)
- 26 2) Prejudice suffered by the Petitioner is loss of witnesses
27 that would have substantiated and supported an alibi defense
28 and loss of physical and documentary evidence in support of
such a defense.

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Washoe County 3585
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- 1 a) Petitioners deceased father, Donald James Peck who would
2 have testified that the Petitioner was not in the State
3 at the time the crime was committed. He would have been
4 found credible and withstood cross-examination.
5 The factors that support this claim are (1) The witness
6 had no criminal history; (2) The witness was an upstanding
7 member of the community; (3) Credit card and phone records
8 would have further supported his exculpatory testimony.
- 9 b) Petitioner's deceased Mother, Bessie Pauline Peck who would
10 have testified that the Petitioner was not in the area or
11 in the State at the time the crime was committed, she would
12 have been found credible and withstood cross-examination.
13 The factors that support this claim are (1) The witness had
14 no criminal history; (2) The witness was an upstanding
15 member of the community; and (3) Phone and Credit card
16 records would have supported this exculpatory testimony.
- 17 c) Petitioner's deceased friend, Nocholas Ponce who would have
18 testified to the fact that Petitioner was not in the area
19 or in the state at the time the crime was committed. He
20 would have been found credible and withstood cross-examination.
21 The factors that support this claim are; (1) The witness
22 had no criminal history; and (2) The witness was an upstanding
23 member of the community. His testimony would have supported
24 the other exculpatory testimony.
- 25 d) Larry Peck, the Petitioner's brother, can substantiate and
26 support Alibi, that petitioner was not in the area or in
27 the state at the time this crime occurred. Prior to 2001
28 this witness would have been found credible and would have
withstood cross-examination.
Factors that support this claim are (1) He would have
provided exculpatory testimony supporting petitioner's
actions and whereabouts at the time the crime occurred
because he was with the petitioner and; (2) He would have
been able to provide Credit card and phone records which
support his testimony, and; (3) Extreme prejudice exists
by virtue of the loss of a valid Alibi Defense caused by
the dilatory actions of Sparks Police Department and D.A.
David Clifton.
3. The loss of these witnesses has caused extreme prejudice
by way of preventing petitioner from presenting a valid
Alibi Defense.
- a) Loss of Documentary evidence, including Telephone records
Credit card records Ranking records, Credit card records and
Medical records from these witnesses has created extreme
undue prejudice to the Petitioner and prevented him from
presenting a Valid Defense.

- 1 b) The extreme passage of time in this case has violated
2 Due Process in that the 12 year Pre-Indictment Delay,
3 in and of itself creates extreme undue prejudice to the
4 petitioner in the form of **Laches**.
- 5 c) Petitioner has been deprived of any defenses available
6 to him at the time the crime was committed and the
7 punishment has been made more burdensome due to the changes
8 in statutes between 1994 and present. Thereby creating
9 undue prejudice to the petitioner.
- 10 d) The incessant coaching, prodding and questioning of the
11 Victum by Sparks Police Department and the Washoe County
12 District Attorney has created inaccuracies in the Victim's
13 testimony causing extreme and deliberate prejudice to the
14 petitioner.
- 15 4. The District Attorney gained a tactical advantage over
16 the petitioner by his access and availability to the
17 witnesses and evidence throughout the 12 year period.
- 18 a) The District Attorney and Sparks Police Department had
19 complete control and access to all evidence without any
20 Court supervised controls.
- 21 b) Only 30 days after the crime occurred, Sparks Police Dept
22 and Washoe County crime lab suspended and closed this case
23 for lack of evidence.
- 24 c) The Police and Medical reports of the Victum are contrary
25 to the crime lab findings in 2001.
- 26 d) The late Expost Facto application of NRS 171.083 gave the
27 prosecution a decided advantage in that the original
28 Statute of Limitations would have expired more than 6 years
before an arrest was made in this case giving the
prosecution a decidedly unfair tactical advantage and
causing extreme prejudice to the petitioner.
5. The extreme delay precluded the discovery of and the
petitioner's ability to call witnesses in support of his
defense.
- a) One potential witness is a retired Superior Court Judge
whose testimony would support the fact that the petitioner
was not in the area or in the state at the time of this
crime.
- b) Other potential witnesses are the Doctors and Nurses who
administered an MRI to Donald Peck and would verify the
presence of the petitioner at the clinic located in
Lancaster California on or about the date in question.

1 B. POST-ACCUSATION DELAY

- 2 1) The length of the delay after arrest/formal accusation was
3 over two years.
- 4 a) At no time did the Courts or the prosecution show good
5 cause for the length of the delay.
- 6 b) There was no plausible reason for the delay between the
7 arrest and actual indictment.
- 8 c) The evidence used to make the arrest is the same as was
9 used to support Grand Jury Indictment two years later.
10 No new evidence has been collected between arrest and
11 Indictment.
- 12 d) The petitioner was clearly prejudiced by the additional
13 Post-accusation delay as it only served to compound the
14 previously listed violations of his constitutional rights.
15 The federal Courts generally holds that a delay in excess
16 of 1 year is presumptively prejudicial.
- 17 e) However a showing of prejudice is not a necessary
18 prerequisite to the finding of a deprivation of the right
19 of speedy trial.

20 C. ARRAIGNMENT

- 21 1. The Petitioner did not receive a timely Arraignment as required by the
22 Fourth Amendment of the U.S. Constitution.
- 23 a) State and Federal Law requires that the petitioner be brought before
24 a magistrate within 72 hours after arrest. This was not done. Petitioner
25 was never formally charged aside from the charges he was arrested for.
26 This failure was a clear violation of his due process rights, that
27 extended for a period of over Two Years between arrest and indictment.

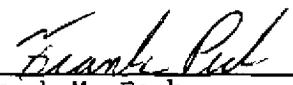
28 D. SPEEDY TRIAL

1. The Petitioner did not at any time prior to the actual indictment:
- a) Pursuant to federal law the information or indictment must be filed
within 30 days of arrest or the service of a summons on the defendant, in
the instant case there was a Two year period between arrest and indictment.
- b) On or about April 2004, Detective Greta Fye placed the petitioner
under arrest for the charges now before the court. Petitioner was not
notified at any time of his release on the present charges or in any
change of status regarding this case until the indictment was handed
down in 2006.

- 1 c) The court did not afford the petitioner his Constitutional right to
- 2 a Speedy Trial under the Sixth Amendment to the U.S. Constitution, therefore
- 3 Dismissal is Mandatory under these provisions.
- 4
- 5 4. That no other Petition for writ of Habeas Corpus has heretofore been
- 6 filed by this Petitioner or his representatives.
- 7
- 8 5. The defendant waives his 60-day limitation for bringing him to trial
- 9 only for the purpose of adjudication of this petition.
- 10
- 11 6. If the Petition is not decided within 15 days before the date set for
- 12 trial, the petitioner consents that the Court may continue the trial to
- 13 an alternate date designated by the court.
- 14

15 Wherefore, the petitioner prays that this Honorable court make an Order
16 directing the County Clerk to issue a Writ of Habeas Corpus directed to the
17 Sparks Police Department and Deputy District Attorney David Clifton and
18 The Nevada Department of Corrections, commanding them to bring the petitioner
19 before your Honor and return the cause of his continued restraint with
20 regards to the above-named case number.

21 Dated this 31st day of october, 2008

22
23 
24 _____
25 Frank M. Peck
26 Petitioner, In Proper Person
27
28

PURSUANT TO N.R.S. 208.165, I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF NEVADA THAT THE FOREGOING IS TRUE AND CORRECT. See N.R.S. 208.165.

Signed at WCC
(Location)

11/4/08
(Date)

[Signature]
(Signature)

57106
(Inmate number)

CERTIFICATE OF SERVICE BY MAIL

Pursuant to N.R.C.P. Rule 5 (b), I hereby certify that I am the petitioner/Defendant named herein and that on this 4th day of Nov 2008, I deposited in the United States Mails in Carson City, Nevada a true a correct copy of the foregoing addressed to:

District Attorney
Washoe County
75 Court Street
Reno Nv, 89501



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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

PETITION FOR WRIT OF HABEAS CORPUS

(Title of Document)

filed in District Court Case No. CR-06-2580

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-OR-

B. For the administration of a public program or
for an application for a federal or state grant.

(Signature)

11-4-08

(Date)

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District Court 06/18/2009 04 01 PM
Washoe County 1955
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE 2009 JUN 18 PM 4:01

HOWARD W. CONYERS
BY [Signature]
DEPUTY

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In the Matter of the
Application of
Frank Milford Peck
for a Writ of Habeas Corpus /

Memorandum of points and Authorities in support of
Petition for Writ of Habeas Corpus

Comes Now, Frank Milford Peck, In Proper Person
submitting the following statement of facts and points
and Authorities in support of the attached Petition for
a Writ of Habeas Corpus.

POINTS AND AUTHORITIES

The following points and authorities and arguments are
used in support of the preceding petition:

A. PREACCUSATION DELAY

Pursuant to both State and Federal law there are specific
time limits between Arrest, indictment and Trial and permissible
delays within each period. 18 USC § 3161-3174 (2000).

In the instant case there are numerous delays between not
only discovery through reasonable diligencs but also between
discovery, arrest and indictment.

The compounded delays clearly have violated the petitioners
due process and he clearly meets all standards of showing that
actual prejudice has resulted. see, U.S V GOVEA 467 U.S 180 182
(1984).

In addition FRCP 48 (b) authorizes Courts to dismiss
indictments for governments unnessary pre-indictment or post-
indictment delay. NRS. 34.500 (1,3,8) provides in pertinent
part; Grounds for discharge in certian cases; If it appears
on the return of the Writ of Habeas Corpus that the petitioner
is in custody by virtue of process from any court of this
state, or judge or officer thereof, the peritioner may be
discharges in any one of the following cases:

1. When the jurisdiction of the court or officer has been
exceeded.

1 3. When the process is defective in some manner of substance
2 required by law, rendering it void.

3 8. Where the petitioner has been committed or indicted on
4 any criminal charge under a statute or ordinance that is un-
constitutional, or if constitutional on its face is un-
constitutional in its application.

5 In the instant case, based upon the unconstitutional pre-
6 accusation delay and the actual prejudice shown the instant
7 case and indictment should be dismissed. Further, in State
8 v. Autry 746 P2d 637 (1987) the Nevada Supreme Court has
9 stated "some showing must be made that the delay entailed intent
ional or reckless disregard by the State of the appreciable
risks of impairment to the accused's defense." There has been
a more than sufficient showing herein by the petitioner.

Whereby the instant petition should be granted by the Court.

10 B. POST ACCUSATION DELAY

11 Both State and Federal law establishes that if arrest
12 precedes Indictment or Arraignment, time must be calculated
from the date of arrest. Dillingham v. U.S. 423 U.S.64,65
(1975).

13 In the instant case there is a more than (2) Two year delay
14 from the petitioner's arrest in April 2004 and his actual
15 indictment in November 2006. This delay has caused substantial
16 prejudice to the petitioner as clearly established in the
original petition. In keeping with Barker v. Wingo 407, U.S.514,
534 (1972). The petitioner has shown and alleged more than
mere speculative harm.

17 The deliberate dilatory actions of the State between Arrest
18 and indictment are inexcusable especially since they cannot
even claim investigation time because they had 10 years to
investigate prior to Arrest.

The prejudice to the petitioner is incontrovertible.

19 The Constitutional right to a Speedy resolution of charges
20 against an accused is contained in the Sixth Amendment of the
21 U.S. Constitution, made applicable to the States by the due
22 process clause of the Fourteenth Amendment. Barker v. Wingo 407
U.S. 514 (1972). Barker is the seminal case on unreasonable
23 delay in prosecution. In that decision, the Court established
24 a balancing test to determine whether an accused had been
denied his right to a speedy trial. The Court indicated that
25 four factors should be considered: the length of the delay;
26 the reason for the delay; the defendant's assertion of his right
27 and prejudice to the defendant. Id 407 U.S. at 530 The Court
28 also noted, however, that "the rule we announce today, which
comports with constitutional principles, places the primary
burden on the courts and the prosecutors to assure that cases
are brought to trial. Id at 529. Additionally, as noted
previously, "a defendant has no duty to bring himself to trial,
the State has that duty as well as the duty of insuring that
the trial is consistent with due process.

1 The decision was refined by the Court's subsequent decision
2 in Doggett v. U.S. 505 U.S. 647 (1992), especially regarding
3 the necessary showing of prejudice to the defendant.
4 Specifically, In Doggett the Court observed that "depending
5 on the nature of the charges, the lower Courts have generally
6 found post-accusation delay 'presumptively prejudicial' at
7 least as it approaches one year".

8 In the instant case, the delay between arrest and indictment
9 is over two years and in keeping with federal standards should
10 warrant immediate dismissal.

11 In addition, NRS 187.556 gives the Court authority to
12 dismiss charges which are not pursued to trial in a timely
13 fashion and State in relevant part that:

14 1. If no indictment is found or information filed against a
15 person within 15 days after he has been held to answer for
16 a public offense which must be prosecuted by indictment or
17 information, the Court may dismiss the complaint.

18 Additionally, the Second Judicial District Court Rules of
19 Practice concerning caseload management State in relevant part
20 that;

21 The Court recognizes that 100% of all cases must be resolved
22 within 60 months from the date of filing. Obviously, the
23 Prosecutors and the Courts have not kept up with these
24 requirements.

25 Therefore, based on all Federal and State standards the
26 instant case should be dismissed forthwith as a result of the
27 inexcusable post-accusation delay.

28 C. ARRAIGNMENT

The State and Federal law requires that the petitioner was
arraigned in a timely manner not to exceed 72 hours after
arrest. This did not occur. No effort was made to comply with
the requirements of NRS 171.186, NRS 171.178 and 171.338 after
the petitioner was arrested in April of 2004.

This failure is violative of the petitioner's right to due-
process of law under the fifth, sixth and fourteenth amendments
of the U.S. Constitution and Article 1, section 8 of the Nevada
Constitution thereby warranting dismissal of the instant case
forthwith.

D. SPEEDY TRIAL

The previously stated points and Authorities are similarly
applied herein as they also deal with Speedy trial issues.

The Petitioners's 6th Amendment speedy trial right attached
after the State served the arrest warrant on the petitioner
in April of 2004. see, U.S. v Woolfork 399 F3d 590 (4th cir
(2005).

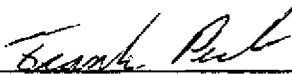
Therefore, the Court should dismiss the instant case with
prejudice forthwith.

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CONCLUSION

In conclusion, based upon the foregoing points and Authorities the attached petition for Pre-trial Writ of Habeas Corpus should be granted forthwith.

Respectfully submitted this 31st day of October, 2008.



Frank M. Peck
Petitioner Pro se

TABLE OF AUTHORITIES

1
2 18 USC § 3161-3174 (2000).
3 U.S. v. Govea 467 U.S. 180,182 (1984).
4 Federal Rules of Criminal Procedure 48 (b).
5 Nevada Revised Statute 34.500 1,3,8.
6 State v. Autry 746. P2d 637 (1987).
7 Dillingham v. U.S. 423 U.S. 64,65 (1975).
8 Barker v. Wingo 407 U.S. 514,534 (1972).
9 Doggett v. U.S. 505 U.S. 647 (1992).
10 Nevada Revised Statute 187.556
11 Nevada revised Statute 171.083
12 Nevada Revised Statute 171.186
13 Nevada Revised Statute 171.178
14 Nevada Revised Statute 171.338
15 U.S. v. Woolfork 399 F3d 590 (4th cir 2005).
16 Article 1 section 8 of the Nevada Constitution.
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District Court 06/18/2009 04 01 PM 2490
Washoe County
NVC

CASE No. CR-06-2580

Dept No. 6

FILED

2009 JUN 18 PM 4:01

HOWARD W. CONYERS

IN the Second Judicial District Court of the State of Nevada
IN and for the County of Washoe

FRANK PECK
Defendant,
↓
State of Nevada
Plaintiff,

Motion to file and
SHOW CAUSE why
documents were not
timely filed

Comes Now, the Defendant, FRANK PECK, Pro se
herein requests that his pre-trial petition for writ of
Habeas Corpus be filed as this petition would have
been timely filed had the Deputies Not Refused
to take possession and file as was requested
ON 5-4-09 before telephonic hearing when the
trial Judge said it was now untimely; - Deputy
Thomas WDC told the Defendant a supervisor would
accept and file documents, None was ever in contact
with the defendant, violating the defendants
Fifth Amendment right to due process. F.R.A.P. 5(A) 1
Federal mailbox rule.

Dated this 27th day of May 2009.

Frank Peck
Frank Peck Pro se

TO CASEWORKER
Inmate Request Form Given to Officer

Refused 5-4-09

Inmate Name: FRANK PECK Booking #: P00105283

Housing Unit: 4 Cell: 4 Date: 5-4-09

Note: Inmate Rights and Discipline are the only complaints that will be addressed in a Grievance. Inmates may Request to have a Policy issue reviewed.

Request Grievance Appeal

The Documents with this request under Federal Law, - Mailbox Rule ARE LEGALLY FILED WHEN HANDED TO PRISON OR DETENTION FACILITY EMPLOYEES. Documents are - Pre trial Habeas Corpus, Subpoena and Notice to produce, (Notice of Appeal - New Counsel) Motion for Continuance, Motion to Suppress, Motion for Admissibility hearing, These Documents are "time sensitive" and must be filed immediately, In the Second Judicial District Court Dept 6 Judge Brent Adams. Thank you and "Sorry", But I have no access to file pleadings any other way. - I am completely cut off from communication, Not so much as an envelope!

Receiving Staff / ID #: _____ Date: _____

First Response Routing (Staff Use Only) _____

Responding Staff / ID #: _____ Date: _____

Disagree with Response. Please Review

Second Response Routing (Staff Use Only) _____

Responding Staff / ID #: _____ Date: _____

Forward To Operations Lieutenant

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6 IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 FRANK MILFORD PECK,

Case No. CR06P2580

9 Petitioner,

Department No.: 6

10 v.

11 STATE OF NEVADA, et al.,

12 Respondent.

13 _____ /
14 **ORDER GRANTING IN FORMA PAUPERIS STATUS**

15 Having read Petitioner, FRANK MILFORD PECK's pleading entitled "Petition for Writ
16 of Habeas Corpus (Post-Conviction)", the Court finds that pursuant to NRS 171.188, there are
17 sufficient grounds to grant *forma pauperis* status at this time.

18 Pursuant to Nevada Supreme Court's Order ADKT No. 411 filed January 4, 2008, a
19 person will be deemed 'indigent' who is unable, without substantial hardship to himself or his
20 dependents, to obtain competent qualified legal counsel on his or her own. Under this standard,
21 a presumption of substantial hardship attaches to those persons currently serving a sentence in a
22 correctional institution or housed in a mental health facility.

23 IT IS HEREBY ORDERED, pursuant to NRS 171.188, Petitioner, FRANK MILFORD
24 PECK, is found to be in Forma Pauperis.

25 IT IS HEREBY FURTHER ORDERED that the Clerk allow said FRANK MILFORD
26 PECK to bring such action without costs and file or issue any necessary writ, process, pleading
27 or paper without charge, with the exception of jury fees.
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IT IS HEREBY FURTHER ORDERED that the Sheriff or any other appropriate officer within the state make personal service of any necessary writ, process, pleading or paper without charge for FRANK MILFORD PECK.

IT IS HEREBY FURTHER ORDERED that this matter is referred to Robert Bell, Court Appointment Administrator for the appointment of counsel for FRANK MILFORD PECK concerning the Petition for Habeas Corpus (Post-Conviction) on file herein.

DATED this 6 day of July, 2009.

Connie J. Steinheimer
CHIEF DISTRICT JUDGE

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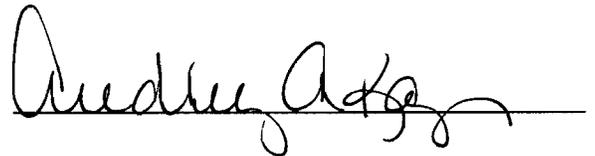
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 4th day of ~~June~~ ^{July}, 2009, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

FRANK MILFORD PECK, #77562
N.N.C.C.
P.O. Box 7000
Carson City, NV 89702

Washoe County District Attorney
Appellate Division
VIA INTEROFFICE MAIL

Robert C. Bell, Esq.
Court Appointment Administrator
20 Winter St.
Reno, NV 89503



Code
2230

FILED

CASE No. CR-06P2580

Dept No. 6

09 JUL 23 AM 9:06

HOWARD W. CONYERS
DEPUTY

In the Second Judicial District Court of the State of Nevada
IN AND FOR THE COUNTY OF WASHOE

FRANK PECK
Defendant,

-VS-

State of Nevada
Plaintiff,

Motion for
Transcripts AND
All Pre-trial Motions

Comes Now, the Defendant, Frank Peck, Prose,
with his Request for Transcripts of all proceedings
including telephonic hearings in the Above intitled
case; Defendant has been deemed indigent and
cannot afford to pay, nor should be required to pay,
and hereby requests all transcripts at public expense.
US V. NEAL, 27 F3d 1035 (5th Cir 1994). GRIFFIN
V. ILLINOIS, 351 US 12, 100 LEd 891 76 Sct 585
(1956). Criminal defendant has right to record
on appeal which includes complete transcript
of proceedings at trial.

Dated this 15th day of May 2009.

Frank Peck
Frank Peck Prose

DC-990010049-005
POST: FRANK MILFORD PECK (06 2 Pages
District Court 07/23/2009 09 06 AM
Washoe County
TFL/DFC
.DOC

Certificate of Service and Affirmation pursuant
to NRS 239B.030 This motion for transcripts
does not contain any social security numbers
and has been mailed to:

Dave Clifton DPA
75 Court Street
Reno, NV 89509

Dated this 15th day of May 2009.

Frank Peck

Frank Peck Pro. Sec.

1 **Code : 2715**

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6 **THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

8 * * *

9 FRANK MILFORD PECK,

10 Petitioner,

Case No. : CR06P2580

11 vs.

Dept No. : 6

12 STATE OF NEVADA, et al.,

13 Respondents.
_____ /

14 **RECOMMENDATION AND ORDER APPOINTING COUNSEL**

15 The Petitioner having been previously found indigent and having made a
16 Motion For Appointment of Counsel, and said Motion having been reviewed by the
17 Appointed Counsel Administrator finds as follows:

18 NOW THEREFORE IT IS HEREBY RECOMMENDED that Aziz Merchant, Esq., be
19 appointed to represent Petitioner, Frank Milford Peck, on this *Petition For Writ Of*
20 *Habeas Corpus*. Said Counsel is to be paid pursuant to NRS 7.115 through NRS 7.165
21 in an amount recommended by the Administrator and approved by the Court;

22 IT IS HEREBY FURTHER RECOMMENDED that Petitioner's Counsel have ten (10)
23 days from the date of the Court's Order to designate what portions of the Court file
24 Counsel requests be copied by the Clerk of the Court;

25 IT IS HEREBY FURTHER RECOMMENDED that the Clerk of the Court provide
26 copies of all designations made by Petitioner's Counsel within five (5) days of the
27 designation;

28 IT IS HEREBY FURTHER RECOMMENDED that Counsel have forty-five (45) days

1 from the date of the receipt of the copies within which to supplement the Petition
2 For Writ Of Habeas Corpus or file a Notice indicating that the original Petition For
3 Writ Of Habeas Corpus shall stand as filed;

4 IT IS HEREBY FURTHER RECOMMENDED that the State of Nevada be ordered
5 to respond within forty-five (45) days from the date of filing by the Petitioner of the
6 Petition To Supplement or Notice Of Nonsupplementation;

7 IT IS HEREBY FURTHER RECOMMENDED that Counsel for Petitioner and the
8 State of Nevada be ordered to appear within fifteen (15) days of the final briefing
9 before the Administrative Assistant in Department 6, of the Second Judicial District
10 Court for the purpose of setting this case for hearing.

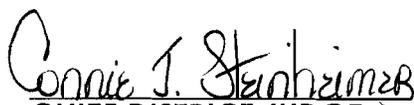
11
12 DATED this 16 day of July, 2009.

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14 
15 _____
16 ROBERT C. BELL, ESQ.
17 APPOINTED COUNSEL ADMINISTRATOR

18 Pursuant to the Nevada Supreme Court Order in ADKT 411, and the Second
19 Judicial District Court's Model Plan to address ADKT 411, good cause appearing
20 and in the interest of justice,

21 IT IS HEREBY ORDERED that the recommendations of the Administrator are
22 hereby confirmed, approved and adopted.

23 DATED this 20 day of July, 2009.

24 
25 _____
26 CHIEF DISTRICT JUDGE
27
28

CERTIFICATE OF SERVICE

CASE NO. CR06P2580

I certify that I am an employee of JUDGE CONNIE STEINHEIMER; that on the 24 day of July, 2009, I electronically filed the foregoing with the Clerk of the Court system.

Further, I certify that I deposited in the county mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing addressed to:

Frank Milford Peck, #77562
NNCC
P.O. Box 7000
Carson City, NV 89702

Aziz Merchant, Esq.
Merchant Law Firm, Ltd.
100 N. Arlington Ave., Ste. 290
Reno, NV 89501

Washoe County District Attorney's Office
Appellate Division

Robert Bell, Esq.
Administrator
20 Winter St.
Reno, NV 89503



Audrey A. Kay
Judicial Assistant

3980
Aziz N. Merchant, Esq.
Nevada Bar No.: 10148
Merchant Law Firm, Ltd.
100 N. Arlington Ave., Suite 290
Reno, NV 89501
Ph: 775-337-8400
Fax: 775-337-8401

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Frank Peck,

Petitioner,

vs.

EK McDaniel, Warden, ; and

State of Nevada,

Respondents.

Case No.: CR06P2580
Dept: 6

Stipulation and Order to Stay Post-Conviction

Proceedings Pending Resolution of Direct Appeal

COMES NOW, Aziz Neal Merchant, Esq. of the Merchant Law Firm, Ltd. on behalf of petitioner Frank Peck and Deputy District Attorney Terrence McCarthy on behalf of Respondents and hereby stipulates to stay the post-conviction proceedings in the above-entitled matter pending resolution of petitioner Frank Peck's direct appeal to the Nevada Supreme Court.

Affirmation Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

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X Aziz N Merchant 8/19/09

Aziz N. Merchant, ESQ. Date
Counsel for Petitioner

X Terrence McCarthy 8/20/09

Terrence McCarthy, ESQ. Date
Counsel for Respondents

IT IS SO ORDERED

Dated this 21 Day of August, 2009

[Signature]

District Judge

CR06P2580 DC-9900012709-032
POST: FRANK MILFORD PECK (D6 2 Pages
District Court 10/26/2009 09:33 AM
Washoe County 2525
DOC IFLORES

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FILED

09 OCT 26 AM 9:33

HOWARD J. LEWIS
BY *[Signature]*

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR06P2580

FRANK MILFORD PECK,

Dept. No. 6

Defendant.

NOTICE OF CHANGE OF ADDRESS

8/5/09

*

Frank Peck 57106
Ely State Prison
PO Box 1989
Ely NV 89301

To
Clerk
2nd Jud Dist Court
75 Court St
Reno NV 89501

RE: CR 06-2580
CR 96-2687

Dear Clerk:

Please Note my New Address,

Thank You

F Peck

Code: 2260
Aziz N. Merchant, Esq.
Nevada Bar No.: 10148
Merchant Law Firm, Ltd.
100 N. Arlington Ave., Suite 290
Reno, NV 89501
Ph: 775-337-8400
Fax: 775-337-8401
Attorney for Petitioner Frank Peck

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK PECK,
PETITIONER,
VS.
THE STATE OF NEVADA,
RESPONDENT.

Case No.: CR06P2580
Dept: 6

MOTION TO WITHDRAW AS COUNSEL OF RECORD

COMES NOW, Aziz Neal Merchant, Esq. of the Merchant Law Firm, Ltd. and files this
MOTION TO WITHDRAW AS COUNSEL OF RECORD.

POINTS AND AUTHORITIES

The relevant standard for granting a motion to withdraw as counsel of record is contained in Nevada Rules of Professional Conduct (NRPC) 1.16(b), which states in relevant part that “a lawyer may withdraw from representing a client if:

(1) Withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) The client persists in a course of action involving the lawyer’s services that the lawyer reasonably believes is criminal or fraudulent;

1 (3) The client has used the lawyer's services to perpetrate a crime or fraud;

2 (4) A client insists upon taking action that the lawyer considers repugnant or with which
3 the lawyer has fundamental disagreement;

4 (5) The client fails substantially to fulfill an obligation to the lawyer regarding the
5 lawyer's services and has been given reasonable warning that the lawyer will withdraw unless
6 the obligation is fulfilled;

7 (6) The representation will result in an unreasonable financial burden on the lawyer or
8 has been rendered unreasonably difficult by the client; or

9 (7) Other good cause for withdrawal exists.

10 Attorney Aziz Neal Merchant (Merchant) was appointed to represent Frank Peck (Peck)
11 in a post-conviction proceeding on July 24, 2009. Frank Peck's post-conviction proceeding was
12 placed on hold by stipulation and order pending resolution of Frank Peck's appeal to the Nevada
13 Supreme Court. The Nevada Supreme Court affirmed Frank Peck's conviction on May 7, 2010.
14 See Stip and Order, filed August 21, 2009; Peck v. State, Docket No. 54168, May 7, 2009, Order
15 of Affirmance.

16 After May 7, 2010, Merchant began discussing with Peck how Peck would like to
17 proceed. Peck immediately began insisting through collect calls and letters that Merchant take
18 action that Merchant considers repugnant. Merchant also has a fundamental disagreement about
19 the course of action that client's desires to take.

20 Merchant would refer this Court to the US Supreme Court case of Nix v. Whiteside, 475
21 U.S. 157 (1986) in which the US Supreme Court ruled that an attorney has no duty to assist in
22 presenting perjured testimony. Merchant would also assert that he has no duty to accuse anyone
23 of committing perjury when there is no basis in law or fact to do so. Merchant would also point
24 out that such conduct is illegal. If this Court requires, Merchant will file a supplemental affidavit
25 detailing the exact nature of the fundamental disagreement.

26 Merchant fears that Peck may attempt file a bar complaint against Merchant as Peck
27 apparently attempted with his previous trial attorneys when they refused to do what he asked.
28 Post-conviction proceedings tend to last for many months if not several years. Merchant should

1 not have to live in fear for the next several years of having a bar complaint filed against him for
2 refusing to do as Peck requests.

3 As for any material adverse effect, there would be none. This matter can easily be
4 referred to the Robert Bell conflict group for appointment of new post-conviction counsel.

5 In conclusion, it is respectfully requested that Attorney Aziz Neal Merchant be allowed to
6 withdraw as counsel of record and that this matter be referred to the Robert Bell conflict group
7 for appointment of new counsel.

8 *Affirmation Pursuant to NRS 239B.030*

9 The undersigned does hereby affirm that the preceding document does not contain the
10 social security number of any person.

11
12 Dated: June 10, 2010

13
14 X/S/Aziz N. Merchant, Esq. _____
15 Aziz N. Merchant, Esq.
16 Counsel for petitioner Frank Peck

17 Certificate of Service

18 I hereby certify that on 6/10/10, I electronically filed the foregoing with the Clerk of the
19 Court by using the ECF system which will send a notice of electronic filing to the following:

20 TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA
21 AZIZ MERCHANT, ESQ. for FRANK PECK

22 Copy mailed to
23 ELY STATE PRISON
24 ATTN: FRANK PECK
25 PO BOX 1989, ELY NV 89301

26 June 10, 2010

27 /S/Aziz N. Merchant, Esq.

Index of Exhibits

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Exhibit 1: Affidavit (1 Page)

Exhibit 1

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Exhibit 1

Affidavit

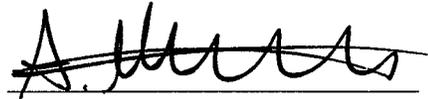
State of Nevada
County of Washoe

1. My name is Aziz Neal Merchant, Esq. I am a Nevada licensed attorney.
2. I was appointed to represent the petitioner Frank Peck in a post-conviction proceeding.
3. I am seeking to withdraw as counsel of record based upon the grounds stated in the accompanying motion, which I have read and declare true to the best of my knowledge.

FURTHER affiant sayeth naught.

6/10/10

Date



Aziz Neal Merchant, Esq.

State of Nevada
County of Washoe

Signed and sworn to before me on this 10th day of June 2010, by
Aziz merchant,

having personally appeared before me, a notary public.



Notary Public



******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 06-10-2010:08:35:16
Clerk Accepted: 06-10-2010:09:55:19
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Mtn to Relieve Counsel
- **Continuation
Filed By: AZIZ MERCHANT, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

AZIZ MERCHANT, ESQ. for FRANK PECK
GARY HATLESTAD, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

1 CODE #2610
RICHARD A. GAMMICK
2 #001510
P. O. Box 30083
3 Reno, Nevada 89520-3083
(775) 328-3200
4 Attorney for Respondent

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 FRANK MILFORD PECK,

10 Petitioner,

11 v.

Case No. CR06P2580

12 THE STATE OF NEVADA,

Dept. No. 6

13 Respondent.
14 _____/

15 NOTICE OF CHANGE OF RESPONSIBLE ATTORNEY

16 COME NOW, Respondent, by and through Terrence P. McCarthy, Appellate Deputy, and
17 hereby provides notice to the court, all parties, and their respective counsel that Terrence P.
18 McCarthy, Appellate Deputy, has replaced Gary H. Hatlestad, Chief Appellate Deputy, as the
19 responsible attorney for Respondent in all future matters related hereto.

20 Respondent herein requests that the Court and all parties herein update their service list
21 with Terrence P. McCarthy's name and address in order to facilitate timely service of all
22 documents in this matter.

23 AFFIRMATION PURSUANT TO NRS 239B.030

24 The undersigned does hereby affirm that the preceding document does not contain the

25 ///

1 social security number of any person.

2 DATED: June 16, 2010.

3 RICHARD A. GAMMICK
4 District Attorney

5 By /s/ TERRENCE P. McCARTHY
6 TERRENCE P. McCARTHY
7 Appellate Deputy
8 Nevada Bar No. 2745

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that this document was filed electronically with the Second Judicial
3 District Court on June 16, 2010. Electronic Service of the foregoing document shall be made
4 in accordance with the Master Service List as follows:

5 Aziz N. Merchant, Esq.
6 for Petitioner Frank Peck

7 /s/ SHELLY MUCKEL
8 SHELLY MUCKEL

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1 CODE #2645
RICHARD A. GAMMICK
2 #001510
P. O. Box 30083
3 Reno, Nevada 89520-3083
(775)328-3200
4 Attorney for Respondent

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 FRANK MILFORD PECK,

10 Petitioner,

11 v.

Case No. CR06P2580

12 THE STATE OF NEVADA,

Dept. No. 6

13 Respondent.
14 _____/

15 OPPOSITION TO MOTION TO WITHDRAW AS COUNSEL OF RECORD

16 Aziz Merchant has moved to withdraw as counsel for petitioner Peck. He claims,
17 vaguely, that Peck is insisting on a course of conduct that Merchant finds repugnant. The State
18 would first point out that Peck does not enjoy the absolute right to counsel in this post-
19 conviction case. Instead, the court has the option to require him to go forward without a
20 lawyer. *See* NRS 34.750; *McKague v. Warden*, 112 Nev. 1466, 929 P.2d 922 (1996). If this
21 court grants the motion to withdraw as counsel, the court should also re-examine the question
22 of whether the appointment of counsel is appropriate at all.

23 The court should also note that whatever problem exists regarding Peck, there is no
24 reason to believe that it will be resolved by appointing a new lawyer. Instead, it appears that
25 any new lawyer would simply inherit the same problem that Merchant now faces. For that
26 reason, the motion should be denied. For that same reason, if the motion is granted, the court

1 should decline to appoint new counsel and allow Peck to represent himself, free of the
2 restraints that will affect every lawyer that might get appointed.

3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the preceding document does not contain the
5 social security number of any person.

6 DATED: June 16, 2010.

7 RICHARD A. GAMMICK
8 District Attorney

9 By /s/ TERRENCE P. McCARTHY
10 TERRENCE P. McCARTHY
11 Appellate Deputy
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that this document was filed electronically with the Second Judicial
3 District Court on June 16, 2010. Electronic Service of the foregoing document shall be made in
4 accordance with the Master Service List as follows:

5 Aziz N. Merchant, Esq.
6 for Petitioner Frank Peck

7 /s/ SHELLY MUCKEL
8 SHELLY MUCKEL

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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 06-16-2010:15:36:44
Clerk Accepted: 06-16-2010:16:57:55
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Notice of Change of Attorney
Opposition to Mtn
Filed By: TERRENCE MCCARTHY, ESQ.
You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

AZIZ MERCHANT, ESQ. for FRANK PECK
TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA
GARY HATLESTAD, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

1 Code: 3660
2 Aziz N. Merchant, Esq.
3 Nevada Bar No.: 10148
4 Merchant Law Firm, Ltd.
5 100 N. Arlington Ave., Suite 290
6 Reno, NV 89501
7 Ph: 775-337-8400
8 Fax: 775-337-8401
9 Attorney for Petitioner Frank Peck

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8
9 IN AND FOR THE COUNTY OF WASHOE

11 FRANK PECK, Case No.: CR06P2580
12 PETITIONER, Dept: 6
13
14 VS.
15 THE STATE OF NEVADA,
16 RESPONDENT.

17 REPLY TO THE STATE'S OPPOSITION TO AZIZ NEAL MERCHANT'S
18 MOTION TO WITHDRAW AS COUNSEL OF RECORD

19 COMES NOW, Aziz Neal Merchant, Esq. of the Merchant Law Firm, Ltd. and files this
20 REPLY TO THE STATE'S OPPOSITION TO AZIZ NEAL MERCHANT'S MOTION TO
21 WITHDRAW AS COUNSEL OF RECORD.

22 POINTS AND AUTHORITIES

23
24 Aziz Neal Merchant (Merchant) would point out that the State cites no rule of law in
25 support of the State's request to deny Merchant's request to withdraw. Also, the State does not
26 respond to and presumably concedes that Frank Peck will suffer no prejudice as Frank Peck's
27 case is currently on hold. The State also does not respond to and presumably concedes that the
28

Reply

1 Robert Bell Conflict Group can very easily appoint another lawyer. Instead, the State contends
2 that because any new lawyer will inherit the same problems as Merchant, Merchant should
3 remain on the case.

4 Very respectfully and in response to the State, no lawyer should have to live under
5 constant threat from a client—for the next several years no less. It is very respectfully and
6 strongly urged that this Court grant the motion to withdraw.
7

8
9 *Affirmation Pursuant to NRS 239B.030*

10 The undersigned does hereby affirm that the preceding document does not contain the
11 social security number of any person.

12
13 Dated: June 16, 2010

14
15 X/S/Aziz N. Merchant, Esq.
16 Aziz N. Merchant, Esq.
17 Counsel for petitioner Frank Peck

18 Certificate of Service

19 I hereby certify that on 6/16/10, I electronically filed the foregoing with the Clerk of the
20 Court by using the ECF system which will send a notice of electronic filing to the following:

21 TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA
22 AZIZ MERCHANT, ESQ. for FRANK PECK

23 Copy mailed to
24 ELY STATE PRISON
25 ATTN: FRANK PECK
26 PO BOX 1989, ELY NV 89301

27 June 16, 2010

28 /S/Aziz N. Merchant, Esq.

1 Code: 3860
2 Aziz N. Merchant, Esq.
3 Nevada Bar No.: 10148
4 Merchant Law Firm, Ltd.
5 100 N. Arlington Ave., Suite 290
6 Reno, NV 89501
7 Ph: 775-337-8400
8 Fax: 775-337-8401
9 Attorney for Petitioner Frank Peck

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8
9 IN AND FOR THE COUNTY OF WASHOE

11 FRANK PECK, Case No.: CR06P2580
12 PETITIONER, Dept: 6
13
14 VS.
15 THE STATE OF NEVADA,
16 RESPONDENT.

17 REQUEST FOR SUBMISSION

18 COMES NOW, Aziz Neal Merchant, Esq. of the Merchant Law Firm, Ltd. and files this
19 Request for Submission of the Motion to Withdraw as Counsel of Record, filed on or about June
20 10, 2010.

Affirmation Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: June 16, 2010

X /S/Aziz N. Merchant, ESQ.
Aziz N. Merchant, Esq.
Counsel for petitioner Frank Peck

Certificate of Service

I hereby certify that on 6/16/10, I filed the foregoing with the Clerk of the Court, which will send a notice of electronic filing to the following:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA
AZIZ MERCHANT, ESQ. for FRANK PECK

Copy mailed to
ELY STATE PRISON
ATTN: FRANK PECK
PO BOX 1989, ELY NV 89301

June 16, 2010

/S/Aziz N. Merchant, ESQ.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 06-16-2010:21:25:33
Clerk Accepted: 06-17-2010:08:04:41
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Reply to/in Opposition
Request for Submission
Filed By: AZIZ MERCHANT, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

AZIZ MERCHANT, ESQ. for FRANK PECK
TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA
GARY HATLESTAD, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

1 Code 3370
2
3
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8
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13 FRANK PECK.,

Case No. CR06P2580

14
15 Petitioner,

Dept. No. 6

16 vs.

17 THE STATE OF NEVADA

18 Respondent.
19 _____/

20 ORDER
21

22 Aziz Neal Merchant, Esq. attorney for the petitioner, has filed a motion to withdraw
23 as counsel of record.

24 NRPC 1.16(b) permits an attorney to request withdrawing when withdraw can be
25 accomplished without material adverse effect on the interest of the client, and when the
26 client insist upon taking action that attorney considers repugnant or with which the lawyer
27 has fundamental disagreements

28 The Court finds the conditions stated in NRPC 1.16(b) are present in this case.

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Accordingly, the motion to withdraw as counsel of record is granted.

The above entitled matter is referred to Robert Bell, Esq., Administrator of the Court Appointed Counsel, for the selection of new counsel for the defendant.

DATED: This 21st day of June, 2010.



DISTRICT JUDGE

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 06-21-2010:14:43:02
Clerk Accepted: 06-21-2010:14:43:22
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ord Granting
Filed By: Heidi Boe

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

AZIZ MERCHANT, ESQ. for FRANK PECK
TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

CR06P2580 DC-9900018247-008
POST FRANK MILFORD PECK (D 24 Pages
District Court 07/01/2010 11 44 AM
Washoe County 3373
L.MATHEUS
DOOC

CASE NO. CR-06-P-2580
Dept No. 6

FILED

2010 JUL -1 AM 11:44

HOWARD H. CONYERS

In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe

Frank M. Peck
Petitioner,

JUDICIAL NOTICE

v.
State of Nevada
Respondent,

Comes Now, Petitioner, Frank M. Peck, prose
with Judicial Notice that Petitioner's previous Atty
Aziz Merchant took issue with Petitioner's wish
to develop the facts and evidence surrounding
the Material false statements / perjury pro-
ffered into evidence during Petitioner's
Jury Trial by Deputy District Attorney Dave
Clifton, Washoe County Sheriff Dept Crimelab
Director Rene Romero, Senior criminalist Jeffery
Riolo and Petitioner's ex-wife Leslie Crouser.

Deputy District Attorney Dave Clifton made material false statements to the jury when he advised the jury that a DNA reference sample had to be obtained by seizure order as there was no reference standard available on Mr Peck. This was untrue. See T.T. Sep 4, 1997 CR-96-2687 page 397 Lines 5-22.

Washoe County Sheriff Crimelab Director Rene Romero gave material false testimony when she testified under oath that the first time a DNA sample was in her lab under the name Frank Peck was March 2002 and for that reason contamination could not have occurred. Romero also testified that the PCR DNA process was not available in her lab until the year 2000 and that this was the reason the evidence wasn't tested until November 2001, seven years after the crime was committed. This was untrue. See T.T. May 11, 2009 page 99 lines 9-13, 17-20 and T.T. Sep 4, 1997 case no CR-96-2687 page 397, page 397 line 24, page 393 line 2.

Washoe County Sheriff Crimelab, SENIOR criminalist, Jeffery Riolo gave false material testimony when he testified under oath that he didn't have a DNA reference sample from Mr Peck, until PCR DNA testing was starting in 2000 or 2001. This was untrue, see testimony of Jeffery Riolo, T.T. Sep 4, 1997, page 392 line 24, page 393 line 1 and page 397 lines 5-22.

States witness Leslie Crouser, proffered material false testimony when she testified under oath that she had no prior knowledge of a "Pinky Ring" being of importance to Mr Peck's case. see T.T. May 11, 09 page 121 lines 19-24 page 127 lines 1 and 2. Her testimony was untrue and is belied by attached Sparks Police Report.

DAVE Clifton, Rene Romero, Jeffery Riolo all knew Mr Peck was incarcerated since 1996 for a sexual offense and cannot deny any knowledge of existing evidence or reference standard samples already booked into evidence at the Washoe County Sheriff's Office.

These material witnesses knew or should have known that certain assertions were untrue.

Dated this 27th day of June 2010.

Certificate of Service AND Affirmation

Pursuant to NRS 239 B 030 contains no social security numbers of any person and under penalty of perjury a true and correct copy of the attached Judicial Notice was mailed to:

Deputy District Attorney
Bruce Hahn
75 Court Street
Reno, NV. 89501

Frank Peck
FRANK PECK Petitioner

Code No. 4185

CERTIFIED COPY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

-000-

STATE OF NEVADA,)	
)	
Plaintiff,	)	Case No. CR06-2580
)	
vs.	)	Dept. No. 6
)	
FRANK MILFORD PECK,)	
)	
Defendant.)	

TRANSCRIPT OF PROCEEDINGS
TRIAL
MAY 8, 2009
RENO, NEVADA

Reported By: Rebecca S. Martinelli, CCR No. 212

RENO, NEVADA, FRIDAY, MAY 8, 2009, 10:42 A.M.

-o0o-

THE COURT: Ladies and gentlemen, I apologize for the delay. Thank you for your patience. We are still right on schedule for the trial.

Mr. Clifton, you may call your next witness.

MR. CLIFTON: Thank you, Your Honor.

~~JEFFREY RIOLO~~

called as a witness by the State herein, having been first duly ~~sworn~~ was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CLIFTON:

Q Please state your full name.

A Jeffrey Riolo.

Q Spell both first and last name.

A J-e-f-f-r-e-y, R-i-o-l-o.

Q Your occupation, please.

A I'm a senior criminalist assigned to the DNA testing section of Washoe County Sheriff's Office, Forensic Science Division.

Q What kind of background and education do you have?

A I have a bachelor of science degree in

Q Are you familiar with lab reports that are utilized -- standard report forms utilized in our Washoe County Lab?

A Yes.

Q What they look like?

A Yes.

Q I want to hand you what is No. 24.

MR. CLIFTON: If we have it, Miss Clerk.

Thank you, ma'am.

BY MR. CLIFTON:

Q Handing you 24, which is No. 1 for counsel's information. It's Exhibit No. 24 in laboratory report No. 1 by Maria Fassett.

Are you familiar with reports that look in this type of form from your laboratory?

A Yes.

Q And you are familiar with the case number at the top? You have been involved in working on that case? It's L2145-94?

A Yes.

Q Familiar with the author's name and/or signature on the back?

A Maria Fassett, yes.

Q In this particular case, did you also do a report

like that? In the same form, not on the same subject.
but --

A Yes.

Q -- a laboratory report.

A Yes.

Q Do you know if Renee Romero has done several in
this particular case?

A Yes.

Q What type of examination or investigation did you
do in that laboratory number in this case?

A I looked at the DNA profile from Frank Peck.

Q Okay. Did you have that in your lab, to your
knowledge, in 1996, when you started? The sample.

A No, we did not.

Q Did you have it, to your knowledge, in your lab
in the year 2000 or 2001 when PCR was starting?

A No.

Q When did you receive at the lab that sample from
Frank Peck, to your knowledge?

A His DNA sample was received in the lab in March
of 2002.

Q I want to talk a little bit about how you
received it for databases: Local, state and national
databases. Are you familiar with these?

1 RENO, NEVADA, FRIDAY, MAY 8, 2009, 2:06 P.M.

2 -oOo-

3 THE COURT: Mr. Clifton, call your next witness.

4 MR. CLIFTON: State's next witness will be
5 Ms. Renee Romero.

6 Ask you to step forward, face the clerk, raise
7 your right hand.

8 THE COURT: Ms. Romero, please take the witness
9 stand and be seated.

10 RENE ~~ROMERO~~.

11 called as a witness by the State herein, having been first
12 duly ~~sworn~~, was examined and testified as follows:

13
14 DIRECT EXAMINATION

15 BY MR. CLIFTON:

16 Q Take a moment to catch your breath.

17 Did you just run here from the airport?

18 A Yes.

19 Q Take a moment, get comfortable, and tell us your
20 name.

21 A I'm Renee Romero. R-o-m-e-r-o.

22 Q Your employment or occupation?

23 A I am the director of the Washoe County Sheriff's
24 Office, Forensic Science Division.

1 Q So a lot of people might have A blood or B blood
2 or O blood?

3 A Yes.

4 Q So you haven't narrowed it sufficiently to get to
5 a suspect, correct?

6 A Correct.

7 Q Has DNA technology gotten to that point where you
8 can possibly narrow it to a suspect?

9 A Still have to have something to compare it to.

10 Q Got you. So if you do a DNA test, you get a
11 result of what? What do you call it?

12 A You get a DNA profile.

13 Q Unless you have somebody to compare it to, it's
14 just a bunch of numbers or letters, or whatever it is. A
15 profile.

16 A Yes.

17 Q And they get a graph, an electropherogram?

18 A Yes.

19 Q So in any event or for whatever reason, this
20 sample was not tested until when, for DNA, to your
21 knowledge?

22 A Until the technology changed to technology that
23 has the acronym PCR testing, and areas of DNA that we're
24 looking at are called STRs.

1 Q The standard repeats?

2 A Yes.

3 Q What year or what date was that, if you know,
4 that that became available, that technology, to Washoe
5 County laboratory?

6 A In our laboratory we brought that on line in the
7 year 2000.

8 Q Now, when it came on line, did it cause a
9 floodgate, did it cause an influx of cases to go back and
10 test, or what?

11 A A couple things happened. There were some cases
12 that we, the analyst, recalled that there wasn't enough
13 DNA on, and so we pulled those to call an investigator to
14 see if they wanted them done.

15 And then also we tried to educate the
16 investigators to go back and look at your older cases that
17 you didn't initially get DNA results on and send those in,
18 because now, with this new technology, we can look at much
19 smaller amounts of DNA. We could look at a single hair
20 root, we could look at a bottle rim that had been licked.
21 It really changed the types of samples that we could get
22 DNA results from.

23 Q And they could be smaller samples and still yield
24 results?

CERTIFIED COPY

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IN THE SECOND JUDICIAL DISTRICT COURT

7

STATE OF NEVADA, COUNTY OF WASHOE

8

THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

9

STATE OF NEVADA,

10

Plaintiff,

11

vs.

12

FRANK MILFORD PECK,

Case No. CR06-2580

13

Defendant.

Dept. 6

14

Pages 1 to 131, inclusive.

15

16

TRANSCRIPT OF PROCEEDINGS

17

JURY TRIAL

Monday, May 11, 2009

18

A P P E A R A N C E S:

19

FOR THE PLAINTIFF:

DAVID CLIFTON

20

CHIEF DEPUTY DISTRICT ATTORNEY

One South Sierra Street

Reno, NV 89521

21

22

FOR THE DEFENDANT:

FRANK PECK, IN PRO PER

23

ADVISORY COUNSEL:

ROBERT BRUCE LINDSAY, ESQUIRE

596 California Street

Reno, NV 89509

24

REPORTED BY:

Christina Herbert, CCR #641

Molezzo Reporters, 322.3334

1 A It could be.

2 Q I guess what I'm getting at is that there had to
3 have been some sort of contamination to implicate me in this
4 case.

5 In your mind at any point during your analysis with
6 the controls that are in place now, you can't say
7 definitively 100 percent that there wasn't contamination.
8 You cannot say that.

9 A I can say that the vaginal swab was not
10 contaminated by a reference sample from Frank Peck, because
11 we didn't have one in the lab. I can say it based on a lot
12 of other things but it's not possible. We didn't have the
13 sample.

14 Q You had a reference standard from me very close in
15 time to when you profiled that evidentiary sample, very close
16 in time.

17 A The results were obtained and put into the database
18 in December of 2001 and the first time a sample came in under
19 the name of Frank Peck was in March of 2002, after the
20 analysis.

21 Q But then don't you run them next to each other for
22 comparison?

23 A No. I never went back to the vaginal swab for
24 analysis. You make a record of your results and you compare

1 today, I'll do my best.

2 THE COURT: I know it's warm in the courtroom this
3 afternoon, ladies and gentlemen. Trying to see if we can do
4 a better job with the air conditioning tomorrow.

5 MR. CLIFTON: I'll do my best to go to closing
6 arguments tomorrow morning.

7 THE COURT: All right. Thank you.

8 Ma'am, please step forward, face the clerk, raise
9 your right hand and be sworn as a witness.

10 (Witness Sworn)

11 THE COURT: Please take the witness stand and be
12 seated.

13 DIRECT EXAMINATION

14 BY MR. CLIFTON:

15 Q Please tell us your first and last name and spell
16 both names.

17 A Leslie Crouser, L-e-s-l-i-e, C-r-o-u-s-e-r.

18 Q Are you currently a resident of Washoe County,
19 Nevada?

20 A Yes.

21 Q Where you such in 1994, do you know?

22 A Yes.

23 Q Were you ever married to defendant, Frank Peck, who
24 is seated here to my left?

1 A I believe so, yes.

2 Q Did he have a twin brother that you became aware?

3 A No.

4 Q Are you aware of his brother Larry?

5 A Yes.

6 Q His sister Sheri?

7 A Yes.

8 Q Sheri Gray now, I guess.

9 A Uh-huh.

10 Q Did you and he have wedding rings?

11 A Yes.

12 Q Did he wear his?

13 A At first.

14 Q Then what happened?

15 A He pawned it.

16 Q Do you know when that occurred?

17 A I couldn't give you an exact date. Sometime in our

18 marriage.

19 Q After he pawned it, did he buy another wedding

20 ring?

21 A No.

22 Q Did you ever see him wear any rings after that?

23 A Yes.

24 Q What kind of ring?

1 A He wore his father's ring.

2 Q What kind of ring was that?

3 A It was a gold ring. Um, it was gold ring, had like
4 flattened gold nuggets on it, ~~a pinky ring~~.

5 Q Oh, a pinky ring?

6 A (Witness nods.)

7 Q That was a yes, for the record?

8 A Yes.

9 Q Did you ever see his father wear that?

10 A Yes.

11 Q On which finger?

12 A His pinky.

13 Q How did Mr. Peck, the defendant, Frank Peck get it?

14 A How did he what?

15 Q How did it come to pass to him?

16 A I believe it was after his father passed away.

17 Q Do you know if his father ever parted with that
18 ring at all during his -- or did he wear it every day or do
19 you know?

20 A As far as I can remember, he wore it every day.

21 Q Do you know if he gave it to Mr. Peck before he
22 died?

23 A That, I can't be -- I can't remember exactly, no.

24 Q Was it a family heirloom, kind of a valuable?

1 were together, if you remember?

2 A I don't have an exact number. I'm gonna say a few,
3 several. I don't really remember how long.

4 Q It's been a lot of years, hasn't it?

5 A It has.

6 Q It's pretty difficult -- we're talking 15 to 20
7 years ago, aren't we, the marriage, et cetera?

8 A Yes.

9 Q And it's kind of tough to remember, isn't it?

10 A (Witness nods.)

11 Q Fair to say?

12 A Yeah.

13 Q Did he have a scar on his back, a two-inch scar, if
14 you remember?

15 A I don't remember.

16 Q Did you ever see a two-inch scar on his back, if
17 you remember?

18 A I don't remember. I don't remember a scar.

19 Q And I'm hoping Mr. Clifton doesn't jump up and
20 down, but did anybody suggest to you prior to you coming here
21 to testify that there was perhaps a pinky ring involved in
22 this case?

23 A No

24 Q It's the first time you've ever heard the word

1 "pinky ring" is on the stand here today?

2 A Yes

3 Q Okay. But you, at first at least, believed that
4 that ring was given to him after the father passed away as an
5 heirloom sort of thing --

6 A I think so, yes.

7 Q -- to the best of your memory 15 years ago or so?

8 A Yes.

9 Q Would have been about 15 years his father passed
10 away. It's not a trick question. It's about 15 years ago.

11 A I think so, yeah.

12 MR. LINDSAY: If I might have one moment with my
13 client, your Honor?

14 THE COURT: You may.

15 MR. LINDSAY: Your Honor --

16 THE DEFENDANT: May I?

17 THE COURT: Yes, but briefly, counsel. Mr. Peck,
18 you may resume. That's all right. As I indicated, ladies
19 and gentlemen, the defendant is representing himself in this
20 case. Mr. Lindsay is appearing as advisory counsel. You may
21 proceed..

22 BY THE DEFENDANT:

23 Q You don't remember my being gone for weeks?

24 A No.

1 Case No. CR96-2687

'97 NOV 17 A8:07

2 Department No. 8

3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR THE COUNTY OF WASHOE

5 HONORABLE STEVEN R. KOSACH

6 THE STATE OF NEVADA,

7 Plaintiff,

8 vs.

Trial

9 FRANK MILFORD PECK,

10 Defendant.

11 -----/

12

13 TRANSCRIPT OF PROCEEDINGS

14 VOLUME III

15 Pages 280-480

16 September 4, 1997

17 Reno, Nevada

18 APPEARANCES:

19 For the State:

Egan Walker & Cindi Heron
Deputy District Attorneys
Washoe County Courthouse
Reno, Nevada

21

22 For the Defendant:

Dennis Widdis
Attorney at law
Reno, Nevada

23

24 Reported by:

Isolde Zihn, CCR #87

IV

1 Now we have both sides of the DNA, and we're going to
2 look at the order of these bases. We're going to go down the
3 train. The order of these bases is what makes an
4 individual's genetic blueprints. It's what makes somebody
5 have brown eyes, blue eyes. But it also helps us identify
6 whether one individual is different from another individual,
7 or if a sample matches an individual.

8 There's two areas of DNA-- I'm sorry. There's two
9 variations of DNA that we look at. One is called the
10 sequence variation and one is called the repeat variation.

11 In the context of the sequence variation what we're
12 doing is we're looking at changes in the bases. So you can
13 see in this one example right here we have a sequence of
14 bases, and at this one sight we have a G. Now, on this other
15 sequence of DNA we have a sequence of bases, this one site we
16 have a C. We're able to distinguish this piece of DNA from
17 this piece of DNA.

18 Now, in a repeat variation what we're doing is looking
19 at a core unit, and we're looking at how often these core
20 units are hooked together. Like boxcars hooked together to
21 make a train. So we're going to look at the number of
22 boxcars, and we're going to look at the whole train
23 afterwards.

24 There's a technique we use to do this. It's called

1 PCR, polymerase chain reaction, Just a name that says we can
2 start out with a small amount of DNA and make a large amount
3 of DNA from that small amount. So it's like a Xerox machine
4 when you make copies of these variations of the DNA.

5 There's four steps. We would isolate the DNA. In that
6 step what we're doing is taking the stain or, say, the blood
7 sample, and we're separating the DNA from the rest of the
8 cell.

9 In the amplification step is where we actually are
10 making the copies of the DNA. And there's three steps. The
11 denaturation, annealing and extension. Denaturation is where
12 DNA comes apart. The annealing is where we bind known pieces
13 of DNA. And then the extension is where we're actually
14 making the copies that we want to make. Then what we do is
15 analyze it, interpret it and then apply statistics to it.

16 When we go to analyze the sample in the case of a
17 sequence detection, remember the sequence detection is when
18 we're looking for the different--the changes in the base.
19 The previous illustration was a G to a C. So we're looking
20 for that change.

21 These are just areas of the DNA we are looking at.
22 HLADQ alpha, an area of the DNA. The poly marker consists of
23 one, two, three, four, five areas of the DNA that I'm going
24 to look at.

1 ~~PECK, FRANK~~
SPARKS POLICE DEPARTMENT
Supplemental or Continuation Report

DA#327992

Type of Report: Sexual Assault

Case: 94-9292

Date/Time of Supplement: November 20, 2006 3:00P.M.

Detective: Fiore 1850

Approving Supervisor: TELETT 4897

Date: 11-21-06

On 11/16/06 I contacted Leslie Crouser reference this case. Crouser is Frank Peck's ex-wife and was married to Peck when this sexual assault occurred. I advised Crouser the Sexual Assault case from 1994 went to the Grand Jury and an indictment was obtained for Frank Peck. I told Crouser the trial would not happen until after the 1st of the year. I also told Crouser it would be the District Attorney's decision if Crouser would have to testify in this case. Crouser advised me that she is very afraid of Peck and she does not want Peck to know her current name, address, phone number or place of work.. Crouser said if she thought Peck was going to get out of jail she would consider moving out of state. I advised Crouser if Peck was convicted on this case, Peck would probably never get out of prison.

I asked Crouser if she remembers Peck wearing a ring on his "pinky" finger back in 1994. Crouser said Peck had a gold ring, with gold nuggets, that was Peck's fathers. Crouser remembers Peck frequently wearing the ring, but she could not remember if he wore the ring on his pinky finger or not. Crouser said that is the only ring she remembers Peck ever wearing.

I advised Crouser I would keep her posted of the trial and any pre-trial events related to this case.

Disposition of Case:

Cleared arrest

1 **Code : 2715**

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4
5 **THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6 **IN AND FOR THE COUNTY OF WASHOE**

7 ***

8
9 FRANK PECK,

Petitioner,

Case No. : CR06P2580

10 vs.

Dept No. : 6

11 STATE OF NEVADA,

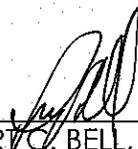
12 Respondent.
13 _____/

14 **RECOMMENDATION AND ORDER FOR APPOINTMENT OF COUNSEL**

15 The Petitioner has previously been granted Forma Pauperis Status, and has
16 previously been determined to have a basis for the appointment of counsel. On July 24,
17 2009, Aziz Merchant, Esq., was appointed as counsel for Plaintiff. On June 10, 2010, counsel
18 Aziz Merchant filed his Motion To Withdraw As Counsel Of Record, citing NRPC 1.16(b). On
19 June 21, 2010, Judge Brent Adams filed his Order withdrawing Aziz Merchant, Esq., as
20 counsel of record and referred the matter to the Administrator of the Court Appointed
21 Counsel for selection of counsel for the Petitioner. The Administrator of the Court
22 Appointed Counsel makes the following recommendation:

23 IT IS HEREBY RECOMMENDED that Mary Lou Wilson, Esq., be appointed to represent
24 Petitioner on this Petition For Writ Of Habeas Corpus. Said Counsel is to be paid pursuant
25 to NRS 7.115 through NRS 7.165 by the State Public Defender in an amount recommended
26 by the Administrator and approved by the Court.

27 DATED this 28 day of June, 2010.

28 
ROBERT C. BELL, ESQ., ADMINISTRATOR,
COURT APPOINTED COUNSEL

1 Pursuant to the Nevada Supreme Court Order in ADKT 411, and the Second
2 Judicial District Court's Model Plan to address ADKT 411, good cause appearing
3 and in the interest of justice,

4 IT IS HEREBY ORDERED that the recommendations of the Administrator are
5 hereby confirmed, approved and adopted. Mary Lou Wilson, Esq., shall be
6 appointed to represent Petitioner on his Petition For Writ Of Habeas Corpus.

7 DATED this 20th day of July, 2010.

8 
9 CHIEF DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 21st day of July, 2010, I electronically filed the Order with the Clerk of the Court by using the ECF system, which sent a notice of electronic filing to the following:

Terrence McCarthy, Esq.
Deputy District Attorney

Aziz Merchant, Esq.
Attorney at Law

I further certify that on the 22nd day of July, 2010, I deposited in the county mailing system for postage and mailing with the U.S. Postal Service, a true copy of the same, addressed to:

Robert Bell, Esq.
Administrator
20 Winter Street
Reno, Nevada 89503

Frank Peck
Inmate
NSP
P.O. Box 1989
Ely, Nevada 89301



Marci L. Stone

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 07-21-2010:15:37:04
Clerk Accepted: 07-21-2010:15:42:30
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ord Appointing Counsel
Filed By: Marci Trabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARY LOU WILSON, ESQ. for FRANK PECK
TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

1 CODE NO.
2 MARY LOU WILSON ESQ.
3 Nevada Bar No. 3329
4 333 Marsh Avenue
5 Reno, NV 89509
6 775-337-0200
7 Attorney for Petitioner

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

9 IN AND FOR THE COUNTY OF WASHOE

10 FRANK MILFORD PECK,

11 Petitioner,

12 vs.

Case No. CR06P2580

13 Dept. No. 6

14 E.K. McDANIEL, WARDEN, E.S.P. and
15 THE STATE OF NEVADA,

16 Respondents.

17 MOTION FOR DISTRICT COURT ORDER PERMITTING TELEPHONIC CONFERENCE
18 BETWEEN APPOINTED COUNSEL AND PETITIONER IN SUPPORT OF THE
19 SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS
20 (POST CONVICTION)

21 COMES NOW, FRANK MILFORD PECK, by and through counsel, MARY LOU WILSON,
22 and Moves this Honorable Court for its Order to Command Ely State Prison and Warden
23 McDaniel to set up a telephone conference between Petitioner and appointed counsel Mary Lou
24 Wilson.

25 This request is based on a request made to Ely State Prison to set up a phone conference. The
Warden's office informed counsel's office that Ely State Prison would not accommodate

1 counsel's request as their policy forbids telephone conference between counsel and client. No
2 reasonable reason was given for this policy.

3 The Warden's office suggested that Petitioner could call counsel but that Petitioner has to
4 wait in line for the phone to which he has access only a few days per week and that the phone
5 call could literally come on any day at any time. Obviously, this would not facilitate an
6 appropriate legal conversation between Petitioner and counsel.

7 This phone conference request is made in an attempt to save the State travel costs for driving
8 from Reno to Ely and back.

9 Other prisons in the N.D.O.C., such as High Desert State Prison in Southern Nevada, have
10 previously accommodated counsel's requests for phone conferences with other clients by having
11 the client call from a caseworker's office to counsel's office.

12 Therefore, the Petitioner moves that the Honorable Court Order Ely State Prison to set up a
13 telephonic conference between Petitioner and appointed counsel, Mary Lou Wilson.

14 Should this Honorable Court's Order be ignored by Ely State Prison, counsel will be forced to
15 request a Writ of Mandamus to the Nevada Supreme Court seeking enforcement of this
16 reasonable request for a telephonic conference. In these dire times of economic problems, Ely
17 State Prison should accommodate this request.

18 DATED this 11th day of August, 2010.

19 By: s/s: MARY LOU WILSON
20 MARY LOU WILSON
21 Attorney for Petitioner

22 Affirmation:

23 I, Mary Lou Wilson hereby affirm that there is no social security number of any person in the
24 aforementioned document.

Dated this 11th day of August, 2010.

25 By: s/s: Mary Lou Wilson
Mary Lou Wilson

1 CERTIFICATE OF SERVICE

2 I, Mary Lou Wilson, hereby certify that pursuant to NRCP 5(b), on the 11th day of August,
3 2010, I e-filed the foregoing pursuant to the Master List of persons on the e-filing roster, in
4 particular, to The Honorable Judge Brent T. Adams, Terrence McCarthy, Appellate Deputy
District Attorney, and mailed a copy of the same to Petitioner Peck through the U.S. mail to:

5 The Honorable Judge Brent Adams, District Court, Department 6 (e-file)

6 Terrence McCarthy, Appellate Deputy District Attorney, (e-file)

7 Frank Peck (U.S. mail)

8 Inmate Number 57106

9 Ely State Prison

10 4569 North State Route 490

11 P.O. BOX 1989

12 Ely, NV 89301

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 08-11-2010:16:26:01
Clerk Accepted: 08-11-2010:16:29:03
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Motion
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARY LOU WILSON, ESQ. for FRANK PECK
TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

1 CODE #2645
RICHARD A. GAMMICK
2 #001510
P. O. Box 30083
3 Reno, Nevada 89520-3083
(775)328-3200
4 Attorney for Respondent

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 FRANK MILFORD PECK,

10 Petitioner,

11 v.

Case No. CR06P2580

12 THE STATE OF NEVADA,

Dept. No. 6

13 Respondent.
14 _____/

15 OPPOSITION TO MOTION FOR DISTRICT COURT ORDER PERMITTING TELEPHONIC
16 CONFERENCE BETWEEN APPOINTED COUNSEL AND PETITIONER IN SUPPORT OF THE
SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

17 Petitioner has sought an order from this court “commanding” the Warden of Ely State
18 Prison to make his office and telephone available to the petitioner in order to allow a telephonic
19 conference with counsel. Petitioner suggests that he may seek a writ of mandamus.¹ In
20 general, the people of the state of Nevada are disinterested in the motion. However, the court
21 may note that the Warden is a nominal party to this action and thus is represented by the
22 Washoe County District Attorney. Hence, this response. In addition, the Department of
23 Corrections is represented by the Attorney General. The undersigned will forward the motion
24 to the AG just in case the AG wishes to weigh in on the subject.

25 _____
26 ¹The motion has not been served on the Warden, or the Department of Corrections, or
the Attorney General.

1 Notably lacking from the diatribe is any authority for the proposition that this court has
2 any authority to tell the Warden how to run the prison. That is because there is none. This
3 court cannot order the Warden to even have an office or a telephone, let alone require the
4 Warden to surrender that office to a prisoner. A court may issue a writ of habeas corpus,
5 commanding the production of the prisoner in court, but has no greater authority to direct how
6 or where the prisoner is to be confined.

7 The motion also criticizes prison officials for failing to provide counsel with a
8 “reasonable reason” for their policies. No law requires the Warden to explain himself and
9 reveal security procedures to counsel for a prisoner.

10 In the experience of the undersigned, the wardens of the various prisons have been
11 receptive to “requests” from the court that are designed to save money. In fact, if this court
12 were to inquire of the Warden and seek out the Warden’s suggestions on how counsel may
13 communicate with her client without any inconvenience to herself or expense to the State, the
14 undersigned expects that the Warden may be happy to provide opinions on the subject.
15 However, petitioner has not sought such assistance. Instead, petitioner has asked this court to
16 exceed its authority. The people of the State of Nevada oppose that effort.

17 There is no litigation pending that concerns the Warden’s office or telephone. An order
18 to anyone to do anything that is issued without any pending litigation concerning the subject
19 matter of the order is void as being in excess of the court’s jurisdiction. *Cunningham v. Eighth*
20 *Judicial District Court*, 102 Nev. 551, 729 P.2d 1328 (1986). That case concerns one of the
21 more infamous contempt orders issued by Judge Goldman of Las Vegas. He ordered a police
22 lieutenant to appear in his office with certain video tapes. The Court ruled: “Because no
23 criminal or civil action involving the right to possess the video tapes was pending before Judge
24 Goldman, he lacked subject matter jurisdiction over the underlying dispute.” The Court went
25 on to issue a writ of prohibition, calling the contempt order a “an abuse of judicial power.” 102
26 Nev. at 560.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that this document was filed electronically with the Second Judicial
3 District Court on August 20, 2010. Electronic Service of the foregoing document shall be made
4 in accordance with the Master Service List as follows:

5 Mary Lou Wilson, Esq.
6 for Petitioner Frank Peck

7
8 /s/ SHELLY MUCKEL
SHELLY MUCKEL

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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 08-20-2010:14:00:00
Clerk Accepted: 08-20-2010:14:22:24
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Opposition to Mtn
Filed By: TERRENCE MCCARTHY, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

MARY LOU WILSON, ESQ. for FRANK PECK
TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 09-04-2010:18:28:41
Clerk Accepted: 09-07-2010:08:39:42
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
- **Continuation
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

1 CODE NO.
2 MARY LOU WILSON ESQ.
3 Nevada Bar No. 3329
4 333 Marsh Avenue
5 Reno, NV 89509
6 775-337-0200
7 Attorney for Petitioner

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

9 IN AND FOR THE COUNTY OF WASHOE

10 FRANK MILFORD PECK,

11 Petitioner,

12 vs.

13 Case No. CR06P2580

14 Dept. No. 6

15 E.K. McDANIEL, WARDEN, E.S.P. and
16 THE STATE OF NEVADA,

17 Respondents.

18 NOTICE OF PETITIONER'S MOVE TO ANOTHER CORRECTIONAL FACILITY
19 AND WITHDRAWL OF MOTION FOR DISTRICT COURT ORDER
20 PERMITTING TELEPHONIC CONFERENCE
21 BETWEEN APPOINTED COUNSEL AND PETITIONER IN SUPPORT OF THE
22 SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS
23 (POST CONVICTION)

24 COMES NOW, FRANK MILFORD PECK, by and through counsel, MARY LOU WILSON,
25 and gives Notice to this Honorable Court for Petitioner's move to another correctional facility
and Petitioner's withdrawal of Motion for Order permitting telephonic conference between
Petitioner and appointed counsel Mary Lou Wilson, which was filed on August 11, 2010.

//

1 This Notice is based on a phone call by Petitioner to counsel on September 24, 2010 advising
2 that Ely State Prison had informed Petitioner he would be transferred to Nevada State Prison in
3 Carson City the week of September 27, 2010.

4 In light of this new information, it is unnecessary for Petitioner to continue with his Motion
5 for a telephonic conference, as counsel will simply drive to Carson City to visit Petitioner.

6 Therefore, Petitioner withdraws the Motion for District Court Order Permitting Telephonic
7 Conference between Appointed Counsel and Petitioner.

8 DATED this 24th day of September, 2010.

9
10 By: s/s: MARY LOU WILSON
11 MARY LOU WILSON
Attorney for Petitioner

12 Affirmation:

13 I, Mary Lou Wilson hereby affirm that there is no social security number of any person in the
14 aforementioned document.

Dated this 24th day of September, 2010.

15 By: s/s: Mary Lou Wilson
Mary Lou Wilson

1 CERTIFICATE OF SERVICE

2 I, Mary Lou Wilson, hereby certify that pursuant to NRCP 5(b), on the 24th day of September,
3 2010, I e-filed the foregoing pursuant to the Master List of persons on the e-filing roster, in
4 particular, to The Honorable Judge Brent T. Adams, Terrence McCarthy, Appellate Deputy
District Attorney, and mailed a copy of the same to Petitioner Peck through the U.S. mail to:

5 The Honorable Judge Brent Adams, District Court, Department 6 (e-file)

6 Terrence McCarthy, Appellate Deputy District Attorney, (e-file)

7 Frank Peck (U.S. mail)

8 Inmate Number 57106

9 Ely State Prison

10 4569 North State Route 490

11 P.O. BOX 1989

12 Ely, NV 89301

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 09-24-2010:15:56:44
Clerk Accepted: 09-24-2010:16:10:09
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Notice
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

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The following people were served electronically:

MARY LOU WILSON, ESQ. for FRANK PECK
TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 01-14-2011:15:50:34
Clerk Accepted: 01-14-2011:16:09:28
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 02-22-2011:12:31:38
Clerk Accepted: 02-22-2011:14:35:03
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
- **Continuation
- **Continuation
- **Continuation

Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

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-

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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 02-22-2011:17:30:01
Clerk Accepted: 02-23-2011:08:30:23
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Request for Submission
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 03-24-2011:23:41:08
Clerk Accepted: 03-25-2011:08:15:08
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Request for Submission
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 04-07-2011:14:49:40
Clerk Accepted: 04-07-2011:14:53:03
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
- **Continuation
- **Continuation
- **Continuation

Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 04-26-2011:13:30:20
Clerk Accepted: 04-26-2011:13:30:58
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ord Granting Mtn
Filed By: Heidi Boe

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

1 CODE NO.
2 MARY LOU WILSON ESQ.
3 Nevada Bar No. 3329
4 333 Marsh Avenue
5 Reno, NV 89509
6 775-337-0200
7 Attorney for Petitioner Peck

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

9 IN AND FOR THE COUNTY OF WASHOE

10 FRANK MILFORD PECK,

11 Petitioner,

12 vs.

Case No. CR06P2580

13 Dept. No. 6

14 Warden, N.D.O.C. and
15 THE STATE OF NEVADA,

16 Respondents.

17 MOTION FOR DISCOVERY
18 IN SUPPORT OF THE EVIDENTIARY HEARING
19 IN THE PETITION FOR WRIT OF HABEAS CORPUS
20 (POST CONVICTION)

21 COMES NOW FRANK PECK, by and through counsel, MARY LOU WILSON, and
22 MOVES this Honorable Court for its Order for Discovery.

23 This motion is based upon correspondence with Mehul Anjaria, MS, F-ABC, the Curriculum
24 Vitae of Mr. Anjaria, and the Discovery Request presented by Mr. Anjaria.

25 Petitioner may invoke the traditional forms of discovery under the Nevada Rules of Civil
Procedure to the extent they are not inconsistent with NRS 34.360 to 34.830. NRS 34.780(1).

1 Under NRS 34.780(2) petitioner may proceed with discovery “if, and to the extent that, the judge
2 or justice for good cause shown grants leave to do so.” NRS 34.780(2)

3 As an offer of proof, counsel submits the following:

4 DNA evidence was used to convict Petitioner of the crime of Sexual Assault, which lead to a
5 sentence of Life with the possibility of parole after 5 years had been served.

6 Counsel has contacted Mehul Anjaria MS, F-ABC regarding evaluating the DNA evidence
7 and chain of custody in Petitioner’s case. Mr. Anjaria has supplied counsel with a list of the
8 items that he requires for a thorough review. Exhibit 1.

9 Per counsel’s correspondence with Mr. Anjaria, the following items are required for a
10 thorough and reasonable review of the serology/DNA testing and the chain of custody:

11 -complete chain of custody record for all biological evidence and:

- 12
- 13 A. A legible copy of the entire contents of the case file. This includes all laboratory reports,
14 notes, data, communication logs, chain of custody information, CODIS hit reports, and
15 evidence collection, screening, and preservation notes.
 - 16 B. A current CV for all personnel involved in the collection and analysis of evidence in this
17 case.
 - 18 C. Proficiency testing results for the year surrounding the time of analysis for the individuals
19 referred to in „B“ above.
 - 20 D. Any documentation regarding QC issues with analysis in this case. This includes
21 contamination logs, corrective actions, discrepancy reports, unexpected results, and other
22 similarly titled documents.
 - 23 E. CD(s) containing all electronic data necessary to re-create the STR data analysis
24 performed in this case. This includes raw data, matrix files, log files, etc.
25

1 F. The version(s) of the following manuals/protocols in effect at the time of analysis
2 (electronic version if possible):

- 3 -Quality Assurance Manual
- 4 -Forensic Biology/DNA examination and testing protocols
- 5 -Interpretation guidelines for specific typing kit(s) used in the analysis (e.g. Profiler Plus,
6 Identifiler)
- 7 -Analysis parameters used for electronic data analysis/genotyping
- 8
- 9 -Mixture interpretation guidelines for specific typing kit(s) used in the analysis

10 Additionally, in light of possible juror misconduct by reading a newspaper article about the
11 instant offense at the time of trial, Petitioner also requests copies of the juror information cards,
12 in order to contact jurors to determine whether or not they read a newspaper article or were
13 spoken to about it while in the midst of the trial, that are within the possession, custody, or
14 control of the State, the existence of which is known, or with the exercise of due diligence may
15 become known to the appellant prosecuting attorney.

16 DATED this 23rd day of May, 2011.

17 By: s/s: MARY LOU WILSON
18 MARY LOU WILSON
19 Attorney for Petitioner

20 Affirmation:

I, Mary Lou Wilson hereby affirm that there is no social security number of any person in the
aforementioned document.

21 Dated this 23rd day of May, 2011.

22 By: s/s: Mary Lou Wilson
23 Mary Lou Wilson
24 Attorney for Petitioner
25

1 CERTIFICATE OF SERVICE

2 I, Mary Lou Wilson, hereby certify that pursuant to NRCP 5(b), on the 23rd day of May, 2011
3 I e-filed the foregoing pursuant to the Master List of persons on the e-filing roster, in particular,
4 to The Honorable Judge Brent T. Adams, Terrence McCarthy, Appellate Deputy District
Attorney, and mailed a copy of the same to Petitioner Peck through the U.S. mail to:

5 The Honorable Judge Brent Adams, District Court, Department 6 (e-file)

6 Terrence McCarthy, Appellate Deputy District Attorney, (e-file)

7 Frank Peck (U.S. mail)

8 Inmate Number 57106

9 S.D.C.C.

P.O. Box 208

10 Cold Creek Road

Indian Springs, Nevada 89070

1 Exhibit in Support of Motion for Discovery

2 Exhibit 1, Discovery Request from Mehul Anjaria, MS, F-ABC

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EXHIBIT 1

EXHIBIT 1



DISCOVERY REQUEST

People V. Frank Peck

With regard to the following cases and their respective agencies:

Washoe County Sheriff's Office/Sparks Police Department

Agency Case # 94-9292

Court Case No. CR 06-2580

And: Police and Forensic Science agencies involved in Court Case No. CR 96-2687

The following items are required for a review of the serology/DNA testing and the chain of custody:

- complete chain of custody record for all biological evidence**
- available court transcripts of testimony of forensic scientists**

and:

- A. A legible copy of the entire contents of the case file. This includes all laboratory reports, notes, data, communication logs, chain of custody information; CODIS hit reports, and evidence collection, screening, and preservation notes.**
- B. A current CV for all personnel involved in the collection and analysis of evidence in this case.**
- C. Proficiency testing results for the year surrounding the time of analysis for the individuals referred to in 'B' above.**

- D. Any documentation regarding QC issues with analysis in this case. This includes contamination logs, corrective actions, discrepancy reports, unexpected results, and other similarly titled documents.
- E. CD(s) containing all electronic data necessary to re-create the STR data analysis performed in this case. This includes raw data, matrix files, log files, etc.

- F. The version(s) of the following manuals/protocols in effect at the time of analysis (electronic version if possible):
 - Quality Assurance Manual
 - Forensic Biology/DNA examination and testing protocols
 - Interpretation guidelines for specific typing kit(s) used in the analysis (e.g. Profiler Plus, Identifiler)
 - Analysis parameters used for electronic data analysis/genotyping
 - Mixture interpretation guidelines for specific typing kit(s) used in the analysis

This Discovery Request is considered to be ongoing for any additional analysis that is completed after the date of this request.

Thank You

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 05-23-2011:11:55:20
Clerk Accepted: 05-23-2011:14:11:46
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Mtn for Discovery
- **Continuation
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

1 CODE #2645
RICHARD A. GAMMICK
2 #001510
P. O. Box 30083
3 Reno, Nevada 89520-3083
(775) 328-3200
4 Attorney for Respondent

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 FRANK MILFORD PECK,

10 Petitioner,

11 v.

Case No. CR06P2580

12 THE STATE OF NEVADA,

Dept. No. 6

13 Respondent.
14 _____/

15 OPPOSITION TO "MOTION FOR DISCOVERY IN SUPPORT OF THE EVIDENTIARY
16 HEARING IN THE PETITION FOR WRIT OF HABEAS CORPUS"
(POST-CONVICTION)

17 Petitioner Peck has filed a motion seeking leave to engage in discovery, listing the sort of
18 things he wishes to ultimately have. The State has no objection to Peck having any information
19 on any subject at any time. The objection is that Peck has not described any form of discovery.
20 If Peck were to file a motion seeking leave to depose some specific person, the State would have
21 a response. If Peck were to file a motion seeking leave to send interrogatories to the
22 respondent Warden, the State would have a response. He has not filed any such motion.

23 Peck seems to have confused concepts of investigation and discovery. Investigation does
24 not require leave of the court under NRS 34.780. What requires leave of the court are
25 depositions interrogatories, requests for production, or permission to enter upon land and
26 physical and mental examinations. See NRAP 26. Peck has not mentioned any vehicle for

1 discovery, or described to whom that vehicle would be addressed. Furthermore, NRS 34.780
2 allows for specific types of discovery, only where the questions are first revealed and where the
3 court finds “good cause” for the discovery. That would seem to require, at a minimum, that
4 there be some relationship between the discovery and some pleaded claim for relief. As there is
5 no mention of any claim in Peck’s motion, this court has no basis for any finding of “good
6 cause.”

7 Finally, but perhaps most importantly, NRS 34.780 provides that the court may NOT
8 allow any depositions or other forms of discovery until the cause has been set for a hearing.
9 This case has not been set for a hearing. In fact, the State notes that counsel for Peck has not
10 even filed a supplement in the ten months in which she has represented Peck.¹ Once the
11 pleadings are done, then this court can decide if any pleaded claims survive. Only then may the
12 court grant leave to engage in some specific form of discovery. For the moment, the motion for
13 discovery ought to be denied for being premature and for failing to specify just whom Peck
14 proposes to depose, or what other vehicle he seeks to address and to whom.

15 If counsel is suggesting that she is entitled to publicly funded expert assistance in order
16 to plead a claim, there is no statute authorizing such expenses. If she wants to plead a claim
17 that some biological evidence cannot have been left by Peck because he was not at the scene of
18 the crime, counsel need only ask Peck and does not need expert assistance.

19 AFFIRMATION PURSUANT TO NRS 239B.030

20 The undersigned does hereby affirm that the preceding document does not contain the

21 ///

22 ///

23 ///

24 _____

25 ¹The supplement is now about 9 months overdue with no extensions allowed by this
26 court. The State will oppose any effort by Peck’s counsel to file a supplement with such
disregard for the mandates of the legislature.

1 social security number of any person.

2 DATED: June 1, 2011.

3 RICHARD A. GAMMICK
4 District Attorney

5 By /s/ TERRENCE P. McCARTHY
6 TERRENCE P. McCARTHY
7 Appellate Deputy

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that this document was filed electronically with the Second Judicial
3 District Court on June 1, 2011. Electronic Service of the foregoing document shall be made in
4 accordance with the Master Service List as follows:

5 Mary Lou Wilson, Esq.
6 for Petitioner Frank Milford Peck

7
8 /s/ SHELLY MUCKEL
9 SHELLY MUCKEL

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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 06-01-2011:10:13:03
Clerk Accepted: 06-01-2011:10:38:54
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Opposition to Mtn
Filed By: TERRENCE MCCARTHY, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

1 CODE NO.
2 MARY LOU WILSON ESQ.
3 Nevada Bar No. 3329
4 333 Marsh Avenue
5 Reno, NV 89509
6 775-337-0200
7 Attorney for Petitioner

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

9 IN AND FOR THE COUNTY OF WASHOE

10 FRANK MILFORD PECK,

11 Petitioner,

12 vs.

13 Case No. CR06P2580

14 Dept. No. 6

15 E.K. McDANIEL, WARDEN, E.S.P. and
16 THE STATE OF NEVADA,

17 Respondents.

18 REPLY TO STATE'S OPPOSITION TO MOTION FOR DISCOVERY
19 IN SUPPORT OF THE EVIDENTIARY HEARING
20 IN THE PETITION FOR WRIT OF HABEAS CORPUS
21 (POST CONVICTION)

22 COMES NOW FRANK PECK, by and through counsel, MARY LOU WILSON, and
23 REPLIES to the State's Opposition to Petitioner's Motion for Discovery.

24 On May 23, 2011, Petitioner filed a motion for Discovery based upon communication with
25 Mehul Anjaria, MS, F-ABC.

The State has since filed an Opposition to the Motion for Discovery based upon NRS 34.780.

In its Opposition, the State noted that a hearing for the date has not yet been set and that
Petitioner has been represented by counsel for some 10 months without filing a Supplemental

1 Petition. This is true. However, Petitioner has not failed to file any extension as a result of a
2 willful “disregard to the mandates of the Legislature” as the State suggests.

3 On July 21, 2010, counsel was appointed to represent Petitioner. This order listed no date by
4 which to file a supplemental petition. Counsel did not take this as a pass to file whenever she felt
5 like it. However, it was taken into consideration during the next few months while having
6 difficulty communicating with Petitioner as it was supposed there would be adequate contact to
7 discuss Petitioner’s grounds and any additional grounds that may have been needed.

8 On August 27, 2010, counsel spoke with Petitioner via telephone call by Petitioner to counsel.
9 This call lasted only 15 minutes and it was determined that, in order to effectively represent
10 Petitioner, counsel needed an uninterrupted time to speak with Petitioner. Therefore, counsel
11 contacted the Ely State Prison in an attempt to set up a telephonic conference with Petitioner.
12 The Warden’s office informed counsel that they neither facilitated not allowed telephonic
13 conferences between a petitioner and his counsel.
14

15 On August 11, 2010, Petitioner filed a Motion for District Court Order Permitting Telephonic
16 Conference between Appointed Counsel and Petitioner in order to facilitate an uninterrupted
17 conversation between counsel and Petitioner.

18 On August 20, 2010, the State filed an Opposition to Petitioner’s motion.

19 During the next few weeks, Petitioner wrote counsel and advised her that pursuant to
20 conversations with his caseworker, he was schedule to be moved to Nevada State Prison.
21 Therefore, there was no need to have an uninterrupted telephone call with Petitioner, since
22 counsel could simply visit Petitioner in Carson City.
23

24 //

25 //

1 Thereafter, on September 24, 2010, Petitioner filed a Notice of Petitioner's Move to Another
2 Correctional Facility and Withdrawal of Motion for District Court Order Permitting Telephonic
3 Conference between Appointed Counsel and Petitioner.

4 However, over the next few weeks, Petitioner was placed on the transportation list, only to be
5 removed and rescheduled for the following week. This occurred several times between the end of
6 September 2010 and the beginning of January 2011. Each time, Petitioner was assured by his
7 caseworker that he would be moved in the following week or two. But this did not happen until
8 the end of December, 2010, when Petitioner was moved to Nevada State Prison.
9

10 Counsel made plans to visit Petitioner at Nevada State Prison after Christmas.

11 However, the first week of January, Petitioner was moved to Southern Desert Correctional
12 Center (SDCC).

13 On January 11, 2011, counsel called SDCC and was informed by the Warden's office that
14 they neither facilitated nor allowed telephonic conferences between a petitioner and his counsel.

15 At that time, counsel decided to have an investigator visit Petitioner at SDCC for the above
16 reasons mentioned.

17 On March 8, 2011, an Order granting funds for an investigator was approved.

18 On April 4, 2011, counsel's investigator traveled to SDCC and spoke with Petitioner at
19 length, gathering enough information for counsel to submit a Supplemental Petition.
20

21 Then, approval was sought and granted for Mr. Anjaria to evaluate the DNA evidence and
22 submit a report.

23 Mr. Anjaria submitted a discovery request, which is the subject of Petitioner's Motion for
24 Discovery.

25 //

1 Counsel has no intention of delaying the post conviction proceedings by failing to submit a
2 Supplemental Petition. She merely wanted to make sure she could effectively represent
3 Petitioner.

4 *Strickland* obligates defense attorneys to make reasonable investigations before settling on a
5 trial strategy or, at the least, to conduct sufficient inquiries to make an informed decision about
6 whether further investigation is needed. See *Wiggins v. Smith*, 539 U.S. 510, 525, 123 S.Ct. 2527
7 (2003) (holding counsel must make an "informed choice" among possible defenses); *Strickland*,
8 466 U.S. at 690-91, 104 S.Ct. 2052 ("[S]trategic choices made after less than complete
9 investigation are reasonable precisely to the extent that reasonable professional judgments
10 support the limitations on investigation. In other words, counsel has a duty to make reasonable
11 investigations or to make a reasonable decision that makes particular investigations
12 unnecessary."); see also *Jennings v. Woodford*, 290 F.3d 1006, 1014 (9th Cir.2002) ("[A]ttorneys
13 have considerable latitude to make strategic decisions about what investigations to conduct once
14 they have gathered sufficient evidence upon which to base their tactical choices." (emphasis in
15 original)). Until a reasonable investigation is conducted, counsel is not in a position to make
16 critical strategic decisions or settle on a trial strategy—certainly including the decision to rest on
17 his client's testimony irrespective of the forensic facts. We have repeatedly held that "[a]n
18 uninformed strategy is not a reasoned strategy," *Correll v. Ryan*, 539 F.3d 938, 949 (9th
19 Cir.2008), cert. denied sub nom. *Schriro v. Correll*, ___ U.S. ___, 129 S.Ct. 903, 173 L.Ed.2d
20 108 (2009), and we have followed the Supreme Court's holding that "the traditional deference
21 owed to the strategic judgments of counsel is not justified where there was not an adequate
22 investigation `supporting those judgments,'" *Id.* at 948-49 (quoting *Wiggins*, 539 U.S. at 521, 123
23 S.Ct. 2527).

1 With regard to the forensic expert, which this Court has approved, counsel requests
2 cooperation with the State and requests that the DNA expert be provided the necessary material
3 transferred from the Washoe County Crime Laboratory to 433 North Camden Drive, Suite 600,
4 Beverly Hills, California 90210, our expert, for analysis. This chain of custody procedure will
5 ensure that the DNA sample is without tampering or contamination.

6 DATED this 6th day of June, 2011.

7
8 By: s/s: MARY LOU WILSON
9 MARY LOU WILSON
Attorney for Petitioner

10 Affirmation:

11 I, Mary Lou Wilson hereby affirm that there is no social security number of any person in the
12 aforementioned document.

13 Dated this 6th day of June, 2011.

14 By: s/s: Mary Lou Wilson
Mary Lou Wilson

1 CERTIFICATE OF SERVICE

2 I, Mary Lou Wilson, hereby certify that pursuant to NRCP 5(b), on the 6th day of June, 2011
3 I e-filed the foregoing pursuant to the Master List of persons on the e-filing roster, in particular,
4 to The Honorable Judge Brent T. Adams, Terrence McCarthy, Appellate Deputy District
Attorney, and mailed a copy of the same to Petitioner Peck through the U.S. mail to:

5 The Honorable Judge Brent Adams, District Court, Department 6 (e-file)

6 Terrence McCarthy, Appellate Deputy District Attorney, (e-file)

7 Frank Peck (U.S. mail)
8 Inmate Number 57106
9 Southern Desert Correctional Center
10 Post Office Box 208
11 Indian Springs, Nevada 89070

1 CODE #
2 MARY LOU WILSON
3 Attorney At Law, Bar Number 3329
4 333 Marsh Ave.
5 Reno, Nevada 89509
6 775-337-0200
7 Attorney for Petitioner Peck

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
9
10 IN AND FOR THE COUNTY OF WASHOE

11 FRANK PECK,

12 Petitioner,

13 vs.

14 Case No. CR06P2580

15 Dept. No. 6

16 WARDEN, N.D.O.C. and
17 THE STATE OF NEVADA,

18 Respondents.

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REQUEST FOR SUBMISSION

26 COMES NOW FRANK PECK, by and through appointed counsel, MARY LOU WILSON,
27 and requests submission of this case regarding the MOTION FOR DISCOVERY. The Motion
28 for Discovery was filed on May 23, 2011. An Opposition to the Motion for Discovery was filed
29 on June 1, 2011. A Reply to the State's Opposition was filed on June 6, 2011.

30 DATED this 6th day of June, 2011.

31 By: s/s: MARY LOU WILSON
32 MARY LOU WILSON
33 Attorney for Petitioner

34 Affirmation:

35 I, Mary Lou Wilson, hereby affirm that there is no social security number of any person in the
aforementioned document.

Dated this 6th day of June, 2011.

By: s/s: Mary Lou Wilson
Mary Lou Wilson

1 CERTIFICATE OF MAILING

2 I, Mary Lou Wilson, hereby certify that pursuant to NRCP 5(b), on the 6th day of June, 2011,
3 I e-filed the foregoing pursuant to the Master List of persons on the e-filing roster and mailed a
4 copy of the same to Petitioner Peck through the U.S. mail to:

5 The Honorable Judge Brent Adams Dept. 6, (e-filing)

6 Terrence McCarthy, Deputy Appellate District Attorney, (e-filing)

7 Frank Peck (U.S. Mail)

8 Inmate Number #57106

9 Southern Desert Correctional Center

10 P.O. Box 208

11 Indian Springs, Nevada 89070

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 06-06-2011:15:27:40
Clerk Accepted: 06-06-2011:15:49:11
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Reply
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

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PROOF OF SERVICE OF ELECTRONIC FILING

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A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 06-06-2011:15:30:52
Clerk Accepted: 06-06-2011:16:02:47
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Request for Submission
Filed By: MARY LOU WILSON, ESQ.

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MARY LOU WILSON, ESQ. for FRANK PECK

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A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 06-22-2011:08:46:42
Clerk Accepted: 06-22-2011:09:51:32
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
- **Continuation
- **Continuation
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 06-23-2011:07:51:40
Clerk Accepted: 06-23-2011:08:19:43
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
- **Continuation
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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PROOF OF SERVICE OF ELECTRONIC FILING

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A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 06-23-2011:12:03:24
Clerk Accepted: 06-23-2011:12:53:54
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
- **Continuation
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

FILED

Electronically
07-08-2011:01:41:03 PM
Howard W. Conyers
Clerk of the Court
Transaction # 2334099

1 Code 3370
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 FRANK MILFORD PECK,
9
10 Petitioner,

Case No. CR06P2580

Dept. No. 6

11 v.

12 E.K. McDANIEL, WARDEN, E.S.P.; and
13 THE STATE OF NEVADA,

14 Respondents.
15 _____ /

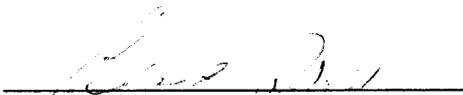
ORDER

16 The petitioner filed a motion for discovery.

17 The Court finds that the petitioner's motion is premature as a date has not been set
18 for a hearing in this matter. See N.R.S. 34.780(2). Though the petitioner's motion is
19 premature, the Court approved the petitioner's separate request for a forensic expert (Or.,
20 Apr. 26, 2011), and the State made no objection to providing the petitioner with the
21 materials requested in his motion for discovery (Opp'n, p. 1, Jun. 1, 2011).

22 Thus, the State shall provide the petitioner's forensic expert, Mr. Mehul Anjaria, with
23 the requested materials in the petitioner's motion no later than ten (10) days after the entry
24 of this Order. See *Strickland v. Washington*, 466 U.S. 668, 691 (1984) ("[C]ounsel has a
25 duty to make reasonable investigations or to make a reasonable decision that makes
particular investigations unnecessary.").

26 DATED: This 24th day of July, 2011.
27
28



DISTRICT JUDGE

CERTIFICATE OF SERVICE

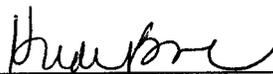
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I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 8th day of July, 2011, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

TERRENCE MCCARTHY, ESQ.

MARY LOU WILSON, ESQ.

Further, I certify that I deposited in the county mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing addressed to:



Judicial Assistant

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PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 07-08-2011:13:41:03
Clerk Accepted: 07-08-2011:13:41:53
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Order...
Filed By: Heidi Boe

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The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

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A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 08-04-2011:10:24:22
Clerk Accepted: 08-04-2011:11:35:53
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

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-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 10-19-2011:16:56:21
Clerk Accepted: 10-20-2011:08:32:51
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

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PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 01-17-2012:14:18:38
Clerk Accepted: 01-17-2012:14:43:09
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
- **Continuation
- **Continuation
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

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A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 03-05-2012:08:10:40
Clerk Accepted: 03-05-2012:08:11:03
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Sealed Order
Filed By: MaryBeth Stackhouse

You may review this filing by clicking on the following link to take you to your cases.

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PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 03-06-2012:16:49:03
Clerk Accepted: 03-06-2012:16:49:57
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Sealed Order
Filed By: MaryBeth Stackhouse

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

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******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 05-09-2012:15:52:13
Clerk Accepted: 05-09-2012:15:56:57
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

FRANK M. PECK 57106

FILED

HDSP Box 650

2012 MAY 11 PM 2:58

Indian Springs, NV, 89070

JOEY GREENE HASTINGS
CLERK OF THE COURT
BY 
DEPUTY

Petitioner, pro se.

DC-9500035129-002
STATE VS FRANK MILFORD PECK 7 Pages
District Court 05/11/2012 02:58 PM
2490
Washoe County
OSM/TJP

In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe

Frank M. Peck,

Case No. CR-06-P-2580

Petitioner,

Dept. No. 6

vs.

The State of Nevada,

Motion for Substitute

Respondent.

COUNSEL

Comes now, the Petitioner, Frank M. Peck pro se
hereinafter Mr. Peck with his Motion for Substitute
Counsel.

This Motion is made and based upon all
papers and pleadings on file in this case as well
as the attached Points and Authorities and
affidavit of Mr. Peck, and WDCR 23, SCR 46.

Dated this 4th day of May 2012.

Frank M. Peck

Frank M. Peck

Petitioner DRO ST 9.135

Points and Authorities

Since being appointed on June 28, 2010 counsel Mary Lou Wilson has not provided an adequate business telephone number to receive collect calls from her clients. In fact her business line 775-337-0200 has an institutional block on it and cannot be called by prisoners.

Mr. Peck to date has not had a single privileged, private, Attorney-Client conversation with his Attorney.

Mr. Peck's counsel even went so far as to ask this Court for an Order granting a conference call, stating in her motion that Mr. Peck could call her, "knowing full well that her business line was blocked."

Mr. Peck, after making several complaints was provided a cellphone number for Mary Lou Wilson's assistant Mr. John Whittaker. Mr. Whittaker's number is not recognized by the N.D.O.C. as an Attorney number and was rejected and refused registration as such. This rejection subjected all Mr. Peck's calls to recording by the Dept. of Corrections.

Mr. Peck's counsel has NOT personally EVER EVEN visited or at any time privately discussed the issues with Mr. Peck resulting in this total Break-down in communication, trust and fiduciary duty.

It should be noted that Mr. Peck's Trial Attorney Robert Bruce Lindsay also refused to subscribe to institutional telephone service or observe the standards set forth in Nevada Supreme Court Order ADKT-411 filed Oct 16, 2008 also causing a total Break-down in communication, trust and the fiduciary duty.

Mr. Peck's counsel Mary Lou Wilson has remained silent as to Mr. Peck's requests that counsel raise issues amounting to NAPUC violations committed by Prosecutor Dave Clifton, Crimelab Director Rene Romero, Forensic Analyst Jeff Riolo and states witness Leslie Crouser who's testimony was known or should have been known to be false by Prosecutor Dave Clifton and ARS supported by uncontravertable documentary evidence. NAPUC v. Illinois 360 US. 264 269 (1959).

It should also be noted that Mr. Whittaker for over (60) days now has not communicated with Mr. Peck as well.

Mr. Whittaker has repeatedly told Mr. Peck that He would get back to him on the issues ~~but~~ but NEVER has. Mr Whittaker was to pose Questions to counsel and get back to Mr Peck and NEVER has. Clearly, this Attorney wants NO CONTACT with her client. Clearly, this behavior by counsel is unprofessional, unethical, outside the professional norms and a violation of Mr. Peck's U.S. Constitutional Rights to Due Process under the 14th Amendment.

Mr. Peck was forced to file a Civil Rights Complaint against the Dept of Corrections for recording Mr. Peck's calls to the number provided by his Counsel.

Mr. Peck believes that the Attorney General has contacted Mary Lou Wilson regarding the Above suit resulting in Mr. Whittaker's refusal to answer calls.

Conclusion

Therefore, for the reasons stated above and the lack of regard for Mr. Peck's Constitutional Rights to Due Process under the U.S. Constitutional 14th amendment by Attorney Mary Lou Wilson it is requested that counsel be substituted with professional counsel willing to communicate and abide by professional norms, ethics and rules of professional conduct.

Dated this 4th day of May 2012.

Frank M. Peck

FRANK M. PECK 57106

HDSP Box 650

INDIAN SPRINGS, NV, 89070

Petitioner, pro se

State of Nevada
County of Clark ^{SS} Affidavit, Verification of Frank Peck.

I, Frank Peck do hereby Affirm and Verify under the penalty of perjury that:

1. I Am the Petitioner in Case No CR-06-P-2580.
2. I make the Attached Motion for Substitute Counsel based upon personal Knowledge and I Am competent to testify to all matters contained therein.
3. All assertions are true based upon personal Knowledge.
4. This motion is made in good faith and for NO IMPROPER REASON.

Dated this 4th day of May 2012.

Signed under penalty of perjury NRS 208.165
and 28 USC. 1746.

Frank M Peck

Frank M. Peck 57106

HOSP Box 650

Indian Springs, Nv. 89070

Petitioner, pro se

Certificate of service AND Affirmation

Pursuant to NRS 239 B 030 the attached Motion for Substitute Counsel does not contain social security numbers of any person and a true and correct copy was mailed this date to:

Mary Lou Wilson Esq.
333 Marsh Ave
Reno, NV, 89509

Dated and done this 6th day of May 2012.

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.

~~Frank M. Peck~~
Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV. 89020
Petitioner, pro se.

CR06P2580 DC-9900035385-007
POST FRANK MILFORD PECK (D6 2 Pages
District Court 05/21/2012 03 28 PM
Washoe County 3860
ASMTTH
DOC

No. CR-06-P-2580

FILED
Dept. No. 6

2012 MAY 21 PM 3:20

JOHN J. HARRIS
CLERK OF DISTRICT COURT
[Signature]
DEPUTY

IN THE 2nd JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF Washoe

Frank M. Peck

Petitioner/Plaintiff,

v.

The State of Nevada

Respondent/Defendant.

REQUEST FOR SUBMISSION OF MOTION

It is requested that the Motion entitled Motion for Substitute
Counsel, which was submitted/filed on the
11 day of May, 2012, in the above-entitled matter, be submitted to the Court for
it's consideration.

The undersigned Petitioner/Plaintiff, certifies that a copy of the motion noted above and this
pleading, have been served upon the Respondent/Defendant.

Dated this 16 day of May, 2012.

Frank Peck
Petitioner/Plaintiff

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

Request for submission of Motion

(Title of Document)

filed in case number: CR-06-P-2580

Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

(State specific state or federal law)

-or-

For the administration of a public program

-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 5/16/12

Frank Peck
(Signature)

Frank Peck
(Print Name)

Pro se
(Attorney for)

1 CODE #
2 MARY LOU WILSON
3 Attorney At Law, Bar Number 3329
4 333 Marsh Ave.
5 Reno, Nevada 89509
6 775-337-0200
7 Attorney for Petitioner

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
9
10 IN AND FOR THE COUNTY OF WASHOE

11 FRANK PECK,

12 Petitioner,

13 vs.

14 Case No. CR06P2580

15 Dept. No. 6

16 WARDEN, N.D.O.C. and
17 THE STATE OF NEVADA,

18 Respondents.

19 _____ /
20 RESPONSE TO LETTER

21 COMES NOW FRANK PECK, by and through counsel, MARY LOU WILSON, and
22 Responds to a letter from Petitioner Frank Peck, requesting this Honorable Court for its Order for
23 new counsel.

24 On May 11, 2012, Frank Peck filed a pro per letter requesting the substitution of counsel
25 based on failure to communicate with him and for violation of due process.

On May 21, 2012, Peck filed a Request for Submission on his letter.

Counsel will list each issue raised by Mr. Peck and respond to each in kind.

//

//

1 The following is a summary of the issues raised by Peck in his letter to the court and
2 corresponding responses from Counsel.

- 3 **1. Counsel has not provided a phone number to communicate with Peck.** Counsel had
4 provided the cell number of her assistant, John Whittaker, for communication with Peck.
5 Mr. Whittaker has spoken on the phone with Peck or written him through the U.S. mail
6 on numerous occasions including, February 3, 2011, February 4, 2011, February 14,
7 2011, February 21, 2011, February 24, 2011, March 17, 2011, March 23, 2011, March
8 28, 2011, April 26, 2011, June 7, 2011, June 16, 20011, August 25, 2011, August 29,
9 2011, September 7, 2011, September 12, 2011, September 13, 2011, October 13, 2011,
10 October 27, 2011, November 16, 2011, December 1, 2011, February 13, 2012, March 1,
11 2012, and April 3. 2012. In addition, Counsel had investigator Rafael Arango interview
12 Peck on April 4, 2011.
- 14 **2. Peck has not had a single privileged conversation with Counsel.** Counsel asked Ely
15 State Prison for a confidential phone call. This request was refused, so Counsel filed a
16 motion to compel Ely State Prison to coordinate a privileged telephone call between Peck
17 and herself. This motion was denied.
- 18 **3. Counsel asked for an Order compelling the Nevada Department of Corrections**
19 **(NDOC) to set up a confidential telephone call between Peck and Counsel, knowing**
20 **that her number is blocked.** Counsel asked for a phone call from the prison, not from
21 the pay phones used by inmates. Therefore, that number would not have been blocked.
22
- 23 **4. Peck was provided the cell phone number of Counsel's assistant John Whittaker,**
24 **but this number was never privileged, even after Peck requested from the NDOC**
25 **that it be so.** The Nevada Department of Corrections is not under the control of Counsel,

1 as evidenced by its refusal to set up a private telephone conversation between her and
2 Peck.

3 **5. Counsel's failure to communicate with Peck has resulted in a breakdown in**
4 **communication, trust, and fiduciary duty.** Counsel has communicated to Peck through
5 letters and her assistant, John Whittaker. Most recently, on May 7, 2012, Counsel
6 responded, via mail, to two letters from Peck. Ex. 1.

7
8 **6. Counsel has refused to communicate regarding Peck's question about a *Napue***
9 **violation.** Counsel has not yet finished the Supplemental Petition for Writ of Habeas
10 Corpus. She has provided discovery to Mehul Anjaria, MS, D-ABC who is investigating
11 the DNA procedures and protocols employed by the Washoe County Sheriff's Office.
12 Mr. Anjaria has recently requested additional discovery from the Sheriff's Office and so
13 his report is not yet complete. Ex. 2. Counsel has also indicated to Peck that she would
14 provide him an opportunity to review the Supplemental Petition before she files it.

15 **7. Mr. Whittaker has not communicated with Peck in 60 days.** Mr. Whittaker is not
16 being reimbursed for the phone calls he receives from any NDOC inmate. Therefore, he
17 has refused calls from Peck. In the past, however, Mr. Whittaker has communicated with
18 Peck on a regular basis both by telephone and through the mail.

19
20 **8. Mr. Whittaker has not gotten back to Peck on issues he has raised. Mr. Whittaker**
21 **was supposed to relay questions to Counsel but and never has. This equals**
22 **unprofessional and unethical conduct resulting in a violation of Peck's due process.**
23 Mr. Whittaker has communicated to Counsel the concerns of Peck.
24
25

1 **9. Peck has filed a civil rights complaint the NDOC. This has lead Peck to believe that**
2 **the Attorney General’s Office has contacted Counsel’s office.** Neither Counsel nor her
3 office has been in communication with the Attorney General’s Office regarding Peck.

4 **10. Peck requests the substitution of counsel.** Counsel has not ineffectively represented
5 Frank Peck. She has communicated with him through mail and her office.

6 Counsel is still preparing for the inclusion of grounds in Peck’s Supplemental Petition.

7 Counsel would also note that not communicating with Mr. Peck every single time that he wants
8 to communicate does not equal ineffective representation.

9
10
11 DATED this 22nd day of May, 2012.

12 By: s/s: MARY LOU WILSON
13 MARY LOU WILSON
14 Attorney for Petitioner

15
16 Affirmation:

17 I, Mary Lou Wilson, hereby affirm that there is no social security number of any person in the
18 aforementioned document.

19 DATED this 22nd day of May, 2012.

20 By: s/s: Mary Lou Wilson
21 Mary Lou Wilson
22 Attorney for Petitioner

1 **CERTIFICATE OF SERVICE**

2 I, Mary Lou Wilson, hereby affirm that on the 22nd day of May, 2012, the aforementioned
3 document was e-filed according to the Master List of e-filers and a hard copy of the same
4 provided through the U.S. Mail to Petitioner Peck as follows:

5 The Honorable Judge Brent Adams, Department 6 (e-filed)

6 Terrence McCarthy, Appellate Deputy District Attorney (e-filed)

7 Frank Peck (U.S. Mail)

8 Inmate Number 57106

9 S.D.C.C.

10 P.O. Box 208

11 Cold Creek Road

12 Indian Springs, Nevada 89070

Exhibits in Support of Ex Parte Motion for Payment for Expert Witness

Exhibit 1, Letter from Counsel to Frank Peck, dated May 7, 2012

Exhibit 2, Discovery Request

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FILED
Electronically
05-22-2012:04:42:58 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 2972583

EXHIBIT 1

EXHIBIT 1

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Mary Lou Wilson, Esq.

333 Marsh Ave.
Reno, NV 89509

Frank Peck #57106
S.D.C.C.
P.O. Box 208
Cold Creek Road
Indian Springs, Nevada 89070

May 7, 2011

Mr. Peck:

I received your letters dated April 15, 2012 and May 3, 2012. In the April letter, you asked for a detailed summary of the SPD file. You also included a copy of the docket sheet from May 22, 2009.

I can have John make a copy of it when he gets the chance. However, I have him on other matters for the time being. I understand that he has not accepted your calls and it is because I have him writing two federal petitions, which are murder cases. Also, it is not personal that he has not accepted your calls. If he does not get you a detailed summary in the very near future, it is because of these two murder cases.

I am still waiting for word from Anjaria for the completion of his report. Then I can proceed with your petition.

In your May letter, you expressed frustration at not having had a conversation with me that has not been recorded. You also accuse me of lying to the district court in my motion for a conference call because my phone is blocked. If the motion had been granted, I would have had the conference through the caseworker's phone, not through the collect call pay phone system. Therefore, I did not misrepresent my intentions or call capabilities to the court.

You also stated that you wanted me to "remove myself from [your] case so that an attorney who communicates with their clients can be appointed."

I do not plan on removing myself from your case. When Mr. Anjaria sends me his report, then I will supplement your petition.

.....

Justice for all...

I understand that you have had numerous phone conversations with John, and constant communication via letters but, for the time being, your communication with my office will have to be through letters. We are also having money issues with the district court and cannot afford to pay for telephone calls. Therefore, we will certainly read and respond to all of your letters.

I hope that this manner of communication can suffice for now. I am hopeful for your case and in getting an evidentiary hearing so that we can present your grounds orally to the court.

Very Sincerely Yours,

Mary Lou Wilson

cc: file

FILED
Electronically
05-22-2012:04:42:58 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 2972583

EXHIBIT 2

EXHIBIT 2

MBA DNA CONSULTING, LLC
Official Correspondence



April 4, 2012

John Whittaker

RE: Frank Peck DNA Review

Mr. Whittaker,

In order to fully review the DNA analysis in the case, some additional discovery is required from the Washoe County Sheriff's Office:

-Documentation establishing the date that the DNA profile for the sperm fraction from the vaginal swab (Target ID: 214594) was entered into the State and National DNA databases and became searchable.

-Documentation establishing the date that the DNA profile of Frank Peck was first entered into the State and National DNA databases and when it became searchable.

-The electronic DNA data that supports the analysis in report L2145-94-6 which involved typing Frank Peck's database sample #NN03100.

Please let me know if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mehul B. Anjaria', written over a horizontal line.

Mehul B. Anjaria, MS, D-ABC
Founder and Chief Consultant

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 05-22-2012:16:42:58
Clerk Accepted: 05-22-2012:16:46:46
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Response
- **Continuation
- **Continuation
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 05-23-2012:10:27:53
Clerk Accepted: 05-23-2012:10:28:23
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Sealed Order
Filed By: MaryBeth Stackhouse

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

Frank Peck 57106

FILED

H.D.S.P. Box 650

2012 MAY 23 PM 2:30

Indian Springs, NV. 89070

JOEY DEAN STINGS
CLERK OF THE COURT

In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe

Frank M. Peck,

CASE No. CR-06-P-2580

Petitioner,

Dept No. 6

v.

The State of Nevada,

Motion

Respondent.

Notice of termination of Counsel and
Request for Documents

Comes Now, Petitioner, FRANK M. PECK pro se
hereinafter, Mr. PECK with the above captioned.

This Notice and Request is made and based
upon all papers and pleadings on file in this case
as well as the attached Points and Authorities
and Affidavit of Mr. Peck.

Dated this 17th day of May 2012.

Frank Peck

Frank Peck

Petitioner, pro se.

CR06P2580 DC-9800035469-006
POST: FRANK MILFORD PECK (06 5 Pages
District Court 05/23/2012 02:30 PM
Washoe County 2490
NCC ASMTTU

Points And Authorities

Mr. Peck has duly discharged his counsel Mary Lou Wilson pursuant to WDCR 23 AND SCR 46 AS Counsel refused to provide A phone AND HAS NOT EVEN ONCE privately spoken to her client AND refuses to provide copies of Sparks Police files of which Mr. Peck is privy to AS he represented himself At trial. AS WELL AS refusing to raise Key issues in Mr. Peck's supplemental petition for writ of habeas Corpus,

Accordingly, Mr. Peck is requesting "ALL Files" in Mary Lou Wilson's possession be copied AND provided to Mr. Peck so that Mr. Peck can supplement his own petition for writ of Habeas Corpus.

Indigent Defense Attorney Mary Lou Wilson is violating Mr. Peck's 14th Amendment rights to Due Process (USCA Amend 14) by refusing to raise Constitutional Issues. She has breached the trust of her client by refusing to provide documents from the Sparks Police Dept that PROVE Mr. Peck's claims.

ONCE AGAIN, Mr. Peck is faced with AN Attorney who won't communicate or provide information or Abide by recommended standards set forth by the Nevada Supreme Court in ADKT-411.

ONCE AGAIN, Mr. Peck is forced to choose sub-Standard counsel or represent Himself. - Mr. Peck chooses the latter.

Therefore it is Respectfully Requested that this Court Order Attorney Mary Lou Wilson Esq to provide copies of All case files, Police files investigative files, Any Reports or documents related to the instant case to Mr. Peck immediately. Mr. Peck's indigency has previously been determined And Verified.

Dated this 17th day of May 2012.

Respectfully Submitted

Frank Peck
Frank Peck
Petitioner, pro se.

State of Nevada ss

County of Clark Affidavit of Frank M. Peck

I Frank M. Peck do hereby swear under penalty of perjury that:

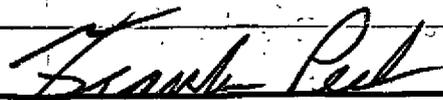
1. I AM the Plaintiff in CASE NO. CR-06-P-2580.

2. I make the Attached Notice of Termination of Counsel and request for documents in good faith and for NO improper reason.

3. All assertions are true and based upon personal knowledge and I am competent to testify to all matters contained therein.

Dated this 17th day of May 2012.

Signed under penalty of perjury NRS 208.165 and 28 USC 1746.



Frank Peck 57106

HDSP Box 650

Indian Springs, NV, 89070

Petitioner, pro se.

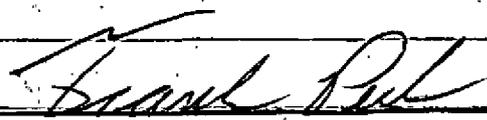
Certificate of Service and Affirmation

Pursuant to NRS 239 B 030 the attached Notice of termination and request for documents does not contain social security numbers of any person and a true and correct copy was mailed this date to:

Mary Lou Wilson Esq.
333 Marsh Ave
Reno NV 89509

Dated and Done on this 17th day of May 2012.

Signed under penalty of perjury NRS 208.165 and 28 USC 1746.


Frank M. Peck 57106
HDSP Box 650
Indian Springs NV 89070
Petitioner pro. ss.

FRANK M PECK 57106

FILED

HDSP Box 650

2012 JUN -5 PM 2:14

Indian Springs, NV. 89070

JOEY [Signature] LISTINGS
CLERK OF THE COURT

Petitioner.

BY [Signature] DEPUTY

In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe

Frank M. Peck,

Case No. CR-06-P-2580

Petitioner,

Dept No. 6

vs.

The State of Nevada,

Respondent.

REPLY TO RESPONSE TO LETTER

Comes Now, the Petitioner, Frank M. Peck prose
hereinafter Mr. Peck with his REPLY to Response
to Letter.

This REPLY is made and based upon ALL
PAPERS AND pleadings on file in this case AS WELL
AS THE attached Points and Authorities, Exhibits
and affidavit of Mr. Peck.

Dated this 26th day of May 2012.

[Signature] Frank M. Peck

Frank Peck/Petitioner

CR06P2580 DC-9900035805-002
POST FRANK MILFORD PECK ID 13 Pages
District Court 06/05/2012 02 14 PM
Washoe County 3795
NO. ASMTTU

Points and Authorities

Counsel's Response is to a certified letter # 7011 0470 0000 8581 9580 mailed to counsel on May 17-2012 and NOT Mr. Peck's "Motion for Substitute Counsel" filed on May 11, 2012.

1. The lengths Counsel has gone to to avoid having an office telephone clients can call is Remarkable!

Mr. Peck has indeed spoken to "Counsel's Assistant Mr. Whittaker", when Mr. Peck could afford to pay for the calls himself!

Mr. Whittaker is NOT AN ATTORNEY. Mr. Whittaker has told Mr. Peck that he would provide Mr. Peck with the April 2004 Arrest Report, Transcript of May 5th telephonic hearing, Investigation report on John L Sullivan, Interview of Tarrants for effects of Newspaper article and who posed questions and why, for over two (2) years. Mr. Peck Frankly is tired of being lied to by Counsel's Assistant.

How counsel thinks she can do business in this fashion is beyond comprehension, obviously treating paying customers and indigent clients with different levels of attention.

It should be duly noted that Mr. Peck's Direct Appeal Attorney Karla Butko is a true professional and even has a telephone that she even answers.

Mr. Peck is in this position again with an attorney who refuses to abide by the recommended standards set forth by the indigent commission report and the Order of the Nevada Supreme Court in ADKT-411 filed Oct 16 2008, Standard # 3, Ex-5.

Mary Lou Wilson insists on wasting everyone's time by filing motions for conference calls then blaming the court for denying the motions, when all counsel has to do to avoid these problems is to remove the block on her business line! Ex-1.

Counsel has been paid handsomely to represent Mr. Peck and should be able to accept calls from her clients.

2. "Peck has not had a single privileged conversation with Counsel."

"This FACT is not Ely State Prisons fault!"

"This FACT is Not this Courts fault for denying counsels Motion!"

The FACT that Counsel chooses to take up the Courts time and Prison Administrators time then blame everyone else for her shortcomings and outrageous business practices should weigh heavy in this Courts decision and future appointments of Mary Lou Wilson.

3. Counsel Asked for an Order compelling NDOC to set up a confidential telephone call between Peck and Counsel knowing that her number is blocked. Ex-2.

1. Counsel misses the mark. "Counsel specifically misleads this Court" in her "Motion for District Court Order Permitting Telephonic Conference Between Appointed Counsel and Petitioner in Support of the Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)". page (2) lines 4-5 AS "NO CALL AT any day or time could come AS Mary Lou Wilson's Telephone # 775-337-0200 has AN institutional BLOCK on it". See: Exhibit #1 AND Exhibit #2.

4. Peck was provided the cell phone number of Counsel's Assistant John Whittaker, but this number was NEVER privileged. EVEN AFTER Peck requested registration.

1. Counsel is fully AWARE of the rules regarding registration of Attorneys telephone numbers.

2. "Counsel is responsible for Private, Attorney-Client communications", NOT NDOC! NDOC DOES NOT HAVE A duty to set up private telephone conversations. "This is Counsel's obligation AND is NOONE'S fault but Counsel's!"

3. Mr. PECK is entitled to speak to his Attorney! Not AN ASSISTANT! Not A LAW Clerk! Not A secretary! "Mr. Whittaker is not A Lawyer."

4. Mr. Whittaker has been telling Mr. Peck things he would do, but has NOT in two years done ONE thing he said he would do."

5. Counsel's failure to communicate with Peck has resulted in A breakdown in communication, trust, and fiduciary duty.

1. Even in Counsel's May 7, 2011 letter she blames NDOC for not providing a call

2. Counsel Absolutely misrepresented her call capabilities to this Court See Exhibit # 2 lines 3, 4, 5, 6.

3. "Mr. Peck represented himself at Trial as such Mr. Peck is privy to Any and All documents generated or existing."

4. Counsel recently refused to provide the file containing the April 2004 Arrest report that Mr. Whittaker has been promising to Mr Peck for two years leading Mr. Peck to distrust his Counsel in that she is hiding information and possibly exculpatory evidence from her client.

5. Only after asserting that Mr. Peck was fed up with counsel's un-professional way of doing business did Counsel personally write to Mr. Peck.

6. Counsel has refused to communicate regarding Peck's Question about a Napue violation.

1. "Mr. Peck's Napue violations ARE Fact not Questions."

2. Counsel is totally UNaware of the status of Mr. Anjaras Report! Mr. Peck is in contact with Mr. Anjaras and knows that his report is not even contemplated yet until all discovery has been accounted for. Then a decision will be made based upon the evidence.

3. Additionally, Counsel has left all communication with DNA Expert Mehal B. Anjaria up to Mr. Whittaker and is why her communication on this subject is incorrect as she remains un-informed as to status of Mr. Anjarias progress.

4. If counsel were interested in the case she would know that Mr. Anjaria has already confirmed that the so-called evidence could have been tested by methods in place at the time and therefore the 15 year delay in bringing the charges were brought in bad faith and the delay by the State cannot be justified.

7. Mr. Whittaker has not communicated with Peck in (60) days.

1. Counsel has put off on Mr. Whittaker all of her incarcerated clients to call his "personal cell phone" without reimbursement and is her reasoning for Mr. Whittaker to refuse calls, but then goes on to claim Mr. Peck had regular communications.

2. A pre-condition to Mr. Peck being given Mr. Whittakers number was that Mr. Peck would pay for the calls!

8. Mr. Whittaker has not gotten back to Peck on issues he has raised. Mr. Whittaker was supposed to relay questions to Counsel but never has. This equals unprofessional and unethical conduct resulting in a violation of Peck's Due process.

1. Whenever Mr. Peck was able to afford to call his Attorney's "legal assistant", Mr. Whittaker was always too busy driving Ms. Wilson to Yoga classes and the like to speak about the issues with Mr. Peck.

2. Not even once since June of 2010 has Mr. Peck been afforded a conversation, much less a private, Attorney-Client conversation with Attorney, Mary Lou Wilson.

3. Since June of 2010 Mr. Peck has received Lip service and Lip service only from Mary Lou Wilson's Assistant Mr. John Whittaker.

9. Peck has had to file a civil rights complaint due to NDOC's refusal to register number provided by Counsel.

1. Shortly after filing, all communication was lost with Mary Lou Wilson's Firm.

10. Peck requests substitution of Counsel.

1. Mr. Peck has not asserted ineffective representation.
2. Mr. Peck is asserting 14th Amendment violations to the US Constitutional guarantee of Due Process.
3. "Counsel has become accustomed to treating her indigent clients in this fashion"
4. Counsel's assertion that not communicating every single time does NOT equal ineffective representation.
5. Counsel, but for the last two letters responding to Mr. Peck's Anger, has NOT responded EVEN A SINGLE TIME!

Conclusion

Therefore, for the foregoing reasons Counsel Mary Lou Wilson should be removed and substituted with Counsel that communicates with proper telephone numbers that can be registered with NDOC so, Mr. Peck can speak freely and candidly with his Attorney. Mr. Peck cannot trust Ms. Wilson not to hide information he is privy to.

Conclusion Continued

Counsel's telephone has been blocked since her Appointment in this case see: Exhibit # 1.

Mr. Peck was forced into this same situation with Indigent Defense Attorney Robert Bruce Lindsay, who also refused to abide by the suggestions and standards set forth by the Commission and the Order of the Nevada Supreme Court in ADKT-411 filed Oct 16, 2008 resulting in a similar breakdown in communication.

"Counsel blames everyone else for the breakdown in communication."

"In reality communication with Counsel has NEVER existed."

"Counsel is Acting as an Adversary not an Advocate." This is what happens when communication is strained or non-existent.

"Mr. Peck has demonstrated a very real need for substitute Counsel."

All Counsel, who accept public funds, should be required to comply with standards set forth by the Nevada Supreme Court in ADKT-411!

See Ex-5.

Dated this 26th day of May 2012.

Frank M Peck

Frank M. Peck 57106

HOSP Box 650

Indian Springs, NV, 89070

Petitioner, pro se.

State of Nevada
County of Clark ^s Affidavit of Frank M Peck

I Frank M Peck do hereby swear under penalty of perjury that:

1. I am the Petitioner in case no CR-06-P-2580.
2. I make this Reply in good faith and for no improper reason.
3. All assertions are true based upon personal knowledge and I am competent to testify to all matters contained therein.

Dated this 26th day of May 2012.

Signed under penalty of perjury NRS 208.165 and 28 USC 1746.

Frank M Peck

Frank M. Peck 57106

HOSP Box 650

Indian Springs, NV, 89070

Petitioner

Pages	Exhibit No.	<u>Exhibit list</u>
2 pgs	Ex-1	August 11, 2010 letter from Mary Lou Wilson's Assistant Jason Von Rosenberg.
3 pgs	Ex-2	Counsel Mary Lou Wilson's Motion for District Court Order-permitting telephonic conference between appointed counsel and petitioner in support of the supplemental petition for writ of Habeas Corpus post-conviction.
1 pg	Ex-3	August 3, 2010 letter from the State Bar of Nevada
2 pgs	Ex-4	August 10, 2010 Letter to the State Bar of Nevada.
2 pgs	Ex-5	NEVADA Supreme Court Order ADKT-411 filed Oct 16, 2008 and page 25 of ADKT standard # 3.

Certificate of Service and Affirmation

Pursuant to NRS 239B 030 the Attached
Reply to Response to letter does not
contain social security numbers of any
person and a true and correct copy
was mailed this date to:

Mary Lou Wilson Esq.
333 Marsh Ave
Reno, NV, 89509

Dated this 29th day of May 2012.

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.

Frank M. Peck
Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner

CR06P2580 DC-9900035805-003
POST FRANK MILFORD PECK (06 3 Pages
District Court 06/05/2012 02:14 PM
Washoe County 3795
FX1 ASMTW

Exhibit-1

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•
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•

Jason von Rosenberg

Legal Assistant

Mary Lou Wilson, Esq.
333 Marsh Ave.
Reno, NV 89509

Frank Peck #57106
Ely State Prison
P.O. Box 1989
Ely, NV 89301

August 11, 2010

Frank Peck:

First and foremost, I would like to congratulate you for actually taking note of our Simpson stamps. We do try to retain our sense of humor and not get too wrapped up in the negative things that happen in our jobs and lives. We hope to bring smiles to those that have the same outlook.

The office phone is blocked. There are several reasons. Mostly, that we do not have a receptionist to take the calls when we could not just call you back anyways. We are often working from the field, in court, or at our home offices. There are some other ugly incidents that have happened over the years. For your protection and ours we also prefer to have all requests and directions in writing so that there is no confusion or misunderstanding.

However, team member John does have a contact phone 775-379-5854. He is typically able to take calls between 10am and 4pm Monday – Friday. He and I have your case. He will be doing the legal research and preparing the Supplemental Petition, I will be do the field research and finding people and files.

We will want to do the conference call when we are all present and in the office so that we really have a clear understanding of what we are going to do for you and your case. We will be taking detailed notes and have the file out and available for reference.

.....

Justice for all...

Thank you for the information you passed along. I will get on it right away.
We will always copy and return any original documents as requested.

A few follow up questions.

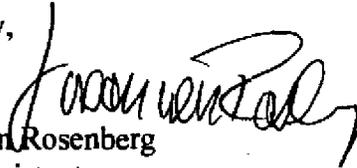
Did your parents both pass in Los Angeles County? I would like to submit records
as proof in the petition.

Do you have any idea what the Judges name was?

(The FRIEND OF YOUR FATHERS)

We are looking forward to talking to you soon, hang in there.

Sincerely,



Jason von Rosenberg
Legal Assistant
Mary Lou Wilson, Esq.

CR06P2586 DC-9900035905-004
POST - FRANK MILFORD PECK 106 4 Pages
District Court 06/05/2012 02 14 PM
Washoe County 3795
FX? ASMTU

Exhibit 2
16

V9.178

1 CODE NO.
2 MARY LOU WILSON ESQ.
3 Nevada Bar No. 3329
4 333 Marsh Avenue
5 Reno, NV 89509
6 775-337-0200 Blocked
7 Attorney for Petitioner

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
9
10 IN AND FOR THE COUNTY OF WASHOE

11 FRANK MILFORD PECK,

12 Petitioner,

13 vs.

14 Case No. CR06P2580

15 Dept. No. 6

16 E.K. McDANIEL, WARDEN, E.S.P. and
17 THE STATE OF NEVADA,

18 Respondents.

19
20 MOTION FOR DISTRICT COURT ORDER PERMITTING TELEPHONIC CONFERENCE
21 BETWEEN APPOINTED COUNSEL AND PETITIONER IN SUPPORT OF THE
22 SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS
23 (POST CONVICTION)

24 COMES NOW, FRANK MILFORD PECK, by and through counsel, MARY LOU WILSON,
25 and Moves this Honorable Court for its Order to Command Ely State Prison and Warden
McDaniel to set up a telephone conference between Petitioner and appointed counsel Mary Lou
Wilson.

This request is based on a request made to Ely State Prison to set up a phone conference. The
Warden's office informed counsel's office that Ely State Prison would not accommodate

1 counsel's request as their policy forbids telephone conference between counsel and client. No
2 reasonable reason was given for this policy.

3 The Warden's office suggested that Petitioner could call counsel but that Petitioner has to
4 wait in line for the phone to which he has access only a few days per week and that the phone
5 call could literally come on any day at any time. Obviously, this would not facilitate an
6 appropriate legal conversation between Petitioner and counsel.

7 This phone conference request is made in an attempt to save the State travel costs for driving
8 from Reno to Ely and back.

9 Other prisons in the N.D.O.C., such as High Desert State Prison in Southern Nevada, have
10 previously accommodated counsel's requests for phone conferences with other clients by having
11 the client call from a caseworker's office to counsel's office.

12 Therefore, the Petitioner moves that the Honorable Court Order Ely State Prison to set up a
13 telephonic conference between Petitioner and appointed counsel, Mary Lou Wilson.

14 Should this Honorable Court's Order be ignored by Ely State Prison, counsel will be forced to
15 request a Writ of Mandamus to the Nevada Supreme Court seeking enforcement of this
16 reasonable request for a telephonic conference. In these dire times of economic problems, Ely
17 State Prison should accommodate this request.

18 DATED this 28th day of July, 2010.

19 By: s/s: MARY LOU WILSON
20 MARY LOU WILSON
21 Attorney for Petitioner
22

23 Affirmation:

24 I, Mary Lou Wilson hereby affirm that there is no social security number of any person in the
25 aforementioned document.

Dated this 28th day of July, 2010.

By: s/s: Mary Lou Wilson
Mary Lou Wilson

1 CERTIFICATE OF SERVICE

2 I, Mary Lou Wilson, hereby certify that pursuant to NRCP 5(b), on the 28th day of July, 2010,
3 I e-filed the foregoing pursuant to the Master List of persons on the e-filing roster, in particular,
4 to The Honorable Judge Brent T. Adams, Terrence McCarthy, Appellate Deputy District
Attorney, and mailed a copy of the same to Petitioner Peck through the U.S. mail to:

5 The Honorable Judge Brent Adams, District Court, Department 6 (e-file)

6 Terrence McCarthy, Appellate Deputy District Attorney, (e-file)

7 Frank Peck (U.S. mail)

8 Inmate Number 57106

9 Ely State Prison

10 4569 North State Route 490

11 P.O. BOX 1989

12 Ely, NV 89301

13
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15
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17
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19
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21
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24
25



CR06P2580 DC-9900035805-005
POST FRANK MILFORD PECK (06 2 Pages)
District Court 06/05/2012 02:14 PM
Washoe County 3795
EXR ASMITH

Exhibit-3

STATE BAR OF NEVADA

August 3, 2010

Frank Peck #57106
ESP Box 1989
Ely, Nevada 89301



600 East Charleston Blvd.
Las Vegas, NV 89104-1563
phone 702.382.2200
toll free 800.254.2797
fax 702.385.2878

Dear Mr. Peck:

Thank you for your letter requesting assistance from Lawyer Referral and Information Service in locating an attorney to help you with your legal matter. Enclosed you will find the information to the Attorney you have requested.

Mary Lou A. Wilson
333 Marsh Ave.
Reno NV 89509

(775) 337-0200 Blocked

9456 Double R Blvd., Ste. B
Reno, NV 89521-5977
phone 775.329.4100
fax 775.329.0522

www.nvbar.org

Our office hours are from 8:30am to 5pm M-F, you can contact us during these office hours. In your letter you mentioned that you called and it was not a collect call. Thank you again for your request and should you need further assistance you are welcome to call us at 702-382-0504.

Sincerely,

LRIS Assistant
State Bar of Nevada

Enclosure as stated

CR06P2560 DC-9900035605-006
POST FRANK MILFORD PECK (D6 3 Pages
District Court 06/05/2012 02:14 PM
Washoe County 3795
FX4 ASMTLV

Exhibit-4
22

V9.184

FRANK PECK 57106

Aug 10, 2010.

ESP BOX 1989

Ely, NV. 89301

State Bar of NEVADA

600 East Charleston Blvd

Las Vegas, NV. 89104-1563

Dear State Bar

I've a few questions: RE: Atty Mary Lou Wilson

What to do, since my recently appointed counsel has a Block on her business telephone?

She's misleading the Court in her Motion for Court Order for conference call, as "she knows full well, her line has a block on it!"

I've been placed in a bad position. I just dont know what to think about an Atty that wont take calls from clients.

Mary Lou Wilson was appointed June 28th and i've NEVER spoken to her to date.

Can you tell me who enforces ADKT-411?

I've been put in a compromising position due to this situation and it's not right that Ms Wilson has misled the District Court Judge to think that, "I could call her at any time, or on any day," when she knows, full well, that there is a block on her telephone.

I fear that this situation is going to cost me a very good Attorney, that would otherwise provide a good service. I also fear ending up with an attorney the likes of Scott Edwards.

I'm extremely upset that I'm even having to deal with this un-professional situation.

Also, You guys keep telling me, I'm welcome to call, yet, when I try, no one will accept a direct 'not collect' call. What's up with that?

May I, or not, call on 702-382-0504?

any suggestions?

Sincerely,
Frank Pugh

CR06P2580 DC-9900035805-007
POST: FRANK MILFORD PECK (D8 3 Pages
District Court 06/05/2012 02 14 PM
Washoe County 3795
FX5 05MTPP

Exhibit-5
25

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE REVIEW OF
ISSUES CONCERNING
REPRESENTATION OF INDIGENT
DEFENDANTS IN CRIMINAL AND
JUVENILE DELINQUENCY CASES.

ADKT No. 411

FILED

OCT 16 2008

THOMAS W. ANDERMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER

WHEREAS, the paramount obligation of criminal defense counsel is to provide zealous and competent representation at all stages of criminal proceedings, adhere to ethical norms, and abide by the rules of the court; and

WHEREAS, the performance standards attached as Exhibit A provide guidelines that will promote effective representation by both appointed and retained counsel;

IT IS HEREBY ORDERED that the performance standards contained in Exhibit A to this order are to be implemented effective April 1, 2009.

IT IS FURTHER ORDERED that an extension for Washoe County and Clark County to complete the weighted caseload studies is granted to May 15, 2009; and

IT IS FURTHER ORDERED that this court shall hold a public hearing at 2:00 p.m. on Tuesday, January 6, 2009, at which time the court will consider the final report from the Rural Issues Subcommittee; and

IT IS FURTHER ORDERED that representatives from Clark

FELONY AND MISDEMEANOR TRIAL CASES

Standard 1: Role of Defense Counsel

The paramount obligation of criminal defense counsel is to provide zealous and quality representation to their clients at all stages of the criminal process. Attorneys also have an obligation to abide by ethical norms and act in accordance with the rules of the court.

Standard 2: Education, Training, and Experience of Defense Counsel

- (a) To provide quality representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the courts of Nevada. Counsel has a continuing obligation to stay abreast of changes and developments in the law. Where appropriate, counsel should also be informed of the practice of the specific judge before whom a case is pending.
- (b) Prior to handling a criminal matter, counsel should have sufficient experience or training to provide quality representation and should move to be relieved as counsel should determine at a later point that he or she does not possess sufficient experience or training to handle the case assigned.

Standard 3: Adequate Time and Resources

Counsel has an obligation to make available sufficient time, resources, knowledge, and experience to afford competent representation of a client in a particular matter before agreeing to act as counsel or accepting appointment. Counsel must maintain an appropriate, professional office in which to consult with clients and witnesses, and must maintain a system for receiving collect telephone calls from incarcerated clients.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 06-11-2012:15:34:50
Clerk Accepted: 06-11-2012:16:37:26
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 06-22-2012:15:17:34
Clerk Accepted: 06-22-2012:15:18:06
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Sealed Order
Filed By: MaryBeth Stackhouse

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

CR062580 DC-9500036735-008
POST FRANK MILFORD PECK 106 4 Pages
District Court 07/09/2012 01 48 PM
Washoe County 2610
11057

Frank M. Peck 57106
HDSP Box 650
Indian Springs, Nv. 89070
Petitioner pro se

FILED
2012 JUL -9 PM 1:48
JOEY ORDUNA HASTINGS
CLERK OF THE COURT
BY *[Signature]*
DEPUTY

In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe

Frank M. Peck, Case No. CR-06-P-2580
Petitioner, Dept No. 6
vs
The State of Nevada,
Respondent.

NOTICE OF LAWSUIT AND REQUEST
FOR ALTERNATE COUNSEL

Comes Now, the Petitioner, Frank M. Peck
pro se hereinafter Mr. Peck with Notice of
Lawsuit and request for Alternate Counsel.

This Notice of Lawsuit and request for alternate
counsel is made and based upon all papers and
pleadings on file in this case as well as the
attached Points and Authorities and Affidavit
of Mr. Peck.

Dated 7-3-12

Frank Peck
Frank M. Peck
Petitioner, prd/9192

Points And Authorities

Within 30 days of the filing of this document Mr. Peck shall have mailed to this court for filing A Civil Action naming Mary Lou Wilson Esq, et al as Defendants for collusion to deprive Mr. Peck of his Constitutional Rights under the Due-Process clause of the 14th Amendment of the U.S. Constitution.

"COUNSEL Mary Lou Wilson HAS AND CONTINUES to refuse to speak to her clients".

Counsel's Assistant is NOT AN ATTORNEY AND repeatedly lies AND stalls AND makes false statements AND cannot be considered AS contact or dialog with counsel Wilson.

Conclusion

Therefore, this Honorable Court should Appoint Alternate Counsel or Grant Mr. Peck pro se status.

Dated this 3rd day of July 2012.

Frank Peck

Frank M. Peck V# 198, sc

STATE OF NEVADA
County of WASHOE ^{ss} Affidavit of Frank M. Peck

I Frank M. Peck do hereby swear to the following under penalty of perjury that:

1. I am the Petitioner in WDC case NO. CR-06-P-2580.
2. All assertions in the attached Notice of Lawsuit and request for alternate counsel are true based on personal knowledge and I am competent to testify to all matters contained therein.
3. I bring this Notice of Lawsuit and request for alternate counsel out of dire necessity, good faith and for NO IMPROPER REASON.

Dated this 3rd day of July 2012

Signed under penalty of perjury NRS 208.165 and 28 USC ss 1746.

Frank Peck
Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV 89070
Petitioner, pro se

Certificate of service AND Affirmation

Pursuant to NRS 239B.030 the attached Notice of Lawsuit and request for Alternate Counsel does not contain social security numbers of any person and a true and correct copy was mailed this date to:

Mary Lou Wilson Esq.	DDA Terrance Mc Carthy Esq.
333 Marsh Ave	75 Court Street
Reno, NV. 89509	Reno, NV. 89501

Dated this 3rd day of July 2012.

Signed under penalty of perjury NRS 208.165
and 28 USC § 1746.

Frank Peck
FRANK M. PECK 57106
HOSP Box 650
Indian Springs, NV, 89070
Petitioner, pro se

FRANK M. PECK 57106

HDSP BOX 650

INDIAN SPRINGS, NV. 89070

PETITIONER, PRO SE.

FILED

2012 AUG -2 PM 4:04

JOEY ORDUÑA HASTINGS
CLERK OF THE COURT

BY
DEPUTY

In the Second Judicial District Court of the State of Nevada

FRANK M. PECK,

CASE No. CR-06-P-2580

Petitioner,

Dept. No. 6

v.

The State of Nevada,

NOTICE

Respondent.

Comes Now, the PETITIONER, FRANK M. PECK
prose with NOTICE that suit has been filed in
dept 9 Peck v. Mary Lou Wilson No. CV12-01897.

This Notice is made and based upon all papers
and pleadings on file in this case as well as the
attached points and authorities and affidavit
of Petitioner Peck.

Dated this 28th day of July 2012.

Frank Peck
FRANK M. PECK
Petitioner, pro se.

CR06P2580
POST FRANK MILFORD PECK (06 3 Pages)
District Court 08/02/2012 04:04 PM
Washoe County NV 89070

Points And Authorities

Petitioner has filed suit against his Counsel Mary Lou Wilson for inter alia, stating in a letter to Petitioner dated May 7, 2011 that Petitioner's meritorious issues would only be raised contingent on the granting of an evidentiary hearing.

A copy of this letter is being served on this court simultaneously in a Petition for Writ of Mandamus.

Dated July 28 2012

Frank Peck

Frank Peck Petitioner, pro se.

State of Nevada,

County of Washoe

Affidavit of Frank M. Peck

I Frank M. Peck do hereby swear under penalty of perjury that:

1. I AM the Petitioner in case NO. CR-06-P-2580.
2. All assertions in this Notice are true based on personal knowledge and I am competent to testify to all matters contained herein.
3. I bring the Above LAW SUIT AND NOTICE in good faith and for NO IMPROPER REASON.

Dated July 28 2012 Signed under penalty of perjury
NRS 208.165, § 28 USC 1746.

Frank Peck
Frank M. Peck Petitioner

Certificate of Service and Affirmation

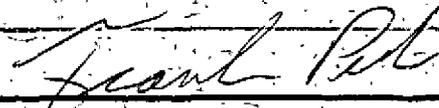
Pursuant to NRS 239B.030 the attached NOTICE does not contain social security numbers of any person and a true and correct copy was mailed this date to:

DDA Terrance McCarthy Esq
75 Court Street
Reno, NV. 89501

Mary Lou Wilson Esq
333 Marsh Ave
Reno, NV. 89509

Dated July 29, 2012.

Signed under penalty of perjury NRS 208.165
and 28 USC 1746


FRANK M. PECK 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner, pro se.

File Copy

08062580 DC 990037797-007
POST FRANK MILFORD PECK (06 7 Pages
District Court 08/13/2012 02 21 PM
Washoe County Nevada

Frank M. Peck 57106

HDSP Box 650

Indian Springs, NV 89070

Petitioner, pro se.

FILED

2012 AUG 13 PM 2:21

JOY GREEN HASTINGS
CLERK OF THE COURT

BY *[Signature]*
DEPUTY

In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe

Frank M. Peck,

CASE NO. CR-06-P-2580

Petitioner,

Dept No. 6

v.

The State of Nevada,

Respondent.

Motion for Court Ordered Conference Call

Comes Now, the Petitioner, Frank M. Peck
pro se hereinafter Mr. Peck with his Motion
for Court Ordered Conference Call.

This Motion is made and based upon ALL
PAPERS AND pleadings on file in this CASE
AS WELL AS the Attached Points and Authorities,
Exhibit #1 and the Affidavit of Mr Peck.

Dated this 4th day of August 2012.

[Signature]

Frank M. Peck Petitioner 57106

Points and Authorities

Mr Peck is requesting A Court Order for A conference call between Mr. Peck and his DNA expert, Mehul B. Anjaria.

Mr. Peck and Mr. Anjaria have made significant progress and Mr. Peck wishes to further the development of the issues with Mr. Anjaria.

Among the issues, Mr. Peck has learned and Mr. Anjaria has confirmed that the "DNA evidence is merely used as a template or Guide to create copies" and that these copies are made entirely from materials/chemicals/ A,T,C,G "brought into the process from an outside source" and that the Short tandem Repeats (STRS) are completely recombinant/ man made from the same materials foreign to the DNA source/input DNA and that the subsequent analysis of the Product of the Polymerase chain reaction is of materials completely foreign to and in addition to the actual DNA evidence and "therefor is the literal manufacture of evidence at a molecular scale". Mr. Peck obviously wishes to raise this constitutional issue.

Mr. Peck's "Attorney" claims that she is having problems obtaining money from this court and cannot afford to pay for collect calls from Mr. Peck.

Mr. Peck as a pre-condition to even being able to call Mr. Wilson's assistant had to pay for the calls himself.

Ms. Wilson has not spoken to her client Mr. Peck in over two (2) years!

As a result, Mr. Peck has duly dismissed/fired his Attorney Mary Lou Wilson pursuant to the District Court Rules and the Law Suit in dept 9 of this District in case no. CV-12-01897.

Mr. Peck made a request on a DOC-515 form requesting that Mr. Peck's savings of \$200.00 be transferred to his trust account where he could use it for telephone charges to call Mr. Anjaria that cost \$35.00 for a 30 minute call on the inmate calling system. This request was denied by warden Awo Wickham. See: Exhibit - 1.

Conclusion

Therefore, for the reasons stated herein and other reasons not specifically stated this Honorable Court should GRANT Mr. Peck's reasonable request to further Mr. Peck's working relationship with his DNA expert that was financially provided by this Court.

Mr Peck's DNA Expert:

MBA DNA Consulting

Mehul B. Anjaria M.S., D-ABC

433 N. Camden Dr. Suite 600

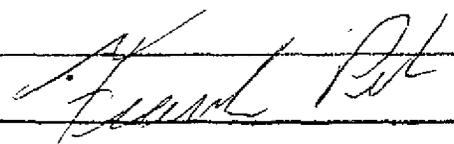
Beverly Hills, CA 90210

Phone No. 310-801-1848 FAX. 310-295-2161

* It should be noted Mr. Anjaria is on vacation and should be available in early September.

Dated this 4th day of August 2012.

Respectfully Submitted



FRANK M. PECK 57106

HDSP Box 650

Indian Springs, 2012 89070

State of Nevada ss

County of Washoe

Affidavit of Frank M. Peck

I Frank M. Peck do hereby swear under penalty of perjury that:

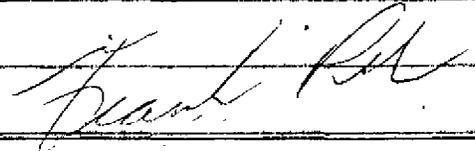
1. I Am the Petitioner in case NO CR-06-P-2580,

2. All assertions in the attached Motion for Court Ordered Conference call are true based upon personal knowledge and I am competent to testify to all matters contained therein.

3. I make this Motion in good faith and for no improper reason.

Dated this 4th day of August 2012.

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.



Frank M Peck, 57106

HDSP Box 650

Indian Springs, NV 89020

Petitioner, pro se.

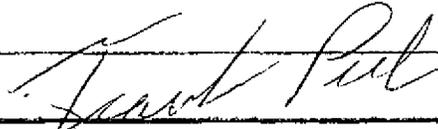
Certificate of Service and Affirmation

Pursuant to NRS 239 B.030 the Attached Motion for Court Ordered Conference Call does NOT contain social security numbers of any person and a true and correct copy was mailed this date to:

Deputy District Attorney	Marylou Wilson Esq.
Terrance Mc Carthy Esq.	333 Marsh Ave
75 Court Street	RENO NV 89509
RENO, NV 89501	

Dated this 8th day of August 2012.

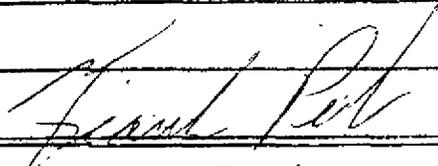
Signed under penalty of perjury NRS 208.165
AND 28 USC 1746.


Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner, pro se.

Index of Exhibits

1. Dept of Corrections form # 515.

Dated this 4th day of August 2012.


FRANK M. PECK 57106
HDSP Box 650
Indian Springs, W.V. 89070
Petitioner, pro se.

CRD6P2S60
POST FRANK MILFORD PECK (D6 2 Pages
District Court 06/13/2012 02:21 PM
Washoe County 2490
FX
.jvncst

EXHIBIT 1

EXHIBIT 1

NEVADA DEPARTMENT OF CORRECTIONS

"INMATE SAVINGS WITHDRAWAL REQUEST"

TO: DEPUTY DIRECTOR/SUPPORT SERVICES

FROM: FRANK PECK DOC# 57106

I HEREBY REQUEST TO WITHDRAW \$ 200.00 FROM MY OFFENDER'S EMPLOYMENT FUND.

REASON: Various, most of which is for upcoming telephone call to Beverly Hills DNA Expert who cannot be called collect. Approx \$30.00 for a 15 minute call.

DATE: May 8th 2012

Frank Peck
INMATE SIGNATURE

(DO NOT WRITE BELOW THIS LINE)

(TO BE COMPLETED BY THE WARDEN/DESIGNEE)

INSTITUTION/FACILITY: HOSP U-6 D-27-B

SENTENCE: Life

APPROXIMATE RELEASE ELIGIBILITY DATE: 11-1-21

INSTITUTIONAL ADJUSTMENT: PS

ADDITIONAL COMMENTS: many many grievances

BALANCE IN ACCOUNT: _____ DATE: _____

RECOMMEND: () APPROVAL (-) DISAPPROVAL

SIGNATURE WARDEN/DESIGNEE

() APPROVED () DISAPPROVED

DEPUTY DIRECTOR/SUPPORT SERVICES

EX-1

1 CODE NO.
2 MARY LOU WILSON ESQ.
3 Nevada Bar No. 3329
4 333 Marsh Avenue
5 Reno, NV 89509
6 775-337-0200
7 Attorney for Petitioner

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

9 IN AND FOR THE COUNTY OF WASHOE

10 FRANK MILFORD PECK,

11 Petitioner,

12 vs.

13 Case No. CR06P2580

14 Dept. No. 6

15 WARDEN, N.D.O.C. and
16 THE STATE OF NEVADA,

17 Respondents.

18 NOTICE OF CONTACT FROM DNA EXPERT
19 IN SUPPORT OF THE SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS
20 (POST CONVICTION)

21 COMES NOW, FRANK MILFORD PECK, by and through counsel, MARY LOU WILSON,
22 and gives Notice to this Honorable Court from an email received by DNA expert, Mehul Anjaria,
23 MS, D-ABC, regarding his review of the Washoe County Sheriff's Office Crime Lab chain of
24 custody.
25

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1 On August 19, 2012, Counsel's assistant, John Whittaker, received an email from DNA
2 expert, Mehul Anjaria, MS, D-ABC in which Anjaria advised that he would send his report to
3 Counsel by August 24, 2012. Exhibit 1.

4 DATED this 20th day of August, 2012.

5 By: s/s: MARY LOU WILSON
6 MARY LOU WILSON
7 Attorney for Petitioner

8 Affirmation:

9 I, Mary Lou Wilson hereby affirm that there is no social security number of any person in the
10 aforementioned document.

11 Dated this 20th day of August, 2012.

12 By: s/s: Mary Lou Wilson
13 Mary Lou Wilson
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1 CERTIFICATE OF SERVICE

2 I, Mary Lou Wilson, hereby certify that on the 20th day of August, 2012, I e-filed the
3 aforementioned document through the Master List, which includes The Honorable Judge Brent
4 T. Adams, Terrence McCarthy, Appellate Deputy District Attorney, and mailed a hard copy of
the document through the U.S. mail to Petitioner Peck at the following address:

5 The Honorable Judge Brent Adams, District Court, Department 6 (e-file)

6 Terrence McCarthy, Appellate Deputy District Attorney, (e-file)

7 Frank Peck (U.S. Mail)

Inmate Number 57106

8 Ely State Prison

4569 North State Route 490

9 P.O. BOX 1989

10 Ely, NV 89301

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1 Exhibit in Support of Notice

2 Exhibit 1, Email from Mehul Anjaria

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FILED

Electronically

08-21-2012:12:39:56 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3163443

EXHIBIT 1

EXHIBIT 1

V9.212



John Whittaker <npspider@gmail.com>

The end is near!!

4 messages

Mehul B. Anjaria <m.anjaria@mbadnaconsulting.com>
To: John Whittaker <npspider@gmail.com>

Sun, Aug 19, 2012 at 7:23 PM

Hi John,

Had a great weekend of getting my Peck write up together. It's going to be a pretty hefty document. When you get it, you can accuse me of being slow, but you certainly won't be able to accuse me of not being thorough! ☺ I need a few days to finish, and my schedule looks pretty open for Mon and Tues. Hell or high water, I'll have a write up to you this week (Wednesday if all goes well). Believe me, no one is more anxious than me to get this thing off his desk!

Thanks,

Mehul B. Anjaria, MS, D-ABC

MBA DNA Consulting, LLC

Beverly Hills | Chicago

MBADNACONSULTING.com

433 North Camden Drive | Suite 600

Beverly Hills, CA | 90210

p | 310-801-1848

f | 310-295-2161

One Magnificent Mile

980 North Michigan Avenue | Suite 1400

Chicago, IL | 60611

p | 310-801-1848

f | 312-448-9170

V9.213

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 08-21-2012:12:39:56
Clerk Accepted: 08-21-2012:14:45:10
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Notice
- **Continuation
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

1 CODE NO.
2 MARY LOU WILSON
3 Attorney At Law
4 333 Marsh Ave.
5 Reno, Nevada 89509
6 775-337-0200
7 Attorney for Petitioner

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

10 FRANK M. PECK,
11 Petitioner,

12 vs.

13 Case No. CR06P2580

14 Dept. 6

15 WARDEN, N.D.O.C. and
16 THE STATE OF NEVADA,
17 Respondents.

18 _____ /
19 NOTICE OF EXPERT WITNESS MEJUL B. ANJARIA'S REPORT IN SUPPORT OF
20 PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS
21 (POST CONVICTION)

22 COMES NOW FRANK PECK, by and through counsel, MARY LOU WILSON, and hereby
23 gives Notice of expert witness, MEJUL B. ANJARIA and his report in support of Petition and
24 Supplemental Petition for Writ of Habeas Corpus (Post Conviction).

25 DATED this 24th day of August, 2012.

By: s/s: MARY LOU WILSON
MARY LOU WILSON

AFFIRMATION

I, Mary Lou Wilson, hereby affirm that there is no social security number of any person in the
aforementioned document.

Dated this 24th day of August, 2012.

By: s/s: Mary Lou Wilson
Mary Lou Wilson

1 CERTIFICATE OF SERVICE

2 I, Mary Lou Wilson, hereby affirm that on the 24th day of August, 2012, I e-filed the
3 aforementioned document and sent it to the Master List of e-filers and sent a copy of the same to
4 Petitioner Peck through the U.S. Mail to the following:

5 The Honorable Judge Brent T. Adams (e-file)

6 Appellate Deputy District Attorney Terrence P. McCarthy (e-file)

7 Frank M. Peck (U.S. Mail)

8 Inmate Number 57106

9 H.D.S.P.

10 Post Office Box 650

11 Indian Springs, Nevada 89070

1 EXHIBIT IN SUPPORT OF NOTICE OF EXPERT WITNESS REPORT

2 Exhibit 1, Mehul B. Anjaria's Report

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Electronically

08-24-2012:02:42:06 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3174519

EXHIBIT 1

EXHIBIT 1

V9.218

August 22, 2012

To:
Mary Lou Wilson
John Whittaker
Frank Peck

This document is not intended to be a formal report. Rather it is a summary of my observations, explanations, and recommendations. The document is intended to present underlying details of the DNA testing and chain of custody such that the defense team can better understand the issues and decide on what further action or court filings may be required. The intended audience is only the individuals mentioned above. Based on review of this document and further discussion, a formal report may be prepared for legal purposes if requested.

LESLIE NUMMER CASE

Report Dated 12-3-96 by Maria Fassett, WCSO Crime Lab

Sexual Assault Evidence from Leslie Nummer:

- no semen detected on vaginal swabs
- semen was detected in a stain on the front crotch area of the panties. Stain removed for retention.
- no hairs observed on panties
- brown hair observed in pubic brushing packet

"The victim's clothing will be examined at a later date. The suspect's evidence kit, liquid blood sample and clothing are not listed in WCSO Evidence under this case number."

Laboratory Notes for this Report:

- 4 vaginal swabs present, they tested negative with AP

(AP stands for Acid Phosphatase, a presumptive chemical color test for seminal fluid. A positive result indicates the likely presence of semen, and further confirmatory testing is warranted)

-underwear: multicolored (jewel tones) satin bikini style. Sketch indicates that a positive AP test was found in inside front panel of crotch. An area of the crotch of the panties was excised and labeled "T1 panties"

-small portion of crotch was excised for microscopic exam: positive for sperm, quant ~1+, uneven distribution

(When microscope slides are examined for sperm cells, the number of cells present is generally recorded on a scale of 1 to 4. 1 is the least amount of sperm and 4 is the greatest. It is a subjective rating system, meant to document the approximate density of sperm cells present).

Report Dated 12-5-06 by Maria Fassett, WCSO Crime Lab

-No semen detected on Leslie Nummer's bra, sweater, and turtleneck. Loose hair and fibers were collected off of the sweater and turtleneck.

-Positive presumptive results for semen were obtained for the inside of the center crotch area of the jeans. A stain was removed for retention.

(presumptive positive means that semen is indicated, but it was not confirmed and cannot be said to be definitively present without further, confirmatory testing.)

-Hairs and fibers were collected off the jeans. Green stains and dried leaves observed on jeans.

Laboratory Notes for this Report:

-small area of discoloration to inside center crotch, tested positive with AP. Stain removed as 'T1 jeans'.

(here, no microscopic exam was performed for sperm thus it could not be concluded that semen was definitively present. Perhaps the size of the stain was judged too small to sample for microscopic exam at this stage)

Report Dated 3-14-97 by Maria Fassett, WCSO Crime Lab

"As per DA investigator, Mike NEVILLE, the above-listed items were sent back without examination at this time"

"The blood samples were not examined due to their excessive age"

The items listed in the report (received from WCSO Evidence Section 3-12-97) were:

- CAMEL T-shirt
- green towel, yellow towel, razor
- one pair grey sweats, one pair underwear, two pair of white socks, one tee shirt, numerous hair/fibers
- one black jacket, one pair NIKE black tennis shoes
- one orange towel from top of living room
- one petri dish with hair/fiber form bathroom sink drain
- piece of lint, two leaves, one white tissue with red stain, one white tissue, empty razor package, two razor caps, numerous hairs/fibers form contents of trash container.
- two vials of liquid blood obtained from Frank Peck
- sexual assault kit obtained from Frank Peck

Report Dated 5-6-97 by Jeffrey Riolo, WCSO Crime Lab

This is the first DNA report issued in the case. It uses a variation of PCR-based DNA testing known as 'PM+DQA1 and D1S80'. It was more sensitive but not as discriminating as the prior type of testing (see below).

The predecessor to this type of testing was called 'RFLP'. RFLP required a larger amount of DNA than PCR based techniques. A bloodstain about the size of a dime was required to have enough DNA for RFLP.

In later years, another type of PCR-based testing known as 'STR' came into use. This testing was even more sensitive than PM+DQA1 and D1S80, and offered even greater discrimination than RFLP.

All DNA testing systems after RFLP are PCR-based. However, there are different varieties of PCR-based testing (such as STR and PM+DQA1 and D1S80).

-A DNA profile was determined for the sperm fraction of T1 panties. It was a mixture of DNA from at least 2 people. The major (stronger profile) was consistent with Frank Peck. The minor (weaker) DNA types were consistent with Leslie Nummer, but it also appears that they could be consistent with Tim Billings.

-"Due to insufficient quantity and/or quality, no DNA results were obtained from Item #6: T1 Jeans (P19798).

Laboratory Notes for this Report:

"A blood stain and .5 ml tube was made from 1 of 2 vials of Frank M. Peck. The other vial was left unopened and along with the empty vial was returned to WCSO evidence."

Information on the blood tube is as follows:

Name: Peck, Frank M.

Date: 4-21-97

Officer: Ferguson, J #2248

Time: 0910

Place: 911 Parr Blvd.

Envelope No.: _____

Case #: 257920-96

Sampling of evidence:

T1 Panties: multi-colored fabric (purple, black, blue, etc). Whitish stain observed in two areas of panties. Took 2 cuttings (5mm and 2mm) of apparently 1/2 of the stained areas for DNA extraction

T1 Jeans: Blue denim fabric, no stain observed, took a 3mm squared cutting from around the +AP area.

(since he could not observe a visible stain, he sampled where Fasset had marked as being presumptive positive for semen).

Microscopic exam:

T1 Panties: +1 for sperm with tails and possibly a +4 for sperm without tails (tough to say what 'possibly' exactly means. If tails are observed, that generally means that a sample was collected relatively quickly after an assault as the tails easily break off of the sperm body with time. According to notes, the exam occurred 2.5 hours after the alleged assault-a time frame in which you might still observe tails)

The notes provided regarding the DNA extraction are rather scarce. It lists a Chelex method as being used, but does not provide details such as times, temperatures, lot numbers, etc. It does say that the reference samples from Nummer, Billings, and Peck were extracted 3 days after the extraction of the questioned samples.

Basic steps in DNA analysis are extraction, quantitation, amplification, and typing.

It appears that a type of extraction known as a differential extraction was used. The idea is to separate any DNA profiles coming from sperm, from the DNA profile of the female. Thus each sample has a non-sperm fraction and a sperm fraction after extraction. The separation is not always 100%.

For the quantitation step (which tells you the approximate amount of DNA present after extraction), the results are in the notes, but there is no actual data or worksheets or pictures from the lab procedure.

-No DNA was detected in either the non-sperm or sperm fractions from the jeans

-Suitable amounts of DNA were recovered from the reference samples and non-sperm and sperm fractions of the panties. The amount of DNA recovered from the sperm fraction of the panties (1.25 ng/ul) is consistent with a significant amount of sperm being present.

-Appropriate notes/data were provided for the amplification step

-Appropriate notes/data were provided for the typing steps.

Results for this type of DNA typing were documented via photograph and I'm looking at photocopies of photographs, but as far as I can tell the results were reported correctly. The sperm fraction of the panties did have to be tested in various amounts to get a result. This is not necessarily uncommon.

-samples from jeans were concentrated further in attempt to get typing result-no results obtained.

The presumptive positive for semen initially performed on the jeans may have been a false positive or indicative of a trace amount of semen. For example, high amounts of vaginal secretions, or bacteria I believe can cause an AP test to be positive. DNA testing did not detect semen on the jeans.

Candace Inman Case

Emergency Record, Saint Mary's Regional Medical Center (signed by physician)

Difficult to read most of document

"wet mount. No sperm seen. R04014-CR (Carole Phillips)"

In my review of cases I frequently see situations where the wet mount taken at the time of exam is negative, and when smears are later examined in the crime lab they

are positive for sperm. It appears that the wet mount is a more 'quick and dirty' screen and seems to have limited use. Not finding sperm at this stage is technically inconsistent with the finding of sperm at the crime lab, but based on my experience there appears to be a reason for this.

Carole Phillips Testimony:

"I'm handed a slide with a drop on it and asked to scan the slide for motile sperm or sperm, period."

Showing her the motile sperm slide:

A: "That's a microscopic slide with a small cover slip on"

Q: "Do you use small cover slips or the large"

A: "I would have used the large"

Speaking about the apparent inconsistency with the motile sperm slide being negative and the crime lab later finding sperm:

Q: Is that unusual?

A: No

Q: Give me some reasons why it might not be

A: Small, low sperm count, sperm like to stick to the swabs, possibly the swab wasn't totally swabbed onto that little bitty slide

Q: Well enough, you mean?

A: It's even possible that it could have been on the slide, but simply not in any of the fields I looked at even though I would have gone across, you know, quite a ways across it

Report Dated 9-15-94 by Maria Fasset, WCSO Crime Lab

-The presence of semen was identified on the vaginal smear. The vaginal swabs tips were removed and will be retained in the laboratory.

-The "stains on skin" gauze was examined for the presence of semen with none detected.

-No hairs or fibers were observed in the pubic hair brushing packet.

Laboratory Notes for this Report:

- "exam ~1-1.5 hours post"

Appears to refer to the hospital exam occurring quickly after the alleged assault

-stains on skin "collection site?". 2, 2x2 gauze pc's, one with brown/grey stain.
Negative AP test.

-vaginal swabs x2. Each with light brown staining. Positive AP " ~slow rxn mod color dev.

This would imply a weak positive result, possibly indicating a low level of semen.

-vaginal smears x2: microscopically examined for sperm, 3 heads observed, "rare"
At this point, based on the swabs having a weak AP result, and micro exam of the smears having a low level of sperm, there is indication that a relatively low level of semen was present.

-the motile sperm slide (presumably the one prepared at the hospital) was also included in the kit.

-The vaginal swab tips were taken for frozen storage.

In 1994, it is unclear which type of DNA technology the WCSO lab had available. We know that in 1996 from the Nummer case, they were using PM+DQA1 + D1S80 testing. Although PM+DQA1 testing could have been attempted in 1994 (if available), it likely was not since there was not a named suspect and no one to compare any results too. Based on the AP and sperm search results, there would not have been enough DNA to perform RFLP testing.

The National CODIS DNA database in its current form was not created until 1998. Prior to that, some databasing of DNA was occurring however it was not unified among laboratories and did not contain a large number of DNA profiles. In 1990 there was a pilot CODIS program for RFLP. From personal experience, PM+DQA1 and D1S80 markers could be searched in the late 1990's, but it was not a well-developed tool. Until STR technology and the national database in 1998, the CODIS system was of limited use.

Report Dated 12-17-01 by Renee Romero, WCSO Crime Lab

First DNA testing in Inham case. At this point, the lab has STR testing on-line and the National CODIS database is being heavily used to attempt to resolve criminal matters.

If Frank Peck's DNA had been profiled for the database in other technologies such as PM+DQA1 and D1S80, it would be irrelevant to the case, since the testing now being performed in 2001 is based on STR technology.

-A DNA profile was developed from the sperm fraction of the vaginal swab. The profile was searched against the State DNA database with no matching profile found. The profile will be forwarded to the National DNA database where it will be searched monthly.

Laboratory Notes for this Report:

-75% of one of 2 vaginal swabs was used for DNA extraction. A differential extraction was used to separate sperm fraction DNA from non-sperm fraction DNA.

-The notes on the extraction indicate which samples were extracted and by what method, however they are scarce in details such as times of extraction, temperatures, lot numbers, and volume of final extraction.

Apparently the following samples were extracted together:

- 2145-94 Vaginal swab (Inman Case)
- 8820-01 Vaginal swab
- 5841-01 nylons
- 3928-01 vag swab
- Blank

A blank should be included in each extraction, it is basically a tube to which no DNA is added, however it contains all of the chemicals used in the extraction process and goes through all of the steps that other samples do. At the end of the analysis there should be no DNA present, if there is, then the chemicals used or the extraction environment is contaminated with DNA.

-Romero did not perform microscopy during her extraction, which is perhaps not the best protocol, but is fairly common. The idea is that sperm was previously identified, so it is known that a differential extraction should be used. She thus did not have an opportunity to physically look for sperm cells in the material she was extracting. Because male DNA was however found in the sperm fraction of the sample, the earlier finding of sperm cells on the swabs is confirmed by the DNA testing.

-Inman's reference sample was also extracted along with other reference samples from different cases.

No blank is listed for this extraction in the notes. Again, details such as times, temperatures, lot #'s, and volumes are not present.



-DNA quantitation results are provided however, there is no data on the quantitation step. It is unclear as to even what technique was used.

A blank associated with the reference extraction is listed under the quantitation results. As mentioned above, no blank was listed with the reference sample extraction initially.

-We are not provided with the final volume of extracted DNA. The quantitation values are as follows:

Vaginal swab (non-sperm fraction) = 4 ng/ul

Vaginal swab (sperm fraction) = 156 pg/ul

We know the concentration of DNA obtained, however we do not know the volume of liquid extracted DNA, so we don't know the total amount of DNA recovered. 156 pg/ul is a relatively low yield of sperm DNA, that is consistent with the prior AP and microscopic exam results.

-The amplification step appears to be properly documented. The specific variety of STR testing used was the Profiler Plus and COfiler kits.

1.56 ng of DNA was amplified for the sperm fraction of the vaginal swab, an appropriate amount. One ng (nanogram) = 1,000 pg (picograms).

The STR typing process generates raw electronic data from an instrument. That raw data is then run through software programs that interpret the data. I was provided with the raw data for this typing and was able to run it through my software.

The types that I determine agree with the types that Romero obtained.

The non-sperm fraction was a single source profile that matched Inman.

The sperm fraction was a mixture of DNA. There was a clear major (stronger) male profile that was used to enter in the database, and a minor DNA profile consistent with Inman. This is an example of the less than 100% separation of a differential extraction, which is more likely to occur with low levels of sperm.



The following DNA profile was determined for the sperm fraction of the vaginal swab and entered in the database:

D3S1358	15
vWA	18, 19
FGA	19, 21
Amelogenin	XY
D8S1179	11, 13, 14*
D21S11	28, 31
D18S51	15, 20
D5S818	12
D13S317	9, 12
D7S820	11, 12
D16S539	12, 13
TH01	6,8
TPOX	8,12
CSF1P0	12

*Inman is a 13, so the likely male profile is an 11,14, however the 13 was added to the search presumably in the rare even that the male also had a 13

-This DNA profile was entered in a 'keyboard search' of the State database on 12-6-01. It was searched against 2,921 profiles in the database. A keyboard search is a manual search performed prior to officially uploading the profile to be searched. No matches occurred.

This is the first time the profile from the sperm fraction of the vaginal swab was searched (12-6-01). The question (to be addressed later in this document is whether Frank Peck's STR profile was in the database at this time).

-On 12-17-01 the major profile from the vaginal swab was entered in the State database. On the same day it was released to be made available for the next upload to the National database.

Report Dated April 23, 2003 by Jeffrey Riolo, WCSO Crime Lab

-Search of State database of dominant profile of sperm fraction of vaginal swab matched Frank Peck.

-Requests a new reference sample from Frank Peck to confirm the match
Anytime there is a hit, a new reference sample taken from the individual is tested for confirmation.

Laboratory Notes for this Report:

-'State Match Result Report' shows a match of Convicted Offender STR profile NN03100 and Sample 214594 (profile for major profile of sperm fraction of vaginal swab)

-Photocopy of envelope with sticker "NN03100"

"State of Nevada Convicted Offender DNA Collection Kit

Type of offense: 200.366

County of conviction: Washoe

Date of conviction: 3-17-98

Name: Peck, Frank

State ID#: NV00515546

Social Security#: 549-08-5867

Dept of Prisons/P&P#: 57106

Male: X

Date of Birth: 03-02-1962

Collected by: Paula Houston (can't quite make out handwriting)

On: 3-20-02 at LCC"

-It appears that the Convicted Offender sample from Peck was re-analyzed to confirm that the DNA type of that sample matches the DNA type previously entered for the sample in the database. Typically CODIS labs will re-test the sample along with a few samples that were processed next to it to ensure that a mix-up did not occur when typing the Convicted Offender sample and entering it in the database.

-On 4-15-03 Jeff Riolo obtained the Convicted Offender sample from Peck (envelope described above).

-Notes on the extraction were provided, but like other notes seem incomplete. Information such as times, temperatures, and lot numbers are not included. Notes indicate that on 4-15-03 the following samples were extracted:

Q46077-L0654-03 Rose
NN03100 Peck
NN03468 Battle
NN03386 Rotunno

-No data was provided regarding the quantitation step, just the final quantitation values.

-The amplification notes appear to be sufficient.

-I have printouts of the final typing that appear to show that the re-typing of the Peck sample gave the expected DNA result on April 18, 2003.
The electronic raw data was not provided to me.

After a subsequent discovery request I was provided with raw electronic data from what appears to be the initial testing of Peck's database sample. The dates that the samples were run according to the electronic data were 12-2-2002 and 1-8-2003.

In that same discovery request I had asked for :"

-Documentation establishing the date that the DNA profile for the sperm fraction from the vaginal swab (Target ID: 214594) was entered into the State and National DNA databases and became searchable.

-Documentation establishing the date that the DNA profile of Frank Peck was first entered into the State and National DNA databases and when it became searchable."

As noted above, the documents I received in discovery indicated that the DNA profile from the sperm fraction of the vaginal swab was entered in the database on 12-17-01.

With regard to the first time Peck's sample was entered into the database and became searchable, the document provided to me shows that it was 4-3-03. This is also the date of the hit to the sperm fraction of the vaginal swab which makes sense.

The raw data that I was provided that pertained to typing Peck's sample on 12-2-2002 and 1-8-2003 is therefore likely the data from the original database typing of Peck's sample that resulted in his profile being uploaded on 4-3-03.

While I did not have the bench notes that went along with this raw data, I was able to run it through my software and obtain a DNA profile consistent with what has been reported for Peck.

Report Dated 2-14-05 by Renee L. Romero, WCSO Crime Lab

Received from WCSO Evidence Section on 12-2-04:

W112837: PS1-Sexual assault evidence kit R04014 containing envelope #3 "stains on skin"

W112602: LB1-Reference saliva sample from Frank Peck

The foreign deduced DNA profile from the stain on skin matches Frank Peck.

The major profile from the sperm fraction of the vaginal swab (previously typed) matches Frank Peck.

This looks to be the confirmation of the CODIS hit achieved by collecting a new sample from Peck.

Laboratory Notes for this Report:

- 2 ~2 square in pieces of gauze material. One is marked '-AP' and has some discoloration (received 12-22-04 from WCSO evidence)
- LB1 swab box labeled Frank M. Peck containing 2 swabs (received 1-4-05 from WCSO evidence)
- Extraction notes indicate that 50% of the discolored area of the gauze was sampled for DNA analysis.
- Extraction notes indicated that the sample from Peck was analyzed with no other case samples
- This time, quantitation data was provided, and showed a relatively high amount of DNA on the gauze.
- The amplification notes appear to be adequate.
- Apparently the first time the sample from the skin was tested, no DNA types were detected, despite a sufficient quantity of DNA being recovered.
- The skin sample was re-analyzed using more input DNA and results were obtained.

-I was provided with the raw electronic data for the analysis of the skin sample and Peck's reference sample. This typing of Peck's sample is consistent with the DNA profile for his Convicted Offender Sample and is consistent with the DNA from the sperm fraction of the vaginal swab.

-It looks like the positive amplification control for Peck's reference sample typing was mislabeled 'amp +11205' when it apparently should have been 'amp + 11305' which reflects the date his reference sample was amplified.

-The results from the skin sample show a mixture of DNA from at least 2 individuals. The results are consistent with an approximate 50:50 mix of 2 people. If you subtract out the DNA types of Inman, the deduced foreign DNA profile is consistent with Peck.

We don't know what type of cellular material is responsible for the DNA that is consistent with Peck. We just know that semen was not detected due to the negative AP result originally obtained.

Report Dated 2-6-06 by Renee Romero, WCSO Crime Lab

Received from Washoe County Sheriff's Office Evidence Section on 1-24-06:

W204210: Buccal swabs from Frank Peck (LB3)

Peck matches sperm fraction from vaginal swab (typed earlier)
Unclear in the report itself why another reference sample is being tested.

Laboratory Notes for this Report:

-On WCSO Lab Number Submission Sheet:

"This sample was sent in again due to the previous sample having "legally obtained" issues.

-Analysis notes look OK

-I was provided with raw electronic data, ran it through my software and agree with the types obtained for Frank Peck.

Report Dated 7-6-06 by Richard Berger, WCSO Crime Lab

-blood indicated on small stain from corner of bed sheet

- semen indicated in a sizeable stain present near middle of bed sheet
- five hairs recovered from bathtub, appear to be suitable for DNA
- 20 cigarette butts of 13 different brands recovered
- soda can was swabbed

I did not receive any laboratory notes with this report. In subsequent discovery requests I did not pursue them since no DNA testing was apparently performed.

If there are doubts about the authenticity of the vaginal swab and skin results from the Inman case, perhaps additional items listed in this report can be tested.

Jeffrey Riolo Testimony (Inman Case)

Q: What type of examination or investigation did you do in that laboratory number in this case?

A: I looked at the DNA profile from Frank Peck

Q: Okay. Did you have that in your lab to your knowledge in 1996, when you started? The sample

A: No, we did not

Q: Did you have it, to your knowledge, in your lab in the year 2000 or 2001 when PCR was starting?

A: No

Q: When did you receive at the lab the sample from Frank Peck, to your knowledge?

A: His DNA sample was received in the lab March of 2002

--->

The sample that he refers to that was received in March of 2002 is the Convicted Offender Sample NN03100, but obviously a reference sample from Peck was in the possession of the lab in conjunction with the Nummer case previously.

On 3-11-97 the lab received 2 vials of blood from Frank Peck, however per Neville they were sent back without being analyzed on 3-13-97.

It looks like blood was drawn from Peck on 4-2-97 and Riolo took possession of the blood vials on 4-24-97 to create a dried bloodstain perform DNA testing. As far as I can the blood vials were sent back.



Here is the chain of custody information on dried bloodstain prepared:

Lab #: L2807-96

Agency: Reno PD

Control #: P19920

Case #: 257920-96

Description: Reference standards from Leslie Nummer, Tim Billings, Frank Peck

Source: Control Chain of Custody Sheet

Date	Released By	Received By
4-28-1997	LAB	DG
9-27-11	MAM	Returned to Agency

Q: In your investigation in this case, you received Mr. Peck's DNA sample for the first time in—did you say March of '02?"

A: Yes

Q: What did you do with it or were you assigned to do with it, if anything?

A: When that sample—it was received in the laboratory, and it basically sat on the shelf until we were able to get a DNA profile from that or work on that sample. And that DNA profile was obtained on that sample in April of 2003

Q: Why the year delay or backlog?

A: This portion of the DNA section—our main focus in the laboratory is to do casework, and the samples that come in to be put into the database are second priority. And we just have a backlog where it takes us a little while to get to those samples.

Q: You put it in the computer in April of '03. How long was it before you get the match, do you know?

A: The match actually happened in April of '03, and that's what led to the reanalysis of the reference—the sample from Frank Peck, when then led to me writing a report

indicating that a new reference standard needed to be obtained from Frank Peck to confirm this match.

Renee Romero Testimony (Inman Case)

Q:.....do you have any opinion, base upon your education and training, as to whether or not DNA would have been a possibility to test on either or both of those samples, the three sperm heads or this vaginal swab, that may be sufficient in quantity for limited blood grouping analysis in 1994 under the state of the technology in Washoe County Lab?

A: No. At that time a sample that only indicated three sperm heads from the swabbing would not indicate there was enough to do the RFLP DNA-type test that we were using at the time.

→The amount of DNA recovered from the vaginal swabs was definitely not enough for RFLP analysis. It would have been enough for a decent try at PM+DQA1 and D1S80 typing which we know was available in 1996 since it was used in the Nummer case. However, according to Romero, the lab was only doing RFLP in 1994.

Q: So in any event or for whatever reason, this sample was not tested until when, for DNA, to your knowledge?

A: Until the technology changed to technology that has the acronym PCR testing, and areas of DNA that we're looking at are called STR's

→PCR-based testing was available earlier (PM+DQA1 and D1S80 used in Nummer case), but the specific application of STR, PCR-based testing did not come online until 2000 at the Washoe lab.

Q: Now, seven years have gone by from '94 to 2001. Does it indicate what's been done with that sample since Maria Fassett placed it in a refrigerator in '94?

A: No. There is just a chain of custody here.

Q: Right. Where were you on that list? Where has it gone to from '94 to 2001?

A: To evidence and to me

Q: So it doesn't go back to Sparks Police Department or to the agency or anything like that?

A: No. We kept the sample



Q: I guess what I'm getting at is that there had to have been some sort of contamination to implicate me in this case. In your mind at any point during your analysis with the controls that are in place now, you can't say definitively 100 percent that there wasn't contamination. You cannot say that.

A: I can say that the vaginal swab was not contaminated by a reference sample from Frank Peck, because we didn't have one in the lab. I can say it based on a lot of other things but it's not possible. We didn't have the sample.

Testimony of Diane Hackworth

Q: Handing you Exhibit Number 9a, what type of envelope would that be used for?

A: It's marked "stains on skin"

Q: Are you familiar with that type of label?

A: Yes, I am. I cannot recall exactly what type of medium, but that's where we would rub some –either a strip or something on to collect evidence if the victim noted that they were kissed or licked or somehow had evidence that may be on other parts of their body.

Q: Could it be a gauze swabbing of something like a cheek?

A: It could be.

.....

A: According to my documentation, the victim was kissed on her face and on her vagina, so I would have used collection material for her face.

Q: But you wouldn't make it with the vagina?

A: No

Q: All right. So this means stains on skin, not genitalia?

A: Correct

Chain of Custody

Ref std of Candace Inman and 2 vaginal swabs were repackaged from the original sexual assault kit. As Romero testified to, they were in the possession for the entire time prior to her analysis in 2001. The chain records show the following:

**Confidential Consultant Observations, Mehul B. Anjaria
Frank Peck, CR06P2580**



Lab #: L2145-94

Agency: Sparks PD

Control #: **P18948**

Case #: 94-9292

Description: Ref Std: Candace INMAN; R04014; vaginal swabs x 2

Source: Control Chain of Custody Sheet

Date	Released By	Received By
1-19-95	Laboratory	IM
11-26-01	IM	Romero
12-6-01	Romero	DG
4-23-09 (Court)	IM	Romero

Nummer case: stained area of panties found to have semen present has the following chain of custody record:

Lab #: L2807-96

Agency: Reno PD

Control #: **P19790**

Case #: 257920-96

Description: C-016965; T1 panties

Source: Control Chain of Custody Sheet

Date	Released By	Received By
12-2-96	LAB	DG
4-24-97	IM	Riolo
4-28-97	Riolo	DG
12-17-97	IM	Fassett
12-17-97	Fassett	IM
9-7-11	MAM	Returned to agency

It appears that the stained area from the panties was in possession of the lab until 2011.

Nummer case: stained area of jeans that screened positive for semen, but were negative for DNA has the following chain of custody record:

Lab #: L2807-96

Confidential Consultant Observations, Mehul B. Anjaria
Frank Peck, CR06P2580



Agency: Reno PD
Control #: **P19798**
Case #: 257920-96
Description: Item #6; TI jeans
Source: Control Chain of Custody Sheet

Date	Released By	Received By
12-6-96	LAB	IM
4-24-97	IM	Riolo
4-28-97	Riolo	DG
12-17-97	IM	Fassett
12-17-97	Fassett	IM
9-7-11	MAM	Return to Agency

It appears that the stained area from the jeans was in possession of the lab until 2011.



Here is the complete summary of the chain of custody that I prepared after reviewing all documents provided to me:

Summary of Chain of Custody Documentation Provided

1994 Case

Lab #: L2145-94

Agency: Sparks PD

Control #: **W020120**

Case #: 94-9292

Description: Sexual Assault kit with blood

Source: Control Chain of Custody Sheet

Date	Released By	Received By
8-24-94	Sparks PD	IM
8-30-94	IM	Fassett
8-30-94	Fassett	IM
8-30-94	IM	Return to Agency

Maria Fassett's exam notes:

"items rec'd from WCSO Evid in 2 sealed manila env's"

"items ret'd to WCSO Evid on 30 Aug 94"

Property Section printout shows release from Matthews to ~Bartlett 8-30-94

Property Section printout shows release from IM (Matthews?) to M. Fasset 8-30-94

Lab #: L2145-94

Agency: Sparks PD

Control #: **P18948**

Case #: 94-9292

Description: Ref Std: Candace INMAN; R04014; vaginal swabs x 2

Source: Control Chain of Custody Sheet

Date	Released By	Received By
1-19-95	Laboratory	IM
11-26-01	IM	Romero
12-6-01	Romero	DG
4-23-09 (Court)	IM	Romero

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Frank Peck, CR06P2580



According to Romero's Exam notes:

"Item number P18948 received on 11-26-01 from WCSO Evidence"
Tape sealed envelope

Chain info in notes: Romero to Gallagher 12-6-01 (form states "temporary release on case # 94-9292"
Lab #: L2145-94

Agency: Sparks PD
Control #: **W112837**
Case #: 94-9292
Description: Sexual Assault Kit-Candace Inman
Source: Control Chain of Custody Sheet

Date	Released By	Received By
12-17-04	Evidence Clerk	Darla Gallagher
12-22-04	Darla Gallagher	Renee L. Romero
1-4-05	Renee L. Romero	Irene Matthews
1-4-05		imathew
10-20-06	IM	Return to Agency

WCSO Lab Number Submission sheet lists date of submission as "12-17-04", requested by G.FYE.

Romero notes say received from WCSO evidence 12-22-04

Lab #: L2145-94

Agency: Sparks PD
Control #: **W112602**
Case #: 94-9292
Description: Buccal Swabs from Frank Peck
Source: Control Chain of Custody Sheet

Date	Released By	Received By
12-23-04	Evidence Clerk	Darla Gallagher
1-4-05	Darla Gallagher	Renee L. Romero
1-12-05	Renee L. Romero	Irene Matthews
10-24-06	IM	Return to Agency

Romero notes say received from WCSO evidence 1-4-05

Lab #: L2145-94

Agency: Sparks PD

Confidential Consultant Observations, Mehul B. Anjaria
Frank Peck, CR06P2580



Control #: **W204210**

Case #: 94-9292

Description: Buccal Swabs from Frank Peck

Source: Control Chain of Custody Sheet

Date	Released By	Received By
12-15-05	Evidence Clerk	Irene Matthews
1-24-06	Irene Matthews	Renee L. Romero
1-24-06	Renee L. Romero	Darla Gallagher
10-24-06	IM	Return to Agency

Lab Number Submission Sheet shows Date of Submission 12-15-05, requested by Detective Fiore.

Hand written notes "new collection" and "This sample was sent in again due to the previous sample having "legally obtained" issues.

Romero lab notes: received 1/24/06 from WCSO evidence

Lab #: L2145-94

Agency: Sparks PD

Control #: **P36889**

Case #: 94-9292

Description: DNA Extracts Vag Swab

Source: Control Chain of Custody Sheet

Date	Released By	Received By
5-21-02	Romero	DG
4-23-09 (court)	IM	Romero

Lab #: L2145-94

Agency: Sparks PD

Control #: **W102174**

Case #: 94-9292

Description: CODIS sample

Source: Form in notes

Date requested 4-4-03

Evidence received by Riolo 4-15-03

Evidence examined by Riolo 4-18-03

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Frank Peck, CR06P2580



1996 Case

Case #: 257920-96

Lab #: 2807-96

C-016965

Victim Sexual Assault Kit

Date obtained: 11-19-96

Chained between Fassett and Gallagher 12-2-96

Source: Forensic Science Division Internal Use Only Evidence Form

Lab #: L2807-96

Agency: Reno PD

Control #: **C-016965**

Case #: 257920-96

Description: Victim Sexual Assault Kit

Source: Control Chain of Custody Sheet

Date	Released By	Received By
11-19-96	Evidence Clerk	DG
12-2-96	DG	M Fassett
12-2-96	M Fassett	DG
12-2-96	DG	Return to Agency

M. Fassett notes say received from WCSO on 12-2-96

Temporary release form shows Gallager to Fassett back to Gallager on 12-2-96

Temporary release form shows Gallagher to ? 12-3-96 (Released by WCSO)

Case #: 257920-96

Lab #: 2807-96

C-016966

Victim Blood

Date obtained: 11-19-96

Chained between Fassett and Gallagher 12-2-96

Source: Forensic Science Division Internal Use Only Evidence Form

Lab #: L2807-96

**Confidential Consultant Observations, Mehul B. Anjaria
Frank Peck, CR06P2580**



Agency: Reno PD
 Control #: **C-016966**
 Case #: 257920-96
 Description: Victim Blood
 Source: Control Chain of Custody Sheet

Date	Released By	Received By
11-19-96	Evidence Clerk	IM
12-2-96	DG	M Fassett
12-2-96	M Fassett	DG
12-2-96	DG	Return to Agency

M. Fassett notes say received from WCSO on 12-2-96
 Temporary release form shows Gallager to Fassett back to Gallager on 12-2-96
 Temporary release form shows Gallagher to ? 12-3-96 (Released by WCSO)

Case #: 257920-96
 Lab #: 2807-96
C-016964
 White bra, white sheet, b/w striped sweater, blu denim pants w/ brown belt, white shirt
 Date obtained: 11-19-96
 Rec'd by Fassett 12-4-96
 Rec'd by Matthews 12-5-96
 Source: Forensic Science Division Internal Use Only Evidence Form

Lab #: L2807-96

Agency: Reno PD
 Control #: **C-016964**
 Case #: 257920-96
 Description: W039622: white bra, white sheet, b/w striped sweater, blue denim pants
 Source: Control Chain of Custody Sheet

Date	Released By	Received By
11-19-96	Evidence Clerk	IM
12-4-96	IM	Fassett
12-5-96	Fassett	IM
12-5-96	IM	Return to Agency

Printout shows Fassett received 12-4-96

Confidential Consultant Observations, Meहुल B. Anjaria
Frank Peck, CR06P2580



MF notes show recd from WCSO 12-4-96
Temporary release form shows Matthews to Fassett on 12-4-96 and back to Matthews 12-5-96
Temporary release form shows Matthews to ? 12-6-96 (Released by WCSO)

Case #: 257920-96
Lab #: 2807-96
W43412
2 vials of blood collected from Frank Peck
Date obtained: 04-02-97
Chained between Riolo and Matthews 4-24-97
Source: Forensic Science Division Internal Use Only Evidence Form

Riolo notes show receipt of samples 4-24-97
Temporary release form shows Gallagher to Riolo to Matthews 4-24-97
Form shows Matthews to Mitchell 4-25-97 (Released by WCSO)

Case #: 257920-96
Lab #: 2807-96
W43414
Blood sample from Leslie Nummer; Blood sample from Tim Billings
Date obtained: 04-22-97
Chained between Riolo and Matthews 4-24-97
Source: Forensic Science Division Internal Use Only Evidence Form

Riolo notes show receipt of samples 4-24-97
Temporary release form shows Gallagher to Riolo to Matthews 4-24-97
Form shows Matthews to Mitchell 4-25-97 (Released by WCSO)

Lab #: L2807-96

Agency: Reno PD
Control #: **Q08521**
Case #: 257920-96
Description: camel T-shirt, bl sweat pants, pair whit shorts (all suspect)
Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"

Confidential Consultant Observations, Mehul B. Anjaria
Frank Peck, CR06P2580



Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD

Control #: **Q08518**

Case #: 257920-96

Description: green towel, yellow towel, razor

Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"

Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD

Control #: **Q08513**

Case #: 257920-96

Description: pr grey seats, pr underwear, 2 pr whit socks, t-shirt, numerous hair/fibers

Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"

Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD

Control #: **Q08512**

Case #: 257920-96

Confidential Consultant Observations, Mehl B. Anjaria
Frank Peck, CR06P2580



Description: Miller Genuine Draft black jacket, nike black pair tennis shoes
Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"
Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD
Control #: **Q08514**
Case #: 257920-96
Description: orange towel from top of living room hamper
Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"
Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD
Control #: **Q08519**
Case #: 257920-96
Description: Petri dish w/hair/fiber from bathroom sink drain
Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"
Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD

Confidential Consultant Observations, Meहुल B. Anjaria
Frank Peck, CR06P2580



Control #: **Q08520**

Case #: 257920-96

Description: piece lint, 2 yw leaves, wh tissue with red stain, wh tissue, empty razor pkg, 2r

Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"

Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD

Control #: **Q08522**

Case #: 257920-96

Description: 2 vials bloods

Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"

Mitchell received 3-13-97

Lab #: L2807-96

Agency: Reno PD

Control #: **Q08523**

Case #: 257920-96

Description: sexual assault kit from suspect

Source: Control Chain of Custody Sheet

Date	Released By	Received By
3-11-97	Evidence Clerk	IM
3-13-97	DG	Return to Agency

Handwritten note "12 Mar: after email Neville said to send all items back"

Mitchell received 3-13-97

Confidential Consultant Observations, Meहुल B. Anjaria
Frank Peck, CR06P2580



Lab #: L2807-96

Agency: Reno PD

Control #: **P19920**

Case #: 257920-96

Description: Reference standards from Leslie Nummer, Tim Billings, Frank Peck

Source: Control Chain of Custody Sheet

Date	Released By	Received By
4-28-1997	LAB	DG
9-27-11	MAM	Returned to Agency

Lab #: L2807-96

Agency: Reno PD

Control #: **P19790**

Case #: 257920-96

Description: C-016965; T1 panties

Source: Control Chain of Custody Sheet

Date	Released By	Received By
12-2-96	LAB	DG
4-24-97	IM	Riolo
4-28-97	Riolo	DG
12-17-97	IM	Fassett
12-17-97	Fassett	IM
9-7-11	MAM	Returned to agency

Temp release form shows Matthews to Riolo 4-24-97 and Riolo to Gallatgher 4-28-97

Lab #: L2807-96

Agency: Reno PD

Control #: **P19798**

Case #: 257920-96

Description: Item #6; TI jeans

Source: Control Chain of Custody Sheet

Confidential Consultant Observations, Mehul B. Anjaria
Frank Peck, CR06P2580



Date	Released By	Received By
12-6-96	LAB	IM
4-24-97	IM	Riolo
4-28-97	Riolo	DG
12-17-97	IM	Fassett
12-17-97	Fassett	IM
9-7-11	MAM	Return to Agency

Temp release form shows Matthews to Riolo 4-24-97 and Riolo to Gallatgher 4-28-97

Considerations on co-mingling of evidence

If the source of Frank Peck's DNA on the vaginal swabs in the Inman case is thought to be contamination from the Nummer case, then it has to be from semen since sperm cells and DNA testing results consistent with semen were obtained. Blood reference samples collected from Peck therefore could not have been used to create the DNA profile on the vaginal swabs from Inman.

The only semen positive sample determined in the Nummer case was the panties (T1). There was a significant sperm count associated with the panties. The test results from the panties were not actually fully reported in the report from Riolo 5-6-97. The results of the non-sperm fraction of the panties was not reported. The DNA in the non-sperm fraction matched Leslie Nummer, as might be expected. Presumably, this was not reported since the question of the analysis was the sperm donor.

So, if for example material from the panties was placed onto the vaginal swabs in the Inman case, the DNA profile of Nummer would be expected to be transferred along with the sperm fraction profile of Peck. In looking at the results from the vaginal swab from Inman, there is no indication of any DNA foreign from Inman in the non-sperm fraction.

If the vaginal swab from Inman were 'spiked' with extracted DNA from the sperm fraction of the panties, traces of Nummer's DNA would likely be seen as well since there was some carry-over of her DNA profile into the sperm fraction of the panties.



Other Analysis

The report dated 7-6-06 by Richard Berger reveals that there are other items that are suitable for DNA testing in the Inman matter.

Semen was detected in the middle of the bed sheet. If this were tested, and the DNA did not come back to Peck, and the semen profile could not be explained by a consensual partner (husband, boyfriend, etc.) it seems like some questions would be raised.

There were also some hairs reportedly collected from the bathtub. Assuming they are not visually consistent with anyone who lives in the house, the finding of an unexplained male DNA profile from the hairs could aid Mr. Peck.

There are other items in the report such as cigarette butts and a soda can of unknown significance, but they sound like potential sources of DNA.

Since I currently do not maintain a laboratory, I am not able to personally test any items however I can recommend a private laboratory and liaison with them.

Although we asked for the chain of custody information for the items tested, there may be more documentation/logs, etc. maintained on-site that were not turned over. However, I would imagine that any nefarious activity would not leave behind a paper trail.

The evidence packages themselves could be reviewed in person to see if there are any irregularities.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06P2580
Judge: BRENT ADAMS
Official File Stamp: 08-24-2012:14:42:06
Clerk Accepted: 08-24-2012:14:47:59
Court: Second Judicial District Court - State of Nevada
Case Title: POST: FRANK MILFORD PECK (D6)
Document(s) Submitted: Notice
- **Continuation
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA
Plaintiff,

vs.

FRANK PECK,
Defendant.

Sup. Ct. Case No. 65691
Case No. CR06-2580
Dept. 6

RECORD ON APPEAL

VOLUME 8 OF 13

DOCUMENTS

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 JULY 18, 2014

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1 differential analysis and you did tests regularly, you
2 said you would probably come up with a mixed DNA sample or
3 mixed profile.

4 Is that immediately apparent to you when you look
5 at it, or do you get some stranger's DNA? Do you get a
6 profile of some other person or do you get a profile
7 showing that you've got more than one here?

8 A I would get a profile that shows more than one.

9 Q Wouldn't that tell you, then, that maybe you
10 better do the differential analysis?

11 A Oh, you need to do it before that. You're done
12 at that point in time.

13 Q Oh, so you went right to the differential
14 analysis, and you had indicators that you should anyway.

15 A Yes.

16 Q Did you have any trouble doing that test?

17 A No.

18 Q Any trouble following protocol?

19 A No.

20 Q Any trouble with the machinery, the chemicals or
21 anything about the test?

22 A No.

23 Q Did you get a result?

24 A Yes.

1 Q Did you find two separate DNAs?

2 A Yes, I did.

3 Q Did you find profiles for a female and a male?

4 A Yes.

5 Q And you can detect that?

6 A Yes.

7 Q The female extract or the female DNA profile, did
8 it match anybody?

9 A That matched Candace Inman.

10 Q From her blood or her reference sample?

11 A Yes.

12 Q And the remainder that you have left, can you
13 determine it's one and only one male DNA profile?

14 A Yes.

15 Q So you don't have a mixture of two or three
16 males.

17 A No, I do not.

18 Q And that's something that is immediately apparent
19 to you in the electropherogram?

20 A Yes, it is.

21 Q So when you do the male section of this DNA
22 profile and you get a profile, you get a result, do you
23 have a match? Do you know who the suspect is?

24 A No.

1 Q Similar to what I asked you before, that you just
2 have a profile?

3 A Correct.

4 Q So what can you do with that profile now?

5 A I can put it into the DNA database.

6 Q Is that local, national, state, both, all three?

7 A All three.

8 Q Did you do that?

9 A Yes, I did.

10 Q What year was that, or date?

11 A I put that in -- looking at my notes, if I may --
12 in 2001, at the end of my analysis in December.

13 Q I hope it was before November.

14 So it was after you did the 11/26 examination in
15 '01, and it was in December of 2001.

16 A Yes.

17 Q So pretty much right away after you get your DNA
18 results.

19 A Yes.

20 Q No reason to hold off on it?

21 A No.

22 Q I mean, the database was up and running by then?

23 A Yes, they were.

24 Q When you put it in the databases, national, state

1 and local, how often is it checked in case the database is
2 expanded or updated?

3 A At that point I believe it was being checked on a
4 monthly basis, now it is checked weekly.

5 Q And how would you determine whether you get a
6 match or a hit?

7 A It would show up electronically on the computer
8 system that there was a match, and that we need to
9 investigate and see if that was a true match.

10 Q Do you have to be there present to see it, or do
11 bells and whistles go off?

12 A No. Right now what happens is we upload our data
13 every Friday to the national system, and Monday morning
14 just come in and check the computer and look for a match
15 report, basically.

16 Q How about in '01 or '02?

17 A It's not as sophisticated. I can't recall
18 exactly how it happened then.

19 Q Could it be, though, that you went for a year and
20 you had a hit or a match and you didn't notice it on your
21 computer database?

22 A No.

23 MR. LINDSEY: Objection; speculation.

24 THE COURT: Don't speculate. You may answer

1 without speculating, Ms. Romero.

2 BY MR. CLIFTON:

3 Q Why is that not possible?

4 Did you answer? I'm sorry.

5 A I said no.

6 Q Why would that be not possible?

7 A Because once the match shows up, you'd look at it
8 and determine what to do next.

9 Q Was that part of your job and Mr. Riolo's job?

10 A Mr. Riolo's job.

11 Q When did you become director?

12 A Officially last June.

13 Q Of '08?

14 A Yes.

15 Q Did you go directly from criminalist to director,
16 or was there a chief or assistant anywhere?

17 A I also held the role, and still do, as DNA
18 technical leader, and was also a supervising criminalist.

19 Q So this sample DNA profile of a male from her
20 vaginal swabbing is put in the system in November and
21 checked monthly back then.

22 Do you know when Jeff Riolo got a hit on it?
23 Have you seen that in his report?

24 A I have seen in his report that he got a hit on

1 it.

2 Q Before he gets a hit now, we didn't have any
3 other hits before that, correct?

4 A Correct.

5 Q So that means it's being checked monthly and
6 we're not getting any matches.

7 A That's correct, on this case.

8 Q And he indicated that in 2002 Mr. Frank Peck's
9 sample became part of the database or databases.

10 Are you aware of that?

11 A I believe it became part of the database in 2003.

12 Q 2003. I think you're right. 2003.

13 So approximately a year to two years has gone by
14 with no matches, and in 2003 Mr. Riolo gets a hit or a
15 match.

16 A Correct.

17 Q And that, I think, was April. Does that sound
18 right?

19 A I believe his report was issued in April 2003.

20 Q Okay. When he gets that match, and he testified
21 he confirmed it, then he requested that it be confirmed
22 again, I guess, another way, with a direct chain of
23 custody.

24 Are you aware of how that works?

1 A Yes.

2 Q Is that how you operate, the same way?

3 A Yes, we do.

4 Q So the entire lab, that's the protocol?

5 A Yes.

6 Q He then requests to whom to get another sample
7 from Mr. Peck?

8 A He would have written what we call an
9 investigative lead report to Sparks PD requesting them to
10 collect an evidentiary sample from Mr. Peck.

11 Q And either late 2004 or early 2005, did you get a
12 request from Greta Fye, according to your reports and your
13 documentation, to test this sample now obtained from a
14 seizure order from Mr. Peck?

15 A I did get two evidentiary samples, both late in
16 the year of '04 and '05. I'd have to look at my notes to
17 tell you if they came from Greta Fye. I just know it's
18 Sparks PD.

19 Q Do you recognize from your report there the
20 initials LB1 and LB3 as identifying documentation or
21 identifying features of those samples from Mr. Peck?

22 A They were labeled that way. The first one was
23 labeled LB1, the second was LB3.

24 Q So LB1 would be from '04 that you received or

1 tested in '05?

2 A Yes.

3 Q All right. Exhibit No. 10, can you describe what
4 that is?

5 A This is labeled as LB1 under the Sparks Police
6 Department case number 94-9292, and it states it's a swab
7 box containing buccal swabs from right cheek of Frank M.
8 Peck.

9 Q And that's LB1. Where did you first see that?
10 You're on the chain of custody, I take it.

11 A Yes.

12 Q Where did you first obtain it?

13 A From --

14 Q Where and when.

15 A From our evidence section on January 4 of 2005.

16 Q How does it get to your evidence section, if you
17 know the protocol?

18 A Sparks PD brings it over.

19 Q Does that appear as though that occurred,
20 according to that chain of custody? Is that how it would
21 have come to you in this particular case?

22 A Yes.

23 Q Then when you get it, is it in a sealed
24 condition, or do you have evidence techs open it, or what?

1 A It's booked into evidence in a sealed condition.
2 The evidence technicians do not open it. I received it in
3 a sealed condition.

4 Q So chain of custody is being maintained on
5 Mr. Peck's buccal swab from his cheek in this sample,
6 correct?

7 A Yes.

8 Q When you opened it, how many Q-tips did you find?

9 A I would need to refer to my notes. I believe
10 two.

11 Q That's fine. It's generally more than one,
12 though?

13 A Yes.

14 Q That's customary?

15 A Yes.

16 Q Do you test them both or do you save one and test
17 one?

18 A We do not test them both, we save one.

19 Q When you test one, do you use the whole thing up
20 sometimes, or do you only try to use part of it?

21 A Sometimes we use half.

22 Q In this particular case, do you recall?

23 A I would need to look at my notes.

24 Q It's not that pertinent.

1 So you take one Q-tip swab out, and how do you
2 test it? Do you swab a smear onto a microscope-type
3 testing, or do you put it right into the computer for DNA?

4 A I basically cut the white, fluffy part off of the
5 swab, put that into a tube, and start the DNA process to
6 extract the DNA off of that swab.

7 Q So for these swabs that are from the saliva and
8 the cells and skin on the inside of the cheek, correct,
9 and also you have things like the vaginal swab, which is
10 vaginal extract, and possibly semen extract, are they
11 tested the same way in the DNA procedure? Do they both
12 just get cut off and put into the machine?

13 A They start out the same way in that I cut a
14 section of the swab off or I cut a section of the blood
15 swatch off and put that into a tube and go through a
16 several-step process.

17 Q Would it be a different step process of
18 extraction for something -- buccal swab from the cheek
19 versus a vaginal swab at this point? Is it a different
20 extraction or is it the same?

21 A At one point it turns into a differential
22 extraction for the vaginal swab. It starts out I put them
23 in tubes, if I am trying to follow you.

24 Q That's correct.

1 So they're tested the same way up to a certain
2 point.

3 So when the point changes, you said, is the
4 differential analysis because the vaginal swab, you
5 had reason to believe it had more than one DNA type in
6 there, correct?

7 A That's correct.

8 Q Whereas the swab from Mr. Peck you expected to be
9 one?

10 A Yes.

11 Q So was there anything unusual or not customary
12 about that particular testing process on your part?

13 A No.

14 Q Did you gain a result?

15 A Yes, I did.

16 Q You're testing now his buccal swab sample from
17 his cheek and you got a DNA profile.

18 A Yes, I did.

19 Q Did you compare that DNA profile to anything?

20 A I compared that to the DNA profile from the
21 vaginal swab.

22 Q And your result?

23 A I found that the DNA profile from the Frank Peck
24 reference standard matched the sperm fraction DNA profile

1 from the vaginal swab.

2 Q This is the first and only match you've had --
3 I'm sorry strike that.

4 This is consistent with Jeff Riolo's match and
5 confirmatory match from his database sample, Frank Peck.
6 Am I correct?

7 A Yes. That is correct.

8 Q Is there a need to or do you ever go back and
9 compare Frank Peck's known saliva through this chain of
10 custody approach versus the database sample that Mr. Riolo
11 used?

12 A In effect, you are doing that because you have
13 already made that initial comparison with the database
14 sample to the vaginal swab and had stated that is the
15 same; therefore, it follows that if the next sample is the
16 same, they're all equal.

17 Q So if I'm following you right, we have the
18 vaginal extraction of the male portion of that Q-tip swab
19 from Candace Inman, you have Mr. Peck's sample from the
20 database that Mr. Riolo analyzed, and your sample now, and
21 all three are the same profiles?

22 A That is correct.

23 Q Now, you have another one. It's No. 11. I don't
24 know if I gave it to you or not.

1 No. 11, same types of questions: What is this
2 and when did you first see it?

3 A This is labeled LB3, and it's under the Sparks
4 Police Department case number 94-9292, and it is buccal
5 swabs from Frank Peck, and I checked this out of our
6 evidence on January 24th of 2006.

7 Q LB3 -- do you know Linda Brown from Sparks Police
8 Department? Have you met her?

9 A I have met her, yes.

10 Q Those are her initials?

11 A I'm not familiar with her handwriting.

12 Q No. Linda Brown, LB --

13 A Right. Yes. Those are her initials, yes.

14 Q I am not saying she signed, I don't need to ask
15 you if that's her signature.

16 Okay. LB3 is from approximately a year later,
17 correct?

18 A Yes.

19 Q From LB1.

20 Same process? You can tell there that you've
21 seen this and been on the chain of custody?

22 A Yes.

23 Q Go through the same testing process?

24 A Yes, I did.

1 Q It's a year later now. Was it any more advanced,
2 or are we worried about anything like that?

3 A No change.

4 Q Mr. Riolo said something about he had 13 DNA
5 characteristics that they tested.

6 Has it been expanded up to 15? Do you know what
7 I'm talking about?

8 A Yes. There was a change in amplification kits
9 that we utilize. We went from a two-step process, where
10 we had to use two separate amplification kits in order to
11 get the results of all 13 areas of DNA, and that was
12 evolved to one kit to get all 13 areas. And then,
13 additionally, the manufacturer put two more areas in that
14 kit.

15 Q And that's based on technology advancing in DNA?

16 A Yes.

17 Q Even with 13 characteristics, was it sufficient
18 to get a match?

19 A Yes.

20 Q And under 15, now, I guess it's more
21 discriminate, even easier to come up with a match? You
22 have more things to test? I don't know how else to ask
23 it.

24 A It's still the 13 characteristics that are

1 frequently searched in the DNA database. I am not sure
2 what you're asking.

3 Q Don't worry about it.

4 Under either approach, would you expect to get
5 the same result from a particular sample? In other words,
6 one may be more discriminate than the other, but you still
7 get the same profile?

8 A Yes.

9 Q If you use one sample and test it the way you did
10 it years ago and the way you do it today, both under PCR,
11 one with 13 characteristics and one with 15, the same
12 blood and the same saliva will come up with the same
13 profile?

14 A Yes. But you have two additional areas on the
15 second test, two additional results.

16 Q Did you have those you additional results in the
17 '04 and the '05 samples? Your test would be '05 and '06.

18 A Yes, I believe so.

19 Q So little more technology, it's advanced now, you
20 run the test on this one, too. What is your result?

21 A My result is the same. The second sample that I
22 received also matched the sperm fraction from the vaginal
23 swab as well as the previous reference sample.

24 Q So if I'm counting correctly now, we have a total

1 of five at your lab and they're all consistent, and the
2 exact same DNA profile, vaginal swab, male extract.
3 Mr. Riolo's two and the two you did.

4 A But Mr. Riolo would have tested the same sample.

5 MR. LINDSEY: Twice.

6 BY MR. CLIFTON:

7 Q Twice, correct. I hear you.

8 So we have five tests, but one Mr. Riolo was on
9 the exact same sample.

10 A Okay.

11 Q Well, four tests. I'm sorry. The first was just
12 a sample from the swab.

13 So four more times we're comparing to that.
14 Mr. Riolo's are two times on the same sample.

15 A Yes. That is correct.

16 Q So what is your opinion about whether this
17 confirmatory test that was requested by Mr. Riolo did in
18 fact confirm that Mr. Peck was the source of the DNA on
19 that vaginal swab of Ms. Candace Inman?

20 A My analysis of the samples of Frank Peck and the
21 vaginal swabs show that he is the source of the DNA of the
22 sperm fraction on the vaginal swab.

23 Q Mr. Riolo mentioned something about 1 in 500
24 billion. I think he said rarer than 500 billion.

1 Is that a threshold or something?

2 A That is a threshold at our laboratory. Once we
3 obtain a matching DNA profile, the next step is to
4 determine how often we would expect to see that DNA
5 profile.

6 And when we reach a statistical frequency of
7 rarer than 1 in 500 billion, then we make the
8 determination that that individual is the source of the
9 DNA from the crime scene sample.

10 Q Unless he has an identical twin?

11 A Unless there is an identical twin, correct.

12 Q If I could rule out identical twin here, what is
13 your opinion about Mr. Peck?

14 A My opinion is that, based on my analysis, he is
15 the source of the DNA from the sperm fraction from the
16 vaginal swab of Candace Inman.

17 Q When Mr. Riolo requested a confirmation or that
18 Sparks PD should do the confirmation, has that been done,
19 in your opinion now?

20 A Yes.

21 Q More than once?

22 A Yes.

23 Q And both times confirmed the same result?

24 A That is correct.

1 Q Thank you.

2 How important is it to refrigerate samples?
3 Sometimes we have to bring them to court and stuff and
4 they're sitting at room temperature. Can you describe
5 that?

6 A Refrigeration, freezing is the best preservation
7 for biological evidence, but we have learned over time
8 that it actually can be preserved, basically, at room
9 temperature in an office-type environment, and it would be
10 fine as well.

11 Q Haven't you in fact seen samples on cases we have
12 worked on together where there have been samples found
13 outside on concrete, bloodstains, samples like that out in
14 the sun, sometimes the rain, if it's dry, and you still
15 get DNA off it?

16 A That is correct.

17 Q So room temperature wouldn't necessarily degrade
18 DNA for any period of time to where you think you
19 automatically wouldn't be able to get a result?

20 A No. I don't believe that would happen.

21 Q There are some things that could affect it, like
22 extreme heat, correct?

23 A Extreme heat, high humidity and mold.

24 Q Did you have any of those in any of these tests,

1 that you're aware of, present?

2 A I did not.

3 Q Is there anything about the protocol that you can
4 think of that could have affected the trustworthiness, the
5 veracity of these results?

6 A No.

7 Q There's one more report that I've got to refer
8 you to where you tested stains-on-skin sample, which is
9 your report number L2145-94-7 and -9.

10 Are you aware of this report?

11 A Yes. I have a copy with me.

12 Q Directing your attention to the envelope number
13 3, which was from the evidence kit R04014 from Candace
14 Inman, the same sexual assault kit you referred to before.

15 Did you have occasion to review and examine the
16 contents of envelope 3?

17 A Yes, I did.

18 Q I'll hand you Exhibit No. 9-A at this time, and
19 tell me if that looks familiar.

20 And let me take those three back from you,
21 please. Go ahead.

22 A Yes, it does. This has the identifying markers
23 on it of R04014, envelope number 3, stains on skin, and my
24 initials appear on it, as well as our laboratory number

1 and the date that I examined it.

2 Q What date was that?

3 A 12/22 of 2004 is when I started.

4 Q Who made the request, or is this some other way
5 you came to examine this?

6 A Based on my report, it is also by the Detective
7 Greta Fye.

8 Q Do you know if it came in at the same time as one
9 of the others or not?

10 A I received it in 2004.

11 Q Okay. When you looked at it in 2004, what were
12 you requested -- or what did you compare it to as far as
13 DNA profile?

14 A At the end of 2004 and into 2005, I did this
15 analysis, and what I did was I extracted DNA from the
16 stains-on-skin sample to develop a DNA profile, and I
17 compared that DNA profile to the reference samples that I
18 previously obtained DNA profiles on in this case that was
19 Inman, and then also it had, actually, the Frank Peck
20 sample at the same time on this analysis.

21 Q So the stains on the skin, were you familiar with
22 Maria Fasset's previous report that we already talked
23 about? I already took it from you. I'm sorry.

24 But were you aware of the fact that she tested it

1 for semen and got negatives?

2 A Yes, I am.

3 Q So when she gets negative for semen, what does
4 that tell you about whether you should test it for two
5 DNAs or one?

6 A If there's been no semen sperm cells identified,
7 then I would not perform the differential extraction.
8 Because the only types of cells that can be separated are
9 sperm cells. You can't separate blood cells from saliva
10 cells or skin cells. They all have a similar-type
11 coating. Sperm cells have a tougher coat around them, so
12 the differential extraction process you can break open
13 everything except for the sperm cells, and then go back
14 and break open the sperm cells.

15 So since there was no indication of sperm cells
16 on this sample, I did not do a differential extraction.

17 Q Interesting. So you do your regular DNA, but
18 isn't it possible it could have more than one person's
19 DNA?

20 A Yes, it could.

21 Q So explain how -- does that cause any
22 complications, or how does that come up?

23 A If we have what I would call an intimate sample,
24 being that that would be a sample taken directly off a

1 person's body -- maybe they have been licked or kissed or
2 something, for example -- that area could be swabbed or
3 take some gauze and wipe it.

4 And from that I could perform a DNA test. And I
5 would expect to see some DNA from the individual's body
6 that was taken from, so the victim, and then I would be
7 able to determine if there was a foreign DNA profile --
8 when I say "foreign," I mean foreign to the victim -- and
9 I could look at a mixture and determine if there was DNA
10 foreign to the victim.

11 Q Do you get an electropherogram from this type of
12 testing, too?

13 A Yes, I do.

14 Q In that electropherogram, then, are you able to
15 extract out Candace Inman's DNA?

16 A Yes. It's a single electropherogram, but you can
17 use her reference sample to determine what contributions
18 she's making to the mixture.

19 Q Okay. And by electropherogram, in case it's not
20 clear -- let's just go ahead and go back to a few on this
21 screen.

22 Are these the electropherograms that you see on
23 your monitor there?

24 A Yes.

1 Q These are portions of the electropherograms?

2 A Yes.

3 Q So is it safe to say that the electropherogram
4 that you're getting is indicating Mr. Peck's DNA profile
5 are the same in all these tests?

6 A They're not exactly the same.

7 Q How do you explain that?

8 A Because the electropherogram from the stains on
9 skin is a mixture of DNA.

10 Q No, no. I meant the other -- meant --

11 Okay. I'm done with that question.

12 Are you able to determine a foreign DNA to
13 Candace Inman in this stains-on-skin sample?

14 A Yes, I am.

15 Q I was talking about the other ones you did
16 before. Say the last two, from the seizure orders of '04
17 and '05, did those two electropherograms look the same?

18 A Yes, they did.

19 Q Those would be exact DNA profiles, mirror images
20 of each other, or if you put one on top of the other?

21 A They would not be mirror images, they'd be the
22 same.

23 Q The same. Okay. Mirror images, I know, is
24 reverse.

1 This one, then, the stains on skin, it's not
2 differential analysis.

3 Does it take a subjective mind to differentiate
4 them out or is it the computer that does it?

5 A Well, you do get a computer printout.
6 Electropherogram is a computer printout that indicates the
7 size of the DNA at each location, but then it takes human
8 eyes to evaluate the profile.

9 Q Were you able to do that?

10 A Yes.

11 Q Based upon your training and experience with
12 these electropherograms, what was the result that you came
13 up with?

14 A On the stains on skin?

15 Q Yes.

16 A I determined that, based on my analysis in
17 comparing the foreign DNA profile from the stains on skin
18 to the reference samples in this case, that Mr. Peck is
19 the source of the DNA that was foreign to Ms. Inman on the
20 stain-on-skin sample.

21 Q Were you able to determine that a frequency of
22 more than 1 in 5 -- rarer than 1 in 500 billion is the
23 frequency?

24 A The frequency of occurrence in the matching DNA

1 profile was rarer than 1 in 500 billion, yes.

2 Q And that allowed you to deduce Mr. Peck as the
3 source?

4 A That is correct.

5 Q Frequency of occurrence in the DNA profile?

6 A Yes.

7 Q I'd rather use your words than try to paraphrase
8 you.

9 Can you click the clicker there to the arrow that
10 goes forward.

11 You recognize the screen?

12 A Yes.

13 Q And you recognize those control numbers, P18948
14 and W112837?

15 A Yes, I do.

16 Q And this is actually your PowerPoint slide, I
17 guess; is that correct? Let's just say it's your
18 information.

19 A It's my information, yes.

20 Q You were out of town. I had Mr. Riolo make this.
21 I assume he made this PowerPoint?

22 A Dr. Lisa Smyth-Roam made the PowerPoint.

23 Q The slide?

24 A Yes, she did.

1 Q Is the information on the slide consistent with
2 your results?

3 A Yes, it is.

4 Q And the control number items, do you recognize
5 those?

6 A Yes, I do.

7 Q Go ahead and explain this slide, then.

8 A This slide is just, basically, a table indicating
9 the results that I have verbally stated to you already,
10 indicating the result for the vaginal swab matching Frank
11 Peck, and concluding that he is the source of the sperm
12 fraction from the vaginal swab.

13 And then also a tabular result stating that from
14 the stains-on-skin sample, that Mr. Peck is the source of
15 the foreign-deduced DNA profile from the stains on skin.

16 MR. CLIFTON: Thank you very much. No further.

17 THE COURT: Mr. Lindsey.

18
19 CROSS-EXAMINATION

20 BY MR. LINDSEY:

21 Q Is it fair to say --

22 MR. LINDSEY: I apologize, but, Your Honor, can I
23 move that thing left or right for a second? I apologize.
24 We're in no man's land.

1 Standing behind Mr. Clifton probably makes him
2 feel insecure, and I don't mean to do that.

3 MR. CLIFTON: Is that okay, counsel?

4 MR. LINDSEY: That's fine. Thank you very much.

5 BY MR. LINDSEY:

6 Q Ma'am, you make this sound as if this is fairly
7 infallible, correct?

8 A If that's the way you heard it.

9 Q Has your testimony ever been found to be false
10 and misleading in Nevada?

11 A I do have a particular case out of Elko, Nevada,
12 where the statistics, the frequency of occurrence, it
13 ended up what is called the prosecutor's fallacy, and what
14 that is, is where it gets turned into rather than a
15 statement of frequency of occurrence of this profile is 1
16 in 500 billion, that type of thing, to an association of
17 chance of match, and it's not a correct way to make the
18 association.

19 I am not saying that the chance these two samples
20 would match is 1 in X, I'm saying that this is how often
21 this profile occurs.

22 And there is a case in Elko, Nevada -- trying to
23 remember the year -- early on, and we did have a situation
24 where it ended up -- I did not answer the question

1 correctly after awhile of testimony, and it did end up
2 sounding as if that was for the association of the match.

3 Q In fact, the case was reversed, wasn't it?

4 A No. It's at the Ninth Circuit right now. It's
5 not done, it's in the process.

6 Q Okay. Your testimony was -- and, please, your
7 testimony was later discredited, is that fair to say,
8 regarding DNA evidence, correct?

9 A I don't believe it's -- the process is done yet.
10 This is still ongoing. The Ninth Circuit is determining
11 what to do with the case, whether they're going to retry
12 it or not.

13 MR. LINDSEY: If I might have one moment, Your
14 Honor.

15 THE COURT: Yes.

16 BY MR. LINDSEY:

17 Q Have you ever heard of Larry Peck?

18 A I'm sorry. Larry?

19 Q Have you ever heard of Larry Peck?

20 I'm sorry. I don't mean to be --

21 A I know there's another individual by the name of
22 Peck, but I do not recall his first name.

23 Q Officer Bohach?

24 A Yes. I am familiar with that situation. I just

1 didn't recall the first name.

2 MR. LINDSEY: Your Honor, that's all the
3 questions I have at this time.

4 I would ask, unless -- is she available next
5 Monday at all for a very short recall?

6 THE COURT: Ms. Romero, would you be available on
7 Monday if we needed to recall you?

8 THE WITNESS: Yes, I am.

9 THE COURT: Will you be here?

10 THE WITNESS: Yes.

11 THE COURT: Okay. Thank you.

12 MR. LINDSEY: Thank you very much, Your Honor.

13 THE COURT: With that reservation, Mr. Clifton?

14 MR. CLIFTON: Thank you, Your Honor.

15
16 REDIRECT EXAMINATION

17 BY MR. CLIFTON:

18 Q Officer Bohach and Larry Peck, does that have
19 anything to do with your testing in this case?

20 A No, it does not.

21 Q Did you take samples from one case and put them
22 in another? I mean, cross-up samples from that case to
23 this case?

24 A No.

1 Q I don't know how else to ask you: Is there
2 anything about that case that affected your analysis in
3 this case?

4 A No.

5 Q Trying remember when that case was. 2001, I
6 believe, if I have my dates right.

7 You did one test in 2001 here in your report,
8 correct? Your report was 2001, I recall.

9 A Yes, there is one.

10 Q Did you know Officer Bohach as an officer?

11 A No.

12 Q Is there any reason to believe that you would be
13 influenced by that case? Because an officer was shot and
14 killed, that would affect how you did your analysis in
15 this case?

16 A No.

17 Q You've testified as an expert before, correct?

18 A Yes, I have.

19 Q Many times qualified as expert in Nevada?

20 A Yes.

21 Q Many times here in Washoe County, even?

22 A Yes, I have.

23 Q And other counties around the state?

24 A Yes.

1 Q Thank you. That that you called prosecutor's
2 fallacy, I don't know who put the blame on it or who we
3 call it, but there's been cases like that around the
4 nation, haven't there?

5 A Yes, there have.

6 Q And it's all in how you say the result, correct?

7 A All in how you're stating the statistical
8 frequency, yes.

9 Q It didn't mean even in that case that you said
10 somebody's DNA was there that wasn't, did it?

11 A No.

12 Q As a matter of fact, I had you repeat it and I
13 wrote it down because I wanted to make sure I got it
14 right, it's in the term "frequency of occurrence" of the
15 DNA profile, correct?

16 A That's correct.

17 Q In other words, wouldn't that be like saying you
18 can't take them out of the possibles?

19 A That's absolutely correct. It is not a matter of
20 odds.

21 Q So this DNA profile of Frank Peck, you would
22 expect to see a frequency of no more than 1 in 500 billion
23 samples.

24 A The number reflects how often I would expect to

1 observe that DNA profile.

2 Q Okay. Stick with that wording, then.

3 MR. CLIFTON: Thank you very much.

4 MR. LINDSEY: Your Honor, if I might reserve for
5 a possible callback on Monday.

6 THE COURT: You may.

7 This concept might be a little subtle,
8 Ms. Romero. Is this an expression of how often you would
9 expect to see that particular DNA profile at this
10 particular location?

11 THE WITNESS: No. In general.

12 THE COURT: Could you just explain the concept
13 one more time for the jury, please.

14 THE WITNESS: When we obtain a DNA profile, a
15 matching DNA profile, the next thing that we do is
16 determine, when they match, what does that mean? How
17 often would I expect to see that DNA profile? What is the
18 weight of that match? All right.

19 And we have three population databases, and we
20 put that DNA profile into those three different population
21 databases. And from that a calculation is performed on
22 how often we would expect to see that profile in the
23 Caucasian, Hispanic and African American populations.
24 It's not necessarily just Nevada, it's in general in those

1 populations.

2 And once the frequency is rarer than 1 in 500
3 billion in all three of those populations, then we make
4 the conclusion that the individual is the source of that
5 DNA profile.

6 THE COURT: That's an assessment of how often one
7 would expect to see that DNA profile.

8 THE WITNESS: Yes.

9 THE COURT: Just encountered in the world.

10 THE WITNESS: Yes.

11 THE COURT: And that's different depending on the
12 population, Caucasian versus other populations, correct?

13 THE WITNESS: There are slight differences, yes.
14 The numbers are slightly different.

15 THE COURT: Were the numbers different in this
16 case?

17 THE WITNESS: Yes.

18 THE COURT: All right. Was there any
19 significance in those differences?

20 THE WITNESS: They're far over 1 in 500 billion.

21 THE COURT: In the other populations?

22 THE WITNESS: In all three populations.

23 THE COURT: I see. Okay. Thank you.

24 Counsel, additional questions of Ms. Romero at

1 this point?

2 MR. CLIFTON: Certainly.

3
4 REDIRECT EXAMINATION

5 BY MR. CLIFTON:

6 Q Ms. Romero, is there any problem in asking what
7 those numbers are?

8 A If I may refer to my notes, it's not a problem.

9 Q Before you do that, isn't it true that the way
10 DNA has become so discriminate now, you can get numbers in
11 the quintillions; isn't that correct?

12 A Yes, that's correct.

13 Q Let's see what they are in this case.

14 The threshold, you said, was 500 billion, as a
15 threshold, to be safe, though, correct?

16 A That is our threshold to make the statement that
17 the individual is the source of the DNA profile.

18 Q How many people are in the world, do you know?

19 A I don't know that number exactly, but I believe
20 it's around 6 billion.

21 Q All right. Thank you.

22 A The numbers are, in the Caucasian population, 1
23 in -- approximately 1 in 759 quadrillion.

24 MR. CLIFTON: That's all I need because we're

1 only talking Caucasian here.

2 But, Your Honor, would you like a little bit
3 more, or Mr. Lindsey? I don't want to confuse things, but
4 we're talking Caucasian population.

5 THE COURT: Why don't you just go ahead, if she
6 has those results.

7 THE WITNESS: I do have the results.

8 THE COURT: All right. You may.

9 THE WITNESS: In the African American population,
10 it's approximately 1 in 19 quintillion.

11 And in the Hispanic population, it is
12 approximately 1 in 332 quadrillion.

13 BY MR. CLIFTON:

14 Q You know, I don't know how many zeroes are in
15 quintillion.

16 A A lot.

17 Q I really don't.

18 A In quintillion, you have 1, 2, 3, 4, 5 -- 6 sets
19 of 3 zeroes after the 19.

20 Q So 18 zeroes. And in quadrillion?

21 A Three less.

22 Q So 15 sets of zeroes.

23 MR. PECK: I have to ask a question. May I ask a
24 question?

1 MR. CLIFTON: No objection.

2
3 RECCROSS EXAMINATION

4 BY MR. LINDSEY:

5 Q Everything that you've testified assumes that the
6 protocol in '94 is correct and that there has been no
7 intentional, just use the broad word, corruption in any
8 way, shape or form by anyone. And I am not talking about
9 you. I am not talking you.

10 But that is -- is that a fair statement?

11 A Yes. I mean, my results are based on the
12 evidence that I had.

13 Q You're assuming that from '94 forward there has
14 been absolutely no intentional corruption whatsoever of
15 the evidence that has been presented by the State; is that
16 a fair statement?

17 A Yes, I am.

18 MR. LINDSEY: Thank you very much.

19 THE COURT: Anything else?

20
21 REDIRECT EXAMINATION

22 BY MR. CLIFTON:

23 Q Are you aware of any conspiracy, corruption, or
24 any intentional wrongdoing with any of this evidence?

1 A I am not.

2 Q Again, I have no idea what he is referring to.

3 Is there anything in the reports or anything in
4 this evidence chain, any of these samples, that you have
5 seen that causes you concern?

6 A No. There is nothing that has caused me any
7 concern.

8 Q Now, given -- Dr. Dedolph was the doctor. He's
9 already testified that he did the vaginal Q-tip samples
10 and took the swabs from Ms. Inman.

11 You're not guaranteeing to us that he didn't take
12 those swabs and take them over to another emergency room
13 and swapped them with another victim or something, right?

14 A I would have no idea.

15 Q So you only can guarantee from what you see here;
16 but you see no intentional or any other type of deception,
17 corruption or misconduct.

18 A No. And the vaginal swab itself, by getting the
19 DNA profile from the victim, from the vaginal vault, that
20 matches the victim reference sample, serves as an internal
21 control that that swab came from her.

22 Q How about this, something like this: The stain
23 on skin that you said also matches Mr. Peck had no semen
24 on it, according to the acid phosphatase test, correct?

1 A Correct.

2 Q So doesn't that kind of rule out the likelihood
3 that it was somehow contaminated with the Q-tip swabs from
4 the vaginal swabs which were semen?

5 A I can tell you the results of my analysis.

6 MR. CLIFTON: Thank you. No further questions.

7 THE COURT: Thank you, Ms. Romero, you are
8 excused. And we do need you to return, we'll notify you
9 as early as we can. Thank you.

10 THE WITNESS: Thank you.

11 MR. CLIFTON: Your Honor, before she leaves, I
12 would like the stuff to go back to the lab. I think
13 Ms. Romero has already indicated it's better preserved in
14 refrigeration. And counsel and I looked --

15 MR. LINDSEY: No objection.

16 MR. CLIFTON: Counsel and I have looked through
17 it, Your Honor. There's numerous writing on these that
18 shouldn't go to the jury. And it's also hazard and
19 biohazard materials that I would be very worried about
20 being given to the jury.

21 THE COURT: Any objection?

22 MR. LINDSEY: Not at all, Your Honor. I believe
23 that's a stipulation, Your Honor.

24 THE COURT: All right. Thank you.

1 MR. CLIFTON: And for the record, Your Honor, if
2 I may. These are already marked as evidence. I don't
3 think we've admitted any of them, but I'd like to go
4 through the list to make sure.

5 So they're being marked and being returned to the
6 lab.

7 THE COURT: You may go, Ms. Romero. Thank you.

8 MR. CLIFTON: She'll be the one taking them, Your
9 Honor.

10 THE COURT: Oh, you are.

11 MR. CLIFTON: Yes. I don't care if you wait
12 here, but don't go too far.

13 Your Honor, if I may go through these one by one,
14 make sure we get the sample that should be kept
15 refrigerated back to the lab.

16 I'll try to make sure they're also not admitted.
17 If they are, we can also stipulate to take them out --
18 I'll withdraw them from admission.

19 First is Exhibit No. 9 with all of its contents,
20 Exhibit No. 10 and 11, Exhibit No. 22, Exhibit No. 23 and
21 No. 8. These are all the samples that the lab has had
22 and/or were refrigerated.

23 THE COURT: They're admitted and they may be
24 retained by the forensic laboratory during the duration of

1 trial.

2 (Exhibits No. 8, 9, 10, 11, 22, 23 admitted.)

3 MR. CLIFTON: Thank you, Your Honor.

4 MR. LINDSEY: Thank you, Your Honor.

5 MS. ROMERO: You have to sign the chain of
6 custody.

7 MR. CLIFTON: Not me. We're going to have to do
8 this during the recess, I believe. The chain of custody
9 has to be preserved.

10 THE COURT: Any additional exhibits the State
11 wishes to offer?

12 MR. CLIFTON: Four, five have not been admitted
13 yet, according to the clerk's records, Your Honor.

14 No. 13 is the Compu-Sketch from Detective Asher.
15 We stipulated to that, but I don't know if there was ever
16 an order admitting it.

17 THE COURT: No. 13 is admitted.

18 MR. CLIFTON: Thank you.

19 (Exhibit No. 13 admitted.)

20 THE COURT: Any objection to Exhibits 4 and 5?

21 MR. CLIFTON: Which ones?

22 THE COURT: Exhibits 4 and 5, are you offering
23 those?

24 MR. LINDSEY: Those are photographs, Your Honor.

1 Correct?

2 MR. CLIFTON: No, no. I was saying there are
3 four or five exhibits.

4 THE COURT: Oh, There are four or five.

5 MR. CLIFTON: Number one is 13. We just did
6 that. The other four are 17, 18, 19 and 20, which are the
7 pictures of Mr. Peck's back.

8 THE COURT: Those are admitted. They have
9 already been shown to the jury.

10 (Exhibits No. 17-20 admitted.)

11 MR. CLIFTON: And with that, Your Honor, the
12 State would rest.

13 MR. LINDSEY: No objection, Your Honor.

14 THE COURT: We will take a recess at this time.
15 Court is in recess.

16 (Recess taken.)

17 THE COURT: Please be seated.

18 Mr. LINDSEY, Mr. Peck, you may proceed.

19 Gentlemen, you may proceed.

20 MR. LINDSEY: Would you please raise your right
21 hand and be sworn.

22 ///

23 ///

24 ///

1 SHERRY R. GRAY,

2 called as a witness by the Defense herein, having been
3 first duly sworn, was examined and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. LINDSEY:

7 Q Ma'am, would you please state your name and would
8 you spell it for the record.

9 A Including middle initial?

10 Q If you'd like.

11 A Sherry, S-h-e-r-r-y, middle initial R, Gray,
12 G-r-a-y.

13 Q Ma'am, do you know Mr. Peck?

14 A Yes.

15 Q Can you tell us how you know him.

16 A He's my brother. My youngest brother.

17 Q Your youngest brother.

18 Did you live with him for many years of your
19 life?

20 A Oh, yes.

21 Q Did you bring some documents here today?

22 A Yes, I did.

23 Q Did you in fact attempt to recreate August and
24 July of 1994?

1 A Oh, yes.

2 Q And in that effort to create that, did you do
3 that because it's your belief, based on the documents --

4 MR. CLIFTON: Objection, Your Honor.

5 THE COURT: It's leading. Please rephrase.

6 MR. CLIFTON: Thank you.

7 BY MR. LINDSEY:

8 Q Do you know where your brother was in July of
9 '94?

10 A Well, I can tell you where he was on July 17th of
11 1994. I have documentation that confirms that he was at
12 my home --

13 MR. CLIFTON: Your Honor, objection before she
14 says any more; hearsay, number one, number two, personal
15 knowledge.

16 THE COURT: Sustained. The question was: Do you
17 know where he was in July 1994?

18 You said you know where he was on July 17th,
19 correct? Is that what you said?

20 THE WITNESS: Well, it was a long time ago. I
21 have documentation that confirms to me where he was.

22 THE COURT: Don't say what the documentation
23 says, but you have documentation concerning your brother's
24 whereabouts in July 1994, right?

1 THE WITNESS: I'm sorry, sir, I --

2 THE COURT: I'll let Mr. Lindsey ask another
3 question.

4 Ask her another question.

5 BY MR. LINDSEY:

6 Q Ma'am, to the best of your knowledge, as you sit
7 there right now -- just relax, take a big deep breath --
8 do you know where your brother was in July of 1994, to the
9 best of your knowledge?

10 A Yes.

11 Q Would you share that with --

12 MR. CLIFTON: My objection is "to the best of
13 your knowledge." She is basing it on what she's reading.
14 It's hearsay.

15 THE COURT: I don't know what she is basing it
16 on.

17 Ms. Gray, you said you know where your brother
18 was in July of 1994. How do you happen to know that?

19 THE WITNESS: Well, I know that he was in Reno,
20 Nevada.

21 THE COURT: Wait a minute. How do you happen to
22 know where he was?

23 THE WITNESS: I'm very sorry. I don't mean to
24 be --

1 THE COURT: I know. I know it's a difficult
2 moment.

3 THE WITNESS: I'm just frightened.

4 THE COURT: I know. As Mr. Lindsey said, just
5 settle down. It's all right. Take your time.

6 You said that you believe you know where Mr. Peck
7 was in July 1994, right?

8 THE WITNESS: Yes.

9 THE COURT: And I just want you to say how you
10 happen to know that.

11 THE WITNESS: Well, my father came to Reno to
12 pick him up.

13 MR. CLIFTON: Your Honor, she lives in
14 California. She has no personal knowledge of this. It's
15 either based on hearsay or documents.

16 Your Honor, if I may voir dire maybe we could get
17 somewhere faster with a few questions.

18 THE COURT: All right.

19 MR. CLIFTON: Thank you.

20

21 VOIR DIRE EXAMINATION

22 BY MR. CLIFTON:

23 Q Is it Mrs. Gray or --

24 A Mrs. Gray, yes.

1 Q Mrs. Gray. Thank you.

2 You live in California?

3 A Yes, I do.

4 Q How long have you lived there?

5 A Well, all my life minus six months at birth.

6 Q Other than that six months, you lived in
7 California and never in Reno, Nevada, correct?

8 A I've never resided here, no.

9 Q Were you here on August 9th or 10th of August
10 1994?

11 A No.

12 Q You cannot say Mr. Peck was or was not in Reno
13 from your own personal vision of him on August 9th or 10th
14 of 1994, can you?

15 Not from documents; from you being with him.

16 A I was with my brother in Southern California at
17 that time.

18 Q When?

19 A Between August 5th and August 25th, when he flew
20 home to Reno.

21 Q You were personally with him?

22 A I worked from 8:30 to 5:30 and an hour of
23 commuting. He was with my father, I remember this time
24 period very well, at my home.

1 And the reason I remember --

2 Q Go ahead.

3 A The reason I remember this, is this is about the
4 last six months of my father's life and it was one of the
5 last quality visits that Frank had with his father.

6 Q How do you know those dates?

7 A I happen to know these dates because my father
8 came to Reno to pick up my brother because another brother
9 had a very large job to do in Las Vegas where he resided,
10 and it was my father's opinion that my one brother needed
11 assistance. It was too big of a job to handle on his own,
12 so he went to Reno and picked him up and brought him home
13 to my home.

14 MR. CLIFTON: I am going to save the rest for
15 cross-examination. Thank you.

16 THE COURT: All right. Thank you.

17 Mr. LINDSEY.

18

19 DIRECT EXAMINATION RESUMED

20 BY MR. LINDSEY:

21 Q Did you do your very best to remember as well as
22 you could independently without any documentation
23 whatsoever?

24 A Oh, yes.

1 Q When did your father pass away?

2 A February 6th, 1995.

3 Q So we're talking about the summer before your
4 father passed away; is that fair to say?

5 A Yes.

6 Q Is that a fairly remarkable period for you? Do
7 you remember it well?

8 A I do.

9 Q And I am certain it's sad, but is it remarkable?
10 You remember it because it's your last year with your
11 father; is that fair to say?

12 A I remember it well, yes. It was a nice visit
13 that we had with Frank, and my dad was there.

14 Q Was that at your home?

15 A Yes, my home.

16 Q Would you tell the jury where you lived at that
17 time.

18 A Acton, California, which is near Palmdale,
19 California.

20 Q I'm going to confess, I don't know where
21 Palmdale, California, is. Could you help us a little
22 more.

23 A LA County. It's right near Lancaster, if you're
24 familiar with that area.

1 Q Is that slightly north? Is that northern LA?

2 A Yes. I would say so.

3 Q Kind of towards the desert out there?

4 A Yes.

5 Q Did you make the attempt to -- you in fact
6 remember that he came and visited you that summer; is that
7 fair to say?

8 A You're referring to Frank?

9 Q Frank, yes.

10 A Yes.

11 Q And your father?

12 A Yes. He was with my father.

13 Q With your father. And did you make, as well as
14 you could, an attempt to be able to recreate that with as
15 much documentation as was possible?

16 A That was the only way I could redocument, you
17 know. I could see dates, it's been so long ago.

18 Q It's been 15 years --

19 A Almost 15 years ago.

20 Q Okay. But your father's passing is pretty easy
21 to date, isn't it?

22 A Yes. Especially since I've had to think about
23 this year in regards to this.

24 MR. LINDSEY: Your Honor, if I might approach?

1 THE COURT: All right.

2 BY MR. LINDSEY:

3 Q I know that you have a copy. It's an AT&T bill.
4 Would you look at that.

5 A Yes.

6 Q Does that bill refresh your memory in any way as
7 to something that happened from your home?

8 A Well, this was from my father's phone calling
9 card bill that was in his personal belongings from when
10 he -- just prior to when he died, I bundled things up and
11 put them away.

12 And it established in my mind, because it is so
13 long ago, of the time frame when I could say when they
14 arrived. A time frame from Reno with the intention of
15 going on to Las Vegas.

16 Q We talking about the Palmdale?

17 A That's my phone number. Apparently the phone
18 company considered that Palmdale -- or Acton was -- that
19 is my phone number, the area code 805-269-1385. That was
20 my residence phone number at the time in Acton,
21 California.

22 MR. LINDSEY: Your Honor, I would ask that this
23 be marked next in order.

24 THE COURT: All right. It will be marked next in

1 order.

2 THE WITNESS: You want the original?

3 MR. LINDSEY: I do.

4 THE WITNESS: That's the original, sir.

5 (Exhibit No. 25 marked)

6 BY MR. LINDSEY:

7 Q Would it help you to refresh your recollection to
8 look at that AT&T bill? Would it help you to refresh your
9 recollection to look at that AT&T bill?

10 A Yes.

11 Q I'd like you to look at it, if you'd like.

12 Looking at that bill, are you able to know when
13 the phone call was placed from your home phone number?

14 A No, sir. I could not. My father made that phone
15 call, and it was on his calling card which he used so he
16 wouldn't run my bill up.

17 But that established in my mind that he and Frank
18 had arrived to my home.

19 Q I apologize. I thought the Palmdale number was
20 your number.

21 A It is.

22 Q Okay. I guess I'm misunderstanding. I'm sorry.

23 A Am I not reading --

24 Q No, no. It's fine. I think I'm getting tired,

1 and I'm not quite understanding my own questions. I
2 apologize.

3 Does that refresh your memory as to a phone call
4 being made from the Palmdale -- your phone number?

5 A I did not make that call, sir. My father did.
6 This was his phone calling card bill.

7 Q Okay. And they just happened to add your phone
8 number to it, then?

9 A No. It says "call from." The calling card,
10 he -- I've never had one myself, but he would either
11 dial -- back then I don't know if he dialed the number in.
12 I think he did. And then it would not be billed to my
13 phone.

14 THE COURT: The piece of paper you're looking at
15 to help your memory is a copy of your father's bill, not
16 your bill, right?

17 THE WITNESS: Yes, sir.

18 THE COURT: And it refers to a telephone call
19 from your residence, right?

20 THE WITNESS: That's correct. Yes.

21 THE COURT: How does that help you remember what
22 was going on in August of 1994?

23 THE WITNESS: Well, July of 1994 it helps me know
24 when Frank and my father arrived at my home. I would not

1 have any other way of knowing, it was so long ago. And I
2 attempted to just make a rational --

3 BY MR. LINDSEY:

4 Q Is there a date on there, ma'am?

5 A July 17th.

6 Q What's the year?

7 A 1994.

8 Q Thank you. Do you know how long they stayed at
9 your house, ma'am, if you remember?

10 A The best to my knowledge, a couple days. Just to
11 get their tools and things together to go on to Las Vegas.

12 MR. LINDSEY: I'd like to -- excuse me. Could I
13 have this marked, please?

14 MS. CLERK: 26.

15 (Exhibit No. 26 marked.)

16 BY MR. LINDSEY:

17 Q I'd like to show you Exhibit 26, and I would ask
18 if you recognize that document whatsoever.

19 A Yes, I do.

20 Q Does that help you establish where your father
21 and your brother and you and your brothers were?

22 MR. CLIFTON: Your Honor, now we have pure
23 hearsay because she definitely was not there.

24 THE COURT: Well, just answer that very narrow

1 question. Now, listen to me. By looking at that piece of
2 paper, don't tell the jury what the piece of paper is, and
3 the question is: Do you find that piece of paper helpful
4 in your memory of where you and your brothers were? Just
5 answer that yes or no.

6 It's a real simple question. You have been given
7 a piece of paper. Don't tell the jury what the piece of
8 paper says. Just answer the question: By looking at that
9 piece of paper, does that piece of paper help you in
10 remembering where your brother and your father were in
11 1994?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: Thank you. Next question.

14 THE WITNESS: I'm sorry.

15 THE COURT: That's okay.

16 Go ahead.

17 BY MR. LINDSEY:

18 Q Do you have personal knowledge as to where your
19 brother -- your brothers and your father were -- this is
20 Exhibit 26, and this would be on the 2nd of August 1994.

21 A Yes.

22 Q Where would they have been?

23 MR. CLIFTON: Wait. Your Honor, foundation. He
24 asked for personal knowledge. She hasn't established how

1 she has that knowledge. As far as I can tell, these are
2 people that are 400 miles apart.

3 THE COURT: Overruled. It's a simple question:
4 Do you have personal knowledge on where they were on
5 August 2nd, 1994?

6 THE WITNESS: Yes.

7 THE COURT: Next question.

8 BY MR. LINDSEY:

9 Q Well, where were they? Where were they, if you
10 know?

11 A They were in Las Vegas purchasing a piece of
12 equipment.

13 MR. CLIFTON: Your Honor, I have to -- can I do
14 voir dire, then, because I don't know how she can answer
15 that? May I voir dire?

16 THE COURT: You may.

17
18 VOIR DIRE EXAMINATION

19 BY MR. CLIFTON:

20 Q Where were you on August 2nd?

21 A Let me check my calendar to know what date it
22 was.

23 Most likely working, sir.

24 Q In California?

1 A Yes, in California. Yes.

2 Q So the only way you can say they're in Las Vegas
3 is by looking at another document, correct?

4 A Yes.

5 Q When Judge asked you or Mr. Lindsey asked you if
6 you had personal knowledge they were in Las Vegas, that
7 means you're seeing them, you're talking to them or you're
8 with them. Do any of those apply?

9 A No, sir.

10 Q So, in fact, when they say "personal knowledge,"
11 you're thinking you can just read it off a slip of paper?

12 A No. I'm sorry, sir. I -- I knew where my father
13 was.

14 Q You weren't with him. We're talking about
15 personal knowledge, Ms. Gray.

16 A I'm sorry.

17 MR. CLIFTON: That's my concern, Your Honor.
18 She's going to be testifying from a lot of hearsay, and
19 one of the questions -- if I may.

20 BY MR. CLIFTON:

21 Q Isn't it true that we tried to find out this
22 information from you last week or earlier this week from
23 the district attorney's office in Reno?

24 A They asked me for a statement, Mr. Grimm did.

1 Q Mr. Grimm, the DA investigator in this case,
2 correct?

3 A However, I don't believe he identified himself on
4 the call. And it was last Thursday, week ago yesterday.

5 Q And we'll ask him, then, if we have to.

6 But did you understand -- who did you understand
7 you were talking to?

8 A I did not know. I saw the Washoe County digital
9 readout on my phone. And when I heard him say that he was
10 investigating, I really did not hear his title, sir, after
11 I told him that I would prefer to save my comments for the
12 court.

13 Q But let me ask you this: All these documents
14 you've rounded up for, what, a couple months now?

15 A These things were in my father's possessions.

16 Q I see dates on some of them from March of this
17 year. See those dates?

18 A Yes. With the exception to that, yes.

19 Q Where people sent you documents in March,
20 correct?

21 A Yes.

22 Q You never brought them to law enforcement's
23 attention including the district attorney's office here in
24 Washoe County, correct?

1 A I was never asked to prior.

2 Q Till last Thursday.

3 A Till last Thursday.

4 MR. CLIFTON: That's my objection, Your Honor.

5 They're not only hearsay, but second, we tried to
6 get notice of these from alibi witnesses. The notice was
7 not proper, but I accepted it. I said, fine, we will do
8 the best we can to make up for the time.

9 The witness would not give us anything. She
10 claimed she didn't know it was a DA investigator. We can
11 certainly ask Mr. Grimm about that. But that's my
12 concern, is they hide this ambush until now. I got these
13 yesterday morning. The phone records I have never seen
14 that she just brought today. And so it's ambushing us to
15 be able to cross-examine on this.

16 THE COURT: Ms. Gray, let me explain two concepts
17 to you, all right?

18 THE WITNESS: Yes.

19 THE COURT: You're entitled to look at any pieces
20 of paper you want to, anything, while you testify to help
21 you trigger your memory about certain things. And those
22 pieces of paper either have been or will be challenged by
23 counsel to the district attorney.

24 But what you may not do, unless the Court admits

1 those documents during the trial, is show them to the jury
2 or tell the jury what is in them, nor may you just repeat
3 what is in them.

4 In other words, if you look at a piece of paper
5 and say, "By looking at this, gosh, now I remember X," you
6 can testify to that.

7 But if the only information you have about X is
8 what the piece of paper says and you don't have any memory
9 at all yourself, you may not do so.

10 Is that clear? It's a little tricky.

11 THE WITNESS: I guess.

12 THE COURT: We will just go through it question
13 by question. You can't tell the jury what the pieces of
14 paper say, but you yourself can look at them if it helps
15 you refresh your memory about that summer. Okay?

16 Go ahead.

17
18 DIRECT EXAMINATION RESUMED

19 BY MR. LINDSEY:

20 Q And, ma'am, is it fair to say these were given to
21 me yesterday morning?

22 A Absolutely.

23 Q Thank you.

24 THE COURT: Go ahead, Mr. Lindsey.

1 MR. LINDSEY: Have this marked next in order,
2 please.

3 (Exhibit No. 27 marked.)

4 BY MR. LINDSEY:

5 Q I'm going to show you what's been marked as 27,
6 ma'am. Would you please look at that.

7 A Yes.

8 Q Ma'am, is your father deceased?

9 A Yes.

10 Q Does that help you remember things that you saw,
11 that you heard, that you have actual personal knowledge
12 of?

13 A Yes.

14 Q Would you please tell the jury what that is.

15 A In regards to this document?

16 Q Well, no. You see, I can't actually answer that
17 question because I am not sure what you have inside of
18 your mind.

19 But if it's personal knowledge, if it's something
20 that you saw, you heard, you knew because you were there,
21 you were a percipient witness, you can share that with the
22 jury. And if that helps you, you can in fact use that as
23 long as it is your own personal knowledge.

24 Where is Palmdale, ma'am?

1 A Southern California in LA County.

2 Q Is that where you lived or --

3 A Yes, it was.

4 Q Okay. Did your -- did you bank at Palmdale?

5 A No. This is my father's bank account receipt.

6 Q Okay. Did you ever go to the bank with your
7 father?

8 A I have on occasion, yes.

9 Q Where was that bank at?

10 A In Palmdale, California.

11 Q Does that reflect that there is a bank account in
12 Palmdale that your father had?

13 A Yes, it does.

14 Q Did you yourself ever go to Palmdale and see that
15 bank with your father?

16 A Yes.

17 Q Would that have been at sometime in August of --

18 A August 5th, 1994.

19 Q Thank you very much.

20 Ma'am, did you ever, while your father was alive,
21 have any contact with his checkbook?

22 A Yes. I was on the Bank of America account.

23 MR. LINDSEY: I might have next in order, Your
24 Honor.

1 (Exhibit No. 28 marked.)

2 THE COURT: You were a joint owner of the
3 account?

4 THE WITNESS: He had me as a signer in case
5 something were to happen to him, which did ultimately.

6 BY MR. LINDSEY:

7 Q Ma'am, I'd like to show you 28 -- Exhibit 28, if
8 I might.

9 A Yes.

10 Q Are you familiar personally with that particular,
11 from 1994 while your father was alive?

12 A Yes.

13 Q And what is that?

14 A It's my father's check register for this period
15 of time.

16 Q Now, there's some writing on that; is that fair
17 to say?

18 A Yes.

19 Q Some of the writing to the left and the right of
20 that?

21 A To the left, where it's indicated with an invoice
22 number, that is my handwriting.

23 Q That's your handwriting, correct?

24 A Yes.

1 Q To the right is there also some -- is that also
2 your handwriting?

3 A Yes. Some notes in the balance columns, I would
4 say, are notes of mine in my handwriting.

5 Q Is it fair to say that the actual writing in the
6 checkbook is your father's?

7 A Yes it is, sir.

8 Q Did you have the personal experience of actually
9 seeing that and going over that at all with your father
10 while he was alive in August of 1994?

11 A No, sir.

12 Q Okay. Did you know he had a bank account?

13 A Yes.

14 Q Did you have occasion to see your brother Frank
15 in the periods of July and August of 1994?

16 A Yes.

17 Q Personally?

18 A Yes.

19 Q Could you let the jury know, under the
20 circumstances, the dates as well as you can and the times
21 as well as you can being 15 years ago?

22 A Yes. Approximately -- let me look at my
23 calendar. Approximately the last two weeks in July -- I
24 stand corrected on that. I'm sorry.

1 I would say for a couple days in July, which
2 would have been the 17th or 18th or 19th, right in that
3 time period, my father arrived from Reno with my brother
4 in tow to go to Las Vegas. So they were at my home for a
5 couple of days, and then they went to Las Vegas.

6 And then they returned to my home August 5th.
7 And they were -- Frank was there for two weeks, to the
8 25th, when he flew out from Burbank to Reno on a one-way
9 flight that my father put him on.

10 Q Was he at your home during that period of time?

11 A Yes.

12 Q So that's something you saw him every day after
13 you went to work?

14 A Yes.

15 Q You know for a fact you say him breakfast, lunch
16 or dinner or whatever it was?

17 A Yes. I prepared meals, I'm quite sure.

18 Q Did you talk with him?

19 A Yes. Had a wonderful visit.

20 Q Was it your brother?

21 A Yes.

22 Q No doubt about that, is there?

23 A None.

24 Q And the calendar that you're referring to, that's

1 simply a standard calendar, is it not?

2 A It's a re-creation from the Internet because I
3 had no idea where the dates were.

4 Q Right. Hard to remember 15 years ago.

5 But that's simply a standard calendar, is it not?

6 A Yes.

7 Q Can you give us the days of the week for the 9th
8 and the 10th of August from your calendar?

9 A The 9th would be a Tuesday, and the 10th would be
10 a Wednesday in the second week of August.

11 Q And that's in 1994; is that fair to say?

12 A Yes. That's what I see here.

13 Q Ma'am, did you make attempts -- did you make
14 attempts to have, in fact, the ticket?

15 A From Southwest Airlines? Yes, I did, sir.

16 Q Did you do as much as you could creatively think
17 about to try to produce that ticket?

18 A I wrote to every address I could find on the
19 Internet.

20 Q Were you successful in being able to produce the
21 ticket?

22 A No. The email states that --

23 MR. CLIFTON: Objection.

24 MR. LINDSEY: That's all right. You don't

1 have --

2 THE WITNESS: I'm sorry.

3 THE COURT: That's okay.

4 Next question.

5 BY MR. LINDSEY:

6 Q Listen just very carefully to what I'm asking
7 you. I know. I know it's difficult. I understand.

8 I'm just asking: Did you try to get that ticket
9 as well as you could?

10 A Yes. I feel that I exercised due diligence in my
11 mind.

12 Q And were you able to get that ticket?

13 A No.

14 MR. LINDSEY: Okay. I have no further questions
15 at this time, Your Honor.

16 THE COURT: Thank you. Mr. Clifton?

17 MR. CLIFTON: Thank you.

18

19 CROSS-EXAMINATION

20 BY MR. CLIFTON:

21 Q Mrs. Gray?

22 A Yes.

23 Q I know I heard you correctly, but I want to ask
24 you again and you tell me if this is what you said: Frank

1 was there for two weeks and left on the 25th. Remember
2 that?

3 A Yes.

4 Q That's of August, correct?

5 A Yes, sir.

6 Q 1994?

7 A Yes.

8 Q Before that, where was he if you know?

9 A From the 5th he was at my home with my father,
10 and my husband and I reside at the home.

11 Q Let me read it to you again, "Frank was there for
12 two weeks and left on the 25th."

13 You have already indicated that's correct.

14 A I'm counting, correct, calendar days.

15 Q Me, too. I don't know of any other days --

16 A Yes, the 5th, so 20 days. In my mind that's --
17 well, that's more than two weeks.

18 I'm sorry. All I'm doing is apologizing. I'm
19 sorry.

20 Q Anyway, we've got it three times now. It was for
21 two weeks, and he left on the 25th.

22 How do you know he left on the 25th?

23 A According to my father's check register --

24 Q Okay. That's good enough.

1 Isn't it true that normally when you buy an
2 airline ticket, you buy it a few days in advance?

3 A That's true, but that's not the way my father
4 was. He was kind of from the old school. In fact, I was
5 actually quite surprised that he wrote a check for it.

6 Q So you see a check written on the 25th that seems
7 to be the right amount for an airline ticket.

8 A Yes. I have flown it before.

9 Q And it's for one airline ticket.

10 A Yes.

11 Q And you're here to tell us that that was for
12 Frank, not for your dad?

13 A That's right.

14 Q Isn't it true all of these documents which I have
15 now seen today and yesterday, not one of them mentions
16 Frank Peck, correct?

17 A No, sir. Because -- I've done the best to
18 reconstruct --

19 Q And we appreciate that.

20 A -- to tangible --

21 Q It's a simple question. I'm not asking all that.
22 We appreciate that, Mrs. Gray. Thank you.

23 I know it's hard to do. It's 15 years, who would
24 want to do this? I agree. I'm not asking that.

1 I'm saying all these documents you have produced,
2 not one of them refers or says Frank Peck, correct?

3 A That's correct.

4 Q They don't even allude to Frank Peck, correct?

5 A No.

6 Q No. I mean, there is nothing saying "my son" or
7 anything -- like, for instance, the airline ticket, it
8 just has an amount that you think you recognized, correct?

9 A Yes. Because I have flown it in the past and I
10 know it was under a hundred dollars.

11 Q So it's \$92, and you believe that that had to be
12 purchased for Frank.

13 A Yes. I remember that it was.

14 Q Why can't Frank buy his own things?

15 A Well, at that time he had not been working, and
16 he went to Las Vegas to help my brother with his job.

17 Q Okay.

18 A And that would be a natural thing that my father
19 would have bought his ticket.

20 Q You said he was with you on the 17th, 18th and
21 19th of July 1994, correct?

22 A I believe that he was -- he arrived on the 17th,
23 and I believe that they stayed a day or two getting their
24 tools together and then went on to Las Vegas.

1 Q Okay. So 17th, 18th and 19th. And then why are
2 they in Vegas so long?

3 A It was a very large job that, in my father's
4 opinion, it was too much for the one brother to handle.

5 Q Who is William Carnahan (phonetically)?

6 A That's a friend of my husband's. They were high
7 school friends.

8 Q You have had quite a bit of contact with him in
9 the last couple weeks?

10 A Off and on we talk.

11 Q But he's not your friend.

12 A He's my husband's friend. He's been my friend
13 for over 30 years.

14 Q And you told him, basically, when this all
15 happened in 1994 in the last couple weeks, didn't you?

16 A I provided him a copy of the document of this
17 equipment that was bought because he had no idea of the
18 dates we spoke.

19 Q In fact, he didn't agree with you on the dates,
20 did he, that he was with Mr. Peck, the defendant?

21 A I don't know what dates he had in mind.

22 Q He said it was a weekend, didn't he, that he was
23 with Mr. Peck in Las Vegas?

24 A He thought it would have been on the weekend;

1 however, he has rethought that because of a conversation
2 that he had with my brother Larry.

3 Q So he's been talking to Larry, too?

4 A No, no. No. He referred to a conversation that
5 he had with Larry.

6 Q So he's been talking to Larry, too?

7 A No. Back at this point in time, sir, that's what
8 I am referring to.

9 Q What helped him reflect about Larry that helped
10 him remember the date?

11 A When I mentioned this situation to my friend
12 William Carnahan, and this was months ago, he said, "Well,
13 I remember that because of this function of this
14 particular piece of equipment."

15 And I said, "You do?"

16 And he said, "Yes. Don't you remember? I lived
17 in Vegas at the time." He works for the gaming industry.

18 And I had forgot -- if we hadn't known of this
19 piece of equipment being bought, we wouldn't have known
20 the dates.

21 Q Ma'am, what I said was: He thought it was on the
22 weekend, and then you said, yeah, but he had a
23 conversation with Larry a couple years ago?

24 A No. No. Back at this point in time, sir.

1 Q Recently when you talked to William Carnahan, he
2 told you he thought the defendant Frank Peck was with him
3 in Vegas on a weekend. True or not true?

4 A That's what he said, true.

5 Q That's just recently. That doesn't go back two
6 years ago talking to Larry, right?

7 A No. I was referring to a conversation that
8 William referred to in our conversation.

9 Q And when he told you about that conversation, he
10 still said it was on a weekend, right?

11 A He said it could have been.

12 Q All right. We'll talk to him.

13 But you were trying to convince him, "No, it was
14 on a Tuesday and a Wednesday," right?

15 A No, sir. I wasn't trying to convince him.

16 Q All right. We'll talk to him, again.

17 You love your brothers, correct?

18 A Of course.

19 Q Frank and Larry.

20 A Yes.

21 Q Larry's the older one.

22 A Yes.

23 Q Are you the older of the three?

24 A Yes, I am the oldest.

1 Q So the older sister caring for their brothers,
2 correct?

3 A Yes.

4 Q Don't want to see either one of them get hurt,
5 correct?

6 A Yes.

7 Q How do you feel about Larry Peck getting
8 convicted of first degree murder?

9 THE COURT: It's not relevant. Next question.

10 MR. CLIFTON: According to the -- okay.

11 THE COURT: Well, it may be relevant.

12 MR. CLIFTON: Yeah. The opening statement. You
13 want me to stay a way from it or you want me to go?

14 THE COURT: Let's try another question. I'm sure
15 that's a difficult subject for Ms. Gray. Go ahead.

16 MR. CLIFTON: That's fine, Your Honor. Thank
17 you.

18 BY MR. CLIFTON:

19 Q Ms. Gray, nothing in the world you'd like less
20 than to see Mr. Frank Peck be convicted of a serious
21 crime, correct?

22 A Yes.

23 Q And we appreciate that you did try your best, and
24 you are trying your best to come up when he was there.

1 But isn't it true, other than those two weeks in August
2 that you just indicated, you cannot actually personally
3 vouch for where he was?

4 A Between the 5th and the 25th, I can, absolutely.

5 Q Saw him every day.

6 A With exception of the time I would be going to
7 work Monday through Friday because I would be scheduled
8 for appointments.

9 Q I'll let you explain. Three times now you've
10 said two weeks. He was there for two weeks only.

11 A I'm sorry. The 20 days in August, from the 5th
12 of August to the 25th of August he resided in my home with
13 the exception of the time he was at work.

14 Q Who else can verify that?

15 A No one, sir. My father is deceased.

16 Q Nobody in Palmdale? No other relatives or
17 friends or anyone can verify that?

18 A No, sir. That was a long time ago.

19 Q Mr. Frank Peck was married at that time, correct?

20 A Yes.

21 Q Remember her name?

22 A Leslie.

23 Q And it's your testimony here that, from your
24 knowledge at least for the 20 days in August and from what

1 you believe from July 17th all the way to August 25th, he
2 was there -- I mean, he was not at home, correct?

3 A He was not in Reno.

4 Q Isn't that his home?

5 A Yes. Yes.

6 Q Okay. He was not at home.

7 A Yes.

8 Q So he did live in Reno in August of 1994?

9 A Yes.

10 Q He was married to Leslie Krauser (phonetically),
11 Leslie Peck?

12 A Yes.

13 Q She wasn't on this trip, was she?

14 A No.

15 Q She certainly would remember him being gone for
16 almost two months, a month and a half, wouldn't she, you
17 think?

18 MR. LINDSEY: Lack of personal knowledge.

19 THE COURT: Sustained.

20 BY MR. CLIFTON:

21 Q Can you think of any reason -- they were married,
22 what, 10 years?

23 A A long time.

24 Q They weren't separated in 1994, were they?

1 A Not that I am aware of.

2 Q So certainly a wife would know when her husband
3 has been gone for almost two months, wouldn't she?

4 A Not two months, sir. Well --

5 Q Month and -- five, six weeks, whatever. It
6 doesn't matter.

7 A Four weeks, four and a half. Yes, sir.

8 Q Half of July, most of August, correct?

9 A Yes.

10 Q Certainly she'd -- a wife would know when her
11 husband was gone that long.

12 A Yes.

13 Q Are you aware that Mr. Frank Peck would know
14 about this charge when he was indicted? Were you aware of
15 the indictment?

16 A No, sir.

17 Q Do you know when you next spoke to him after,
18 say, November of 2006?

19 A November 2006.

20 Q We're going back three years. Do you talk to him
21 a lot?

22 A Yes.

23 Q So you would have talked to him quite a bit in
24 the last three years, you think?

1 A Yes. At least once a week.

2 Q So if he knew the date of this crime in 1994,
3 that being August 9th, you could have discussions with him
4 about it, correct? Since he knows that date --

5 A Yes.

6 Q -- since he was indicted in November of 2006.
7 So were you trying to get hold of any
8 documentation for the last two or three years or just in
9 the last couple months?

10 A Oh, no. I had my father's personal possession
11 documents, and I just went through them and pulled out
12 things that were of this time frame.

13 Q So you had had awhile to look for this stuff?

14 A It's been there. I looked for it when Frank
15 first mentioned it.

16 Q When was that? That's what I'm getting. When
17 was that?

18 A I cannot recall how long ago it was, but it's
19 been some time.

20 Q So not this year?

21 A No. I did spend time on the attempting to get
22 the airline ticket.

23 Q How much time did you spend? When you started
24 was quite awhile ago.

1 A Yes. Yes.

2 Q You would recognize your brother's signature,
3 correct?

4 A Yes.

5 I believe that's his signature.

6 A Okay.

7 (Off the record between counsel.)

8 BY MR. CLIFTON:

9 Q You recognize the signature on this document?

10 A I believe that's his signature.

11 Q I want you to read this along with me. This
12 is -- we believe this is his signature, a filed document
13 in this court, a motion. Do you see this right here?

14 A Mmm-hmm.

15 Q Does it say, "Defendant Peck attempted to provide
16 Mr. McKenna with a list of alibi witnesses he wished to
17 have contacted and called to trial to demonstrate his
18 presence in Las Vegas, Nevada, at the time of the alleged
19 incident."

20 You see that?

21 A Yes.

22 Q So were you and Mr. Peck, your brother, trying to
23 come up with an alibi for August 9th and August 10th of
24 1994?

1 A No, sir. This research was independent on my
2 part.

3 Q Isn't it true from your own description of this
4 signature and this writing that Mr. Peck says he was in
5 Las Vegas on August 9th and August 10th? Wouldn't that be
6 a fair deduction?

7 Let me show you one more thing: In this motion
8 that he filed, on the first page he lists the date of the
9 offense as August 9th, 1994, in the city of Sparks,
10 Candace Inman was a victim of sexual assault. See that?

11 A Yes.

12 Q In that same document he says, "I was in Las
13 Vegas." See that?

14 Do you want the date of when he wrote this? This
15 was February 5th of 19 -- I'm sorry -- 2008, correct?

16 A Yes.

17 Q So a year ago Mr. Peck is stating to the court in
18 his motion that he was actually in Las Vegas. But you're
19 disagreeing with that, and you're saying he was actually
20 in California, correct?

21 A It's my recollection he was in California, yes.

22 Q The only evidence you have of where they were on
23 August 5th to August 10th is documentation of your
24 father's that says nothing about Frank Peck, correct?

1 A Yes.

2 MR. CLIFTON: Thank you. No further questions.

3 THE COURT: Mr. LINDSEY.

4

5 REDIRECT EXAMINATION

6 BY MR. LINDSEY:

7 Q Unfortunately, your father has passed away; is
8 that fair to say?

9 A Yes.

10 MR. LINDSEY: No further questions. Thank you.

11 THE COURT: Thank you, Ms. Gray. You're excused.

12 (Witness excused.)

13 THE COURT: Counsel, would you like to call the
14 next witness, or would you like to wait until Monday?

15 MR. LINDSEY: I do not have the next witness,
16 your Honor, and I apologize.

17 THE COURT: Thank you.

18 Ladies and gentlemen, we'll take the weekend
19 recess at this time. It is very important that you
20 continue to abide by the Court's admonition not to see,
21 read or view any news accounts of the case, if any. You
22 are not to discuss the case among yourselves or with
23 anyone else. You are not to form or express any opinion
24 concerning the case.

1 Now, on Monday morning at 10:30 I'll meet with
2 counsel and the parties to review jury instructions in
3 this case. We'll return to the courtroom and resume the
4 trial at 1 o'clock on Monday. And we're hopeful we will
5 finish the testimony on Monday, so that Tuesday morning we
6 will start the trial at 9 o'clock. You will be instructed
7 by the Court as to the law which applies to this case,
8 hear the closing arguments of the parties, and the case
9 will be submitted to you for deliberation and decision on
10 Tuesday.

11 I want to thank you all again for your time and
12 patience this week during the trial. Hope you all have a
13 nice Mother's Day. Do anything in the world except think
14 about this case over the weekend. We ought to have
15 wonderful weather. And we'll resume the trial on Monday
16 at 1 o'clock.

17 Court is in recess.

18 (Proceedings concluded.)
19
20
21
22
23
24

1 STATE OF NEVADA,)
2 COUNTY OF WASHOE.)

3
4 I, REBECCA S. MARTINELLI, Certified Shorthand
5 Reporter of the Second Judicial District Court of the
6 State of Nevada, in and for the County of Washoe, do
7 hereby certify:

8 That I was present in Department No. 6 of the
9 above-entitled Court and took stenotype notes of the
10 proceedings entitled herein, and thereafter transcribed
11 the same into typewriting as herein appears;

12 That the foregoing transcript is a full, true
13 and correct transcription of my stenotype notes of said
14 proceedings.

15 DATED: At Reno, Nevada, this 23rd day of
16 October, 2009.

17
18 /s/ Rebecca S. Martinelli
19 REBECCA S. MARTINELLI, CCR No. 212
20
21
22
23
24

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 10-26-2009:10:23:17
Clerk Accepted: 10-26-2009:10:26:37
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Transcript
Filed By: Rebecca S. Martinelli

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

The following people were served electronically:

KARLA BUTKO, ESQ. for FRANK PECK
GARY HATLESTAD, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

DAVID CLIFTON, ESQ.
FRANK PECK
STATE OF NEVADA

FILED

Electronically
12-04-2009:03:18:15 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1189862

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
BRENT T. ADAMS, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 54875

CRO6 2580

FILED

DEC 03 2009

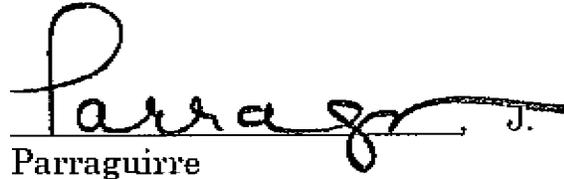
THOMAS K. LINDEMAN
CLERK OF SUPREME COURT
T. Lindeman
DEPUTY CLERK

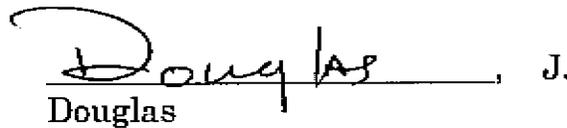
ORDER DENYING PETITION

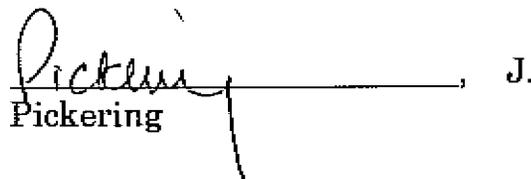
This is a proper person petition for a writ of mandamus. Petitioner seeks an order directing the district court to resolve motions filed prior to sentencing. Petitioner asserts that he cannot raise issues relating to the motions on direct appeal without resolution of the motions. We have reviewed the documents submitted in this matter, and without deciding upon the merits of any claims, we decline to exercise original jurisdiction in this matter. NRS 34.160; NRS 34.170. Any issues relating to the failure to resolve motions can be raised on direct appeal. Notably, petitioner is represented by appellate counsel in Docket No. 54168, the

direct appeal, and petitioner should proceed by and through his appointed counsel. Accordingly, we

ORDER the petition DENIED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Karla K. Butko, Esq.
Washoe District Court Clerk ✓

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 12-04-2009:15:18:15
Clerk Accepted: 12-04-2009:15:20:32
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Order Denying
Filed By: Cathy Kepler

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

KARLA BUTKO, ESQ. for FRANK PECK
GARY HATLESTAD, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

FRANK PECK
DAVID CLIFTON, ESQ.
STATE OF NEVADA

FILED

Electronically
01-28-2010:10:12:42 AM
Howard W. Conyers
The Court
Transaction # 1286772

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE
BRENT T. ADAMS, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 54875

CRO6 2580

FILED

JAN 26 2010

TRACEY K. LINDENBAUM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

[Signature] C.J.
Parraguirre

[Signature] J.
Douglas

[Signature] J.
Pickering

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

10 1821514

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 01-28-2010:10:12:42
Clerk Accepted: 01-28-2010:10:13:00
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Order Denying
Filed By: Cathy Kepler

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The following people were served electronically:

KARLA BUTKO, ESQ. for FRANK PECK
GARY HATLESTAD, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

FRANK PECK
DAVID CLIFTON, ESQ.
STATE OF NEVADA

DC-9900014581-052
CR06-2580
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 02/03/2010 09:38 AM
Washoe County
TEI/DPZ

CASE No. CR-06-2580
Dept No. 6

FILED

2010 FEB -3 AM 9:38

HOWARD W. CONYERS

BY

IN the Second Judicial District Court of the STATE of NEVADA
IN AND for the County of Washoe

FRANK M. PECK
Plaintiff

-VS-

STATE OF NEVADA Et.al.
Second Judicial District Court Et.al.
District Attorney, Richard Gammick Et.al.
DEFENDANTS

NOTICE OF
INTENT TO
File Civil
Action

COMES NOW, the Plaintiff, FRANK M. PECK, prose with NOTICE of civil action for failure of the ABOVE NAMED DEFENDANTS to provide Adequate Court case documents for his Direct Appeal. This Court has ignored/ failed to Address Motions pending in this Court for Months, regarding the return of crucial documents from Plaintiff's former Attorney Robert Bruce Lindsay, crucial to support Constitutional issues brought on Mr Peck's Direct Appeal.

Dated this 25th day of January 2010.

Frank Peck
Plaintiff
V8.1516
Prose

Certificate of Service and Affirmation that
the attached NOTICE OF INTENT TO FILE CIVIL
Action contains No Social Security Numbers
of any person per NRS 239B.030 and a true
and correct copy was mailed to:

District Attorney
75 Court St
Reno, NV, 89501

Dated this 25th day of January 2010.

Frank Pelt

ORIGINAL

FILED

2010 FEB -3 PM 3:13

HOWARD W. CONYERS

BY *A. Simpson*
DEPUTY

CR06-2580 DC-9900014561-054
STATE VS FRANK MILFORD PECK 3 Pages
District Court 02/03/2010 03 13 PM
Washoe County 2645
FILED

CODE 2645
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

FRANK PECK,

Defendant.

Case No. CR06-2580

Dept. No. 6

OPPOSITION TO DEFENDANT'S "DEMAND FOR INVESTIGATION [SPECIAL PROSECUTOR] AND INDICTMENT OF STATE'S WITNESS..."

COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and BRUCE HAHN, Chief Deputy District Attorney, and hereby offers its formal opposition to defendant's hand-written motion dated January 6, 2010.

The State opposes the defendant's request for a special prosecutor because he offers no legal authority for his request, nor is his demand supported by any cogent argument for relief. *Maresca v. State*, 103 Nev. 669, 673 (1987); *Rhyne v. State*, 118 Nev. 1, 13 (2002). Failure to document or cite authority for legal contentions is a sufficient ground to summarily reject any such motion. *McKinney*

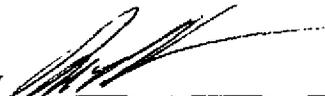
1 v. Sheriff, 93 Nev. 70 (1977); Williams v. State, 88 Nev. 164 (1972).
2 Accordingly, the defendant's motion should be summarily denied.¹

3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the preceding
5 document does not contain the social security number of any person.

6 Dated this 3 day of February, 2010.

7 RICHARD A. GAMMICK
8 District Attorney
9 Washoe County, Nevada

10
11 By 
12 BRUCE C. HAHN
13 5011
14 Chief Deputy District Attorney

15
16
17
18
19
20
21
22
23
24 0203CR0625808
25 _____

26 ¹ Defendant has a ready remedy of making a police report with the appropriate
investigating authorities to ascertain any merit to any violation of law he alleges
has occurred, independent of the Washoe County District Attorney's Office.

DC-9906015229-028
CR06-2580
STATE VS FRANK MILFORD PECK 2 Pages
District Court 02/17/2010 01:31 PM
Washoe County 3790
TFI ORFS
DOC

Frank Peck 57106
ESP Box 1989
Ely, NV, 89301

FILED
2010 FEB 17 PM 1:31

HOWARD W. CONYERS
BY *[Signature]*
DEPUTY

In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe

Frank Peck

Defendant

Case No. CR-06-2580

vs

Dept No. 6

State of Nevada

Plaintiff, 1

REPLY TO OPPOSITION TO DEFENDANT'S
DEMAND FOR INVESTIGATION, SPECIAL
PROSECUTOR AND INDICTMENT OF STATE'S
WITNESSES

Comes Now, the Defendant, Frank M. Peck prose
hereinafter Mr Peck with his HAND WRITTEN reply.

Mr Peck with his HAND WRITTEN REPLY
is forced to chisel his Pleadings in stone
tablets due to the Department of Corrections
confiscation of All Typewriters.

Mr PECK, AS THE STATE IS AWARE, PURSUANT TO N.R.S. MUST OBTAIN CRIMINAL CONVICTION OF THE STATES WITNESSES, PRIOR TO FILING A CIVIL ACTION FOR DAMAGES. AS SUCH, MR PECK ADDS THE NAMES JEFFERY RILO, RENE ROMERO FOR THE PERJURY COMMITTED AT TRIAL AND DAVE CLIFTON FOR SUBORNATION OF PERJURY.

PERSUANT TO NRS 239 B 030 CONTAINS NO SOCIAL SECURITY NUMBERS OF ANY PERSON AND A TRUE AND CORRECT COPY WAS MAILED TO:

BRUCE HAHN DDA
75 COURT ST
RENO, NV, 89501

DATED THIS 8TH DAY OF FEBRUARY 2010.

Frank Peck
Frank Peck prose

CR06-2580
Dp

FILED

Electronically
02-25-2010:08:25:29 AM
Howard W. Conyers
Clerk of the Court
Transaction # 1341874

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Petitioner,
vs.

Supreme Court No. 54875

THE SECOND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF
WASHOE, AND THE HONORABLE BRENT T. ADAMS,
DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

District Court Case No. CR062580

NOTICE IN LIEU OF REMITTITUR

TO THE ABOVE-NAMED PARTIES:

The decision and Order of the court in this matter having been entered on 12/03/09, and the petition for rehearing having been denied, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: February 23, 2010

Tracie Lindeman, Clerk of Court

By: A. Ingersoll
Deputy Clerk

cc: Hon. Brent T. Adams, District Judge
Howard W. Conyers, Washoe District Court Clerk ✓
Attorney General/Carson City
Washoe County District Attorney
Frank Milford Peck

V8.1523

10 02702

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 02-25-2010:08:25:29
Clerk Accepted: 02-25-2010:08:25:59
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Ct Not/Lieu/Remittitur
Filed By: Michelle Purdy

You may review this filing by clicking on the following link to take you to your cases.

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The following people were served electronically:

KARLA BUTKO, ESQ. for FRANK PECK
GARY HATLESTAD, ESQ. for STATE OF NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

BRUCE HAHN, ESQ.
DAVID CLIFTON, ESQ.
STATE OF NEVADA
FRANK PECK

CR06 - 2580
DL

FILED
Electronically
05-11-2010:10:58:27 AM
Howard W. Conyers
Clerk of the Court
Transaction # 1478650

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54168

FILED

MAY 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of sexual assault. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. Appellant Frank Milford Peck challenges his conviction on ten grounds, none of which warrant relief.

First, Peck argues that insufficient evidence supports his conviction. The evidence shows that although the victim could not identify Peck as her assailant, she provided a general physical description matching Peck's appearance. And Peck's DNA was found on matter collected from the victim during a medical examination performed after the sexual assault. Despite Peck's challenge to the DNA evidence as confusing and suspect, the inability of the victim to identify him, and the lack of other physical evidence, considering all the evidence in the light most favorable to the prosecution, we conclude that a rational jury could find him guilty of the charged offense beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

Second, Peck contends that unreasonable governmental delay in arresting and prosecuting him violated his Fifth Amendment and

10 V8 1325

speedy trial rights. As to the pre-indictment delay, we conclude that he failed to show with adequate specificity any prejudice from the delay or that the State intentionally delayed filing a complaint to gain a tactical advantage. See Wyman v. State, 125 Nev. ___, ___, 217 P.3d 572, 577-78 (2009). As to the speedy trial claim, we conclude that it similarly lacks merit. Peck was indicted on November 8, 2006, and shortly thereafter waived his right to a speedy trial. Trial commenced on May 6, 2009. During that period, several defense-related delays occurred, including a five-month continuance, withdrawal of counsel, Peck's removal of another counsel and motion to represent himself, and a motion to recuse the trial judge. Based on the record, we conclude that Peck failed to demonstrate a violation of his speedy trial rights. See Barker v. Wingo, 407 U.S. 514, 515 (1972); NRS 178.556; Furbay v. State, 116 Nev. 481, 485, 998 P.2d 553, 555-56 (2000).

Third, Peck asserts that the application of NRS 171.083, extending the statute of limitations for sexual assault, violated the Ex Post Facto Clause. "Before the statute of limitations for a criminal offense expires, a legislature may amend the statute and extend the limitations period without violating the ex post facto clause." Murphy v. State, 110 Nev. 194, 199, 871 P.2d 916, 919 (1994), overruled on other grounds by State v. District Court, 114 Nev. 739, 964 P.2d 48 (1998); State v. Merolla, 100 Nev. 461, 464, 686 P.2d 244, 246 (1984). Here, the sexual assault occurred on August 9, 1994. NRS 171.083 became effective on July 1, 1997, well before the statute of limitations expired for the charged

offense.¹ See 1997 Nev. Stat., ch. 248, § 1, at 890; id. § 5, at 891. Accordingly, Peck's prosecution was not constitutionally infirm.

Fourth, Peck argues that the district court should have considered his proper person petition for a writ of habeas corpus because of his strained relationship with counsel. We discern no error.

Fifth, Peck complains that his waiver of his right to counsel under Faretta v. California, 422 U.S. 806 (1975), was not unequivocal as he was compelled to forgo that right due to his strained relationship with counsel. The record shows, however, that the district court conducted a commendably thorough canvass, including exploring the nature of Peck's displeasure with counsel, and appointed counsel to advise Peck during trial. See O'Neill v. State, 123 Nev. 9, 17, 153 P.3d 38, 43-44 (2007); Graves v. State, 112 Nev. 118, 124, 912 P.3d 234, 237-38 (1996). Moreover, despite Peck's displeasure with counsel, he allowed stand-by counsel to examine most of the witnesses and present opening statement and closing argument. Therefore, we conclude that this claim lacks merit.

Sixth, Peck argues that his motion to recuse the trial judge based on bias was erroneously denied because the trial judge had presided over the murder trial of Peck's brother, who testified at Peck's trial. Having reviewed the record, we conclude that Peck failed to show that the trial judge should have been removed or any indication of bias. See NRS 1.230(2)(c).

¹An indictment for sexual assault "must be found, or an information or complaint filed within 4 years after the commission of the offense." NRS 171.085.

Seventh, Peck contends that the State failed to collect and preserve exculpatory evidence—the victim’s pubic hairs and fingerprints and a boot print found at the crime scene. Other than asserting a general claim of prejudice, Peck fails to show that the challenged evidence was material or that the State acted in such a manner as to warrant reversal of his conviction. See Randolph v. State, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001); Daniels v. State, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998).

Eighth, Peck asserts that the victim’s pretrial voice identification of him was unduly suggestive because the State requested her attendance at a pretrial hearing where she heard Peck speak and then testified at trial that she recognized his voice, despite the 15 years that had elapsed since the offense. Even assuming error, see generally Wright v. State, 106 Nev. 647, 650, 799 P.2d 548, 550 (1990) (providing that exclusion of pretrial identification evidence (police lineup) is warranted if procedures are unnecessarily suggestive such that identification is unreliable), we discern no prejudice considering the evidence establishing Peck’s guilt.

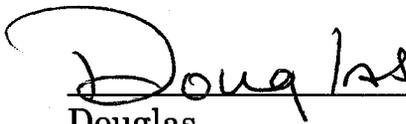
Ninth, Peck contends that the prosecutor committed misconduct by: (1) advising the jury during voir dire that the State did not have to prove Peck’s guilt beyond any doubt or to an absolute certainty, (2) arguing that Peck’s alibi defense “failed miserably,” and (3) expressing a personal opinion about the evidence. Because Peck failed to object to any of the challenged comments, we review for plain error affecting his substantial rights. Valdez v. State, 124 Nev. ___, ___, 196 P.3d 465, 477 (2008). Because none of the challenged comments were improper, Peck failed to show plain error.

Tenth, we reject Peck's argument that cumulative error warrants reversal of his conviction. See Rose v. State, 123 Nev. 194, 211, 163 P.3d 408, 419 (2007).

Having considered Peck's contentions and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Brent T. Adams, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 05-11-2010:10:58:27
Clerk Accepted: 05-11-2010:10:59:26
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Order Affirming
Filed By: Michelle Purdy

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The following people were served electronically:

KARLA BUTKO, ESQ. for FRANK PECK
GARY HATLESTAD, ESQ. for STATE OF NEVADA

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BRUCE HAHN, ESQ.
DAVID CLIFTON, ESQ.
STATE OF NEVADA
FRANK PECK

C206-2580

D4

FILED

Electronically
06-09-2010:02:04:12 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1533120

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54168

FILED

MAY 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingenda*
CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of sexual assault. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. Appellant Frank Milford Peck challenges his conviction on ten grounds, none of which warrant relief.

First, Peck argues that insufficient evidence supports his conviction. The evidence shows that although the victim could not identify Peck as her assailant, she provided a general physical description matching Peck's appearance. And Peck's DNA was found on matter collected from the victim during a medical examination performed after the sexual assault. Despite Peck's challenge to the DNA evidence as confusing and suspect, the inability of the victim to identify him, and the lack of other physical evidence, considering all the evidence in the light most favorable to the prosecution, we conclude that a rational jury could find him guilty of the charged offense beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

Second, Peck contends that unreasonable governmental delay in arresting and prosecuting him violated his Fifth Amendment and

10-11887
V8-1531

speedy trial rights. As to the pre-indictment delay, we conclude that he failed to show with adequate specificity any prejudice from the delay or that the State intentionally delayed filing a complaint to gain a tactical advantage. See Wyman v. State, 125 Nev. ___, ___, 217 P.3d 572, 577-78 (2009). As to the speedy trial claim, we conclude that it similarly lacks merit. Peck was indicted on November 8, 2006, and shortly thereafter waived his right to a speedy trial. Trial commenced on May 6, 2009. During that period, several defense-related delays occurred, including a five-month continuance, withdrawal of counsel, Peck's removal of another counsel and motion to represent himself, and a motion to recuse the trial judge. Based on the record, we conclude that Peck failed to demonstrate a violation of his speedy trial rights. See Barker v. Wingo, 407 U.S. 514, 515 (1972); NRS 178.556; Furbay v. State, 116 Nev. 481, 485, 998 P.2d 553, 555-56 (2000).

Third, Peck asserts that the application of NRS 171.083, extending the statute of limitations for sexual assault, violated the Ex Post Facto Clause. "Before the statute of limitations for a criminal offense expires, a legislature may amend the statute and extend the limitations period without violating the ex post facto clause." Murphy v. State, 110 Nev. 194, 199, 871 P.2d 916, 919 (1994), overruled on other grounds by State v. District Court, 114 Nev. 739, 964 P.2d 48 (1998); State v. Merolla, 100 Nev. 461, 464, 686 P.2d 244, 246 (1984). Here, the sexual assault occurred on August 9, 1994. NRS 171.083 became effective on July 1, 1997, well before the statute of limitations expired for the charged

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Fourth, Peck argues that the district court should have considered his proper person petition for a writ of habeas corpus because of his strained relationship with counsel. We discern no error.

Fifth, Peck complains that his waiver of his right to counsel under Faretta v. California, 422 U.S. 806 (1975), was not unequivocal as he was compelled to forgo that right due to his strained relationship with counsel. The record shows, however, that the district court conducted a commendably thorough canvass, including exploring the nature of Peck's displeasure with counsel, and appointed counsel to advise Peck during trial. See O'Neill v. State, 123 Nev. 9, 17, 153 P.3d 38, 43-44 (2007); Graves v. State, 112 Nev. 118, 124, 912 P.3d 234, 237-38 (1996). Moreover, despite Peck's displeasure with counsel, he allowed stand-by counsel to examine most of the witnesses and present opening statement and closing argument. Therefore, we conclude that this claim lacks merit.

Sixth, Peck argues that his motion to recuse the trial judge based on bias was erroneously denied because the trial judge had presided over the murder trial of Peck's brother, who testified at Peck's trial. Having reviewed the record, we conclude that Peck failed to show that the trial judge should have been removed or any indication of bias. See NRS 1.230(2)(c).

¹An indictment for sexual assault "must be found, or an information or complaint filed within 4 years after the commission of the offense." NRS 171.085.

Seventh, Peck contends that the State failed to collect and preserve exculpatory evidence—the victim’s pubic hairs and fingerprints and a boot print found at the crime scene. Other than asserting a general claim of prejudice, Peck fails to show that the challenged evidence was material or that the State acted in such a manner as to warrant reversal of his conviction. See Randolph v. State, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001); Daniels v. State, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998).

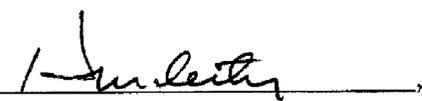
Eighth, Peck asserts that the victim’s pretrial voice identification of him was unduly suggestive because the State requested her attendance at a pretrial hearing where she heard Peck speak and then testified at trial that she recognized his voice, despite the 15 years that had elapsed since the offense. Even assuming error, see generally Wright v. State, 106 Nev. 647, 650, 799 P.2d 548, 550 (1990) (providing that exclusion of pretrial identification evidence (police lineup) is warranted if procedures are unnecessarily suggestive such that identification is unreliable), we discern no prejudice considering the evidence establishing Peck’s guilt.

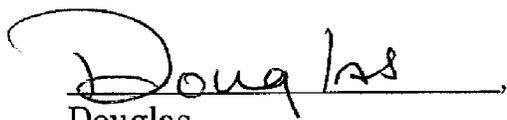
Ninth, Peck contends that the prosecutor committed misconduct by: (1) advising the jury during voir dire that the State did not have to prove Peck’s guilt beyond any doubt or to an absolute certainty, (2) arguing that Peck’s alibi defense “failed miserably,” and (3) expressing a personal opinion about the evidence. Because Peck failed to object to any of the challenged comments, we review for plain error affecting his substantial rights. Valdez v. State, 124 Nev. ___, ___, 196 P.3d 465, 477 (2008). Because none of the challenged comments were improper, Peck failed to show plain error.

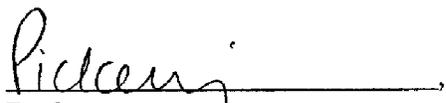
Tenth, we reject Peck's argument that cumulative error warrants reversal of his conviction. See Rose v. State, 123 Nev. 194, 211, 163 P.3d 408, 419 (2007).

Having considered Peck's contentions and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Brent T. Adams, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

STATE COURT STATE OF CALIFORNIA
CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: June 2, 2010
A. Ingersoll

CR06-2580
De

FILED
Electronically
06-09-2010:02:04:12 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1533120

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 54168

District Court Case No. CR062580

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 7th day of May, 2010.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 2nd day of June, 2010.

Tracie Lindeman, Supreme Court Clerk

By: A. Ingersoll
Deputy Clerk



CR06-2580
Dp

FILED

Electronically
06-09-2010:02:04:12 PM
Howard W. Conyers
Clerk of the Court
Transaction # 1533120

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 54168

District Court Case No. CR062580

REMITTITUR

TO: Howard W. Conyers, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: June 2, 2010

Tracie Lindeman, Clerk of Court

By: A. Ingersoll
Deputy Clerk

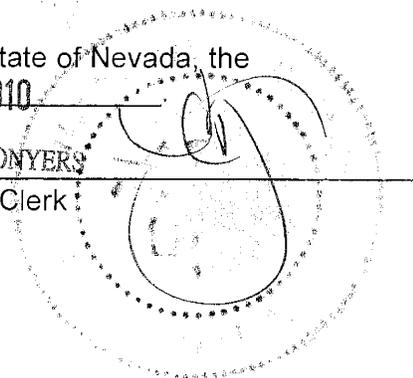
cc (without enclosures):

Hon. Brent T. Adams, District Judge
Attorney General/Carson City
Washoe County District Attorney
Karla K. Butko

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN 9 2010

HOWARD W. CONYERS
District Court Clerk



V8.1538

15-12970

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 06-09-2010:14:04:12
Clerk Accepted: 06-09-2010:14:05:14
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Order Affirming
Supreme Ct Clk's Cert &Judg
Supreme Court Remittitur
Filed By: Michelle Purdy

You may review this filing by clicking on the following link to take you to your cases.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

KARLA BUTKO, ESQ. for FRANK PECK
GARY HATLESTAD, ESQ. for STATE OF NEVADA
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

BRUCE HAHN, ESQ.
DAVID CLIFTON, ESQ.
STATE OF NEVADA
FRANK PECK

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 01-25-2012:06:51:20
Clerk Accepted: 01-25-2012:08:22:08
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Ex-Parte Mtn
Filed By: MARY LOU WILSON, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

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FRANK PECK 57106

FILED

HDSP Box 650

Indian Springs, NV. 89070

2012 JUN -5 PM 2:14

Petitioner

JOEY HASTINGS
CLERK OF THE COURT
BY [Signature] DEPUTY

In the Second Judicial District Court of the State of Nevada
In and for the County of Washoe

FRANK PECK,

CASE No. CR-06-2580

Petitioner,

Dept No. 6

vs.

The State of Nevada,

Respondent.

Motion for Telephonic hearing in regards to
Motion for Substitute Counsel

Comes Now, the Petitioner, FRANK M. PECK pro.se
hereinafter Mr. Peck with his Motion for Telephonic
hearing regarding his Motion for Substitute Counsel.

This Motion is made and based upon all papers and
pleadings on file in this case as well as the attached
Points and Authorities and Affidavit of Mr. Peck.

Dated this 28th day of May 2012.

[Signature of Frank M. Peck]

Frank M. Peck

Petitioner v8.154f

CR06-2580 DC-9900035805-001
STATE VS FRANK MILFORD PECK 4 Pages
District Court 06/05/2012 02:14 PM
Washoe County 2490
NVC ASMTTU

Points And Authorities

Pursuant to the 14th Amendment to the United States Constitution. Due Process requires that Mr. Peck be afforded an opportunity to be heard.

In accordance with Supreme Court rule 46 and Washoe District Court rule 23. The court in its discretion may hear a party in open court although the party is represented by counsel.

Conclusion

Therefore, under the notion of fundamental fairness and Due Process requirements of the USCA Amendment 14. Mr. PECK respectfully requests to be present via telephonic hearing regarding his Motion for Substitute Counsel.

Dated this 28th day of May 2012.

Respectfully Submitted

Frank M. Peck

Frank M. Peck

Petitioner, pro se

STATE OF NEVADA SS
County of Clark AFFIDAVIT OF Frank M. Peck

I Frank M. Peck do hereby swear under penalty of perjury that:

1. I AM the Petitioner in case NO CR-06-P-2580.

2. All assertions in the attached Motion for telephonic hearing in regards to Motion for Substitute Counsel are true based upon personal knowledge and I am competent to testify to all matters contained therein.

3. I bring this motion in good faith and for no improper reason.

Dated this 28th day of 2012 MAY 2012.

Signed under penalty of perjury NRS 208.165
AND 28 USC 1746.

Frank M. Peck
Frank Peck 57106
HDSP Box 650
Indian Springs, NV, 89070
Petitioner, pro se.

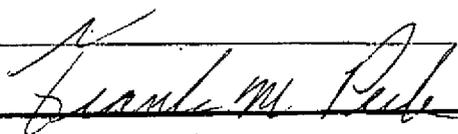
Certificate of Service AND Affirmation

Pursuant to NRS 239 B.030 the Attached Motion for telephonic hearing regarding Motion for Substitute Counsel does not contain social security numbers of any person and a true and correct copy was mailed this date to:

Mary Lou Wilson Esq.
333 Marsh Ave
Reno NV 89509

Dated and done this 28th day of May 2012.

Signed under penalty of perjury NRS 208.165
AND 28 USC 1746.


Frank M. Peck 57106
HDSP Box 650
Indian Springs NV 89070
Petitioner, pro se.

FILED

Electronically
09-18-2012:01:34:33 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3224372

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
BRENT T. ADAMS, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 61406

CR06-2580

6

FILED

SEP 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION

This is a proper person petition for a writ of mandamus. Petitioner seeks an order from this court directing the district court to grant his motion to withdraw counsel. We have reviewed the documents submitted in this matter, and without deciding upon the merits of any claims raised therein, we decline to exercise original jurisdiction in this matter. See NRS 34.160. Accordingly, we

ORDER the petition DENIED.

[Signature], J.
Douglas

[Signature], J.
Gibbons

[Signature], J.
Parraguirre

28-2580-4

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General/Carson City
Washoe County District Attorney
✓ Washoe District Court Clerk

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 09-18-2012:13:34:33
Clerk Accepted: 09-18-2012:13:42:34
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Order Denying
Filed By: Lori Matheus

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DIV. OF PAROLE & PROBATION
BRUCE HAHN, ESQ. for STATE OF NEVADA
GARY HATLESTAD, ESQ. for STATE OF NEVADA
MARY LOU WILSON, ESQ. for FRANK PECK

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

STATE OF NEVADA
FRANK PECK
DAVID CLIFTON, ESQ.

FILED

Electronically

10-02-2012:04:01:29 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3256400

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

FRANK MILFORD PECK,
Petitioner,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 61738
District Court Case No. CR062580

CR06-2580
De

RECEIPT FOR DOCUMENTS

TO: Frank Milford Peck
Washoe County District Attorney/Terrence P. McCarthy
Joey Orduna Hastings, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

09/20/2012 Filing Fee waived. Criminal.

09/20/2012 Filed Proper Person Petition for Writ of Habeas Corpus.

DATE: September 20, 2012

Tracie Lindeman, Clerk of Court
lh

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 10-02-2012:16:01:29
Clerk Accepted: 10-02-2012:16:03:50
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Receipt for Doc
Filed By: Annie Smith

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BRUCE HAHN, ESQ. for STATE OF NEVADA
GARY HATLESTAD, ESQ. for STATE OF NEVADA
MARY LOU WILSON, ESQ. for FRANK PECK

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STATE OF NEVADA
FRANK PECK
DAVID CLIFTON, ESQ.

FILED

Electronically

10-15-2012:04:21:30 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3283727

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE; AND THE
HONORABLE BRENT T. ADAMS, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

Supreme Court No. 61406

District Court Case No. CR062580

CR06-2580

NOTICE IN LIEU OF REMITTITUR

TO THE ABOVE-NAMED PARTIES:

The decision and Order of the court in this matter having been entered on September 13th, 2012, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: October 09, 2012

Tracie Lindeman, Clerk of Court

By: Tiffany Maccagno
Deputy Clerk

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General/Carson City
Washoe County District Attorney
Joey Orduna Hastings, District Court Clerk ✓

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 10-15-2012:16:21:30
Clerk Accepted: 10-15-2012:16:23:08
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Ct Not/Lieu/Remittitur
Filed By: Lori Matheus

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DIV. OF PAROLE & PROBATION
BRUCE HAHN, ESQ. for STATE OF NEVADA
GARY HATLESTAD, ESQ. for STATE OF NEVADA
MARY LOU WILSON, ESQ. for FRANK PECK

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STATE OF NEVADA
FRANK PECK
DAVID CLIFTON, ESQ.

FILED

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11-15-2012:04:44:57 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3349278

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 61406

FRANK MILFORD PECK,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
BRENT T. ADAMS, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

CR06-2580

FILED

NOV 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Orduna*
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

Douglas, J.
Douglas

Gibbons, J.
Gibbons

Parraguirre, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

FILED

Electronically

11-15-2012:04:45:41 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3349286

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 61406

FRANK MILFORD PECK,
Petitioner,
vs.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
BRENT T. ADAMS, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

CR06-2580

FILED

NOV 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Orduna*
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.

Douglas, J.
Douglas

Gibbons, J.
Gibbons

Parraguirre, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

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A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 11-15-2012:16:45:41
Clerk Accepted: 11-15-2012:16:48:33
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Order Denying
Filed By: Lori Matheus

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STATE OF NEVADA
FRANK PECK
DAVID CLIFTON, ESQ.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
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A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 11-15-2012:16:44:57
Clerk Accepted: 11-15-2012:16:48:33
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Order Denying
Filed By: Lori Matheus

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MARY LOU WILSON, ESQ. for FRANK PECK

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STATE OF NEVADA
FRANK PECK
DAVID CLIFTON, ESQ.

FILED

Electronically

02-27-2013:08:47:10 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3557526

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

FRANK MILFORD PECK,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE; AND THE
HONORABLE BRENT T. ADAMS, DISTRICT
JUDGE,

Respondents,

and

THE STATE OF NEVADA,
Real Party in Interest.

Supreme Court No. 62678

District Court Case No. CR062580

CR06-2580

DLP

RECEIPT FOR DOCUMENTS

TO: Frank Milford Peck
Washoe County District Attorney/Terrence P. McCarthy
Hon. Brent T. Adams, District Judge
Joey Orduna Hastings, District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

02/25/2013 Filing Fee waived. Criminal.

02/25/2013 Filed Proper Person Petition for Writ of Mandamus.

DATE: February 25, 2013

Tracie Lindeman, Clerk of Court
lh

V8.1556

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 02-27-2013:08:47:10
Clerk Accepted: 02-27-2013:08:49:21
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Receipt for Doc
Filed By: Deputy Clerk ASmith

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-

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STATE OF NEVADA
FRANK PECK
DAVID CLIFTON, ESQ.

FILED

Electronically

04-29-2013:09:19:06 AM

John D. Hastings

Clerk of the Court

Transaction # 3690164

No. 62678

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF

WASHOE; AND THE HONORABLE

BRENT T. ADAMS, DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

Circle 2580
De FILED

APR 10 2013

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT

BY: *Angela*
DEPUTY CLERK

ORDER DENYING PETITION

This is a proper person petition for an "alternative writ of mandamus first amendment petition." Petitioner appears to challenge the validity of his judgment of conviction. We have reviewed the documents submitted in this matter, and without deciding upon the merits of any claims raised therein, we decline to exercise original jurisdiction in this matter. A challenge to the validity of the judgment of conviction must be raised in a post-conviction petition for a writ of habeas corpus filed in the district court in the first instance. NRS 34.724(2)(b); NRS 34.738(1).¹ Accordingly, we

ORDER the petition DENIED.

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Cherry, J.
Cherry

¹We express no opinion as to whether petitioner could meet the procedural requirements of NRS chapter 34.

RECEIVED

APR 17 2013

V8-155802

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 04-29-2013:09:19:06
Clerk Accepted: 04-29-2013:09:21:31
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Order Denying
Filed By: Deputy Clerk ASmith

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GARY HATLESTAD, ESQ. for STATE OF NEVADA
MARY LOU WILSON, ESQ. for FRANK PECK

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STATE OF NEVADA
FRANK PECK
DAVID CLIFTON, ESQ.

FILED

Electronically

10-21-2013:01:19:58 PM

F. J. Nevelo Hastings

Clerk of the Court

Transaction # 4080272

No. 63974

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,

vs.

DWIGHT NEVEN, WARDEN; AND THE
STATE OF NEVADA,
Respondent.

FILED

C206 P2580
D6
OCT 15 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order denying a motion for reconsideration. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On September 23, 2013, this court received a proper person request to voluntarily dismiss this appeal. Good cause appearing, we direct the clerk of this court to file the September 23, 2013, document, and we grant the request. Accordingly, we

ORDER this appeal DISMISSED.

J. Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Cherry, J.
Cherry

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 10-21-2013:13:19:58
Clerk Accepted: 10-21-2013:13:20:51
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Ct Ord Dismis Appeal
Filed By: Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

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MARY LOU WILSON, ESQ. for FRANK PECK
BRUCE HAHN, ESQ. for STATE OF NEVADA
DIV. OF PAROLE & PROBATION
GARY HATLESTAD, ESQ. for STATE OF
NEVADA

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STATE OF NEVADA
FRANK PECK
DAVID CLIFTON, ESQ.

DC-9900050730-016
CP06-2580
STATE VS. FRANK MILFORD PECK 7 Pages
District Court 11/01/2013 04:01 PM
Washoe County
NV057
nnc

Code 2610.
Frank M. Peck 57106
HOSP Box 650
Indian Springs, NV, 89070
Petitioner, pro se.

FILED
2013 NOV -1 PM 4:01
CLERK OF THE COURT
BY *[Signature]*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK CASE NO. CR-06-P-2580

Petitioner DEPT. No. 6

vs.

WARDEN NDOC,
The State of Nevada,
Respondent.

JUDICIAL NOTICE OF ADJUDICATIVE FACTS

Comes Now, the Petitioner, Frank M. Peck
pro se hereinafter Mr. Peck with his Judicial
Notice of Adjudicative Facts.

This Notice is made and based upon all
papers and pleadings on file in this case as
well as the attached points and authorities,
District Court Rules and affidavit of Mr. Peck.

Dated 10/16/13

[Signature]
FRANK M. PECK Pet, pro se.
V8.1563

Points and Authorities

Federal rules of evidence Rule 201. (a), (b-2), (c), (d), (e), (f), (g) is not inconsistent with the Nevada court rules of evidence as such this court may take judicial notice whether requested or not. rule 201. (c)(d). NRS 47.130 et seq.

ADJUDICATIVE FACTS

1. The Polymerase Chain Reaction (PCR) is not itself a method of DNA typing, but a technique of "sample preparation", United States v. Ewell, 252 F. Supp. 2d at 107 (2002)
2. In 1992 the National Academy of Sciences, National Research Councils (NRC Report) (DNA Technology in Forensic Science) at Page 70 lines 9, 10 and 11 "acknowledges", the theory of PCR analysis, even though it is the analysis of synthetic DNA, as opposed to the natural sample. (Ex-1).
3. The DISBO test is a hybrid of the PCR and RFLP methods. It detects fragment length polymorphisms once the DNA fragment has been amplified through the PCR procedure. People v. SHRECK, 22 P.3d at 71 (2001).

4. Synthetic DNA preparations are eligible for patents because their purified state is different from the naturally occurring compound. Intervet v. Merial, 617 F.3d at 1293 (2010).

5. Synthetic composite DNA (cDNA) is patent eligible because it is NOT naturally occurring. Association for Molecular Pathology v. Myriad Genetics — U.S. — June 13, 2013 Decided.

6. Under the "doctrine of equivalents", replicated cDNA is the substantial equivalent of reverse transcript cDNA. Genentech, Inc v. Boehringer Mannheim Corp U.S.D.C. Massachusetts 47 F.Supp 2d 91; 1999 U.S. Dist LEXIS 5871 at approx Headnote #11.

7. The Polymerase Chain Reaction is most fairly and most accurately presented as "DNA replication" rather than the misleading term "Amplification" in: State of Arizona v. Bobby Lee Tankersley, 956 P.2d 489 p7 and 490.

8. The D1S80 test as well as DQA1, LDLR, GYPA, HBGG, D7S8 and GC were all used and "subjected to PCR amplification" in case no. CR96-2687. See attached forensic report # L2807-96-4 dated 5/06/97 signed by Analyst Jeffrey Riolo. (EX-5).

9. "DNA analysis" is defined broadly to mean "the process through which deoxy-ribonucleic acid (DNA) in a human biological specimen" is analyzed and "compared with DNA from another biological specimen" for identification purposes. See: National Academy of Sciences, National Research Council (1996 NRC Report) (The Evaluation of Forensic DNA Evidence) at 6-5 footnote 12. (EX-2).

10. Defendant's Romero and Riolo committed "intrinsic fraud". See attached (REPORT OF OBSERVATIONS) of DNA expert Mehal B. Anjaria, Founder and Chief Consultant MBA DNA Consulting. (EX-3).

11. The foregoing facts establish that the product of the PCR method is not dissimilar to the product of a 3-D printer.

Dated this 2nd day of September 2013.

Respectfully submitted

Frank Peck *FP*
Frank M. Peck Pltff, pro se.

Affidavit of Frank Milford Peck

I Frank M. Peck do hereby swear under penalty of perjury that:

1. I am the Plaintiff in CV13-00580.
2. All assertions in the attached Judicial Notice of Adjudicative Facts are true based on personal knowledge and information believed to be true and I am competent to testify to all matters herein.
3. I bring this notice in good faith and for no improper reason.
4. I first learned of the facts of fraud from MBA DNA letter dated May 12, 2012 page (2) last paragraph.

Dated September 2, 2013.

Signed under penalty of perjury NRS 208.165, 28 USC 1746.

Frank Peck *FP*
Frank M. Peck Pltff, pro se.

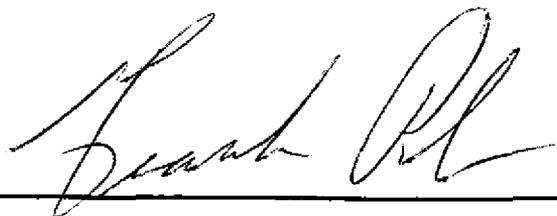
Certificate of electronic service and affirmation

I Frank M. Peck hereby certify that on this date
A true and correct copy of the attached
Judicial Notice of Adjudicative facts were
mailed to the Clerk of the 2nd Jud Dist
Court 75 Court St. Reno, NV. 89501 for
electronic service on the Respondents
Attorney Terrance Mc Carthy ESQ pursuant
to NEFR rule 9 (e).

Dated 10-16-13

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.

Contains no social security numbers of
any person NRS 239 B 030.



Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner, pro se.

Index of Exhibits

Exhibit #1

PAGES 1

Exhibit Description: Page 70. (1992) NRC Report

Exhibit #2

PAGES 1

Exhibit Description: Page 6-5 (1996) NRC Report

Exhibit #3

PAGES 4

Exhibit Description: MBA DNA July 27, 2013
Report of Observations

Exhibit #4

PAGES 3

Exhibit Description: MBA DNA May 12, 2012
Facts of fraud

Exhibit #5

PAGES 1

Exhibit Description: Forensic Report L2807-96-4
Dated 5-6-97 Signed by Jeffrey Riolo

Certification

All exhibits are authentic copies of originals.
Signed under penalty of perjury NRS 208.165, 28 USC 1746

Frank Peck
Frank M. Peck V8.1569

CR06-2580
STATE VS. FRANK MILFORD BECK 2 Pages
District Court Washoe County
11/01/2013 04:01 PM
2610
VNET

Exhibit 1

Exhibit 1

loci. It generates a large quantity of relatively pure product that can be analyzed with much greater precision than Southern blots, even down to the nucleotide level. At the same time, it poses even more serious issues of proficiency, control, and technology transfer than RFLP typing.

In summary, it is well established that one can greatly amplify a locus with authenticity and that one can reliably detect alleles or sequence variation at the amplified locus with any of a number of techniques. PCR analysis is extremely powerful in medical technology, but it has not yet achieved full acceptance in the forensic setting. The theory of PCR analysis, even though it is the analysis of synthetic DNA, as opposed to the natural sample, is scientifically accepted and has been accepted by a number of courts. However, most forensic laboratories have invested their energy in development of RFLP technology and have left the development of forensic PCR technology to a few other laboratories. Thus, there is no broad base of experience in the use of the technique in identity testing.

Forensic PCR-based testing is now limited for the most part to analysis of genetic variation at the DQ α locus in the HLA complex. Potential ambiguities in typing results cannot yet be checked by studying a number of other loci in the same DNA sample. That shortcoming will be rectified with the addition of new PCR markers for forensic analysis. However, it is clear that analysis of the DQ α locus with PCR can often provide useful information during the investigative phase in the forensic setting.

In general, further experience should be gained with respect to PCR in identity testing. Information on the extent of the contamination problem in PCR analysis and the differential amplification of mixed samples needs to be further developed and published. A great deal of this information can be obtained when a number of polymorphic systems are available for PCR analysis. Ambiguous results obtained with a number of polymorphic markers will signal contamination or mixtures of DNA in a sample.

Quantification of PCR results needs to be explored, to make the results more reliable. Laboratories that gain experience with PCR should determine the relationship between cycle number and percentage of contaminating DNA easily detected for each system used. Control primers that amplify small amounts of DNA reliably and robustly need to be added to test amplifications. In general, information derived from new polymorphic loci under standardized conditions with easily quantifiable results or end points is needed. Considerable advances in the use of PCR in forensic analysis can be expected soon; the method has enormous promise.

NATIONAL COMMITTEE ON FORENSIC DNA TYPING

Forensic DNA typing is advancing rapidly. RFLP-based typing methods continue to be refined and improved, PCR typing methods are being

Exhibit 1

CR06-2580
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 11/01/2013 04:01 PM
Washoe County 2510
FX> ivact

Exhibit 2

Exhibit 2

side to identify all statements in an opposing expert's opinion that are disputed and to explain the basis for the disagreement. Controverted issues can be further narrowed at a pretrial conference (see Schwarzer 1994). Procedures such as these might, for instance, persuade statistical experts to furnish a best estimate in addition to a range of estimates so that the jury will have a better sense of the degree of disagreement between the two sides. Even if an expert responds that not enough is known as yet to make a statistically valid estimate, the court will have obtained additional information.

Having more information may aid a court in ruling on challenges to the admissibility of expert testimony and may enable it to make more effective plans for how the expert testimony should be handled at trial. In some cases, judges have departed from the traditional order of presenting testimony to enable opposing experts to testify consecutively rather than waiting for the prosecution to conclude its case. In appropriate circumstances, courts have allowed an expert's direct testimony to be presented in written or other recorded form rather than in person.

General Acceptance and Sound Methodology

The technology used to examine VNTRs, STRs, or other loci must satisfy the standard required of scientific evidence. In the United States, two major standards exist for deciding whether scientific findings will be admitted into evidence: the "general-acceptance" test and the "sound-methodology" standard. In addition, some jurisdictions have adopted special statutes that provide for the admissibility of genetic testing in general or of DNA analyses in particular in criminal or civil cases.¹² If a timely objection is raised, the judge must determine whether the applicable standard has been met.

The general-acceptance standard was first articulated in an influential 1923 federal case, *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). In jurisdictions that follow *Frye*, the proponent of the scientific evidence must establish that the underlying theory and methodology are generally accepted within the relevant portions of the scientific community. The biological and technological principles underlying the forensic methods for characterizing DNA variations have generated little controversy in court.¹³ Indeed, the 1992 NRC report proposed that courts

¹² Statutes applicable to criminal cases include 11 Del. Code § 3515; Ind. Code § 37-4-13; 15 La. Stat. Ann. § 441.1; 10 Md. Code Ann. § 915; Minn. Stat. § 634.25; Tenn. Code Ann. § 24-7-117 (1993 Supp.); Va. Stat. § 19.2-270.5; NRC 1992, p 141-142. The Tennessee statute, for example, provides that "in any civil or criminal trial, hearing or proceeding, the results of DNA analysis . . . are admissible in evidence without antecedent expert testimony that DNA analysis provides a trustworthy and reliable method of identifying characteristics in an individual's genetic material upon a showing that the offered testimony meets the standards of admissibility set forth in the Tennessee Rules of Evidence" (Tenn. Code Ann. § 24-7-117[b][1]). ("DNA analysis" is defined broadly to mean "the process through which deoxyribonucleic acid (DNA) in a human biological specimen is analyzed and compared with DNA from another biological specimen for identification purposes" *Id.* at § 24-7-117(a). Some statutes explicitly identify a type of DNA analysis, e.g., 10 Md. Code Ann. § 915(b) ("an analysis that utilizes the restriction fragment length polymorphism analysis of DNA"). For discussions, see Moenssens, Starrs, Henderson and Inbau (1995, § 15.20) (surveying criminal and civil statutes); Kaye and Kanwischer (1988) (cataloging civil statutes); Liebeschuetz (1991); Jakubaitis (1991); O'Brien (1994).

¹³ For an unusual exception, see *Kelly v. State*, 792 S.W. 2d 579 (Tex. App. 1990) (admitting a VNTR profile match where the state produced five experts who were seriously challenged by only one defense expert, who said that "radioactive technology was too new to be generally accepted in the scientific community"), *aff'd*, 824 S.W. 2d 568 (Tex. Crim. App. 1992). Although the vast bulk of the cases finding general acceptance have come in the

PREPUBLICATION COPY

Definition
DNA ANALYSIS

EX-2

V8.1573

151 APPELLATE DECISION



CR06-2580 DC-9900050730-019
STATE VS. FRANK MILFORD PECK 5 Pages
District Court 11/01/2019 04:01 PM
Washoe County 2610
EVR IVnet

Exhibit 3

Exhibit 3

MBA DNA CONSULTING, LLC



LEGAL AND CONFIDENTIAL

July 27, 2013

Frank M. Peck, 57106
HDSP Box 650
Indian Springs, NV 89070

REPORT OF OBSERVATIONS

Frank Peck v. Warden, N.D.O.C; and State of Nevada
Case No: CR06P2580

In regards to review of DNA testing discovery from the Washoe County Sheriff's Office on the following cases:

Sparks Police Department Case # 94-9292
Laboratory Number L2145-94

And,

Reno Police Department Case # 257920-96
Laboratory Number L2807-96

Sparks Police Department Case # 94-9292 - Laboratory Number L2145-94

Renee Romero sampled 75% of one of two vaginal swabs from Candace Inman for DNA testing.

The "extraction description" worksheet describes that an organic/differential extraction was performed on the vaginal swab, however no information was provided in the discovery regarding lot numbers of chemicals, duration and temperature of extraction, and volume of extracted DNA recovered. It is noted that a "Blank" was included in the extraction.

The "DNA yield" worksheet describes the approximate yield of DNA recovered from the epithelial and sperm fractions of the extracted vaginal swab, however no information on the method of quantitation or notes regarding the quantitation step that resulted in the approximate yield data was provided in the discovery.

The "extraction description" worksheet for the reference sample from Inman does not list a "Blank", however a "Blank" for this extraction set is noted on the "DNA yield" form and on the amplification form. The worksheet indicates that an organic extraction was performed, however no information was provided in the discovery regarding lot numbers of chemicals, duration and temperature of extraction, and volume of extracted DNA recovered.

The "DNA yield" worksheet describes the approximate yield of DNA recovered from the reference sample from Inman, however no information on the method of quantitation or notes regarding the quantitation step that resulted in the approximate yield data was provided in the discovery.

Frank Peck v. Warden, N.D.O.C; and State of Nevada

Jeffrey Riolo analyzed the convicted offender sample NN03100 from Frank Peck after a CODIS hit to the sperm fraction profile of the vaginal swab from Candace Inman.

The "extraction description" worksheet for sample NN03100 notes that a Qiagen extraction procedure was used, however no information was provided in the discovery regarding lot numbers of chemicals, duration and temperature of extraction, and volume of extracted DNA recovered. A "Blank" is not listed on the "extraction description" worksheet. An approximate yield of DNA for sample NN03100 is listed on the amplification worksheet, however no information on the method of quantitation or notes regarding the quantitation step that resulted in the approximate yield data was provided in the discovery.

A "Ref. Blk" (Blank) is listed on the amplification sheet for sample NN03100, though it was not listed on the "extraction description".

Renee Romero analyzed gauze from sampling of stains on skin from Candace Inman as well as a reference sample from Frank Peck.

The "extraction description" worksheet for the extraction of the stains on skin gauze indicates that a Qiagen extraction method was used however no information was provided in the discovery regarding lot numbers of chemicals, duration and temperature of extraction, and volume of extracted DNA recovered. A Blank was included on the "extraction description" worksheet.

The "extraction description" worksheet for the reference sample from Frank Peck indicates that a Qiagen extraction method was used however no information was provided in the discovery regarding lot numbers of chemicals, duration and temperature of extraction, and volume of extracted DNA recovered. A Blank was included on the "extraction description" worksheet.

Real-time PCR data was provided to substantiate the quantitation of DNA recovered from the stains on skin gauze and the reference sample from Frank Peck.

After the amplification on 12-28-04, DNA typing of the stain on skin gauze was attempted with no results, despite a sufficient quantity of human DNA being previously detected. The amplification was repeated on 1-23-05 using more input DNA, and DNA typing was successful.

The reference sample from Frank Peck was amplified on 1-13-05. On the DNA typing data (electropherograms), the negative amplification control is correctly labeled "amp-11305" however the positive amplification control is labeled "amp+ 11205". The actual date of the amplification was 1-13-05 according to the amplification worksheet.

From the transcript of testimony from Jeffrey Riolo Friday, May 8, 2009:

Q: What type of examination or investigation did you do in that laboratory number in this case?

A: I looked at the DNA profile from Frank Peck

Q: Okay. Did you have that in your lab, to your knowledge, in 1996, when you started? The sample.

A: No, we did not.

Q: Did you have it, to your knowledge, in your lab in the year 2000 or 2001 when PCR was starting?

A: No.

Q: When did you receive at the lab that sample from Frank Peck, to your knowledge?

A: His DNA sample was received in the lab in March of 2002.

Frank Peck v. Warden, N.D.O.C; and State of Nevada

From the transcript of testimony from Renee Romero Monday, May 11, 2009:

Q: I guess what I'm getting at is that there had to have been some sort of contamination to implicate me in this case. In your mind at any point during your analysis with the controls that are in place now, you can't say definitively 100 percent that there wasn't contamination. You cannot say that.

A: I can say that the vaginal swab was not contaminated by a reference sample from Frank Peck, because we didn't have one in the lab. I can say it based on a lot of other things but it's not possible. We didn't have the sample.

Inspection of the chain of custody records verify that convicted offender sample NN03100 from Frank Peck was received in March 2002.

Evidence from another case involving Frank Peck, Reno Police Department Case # 257920-96 Laboratory Number L2807-96, was at the laboratory prior to March 2002.

Reno Police Department Case # 257920-96 - Laboratory Number L2807-96

A report dated 12-3-96 by Maria Fassett states that Item C-016965, a sexual assault kit from Leslie Nummer, was received from WCSO Evidence Section on 12/2/96. This item included a pair of panties on which Fassett states "semen was detected in a stain to the front crotch area of the panties. This stain was removed and will be retained in WCSO Evidence under control #19790."

A report by Jeffrey Riolo on May 6, 1997 concludes that "Frank Peck is consistent with being the dominant source of the DNA pattern obtained from the sperm fraction of the stain on the panties (P19790)."

According to chain of custody records, the stain from the panties (P19790) was apparently not returned to the agency until 9-27-11.

According to a report dated 3-14-97 by Criminalist Maria Fassett items including the following were received from the WCSO Evidence Section on 3-12-97:

Q08522: two vials of liquid blood obtained from Frank Peck
Q08523: sexual assault evidence kit obtained from Frank Peck

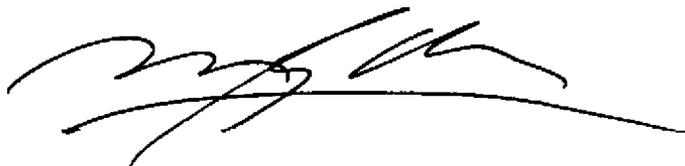
The report states "As per DA investigator, Mike Neville, the above-listed items were sent back without examination at this time."

Frank Peck v. Warden, N.D.O.C; and State of Nevada

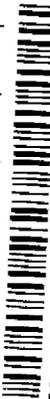
On April 24, 1997 Jeffrey Riolo processed a vial of blood from Frank M. Peck. Information on the blood tube included "Name: Peck, Frank M.", "Date: 4/21/97", and "Place: 911 Parr Blvd" The prepared bloodstain from the vial was packaged under P19920.

According to chain of custody records, P19920 (reference standards form Leslie Nummer, Tim Billings, and Frank Peck) was not returned to the agency until 9-27-11.

-There were no documents regarding QC issues (contamination logs, corrective actions, discrepancy reports, unexpected results, etc.) provided with the discovery for either of the DNA cases reviewed, and no written statement that none exist.

A handwritten signature in black ink, appearing to read 'Mehul B. Anjaria', with a long horizontal flourish extending to the right.

Mehul B. Anjaria, MS, D-ABC
Founder and Chief Consultant



CR06-2580 DC-S900050730-020
STATE VS. FRANK MILFORD PECK 4 Pages
District Court 11/01/2013 04:01 PM
Washoe County 2610
EX4

Exhibit 4

Exhibit 4

MBA DNA CONSULTING, LLC
Official Correspondence



LEGAL AND CONFIDENTIAL

May 12, 2012

Frank Peck, 57106
HDSP Box 650
Indian Springs, NV 89070

Frank,

Thank you for your recent letters regarding the issues with your attorneys. I understand your wishes to not share anything with them until this matter is resolved. I do not intend to generate written materials until I have seen the remaining discovery items. At that point, it would be an informal write up and then we can decide if it merits a formal report. I did previously share the chain of custody breakdown that I sent you with Mr. Whittaker.

I appreciate your patience during this process. It is a bit like looking for a needle in a haystack. The sad truth is that unfortunately it is possible to taint evidence without being detected. I will continue to do my best to review the materials I have and think through best strategies as to what to do next. Looking at recent letters, you have a number of questions that I'll try to address in this letter.

The last e-mail communication I had with Mr. Whittaker was roughly a month ago when I sent him a request for additional discovery.

-Semen is composed of seminal fluid and in some cases sperm cells. If a male has been vasectomized or has a medical issue that prevents sperm production, then his semen will not contain sperm cells. Acid Phosphatase (AP) is a test used to detect the presence of seminal fluid.

-Semen without sperm cells will still contain DNA, but in much less quantity than semen with sperm cells.

-Crime labs perform what is called a differential extraction on samples believed to contain semen. Any sperm cells are physically separated from any type of non-sperm cells. After a DNA analysis, you then have a sperm fraction (which will contain any DNA from sperm cells, and potentially a trace level of non-sperm DNA), and a non-sperm fraction (which contains DNA from any non-sperm cell type, again with the potential of some sperm DNA leaking through if a lot of sperm was present).

-If a vaginal swab is collected from a female who had intercourse with a vasectomized male, it is expected that any male DNA will actually be in the non-sperm fraction since no sperm cells are present in the semen. White blood cells and other bodily cells in the semen are the source of the DNA in this scenario. Since a vaginal swab many times has much more female DNA on it than male DNA, sometimes the male DNA from a vasectomized male is essentially "swamped out" and not detected. In this case, Y-STR (male specific DNA testing) can be used to filter out the female DNA to determine a profile of the male donor.

Beverly Hills: 433 North Camden Drive, Suite 600, Beverly Hills, CA 90210 (fax) 310-295-2161
Chicago: One Miracle Mile, 980 Michigan Avenue, Suite 1400, Chicago, IL 60611 (fax) 312-448-9170
MBADNACONSULTING.com (p) 310-801-1848

V8.1580

-Looking at Fassett's notes dated Aug 30, 1994 it looks like there were 2 vaginal smears 'micro: + sperm only 3 heads observed'. Typically only one of the 2 smears would be looked at. It also says 'motile sperm slide in kit'

-I think I shared with you earlier my thoughts on the utility of the 'motile sperm slide' and how often I see it being negative while a smear is positive. The motile sperm slide as I understand it is really just a quick and dirty screening. Since my experience is that the motile sperm slide carries little weight, there is no way for me to scientifically argue that since it was negative, then any sperm on the smear is questionable. The smear is simply a more comprehensive way to look for sperm cells.

-When Romero did the DNA testing on the vaginal swab in 2001, I don't see any mention of microscopy in her notes. While I don't think this is the best practice, it is actually common. The idea is that by looking at the slides you know that sperm are likely to be on the swab, and therefore a differential extraction should be conducted. If you get male DNA in a sperm fraction after a differential extraction, then it follows based on the technology that sperm was in fact present.

-It may be the best course of action to view the evidence packages themselves, but there again if someone was engaged in foul play, they likely wouldn't date and initial where they opened the evidence.

-I'm looking forward to receiving the information on the dates of entry into the CODIS database. That will allow us to determine the timing of events and determine if anything was out of order.

-The DNA testing on the Nummer case was conducted using a PCR-based technology. PCR is not a specific DNA testing methodology, it is simply a way to prepare DNA for testing. RFLP testing was the original DNA method and did not use PCR.

In the Nummer case a PCR-based method called 'PM+DQA1 and D1S80' was used. While there was a limited database for this technology, it was nowhere near as powerful as today's database. I do not believe that the DNA profiles in 1996 were entered into a database (pretty common). In 1998 a National CODIS database was created based on PCR-based 'STR' technology.

If your reference DNA profile was typed originally in PM+DQA1 and D1S80, that would have no bearing on the ability to match to the STR results in the Inham matter. The DNA testing in Inham was all STR based. Hopefully, the discovery will tell us when your sample was first typed for STR's and therefore available for database search.

-I also found it interesting that the lab kept the evidence from the 1996 case until 2011.

-On page 10 of 11 of my chain of custody breakdown, I'm not finding any info on exactly who "MAM" is. Presumably he/she is the lab property person that released the evidence to Reno PD.

-As far as to whether Fye was ever in the evidence locker...it's unlikely they had a sophisticated key card system, etc. to track every entry/exit.

-If you had a dried stain that you wanted to contaminate a piece of evidence with, you would not have to necessarily take a cutting from it. You could use something like a wet swab to do the transfer.

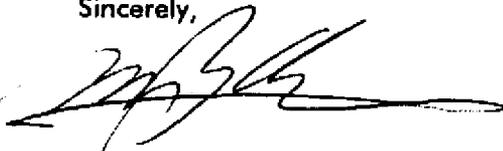
-In the PCR process, the new copies of DNA are made entirely from the building blocks (A,T,C,G) in the kit used to perform the PCR. The existing DNA in the sample is merely a template or guide to 'create' the DNA copies. I've included a basic article that I wrote a while back that will hopefully help you in understanding the process.

-From reviewing the chain of custody records, it looks like the panties and jeans from the Nummer case were at the crime lab up until 2011.

-Control #W020120 'sexual assault with blood' (Inman case) was examined by Fassett on 8-30-94. The vaginal swabs were removed from the kit and a dried bloodstain was prepared from the liquid blood vial. The vaginal swabs and bloodstain were packaged under Control # 'P18948'. It looks like this control number was released from the Laboratory to the Property section on 1-19-95. All other items including the empty blood vial and the vaginal smears were apparently placed back into the original packaging, control # 'W020120'. This was then returned to agency on the same day, 8-30-94.

Control #P18948 with the vaginal swabs was apparently in the possession of the lab until Romero checked it out for court on 4-23-09. Presumably the court still has this evidence?

Sincerely,



Mehul B. Anjaria, MS, D-ABC
Founder and Chief Consultant

CR06-2580 OC-9900050730-021
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 11/01/2013 04:01 PM
Washoe County 2610
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Exhibit 5

Exhibit 5

WASHOE COUNTY SHERIFF'S OFFICE
RICHARD KIRKLAND, SHERIFF
FORENSIC SCIENCE DIVISION
911 PARR BLVD.
RENO, NV 89512-1000

05/06/97

LABORATORY NUMBER: L2807-96-4
AGENCY: RENO P.D.
AGENCY CASE #: 257920-96
SUSPECT: PECK, FRANK M.
VICTIM: NUMMER, LESLIE
PERSON REQUESTING: J. FERGUSON
DATE OF SUBMISSION: 04/23/97
OFFENSE: SEXUAL ASSAULT

Received from WCSO EVIDENCE SECTION, on 04/24/97

The submitted items were identified as:

P19920 Reference standards from Leslie Nummer, Tim Billings and Frank Peck.
 P19790 C-016965: T1 Panties
 P19798 Item #6: T1 Jeans

RESULTS OF EXAMINATION:

DNA was isolated from the following items and subjected to PCR amplification:

SAMPLE	DQA1	LDLR	GYPA	HBGG	D7S8	GC	D1S80
Leslie Nummer	2,4,1	AA	AB	AB	AA	AC	24,24
Tim Billings	2,3	AA	AA	AB	AB	AC	18,24
Frank Peck	1,1,1,2	AB	BB	AB	AB	CC	20,20
T1 Panties (Sperm Fract.)	1,1,1,2 (hint 2)	AB	BB (hint A)	AB	AB	CC (hint A)	20,20 (light 24)

Frank Peck is consistent with being the dominant source of the DNA pattern obtained from the sperm fraction of the stain on the panties (P19790). The frequency of this matching pattern is approximately 1 in 460,900 in the Caucasian population, 1 in 33,811,100 in the Black population and 1 in 15,616,200 in the Hispanic population.

Due to insufficient quantity and/or quality, no DNA results were obtained from Item #6: T1 Jeans (P19798). If additional analysis is required on this sample please contact the undersigned regarding consumption of the evidence.


 ANALYST
 JEFFREY RIOLO, CRIMINALIST

V8.1584

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Joey Orduna Hastings

Clerk of the Court

Transaction # 4134176

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

FRANK MILFORD PECK,
Petitioner,
vs.
DWIGHT NEVEN, WARDEN; AND THE
STATE OF NEVADA,
Respondents.

Supreme Court No. 64293

District Court Case No. CR062580 - P.C.

Db

RECEIPT FOR DOCUMENTS

TO: Frank Milford Peck
Washoe County District Attorney \ Terrence P. McCarthy, Deputy District Attorney
Joey Orduna Hastings, Washoe District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

10/29/2013 Filing fee waived. Criminal.

10/29/2013 Filed Proper Person Petition for Writ of Mandamus.

DATE: October 29, 2013

Tracie Lindeman, Clerk of Court
rw

V8.1585

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 11-14-2013:14:24:02
Clerk Accepted: 11-14-2013:14:25:46
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Receipt for Doc
Filed By: Deputy Clerk SHambright

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

KARLA BUTKO, ESQ. for FRANK PECK
MARY LOU WILSON, ESQ. for FRANK PECK
BRUCE HAHN, ESQ. for STATE OF NEVADA
DIV. OF PAROLE & PROBATION
GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

STATE OF NEVADA
FRANK PECK
DAVID CLIFTON, ESQ.

CR06-2580
STATE VS. FRANK MILFORD PECK 7 Pages
District Court
Washoe County
12/05/2013 03:46 PM
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Frank M. Peck 57106
HDSP Box 650
Indian Springs, NV. 89070
Petitioner, pro se.

FILED
2013 DEC -5 PM 3:46
JOEY GREEN WASTINGS
CLERK OF THE COURT
BY *[Signature]*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Frank M. Peck, CASE No. CR-06-P-2580
Petitioner, DEPT No. 6

vs.
WARDEN NEVIN,
STATE OF NEVADA,
Respondents.

SUPPLEMENTAL PETITION FOR WRIT OF
HABEAS CORPUS (POST-CONVICTION) RELIEF

Comes now, Petitioner, Frank M. Peck pro se
hereinafter Mr. Peck with SUPPLEMENTAL to
the issues already on file herein.

This Supplemental is made and based upon
all papers on file in this case as well as
"Newly Discovered Evidence of FRAUD".
and the attached Points and Authorities
Dated 11-25-13

[Signature]
Frank M. Peck Pet pro se

Points and Authorities

The following issues are brought under the US. Constitution's protections of the 5th and 14th Amendment rights to Due-Process of law.

GROUND ONE

FRAUD, EXTRINSIC FRAUD AND FRAUD UPON THE COURT

The State of Nevada committed FRAUD, EXTRINSIC FRAUD AND FRAUD UPON THE COURT by portraying "SYNTHETIC NON-Biological materials to Mr Peck's JURY AS direct Biological Evidence".

The six elements set forth in *DeSautis v. Wackenhut Corp.*, 793 S.W. 2d 670 688 (Tex 1990) have been met. See also: *NC-DSH, A NEVADA CORPORATION DBA Valley Hospital vs. GARNER* 218 P3d 853 (2009 NEV) (125 NEV@ 653) (the very temple of justice has been defiled).

Universal Oil Co v. Root Bfg. Co., 328 U.S. 575, 580, 66 S.Ct. 1176, 90 L. Ed. 1447 (1946). "[A] case of fraud upon the court [calls] into question the very legitimacy of the judgement."

Calderon v. Thompson, 523 U.S. 538, 557, 118 S.Ct. 1489, 140 L. Ed. 2d 728 (1998). Put another way, "When a judgement is shown to have been procured" by fraud upon the court" no worthwhile interest is served in protecting the judgement."

(125 Nev. 654) The problem lies in defining what constitutes "fraud upon the court."

Obviously, it cannot mean any conduct of a party or lawyer of which the court disapproves; among other evils, such a formulation "would render meaningless the time limitation on motions under Rule 60(b)(3)." Kupferman v. Consolidated Research & Mfg Corp., 459 F.2d 1072, 1078 (2d Cir 1972) (Friendly J.), cited with approval in Ochiuto, 97 Nev. at 146 n.2, 625 P.2d at 570 n.2 and Murphy, 103 Nev. at 186 734 P.2d at 739. The most widely accepted definition, which we adopt,

holds that the concept embrace[s] only that species of fraud which does, or attempts to, subvert the integrity of the court itself. Whereas here, the Respondent's portrayed "Synthetic 'Non-Biological' materials" as "direct Biological Evidence", (subverting the integrity of the court itself).

"Fraud upon the court" has been recognized for centuries as a basis for setting aside a final judgement, sometimes even years after it was entered. Hazel-Atlas Co. v. Hartford Co., 322 U.S. 238, 245. 64 S.Ct. 997. 88 L. Ed. 1250. 1944 Dec. Comm'r Pat. 675 (1944) (discussing "the historic power of equity to set aside fraudulently begotten judgements" and canvassing cases and treatises and vacating a judgement entered nine years earlier), overruled on other grounds by Standard Oil Co. of Cal. v. United States, 429 U.S. 17. 18. 97 S.Ct. 31. 50 L. Ed. 2d 21 (1976).

It is, of course, true that "in most instances society is best served by putting an end to litigation after a case has been tried and judgement entered.

For this reason, a final judgement, once entered, normally is not subject to challenge.

However, the policy of repose yields when "the court finds after a proper hearing that fraud has been practiced upon it, or the temple of justice has been defiled." Universal Oil Co. v. Root Rfg Co. Supra.

Federal authority holds that there is no time limit on setting aside a judgement on the basis of fraud on the court, nor can laches bar consideration of the matter.

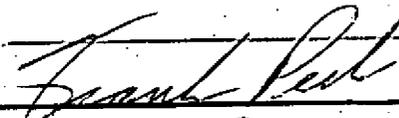
Our NEVADA cases have held that a party who seeks relief from a judgement based upon fraud upon the court is (218 P3d 862) not subject to NRCP 60 (b)'s six-month limitation period and that there is "no time limitation" Price v. Dunn, 106 Nev. 100, 104 787 P2d 785 787 (1990) (Allowing motion even though 19 months had passed between entry of judgement and application to vacate,

A party is not bound by the label he puts on his papers. A motion may be treated as an independent action or vice versa as is appropriate. Also, the supreme court has already interpreted Nev. R. Civ. P. 60 (b)'s savings clause to permit a party seeking to vacate a judgement because of fraud on the court to proceed by motion or to bring an independent action, he or she just may not pursue both remedies simultaneously. If anything comity and efficiency make a motion in the court that rendered the judgement the preferred and normal procedure to attack a judgement for fraud on the court. As such, this court can address this pleading as a motion or as part of the instant independent action.

Conclusion

Therefore, this court should order a (218 P.3d 861) proper hearing so Mr. Peck can present his "clear and convincing evidence".

Dated 11-26-13


Frank M. Peck Pet pro se

Affidavit, certificate of electronic service and
Affirmation

I Frank M. Peck do hereby swear under penalty
of perjury that:

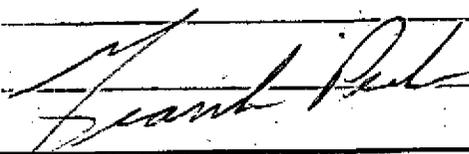
1. I am the Petitioner in CROB-P-2580³ CR96-P-2687.
2. All assertions in the attached SUPPLEMENT ARE true
based upon personal knowledge and I am competent
to testify to all matters contained therein.
3. A true and correct copy was mailed this date
to the Clerk of the Court at 75 Court St Reno,
Nv. 89501 for electronic service on DDA Terrance
McCarthy NEFR rule 9(c).
4. I bring this supplement in good faith and for
no improper reason.

further affiant sayeth naught

Dated Nov 27th 2013

Signed under penalty of perjury NRS 208.165
and 28 USC Sec 1746.

Contains no social security numbers of
any person NRS 239 B.030.



FRANK M. PECK 57106

HDSP Box 650

Indian Springs, NV. 89070

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Joey Orduna Hastings
Clerk of the Court
Transaction # 4207226

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Petitioner,

No. 64293

vs.

DWIGHT NEVEN, WARDEN; AND THE
STATE OF NEVADA,
Respondents.

FILED
CRO6-2580
De
DEC 12 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER DENYING PETITION

This is a proper person petition for a writ of mandamus. Petitioner seeks the imposition of sanctions against post-conviction counsel; requests that this court order the State to answer a petition below; and requests that this court order the district court to pay petitioner's expert fees, grant an evidentiary hearing, and allow his presence at the hearing. Without deciding upon the merits of any claims raised therein, we decline to exercise original jurisdiction in this matter. See NRS 34.160; NRS 34.170. Accordingly, we

ORDER the petition DENIED.

Pickering _____, C. J.
Pickering

Hardesty _____, J.
Hardesty

Cherry _____, J.
Cherry

13837638
13837504

cc: Frank Milford Peck
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 12-18-2013:14:04:37
Clerk Accepted: 12-18-2013:14:07:31
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Order Denying
Filed By: Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

KARLA BUTKO, ESQ. for FRANK PECK
MARY LOU WILSON, ESQ. for FRANK PECK
BRUCE HAHN, ESQ. for STATE OF NEVADA
DIV. OF PAROLE & PROBATION
GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

STATE OF NEVADA
FRANK PECK
DAVID CLIFTON, ESQ.

FILED

Electronically

01-08-2014:10:31:34 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 4241920

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Petitioner,
vs.
DWIGHT NEVEN, WARDEN; AND THE
STATE OF NEVADA,
Respondents.

Supreme Court No. 64293
District Court Case No. CR062580

CR06-2580
De

NOTICE IN LIEU OF REMITTITUR

TO THE ABOVE-NAMED PARTIES:

The decision and Order of the court in this matter having been entered on December 12th, 2013, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: January 06, 2014

Tracie Lindeman, Clerk of Court

By: Sally Williams
Deputy Clerk

cc: Attorney General/Carson City
Washoe County District Attorney
Frank Milford Peck
Joey Orduna Hastings, District Court Clerk ✓

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 01-08-2014:10:31:34
Clerk Accepted: 01-08-2014:10:33:08
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Supreme Court Receipt for Doc
Filed By: Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

KARLA BUTKO, ESQ. for FRANK PECK
MARY LOU WILSON, ESQ. for FRANK PECK
BRUCE HAHN, ESQ. for STATE OF NEVADA
DIV. OF PAROLE & PROBATION
GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

STATE OF NEVADA
FRANK PECK
DAVID CLIFTON, ESQ.

FILED

Electronically
01-14-2014:10:46:50 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4255637

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CODE:

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK MILFORD PECK,
Petitioner,

vs.

Case No. CR06-2580

STATE OF NEVADA,
Respondent.

Dept. No. 6

ORDER

On December 5, 2013, Petitioner filed a Supplemental Petition for Writ of Habeas Corpus. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether the Petitioner is illegally imprisoned and restrained of Petitioner's liberty. Respondent shall, within 45 days after the date of this order, answer or otherwise respond to the petition and file a return in accordance with the provisions of N.R.S. 34. 360 to 34.830, inclusive.

IT IS SO ORDERED.

Dated: January 14th, 2014.


District Court Judge

CERTIFICATE OF SERVICE

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I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 14th day of January, 2014, I electronically filed the foregoing with the clerk
of the Court:

KARLA BUTKO, ESQ.
DIV OF PAROLE & PROBATION

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows:

Terrence McCarthy, Esq.
Washoe County District Attorney's Office
One South Sierra Street
Reno, NV 89501

Frank M. Peck, #57106
HDSP Box 650
Indian Springs, NV 89070



Judicial Assistant

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 01-14-2014:10:46:50
Clerk Accepted: 01-14-2014:10:48:11
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Order...
Filed By: Judicial Asst. HBoe

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

KARLA BUTKO, ESQ. for FRANK PECK
MARY LOU WILSON, ESQ. for FRANK PECK
BRUCE HAHN, ESQ. for STATE OF NEVADA
DIV. OF PAROLE & PROBATION
GARY HATLESTAD, ESQ. for STATE OF
NEVADA

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

STATE OF NEVADA
FRANK PECK
DAVID CLIFTON, ESQ.

CR06-2580
DC-09900053674-007
STATE VS. FRANK MILFORD PECK 4 Pages
District Court 02/12/2014 04:29 PM
Washoe County 2490
11037

FRANK M. PECK 57106

HDSP Box 650

Indian Springs, NV. 89070

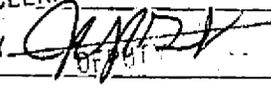
Petitioner, Pro se,

FILED

2014 FEB 12 PM 4:29

JOEY WARDEN HASTINGS
CLERK OF THE COURT

BY



IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK, CASE NO. CR-06-2580

Petitioner, dect No. 6

vs.

STATE OF NEVADA,

WARDEN NEVIN,

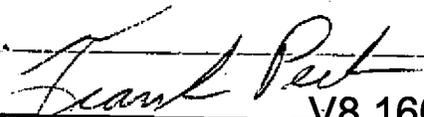
Respondent's,

MOTION FOR ORDER INCORPORATING
ALL EVIDENCE AND EXHIBITS FROM
ALL OF PETITIONERS SUPPLEMENTAL
PETITIONS INTO PETITIONER'S DECEMBER
FIFTH 2013 FILING. ALTERNATELY
MOTION TO AMEND

Comes Now, the Petitioner, Frank M. Peck
pro se with the above entitled Motion.

This Motion is made and based upon all
papers and pleadings on file in this case
as well as the attached points and authorities
and Affidavit of Mr Peck.

Dated 2/5/14



V8.1602

Points and Authorities

Petitioner filed his original supplement on October 9th 2012. While the pleadings had not been closed Petitioner filed 8 additional supplements and the Petition was drafted as to be one document each successive supplement relying ~~af~~ on the evidence and exhibits previously filed and was intended to be ONE (1) Habeas Corpus writ (post-conviction) petition.

All evidence and supporting exhibits were filed in previous supplements supporting Petitioner's claims of Fraud Extrinsic Fraud and Fraud on the Court.

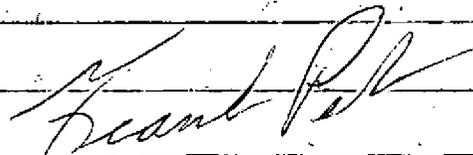
Mr. Peck feels that it is "unfair" to single out the Dec 5 2013 Supplement as a "stand alone Petition", when its support is established in the preceding supplements.

Conclusion

Therefore, Petitioner respectfully requests that this honorable court treat Petitioner's supplements as one petition as it was intended. Or allow Petitioner to Amend his Dec 5 2013 Petition.

Respectfully submitted

Dated this 5th day of February 2014.



FRANK M. PECK 57106

H.D.S.P. Box 650

Indian Springs, Nv. 89070

Petitioner, PRO SE

Affidavit,

Certificate of electronic service and Affirmation

I Frank M. Peck do hereby swear under penalty of perjury that:

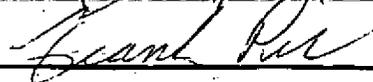
1. I am the Petitioner in case no CR-06-2580.

2. All assertions in the attached motion are true based on personal knowledge and information believed to be true and I am competent to testify to all matters contained therein.

3. I bring this motion in good faith and for no improper reason.

4. A true and correct copy was mailed to Clerk of the court 75 Court St Reno NV for electronic service on ODA Terrance McCarthy Esq per NER rule 9 (e). Signed under penalty of perjury

NRS 209.165, 2E USC 1746.



Dated 2-5-14

Frank M. Peck Pet pro se

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**SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA**

**AFFIRMATION
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, _____

Motion

(Title of Document)

filed in case number: _____

Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

(State specific state or federal law)

-or-

For the administration of a public program

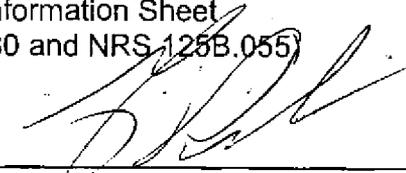
-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 2 5 14



(Signature)

Frank Peck

(Print Name)

Rob pro se

(Attorney for)

1 CODE #1130
RICHARD A. GAMMICK
2 #001510
P. O. Box 30083
3 Reno, Nevada 89520-3083
(775) 328-3200
4 Attorney for Respondent

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 FRANK MILFORD PECK,

10 Petitioner,

11 v.

Case No. CR06-2580

12 THE STATE OF NEVADA,

Dept. No. 4

13 Respondent.
14 _____/

15 ANSWER TO SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS
16 (POST-CONVICTION)

17 COMES NOW, Respondent, by and through counsel, to answer the supplemental petition,
18 filed on July 10, 2009, as follows:

19 1. As to the supplemental petition filed on July 10, 2009, due to the unstructured narrative
20 nature of the petition, the Respondent State of Nevada generally denies each and every material
21 allegation of fact included therein.

22 2. That your affiant is informed and does believe that all relevant pleadings and transcripts
23 necessary to resolve the supplemental petition are currently available.

24 3. That Respondent is informed and does believe that, aside from an unsuccessful appeal,
25 and an unsuccessful petition for writ of mandamus, and an unsuccessful petition for writ of habeas

26 ///

1 corpus filed in the Supreme Court.

2 AFFIRMATION PURSUANT TO NRS 239B.030

3 The undersigned does hereby affirm that the preceding document does not contain the
4 social security number of any person.

5 DATED: February 27, 2014.

6 RICHARD A. GAMMICK
7 District Attorney

8 By /s/ TERRENCE P. McCARTHY
9 TERRENCE P. McCARTHY
10 Chief Appellate Deputy

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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County
3 District Attorney's Office and that, on February 27, 2014, I deposited for mailing through the
4 U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the
5 foregoing document, addressed to:

6 Frank Milford Peck, #57106
7 High Desert State Prison
8 P.O. Box 650
9 Indian Springs, NV 89070-0650

10 /s/ EARLEEN RUSSELL
11 EARLEEN RUSSELL
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1 CODE #2300
RICHARD A. GAMMICK
2 #001510
P. O. Box 30083
3 Reno, Nevada 89520-3083
(775) 328-3200
4 Attorney for Respondent

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 FRANK MILFORD PECK,

10 Petitioner,

11 v.

Case No. CR06-2580

12 THE STATE OF NEVADA,

Dept. No. 4

13 Respondent.
14 _____/

15 MOTION TO DISMISS PETITION AND/OR SUPPLEMENTAL PETITION(S)
16 FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)

17 COMES NOW, the State of Nevada, by and through counsel, and moves this honorable
18 court to dismiss whatever petition might be pending before this court. This motion is based
19 upon the records of this court and the following points and authorities.

20 POINTS AND AUTHORITIES

21 This court ordered an answer “to the petition” after Frank Peck filed what was captioned
22 as a “Supplemental Petition for Writ of #8 Habeas Corpus (Post-Conviction) Relief.” The first

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1 task was in trying to identify which of the various pleadings might be seen as “the petition”.¹

2 The first possible pleading was a “Petition for Writ of Habeas Corpus” filed in
3 November, 2008. That should not qualify as that petition was filed before Peck was convicted
4 and the post-conviction petition is available only to those who have already been convicted.
5 NRS 34.724.

6 Peck was convicted on July 10, 2009. He appealed but the judgment was affirmed. *Peck*
7 *v. State*, Docket No. 54168, Order of Affirmance (May 7, 2010). See Exhibit 1. The remittitur
8 issued on June 2, 2010. See Exhibit 2. The next possible pleading that might amount to a
9 petition is a document captioned as a “Supplemental Petition for Writ of Habeas Corpus,” that
10 was filed on October 9, 2012. If that is the petition, it should be dismissed as it was filed
11 beyond the time allowed by NRS 34.726.

12 Since then, Peck has filed several other pleadings purporting to be supplements to the
13 petition, but has never identified the petition that he wishes to be supplemented. If he is trying
14 to supplement the pre-trial petition, that petition became moot upon his conviction. If he is
15 trying to supplement the “Supplemental Petition” filed on October 9, 2012, that petition was
16 late.

17 The court might also note that all of the so-called supplemental petitions are fugitive
18 pleadings as NRS 34.750 allows for one petition by the prisoner, and one supplement by
19 appointed counsel but further provides that “no further pleadings may be filed except as
20 ordered by the court. As this court has not ordered Peck to file his various additional
21 pleadings, they are all fugitive pleadings and must be stricken.

22 Additional reasons for dismissal include the failure to present the petition in
23 substantially the form required by NRS 34.735. In *Miles v. State*, 120 Nev. 383, 91 P.3d 588

24
25 ¹The task is made more difficult as Peck has another conviction for sexual assaults, in
26 case number CR96-2687, and some of the various actions in the Supreme Court and in this
court concern that conviction, but Peck has a tendency to be somewhat unclear in just what
conviction he is attacking.

1 (2004), the Supreme Court ruled that the district court had the discretion to allow a prisoner to
2 cure a similar defect, the lack of verification. It follows, however, that if the court has the
3 discretion to allow the cure, the court also has the discretion to not allow the cure. In this case,
4 given that there was no attempt at all to even acknowledge any of the state procedural laws
5 governing post-conviction petitions, this court ought to decline the opportunity to cure, in its
6 discretion, and simply dismiss.

7 The court might also note that the claims raised by Peck are presented in the guise of a
8 claim of ineffective assistance of counsel. Peck waived his right to counsel and insisted on
9 making his own tactical decisions. Thus, each claim of ineffective assistance must be
10 dismissed. Each claim of error by the court must be dismissed as it could have been raised on
11 direct appeal. *See* NRS 34.810. The sole exception is ground 5, raised in the guise of ineffective
12 assistance of appellate counsel in failing to argue prosecutorial misconduct in failing to give
13 notice to Peck that he would be “subjected to pre-trial in court identification procedures.”
14 There is no law that requires the prosecutor to give notice that he will ask a witness if the
15 witness recognizes the perpetrator. Hence, there is no likelihood that the issue would succeed
16 on appeal and so that claim, too, should be dismissed.

17 The balance of the various supplements should be ignored as they are fugitive pleadings.
18 In addition, for the most part, they are based on the proposition that DNA analysis based on a
19 PCR method is prohibited. It is not. *Bolin v. State*, 114 Nev. 503, 528, 960 P.2d 784, 800
20 (1998). The court might also note that the claims that there was some sort of perjury by telling
21 the jury that PCR analysis was the same as analyzing grown DNA, are repelled by the record.
22 The record reveals that the prosecutor asked the expert if the PCR method was “like” growing
23 the DNA evidence. The repeated shrill assertions of perjury are nonsensical as the jury was
24 indeed informed of the PCR amplification process. Hence, the eight supplemental petitions
25 should also be dismissed for that reason, because the claim, as it was pleaded, (asserting
26 perjury), is repelled by the record. Claims repelled by the record do not warrant a hearing.

1 *Hargrove v. State*, 100 Nev. 498, 686 P.2d 222 (1984).

2 The eighth supplement may be ignored as it is moot once the petition is dismissed, as
3 are all the other supplements. It is also nonsensical. It seems to be based on a civil rule
4 regarding fraud upon the court. The judgment is a criminal judgment of conviction, not a civil
5 judgment, and it is not governed by the civil rules and there was no fraud upon the court.

6 The first petition that was filed after the conviction was late. That procedural bar is
7 mandatory. *State v. District Court (Riker)*, 121 Nev. 225, 112 P.3d 1070 (2005). If the
8 contention was that Peck lacked sufficient knowledge to raise his attack on the PCR
9 methodology, that would be an internal impediment, and not an external impediment, and
10 thus, even if it were true it would not overcome the procedural bars. *See Phelps v. Director,*
11 *Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that organic brain damage,
12 borderline mental retardation, and reliance on the assistance of an inmate law clerk do not
13 excuse a procedural bar). The proposed excuse must now be pleaded on the face of the
14 petition. *State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681-82 (2003). As the
15 petition was late, and there is no viable excuse pleaded on the face of the petition (probably
16 because Peck eschewed the form required by statute), the petition must be dismissed.

17 AFFIRMATION PURSUANT TO NRS 239B.030

18 The undersigned does hereby affirm that the preceding document does not contain the
19 social security number of any person.

20 DATED: February 27, 2014.

21 RICHARD A. GAMMICK
22 District Attorney

23 By /s/ TERRENCE P. McCARTHY
24 TERRENCE P. McCARTHY
25 Chief Appellate Deputy
26

1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County
3 District Attorney's Office and that, on February 27, 2014, I deposited for mailing through the
4 U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the
5 foregoing document, addressed to:

6 Frank Milford Peck, #57106
7 High Desert State Prison
8 P.O. Box 650
9 Indian Springs, NV 89070-0650

10 /s/ EARLEEN RUSSELL
11 EARLEEN RUSSELL
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INDEX OF EXHIBITS

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	Pages
1. <i>Peck v. State</i> , Docket No. 54168, Order of Affirmance (May 7, 2010)	4
2. Remittitur, dated June 9, 2010	1

EXHIBIT 1

EXHIBIT 1

Slip Copy, 2010 WL 3503524 (Nev.)
 (Table, Text in WESTLAW), Unpublished Disposition
 (Cite as: 2010 WL 3503524 (Nev.))

Only the Westlaw citation is currently available. An unpublished order shall not be regarded as precedent and shall not be cited as legal authority. SCR 123.

This decision was reviewed by West editorial staff and not assigned editorial enhancements.

Supreme Court of Nevada.
 Frank Milford PECK, Appellant,
 v.
 The STATE of Nevada, Respondent.

No. 54168.
 May 7, 2010.

Karla K. Butko

Attorney General/Carson City

Washoe County District Attorney

ORDER OF AFFIRMANCE

*1 This is an appeal from a judgment of conviction, pursuant to a jury verdict, of sexual assault. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. Appellant Frank Milford Peck challenges his conviction on ten grounds, none of which warrant relief.

First, Peck argues that insufficient evidence supports his conviction. The evidence shows that although the victim could not identify Peck as her assailant, she provided a general physical description matching Peck's appearance. And Peck's DNA was found on matter collected from the victim during a medical examination performed after the sexual assault. Despite Peck's challenge to the DNA evidence as confusing and suspect, the inability of the victim to identify him, and the lack of other physical evidence, considering all the evidence in the light most favorable to the prosecution, we conclude that a rational jury could

find him guilty of the charged offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

Second, Peck contends that unreasonable governmental delay in arresting and prosecuting him violated his Fifth Amendment and speedy trial rights. As to the pre-indictment delay, we conclude that he failed to show with adequate specificity any prejudice from the delay or that the State intentionally delayed filing a complaint to gain a tactical advantage. *See Wyman v. State*, 125 Nev. 46, ---, 217 P.3d 572, 577-78 (2009). As to the speedy trial claim, we conclude that it similarly lacks merit. Peck was indicted on November 8, 2006, and shortly thereafter waived his right to a speedy trial. Trial commenced on May 6, 2009. During that period, several defense-related delays occurred, including a five-month continuance, withdrawal of counsel, Peck's removal of another counsel and motion to represent himself, and a motion to recuse the trial judge. Based on the record, we conclude that Peck failed to demonstrate a violation of his speedy trial rights. *See Barker v. Wingo*, 407 U.S. 514, 515, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); NRS 178.556; *Furbay v. State*, 116 Nev. 481, 485, 998 P.2d 553, 555-56 (2000).

Third, Peck asserts that the application of NRS 171.083, extending the statute of limitations for sexual assault, violated the Ex Post Facto Clause. "Before the statute of limitations for a criminal offense expires, a legislature may amend the statute and extend the limitations period without violating the ex post facto clause." *Murphy v. State*, 110 Nev. 194, 199, 871 P.2d 916, 919 (1994), *overruled on other grounds by State v. District Court*, 114 Nev. 739, 964 P.2d 48 (1998); *State v. Merolla*, 100 Nev. 461, 464, 686 P.2d 244, 246 (1984). Here, the sexual assault occurred on August 9, 1994. NRS 171.083 became effective on July 1, 1997, well before the statute of limitations expired for the

Slip Copy, 2010 WL 3503524 (Nev.)
 (Table, Text in WESTLAW), Unpublished Disposition
 (Cite as: 2010 WL 3503524 (Nev.))

charged offense.^{FN1} See 1997 Nev. Stat., ch. 248, § 1, at 890; *id.* § 5, at 891. Accordingly, Peck's prosecution was not constitutionally infirm.

FN1. An indictment for sexual assault "must be found, or an information or complaint filed within 4 years after the commission of the offense." NRS 171.085.

*2 Fourth, Peck argues that the district court should have considered his proper person petition for a writ of habeas corpus because of his strained relationship with counsel. We discern no error.

Fifth, Peck complains that his waiver of his right to counsel under *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975), was not unequivocal as he was compelled to forgo that right due to his strained relationship with counsel. The record shows, however, that the district court conducted a commendably thorough canvass, including exploring the nature of Peck's displeasure with counsel, and appointed counsel to advise Peck during trial. See *O'Neill v. State*, 123 Nev. 9, 17, 153 P.3d 38, 43-44 (2007); *Graves v. State*, 112 Nev. 118, 124, 912 P.3d 234, 237-38 (1996). Moreover, despite Peck's displeasure with counsel, he allowed stand-by counsel to examine most of the witnesses and present opening statement and closing argument. Therefore, we conclude that this claim lacks merit.

Sixth, Peck argues that his motion to recuse the trial judge based on bias was erroneously denied because the trial judge had presided over the murder trial of Peck's brother, who testified at Peck's trial. Having reviewed the record, we conclude that Peck failed to show that the trial judge should have been removed or any indication of bias. See NRS 1.230(2)(c).

Seventh, Peck contends that the State failed to collect and preserve exculpatory evidence—the victim's pubic hairs and fingerprints and a boot print found at the crime scene. Other than asserting a general claim of prejudice, Peck fails to show that

the challenged evidence was material or that the State acted in such a manner as to warrant reversal of his conviction. See *Randolph v. State*, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001); *Daniels v. State*, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998).

Eighth, Peck asserts that the victim's pretrial voice identification of him was unduly suggestive because the State requested her attendance at a pretrial hearing where she heard Peck speak and then testified at trial that she recognized his voice, despite the 15 years that had elapsed since the offense. Even assuming error, see generally *Wright v. State*, 106 Nev. 647, 650, 799 P.2d 548, 550 (1990) (providing that exclusion of pretrial identification evidence (police lineup) is warranted if procedures are unnecessarily suggestive such that identification is unreliable), we discern no prejudice considering the evidence establishing Peck's guilt.

Ninth, Peck contends that the prosecutor committed misconduct by: (1) advising the jury during voir dire that the State did not have to prove Peck's guilt beyond any doubt or to an absolute certainty, (2) arguing that Peck's alibi defense "failed miserably," and (3) expressing a personal opinion about the evidence. Because Peck failed to object to any of the challenged comments, we review for plain error affecting his substantial rights. *Valdez v. State*, 124 Nev. 97, ---, 196 P.3d 465, 477 (2008). Because none of the challenged comments were improper, Peck failed to show plain error.

*3 Tenth, we reject Peck's argument that cumulative error warrants reversal of his conviction. See *Rose v. State*, 123 Nev. 194, 211, 163 P.3d 408, 419 (2007).

Having considered Peck's contentions and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

Slip Copy, 2010 WL 3503524 (Nev.)
(Table, Text in WESTLAW), Unpublished Disposition
(Cite as: 2010 WL 3503524 (Nev.))

Nev.,2010.
Peck v. State
Slip Copy, 2010 WL 3503524 (Nev.)

END OF DOCUMENT

Westlaw Delivery Summary Report for MCCARTHY,TERRENC

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Database:	NV-CS
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EXHIBIT 2

EXHIBIT 2

CR06-2580

dp

FILED

Electronically

06-09-2010:02:04:12 PM

Howard W. Conyers

Clerk of the Court

Transaction # 1533120

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 54168

District Court Case No. CR062580

REMITTITUR

TO: Howard W. Conyers, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: June 2, 2010

Tracie Lindeman, Clerk of Court

By: A. Ingersoll
Deputy Clerk

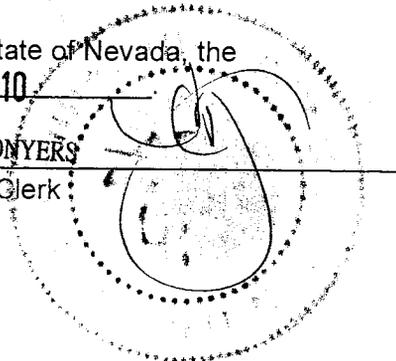
cc (without enclosures):

Hon. Brent T. Adams, District Judge
Attorney General/Carson City
Washoe County District Attorney
Karla K. Butko

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN 9 2010

HOWARD W. CONYERS
District Court Clerk



Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-02-27 15:09:46.604.

BRUCE HAHN, ESQ. - Notification received on 2014-02-27 15:09:46.494.

MARY LOU WILSON, ESQ. - Notification received on 2014-02-27 15:09:46.463.

KARLA BUTKO, ESQ. - Notification received on 2014-02-27 15:09:46.635.

DIV. OF PAROLE & PROBATION - Notification received on 2014-02-27 15:09:46.557.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580

Judge:

HONORABLE BRENT ADAMS

Official File Stamp:

02-27-2014:13:28:31

Clerk Accepted:

02-27-2014:15:08:58

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. FRANK MILFORD PECK (D6)

Document(s) Submitted:

Answer

Mtn to Dismiss Pet

- **Continuation

- **Continuation

Filed By:

Terrence McCarthy

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

KARLA BUTKO, ESQ. for FRANK MILFORD
PECK

DIV. OF PAROLE & PROBATION

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

BRUCE C. HAHN, ESQ. for STATE OF NEVADA

MARY LOU A. WILSON, ESQ. for FRANK
MILFORD PECK

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA
FRANK MILFORD PECK for FRANK MILFORD
PECK
DAVID WAYNE CLIFTON, ESQ.

Points and Authorities

Petitioner Peck was able to determine from this Court's Order filed on 1-14-14 that the Court wanted the State to answer Mr. Peck's Supplemental Petition filed on "Dec 5th 2013".

With regard to footnote 1 a) pg 2 of Respondents "MOTION", if counsel is unclear what conviction Mr. Peck is attacking, Mr. Peck is attacking "Both convictions" and their respective case numbers appear in the captions.

Currently and since February 11th 2014 Mr. Peck has "NO ACCESS" to the institutional law library and will refer this Court to transaction numbers and filing dates, as Mr. Peck has no ability to make copies.

PLEASE SEE: transaction # 988177 Stipulation and Order to Stay Post-Conviction Proceedings Pending Resolution of Direct Appeal filed on 8-21-2009.

This Court should note that it was the Petition filed in ^{JUNE 18, 2009} ~~November 2008~~ that inspired the above "Stay" in turn stopping the clock.
NRS 34.726 1.

Respondents moved for an extension of time in which to answer dated Nov 2, 2012 (Mr. Peck's copy has no filing or transaction numbers) However a) pg 2 lines 3 & 4 the Respondent's request:

An extension until 45 days after the date for any supplement, or 30 days after the court rules that the pleadings are closed.

The above quote would lead a reasonable person to believe that the pleadings were in fact "still open" due to the lack of a ruling either way by this court.

JUDICIAL DISCRETION NRS 34.750

Trial Court did not err in allowing respondent to supplement his petition State v. Powell, 136 P.3d 453 (2006).

Atty: Mary Lou Wilson Esq was "ordered" to supplement Mr. Peck's petition on July 20th 2010. transaction # 1613310. counsel filed a notice of no supplemental petition on 9-18-12 in the face of Mr. Peck's demand that Mr. Peck's challenge to the PCR method be raised -

See: letter dated May 12, 2012 from DNA expert Mehul B Anjaria confirming PCR produces "synthetic non-biological" DNA
See: EX-4 filed Nov 1, 2013 in Judicial Notice of Adjudicative facts. Then see EX-3 controverting all of counsel Mary Lou Wilson's assertions in her "Notice of NO Supplement" filed on 9-18-12.

With regard to the form required by NRS 34.735 The Attorney General is currently threatening inmates at HOSP not to use fill in the blanks forms as they have been modified by inmate legal assistants, and the use of such forms [will] result in the loss of good time and work time credits! Mr. Peck has personally seen these answers to petitions for writs of Habeas Corpus.

Mr. Peck's hard copy of chapter 34 et seq says click here to view form. As such, Mr. Peck is left with no choice but to muddle through with no template to go by.

Mr. Peck is Pro se and his right to Petition for redress / Habeas should not be usurped by the appointment of counsel.

Mary Lou Wilsons first order of business was to mislead [lie] to this court in her Motion for telephonic ~~tee~~ call. "Her business phone was blocked from all NDOC'S telephones." Otherwise, there wouldn't have been a need to Motion the Court.

If this court can reasonably read pleadings to state a valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax, sentence construction, or litigant's UNFAMILIARITY WITH PLEADING REQUIREMENTS. Boag v. Mac Dougall, 454 U.S. 364 (1982) Id Haines v. Kerner, 404 U.S. 519 30 L ed 2d 652, 92 Sct 594 (1972).

The Respondents cite Miles v. State, 120 Nev. 383, 91 P.3d 588 (2004), Acknowledging that this court has discretion to cure Mr. Peck's defect. Mr. Peck also cites to NRCR rule 60 B and prays this court will allow the cure.

"Mr. Peck did not intentionally or fraudulently omit anything from this Court!"

Mr. Peck's claims of ineffective assistance of counsel are clearly claims about Mr. Lindsay's failures "prior to trial" and before Mr. Peck was forced by Mr. Lindsay's failures to waive his right to Trial Counsel.

Counsel is wrong that "NO LAW" exists for "pre-trial identification" procedures. SEE U.S. V. WADE, 388 US 218 Id Stovall v. Denno, 388 US 293 Id Gilbert v. California, 388 US 263.

Mr. Peck's claim that the PCR method is unconstitutional is "prima facie" and not repelled by the record and is confirmed by the "preeminent authority" on (DNA Technology in forensic Science) See: NATIONAL RESEARCH COUNSEL REPORT, (NRC-1 pg 70). Exhibited a Judicial Notice of Ajudicative facts hereinafter JNAF (EX-1). (SEE ALSO EX-2, 3, 4, 5).

BLACKS LAW DICTIONARY

perjury: The act or an instance of a person's deliberately making material false or misleading statements while under oath. (see T.T. May 8th, 2009 pg 22)

Clearly, CRIMESCENE EVIDENCE IS "REPLICATED BY THE PCR METHOD" AND "NOT AMPLIFIED". (SEE JNAF EX-1)

THE TERMS "AMPLIFIED" AND "REPLICATED" ARE "NOT ANALOGOUS".

THE STATEMENT THAT THE PCR METHOD IS "LIKE GROWING THE DNA EVIDENCE" IS FALSE AND MISLEADING AS NO DIRECT EVIDENCE IS "AMPLIFIED". THE EVIDENCE IS "REPLICATED WITH EXTRINSIC, SYNTHETIC MATERIALS PORTRAYED TO MR. PECK'S JURY AS DIRECT EVIDENCE, HENCE, "FRAUD AND PERJURED TESTIMONY"!

RESPONDENTS RENE ROMERO, JEFFREY RILO AND DAVE CLIFTON KNEW OR SHOULD HAVE KNOWN THE EVIDENCE AND TESTIMONY WAS FALSE AND MISLEADING.

From the newly discovered evidence it is now clear that the Nevada Supreme Court was misled in United States v. Beasley, 102 F.3d 1440 at 1445 (8th Cir 1996) that;

"The PCR method is based upon the natural DNA replication process. By utilizing the PCR method, one can produce a substantial number of specific segments of human DNA which can then be typed."

Id

St. v. Lyons, 324 Ore 256 924 P2d 802 804-14 (Or 1996) (Material fact that the theory of PCR is the analysis of synthetic DNA was concealed with three asterisks,

Clearly. The Nevada Supreme Courts holding in Bolin v State, 114 Nev 528 503 960 P2d 784 (1998) was based upon false and incomplete information in Beasley supra. and omitted/concealed material fact in Lyons supra.

ON MAY 22 2012 TRANSACTION # 2972583
Counsel Mary Lou Wilson filed a Response
to letter. At page 4 line 6 states - "Counsel
is still preparing for the inclusion of grounds
in Peck's Supplemental Petition"

Clearly, if counsel was going to file
a supplement for Mr. Peck, it would have
been filed long after Mr. Peck's Oct 9, 2012
Supplement.

Additionally, contrary to Respondent's
incorrect assertion that Mr. Peck was
convicted on July 10th 2009. Mr. Peck
was actually convicted on May 12th 2009
and filed his Petition for writ of Habeas
Corpus on JUNE 18, 2009. So, as the
Court can see that less than 40 days
elapsed from May 12th, 2009 to JUNE 18, 2009
as such, Mr. Peck's filing was timely.

Id

The limitations period in NRS 34.726 and
the laches provisions of NRS 34.800 apply
on their face to petitions, NOT supplemental
pleadings. State v. Powell, 122 Nev. 751, 138 P.3d
453 (2006), NRS 34.750.

Respondents also ignore Mr. Peck's claim of "Actual Innocence" filed on Oct 10, 2013 Gr-2 supplement # 7. Actual Innocence as Exception to procedural bar. Mitchell v. State, 149 P.3d 33, (WV 2006).

If Mr. Peck is only allowed one supplement it would obviously be the first supplement filed on Oct 9th 2012, however, all of Mr. Peck's supplements and Judicial Notice of Adjudicative facts should be considered as NRS 34.726 and NRS 34.800 apply to petitions and not supplements.

re: Fraud, Extrinsic Fraud AND Fraud upon the Court.

Mr. Peck was only able to learn of these facts of Fraud by the letter from DNA Expert Mehul B. Anjaria dated 5-12-12 INAF ex-4 and confirmation by purchasing the (National Research Council's 1992 NRC-1 Report) AND (NRC-11 1996 Report) as these reports are not accessible via prison NDOC law libraries.

The Respondents knew or should have known that presenting inorganic, synthetic, non-biological, extrinsic materials as direct biological evidence "IS FRAUD".

When a criminal defendant sits before a jury and the prosecutor refers to the defendant's DNA the fact that the DNA is re-created is kept secret in part by the misleading term Amplify.

The PCR process was never distinguished from the earlier RFLP process.

The synthetic nature of the product of the PCR process makes it inappropriate for forensic use. (See: NRC-1 1992 Report page 51).

A government's assurances that false evidence was presented in good faith are little comfort to a criminal defendant wrongly convicted on the basis of such evidence. A conviction based in part on false evidence, even false evidence presented in good faith, hardly comports with fundamental fairness. United States v. Young 17 F3d 1201 (9th Cir 1994).

Once Again, Respondents stipulated to the stay two months after Mr. Peck filed his Petition on JUNE 18, 2009. SO, ANY delay in filing supplements is up to this court. NRS 34.750

Mr. Peck has presented A prima facie showing of good cause AND prejudice and if the petition is dismissed it will be A fundamental miscarriage of Justice. Klein v. Warden, 118 Nev. 305 43 P3d 1029 (Nev 2002).

Mr. Peck's claim that the PCR method is unconstitutional False Fabrication of evidence is so novel that its legal basis was not reasonably available to counsel; (SEE: Reed v Ross, 468 U.S. 1. 104 S. CT 2901.) Generally, a claim is reasonably available where it has been raised by other parties see: Rodriguez v. Johnson, 104 F.3d 694 (5th cir 1997).

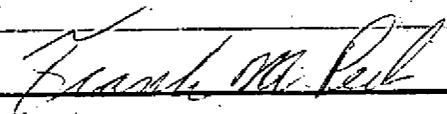
Mr. Peck's challenge/claim against the Forensic Application of the PCR method has NEVER before been raised.

CONCLUSION

Therefore, for the foregoing REASONS,
AND the UNCONTROVERTED REASONS in Mr.
Peck's supplemental petitions this Honorable
Court should GRANT Mr. Peck's Petition
AND order AN EVIDENTIARY HEARING, SO
Mr. PECK CAN present his CLEAR AND
convincing evidence.

Dated this 5th day of March 2014.

Respectfully submitted


FRANK M. PECK 57106
HDSP Box 650
Indian Springs, Nv. 89070
Petitioner. pro se.

*

Affidavit, certificate of electronic service and Affirmation

I FRANK M. PECK do hereby swear under penalty of perjury that:

1. I AM the Petitioner in WDC CASE CR-06-P-2580.
2. All assertions in the attached OPPOSITION ARE TRUE based on personal knowledge and information believed to be true.
3. I at no time willfully or intentionally withheld any information from this court.
4. This OPPOSITION is brought in good faith and for no improper reason.
5. A true and correct copy was mailed this date to the Clerk of the 2nd Jud Dist Court @ 75 Court Street Reno, NV 89501 for electronic service on DDA Terrance McCarthy Esq per NEFR rule 9(e).

Dated this 5th day of March 2014.

Signed under penalty of perjury NRS 208.165
and 28 USC 1746.

* Contains no social security numbers of any person NRS 239 B 030.


FRANK M. PECK 57106
HDSP Box 650
Indian Springs, NV 89070
Petitioner, Pro SE.

EXHIBIT LIST

Exhibit number 1

Pages 3

Exhibit description NRC Report 1992 page 70
Theory of PCR is of synthetic DNA.

Exhibit number 2

Pages 1

Exhibit description 1994 Excerpt from Wash State v.
Russell. PCR ≠ RFLP not distinguished

Exhibit number 3

Pages 1

Exhibit description 1994 Excerpt from Mont State v.
Moore. False statement that PCR "CLONES DNA".

Exhibit number 4

Pages 1

Exhibit description 1995 Excerpt from Oregon State v.
Lyons. Synthetic Nature of PCR concealed with asterisks

Exhibit number 5

Pages 1

Exhibit description 1996 Excerpt from U.S. v Beasley
False material fact that PCR produces "HUMAN DNA".

Exhibit number 6

Pages 1

Exhibit description 1997 Excerpt from U.S. v. Gaines
"LAST CASE CONTAINING VERBS HUMAN".

Exhibit number 7

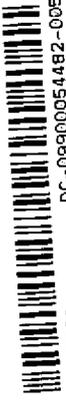
Pages 1

Exhibit description 1998 Excerpt from Nevada State v
Bolin relied on false fact in Beasley.

Exhibit number 8

Pages 1

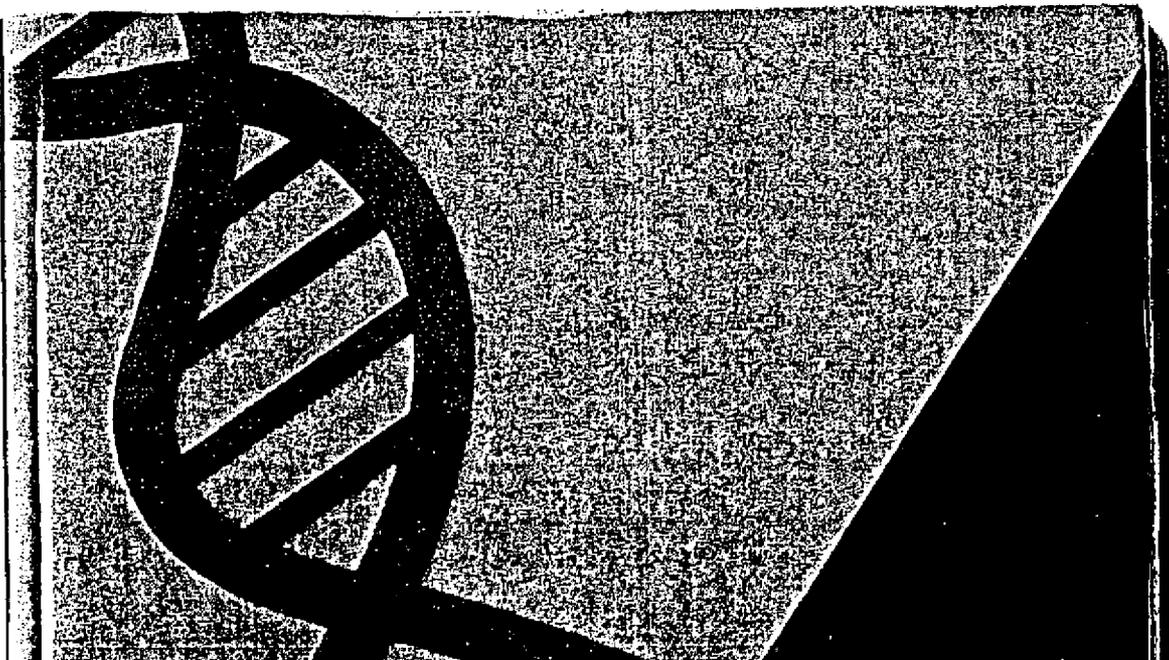
Exhibit description NRC Report 1996 page 5-6
The evaluation of forensic DNA evidence



DC-09900054482-005
CR06-2580 FRANK MILFORD PECK 4 Pages
STATE VS. FRANK MILFORD PECK 4 Pages
District Court 03/17/2014 02:30 PM
Washoe County 2650
-v-1

EXHIBIT 1

EXHIBIT 1

A stylized, high-contrast graphic of a DNA double helix is positioned in the upper left quadrant of the cover. The background is a dark, textured field with a large, solid black triangle on the right side.

DNA Technology in Forensic Science

NATIONAL RESEARCH COUNCIL

V8.1641

DNA Technology in Forensic Science

Committee on DNA Technology in Forensic Science
Board on Biology
Commission on Life Sciences
National Research Council

NATIONAL ACADEMY PRESS
Washington, D.C. 1992

loci. It generates a large quantity of relatively pure product that can be analyzed with much greater precision than Southern blots, even down to the nucleotide level. At the same time, it poses even more serious issues of proficiency, control, and technology transfer than RFLP typing.

In summary, it is well established that one can greatly amplify a locus with authenticity and that one can reliably detect alleles or sequence variation at the amplified locus with any of a number of techniques. PCR analysis is extremely powerful in medical technology, but it has not yet achieved full acceptance in the forensic setting. The theory of PCR analysis, even though it is the analysis of synthetic DNA, as opposed to the natural sample, is scientifically accepted and has been accepted by a number of courts. However, most forensic laboratories have invested their energy in development of RFLP technology and have left the development of forensic PCR technology to a few other laboratories. Thus, there is no broad base of experience in the use of the technique in identity testing.

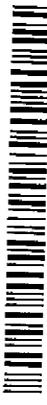
Forensic PCR-based testing is now limited for the most part to analysis of genetic variation at the DQ α locus in the HLA complex. Potential ambiguities in typing results cannot yet be checked by studying a number of other loci in the same DNA sample. That shortcoming will be rectified with the addition of new PCR markers for forensic analysis. However, it is clear that analysis of the DQ α locus with PCR can often provide useful information during the investigative phase in the forensic setting.

In general, further experience should be gained with respect to PCR in identity testing. Information on the extent of the contamination problem in PCR analysis and the differential amplification of mixed samples needs to be further developed and published. A great deal of this information can be obtained when a number of polymorphic systems are available for PCR analysis. Ambiguous results obtained with a number of polymorphic markers will signal contamination or mixtures of DNA in a sample.

Quantification of PCR results needs to be explored, to make the results more reliable. Laboratories that gain experience with PCR should determine the relationship between cycle number and percentage of contaminating DNA easily detected for each system used. Control primers that amplify small amounts of DNA reliably and robustly need to be added to test amplifications. In general, information derived from new polymorphic loci under standardized conditions with easily quantifiable results or end points is needed. Considerable advances in the use of PCR in forensic analysis can be expected soon; the method has enormous promise.

NATIONAL COMMITTEE ON FORENSIC DNA TYPING

Forensic DNA typing is advancing rapidly. RFLP-based typing methods continue to be refined and improved, PCR typing methods are being



CR06-2580 DC-0950065462-006
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 03/17/2014 02:30 PM
Washoe County 2660
JYDST

EXHIBIT 2

EXHIBIT 2

THE STATE OF WASHINGTON, Respondent, v. GEORGE W. RUSSELL, Appellant.
SUPREME COURT OF WASHINGTON
125 Wn2d 24; 125 Wn.2d 24; 882 P.2d 747; 882 P.2d 747; 1994 Wash LEXIS 6351994 Wash.
LEXIS 635; 63 USLW 229163 U.S.L.W. 2291
No. 60673-1

October 13, 1994, Filed Summary

{882 P.2d 764} PCR analysis is extremely powerful in medical technology, but it has not yet achieved full acceptance in the forensic setting. The theory of PCR analysis . . . is scientifically accepted and has been accepted by a number of courts.

The fact that the theory of PCR is of synthetic DNA as opposed to the natural sample was omitted with three periods (...) in the above quote. See (1992 NRC Report) (DNA Technology in forensic science) at page 70, lines 9, 10, and 11.

{125 Wn.2d 101} The quote, the experts and the court opinions cited to by the majority all refer to the RFLP technique of DNA identification and not to PCR amplification analysis. The majority states **"the report acknowledges the admissibility of DNA evidence, without distinguishing between the PCR and RFLP methodology"** (italics mine), majority, at 46, and then quotes to a section of the report that in fact appears to me to be discussing RFLP and not PCR when it states it is unnecessary to hold admissibility hearings on the scientific techniques. In fact, the missing middle section of the majority's quote, majority, at 46, from pages 145-46 of the report clearly discusses RFLP analysis. Additionally, on the previous page of the report, the NRC states that "[t]he use of PCR amplification for sample preparation might require a pretrial hearing on the properties of the technique, because it introduces a novel issue considered by only a few courts thus far -- **the synthesis of evidence by amplification.**" **DNA Technology, at 144.** If page 145 of the report is referring to PCR evidence when it says no hearing is necessary, then it conflicts with the statement about PCR on the prior page. My interpretation is congruent with the report's conclusion that "[t]he current laboratory procedure for detecting DNA variation (specifically, single-locus probes analyzed on Southern blots without evidence of band shifting) is fundamentally sound, . . ." (Italics mine.) **DNA Technology, at 149. The parenthetical material describes the RFLP technique of DNA analysis, not PCR analysis. 29**

EXHIBIT 2

CR06-2560 DC-09900054482-007
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 03/17/2014 02:30 PM
Washoe County 2650
WVCT

EXHIBIT 3

EXHIBIT 3

STATE OF MONTANA, Plaintiff and Respondent, v. **LARRY T. MOORE**, Defendant/Appellant.

SUPREME COURT OF MONTANA

268 Mont 20268 Mont. 20; 885 P2d 457885 P.2d 457; 1994 Mont LEXIS 2601994 Mont. LEXIS 260; 51 Mont St Rep 115151 Mont. St. Rep. 1151

No. 93-369

September 1, 1994, Heard; September 13, 1994, Submitted

November 22, 1994, Decided

{885 P.2d 467}

In sum, the PCR process clones the region of a DNA strand containing the DQ-alpha gene. The copies are then analyzed to determine whether certain sequences of the gene are present.

Clearly, the above statement that PCR "clones DNA" is a FALSE statement.

EXHIBIT 3

V8.1647

CR06-2580 DC-09900054482-008
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 03/17/2014 02:30 PM
Washoe County 2550
-x1

EXHIBIT 4

EXHIBIT 4

STATE OF OREGON, Respondent on Review, v. **ROBERT WALLACE LYONS**, Petitioner on Review.

SUPREME COURT OF OREGON

324 Ore 256324 Ore. 256; 924 P2d 802924 P.2d 802; 1996 Ore LEXIS 1021996 Ore. LEXIS 102SC S41261

January 10, 1995, Argued and submitted; July 8, 1996, reassigned October 11, 1996, Filed

footnote 22

In 1992, the National Research Council noted that "the theory of PCR analysis *** is scientifically accepted and has been accepted by a number of courts." NRC (1992) at 70. In 1996, the National Research Council reported that "the technology for DNA profiling and the methods for estimating frequencies and related statistics have progressed to the point where the reliability and validity of properly collected and analyzed DNA data should not be in doubt." NRC (1996) at ES-1.

The above asterisks omit "even though it is the analysis of synthetic DNA, as opposed to the natural sample," See: (1992 NRC Report) pg 70, lines 10 & 11.

EXHIBIT 4

CR05-2380 DC-06900054462-009
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 03/17/2014 02:30 PM
Washoe County 2650
-VE .JURY

EXHIBIT 5

EXHIBIT 5

FIRST FEDERAL APPELLATE DECISION

United States of America, Appellee, v. Reginald Pierre **Beasley**, Appellant. United States of America, Appellee, v. Oliver Lawrence Beasley, Appellant.

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

102 F3d 1440 102 F.3d 1440; 1996 US App LEXIS 330001996 U.S. App. LEXIS 33000

No. 95-3362, No. 95-3510

June 12, 1996, Submitted

AS QUOTED FROM BEASLEY:

{102 F.3d 1445}

The PCR method is based upon the natural DNA replication process. By utilizing the PCR method, one can produce a substantial number of specific segments of (human DNA) which can then be typed.

Beasley makes no mention of the (1992 NRC REPORT).

See: (1992 NRC REPORT PAGE 70 lines 9,10 & 11).

"The theory of PCR is of synthetic DNA as opposed to the natural sample"

EXHIBIT 5

CF06-2580 DC-09900054482-010
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 03/17/2014 02:30 PM
Washoe County 2650
WNET

EXHIBIT 6

EXHIBIT 6

UNITED STATES OF AMERICA v. LEETAIVIOUS GAINES and BOGARD LIDDELL, Defendants
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
979 F Supp 1429979 F. Supp. 1429; 1997 US Dist LEXIS 194451997 U.S. Dist. LEXIS 19445; 48 Fed R
Evid Serv (Callaghan) 41948 Fed. R. Evid. Serv. (Callaghan) 419
CASE NO. 96-6159-CR-GOLD
October 3, 1997, Decided
October 3, 1997, Filed

{979 F. Supp. 1432}

B. THE PCR METHOD OF DNA ANALYSIS.

The PCR method of DNA analysis has been succinctly described in **United States v. Beasley**, **102 F.3d 1440, 1445 (8th Cir. 1996)**, where the Eight Circuit quoted **(and adopted)** Judge Doty's findings which were rendered following a Daubert hearing. The quoted findings provide:

3

The PCR method [of DNA analysis] is based upon the natural DNA replication process. **By utilizing the PCR method, one can produce a substantial number of specific segments of human DNA which can then be typed.**

{979 F. Supp. 1436}

One key technique introduced in the last few years is the polymerase chain reaction (PCR), which allows a million or more copies of a short region of DNA to be easily made. For DNA typing, one amplifies (copies) a genetically informative sequence, usually 100-2,000 nucleotides long, and detects the genotype in the amplified product. . . . **The PCR process . . . is simple; indeed it is analogous to the process by which cells replicate their DNA.** It can be used in conjunction with various methods for detecting person-to-person differences in DNA. National Research Council, DNA Technology in Forensic Science (1992) at 5-6:

In its 1996 Report, the NRC II Committee (Ex. 6 Government's Memorandum in Support of Admissibility) reiterated this conclusion, and stated that "it is not surprising that PCR-based typing is widely and increasingly used in forensic DNA laboratories in this country and abroad." The increased use was based upon the fact that the process was relatively simple and could be easily carried out within a short period of time, and that PCR-based methods usually permit an exact identification of each allele, in which case there are no measurement uncertainties." National Research Council, The Evaluation of Forensic DNA Evidence (1996) at 70.

The above page numbers for DNA Technology in Forensic Science (1992) at 5-6 was "transposed" with the page number on the following page at The Evaluation of Forensic DNA Evidence (1996) at 70.

Consequently, this case states that the PCR method produces "HUMAN DNA" then goes on to omit the fact, that the theory of PCR is of "synthetic DNA" and further confuses readers by incorrect page numbers. See: DNA Technology in Forensic Science (1992) at 70. See also The Evaluation of Forensic DNA Evidence (1996) at 5-6.

EXHIBIT 6

V8.1653



CR06-2580 DC-09900054482-011
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 03/17/2014 02:30 PM
Washoe County 2580
-X7 JY06RT

EXHIBIT 7

EX-7

**GREGORY D. BOLIN, Appellant, vs. THE STATE OF NEVADA,
Respondent.**

SUPREME COURT OF NEVADA

114 Nev 503 114 Nev. 503; 960 P.2d 784960 P.2d 784; 1998 Nev LEXIS 591998
Nev. LEXIS 59

No. 29497

May 19, 1998, Filed

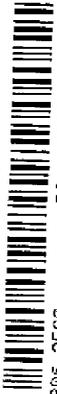
{114 Nev. 528} This court has repeatedly assessed the admissibility of scientific evidence in terms of trustworthiness and reliability. Santillanes v. State, 104 Nev. 699, 704, 765 P.2d 1147, 1150 (1988). Because the overwhelming weight of authority has established that DNA analysis utilizing the PCR technique is reliable and trustworthy for use within the forensic context, See United States v. Hicks, 103 F.3d 837, 844-47, (9th Cir. 1996), cert. denied, U.S. , 117 S. Ct. 1483, 137 L. Ed. 2d 694 (1997); **United States v. Beasley, 102 F.3d 1440, 1444-48 (8th Cir. 1996)**, cert. denied, U.S. , 117 S. Ct. 1856, 137 L. Ed. 2d 1058 (1997); **State v. Lyons, 324 Ore. 256, 924 P.2d 802, 804-14 (Or. 1996)**; People v. Pope, 284 Ill. App. 3d 695, 672 N.E.2d 1321, 1325-28, 220 Ill. Dec. 309 (Ill. App. Ct. 1996); State v. Gentry, 125 Wash. 2d 570, 888 P.2d 1105, 1117-18 (Wash. 1995), we hold that DNA results obtained through the use of the PCR technique are admissible for use within the forensic context. Further, based on the weight of scientific authority, we hold that DNA statistical probability calculations need not take into account genetic population substructure to be valid and admissible. Accordingly, the district court did not err in admitting DNA statistical probability evidence. 6

In Beasley the Court did not mention the 1992 or the 1996 NRC Reports. Instead, relied on the findings of the lower courts Doubert Hearing adopting false facts that the PCR method produces HUMAN DNA.

id

In Lyons the fact that the PCR method produces synthetic DNA is omitted with three asterisks (***) further concealing this truth about the PCR method.

EXHIBIT 7



CR06-2580 DC-0990054482-012
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 03/17/2014 02:30 PM
Washoe County 2650
JR

EXHIBIT 8

EX-8

alleles are inferred by subtraction. (For example, there is no specific probe for the allele 1.2; the presence or absence of this allele is inferred from the reaction of DNA probes with the product of the combination 1.2, 1.3, and 4, but not with the products of 1.3 and 4 individually.)

The problem is complex, and some forensic experts follow the practice of making several reasonable assumptions and then using the calculation that is most conservative. For a fuller treatment of mixed samples, see Weir et al. (1996).

Bayes's Theorem

The likelihood ratio and the match probability, being reciprocals, contain the same information. The LR, however, has a property that makes it especially useful, provided that prior odds are available on the hypothesis that the two DNA profiles have the same source. (Prior odds are the odds that the two DNA samples came from the same person on the basis of information other than the DNA. Posterior odds are the odds when the DNA information is included in the analysis.) That property can be stated this way:

The posterior odds are the prior odds multiplied by LR.⁴

In everyday words: *whatever are the odds that the two samples came from the same person in the absence of DNA evidence, the odds when the DNA evidence is included are LR times as great.* This statement is an instance of Bayes's theorem.

For example, if there is reason to think that the prior odds that two DNA samples came from the same person (however this is determined) are 1:2, and the LR is 10,000, the posterior odds are 5,000:1. Many statisticians and forensic scientists prefer to use the likelihood ratio rather than the match probability (Berry 1991a; Berry et al. 1992; Collins and Morton 1994; Evett et al. 1992; Balding and Nichols 1994) because it admits an inferential interpretation that the simple match probability does not. Odds can be converted into a probability by the relation $\text{Prob} = \text{Odds}/(\text{Odds} + 1)$, or $\text{Odds} = \text{Prob}/(1 - \text{Prob})$. Thus, a likelihood ratio, which is not a probability, can be used to obtain a probability.

Paternity testing

The relation between posterior and prior odds is routinely used in paternity analysis (Walker 1983; AABB 1994). If the putative father is not excluded by blood-group, enzyme, and DNA evidence, a "paternity index" is calculated. The paternity index PI is a likelihood ratio—the probability of the mother-child-father profile combination if the putative father is the true father divided by the probability of this combination if a randomly selected man is the father. Customarily, the calculations make use of a database or databases appropriate to the race(s) of the persons involved.

⁴ This supposes that two simple hypotheses are being compared. When more complicated hypotheses are being compared (when the alternative hypothesis consists of different possibilities with different a priori probabilities), a Bayes factor, essentially a weighted LR, plays the role of the LR (Kass and Raftery 1995).

1 CODE #3860
RICHARD A. GAMMICK
2 #001510
P. O. Box 30083
3 Reno, Nevada 89520-3083
(775)328-3200
4 Attorney for Respondents

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 FRANK MILFORD PECK,

10 Petitioner,

11 v.

Case No. CR06-2580

12 WARDEN NEVIN, and
13 THE STATE OF NEVADA,

Dept. No. 6

14 Respondents.
_____ /

15 REQUEST FOR SUBMISSION

16 It is requested that the Motion to Dismiss Petition and Supplemental Petition for Writ of
17 Habeas Corpus (Post-Conviction), filed February 27, 2014, be submitted to the Court for
18 decision.

19 AFFIRMATION PURSUANT TO NRS 239B.030

20 The undersigned does hereby affirm that the preceding document does not contain the
21 social security number of any person.

22 DATED: March 21, 2014.

23 RICHARD A. GAMMICK
24 District Attorney

25 By /s/ TERRENCE P. McCARTHY
26 TERRENCE P. McCARTHY
Chief Appellate Deputy

1 CERTIFICATE OF MAILING

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County
3 District Attorney's Office and that, on March 21, 2014, I deposited for mailing through the U.S.
4 Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing
5 document, addressed to:

6 Frank Milford Peck, #57106
7 High Desert State Prison
8 P.O. Box 650
9 Indian Springs, NV 89070

10 /s/ EARLEEN RUSSELL
11 EARLEEN RUSSELL
12
13
14
15
16
17
18
19
20
21
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23
24
25
26

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-03-21 12:51:43.949.

BRUCE HAHN, ESQ. - Notification received on 2014-03-21 12:51:43.824.

MARY LOU WILSON, ESQ. - Notification received on 2014-03-21 12:51:43.746.

KARLA BUTKO, ESQ. - Notification received on 2014-03-21 12:51:44.23.

DIV. OF PAROLE & PROBATION - Notification received on 2014-03-21 12:51:43.902.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580

Judge:

HONORABLE BRENT ADAMS

Official File Stamp:

03-21-2014:09:27:48

Clerk Accepted:

03-21-2014:12:50:29

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. FRANK MILFORD PECK (D6)

Document(s) Submitted:

Request for Submission

Filed By:

Terrence McCarthy

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

KARLA BUTKO, ESQ. for FRANK MILFORD
PECK

DIV. OF PAROLE & PROBATION

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

BRUCE C. HAHN, ESQ. for STATE OF NEVADA

MARY LOU A. WILSON, ESQ. for FRANK
MILFORD PECK

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA

FRANK MILFORD PECK for FRANK MILFORD
PECK

DAVID WAYNE CLIFTON, ESQ.

1 Code 3370
2
3
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 FRANK M. PECK,

Case No. CR06-2580

10 Petitioner,

Dept No. 6

11 v.

12 THE STATE OF NEVADA

13 Respondent.
14
15 _____/

16 ORDER

17 On February 27, 2014, the State of Nevada filed a motion for dismissal of Petitioner's
18 petition for writ of habeas corpus (post-conviction). The State moved for dismissal on
19 several grounds: 1) Petitioner filed his petition prior to conviction in violation of NRS 34.
20 724; 2) failure of the Petitioner to timely file his petition pursuant to N.R.S. 34.726; 3) the
21 supplemental petitions filed by Petitioner are fugitive pleadings pursuant to NRS 34.750; 4)
22 Petitioner failed to present the petition in substantially the form required by NRS 34. 735;
23 and, 5) Petitioner incorrectly proposes the introduction of DNA analysis using the PCR
24 technique was improper. The State's motion was opposed by Petitioner on March 17, 2014.

25 The State argues the petition is untimely pursuant to N.R.S. 34.726 because the
26 October, 2012 supplemental petition filed by Petitioner was outside the one year deadline,
27 and was therefore late. The State also argues the supplemental petitions filed by Petitioner
28 are fugitive pleadings under NRS 34.750. NRS 34.750 permits Petitioner's counsel to file a

1 supplemental petition after being appointed, but restricts further filing of pleading without
2 a court order. NRS 34.750(5). Petitioner has filed eight supplemental pleadings in this case,
3 the most recent of which was December 5, 2013. The Court finds the Petitioner has failed to
4 plead and demonstrate good cause for violating NRS 34.726 and has filed fugitive
5 documents under NRS 34.750.

6 The State finally argues the petition should be dismissed because Petitioner
7 incorrectly asserts the DNA analysis using the PCR technique was improperly admitted.
8 The Court agrees with the State's assertion. In *Bolin v. State*, 114 Nev. 503, 528, 960 P.2d 784,
9 800 (1998), the Nevada Supreme Court held, "[b]ecause the overwhelming weight of
10 authority has established that DNA analysis utilizing the PCR technique is reliable and
11 trustworthy for use within the forensic context, we hold that DNA result obtained through
12 the use of the PCR technique are admissible for use within the forensic context." The Court
13 does not find Petitioner's argument meritorious as the use of DNA analysis using the PCR
14 technique is admissible.

15 Accordingly, the State's motion to dismiss is granted.

16
17 DATED: This 30th day of April, 2014.

18
19 

20 DISTRICT JUDGE

1 CERTIFICATE OF SERVICE

2

3 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;

4 that on the 30th day of April, 2014, I electronically filed the foregoing with the clerk of

5 the Court:

6 TERRENCE MCCARTHY, ESQ.

7

8

9

10

11

12 And, I deposited in the County mailing system for postage and mailing with the

13 United States Postal Service in Reno, Nevada, a true and correct copy of the attached

14 document addressed as follows:

15 Frank Milford Peck, #57106

16 High Desert State Prison

17 PO Box 650

18 Indian Springs, NV 89070

19

20

21 

22 Judicial Assistant

23

24

25

26

27

28

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-04-30 14:47:49.767.

BRUCE HAHN, ESQ. - Notification received on 2014-04-30 14:47:49.673.

MARY LOU WILSON, ESQ. - Notification received on 2014-04-30 14:47:49.642.

KARLA BUTKO, ESQ. - Notification received on 2014-04-30 14:47:49.798.

DIV. OF PAROLE & PROBATION - Notification received on 2014-04-30 14:47:49.736.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580

Judge:

HONORABLE BRENT ADAMS

Official File Stamp:

04-30-2014:14:46:48

Clerk Accepted:

04-30-2014:14:47:20

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. FRANK MILFORD PECK (D6)

Document(s) Submitted:

Ord Granting Mtn

Filed By:

Judicial Asst. HBoe

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

KARLA BUTKO, ESQ. for FRANK MILFORD
PECK

DIV. OF PAROLE & PROBATION

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

BRUCE C. HAHN, ESQ. for STATE OF NEVADA

MARY LOU A. WILSON, ESQ. for FRANK
MILFORD PECK

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA

FRANK MILFORD PECK for FRANK MILFORD
PECK

DAVID WAYNE CLIFTON, ESQ.

Frank M. Peck 57106

FILED

HDSP Box 650

MAY 12 2014

Indian Springs, Nv. 89070

JOEY HASTINGS, CLERK
BY  DEPUTY CLERK

Petitioner/Appellant, prose

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Frank M. Peck,

CASE NO. CR 06 2580

Petitioner,

DEPT NO. 6

vs

State of Nevada,

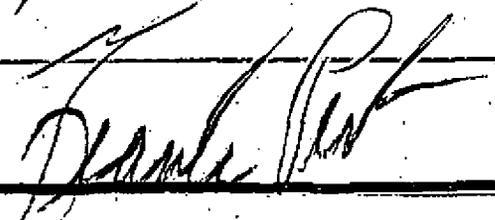
Respondent,

NOTICE OF APPEAL

NOTICE is hereby given that Petitioner Frank M. Peck hereby Appeals to the NEVADA Supreme Court from the Order Dismissing Petitioners Petition for writ of Habeas Corpus Post-conviction relief filed in the instant action on April 30th 2014.

Dated May 7th 2014

Contains NO social security numbers NRS 239 B 030.


Frank M. Peck Pet, prose

CR06-2580
STATE VS FRANK MILFORD PECK 1 Page
District Court 05/12/2014 09:55 AM
Washoe County NV
vvl0810

Code 1310

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

FRANK M. PECK,

Petitioner,

Case No. CR06-2580

vs.

Dept. No. 6

THE STATE OF NEVADA,

Respondent.

CASE APPEAL STATEMENT

This case appeal statement is filed pursuant to NRAP 3(2).

1. This appeal is from an order entered by the Honorable Judge Brent Adams.
2. Appellant is Frank M. Peck. Appellant is representing himself in Proper Person on appeal:
3. Appellant's address is:
Frank M. Peck #57106
High Desert State Prison
PO Box 650
Indian Springs, Nevada 89070
4. Respondent is the State of Nevada. Respondent is represented by the Washoe County District Attorney's Office:
Terrance McCarthy, Esq.
P.O. Box 11130
Reno, Nevada 89520
5. Respondent's attorney is licensed to practice law in Nevada.

6. Appellant was represented by appointed counsel in District Court.
7. Appellant was not represented by appointed counsel on appeal.
8. Appellant was granted leave to proceed in forma pauperis, filed July 7, 2009 in the District Court.
9. Proceeding commenced by the filing of an Indictment filed on November 8, 2006.
10. This is a criminal proceeding and the Appellant is appealing the Order filed April 30, 2014
11. The case has been the subject of a previous appeal to the Supreme Court:
Supreme Court No: 51948, 53403, 53826, 53947, 54168, 54875 and 63974.
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 15th day of May, 2014.

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By: /s/ Annie Smith
Annie Smith
Deputy Clerk

Code 1350

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

FRANK M. PECK,

Petitioner,

vs.

Case No. CR06-2580

THE STATE OF NEVADA,

Dept. No. 6

Respondent.

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 15th day of May, 2014, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 15th day of May, 2014

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By /s/ Annie Smith
Annie Smith
Deputy Clerk

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-05-15 09:53:13.741.

BRUCE HAHN, ESQ. - Notification received on 2014-05-15 09:53:13.647.

MARY LOU WILSON, ESQ. - Notification received on 2014-05-15 09:53:13.616.

KARLA BUTKO, ESQ. - Notification received on 2014-05-15 09:53:13.787.

DIV. OF PAROLE & PROBATION - Notification received on 2014-05-15 09:53:13.709.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580

Judge:

HONORABLE BRENT ADAMS

Official File Stamp:

05-15-2014:09:52:10

Clerk Accepted:

05-15-2014:09:52:44

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. FRANK MILFORD PECK (D6)

Document(s) Submitted:

Case Appeal Statement

Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

KARLA BUTKO, ESQ. for FRANK MILFORD
PECK

DIV. OF PAROLE & PROBATION

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

BRUCE C. HAHN, ESQ. for STATE OF NEVADA

MARY LOU A. WILSON, ESQ. for FRANK
MILFORD PECK

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

V8.1674

STATE OF NEVADA for STATE OF NEVADA
FRANK MILFORD PECK for FRANK MILFORD
PECK

DAVID WAYNE CLIFTON, ESQ.

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 65691
District Court Case No. CR062580

p
De

RECEIPT FOR DOCUMENTS

TO: Frank Milford Peck
Washoe County District Attorney \ Terrence P. McCarthy, Deputy District Attorney
Joey Orduna Hastings, Washoe District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

- 05/19/2014 Appeal Filing fee waived. Criminal.
- 05/19/2014 Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day.

DATE: May 19, 2014

Tracie Lindeman, Clerk of Court
rw

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-05-20 14:28:39.571.

BRUCE HAHN, ESQ. - Notification received on 2014-05-20 14:28:39.478.

MARY LOU WILSON, ESQ. - Notification received on 2014-05-20 14:28:39.446.

KARLA BUTKO, ESQ. - Notification received on 2014-05-20 14:28:39.603.

DIV. OF PAROLE & PROBATION - Notification received on 2014-05-20 14:28:39.524.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR06-2580

Judge:

HONORABLE BRENT ADAMS

Official File Stamp:

05-20-2014:14:27:26

Clerk Accepted:

05-20-2014:14:28:04

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. FRANK MILFORD PECK (D6)

Document(s) Submitted:

Supreme Court Receipt for Doc

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

KARLA BUTKO, ESQ. for FRANK MILFORD
PECK

DIV. OF PAROLE & PROBATION

TERRENCE P. MCCARTHY, ESQ. for STATE
OF NEVADA

BRUCE C. HAHN, ESQ. for STATE OF NEVADA

MARY LOU A. WILSON, ESQ. for FRANK
MILFORD PECK

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

STATE OF NEVADA for STATE OF NEVADA

V8.1678

FRANK MILFORD PECK for FRANK MILFORD
PECK

DAVID WAYNE CLIFTON, ESQ.

CODE: 2540

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK,

Petitioner,

CASE NO: CR06-2580

vs.

DEPT. NO: 6

THE STATE OF NEVADA,

Respondents.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 30th day of April, 2014 the Court entered a decision or order in this matter, a true and correct copy of which is attached hereto.

You may appeal to the Supreme Court from the decision or order of the Court. If you wish to appeal, you must file a notice of appeal with the Clerk of this Court within thirty-three (33) days, after the date this notice is mailed to you. This notice was mailed on the 21st day of May, 2014.

JOEY ORDUNA HASTINGS

Clerk of the Court

By /s/ Janelle Yost

Deputy Clerk

CERTIFICATE OF SERVICE

CASE NO. CR06-2580

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; and that on the 21st day of May, 2014, I electronically filed the Notice of Entry of Order with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to:

Karla Butko, Esq.
Mary Lou Wilson, Esq.
Terrence McCarthy, Esq.
Bruce Hahn, Esq.

I further certify that on the 21st day of May, 2014, I deposited in the Washoe County mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true and correct copy of the Notice of Entry of Order, addressed to:

Attorney General's Office
100 N. Carson St.
Carson City, NV 89701-4717

Frank M. Peck, #57106
High Desert State Prison
P O Box 650
Indian Springs, NV 89070

/s/ Janelle Yost
Janelle Yost

1 Code 3370
2
3
4
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 FRANK M. PECK,

Case No. CR06-2580

10 Petitioner,

Dept No. 6

11 v.

12 THE STATE OF NEVADA

13 Respondent.
14
15 _____/

16 ORDER

17 On February 27, 2014, the State of Nevada filed a motion for dismissal of Petitioner's
18 petition for writ of habeas corpus (post-conviction). The State moved for dismissal on
19 several grounds: 1) Petitioner filed his petition prior to conviction in violation of NRS 34.
20 724; 2) failure of the Petitioner to timely file his petition pursuant to N.R.S. 34.726; 3) the
21 supplemental petitions filed by Petitioner are fugitive pleadings pursuant to NRS 34.750; 4)
22 Petitioner failed to present the petition in substantially the form required by NRS 34. 735;
23 and, 5) Petitioner incorrectly proposes the introduction of DNA analysis using the PCR
24 technique was improper. The State's motion was opposed by Petitioner on March 17, 2014.

25 The State argues the petition is untimely pursuant to N.R.S. 34.726 because the
26 October, 2012 supplemental petition filed by Petitioner was outside the one year deadline,
27 and was therefore late. The State also argues the supplemental petitions filed by Petitioner
28 are fugitive pleadings under NRS 34.750. NRS 34.750 permits Petitioner's counsel to file a

1 supplemental petition after being appointed, but restricts further filing of pleading without
2 a court order. NRS 34.750(5). Petitioner has filed eight supplemental pleadings in this case,
3 the most recent of which was December 5, 2013. The Court finds the Petitioner has failed to
4 plead and demonstrate good cause for violating NRS 34.726 and has filed fugitive
5 documents under NRS 34.750.

6 The State finally argues the petition should be dismissed because Petitioner
7 incorrectly asserts the DNA analysis using the PCR technique was improperly admitted.
8 The Court agrees with the State's assertion. In *Bolin v. State*, 114 Nev. 503, 528, 960 P.2d 784,
9 800 (1998), the Nevada Supreme Court held, "[b]ecause the overwhelming weight of
10 authority has established that DNA analysis utilizing the PCR technique is reliable and
11 trustworthy for use within the forensic context, we hold that DNA result obtained through
12 the use of the PCR technique are admissible for use within the forensic context." The Court
13 does not find Petitioner's argument meritorious as the use of DNA analysis using the PCR
14 technique is admissible.

15 Accordingly, the State's motion to dismiss is granted.

16
17 DATED: This 30th day of April, 2014.

18
19 

20 DISTRICT JUDGE

1 CERTIFICATE OF SERVICE

2

3 I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;

4 that on the 30th day of April, 2014, I electronically filed the foregoing with the clerk of

5 the Court:

6 TERRENCE MCCARTHY, ESQ.

7

8

9

10

11

12 And, I deposited in the County mailing system for postage and mailing with the

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14 document addressed as follows:

15 Frank Milford Peck, #57106

16 High Desert State Prison

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A filing has been submitted to the court RE: CR06-2580

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HONORABLE BRENT ADAMS

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05-21-2014:14:07:36

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Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. FRANK MILFORD PECK (D6)

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FRANK MILFORD PECK for FRANK MILFORD
PECK

DAVID WAYNE CLIFTON, ESQ.

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65691

CR06-258
D6
FILED

JUN 04 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER DIRECTING TRANSMISSION OF RECORD

This court has concluded that its review of the complete record is warranted. *See* NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 45 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. *See* NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. *See* NRS 176.156(5).

It is so ORDERED.

J. Libon, C.J.

cc: Frank Milford Peck
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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06-11-2014:09:12:49

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06-11-2014:09:13:22

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS. FRANK MILFORD PECK (D6)

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MARY LOU A. WILSON, ESQ. for FRANK
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STATE OF NEVADA for STATE OF NEVADA

FRANK MILFORD PECK for FRANK MILFORD
PECK

DAVID WAYNE CLIFTON, ESQ.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA
Plaintiff,

vs.

FRANK PECK,
Defendant.

Sup. Ct. Case No. 65691
Case No. CR06-2580
Dept. 6

RECORD ON APPEAL

VOLUME 7 OF 13

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H D S P - P O Box 650
Indian Springs, Nevada 89070

RESPONDENT

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1 anything about the case before?

2 POTENTIAL JUROR: No.

3 THE COURT: And your practice has not been in
4 the criminal field; is that correct?

5 POTENTIAL JUROR: Correct.

6 THE COURT: But I'm sure that you know in
7 criminal cases, the State is required to prove the case
8 beyond a reasonable doubt.

9 POTENTIAL JUROR: Correct.

10 THE COURT: And the burden never shifts to the
11 defendant to testify or produce any witnesses or to
12 submit any evidence. You know that, right?

13 POTENTIAL JUROR: Yes.

14 THE COURT: Mr. Clifton?

15 MR. CLIFTON: No additional questions.

16 THE COURT: Mr. Lindsay?

17 MR. LINDSAY: Can you be fair -- since there's
18 DNA evidence, can you at least listen fairly to the
19 evidence, as you would want if you were a trial lawyer?

20 POTENTIAL JUROR: Of course. Is it scheduled
21 for five days?

22 THE COURT: It's scheduled for five days. It
23 should be finished by next wednesday afternoon.

24 MR. CLIFTON: Tuesday afternoon.

1 THE COURT: well, I hope Tuesday, because we
2 have to take Monday morning off. So we'll be in session
3 tomorrow, Friday, Monday afternoon, Tuesday, and if
4 necessary Wednesday. Okay?

5 POTENTIAL JUROR: Okay.

6 THE COURT: Thank you, Ms. Simons. You may
7 step out.

8 And Ms. Clerk, could you have the bailiff bring
9 in the gentleman who mentioned he may know one of the
10 witnesses in the trial.

11 Mr. Clifton, do you pass Ms. Simons for cause?

12 MR. CLIFTON: Yes.

13 THE COURT: Mr. Lindsay, do you pass Ms. Simons
14 for cause?

15 MR. LINDSAY: Yes, your Honor.

16 THE COURT: Sir, please have a seat. Would you
17 state your name, please.

18 POTENTIAL JUROR: Francis Lane.

19 THE COURT: The record should reflect the
20 presence of the Court, counsel and the parties, and
21 Potential Juror No. 24, Mr. Francis Lane.

22 Mr. Lane, was there a matter you wanted to
23 bring to the Court's attention?

24 POTENTIAL JUROR: I know one of the ladies, I

1 guess, that's in the court matter. Dal Sydell, I
2 believe her name is. I've known her through work and
3 work only.

4 THE COURT: And can you tell me what job she
5 does and what job you do?

6 POTENTIAL JUROR: When I was working around
7 her, she was a flagger and I was on a paving crew at
8 that time. So I helped pave the roads while she was
9 directing traffic.

10 THE COURT: Okay. Now, in that sort of
11 situation, I assume you all worked together to get the
12 job done. Right?

13 POTENTIAL JUROR: Uh-huh.

14 THE COURT: How long did you work with Ms.
15 Sydell?

16 POTENTIAL JUROR: Off and on through the years.
17 I started paving when I was about 20, maybe 19, and I'm
18 still paving now. So over the years, we ran into each
19 other through our occupations.

20 THE COURT: Did you socialize at all with each
21 other?

22 POTENTIAL JUROR: No, not really, strictly
23 work, but I didn't even know she was involved with this
24 case until I seen her outside the courtroom. So I said

1 hello to her.

2 THE COURT: Okay. I appreciate you bringing
3 that subject to the Court's attention, Mr. Lane. Let me
4 ask you this simple question. If she is a witness
5 during the trial, can you assess her testimony based
6 only on her statements and demeanor here in the
7 courtroom during the trial?

8 POTENTIAL JUROR: Yes, I can.

9 THE COURT: So you wouldn't be inclined to give
10 her testimony any greater weight or any lesser weight
11 because of your knowledge of her?

12 POTENTIAL JUROR: No, sir.

13 THE COURT: Okay, thank you.

14 Any questions of Mr. Lane?

15 MR. CLIFTON: I'm still trying to figure out
16 who this person is. Is this someone on your witness
17 list? It hasn't been mentioned in court.

18 THE DEFENDANT: She is my brother's ex-wife.

19 MR. CLIFTON: What's her first name?

20 THE DEFENDANT: Dal, D-A-L.

21 MR. CLIFTON: I have not heard this name at
22 all, this is all news to me. So you recognized her?

23 POTENTIAL JUROR: I recognized her and went up
24 to her.

1 MR. CLIFTON: Well, how did you know that she
2 was involved in this case?

3 POTENTIAL JUROR: I asked her if she was
4 involved in this matter and she said yes, and that's
5 when I said --

6 MR. CLIFTON: How do you know she wasn't a
7 juror?

8 POTENTIAL JUROR: Well, she was sitting
9 outside, sitting on the bench, and I didn't know until
10 that time.

11 THE COURT: She didn't discuss her testimony
12 with you at all?

13 POTENTIAL JUROR: No. I don't even know if she
14 was brought to court by either you or the district
15 attorney.

16 THE COURT: Okay. Mr. Lindsay, any questions?

17 MR. LINDSAY: Could I have half a second with
18 my -- She's not a witness, your Honor.

19 THE COURT: Oh, she's not a witness. Well,
20 that makes it easier. Thank you, Mr. Lane.

21 POTENTIAL JUROR: Thank you. I just didn't
22 want to hide anything.

23 MR. LINDSAY: No, that's fine, because Dave and
24 I were wondering.

1 THE COURT: You may step outside, Mr. Lane.
2 We'll resume shortly.

3 (Discussion off the record.)

4 THE COURT: All right, we'll go on the record.

5 The record should reflect the presence of the
6 parties and counsel and the Court and clerk in chambers
7 for the purpose of exercising preemptory challenges in
8 this case. Each side is entitled to eight preemptory
9 challenges, to be exercised alternately, beginning with
10 counsel for the plaintiff. When each side has exercised
11 or waived a total of eight preemptory challenges, the
12 first 12 persons in order will be the jury for this
13 trial. Each side is then entitled to one alternate
14 challenge. When each side has exercised or waived the
15 alternate challenge, then the next person remaining will
16 be the alternate juror.

17 So, Mr. Clifton, you may exercise the first
18 preemptory challenge on behalf of the State.

19 MR. CLIFTON: Thank you, your Honor, but can I
20 do one prior thing? I'm sorry to do this now, I just
21 don't want to forget. Mr. Lindsay and Mr. Peck seem to
22 be getting along pretty well today, and I know they've
23 worked together over the weekend at the jail or
24 whatever. I'm just concerned, because Mr. Peck has two

1 constitutional rights here. One is that he represent
2 himself and the other is that he waives counsel, but
3 he's kind of doing a myriad of both.

4 THE COURT: No, I don't think that's true. We
5 had a lengthy hearing last week and Mr. Peck requested
6 to represent himself and I granted that motion. I also
7 appointed Mr. Lindsay as advisory counsel to assist
8 Mr. Peck.

9 So, Mr. Peck, I assume you know this, but I
10 want to make it clear. Whether and to what extent Mr.
11 Lindsay participates in this trial on your behalf is up
12 to you, and I assume that his participation in voir dire
13 so far and his participation in these proceedings has
14 been under your direction, and you've been present
15 during these proceedings, but you are the person in
16 charge of your defense. You understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And if at any time you don't want
19 Mr. Lindsay to do something or examine a witness or make
20 a statement in court, feel free to do it yourself.
21 You're in charge.

22 THE DEFENDANT: I will. Thank you, sir.

23 MR. CLIFTON: All right. I just want to make
24 sure it's clear.

1 MR. LINDSAY: One other thing for the record
2 that I want to make sure of. I've been told there's
3 physical evidence that is going to be given to me this
4 evening, and I'm going to make it a copy of it and I'm
5 going to give it to Mr. Clifton immediately, because as
6 his lawyer, I know that should've been done. Your
7 Honor, I'm just putting it on the record that, Dave, I'm
8 going to see you at 8:00 tomorrow with whatever.
9 Nothing has been given to me yet, but I have told them
10 that I absolutely need a copy and that copy has to
11 absolutely go to you.

12 MR. CLIFTON: Your Honor, just for the record,
13 since we're leading into that issue --

14 THE COURT: would anybody like to proceed with
15 jury selection?

16 MR. CLIFTON: All right. Yeah, we'll deal with
17 that issue later.

18 MR. LINDSAY: I'm sorry, your Honor.

19 THE COURT: That's all right. Mr. Clifton, you
20 may exercise the first preemptory challenge.

21 MR. CLIFTON: The State would excuse juror
22 number eight, Christopher Disuanco.

23 THE COURT: Mr. Peck, you may exercise the
24 first defense preemptory challenge.

1 MR. PECK: Juror number one.

2 THE COURT: Thank you.

3 Mr. Clifton, the State's second preemptory
4 challenge, please.

5 MR. CLIFTON: That would be juror number two,
6 Richard Cheng.

7 THE COURT: And Mr. Peck, the second defense
8 preemptory challenge, please.

9 MR. PECK: That would be Sheri Lee, number 12.

10 THE COURT: Thank you. The third preemptory
11 challenge by the State, please.

12 MR. CLIFTON: Juror number 12, Francis Lane.

13 THE COURT: The third preemptory challenge by
14 the defense, please.

15 MR. PECK: I don't know the number.

16 MR. LINDSAY: Lynne Simons, your Honor.

17 THE COURT: Number 17, Ms. Simons.

18 The fourth preemptory challenge by the State,
19 please.

20 MR. CLIFTON: Number 20, Patrick Gorman.

21 THE COURT: The fourth preemptory challenge by
22 the defense, please.

23 MR. LINDSAY: If we could have just one moment,
24 your Honor.

1 Crystal Bacher, your Honor, number 10.

2 THE COURT: Okay. And the fifth preemptory
3 challenge by the State, please.

4 MR. CLIFTON: It would be Ms. Jennings, number
5 13.

6 THE COURT: Thank you. The fifth preemptory
7 challenge by the defense, please.

8 MR. LINDSAY: Amy Bruskotter, which is the very
9 far right, in the fourth row.

10 THE COURT: Number 26, okay.

11 The sixth preemptory challenge by the State,
12 please.

13 MR. CLIFTON: Number 25, Bruce Upton.

14 THE COURT: The sixth preemptory challenge by
15 the defense, please.

16 MR. LINDSAY: Lori Shults, who is the first
17 juror in row number three.

18 THE COURT: Number 15, all right.

19 The seventh preemptory challenge by the State,
20 please.

21 MR. CLIFTON: Number 18, Mr. Trainer.

22 THE COURT: And the seventh preemptory
23 challenge by the defense, please.

24 MR. LINDSAY: Cindy Ostrom-Graf, juror number

1 six, your Honor.

2 THE COURT: Thank you. And the eighth and
3 final preemptory challenge by the State, please.

4 MR. CLIFTON: Number 28, Mr. Sabini.

5 MR. LINDSAY: Luigi.

6 MR. CLIFTON: Yes.

7 THE COURT: And the eighth and final preemptory
8 challenge by the defense, please.

9 MR. LINDSAY: Your Honor, we're going to take
10 the very last one seated, Cheryl Nowak.

11 THE COURT: Thank you.

12 The clerk will please read in order the names
13 of the jurors for this trial.

14 THE CLERK: Brockhaus, Getty, Lane, Birchall,
15 Burkhardt, Cohen, Hinzen, Rouse, McCarty, Braun, Brant,
16 and Vonthun.

17 THE COURT: Then the persons remaining in this
18 order for the alternate juror are Mr. Lysdal, Ms. Manalo
19 and Ms. Carroll. Is that correct?

20 THE CLERK: Right.

21 THE COURT: On behalf of the State, do you wish
22 to exercise an alternate challenge?

23 MR. CLIFTON: No.

24 THE COURT: All right, thank you.

1 Does the defense wish to exercise an alternate
2 challenge?

3 MR. LINDSAY: Is Christopher Lysdal one of the
4 alternates, your Honor?

5 THE COURT: If you do not exercise an alternate
6 challenge, Mr. Lysdal would be the alternate. If you
7 challenge him, the alternate would be Ms. Manalo.

8 MR. LINDSAY: I believe we have our jury, then.

9 THE COURT: So you're challenging Mr. Lysdal?

10 MR. LINDSAY: Yes, Christopher Lysdal.

11 THE COURT: The alternate juror, then, is Ms.
12 Elisa Manalo.

13 We'll take a brief recess, resume the trial,
14 seat the jury, read the indictment, and have opening
15 statements.

16 (Brief recess taken.)

17 THE COURT: Please be seated.

18 Ladies and gentlemen, the clerk will now call
19 forth the names of 13 persons to be the jury and
20 alternate juror for this trial. As your name is called,
21 please step forward and be seated in the chairs, left to
22 right, in the upper tier of the jury box, in those
23 chairs where we've placed notebooks for your use during
24 the trial, and then the chairs in the front row, left to

1 right.

2 Ms. Clerk?

3 THE CLERK: James Brockhaus, Edna Getty,
4 Deirdre Lane, Kenneth Birchall, Linda Burkhardt, Melvin
5 Cohen, Ronald Hinzen, Matthew Rouse, Linda McCarty,
6 Ryan Braun, Kim Brant, Albert Vonthun, Elisa Manalo.

7 THE COURT: Ladies and gentlemen, will those of
8 you in the jury box please stand, face the clerk, raise
9 your right hand, and be sworn as the jurors to try this
10 case.

11 (Jury sworn.)

12 THE COURT: Please be seated.

13 Ladies and gentlemen, as to those of you in the
14 gallery who've been called for jury selection today, you
15 are now excused. I want to thank you for your time,
16 patience, and attention during the jury selection
17 process. You are excused.

18 Ladies and gentlemen of the jury, I also want
19 to thank you each for your time, patience, and attention
20 during the jury selection process. I'd like to give you
21 a brief overview of the schedule for this trial. This
22 schedule will not change and the deadline I've given you
23 for conclusion of the trial will not be changed. We'll
24 be in session this afternoon until 5 o'clock. This

1 trial will resume at 9 o'clock tomorrow morning until
2 noon, 1:30 until 5:00 -- 9:00 until noon, 1:30 until
3 5:00. On Friday, the Court has a calendar of other
4 matters at 9 o'clock, and so the trial will resume at
5 10:30. So 10:30 Friday morning until noon, 1:30 until
6 5:00. On Monday morning, the trial will not be in
7 session. So the trial will resume at 1:30 on Monday
8 until 5:00. On Tuesday, it'll be 9 o'clock until noon,
9 1:30 until 5:00, and on Wednesday, 10:30 until noon,
10 1:30 until 5:00.

11 JUROR: Are we going to get this or should we
12 have written it down?

13 THE COURT: I'll tell it to you one more time.
14 Are you ready? We'll be in session today until 5
15 o'clock. Tomorrow morning, the trial will resume at
16 9 o'clock until noon, 1:30 until 5:00. On Friday, the
17 trial will begin at 10:30 until noon, 1:30 until 5:00.
18 On Monday, there will be no morning session of the
19 trial, and so the trial will begin at 1:30 Monday. I
20 take that back, let's make it 1 o'clock on Monday. So
21 1 o'clock until 5:00. Tuesday, 9 o'clock until noon,
22 1:30 until 5:00. Wednesday, 10:30 until noon, 1:30
23 until 5:00. Okay? Do you have any questions about that
24 or would you like me to repeat that?

1 Now, ladies and gentlemen, during the trial,
2 remember, you cannot discuss this case among yourselves
3 or with anyone else. That means no one else at home, in
4 your family, at work, a coworker, an employee, an
5 employer, nobody. You cannot visit any scene or
6 location mentioned during the trial. And I want to
7 stress this as strongly as I can. You also may not
8 consult any outside reference works of any nature. As
9 we discussed during the jury selection process, DNA is a
10 popular subject. Any of us could get on the Internet
11 and read until we fell over about DNA. You will be
12 educated to some extent during this trial on that
13 subject, but you want to confine your deliberations and
14 decisions only to what you learn in this room during the
15 trial. So please do not in any way, shape, or form
16 consult any outside information, books, treatises,
17 websites, anything on any subject mentioned during the
18 trial. You are not to form or express any opinions
19 until the case is finally submitted to you for a
20 decision, and you are not to read, listen, or view news
21 accounts of the case, if any.

22 You've been given notebooks for your use during
23 the trial and you're welcome to take notes. However,
24 you should not defer to the recollection of any other

1 juror merely because he or she has taken a note on any
2 subject during the trial. You each must rely on your
3 own recollection of the evidence during the trial.

4 Ladies and gentlemen, do you have any questions
5 of me?

6 Okay. Thank you again for your participation
7 in the jury selection process and your participation in
8 jury service in this case. We begin the trial with the
9 reading of the charge. It is just that and it's not
10 evidence of any kind and it does not permit any
11 inference of guilt.

12 Ms. Clerk, please read the charge contained in
13 the indictment of this case.

14 THE CLERK: Case CR06-2580, Indictment, filed
15 November 8th, 2006. Ron Walton, clerk, by Kate
16 Manarasso, deputy.

17 "In the Second Judicial District Court of the
18 State of Nevada, in the County of Washoe. The State of
19 Nevada, plaintiff, versus Frank Peck, defendant. The
20 defendant, Frank Peck, is accused by the grand jury of
21 Washoe County, State of Nevada, of the following:
22 Sexual assault, a violation of NRS 200.366, a felony, in
23 the manner following, to wit: That the said defendant,
24 on or about the 9th day of August, A.D. 1994, or

1 thereabout, within the County of Washoe, State of
2 Nevada, did willfully and unlawfully subject Candice
3 Inman to sexual penetration against her will and that
4 the defendant caused the victim to submit to sexual
5 intercourse at 445 Sullivan Lane, No. 94, Sparks, Washoe
6 County, Nevada. Dated this 8th day of November, 2006.
7 Richard Gammick, District Attorney, by David Clifton,
8 Chief Deputy District Attorney. To which said
9 indictment, the defendant entered a plea of not guilty
10 as charged."

11 THE COURT: Ladies and gentlemen, you will now
12 hear the opening statements in this trial. The
13 statements and the arguments and the questions of
14 counsel and also of Mr. Peck, representing himself,
15 during the trial are not evidence in the case. The
16 evidence consists only of the evidence of the sworn
17 witnesses and any documents or physical evidence
18 submitted during the trial, but the purpose of an
19 opening statement is for each side to tell you what they
20 believe the evidence will show.

21 We'll begin with Mr. Clifton on behalf of the
22 State. Mr. Clifton?

23 MR. CLIFTON: Thank you, your Honor.

24 Good afternoon, ladies and gentlemen. I'm

1 going to tell you a little bit about the history of the
2 case. You might be wondering at the outset, why are we
3 here 15 years later after this crime occurred? I'm
4 going to give you that answer here shortly.

5 Let me start first by telling you, ladies and
6 gentlemen, that Candice Inman, at 27 years of age, went
7 through probably a woman's worst nightmare on
8 August 9th, 1994, a traumatic event that you wouldn't
9 wish on anybody. She was at her home late at night, a
10 little bit after 11 p.m. on a Tuesday night, August 9th,
11 in her very small studio apartment at 445 Sullivan Lane,
12 No. 94, in Sparks. She lived by herself, had a
13 boyfriend. About two weeks ago, they were kind of on
14 the skids, kind of on the outs, but she'd had a
15 boyfriend up until that time. And NYPD Blues, the show,
16 that was on from 10 to 11 o'clock, and she'd gotten home
17 just before that started. Nothing unusual about the
18 outside of her apartment. She just goes right in her
19 apartment, turns on the lights, turns on the TV. At
20 11 o'clock, the show's over and she doesn't really want
21 to watch the news.

22 So within five or ten minutes after 11 o'clock,
23 she's getting ready to go to bed. She turns all the
24 lights off and the TV. The only light that's still on

1 is her closet light in this small studio apartment.
2 It's got a living room, a bedroom, a bathroom, and a
3 closet, and that's just about it, and a kitchen. And
4 she goes back, turns all the lights off and the TV, and
5 the only light on is her closet light that's in her
6 bedroom, which is the master bedroom. The closet
7 light's on, that's the only real light in the house that
8 she's aware of at that time, and she's only wearing her
9 panties. She's going to make one last trip to the
10 bathroom and go right to bed. She goes into the
11 bathroom just after 11 p.m. on this Tuesday night in
12 Sparks, in her apartment, and no sooner than right after
13 she sits down on the toilet with her panties down to her
14 knees or so -- and she hasn't even had a chance to take
15 a relaxing breath, relax a little bit on the toilet.
16 Somebody comes out of her shower right next to her
17 toilet. I mean, it is right there, six inches to a foot
18 away. The shower curtain was closed. It's dark. Like
19 in the movie Psycho, somebody comes out of the shower
20 and grabs her by the cheek very forcibly, grabs her
21 head, and as this person grabs her by the head, he puts
22 his elbow in her back and shoves her to the ground. She
23 hits the grounds on her left cheek. You'll hear later
24 that she had a swelling, almost a bruise on her left

1 cheek. And this assailant has her on the ground right
2 there in front of the toilet in this very, very small
3 bathroom, facedown with his elbow in her back, panties
4 down by her knees, and he starts making her crawl,
5 either dragging her or making her crawl into the
6 bedroom.

7 Thousands of questions are going through her
8 mind at this point. She's obviously somewhat in shock.
9 She doesn't have a clue what's going on. She's scared
10 to death. She's gotta be wondering -- and she'll tell
11 you all these kind of thoughts were going through her
12 head. Who is this? Why is he doing this to me? What
13 did I do to deserve this? Is this really happening? Is
14 this real? Could this really be happening to me? How
15 did he get in my house? How could he have gotten in my
16 apartment? All these things, she's trying to figure out
17 while she's half in shock. And most importantly, Is he
18 going to kill me?

19 That's when the prayers start. That's when you
20 start figuring out how to save your life and your mind
21 is racing. You're not thinking clearly, you're somewhat
22 in shock. You're either saying prayers to save your
23 life or you're thinking. And she's going to tell you
24 that she was thinking. She was thinking, how do I save

1 my life? Do I fight back? What do I do? She barely
2 has time to think, because he's ordering her to do
3 things, he's making her do things, he's shoving her into
4 the bedroom towards the bed, he's taking off her
5 panties, and while he's shoving her towards the bed,
6 making her go in that direction, he shuts off the closet
7 light. She can't tell who it is. She wants to get a
8 look at him, but now with the closet light off, there's
9 no chance she's going to get a look at him. She wants
10 to know who he is. Does she know this person?

11 After he turns off the closet light and he
12 forces her into the bedroom and onto the bed, the only
13 light now that she's starting to notice as her eyes are
14 adjusting to almost the complete darkness, there's a
15 little light that's a little brighter than usual and
16 it's coming in from her bedroom window, and as you're
17 going to find out later, that was his mode of entry.
18 That was his point of entry. He came in through her own
19 bedroom window. He had a white resin chair that he
20 either brought or it was there at the apartment complex,
21 and he put it up against the window and he stood on it
22 and he cut the screen. Three-quarters of the screen is
23 cut off the window, so the window's open. It's a hot
24 August night. Candice will tell you that she may have

1 had the window open. So the screen is cut, and there's
2 a dresser right inside the window and the dresser comes
3 quite a bit -- about a foot and a half above the bottom
4 of the window. So the assailant would've had to climb
5 over that dresser, and the officers will tell you how
6 the dust had been moved or brushed aside. So somebody
7 had crawled over that dresser to get in.

8 There's a hanging plant and there's another
9 plant that don't seem to be disturbed at all. So either
10 they were moved and moved back or they weren't torn off
11 the wall or they weren't moved off the dresser. They're
12 still there, but clearly the screen is cut. Well, this
13 curtain was open, because the person that came in --
14 when the person crawled over the dresser, they moved
15 aside the curtain to get in. The curtain got caught on
16 the edge of the dresser and got stuck right there on the
17 corner of the dresser.

18 So there's a light coming in now into her
19 apartment through this window that normally wouldn't be
20 there when she goes to asleep, and she's starting to see
21 a little bit of this light and it's from a light post or
22 a lamp post just outside her apartment window a ways
23 back. So it's what you'd call ambient light or a
24 luminescent light, a little bit of lighting but still

1 fairly dark.

2 well, while she's in bed, he forces intercourse
3 on her, and he's kissing her and licking her. She
4 remembers him licking and kissing predominantly her left
5 cheek and she thinks she remembers her neck and maybe
6 her breasts. He started to do oral sex on her but
7 didn't seem to do it or finish. Those are things that
8 she seems to remember later. She also started taking
9 pains to try to identify this person, see what she could
10 see. She saw a dark mustache. She saw a white male
11 adult who didn't have an accent, spoke normal English,
12 and he had shorts on, what seemed to be army boots or
13 some kind of boots or hiking boots, but she thought
14 maybe army boots, and a T-shirt that was pulled up over
15 his head, stopping right at the forehead and going
16 around the ears, so that it was almost worn like an
17 Egyptian style. I forget what she described it as, but
18 some type of Egyptian-style head covering and it covered
19 his hair. So she couldn't tell how long his hair was,
20 but she could tell that he had darker hair that seemed
21 close-cut around the ears and neck. Some of this she
22 couldn't tell while he was forcing sexual intercourse on
23 her, but she saw a little bit later as he got up and
24 smoked a cigarette and got up to leave, but she'll tell

1 you that she remembered short, kind of close-cropped
2 hair, at least the part that was underneath the T-shirt,
3 and it seemed dark, the same color as his eyebrows and
4 mustache.

5 After he finishes the sexual intercourse, which
6 culminated in ejaculation inside of her -- no condom --
7 after he climaxed and finished -- well, actually, even
8 before that, she was trying to appease him. She was
9 afraid for her life and she was trying to keep him calm.
10 She was afraid he might get mad and he might try to kill
11 her, but if he gets what he wants, he may leave. So she
12 was trying to appease him and she actually was touching
13 him. As hard as it is to imagine and as hard as it's
14 going to be for her to tell you, she's actually touching
15 him, trying to feel anything she can that identifies
16 him, any kind of features, and she's making it look
17 like, "This is okay, it's not hurting me, it's not --
18 I'm not gonna call the police, I'm not gonna tell on
19 you." She's actually feeling his face and she feels the
20 mustache, she feels the eyebrows. She even has her
21 hands on his torso. He's chest to chest with her. She
22 has her hands on his torso and she remembers -- you can
23 either say on his right side as he's facing her or his
24 left side, but either way, it's her right hand that

1 feels something on his back side. Let's call it his
2 left side. It's the right side as he's facing her, but
3 it's her right hand. She feels it on his left side, his
4 left back or left side area, and she says it felt like a
5 scar, some type of defect, a raised or protrusion type
6 defect.

7 So she remembered that and she tells the police
8 about that later. But after he climaxes inside of her,
9 he actually is calm enough now, either from her actions
10 or just because he's calm and he's not fighting her,
11 he's not forceful with her. He sits up and he starts
12 talking to her, and he even apologizes for doing this
13 and says he's never done it before, and he apologized
14 and he asked her for a cigarette. How he knows she had
15 a cigarette, she'll never know how he knew that she
16 smokes or would have a cigarette or was just asking.
17 Who knows? But he asked her for a cigarette and she had
18 one.

19 So she gives him the cigarette, and all the
20 while, and even during the intercourse, she's looking at
21 his face and she's thinking of knives, she's thinking
22 about all kinds of possible weapons to hit him on the
23 head and get away, but she's afraid. She's afraid if
24 she tries something and it doesn't work, he'll kill her.

1 she thinks that he has a knife or sheath in his boot.
2 It's just the whole impression, that he kind of reached
3 for it or she saw a little partial thing out of his
4 boot. She can't say what it was, but she was afraid he
5 might have a knife. She didn't actually see a knife or
6 a gun, but she was afraid he might have one in his boot.

7 She was constantly thinking about whether to
8 try to hurt him or try to run for the door or run for
9 the phone, but she realized he was calming down, he was
10 not hurting her. So she started talking to him, trying
11 to find out more about this guy. Why would he do this?
12 And she's starting to get a little information from him
13 and she's saying, you know, "why didn't you just stop
14 and talk to me? Have you seen me around the apartment
15 complex?"

16 He's asking her for a cigarette and she gives
17 him the cigarette, and she actually tries to light it
18 for him with her lighter, but he was having no part of
19 that. He painstakingly tried to conceal his identity.
20 He turned so she couldn't see his face when the lighter
21 went off. When he lit the cigarette, there was a little
22 bit of light coming out of the cigarette, but she's
23 still not seeing him well enough. And he actually says
24 things like, "You wouldn't have talked to me anyway if

1 you would've seen me around the apartment complex."

2 She's trying to find out if he lives around
3 there, does he know her, but she's not getting any good
4 answers that she could eventually tell the police. She
5 has not recognized him or anything about him at this
6 time, but she remembers that defect on his left back
7 side. So she's trying to get him out the door, like
8 he's an unwelcome guest. She's trying to get him to
9 leave, and she's scared to death. He started to leave
10 once and then he came back, and the light comes in from
11 the door and he slams it shut again. This is a dark
12 living room. None of the lights were on, and she's
13 actually standing close by him.

14 There came a point where he's standing there
15 and she's standing there and she actually looked right
16 at him, like eye to eye in the somewhat darkness,
17 because the light from the bedroom window isn't really
18 extending into the living room, but she can see his
19 silhouette. She can see a person and she realizes,
20 "This man is no taller than I am." She's five foot
21 seven and she realizes "this man is my height, no
22 taller." And you've had plenty of occasions to see Mr.
23 Peck and you'll see him in this courtroom all through
24 the week. She says, "That's one thing I'm gonna

1 remember for the police, is he's no taller than I am.
2 Maybe a tiny bit shorter, maybe not, but he's not any
3 taller than I am." And she also estimates his weight
4 back then -- this is 15 years ago -- at about 150. It
5 might stretch between 140 to 160, but right around 150.
6 She tells the police later that he's about 20 to 25
7 years old, "maybe a little bit older, but not much older
8 than me." So the age is young, what she calls young at
9 the time. Not an older man, a younger man, probably 20
10 to 25, maybe a little bit older.

11 She finally gets him to go, and she'll explain
12 this to you. She's watching to the nanosecond his
13 movements. Is he gonna shut the door? Is the door
14 gonna shut behind him, so I can call the police? Is he
15 gonna shut the door or bolt back in, get back in here?
16 So she's watching him. She's shaking, she's nervous,
17 she's crying a lot at this time, but she's, again,
18 trying to appease him, so he won't hurt her.

19 And he does finally leave. He goes out the
20 front door and the door shuts. She hears that click as
21 loud as a bell. She knows the door is shut, and so she
22 runs over and she dead-bolts it and she goes to the
23 phone and immediately calls the police, even though she
24 told him, "Just leave. I won't call anybody, I won't

1 tell anybody. Just leave." She was saying that over
2 and over. He finally did, and when he leaves, she
3 dead-bolts the door and immediately calls emergency
4 assistance, she immediately calls on the phone. It's
5 the rare case that we get, that she called right away,
6 and the police show up right around midnight. It's
7 close to midnight on the night of August 9th.

8 Cheryl Bartlett, John Clayton, Detective Sam
9 Neuharth, those are some of the police officers -- and
10 Peggy Stout is another detective -- those are the people
11 that arrive and/or investigate the case. Candice Inman
12 won't even talk to John Clayton, because he's a man.
13 She's still scared. She just doesn't feel comfortable
14 talking to a man. She confides in Peggy Stout, but she
15 has trouble talking to Detective Neuharth. And there
16 was a point during his investigation where he realized
17 he wants to do a computer-type sketch of what she had
18 seen, but he decided, "we'll just put that off in the
19 morning. She's not composed, she's too upset." But she
20 could talk to Cheryl Bartlett and Peggy Stout a little
21 bit. So they do as much of an interview with her as
22 they can and they investigate the scene, both that night
23 and again later in the daylight.

24 They confiscate things like a penny, a nickel,

1 all kinds of things outside that aren't even close to
2 that window. There's a white chair under the window,
3 but a ways from the window. They're confiscating a
4 little stash of cigarettes, six to seven different
5 brands of cigarettes. They're confiscating a little bit
6 of cereal. They're assessing just about everything. If
7 you don't take it, it's lost forever. The white chair
8 was seen there and photographed, and they do as much
9 investigation as they can that night.

10 And Candice Inman goes to the hospital at Saint
11 Mary's and the Saint Mary's emergency room has to do
12 this sexual assault examination of her. It's very
13 invasive. It's another type of re-victimization, making
14 a girl go through this, but it's part of their standard
15 protocol for collecting evidence, and during that
16 examination at the hospital, they collect what's called
17 a sexual assault kit, which, among other things, is
18 these two packets. It's also the bed sheets that are
19 also in another piece of evidence, but these are the
20 sexual assault evidence kit, Envelope A and B, and these
21 are things that were collected by Dr. Diedoff and Nurse
22 Diane Hackwirth.

23 Diane is actually the one that actually does
24 the examination, vaginal swabbing and things like that,

1 and the items are put in these evidence envelopes for
2 later testing. You're going to hear about this testing.
3 That's where the DNA comes from. You're going to hear
4 about the chain of custody on these things. They are
5 kept locked up and kept in very good protection. Some
6 of them are even refrigerated in the freezer. Some are
7 protected even more, since they wouldn't last very long
8 at room temperature. And some evidence they're able to
9 collect, some they're not.

10 You're going to see that they tested for semen
11 by brushing her pubic hair. They take a brush and they
12 just lightly comb the pubic hair to see if there's any
13 seminal evidence or loose pubic hairs that belong to the
14 assailant. Sometimes loose pubic hairs come out, but
15 they didn't get any. There was no evidence there, no
16 evidence found in that packet. They also take pubic
17 hairs so that they can test those, if they have to.

18 So there's lots of different types of evidence
19 that they're looking for in a standard sexual assault,
20 rape kit protocol. This is 15 years ago and it's
21 progressed a little bit in the way they do these sexual
22 assault protocols. They do it a little differently now
23 than they did back then. A lot of times they use female
24 doctors or nurse practitioners more than males, but

1 Dr. Diedoff, a male doctor, actually did the physical
2 examination of her with a speculum and he actually takes
3 Q-tip swabs and -- you actually take at least two; you
4 don't do it with one. You take two and you swab the
5 inner circle of the vaginal walls. So he takes those
6 Q-tips, or one of them anyway, and makes a microscopic
7 smear or a microscopic slide, he just smears it, and
8 that's given to a medical tech, Carol Phillips, but she
9 doesn't see any sperm. It's just a quick microscopic
10 smear and they run it up to the lab, and she's looking
11 for what's called live sperm with the tail still
12 attached. She doesn't see any motile sperm and she
13 doesn't see any other sperm.

14 So the microscopic slide is put in evidence,
15 the hairbrushing packet is put in evidence. They also
16 swipe her cheek, her left cheek with a gauze, because
17 she said, "That's where he licked me." Even though
18 she's got a redness-type injury, they take the gauze and
19 they wipe it on her cheek to absorb any dry fluids or
20 wet fluids that could be on her cheek, and that is put
21 in the evidence packet. The evidence packet is taken by
22 Peggy Stout, who's right there when this evidence is
23 being collected. Dr. Diedoff, Peggy Stout, and Diane
24 Hackwirth are the only ones there putting things into

1 this packet. That's your chain of custody for this
2 packet. It is then placed in evidence at a later date
3 and it is then sent up to the lab, and it's sealed.
4 These packets are all sealed. So if they've been open,
5 people know.

6 It's sent up to the lab and the laboratory
7 technicians and criminalists unseal it and they do their
8 tests. And Maria Fasett, a criminalist, is going to
9 tell you that she looked at one slide. There's three
10 slides, but she looked at one. We'll find out whether
11 it's the same one that Carol Phillips looked at or not,
12 but remember, Carol Phillips was looking for motile
13 sperm. I believe Maria Fasett is looking at the vaginal
14 smear slide, which is separate and apart from the motile
15 sperm slide.

16 The motile sperm slide turned out negative.
17 Carol Phillips did not see any motile or non-motile
18 sperm, and she'll tell you how that's entirely possible,
19 even though there may be semen and sperm. Carol
20 Phillips will give you about five or six different
21 variables that can control that. One is the sperm count
22 of the individual. How much semen was actually
23 deposited into the vaginal walls? Did the victim douche
24 or clean or wash or shower, which didn't happen in this

1 case? How well was the swabbing of the vaginal wall?
2 Did both Q-tips get all the area or did one Q-tip
3 collect more than the other one?

4 So Maria Fasett up at the lab does a much more
5 detailed examination, and Carol Phillips will be the
6 first one to tell you that. Hers is a cursory look
7 under a microscope looking for motile sperm. She finds
8 none, and in her report she indicates she didn't see any
9 non-motile sperm either. "No sperm seen" were her exact
10 words. So when the same exact slide and two others go
11 up to Maria Fasett, she looks at, I believe, the vaginal
12 smear slide. You'll hear her testify which one it is
13 and put her initials on and she'll show you and tell you
14 which one she reviewed.

15 She took, I believe, the vaginal smear slide
16 and she took it out and took it up to her microscope at
17 400 power. She also stains it. This is a stain that
18 accentuates and highlights the sperm. She stains it and
19 puts a cover slip on it and looks at it at 400 power.
20 She sees sperm. These are the same microscopic slides
21 that came from the vaginal walls of the victim, Candice
22 Inman, on the morning of August 10th. She sees sperm.
23 She says she saw three, three out of millions or
24 billions of possible sperm in the ejaculate. Three

1 sperm heads is what she saw on her slide.

2 Her job now is to protect them. That is
3 evidence that might be able to be tested someday for
4 DNA. At that time, in 1994, it was not enough. It
5 wasn't anywhere near enough to do their DNA testing at
6 our lab in Washoe County, which is one of the foremost
7 DNA labs in the country, next to the FBI's in Quantico,
8 Virginia. Our accredited lab was not able and nobody in
9 the country -- not even the FBI -- would've been able to
10 get DNA off the three sperm heads with the possible DNA
11 testing that they had at that time.

12 Maria Fasett then protects that slide that's
13 still in evidence; we still have it. She then goes
14 right to the Q-tip evidence, because once she has found
15 any sperm, whether it be one head or a million, she goes
16 right to the Q-tip, because that's what contains the
17 evidence. She does a test on the Q-tip and it's called
18 acid phosphate. The acid phosphate test gives either a
19 negative or a presumptive positive for sperm. She does
20 the acid phosphate test on one of the Q-tips. It's
21 positive for sperm. So she protects that evidence. She
22 puts it in her lab report that there's enough evidence
23 here to do a limited blood grouping analysis. Based
24 upon her expert opinion, from being a criminalist as

1 long as she has and with her education and expertise,
2 she determines there's enough to do a limited blood
3 grouping analysis under 1994 standards of DNA testing at
4 our lab.

5 If any of you know what blood grouping analysis
6 is, it just gives you an A, B or an O. It doesn't tell
7 you who your suspect is. It's just when you get a
8 suspect, you can test it to determine if it's A blood, B
9 blood, or O blood, or a combination of those, and then
10 you can match it to your suspect to see if it matches.
11 But there's nothing you can do with testing it in 1994
12 and just determining what blood type it is. So she puts
13 that in her report, indicating that there's not enough
14 to do the DNA test, which is called RFLP testing.

15 So those samples are put in the freezer. They
16 are protected for all time in the freezer in the lab.
17 And what she actually did is she cut off the Q-tip and
18 she just keeps the Q-tip, the cotton, and Carol Phillips
19 will tell you that the semen tends to coagulate or go
20 toward the cotton fibers. So when you do a microscopic
21 smear, you don't always get much semen, you get much
22 less because it's clinging to the cotton swab. That's
23 another reason that she said she has come up with
24 negative results when the lab has come up with positive

1 results. It's not uncommon at all.

2 So that evidence is preserved and this case
3 sat, but they were trying to investigate all kinds of
4 possible leads. They looked up every sex offender in
5 Washoe County that possibly could've committed this
6 crime. A big zero, negative, negative, negative. They
7 showed Candice Inman many, many photographs of possible
8 suspects. She can't ID anybody. And she thought, "In
9 the light I saw him, maybe I'd be able to ID somebody."
10 She couldn't ID anybody from any of these photo lineups.

11 So the case just sat from 1994, forward. There
12 was nothing more they could do scientifically, nothing
13 more they could do with the evidence. And in 2000, DNA
14 progressed to the point of what we call PCR
15 amplification testing. PCR amplification allows a lab
16 to take a very small amount -- sometimes a few heads of
17 semen, a small amount of sperm and amplify it. They
18 duplicate the DNA enough times to where they get that
19 DNA from that sperm. It's the same exact DNA, you can't
20 change that DNA, and it's amplified, reproduced --
21 grown, if you will, like in a petri dish more or less,
22 and it's the same DNA multiplied out. And you'll hear
23 that DNA is segments of yourself, it's your chromosomes.
24 In your chromosomes, the segments have the DNA, which

1 just keeps repeating itself. So they artificially
2 repeat the DNA. The same DNA they started with is the
3 same profile they're going to end up with, but now it's
4 enough to test under PCR amplification.

5 So they take that sample -- I think it's in
6 2001, if I'm correct. 2000 is when they got this
7 ability to do PCR amplification. In 2001, they take
8 that sample from Candice Inman's sexual assault evidence
9 kit and they run it through a computer. It's all
10 computerized, a lot of the testing is with the computer.
11 So the computer comes out with a profile, it's
12 successful.

13 The chief of the lab at the time, Renee Romero,
14 will tell you that in 2001, when we had the ability to
15 do PCR amplification, we took all of our old samples
16 that couldn't be tested and we just started running them
17 through the computer, getting DNA profiles out of all
18 these. The next step then, once you get the DNA
19 profile, is now you've got to find out whose is it, who
20 does it belong to, like a fingerprint, like a Social
21 Security number, only a little bit longer. So you've
22 got to find out who it belongs to now.

23 There's what's called a national DNA database.
24 People can put their DNA into this database, and there's

1 numerous ways we get DNA samples into this database. In
2 2002 -- if I'm getting my dates right -- in 2002, Frank
3 Peck's DNA profile gets put into this DNA database. And
4 the computer's constantly running -- well, not 24/7, but
5 during the hours that it runs, it's constantly checking
6 all DNA database samples against this sample, as well as
7 thousands of others. And in 2003, April of 2003,
8 criminalist Jeff Riollo -- when the bells and whistles
9 start going off, criminalist Jeff Riollo indicates he's
10 got a hit, what we call a hit, and he notifies Sparks
11 Police. And this is why Sparks Police starts an
12 investigation now around Frank Peck and they start
13 looking into this person that this DNA profile has spit
14 out. It matches from the evidence of the vaginal wall
15 semen to the DNA of Frank Peck in this database.

16 So Sam Neuharth, Detective Sam Neuharth, takes
17 a picture of -- or finds a picture of Frank Peck. He
18 takes that picture and puts it in with other pictures
19 and shows it to Candice Inman. Candice Inman now, 10
20 years later -- this is 2004 -- she looks at all the
21 pictures, and after 10 years, she can't recognize
22 anybody. She cannot say any of them is the person. She
23 doesn't know. So Sam Neuharth is still looking at other
24 areas of investigation, other leads, other things.

1 Detective Greta Fye comes on the case, because
2 Sam Neuharth has been on the task force for the last
3 eight or nine years. He hasn't been actively working
4 this case and he's retiring. So before he retires, they
5 assign it -- the Sparks Police Department assigns it to
6 Detective Greta Fye.

7 Greta Fye and Sam Neuharth, both, are sending
8 information over to the DA's Office. They send a report
9 over to the DA's Office, to me. I get the case and I
10 indicate I want some more things done. "Go down and
11 measure his height, go down to Frank Peck and tell me
12 his height. Go down and collect a sample for DNA
13 purposes. Person to person, like I want you personally
14 to see how tall he is. You personally go down and take
15 a sample of his DNA."

16 We need a court order to do that. So Greta
17 Fye, through me, prepares a seizure order application to
18 a judge. That judge is in this building, Stephen
19 Elliott, just down the hall and I think up one flight.
20 Judge Stephen Elliott is presented with the seizure
21 order application. He grants the seizure order
22 application to go down and take Mr. Peck's sample of
23 DNA. Back in 1994, the sample of DNA was blood. They
24 drew blood from the victim. Now, in 2004 -- this was

1 December of 2004 -- you can do it just by swabbing the
2 inner cheek. The epithelial cells on your inner cheek
3 contain the DNA. DNA is contained in all your cells
4 that we are able to extract DNA from. Saliva, bodily
5 fluids, not urine, but bone marrow, a lot of different
6 places in your body -- the hair root -- we can get and
7 extract DNA from. The DNA profile will be exactly the
8 same. From every cell that we can extract from your
9 body, that DNA profile will come up exactly the same on
10 the computer every time. As your body sloughs off skin,
11 these skin cells go on the ground and someday we'll even
12 be able to get DNA off dead skin cells. Right now they
13 really can't, but we're progressing so well that you can
14 get what's called touch DNA, where a suspect just
15 touches something, like a beer can or bottle. That's
16 touch DNA and we may be able to get it from that. We
17 couldn't do that in 1994, but it's progressing very
18 quickly, very fast.

19 In 2004 now, Greta Fye goes down to Frank
20 Peck's residence and she gets a swab of the saliva on
21 his inner cheek. She takes it back, submits it to the
22 lab, and chief criminalist now, chief of the lab, Renee
23 Romero, does the test in the early part of 2005. It's a
24 match. It is a match. She will testify that this is

1 Frank Peck who is the source of this sperm in the sample
2 that was taken from Candice Inman's vagina. She will
3 say in her report, and she'll testify here to it, how
4 she tested it, the manner and protocol that she used --
5 as Mr. Lindsay was referring to in voir dire, the
6 protocol that they use at the lab. They're an
7 accredited lab. She's a very prominent expert and
8 you'll hear her testimony. It is Frank Peck's and
9 nobody else's semen, unless he has an identical twin.
10 An identical twin would have the exact same DNA. So you
11 have fraternal and maternal twins. Identical twins have
12 identical DNA.

13 So we complete the investigation, do more and
14 determine that Frank Peck does not have an identical
15 twin. He does not have an identical twin, so it is
16 Frank Peck's DNA. Greta Fye produces the reports from
17 the match to our office. Again, I review it and I'm
18 looking at the seizure order. I'm reviewing everything
19 and I decide -- where Frank Peck was at the time that
20 they got the seizure order, he wasn't in Washoe County,
21 he was outside of Washoe County. Greta Fye traveled
22 outside the county, and that was my mistake, I should've
23 known that. I think I knew where he was going to be
24 found and it was probably outside Washoe County.

1 So I got a little concerned. It's not a
2 mistake, it's not an error. It's probably legal, it's
3 probably fine. District judges have authority
4 throughout the state. I discussed that with Greta Fye
5 and I said, "You know what, let's just be on the safe
6 side. If we're gonna prove this case to a jury, let's
7 just get a seizure order from a judge in a county where
8 he is." So we do it again, and we're doing other things
9 too to investigate.

10 Detective Fiore comes on the case, because
11 Greta Fye got promoted to a sergeant. So Detective
12 Fiore is on the case and I sent him on a bunch of other
13 investigative leads that I want done. So he's doing
14 some other things, talking with Frank Peck's ex-wife.
15 He investigated her and she gives a lot of information
16 about Mr. Peck that we didn't know before. We do some
17 other things and we do another seizure order now, using
18 a judge in Carson City, which is where Mr. Peck was
19 residing in 2005.

20 So Judge William Maddox, a district judge from
21 Carson City, signs the seizure order for similar things
22 that we got in the first seizure order. We want
23 additional pictures taken, because the first pictures
24 they took of Mr. Peck's back, some of them were a little

1 too close-up, you couldn't quite tell what you're
2 looking at. So I wanted additional pictures taken. Lo
3 and behold, the pictures that were taken in 2004 show a
4 defect or a protrusion, a raised area on his side, right
5 under his shoulder blade here, and that is the shoulder
6 blade you'll see that Candice Inman, in her statement to
7 the police originally said "right," because she was
8 describing it like this. She does this all the time,
9 and it's my fault as much as her fault. When she
10 describes his right side, she's going like this with her
11 right hand as he's facing her. They crossed out
12 "right" in that information they had from her. They
13 crossed out "right" and wrote "left," because what she's
14 really saying is his left side as he's facing her, and
15 it's right there in the Compu-Sketch that she did.
16 "Right shoulder blade" was crossed out and "just under
17 the left shoulder blade" was included. They changed
18 "right" to "left," and that's what she remembers
19 feeling.

20 well, in the pictures, in the daylight when
21 we're doing this seizure order, it's not a scar, it's a
22 large mole, like the size of a pencil eraser. It's a
23 large mole on his left flank, but she felt some type of
24 raised thing or protrusion. She identified it as a

1 scar, because she could never see it in the darkness.
2 She felt a scar. She said somewhere in the back area by
3 the shoulder blade, that's what's in the report, and
4 there it is. There it is.

5 How tall is he? Five-foot-seven. With shoes
6 on, maybe five-foot-seven and a half, but
7 five-foot-seven generally speaking. Detective Fiore
8 will tell you that in his investigation, he determined
9 that in many, many public records, public documents, Mr.
10 Peck identified himself as five-foot-six. How much did
11 he weigh? His weight was -- he's gained quite a bit,
12 like most of us in the last 15 years -- 150, right on
13 the nose in many, many documents. During this
14 investigation and in talking to Leslie Krauser, his
15 ex-wife, we're finding out this information.

16 How about this one? Does he smoke? What do
17 you think the answer is to that? Absolutely, but ladies
18 and gentlemen, DNA tells you this was Mr. Peck. I'm
19 going to show you a little something right now. This is
20 how a computer sees Mr. Peck, not like you or I do.
21 Mr. Peck's DNA is a profile. So how the computer sees
22 Mr. Frank Peck is this profile. This is 13 different
23 segments of DNA. So it really doesn't matter a whole
24 lot -- it's not that critical what order these are in.

1 That's why I put them in bullet points. The critical
2 thing is that each one of these segments, each segment
3 that's identified by these profile letters and numbers,
4 those are his coordinants basically, his matching
5 numbers and letters. That's the same profile you're
6 going to get from every one of his cells that has DNA in
7 it. Every single DNA cell, every single time you put it
8 in the computer, that's what you're going to get.

9 well, ladies and gentlemen, every time we put
10 this evidence from Candice Inman, the semen from Candice
11 Inman's vagina into that computer, that's also the
12 profile we get. That is Frank Peck. Another way of
13 looking at it, which is the way the experts will tell
14 you, is like this. But, again, the order is not the
15 critical thing. That's why I put it in the bullet
16 points the first time, because I want you to see it's
17 this 13 to 15 areas. Here, there's 15 actually. It's
18 progressed from 13 to 15 genetic areas that we can
19 identify now. And Renee Romero is able to go to 15;
20 Jeff Riollo went to 13, but either way, it's the same
21 DNA. Someday we'll be able to tell, in everybody's
22 body, exactly what DNA characteristic makes you have
23 whatever, brown hair or whatever.

24 So each one of these means something, it means

1 a lot. It's got a huge amount of genetic material to a
2 computer. So this is Mr. Peck's DNA, if you wanted to
3 write it all out. The commas indicate different
4 segments of DNA, but if you want to see how the computer
5 also sees it before they put it into a listing of
6 letters and numbers and stuff, the computer's looking at
7 a chart of peaks and valleys -- many machines work this
8 way in computer lab work -- and the peaks and valleys
9 are what is identifiable to the computer as identifying
10 features for an individual, and the peaks and valleys
11 all have the code. The genetic code is indicated by the
12 peaks and valleys and all these numbers below, and that
13 is what is put into the profile above here, that is the
14 15 segments I've indicated before. Renee Romero will
15 explain all this to you, and you're going to see this is
16 actually Frank Peck's profile. This is also identical
17 to the profile that the computer gets from the semen
18 evidence from Candice Inman, and then she's going to
19 tell you that this profile is rarer than 1 in 500
20 billion.

21 You do the math. There's nobody else on this
22 planet that would have that profile, nobody. And even
23 if you want to distrust DNA or say there's a problem
24 with DNA or think there's some kind of problem with

1 believing DNA, you're not going to get a result. I
2 think Mr. Lindsay argued corruption or contamination,
3 but the odds are you're going to get no result. You're
4 not going to get a result of another person. You're not
5 going to change one of these letters or numbers and get
6 a different person. Even if that could happen -- and
7 we'll get to this in closing argument and we'll get into
8 this a little bit more with Renee Romero -- but even if
9 that could happen, what are the odds of getting a white
10 male adult, with a mustache, with dark hair, approximate
11 same age, the right height, the right weight, with this
12 protrusion on his back?

13 It's certainly beyond any reasonable doubt, and
14 ladies and gentlemen, this is the evidence the state is
15 going to be presenting to you through experts, through
16 witnesses. We're going to start with the victim,
17 Candice Inman -- we're going to put her on the stand
18 today -- and I am confident that when you hear all this
19 evidence, scientific and otherwise, you will be
20 convinced beyond any reasonable doubt that the
21 defendant, Frank Peck, is the one and only person, the
22 only person that could've left his semen in Candice
23 Inman's vagina and that raped Candice Inman on
24 August 9th, 2009. I think Mr. Peck has already told

1 you -- you're going to hear it from us too -- he was
2 leaving in the Reno area, probably Cold Springs, at the
3 time this occurred. We'll get a little further into his
4 whereabouts as the trial goes on, but I'm confident you
5 will come back with a just and correct conclusion in
6 this case, and that is that he is guilty of the sexual
7 assault of Candice Inman.

8 Thank you.

9 THE COURT: Thank you, Mr. Clifton.

10 Ladies and gentlemen, you will now hearing an
11 opening statement on behalf of the defendant.

12 MR. LINDSAY: Your Honor, I apologize. Could I
13 have a very short, brief recess? It's absolutely
14 necessary, and I apologize.

15 THE COURT: All right. We'll take about 15
16 minutes.

17 Court is in recess.

18 (Recess taken.)

19 THE COURT: Please be seated. Mr. Lindsay?
20 Mr. Peck, you may proceed.

21 MR. PECK: I have absolutely no experience
22 talking in front of a crowd, and I'm just as nervous as
23 you can imagine, more than you can imagine.

24 My name's Frank Peck, I'm the defendant in this

1 case. Larry Peck is my brother and he's going to
2 testify in this court. So will my sister and so will --
3 he's a friend of the family. I'm not a friend of his,
4 but he's a friend of my brother-in-law. He was in Las
5 Vegas when I was down there, and from talking to my
6 sister, he realized that -- or he remembered that I was
7 in Las Vegas during the time period that this occurred.
8 I want to read to you a statement that I've prepared.

9 Larry Peck, my brother, in 2001 was pulled over
10 and given a ticket for a boulevard stop for running a
11 stop sign in Reno. He was issued a citation that he
12 didn't sign and he drove home. When the officer
13 realized he hadn't signed the ticket, he tried to catch
14 up to my brother and got into an accident. That was no
15 fault of my brother. By his radio call, the other
16 officers assumed that my brother made him wreck. My
17 brother had just recently had serious problems with his
18 neighbors, because his wife's ex-husband killed the
19 neighbor's pitbull, because it got in the yard and hurt
20 one of the children. My brother's entire property was
21 fenced and posted and no one should've been on his
22 property. While in the bathroom, he saw someone walk
23 past the window and heard yelling in the backyard. He
24 approached the back door and saw someone with a weapon.

1 He retrieved a 12-gauge shotgun and fired two warning
2 shots through the back door and screamed get off my
3 property. In the ensuing gun battle, a veteran Reno
4 police officer was hit and killed.

5 Shortly thereafter, who will testify, Reno
6 attorney Ken McKenna was retained to represent my
7 brother during the trial. Mr. McKenna was threatened by
8 law enforcement to back off the friendly fire theory at
9 my brother's trial. He told me this himself in the
10 presence of his legal assistant, Megan, who I believe
11 will also testify. I also received threats for refusing
12 to testify against my brother and again after he was
13 sentenced.

14 Initially in this case, Mr. McKenna volunteered
15 to represent me free of charge, but when I learned that
16 he did in fact back off the friendly fire theory at my
17 brother's trial, I became suspicious, and after waiting
18 about a year with him doing nothing, I realized that I
19 needed a new lawyer. My sister, Elaine Carnahan, will
20 testify that I was in Las Vegas and the southern
21 California area. I know this because my father and I
22 traveled to Las Vegas in his car. We made a purchase
23 from an air conditioning supply house for equipment and
24 supplies, for which we still have a receipt, and the

1 person will testify we were in the area of Las Vegas
2 during this time period. We traveled to the Lancaster,
3 Palmdale area to a clinic for an MRI for my father, as
4 he had just recently been diagnosed with cancer. We
5 then went to my sister's house, who will testify, in
6 Akron, California, and then I flew back to Reno around
7 the 25th of August, 1994.

8 The reports in this case describe a man who had
9 a two-inch scar on his back, not a mole, who was 20 to
10 25 years of age in 1994. And the victim in this case
11 showed the police where her attacker touched the
12 doorknob. He opened the doorknob and they took the
13 fingerprints from that doorknob, and those are not my
14 prints. As a matter of fact, the DNA that they say they
15 have -- the profile made from a sperm fraction is
16 completely contradicted by the medical reports from Dr.
17 Dierdorf and Nurse Carol Phillips. These dates that are
18 up here on the board -- Officer John Bohach was shot on
19 8/22/01. On 9/10, there was a court order, a court
20 order issued for my DNA. I don't know how many days
21 that is, but it's not very many. And then on 12/17/01,
22 there was a profile made from this cold case from 1994,
23 and then there was a warrant issued on 2/5/03 for the
24 profile.

1 They waited six months from the time that they
2 got the court order before they came and got my DNA.
3 The first time, I guess was about a year, and then they
4 declared a match, they said there was a match, and then
5 they waited a full year to come get my DNA again, and
6 then they waited another year to come get it again, and
7 then they waited a full -- well, almost a year before
8 they indicted me.

9 This is a medical report from Dr. Dierdorf and
10 Nurse Carol in 1994. As you can see, it says they
11 didn't see any sperm. I know they have some high-tech
12 equipment, but I'm still reasonably certain that you
13 can't make something from nothing. Both of these people
14 said there was no sperm. It says here on the medical
15 report -- it says the evidence collected, per protocol,
16 with a rape kit vaginal exam swab collection, per Dr.
17 Dierdorf, sperm motility swab collected, no sperm, per
18 Dr. Dierdorf and Nurse Carol.

19 Also, in 1994 they had a prime suspect whose
20 name was Davis McNaught. I don't know who this person
21 is, but he was the prime suspect in 1994. I can't
22 ascertain how he was eliminated as a suspect.

23 I'm sorry this happened to Ms. Inman, I'm very
24 sorry, but I believe the evidence will show that it was

1 not me. I wasn't in the area, I did not commit this
2 crime. And that's all.

3 THE COURT: Thank you, Mr. Peck.

4 Mr. Clifton, please call the first witness.

5 MR. CLIFTON: Thank you, your Honor. The State
6 would call Leslie -- I'm sorry, did I say Leslie? I
7 mean, Candice Inman.

8 THE COURT: Ms. Inman, please step forward,
9 face the clerk, raise your right hand, and be sworn as a
10 witness.

11 (Witness sworn.)

12 THE COURT: Please take the witness stand and
13 be seated.

14 DIRECT EXAMINATION

15 BY MR. CLIFTON:

16 Q Good afternoon, ma'am. Please state your name.

17 A Candice Inman.

18 Q Spell your last name for us.

19 A I-N-M-A-N.

20 Q Better spell your first name too.

21 A C-A-N-D-I-C-E.

22 Q Are you currently a resident of Washoe County,
23 Nevada?

24 A Yes.

1 Q How long would you say you've resided here?

2 A Probably since I was 18.

3 Q What's your date of birth?

4 A 12/17/66.

5 Q Making you 42 right now?

6 A Forty-two.

7 Q And you'll be 43 later this year.

8 A In December.

9 Q Since you were 18. So that would go back to
10 1984?

11 A The winter of '85.

12 Q I want to direct your attention, if I may, to
13 1994. Do you recall your whereabouts within Washoe
14 County, where you were residing in August of 1994?

15 A I lived in Sparks at 445 Sullivan Lane,
16 Apartment 94, at the Stonegate Apartments.

17 Q That's Sparks, Washoe County, Nevada?

18 A Uh-huh. Yes.

19 Q How long did you live there total?

20 A It's been a long time, but I'd been there a
21 couple of years at that time.

22 Q And on that date, were you working, were you
23 employed at the time?

24 A I was.

1 Q Were you living alone?

2 A Yes, I was.

3 Q Did you have a boyfriend or an ex-boyfriend?

4 A Ex-boyfriend.

5 Q How long would you say you two had been not
6 going out anymore?

7 A It had been at least two or three months.

8 Q Months, okay. So you're living alone. How big
9 of an apartment would you say?

10 A It was a one-bedroom. It was small, it wasn't
11 huge, maybe 800 square feet, 600. I'm not good with
12 square footage, but it was a small one-bedroom.

13 Q Kind of like a studio apartment?

14 A No.

15 Q One-bedroom?

16 A One-bedroom.

17 Q How many baths?

18 A One bath.

19 Q So it has a living room and a kitchen.

20 A A living room, a kitchen, a bathroom with a
21 bathroom door, a bedroom with a bedroom door.

22 Q We have a diagram here indicated as Exhibit
23 No. 1. I'll go ahead and put it up on the screen. It
24 should show on your monitor there. Can you see that

1 okay?

2 A Uh-huh.

3 Q It's also up here in the diagram, and it should
4 be the same. Do you recognize that?

5 A Yeah.

6 Q Do you see the address is also listed there?
7 It should actually be Sparks, isn't it?

8 A Yes.

9 Q That's our fault, I'm sorry. Sparks, Washoe
10 County, Nevada. Does this appear to resemble the layout
11 of your apartment at the time?

12 A Yes, exactly.

13 Q So in the bedroom here, if you can look where
14 I'm pointing with the laser, that would be a window?

15 A Uh-huh.

16 Q And then you have your bathroom here. And it's
17 a fairly small bedroom?

18 A Yeah.

19 Q This is your closet?

20 A Yes.

21 Q About what time would you say you came home
22 that night to retire, to stay home?

23 A I got in approximately -- it was about 10
24 o'clock.

1 Q Do you remember where you were coming from by
2 any chance 15 years ago?

3 A I had had dinner with a girlfriend of mine, but
4 I don't remember where.

5 Q Do you know if you'd been drinking much or at
6 all?

7 A We probably had a cocktail with dinner, maybe
8 one, but, I mean, I was driving. So I wouldn't have had
9 any more than that.

10 Q You came home about 10:00?

11 A Yeah.

12 Q And what was it your intent to do?

13 A My intent was to kind of relax. I know it was
14 10 o'clock, because NYPD Blue was on and I had never
15 seen the show before. It was like the first time I
16 watched it, because I never usually stayed up that late.

17 Q So the show's on from 10:00 till what?

18 A 10:00 to 11:00.

19 Q Did you watch the whole show?

20 A Yes, I did.

21 Q Were the lights on in your apartment at the
22 time?

23 A Yeah. I pretty much turn on all the lights
24 whenever I come into my apartment.

1 Q When you came to your apartment, you're
2 driving?

3 A Yes.

4 Q The parking lot, which way would you come from
5 the parking lot to get to your apartment? Do you know?

6 A I would come -- where you see the bathroom,
7 there's a walkway outside of that bathroom area.
8 There's a pathway that goes up by the bathroom, past the
9 window right there. It comes around the corner of the
10 bedroom and comes down past the patio and around through
11 the little walkway to the front door.

12 Q So you're walking around almost
13 three-quarters -- not quite, but almost three-quarters
14 of your apartment?

15 A Right.

16 Q Are there other apartments on either side of
17 you?

18 A There's one directly to the back and there's
19 one directly to the side. It was a corner unit.

20 Q When you say the back, do you mean --

21 A Right there.

22 Q That would be your east side, and then where
23 else?

24 A To the north.

1 Q So if that's north, then that would be this
2 side right here?

3 A Right.

4 Q So this is the outside area, I guess?

5 A Yes.

6 Q So when you parked your car down here toward
7 the south side, you come up this walkway --

8 A Yeah.

9 Q -- and around to your door?

10 A Yeah.

11 Q Did you see anything unusual about your
12 apartment at that time?

13 A No.

14 MR. CLIFTON: Let's move to admit, your Honor,
15 Exhibit 1, which is the diagram.

16 THE COURT: Any objection?

17 MR. LINDSAY: No objection, your Honor.

18 THE COURT: It'll be admitted.

19 MR. CLIFTON: And 1-A, which should be an
20 identical depiction.

21 THE COURT: All right. Any objection?

22 MR. LINDSAY: No objection, your Honor.

23 THE COURT: It is admitted.

24 (State's Exhibits 1 and 1-A admitted into

1 evidence.)

2 BY MR. CLIFTON:

3 Q And you have on your monitor as well as this
4 monitor and the diagram that you can see. Correct?

5 A Yes.

6 Q I will try not to use the laser so much. You
7 can see it okay from there?

8 A Uh-huh.

9 Q So when you come to your apartment just before
10 10 o'clock, did you notice anything unusual about the
11 south side here?

12 A No.

13 Q Anything unusual about the west side?

14 A No.

15 Q You're familiar with the white chair that was
16 later found outside this window after this incident?

17 A Yes.

18 Q Are you certain that that was not there when
19 you came to your apartment?

20 A Positive.

21 Q why is that?

22 A Because I walked by there. I would've seen it.
23 It was out in the open. There's no way that you could
24 walk by that window and not seen that white chair

1 sitting there. You'd have to be blind.

2 Q Was it dark out?

3 A There was a light post right there.

4 Q The sun was down?

5 A The sun was down, it was dark, but there was a
6 light post not too far from there.

7 Q In which direction was the light post?

8 A It would be to the southwest.

9 Q Further that way?

10 A Yeah.

11 Q I'll hand you a couple photographs and ask you
12 if you recognize these exhibits, 2 and 3. Do you
13 recognize these photographs?

14 A Yes.

15 Q Go ahead and look at both of them. Who do they
16 depict?

17 A That's me.

18 Q Do you know when they were taken?

19 A They were taken the night of August -- well, it
20 probably would've been August 10th, it would've been
21 after midnight.

22 Q The morning of August 10th?

23 A Right.

24 Q So the morning after this incident happened.

1 A Uh-huh.

2 Q So this is you and this one's depicting a
3 little more of your side, such as the cheek. Is that
4 correct?

5 A Yeah.

6 Q And Exhibit No -- let's start with number five.
7 Do you recognize this area?

8 A Yes.

9 Q Describe it. Tell us what it is.

10 A That is the pathway coming up to my apartment.
11 My apartment is on the right-hand side, that bottom
12 corner apartment there. That was mine. This is the
13 pathway that I would walk to get to my apartment, to go
14 around the corner, and that's the light post over in the
15 corner.

16 Q Going over this way?

17 A Yeah.

18 THE COURT: Did you have a first-floor
19 apartment?

20 THE WITNESS: Yes.

21 BY MR. CLIFTON:

22 Q So there's apartments above you.

23 A Yeah.

24 Q And this is a lamp post right here?

1 A Yes.

2 Q So whatever that distance is, that's the
3 closest light to your bedroom window?

4 A Yeah.

5 Q So you come down this walkway here, it goes
6 down this way, and you don't remember seeing a chair
7 there. I show you Exhibit No. 4. Did the police or
8 anyone else ever show you this or talk to you about this
9 chair?

10 A The only time that I -- the only recollection I
11 have of seeing the chair for the first time is when the
12 ambulance was taking me out, and then I noticed it and
13 then things started to -- I started to think about it.

14 Q You started what?

15 A I just started to think about it. I started to
16 realize what happened.

17 Q So that resin chair, that white chair, as far
18 as you know, was not there at 10 o'clock when you
19 arrived.

20 A It was not there.

21 Q You're sure?

22 A It was not there.

23 Q Now, do you recognize your bedroom window? Is
24 there anything abnormal or unusual about that?

1 A The curtains are pushed aside and the screen is
2 half gone.

3 Q How would the curtains normally be when you
4 went to bed?

5 A They were closed. They were closed when I came
6 home.

7 Q Are these thick curtains?

8 A They're not thick heavy material. They're your
9 basic, garden-variety cheap apartment curtains.

10 Q would they block out 100 percent of the light?

11 A You still get ambient light, even if they were
12 closed.

13 Q And anything abnormal or unusual about that
14 screen?

15 A It's half gone.

16 Q Did you know how that happened at the time?

17 A No.

18 Q And it wasn't like that when you walked by?

19 A No.

20 Q And the curtains, you said, would've normally
21 been closed when you go to bed or even before you go to
22 bed or when you leave for the day?

23 A Yeah.

24 Q So the curtains were not like that when you

1 walked by there at 10 o'clock?

2 A No.

3 Q I mean, at that time, the curtains were closed.

4 A Yes.

5 Q Now, looking at this picture, I see one plant
6 here.

7 A Yeah.

8 Q That plant's on the dresser, I take it.

9 A Yeah.

10 Q Is there another plant?

11 A There's a plant -- you can't tell from this
12 picture, but there's a plant hanging directly in the
13 center, that's hanging down probably about 12 inches,
14 maybe a foot above the plant that you see sitting there.

15 Q I should get another angle here, but there is a
16 space right here between --

17 A There is a space there.

18 Q This dresser goes all the way across the
19 window, correct?

20 A Yes.

21 Q And I think you can see the dresser there.
22 This dresser goes up a little ways from the bottom of
23 the window. Is it a headboard or a dresser?

24 A It's a dresser.

1 Q And there's a plant there and there's a hanging
2 plant over here?

3 A In the center right there, down to about right
4 there.

5 Q Right above the other plant, sort of?

6 A Yeah, but give or take about 12 inches. They
7 didn't meet, there was a space.

8 Q So close to the middle of the window?

9 A Correct.

10 Q After watching NYPD Blue, you intended to go to
11 bed?

12 A Yes.

13 Q Tell us what you did.

14 A I turned off the TV and I turned off the lights
15 in the kitchen, I turned off the lights in the living
16 room. I turned off all the lights except for the closet
17 light, and I took off all my clothes except for my
18 underwear. I left the light on in the closet, just to
19 kind of see me around the room. I then went into the
20 bathroom and I went to sit down to go to the bathroom.

21 Q Let me stop you there. Did you say you took
22 off all your close?

23 A Except my underwear.

24 Q Panties?

1 A Panties, yes.

2 Q And you were going to go to the bathroom?

3 A Yes, before I went to bed.

4 Q Was there anything else you needed to do in the
5 bathroom, like brush your teeth?

6 A That's all I was doing.

7 Q And the closet light is on?

8 A Yes.

9 Q Let's go back to Exhibit 1-A. The closet faces
10 the bathroom or the bedroom, I guess, either way. Is
11 that correct?

12 A Yes.

13 Q And that closet light is -- it's a standard 40
14 or 60 or 100-watt bulb?

15 A Right.

16 Q So that light comes out the closet toward the
17 bedroom area?

18 A Right.

19 Q You could make your way into the bathroom okay?

20 A Yeah.

21 Q You went to use the facility, and you were
22 saying you were going to sit down on the toilet. Did
23 you actually sit down?

24 A I did.

1 Q Pardon me?

2 A I did sit down.

3 Q So your panties are down below your body?

4 A Yes.

5 Q So you're on the toilet, ready to go to the
6 bathroom. Describe to us what happened. Take your
7 time.

8 A I sat down, and when I sat down, somebody hit
9 me from behind and grabbed my face, grabbed across my
10 face and shoved me to the ground and hit me in the back,
11 put an elbow or something in my back and forced me
12 towards the bedroom, and as he did that, he turned
13 around and he turned the closet light out.

14 Q Let me slow you down. Again, I'm going to have
15 to go step by step, and this is Exhibit No. 12. Do you
16 recognize this area in your bedroom?

17 A Yeah.

18 Q Tell us what it is, please.

19 A That is the bathroom, that is the toilet, and
20 next to the toilet is the shower.

21 MR. CLIFTON: Move to admit 12.

22 MR. LINDSAY: No objection, your Honor. It was
23 previously shown to counsel.

24 THE COURT: All right, thank you.

1 (State's Exhibit 12 admitted into evidence.)

2 BY MR. CLIFTON:

3 Q And this is the toilet you were sitting down
4 on?

5 A Yeah.

6 Q When you said you felt somebody hit you and/or
7 a hand grab your face, which direction did it come from
8 as you're sitting down on the toilet?

9 A From behind me.

10 Q Behind the toilet, I see some towels or
11 something.

12 A Yeah.

13 Q Did you see anybody in the bathroom?

14 A No.

15 Q And then you said the assailant or the person
16 did something else with his hands or arms.

17 A He grabbed me from across the face, shoved me
18 down towards the floor, put an elbow into my back,
19 forcing me down on the ground.

20 Q While that was happening, could you tell where
21 that person came from?

22 A I had no idea. I mean, the only place he
23 could've come from was from the shower. There was no
24 other place anybody could've come from but from that

1 direction.

2 MR. CLIFTON: This monitor isn't doing it
3 justice. May I publish it to the jury, your Honor?

4 THE COURT: You may.

5 BY MR. CLIFTON:

6 Q You see the multi-colored shower curtain there,
7 is that directly on your right as you're sitting on
8 the --

9 A It's to my right.

10 Q How close how would you describe it as?

11 A A foot.

12 Q So you could reach out and touch it?

13 A Yeah.

14 Q If somebody were in there -- is it a shower or
15 is it --

16 A It's a shower/tub, both.

17 Q And if somebody were in there, would they be
18 able to reach you on the toilet?

19 A Yes.

20 Q And you didn't see anybody in the bathroom?

21 A No.

22 Q The bathroom's not very big?

23 A No.

24 Q So you're assuming that's where this person was

1 hiding or came from?

2 A Yeah.

3 Q And they would have to move or reach around the
4 shower curtain, I take it.

5 A Yeah.

6 Q Do you usually keep your shower curtain closed?

7 A Yeah.

8 Q So there was nothing unusual to notice it
9 wasn't open or anything when you walked in the bathroom?

10 A Right.

11 Q And how much light was there in the bathroom?

12 A Probably not that much, but as I sit down, I'm
13 looking -- I would've only saw the closet light, the
14 ambient light coming from the closet in front of me
15 anyway. The bathroom's dark, so there wasn't really any
16 light in the bathroom.

17 Q Was there a night light or anything like that?

18 A No.

19 Q So not much light in the bathroom and this
20 person grabs you. Do you know why, do you know what's
21 going on?

22 A I have no idea.

23 Q Did you know at the time -- had anybody made
24 any threats against you or would do anything like this

1 to you?

2 A No, I couldn't think of anything. I was
3 thinking this isn't happening, this isn't real. Who is
4 this? Who's wanting to do this? I didn't know
5 anything. I didn't know who it was, who it could be,
6 why it was happening, or even if it was real.

7 Q Was the person saying anything?

8 A No.

9 Q Was the person rough with you?

10 A He forced me to the bed almost at a crawl and
11 then put me on the bed.

12 Q Forcibly? Was this forced?

13 A Yeah.

14 Q You said your face was down in the bathroom?

15 A Close to the floor. He hit me and forced me
16 down to the floor as best he could.

17 Q Did you injure your cheek?

18 A Yeah.

19 Q On what?

20 A His hand, the power of his hand. It was a grip
21 and he was pushing me to the floor. I mean, you have to
22 understand, this happened so fast. I mean, the force
23 and what was going through my head at the same time.

24 Q Without this person saying anything to you, did

1 this person force you into the bedroom and onto the bed?

2 A Things black out, because you do it on purpose
3 just to save yourself, but I was forced onto the bed by
4 him.

5 Q And did you say you crawled to the --

6 A He forced me onto the ground to crawl over
7 towards the bed and then put me over on the bed.

8 Q So kind of like leading you with his hand?

9 A Pushing me onto the floor and then up towards
10 the bed.

11 Q Where were your panties or what happened to
12 them at this time?

13 A At a certain point, he took them off.

14 Q Off of you?

15 A He took them off.

16 Q So you were completely naked?

17 A Yeah.

18 Q Was that before the bed or on the bed?

19 A It was on the bed.

20 Q And you said he did something else with his
21 other hand.

22 A He was holding on to me.

23 Q As far as the light --

24 A He turned the closet light off.

1 Q with one of his hands, I take it?

2 A Yes. He's behind me as he's pushing me and he
3 flipped the closet light out.

4 Q So now it's darker?

5 A So it's darker.

6 Q what is the lighting situation at that time?

7 A well, there's -- because the curtains are thin,
8 there's ambient light coming in the window. So the room
9 is not completely dark, there's some light in the room.

10 Q And you've seen how this curtain was in
11 Exhibit 4?

12 A Right.

13 Q Did you make the curtain like that?

14 A No.

15 Q Is this how the curtain was when the police
16 arrived?

17 A Yes.

18 Q Do you know if he moved the curtain at any time
19 when he was with you?

20 A When he was with me in the room, no, he didn't
21 do anything to the curtain.

22 Q Do you know if light was coming through an
23 opening in the curtain or just through the curtain?

24 A That opening added more light to be able to

1 come through than normally would have come through the
2 window.

3 Q Give us an idea of the lighting. I know it's
4 not like this room. would you be able to see
5 silhouettes or see things?

6 A Oh, yeah. You would be able to discern a light
7 carpet from a dark carpet, you would be able to see sort
8 of differentiation in color. There was enough light to
9 be able to tell if the plant was green or if it was --
10 you could see.

11 Q which way would your bed be going from this
12 window? where would your bed be?

13 A In the upper right-hand corner.

14 Q Going down like this or like --

15 A Like that.

16 Q Right where it says "bed" would be kind of the
17 edge of your bed?

18 A Exactly.

19 Q So he forced you over here onto the bed. were
20 you on your back?

21 A I'm on my back.

22 Q Completely naked. And could you tell what he's
23 wearing?

24 A Yeah.

1 Q Tell us what he was wearing.

2 A He had on boots, heavy boots, black or brown,
3 and they came up midcalf. They reminded me of an army
4 boot. He had on shorts. The shorts were sort of --
5 they were dark, I would say purple, brown. They were
6 sort of silky. He did not have a shirt on. He had a
7 T-shirt on that he had put over his hair area, sort of
8 like Egyptian or turban style, so that his face was
9 exposed, but his hair -- most of his head was covered.

10 Q And the T-shirt would be --

11 A Flying back behind.

12 Q Not over his face.

13 A Not over his face.

14 Q So kind of like when someone takes a T-shirt
15 off, if you don't pull it all the way off your head?

16 A Right, leaving it hanging.

17 Q Do you remember telling the police whether he
18 had socks or not?

19 A He did have socks. The socks were coming
20 outside the boots.

21 Q At the very top?

22 A At the top. That's what made me think of them
23 being army boots.

24 Q Did you get a little bit better look at him or

1 his clothing later in the night at some point?

2 A Yeah.

3 Q And before I forget, do you remember telling
4 the police that he was wearing the T-shirt that way?

5 A Yes.

6 Q Do you remember Detective Asher going over the
7 Compu-Sketch with you?

8 A Yes.

9 Q And that's a computer-animated type -- or a
10 helpful tool to help you draw a suspect. Correct?

11 A Correct.

12 Q The computer only has a limited amount of items
13 it can choose from when you mention certain things.
14 Right?

15 A Uh-huh.

16 Q It's like doing a Mr. Potato Head.

17 A Right.

18 Q How did Detective Asher tell the computer to
19 put an Egyptian style T-shirt over the head?

20 A Well, he couldn't, because there was nothing
21 like that. So what was put on looked kind of like a
22 beret.

23 Q A beanie?

24 A Kind of like a beanie, where you could see the

1 edge of the hair, which in that composite sketch, it
2 looks like some sort of beanie.

3 Q But we're not to take it as actually being --

4 A Right, because actually the shirt came down
5 across his back.

6 Q So the shirt would actually cover --

7 A Part of his neck, which is where it came back
8 to.

9 Q And the shirt would cover most of the hair?

10 A Not all of the hair was covered with that being
11 on. There was still some to the side and around
12 underneath that wasn't covered.

13 Q Could you see bangs or anything?

14 A I saw mostly just around the sides here, which
15 was dark.

16 Q So you didn't see much in the front because it
17 was under the T-shirt or whatever it was, and in the
18 back, the T-shirt covered it most of the time.

19 A Most of the time.

20 Q Could you tell if it was a white, black, or
21 Hispanic male?

22 A White. I would've said white.

23 Q Clearly a male?

24 A Clearly a male.

1 Q Was he saying anything to you at this time on
2 the bed?

3 A Not that I recall. It's been a long time.

4 Q That's okay. If you don't remember, I'll move
5 on.

6 A Okay.

7 Q Did you know he was going to rape you? Had he
8 said anything like that or made any threat?

9 A Well, there was things said. To be absolutely
10 honestly clear, I don't remember exactly what they were,
11 but there was voice, there was talk, there was
12 communication back and forth.

13 Q In your mind, did you feel your life may be in
14 danger?

15 A Definitely.

16 Q In your mind, did you feel you may get raped?

17 A Yes.

18 Q In your mind, did you have any clue or idea of
19 what he was going to do to you?

20 A No. Why would you ever think something like
21 that is gonna happen? I mean --

22 Q That's fine. Well, let's put it this way:
23 what did he start doing to you or your body on the bed?

24 A When I was laying there, he was on top of me.

1 He went down to lick me between the legs. He came up
2 and he was licking with his tongue and his lips on my
3 breast. He came up and he was trying to kiss me, he was
4 kissing my cheek.

5 Q Both or which one?

6 A The one side where the bruise was at.

7 Q Do you remember if that was your left or your
8 right?

9 A It was the left side, it was on this side.

10 Q And if you want to move your hair, I'm just
11 afraid it may be blocking your voice from the jury.

12 Okay, your left side. You remember him kissing
13 that?

14 A Yes, kissing it.

15 Q How about anything on your neck?

16 A I just remember between my legs and on my
17 breasts and on my face.

18 Q But you remember for sure the left side?

19 A Yeah.

20 Q And you ended up telling the police that later?

21 A Yes.

22 Q Did he try to kiss you? Did you kiss back?

23 A Yes, he tried to kiss me on my mouth and on my
24 cheek, and that's mostly what I told the police, to let

1 them know.

2 Q Did you kiss him back, or did you let him kiss
3 you?

4 A I let him kiss me.

5 Q Even on the lips or on the mouth, or what?

6 A I think he tried to on the mouth, but mostly on
7 the cheek.

8 Q were you fighting back at this point?

9 A No.

10 Q were you still scared?

11 A I was scared to death, because I figured at
12 some point he was probably going to to kill me. I was
13 doing what I had to do to survive and I did what I had
14 to do to get through it.

15 Q And when you say you did what you had to do, do
16 you mean not aggravating him?

17 A Exactly. I didn't want to antagonize him, I
18 didn't want to say anything to upset him. I was trying
19 to stay calm. I was trying to make him believe that it
20 was okay with me, and the whole time I'm thinking, who
21 is this, what's going on? I'm trying to look at him,
22 trying to see him, trying to keep him calm. I was
23 touching him on his face, on parts of his body, to try
24 to find something that would give me some clue.

1 Q At that point, what were you discovering about
2 his face?

3 A That he had -- it seemed like he hadn't shaved
4 for maybe a day and a half. He had a shadow around his
5 mustache area. The facial on the other parts of his
6 face, it was a darker hair.

7 Q So a mustache and a little bit of a beard?

8 A Like a 5 o'clock shadow.

9 Q A little bit of a growth?

10 A Right, on his face.

11 Q Other than the mustache?

12 A Right.

13 Q And the mustache, you could tell was dark?

14 A Yeah.

15 Q Could you see the eyebrows?

16 A Yeah.

17 Q Dark?

18 A Dark eyebrows, dark hair on the face. The eyes
19 seemed dark, but it was a dark room. So I couldn't
20 really tell specific color, but I would've said dark
21 eyes.

22 Q Because mostly eyes are green, blue, or brown.
23 Do you remember telling the police one of those colors
24 or did you say dark?

1 A If I said dark eyes, I would've said brown or
2 blue.

3 Q I mean, could you see the color?

4 A I probably couldn't have seen the color, but I
5 probably said dark eyes, which would've been brown.

6 Q Did you ever get a good look at his face or his
7 eyes?

8 A I had a pretty good look of him on a whole.

9 Q In your composite sketch, do you remember the
10 eyes are kind of shadowed or inset or dark? And it was
11 in dark light, correct?

12 A Correct.

13 Q Could you say for sure the person did or didn't
14 have brown eyes, blue eyes, or green eyes?

15 A I'm sorry, I don't understand.

16 Q Can you say for certain the person didn't have
17 any certain color of eyes?

18 A No.

19 Q So all we know is that they seemed dark in that
20 lighting you were looking at?

21 A Right.

22 Q If it turned out the assailant had blue eyes,
23 green eyes, or brown eyes, any of the three, would it
24 shock you or surprise you? Would you say no way, that's

1 impossible?

2 A No, because there was enough light in the room,
3 but there wasn't enough light to show the color of an
4 eye, and with having dark features, it would've seemed
5 that the eyes were dark.

6 Q And by dark features, you mean the hair?

7 A Skin color too. It was summer, so probably --
8 I wouldn't have said that he was Hispanic, he didn't
9 have an accent or anything like that. He seemed to be a
10 white male with a tan, with dark hair, dark features.

11 Q On the bed now, when you were trying to -- I
12 don't know what word you want to use -- appease or
13 pacify or calm him --

14 A Yeah.

15 Q When you were trying to keep him calm and you
16 were touching him, what was he doing to you?

17 A He was trying to kiss me, he was still trying
18 to kiss me. He was trying to -- at first he couldn't
19 get erect, and that worried me, that scared me, because
20 I thought that if he couldn't, that he was going to get
21 angry and that was gonna make things worse. So I was
22 thinking this is gonna get worse if he doesn't get
23 erect, then he's gonna end up killing me, but he was on
24 top of me and -- I was kind of going back and forth

1 between -- I knew the phone was there, I knew there was
2 a vase above me, but I didn't want to risk trying to do
3 anything, because I figured he'd kill me if I did. I
4 was feeling around on him, and he did get erect at a
5 certain point, but I was feeling him and touching him
6 and trying to --

7 Q well, you weren't touching his genitalia, were
8 you?

9 A No, I was touching his body. I was touching
10 his body.

11 Q Let me back up, then. So he wasn't able to get
12 erect at first?

13 A Right.

14 Q Did that scare you?

15 A Yes.

16 Q why?

17 A Because I figured if he couldn't get erect,
18 then he was gonna get angry, and if he got angry, he was
19 gonna kill me.

20 Q Then he was able to get erect?

21 A Yes, he was, and then he began the intercourse.

22 Q Meaning he put his penis into your vagina?

23 A Yes.

24 Q And that was without your consent?

1 A Yes.

2 Q And you still don't know who this person is.

3 A No.

4 Q You didn't invite him over?

5 A No.

6 Q So this is against your will, the sexual
7 intercourse. Go ahead and explain what happened.

8 A I don't know how long it lasted -- time is
9 weird -- but I was touching, feeling him, and I felt
10 something on his -- with my right hand, on his side
11 here. It was raised, it was a bump or something on his
12 side here.

13 Q Now, you cannot tell us whether it was a
14 quarter inch long, an inch long, or two inches long, can
15 you?

16 A No.

17 Q What do you mean, you felt it? How did you
18 know it was something unusual?

19 A It was something raised. When I was running my
20 hand down his side, it was something that stuck out and
21 I just remember noting it in my head. That is something
22 different, that's not normal.

23 Q Was it something that could come off, that
24 could be removed?

1 A No, it was part of his skin. Whatever it was,
2 it was part of his skin.

3 Q You feel certain about that?

4 A Yes, I'm certain about that.

5 Q I don't mean to trick you, and I certainly
6 don't mean to tie you down, but what did you describe to
7 the police as far as what type of defect it was?

8 A I said it was probably like a scar.

9 Q And you couldn't see it in the light that you
10 had there?

11 A No.

12 Q So you can't say right now whether it was an
13 inch-long scar, maybe a little longer or smaller, if it
14 was a scar?

15 A No.

16 Q And you can't say positively it was a scar?

17 A No.

18 MR. LINDSAY: Objection, leading.

19 THE COURT: Sustained. The jury will disregard
20 the answer.

21 BY MR. CLIFTON:

22 Q Describe the lighting as far as this thing you
23 felt. Could you see it or could you just feel it?

24 A I could just feel it.

1 Q So you can't give us a visual description of it
2 at all?

3 A No.

4 THE COURT: Excuse me, Mr. Clifton. We'll stop
5 there and take the evening recess.

6 Ladies and gentlemen, during this recess,
7 you're instructed not to discuss this case among
8 yourselves or with anyone else. You are not to form or
9 express any opinions concerning the case, and you are
10 not to read, listen, or view news accounts of the case,
11 if any. This trial will resume promptly at 9 o'clock
12 tomorrow morning, 9 o'clock tomorrow.

13 Again, I want to thank you for your patience
14 and attention today during jury selection and for being
15 so prompt right after the lunch recess. We'll resume
16 the trial at 9 o'clock tomorrow.

17 Court is in recess.

18 (End of proceedings.)

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1 STATE OF NEVADA)
2 COUNTY OF WASHOE) ss.

3 I, ROMONA MALNERICH, official reporter of the
4 Second Judicial District Court of the State of Nevada,
5 in and for the County of Washoe, do hereby certify:

6 That as such reporter, I was present in
7 Department No. 6 of the above court on Wednesday, May 6,
8 2009, at the hour of 3:00 p.m. of said day, and I then
9 and there took verbatim stenotype notes of the
10 proceedings had and testimony given therein upon the Jury
11 Trial in the case of THE STATE OF NEVADA, Plaintiff,
12 versus FRANK MILFORD PECK, Defendant, Case No. CR06-2580.

13 That the foregoing transcript, consisting of
14 pages numbered 1 to 203, both inclusive, is a full, true
15 and correct transcript of my said stenotype notes, so
16 taken as aforesaid, and is a full, true and correct
17 statement of the proceedings had and testimony given upon
18 the Jury Trial in the above-entitled action to the best
19 of my knowledge, skill and ability.

20 DATED: At Reno, Nevada, this 11th day of
21 October, 2009.

22 Romona Malnerich
23 _____
24 ROMONA MALNERICH, CCR #269

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IN THE SECOND JUDICIAL DISTRICT COURT

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STATE OF NEVADA, COUNTY OF WASHOE

6

THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

7

8 THE STATE OF NEVADA,)

9 Plaintiff,)

10 vs.)

Case No. CR06-2580

11 FRANK MILFORD PECK,)

Dept. No. 6

12 Defendant.)

13

14

TRANSCRIPT OF PROCEEDINGS

15

JURY TRIAL
MAY 12, 2009

16

APPEARANCES:

17

For the Plaintiff:

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Reported by:

ROMONA MALNERICH, CCR #269
MOLEZZO REPORTERS
(775) 322-3334

24

1 RENO, NEVADA, TUESDAY, MAY 12, 2009, 8:30 A.M.

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3
4 (Proceedings in chambers.)

5 THE COURT: we'll go on the record.

6 The record should reflect the presence of the
7 defendant and his advisory counsel, counsel for the
8 State, the clerk, and the Court in chambers for the
9 purposes of settling jury instructions in this case.
10 There are 26 sequentially numbered jury instructions,
11 including Instructions 8A and 22A and two verdict forms
12 which the Court will give in this case, but first I'd
13 like to note that Instruction 8A was given at the
14 request of the defendant. Is that correct, Mr. Peck?

15 MR. PECK: Yes, sir.

16 THE COURT: Thank you.

17 And Mr. Lindsay and Mr. Peck -- well, first,
18 let me ask Mr. Clifton: On behalf of the State, do you
19 have any objection to any of the jury instructions or
20 verdict forms which the Court will give?

21 MR. CLIFTON: No, your Honor.

22 THE COURT: Do you have any additional
23 instructions or verdict forms to offer at this time?

24 MR. CLIFTON: I do not.

1 THE COURT: Thank you.

2 And Mr. Peck and Mr. Lindsay, on behalf of the
3 defense, do you have any objection to any of the jury
4 instructions or verdict forms the Court will give in
5 this case?

6 MR. LINDSAY: The order of the last two, I
7 believe I've informed him that the not guilty verdict
8 will be given first and that the guilty verdict will be
9 given second.

10 MR. CLIFTON: No objection.

11 MR. LINDSAY: It's a request on my part and I
12 believe it was granted.

13 THE COURT: That's true, and that's my
14 practice. Thank you.

15 And gentlemen, do you have any additional
16 verdict forms or jury instructions to offer at this
17 time?

18 MR. LINDSAY: We do not, your Honor.

19 THE COURT: All right. Thank you.

20 Mr. Peck, did you anticipate that you would
21 present the defense closing argument or that Mr. Lindsay
22 would or that you both would?

23 MR. PECK: I'd like Mr. Lindsay to close and
24 then I think I should read a statement that I've

1 prepared.

2 THE COURT: well, the purpose of closing
3 argument, of course, is to discuss what the evidence is
4 and any defensive matters. My only reluctance in
5 permitting you to give a statement is you cannot give a
6 statement which, in effect, is offering your own
7 testimony. It would have to be an argument as to what
8 the evidence is. If you would like to just read the
9 statement, maybe I can tell you if it would be
10 admissible or not.

11 MR. LINDSAY: Thank you, your Honor.

12 MR. PECK: well, it's not complete.

13 THE COURT: Can you just give me the gist of
14 what you'd like to state to the jury, please?

15 MR. PECK: well, I guess I could condense it a
16 bit and just hit on the facts about -- I'll just let
17 Mr. Lindsay close.

18 THE COURT: well, you have a little bit of time
19 to think about that. The only admonition is -- you're
20 free to give the closing argument or Mr. Lindsay, or if
21 you wish to share the responsibility, you may do that.
22 The only thing I would admonish you about is to be very
23 careful not to make any statement of fact which, in
24 effect, would be your own testimony or substitute for

1 your testimony. For instance, you could say to the jury
2 or Mr. Lindsay could argue to the jury, "The State has
3 failed to prove beyond a reasonable doubt that the
4 defendant committed this offense, or failed to prove
5 beyond a reasonable doubt the defendant was present at
6 the time and place of the crime charged." You could
7 argue that or Mr. Lindsay could argue that, but what you
8 could not say is, "I was not the perpetrator of the
9 offense because I was not present at the time charged,"
10 because that, in effect, is testifying, when you've
11 elected to invoke the privilege of self-incrimination.

12 MR. PECK: Yeah, that's pretty much the whole
13 thing that I've written here. So I'll let Mr. Lindsay
14 close.

15 THE COURT: Okay. Thank you.

16 So we'll take a brief recess and resume the
17 trial at 9 o'clock. Thank you.

18 Court is in recess.

19 MR. CLIFTON: Thank you, your Honor.

20 (Recess taken.)

21 THE COURT: Please be seated.

22 Counsel, could we move the screen so I can see
23 the jury, please?

24 Ladies and gentlemen, it's not necessary for

1 you to take notes on the instructions of the Court as to
2 the law in this case, because you'll have these written
3 instructions and verdict forms, which have been prepared
4 for your use during your deliberations, but I hope you
5 will be attentive to the instructions.

6 Ladies and gentlemen of the jury, it is my duty
7 as judge to instruct you in the law that applies to this
8 case and it is your duty as jurors to follow the law as
9 I shall state it to you, regardless of what you may
10 think the law is or ought to be. On the other hand, it
11 is your exclusive province to determine the facts in the
12 case and to consider and weigh the evidence for that
13 purpose. The authority thus invested in you is not an
14 arbitrary power, but must be exercised with sincere
15 judgment, sound discretion, and in accordance with the
16 rules of law stated to you.

17 If in these instructions any rule, direction,
18 or idea is stated in varying ways, no emphasis thereon
19 is intended by me and none must be inferred by you. For
20 that reason, you are not to single out any certain
21 sentence or any individual point or instruction and
22 ignore the others, but you are to consider all the
23 instructions as a whole and to regard each in light of
24 all the others.

1 If during this trial I have said or done
2 anything which has suggested to you that I am inclined
3 to favor the position of either party, you will not be
4 influenced by any such suggestion. I have not
5 expressed, nor intended to express, nor have I intended
6 to intimate any opinion as to which witnesses are or are
7 not worthy of belief, what facts are or are not
8 established, or what inference should be drawn from the
9 evidence. If any expression of mine has seemed to
10 indicate an opinion relating to any of these matters, I
11 instruct you to disregard it.

12 The defendant in this matter, Frank Peck, is
13 being tried upon an indictment which was filed on the
14 8th day of November, 2006, in the Second Judicial
15 District Court, charging the said defendant, Frank Peck,
16 with sexual assault, a violation of NRS 200.366, a
17 felony, in the manner following: To wit, that the said
18 defendant on or about the 9th day of August, A.D. 1994,
19 or thereabout, within the County of Washoe, State of
20 Nevada, did willfully and unlawfully subject Candice
21 Inman to sexual penetration against her will, in that
22 the defendant caused the victim to submit to sexual
23 intercourse at 445 Sullivan Lane, No. 94, Sparks, Washoe
24 County, Nevada. To the charge stated in the indictment,

1 the defendant, Frank Peck, pled not guilty.

2 An indictment is a formal method of accusing a
3 defendant of a crime. It is not evidence of any kind
4 against the accused and does not create any presumption
5 or permit any inference of guilt. The penalty provided
6 by law for the offense charged is not to be considered
7 by the jury in arriving at a verdict.

8 Neither the prosecution nor the defense is
9 required to call as witnesses all persons who may appear
10 to have some knowledge on the matters in question at
11 this trial. Nothing that counsel say during the trial
12 is evidence in the case. The evidence in the case
13 consists of the testimony of the witnesses and all
14 physical or documentary evidence which have been
15 admitted. It is a constitutional right of a defendant
16 in a criminal trial that he may not be compelled to
17 testify. Thus, the decision as to whether he should
18 testify is left to the defendant on the advice and
19 counsel of his attorney. You must not draw any
20 inference of guilt from the fact that he does not
21 testify, nor should this fact be discussed by you or
22 enter into your deliberations in any way.

23 There are two types of evidence which the jury
24 may consider in this case. One is direct evidence, such

1 as the testimony of an eyewitness. The other is
2 circumstantial evidence, the proof of a chain of
3 circumstances pointing to the existence or nonexistence
4 of another circumstance. The law makes no distinction
5 between direct or circumstantial evidence but requires
6 that before convicting a defendant, the jury be
7 satisfied of the defendant's guilt beyond a reasonable
8 doubt from all the evidence in the case.

9 Intent may be proved by circumstantial
10 evidence. It rarely can be established by any other
11 means. While witnesses may see and hear and must be
12 able to give direct evidence of what a defendant does or
13 fails to do, there can be no eyewitness account of the
14 state of mind with which the acts were done or omitted,
15 but what a defendant does or fails to do may indicate
16 intent or lack of intent to commit the offense charged.
17 In determining the issue as to intent, the jury is
18 entitled to consider any statements made and acts done
19 or omitted by the accused and all facts and
20 circumstances in evidence which may aid determination of
21 a state of mind.

22 It is the duty of each side of the case to
23 object when the other side offers testimony or other
24 evidence which the party believes is not admissible.

1 when the Court has sustained an objection to a question,
2 the jury should disregard the question and may draw no
3 inference from the wording of it or speculate as to what
4 the witness would've said if permitted to answer.

5 A person is qualified to testify as an expert
6 if he or she has special knowledge, skill, experience,
7 training, or education sufficient to qualify him or her
8 as an expert on the subject to which his or her
9 testimony relates. Duly qualified experts may give
10 their opinions on questions in controversy at the trial
11 to assist you in deciding such questions. You may
12 consider the opinion with the reasons given for it, if
13 any, by the expert who gives the opinion. You may also
14 consider the qualifications and credibility of the
15 expert. You are not bound to accept an expert opinion
16 as conclusive but should give it the weight to which you
17 find it to be entitled.

18 You may disregard any such opinion if you find
19 it to be unreasonable. To the jury alone belongs the
20 duty of weighing the evidence and determining the
21 credibility of the witness. The degree of credit due a
22 witness should be determined by his or her character,
23 conduct, manner upon the stand, fears, bias,
24 impartiality, reasonableness, or unreasonableness of the

1 statements he or she makes and the strength or weakness
2 of his or her recollections viewed in light of all the
3 other facts in evidence. If the jury believes any
4 witness has willfully sworn falsely, they may disregard
5 the whole of the evidence of any such witness. Although
6 you are to consider only the evidence in the case in
7 reaching a verdict, you must render the consideration of
8 the evidence your everyday common sense and judgment as
9 reasonable men and women. Thus, you are not limited
10 solely to what you see and hear as the witnesses
11 testify. You may draw reasonable inferences which you
12 feel are justified by the evidence, keeping in mind that
13 such inferences should not be based on speculation or
14 guess.

15 A verdict may never be influenced by sympathy,
16 passion, prejudice, or public opinion. Your decision
17 should be the product of sincere judgment and sound
18 discretion in accordance with these rules of law.

19 Every person charged with the commission of a
20 crime shall be presumed innocent unless the contrary is
21 proved by competent evidence beyond a reasonable doubt.
22 The burden rests upon the prosecution to establish every
23 element of the crime of which the defendant is charged
24 beyond a reasonable doubt. In every crime there must

1 exist a union or joint operation of act and intent. The
2 burden is always upon the prosecution to prove both act
3 and intent beyond a reasonable doubt. A reasonable
4 doubt is one based on reason. It is not mere possible
5 doubt but is such a doubt as would govern or control a
6 person in the more weighty affairs of life.

7 If the minds of the jurors, after entire
8 comparison and consideration of all the evidence, are in
9 such a condition that they can say they feel an abiding
10 conviction of the truth of the charge, there is not a
11 reasonable doubt. Doubt to be reasonable must be
12 actual, not mere possibility or speculation. A person
13 who willfully subjects another person to sexual
14 penetration against the victim's will is guilty of
15 sexual assault. Sexual penetration means any intrusion,
16 however slight, of any part of a person's body,
17 including sexual intercourse in its ordinary meaning.
18 Sexual assault does not require a showing that the
19 defendant employed force to achieve his objective, but
20 only that the act was committed against the will of the
21 victim. A victim of sexual assault is not required to
22 do more than her age, strength, surrounding facts and
23 all attending circumstances make it reasonable for her
24 to do in order to manifest her opposition.

1 The word "willfully," when applied to the
2 intent with which an act is done or omitted and as used
3 in my instruction, implies simply a purpose or
4 willingness to commit the act or to make the omission in
5 question. The word does not require in its meaning any
6 intent to violate the law or to injure another or to
7 acquire any advantage. Physical force is not a
8 necessary ingredient in the commission of the crime of
9 sexual assault. The crucial question is not whether the
10 victim was, quote, forced, unquote, to engage in sexual
11 intercourse, but whether the act was committed without
12 his or her consent. There is no consent where the
13 victim is induced to submit to the sexual act through
14 fear of death or serious bodily injury.

15 The defendant in this case has introduced
16 evidence for the purpose of showing that he was not
17 present at the time and place of the commission of the
18 alleged crime for which he is here on trial. If, after
19 consideration of all the evidence, you have a reasonable
20 doubt that the defendant was present at the time the
21 crime was committed, you must find him not guilty.

22 It is your duty as jurors to consult with one
23 another and to deliberate with a view of reaching an
24 agreement, if you can do so without violence to your

1 individual judgment. You each must decide the case for
2 yourself, but you do so only after a consideration of
3 the case with your fellow jurors and you should not
4 hesitate to change an opinion when convinced that it is
5 erroneous. However, you should not be influenced to
6 vote in any way on any question submitted to you by the
7 single fact that a majority of the jurors or any of them
8 favor such a decision. In other words, you should not
9 surrender your honest convictions concerning the effect
10 or weight of evidence for the mere purpose of returning
11 a verdict or solely because of the opinion of the other
12 jurors.

13 Upon retiring to the jury room, you will select
14 one of your number to act as foreperson, who will
15 preside over your deliberations and who will sign a
16 verdict to which you agree. When all twelve of you have
17 agreed upon a verdict, the foreperson should sign and
18 date the same and request the bailiff to return you to
19 court. And as I indicated, ladies and gentlemen, you
20 will have these written jury instructions and verdict
21 forms for your use during your deliberations.

22 You will now hear the closing arguments in this
23 trial. We will begin with Mr. Clifton on behalf of the
24 State.

1 MR. CLIFTON: Thank you, your Honor. May I
2 move the monitor a little closer?

3 THE COURT: You may.

4 MR. CLIFTON: Ladies and gentlemen, good
5 morning. Thank you for your close and undivided
6 attention to this very important matter. It's been
7 obvious in watching you during this trial that you've
8 been paying close attention, listening and watching as
9 the witnesses testified from that witness chair.

10 Because the State has the burden of proving any
11 criminal matter beyond a reasonable doubt, we get the
12 privilege of speaking to you first and last during these
13 closing arguments. So I'll be giving you my first
14 closing argument, the defense will then present their
15 closing argument, and then I get a chance to rebut what
16 they have said to you in their closing argument. So
17 I'll be speaking to you twice this morning, and during
18 these closing arguments, this is the chance that the
19 Court gives both sides the opportunity to interpret the
20 evidence and tell you what it means, but you're going to
21 see a very clear dichotomy between what I'm going to
22 tell you this evidence means and what the defense is
23 going to tell you they think it means or doesn't mean,
24 because what you're going to see is -- I'm going to tell

1 you what this evidence shows, what you know from this
2 evidence beyond a reasonable doubt.

3 The defense is going to do just the opposite.
4 They're going to show you what you don't know and
5 speculate that that means there must be reasonable
6 doubt, because things you don't know or things we have
7 to speculate about should put a question in your mind as
8 to the veracity and integrity of this evidence. They
9 could spend all day on that. They could say it was a
10 Tuesday, not a Monday; somebody spelled Candice Inman's
11 name wrong, or nobody found a two-inch scar on Mr.
12 Peck's back, and I'll allude to that in a moment.
13 They're going to talk about what the evidence doesn't
14 show and speculate to you on what that means.

15 we're going to ask you to concentrate and look
16 at the State's burden of proving this case beyond a
17 reasonable doubt, the positive evidence. What does the
18 evidence show, not so much what is missing or what is
19 left out. There can always be more evidence in a case,
20 always. There can always be additional evidence.
21 That's not the question. The question is, is there
22 sufficient evidence to convince you beyond a reasonable
23 doubt of somebody's guilt, and in this case, Mr. Frank
24 Peck's guilt of sexual assault.

1 Starting with what we know: On August 9th,
2 1994, 27-year-old Candice Inman was brutally attacked
3 and raped in her own apartment. That's clear. I don't
4 think there's any controversy over that issue. She was
5 attacked and raped by a five-foot-six, 150-pound thin
6 Caucasian male with a tan, a mustache, an unshaven face,
7 who smoked cigarettes, the exact same description that
8 the ex-wife, Leslie Krauser, gave you here yesterday.
9 That's the exact description she remembers him looking
10 like, the unshaven face, two or three days of unshaven
11 growth, the mustache, the hair, eyebrows -- all the same
12 color, not gray; he wasn't graying yet -- five-foot-six,
13 150 pounds, definitely a thin Caucasian male with a tan,
14 and the mustache. Peck, himself, gives you that. The
15 defendant's own commercial license applications at DMV,
16 many of them between the years 1989 and 1996, show a
17 five-foot-six, 150-pound Caucasian male. So even by his
18 own description of himself, it matches to a T exactly
19 what the victim said she saw.

20 She paid meticulous attention to his height.
21 She even stood up next to him to see his height, she
22 paid attention to his weight. You couldn't get it any
23 better. Five-foot-six, 150 pounds, maybe
24 five-foot-seven, because that's how tall she is, but she

1 knew he was no taller than her, and she was barefoot and
2 he was wearing what seemed to be army-style boots. You
3 see his height in Exhibit No. 21. It's measured in
4 shoes, boots, whatever these are, and it's measured as
5 five foot seven, maybe a tiny bit more, maybe up to five
6 foot seven and a half. He was wearing soles similar to
7 these or at least soles this height. It's not the same
8 sole on the bottom, obviously, but shoes or boots or
9 something similar to this height when he attacked
10 Candice Inman, and he kept wearing them and she was
11 barefoot. You saw her here in the courtroom. She's a
12 tall gal, she's taller than him. She said, "The
13 attacker clearly was no taller than me." She's certain
14 of that. He might've been a little shorter, but he was
15 no taller, even with these army style boots on.

16 So the description fits to a T. We have that
17 description from day one. That description is always
18 there. Keep that in mind, because the defense is going
19 to argue to you that there's some type of manipulation
20 in the evidence, somebody's framing Mr. Peck because
21 they don't like cop killers, because they don't like his
22 brother. How are they going to know that the
23 description is going to match to a T? The preposterous
24 allegation that somebody's framing him, how could that

1 possibly happen in the real world? How can it fit the
2 description, how can it fit the evidence?

3 The criminalists at the lab, they don't get
4 police reports. They work on evidence. They don't read
5 the case, they're not the case agent. They don't sit
6 around somewhere in a bar at night conspiring to frame
7 somebody. How are they going to get the description
8 from the victim to match? Even if that somehow could
9 happen, the Washoe County Crime Lab and all these people
10 are going to put their lives, their reputations at
11 stake? How are they going to assure that the
12 description from the victim is going to match? They
13 matched to a T. The only thing slightly off was the
14 age.

15 Remember, her sense of sight that we're talking
16 about here, she's seeing him in the dark. Her best
17 estimate to Peggy Stout from the Sparks Police
18 Department was 25 years of age. Her best estimate to
19 Sam Neuharth and Detective Asher was a young man, maybe
20 20 to 25. She's testified and she's told the police
21 since then that, "I'm not real sure on the age, I'm not
22 real good about age. He could've been more or less 25,
23 give or take a few years, but not much older than me."
24 She was 27, almost 28. He was 31 at the time -- or 32.

1 He was born in March of 1962. He was 32, she was 27.
2 So he was four and a half to five years older than her
3 at the time. That's the only characteristic that she is
4 slightly off on. How many people could see somebody for
5 up to maybe half an hour or so in a semi-dark room and
6 be that good on their estimate of the heighth, weight,
7 all the other features facially and only be off on age
8 by maybe seven years, and even tell the police that "he
9 might've been a little older than me," but he was not an
10 older man, he was not 40-ish, 50-ish, 60-ish, he was
11 younger, somewhere near her age. And remember, this is
12 her sense of sight that was hindered by the darkness.

13 what we're going to get to in a minute is her
14 other senses, her sense of touch when she's touching his
15 back, her sense of hearing, which was not diminished by
16 the ten-year lapse, the ten-year lapse where Detective
17 Neuharth shows her a photo lineup or individual photos
18 of Mr. Peck, along with many other individuals, and she
19 could not ID any of them in that photograph as the
20 assailant. She could not positively identify anybody.
21 That was ten years after the event. Her sense of sight
22 was hindered by the darkness. So she could not
23 recognize or was not willing to say positively that
24 anybody was the assailant in 2004 when she saw that

1 lineup, but her sense of hearing was not hampered, was
2 not affected by the darkness. Her sense of hearing was
3 good. She had excellent hearing and she spoke to the
4 man. She had a -- I don't know if you want to call it
5 lengthy, but she had many different subjects of
6 conversation -- the cigarette, whether he's ever seen
7 her before or would've talked -- whether she would've
8 talked to him, why did he do this. There was a point --
9 she didn't recollect on the stand, but it's in the
10 composite sketch -- where she remembers him saying, "I
11 won't hurt you. If you just don't fight me, I won't
12 hurt you."

13 So she had occasion to hear his voice during
14 that sexual encounter, during that rape. That was not
15 hampered by the darkness and it was still in her memory
16 bank, still in her recollection not 10 years later, but
17 15 years later. When she hears him in this very
18 courtroom two weeks ago having a discussion with the
19 judge, she hears a man's voice that -- yes, she knows
20 she's coming to this particular hearing, a hearing
21 entitled State versus Frank Peck, but she doesn't know
22 his name, she doesn't recognize him, she doesn't know
23 who he is, but she knows she's coming to a hearing
24 involving this particular case. And I agree with Mr.

1 Lindsay on that, she knows that when she comes in here.
2 She's not told to recognize him, she's not told she has
3 to ID anybody or do anything, just come watch the
4 hearing, and during that hearing, while Mr. Peck is
5 talking to the judge, she looks over and to Christine
6 waday, a victim advocate from the DA's Office, who's
7 sitting with her and assisting her -- Candice Inman
8 leans over and says, "I recognize that voice. That
9 voice sounds familiar. I recognize that voice." And
10 you heard her say under oath say here in court it's not
11 really a grown man's voice, it's not that low voice you
12 hear from a full grown man, it's more of a child-like
13 voice that he still has to this day. It's not a low
14 voice, it's more child-like, almost like a young man in
15 his teens, as his voice has just changed, and she
16 recognized that voice.

17 And then if you remember, I told her take into
18 consideration what you recall about the voice and what
19 you've heard in the courtroom here, take into
20 consideration the composite drawing and this picture of
21 Mr. Peck that I show you side by side, and take into
22 account his appearance as he sits here today 15 years
23 after the crime, as I had him stand up for her, take all
24 of that into account. Is there anything you can tell

1 us, is there anything you can testify about? Do you
2 remember her answer? Quote, it's him, end quote. "It's
3 him." You have the description, you have the
4 identification from Ms. Inman of his voice, and after
5 seeing and hearing everything that's gone on in this
6 case, she told you, "It's him."

7 Next we have several DNA results to look at,
8 telling us consistently that the defendant is the source
9 and, therefore, the rapist, the source not only of the
10 semen in Candice Inman's vagina, but also the source,
11 the source of the saliva on her cheek. Her DNA is there
12 too, but you extract that out, and that's very easy to
13 do, and what's left is a solid match, a hit, a clear
14 computer determination that the saliva on her cheek is
15 one and only one person's. It's not a mixed result,
16 it's not two salivas there, other than the victim's.
17 Once you take out the victim's, there's only one left.
18 It was not a mixed result and it's one person.

19 The semen came out the same way. You extract
20 her epithelial cells and the only thing left was one DNA
21 that came from the harsher chemicals. When they extract
22 her DNA out, there's sperm left, and they use a harsher
23 chemical and there's no epithelial cells left in there,
24 hers are gone. All that's left now is sperm extraction

1 of DNA, and when they put that in the computer, the DNA
2 computer tells them it's not a mixed result. In other
3 words, there's not two samples of DNA from her vagina,
4 there's only one. And the sperm from the Q-tip swab,
5 the DNA says there's one sample and that sample matches
6 only one person in the database, and that is the same
7 person as the saliva. That is the defendant, Frank
8 Peck, the same and only individual that has matched the
9 cheek saliva and the vaginal semen.

10 The defense can try to attack the DNA all they
11 want. That's their job. There's no problem with them
12 trying to attack the DNA, but all they come up with is
13 things that are being thrown at the wall and seeing if
14 they stick. There's no conclusion, there's no evidence,
15 none, of any manipulation, corruption, contamination,
16 intentional mischaracterization, or evidence tampering.
17 Those are just allegations that are being thrown at
18 these professionals up against the wall to see if
19 anything sticks in your mind to give you a reasonable
20 doubt.

21 Ladies and gentlemen, that's why the term
22 reasonable is used in there to define the State's
23 standard of proof beyond a reasonable doubt. It's not
24 proof beyond any doubt, it's proof beyond a reasonable

1 doubt. The word "reasonable," that's why it's in there.
2 It's got to be reasonable to you. It's not reasonable
3 to just throw these allegations out there.

4 After the whole trial, after you've seen all
5 these witnesses, in order for something to stick, you
6 would have to believe -- if there's some type of
7 evidence tampering or corruption or conspiracy, you'd
8 have to believe that all of these people in the chain of
9 the evidence are involved. That's the only way it could
10 work. Dr. Diedoff, Carol Phillips, Diane Hackwirth,
11 Peggy Stout, Linda Brown, Maria Fasset, Jeffrey
12 Olberman, and Renee Romero would have to all be somehow
13 involved.

14 Because remember, at least going back to 1994,
15 Maria Fasset tested the sample and found evidence of
16 semen in two different ways, microscopically and with
17 the acid phosphatase test. Both times, positive results
18 for semen, one with the microscopic slide and then the
19 acid phosphatase test was positive, but it was a weak
20 positive -- in other words, indicating there's a low
21 amount or a low sperm count, for which there could be
22 multiple reasons. There's a small amount of sperm, not
23 an entire lot of sperm on those Q-tip swabs, but
24 certainly enough for the newer PCR amplification DNA

1 testing.

2 Remember Mr. Lindsay asked Dr. Diedoff, "Hey,
3 you were probably tired that night. You might've
4 screwed up, you might've made a mistake." Dr. Diedoff
5 says, "No, I didn't make a mistake." Yes, it was
6 rushed. Yes, an emergency room doctor may be tired, he
7 may be overworked, he may be rushed, but the only way
8 you could make any sense out of that, if there was a
9 mistake -- there's no evidence of any mistake, he flat
10 out denied it, but Mr. Lindsay wants you to believe that
11 there's some kind of mistake, because that could've
12 screwed up the sample. Well, think about that. The
13 sample clearly was from Candice Inman. All tests showed
14 her DNA is in the cheek swab and in the vaginal swab,
15 the epithelial cells.

16 So if there was a mistake, what kind of mistake
17 could Dr. Diedoff make? He doesn't have Mr. Peck's
18 sperm, he can't put Mr. Peck's sperm on that Q-tip. The
19 worst that could ever happen for Dr. Diedoff or Nurse
20 Hackwirth or medical technologist Carol Phillips would
21 be to switch samples somehow, somebody got the samples
22 mixed up. Well, that's not going to result in Mr.
23 Peck's DNA coming out in the test. Remember what Jeff
24 Riolo said, the criminalist. He said, "You may get a no

1 result, but you're not gonna get a wrong result from
2 these tests." In other words, if Dr. Diedoff screwed up
3 the sample somehow, you'd get a different result, you'd
4 get somebody else, but you wouldn't get Candice Inman in
5 that result, because you'd have a different victim.
6 That clearly didn't happen. Once the correct sample
7 gets to the lab -- which clearly is the correct sample,
8 because it's got Candice Inman's markers in it -- once
9 that gets to the lab, there's no way you can get a wrong
10 result. All you're going to get once it gets to the
11 lab -- and we know we have the right sample -- is a no
12 result. If there's an error in the processing of the
13 DNA or the DNA testing, you might get a no result, but
14 how are you going to get a wrong result?

15 Remember the hypotheticals he gave you
16 yesterday, a technologist sneezes into the tube or into
17 the sample or onto the Q-tip, any of the ways that they
18 get the DNA into the system. We can rule that out;
19 that's easy. He wants to throw this at you to see if it
20 sticks, but think about it. If someone sneezed into the
21 sample, it would've had to been Mr. Peck, because only
22 Mr. Peck's DNA was there. He would've had to sneeze
23 into the sample and he would've had to sneeze onto that
24 gauze from her cheek, because his DNA is on there. It

1 wouldn't matter if a technologist sneezed into it,
2 because the next thing that would happen is the computer
3 would print out a mixed result. In other words, the
4 computer would say you've got more than one person's DNA
5 in here once you got rid of the victim, or even with the
6 victim, you're seeing a mixed result of more than two
7 people, so you've got a mixed result here.

8 The computer -- just like in our database, the
9 computer has all the elimination samples. All the
10 samples from all the technologists that work in that lab
11 are in that computer, they're in that database. So if
12 the computer picks up a hit on a mixed sample from a lab
13 technologist, it will print that out, it will say this
14 matches Renee Romero or Maria Fasset. And you'd know if
15 somebody sneezed into the sample. The computer has an
16 internal control for that, and that is, it would print
17 out a mixed result. Either the dominant or the less
18 dominant profile, one of them would be consistent with
19 the technologist in the lab, and then you could start
20 over. You could say, now we have contamination or now
21 there's something that isn't proper, but it never
22 happened in this case. You can rule every one of these
23 hypotheticals out that Mr. Peck threw out at Renee
24 Romero yesterday, because there is no impropriety in

1 this DNA testing. Even if somebody got their own DNA
2 into that sample, the result wouldn't come out as Mr.
3 Peck. Like I said, you wouldn't get a wrong result, it
4 wouldn't come out as Mr. Peck. You can't mix two or
5 more people's samples, like three or four people's
6 samples and get one other person. The computer will
7 tell you we've got a mixture, we've got too many numbers
8 coming up in a row here. We've got too many numbers.
9 There's four people here, we've got four different
10 numbers here. It would clearly show you've got a mixed
11 sample. It never occurred in this case. We have one
12 DNA after we exclude the victim. So there's no
13 contamination, and contamination is easily ruled out
14 with the internal controls.

15 Then Mr. Peck wants to make a very serious
16 allegation, especially to professionals, that there was
17 evidence tampering, intentional evidence tampering.
18 Remember he asked Director Romero, "Some of your friends
19 are cops, right?" There was a cop that was killed and
20 it was his brother that did it. So why is that so hard
21 to believe? There's no evidence of this, but we want
22 you to believe or have some doubt in this case, because
23 we want it to stick to the wall, that this director at
24 the lab mischaracterized, intentionally mischaracterized

1 evidence as a sperm sample or somehow mischaracterized
2 the DNA from his reference sample, saliva, and
3 mischaracterized it as sperm.

4 well, how can that happen? The computer and
5 the chemicals are the ones that rule out whether it's
6 sperm or whether it's saliva. That gets extracted in
7 the differential analysis. His saliva would've been
8 extracted with the victim's as epithelial cells and we
9 would've seen a mixed sample of her cells right there,
10 her DNA and somebody else's DNA, just like we did with
11 the cheek swab. That would've been differentiated then.
12 Instead, it's clearly sperm, because the harsher
13 chemicals could not take away that DNA until it got to
14 the sperm cells, then the harsher chemicals are able to
15 open up the sperm cells and get DNA, and when they did,
16 they got his DNA. So we know it's not saliva. She
17 couldn't have confused that, she couldn't have mixed it
18 up accidentally or intentionally. The computer is the
19 one -- after the chemicals get into the sperm cell, the
20 harsher chemicals, the computer is the one that prints
21 out his DNA.

22 Remember, it isn't Renee Romero that came up
23 with the match for Mr. Peck. It was Jeff Riolo. So now
24 Jeff Riolo and Renee Romero must both be involved in

1 this conspiracy, if there is one. Renee Romero put the
2 DNA profile into the system, and that can be tested and
3 retested. There's still plenty of evidence on those
4 Q-tips. You heard Maria Fasset and Renee Romero talk
5 about those Q-tips. There's plenty left to be tested or
6 retested by anybody. It could be tested and you'd see
7 that there's sperm on those Q-tips, and that sperm was
8 on those Q-tips in 1994. It's not something that Renee
9 Romero could go back and plant his sperm on. They don't
10 have his sperm in the lab on this case until 2001 -- or
11 2002. The profile of the DNA Renee Romero got from this
12 sample was in 2001. His reference sample -- which isn't
13 even sperm, it's saliva -- doesn't get to that lab until
14 2002, and then it's put in the local, the state, and the
15 national database, and then we get a hit a year later,
16 on April 23rd, 2003. It's not from Renee Romero, it's
17 from Jeff Riolo.

18 So there's no possible way his sperm could've
19 gotten on that Q-tip unless he was the rapist in 1994.
20 There is no way. Somehow he's got to say Renee Romero
21 and Jeff Riolo planted this sperm onto that Q-tip.
22 where are they going to get Mr. Peck's sperm? You can
23 still go back and retest it. How would they get his
24 sperm? Nobody got a sperm sample from Mr. Peck. The

1 only sperm sample they have of Mr. Peck in this case is
2 from the 1994 Q-tip. How could it be injected with his
3 sperm? And like I said, that Q-tip can be tested and
4 retested. Today, you could test that Q-tip and find his
5 sperm on there. Where would that sperm come from, if
6 there was some type of intentional manipulation? Answer
7 that for me. Somebody has to answer that before there
8 can be reasonable doubt in this case. Where the heck
9 are they going to get his sperm in this case to inject
10 into a sample from a Q-tip from 1994.

11 So they get his sample into the database and
12 the computer detects a hit a year later, and you heard
13 about how the computers work and the funding and all
14 that. Things take a little time. That's not reasonable
15 doubt. That time delay does not create any kind of
16 reasonable doubt in this case.

17 So there's nothing but empty allegations.
18 There's no proof and no truth to these allegations by
19 the defense. To even suggest that because his brother
20 killed Officer Bohach, that all the evidence in this
21 case -- and I think you're going to have to go back to
22 Maria Fasett, who found the sperm both microscopically
23 and on the Q-tip. We have it in two places here. So
24 even she'd have to be involved. And remember, if there

1 is sperm on that Q-tip from a different rapist, and if
2 somebody did plant or inject his sperm -- wherever
3 they're going to get it -- onto that Q-tip, you'd have a
4 mixed profile on it. The DNA from the computer would
5 show two samples of sperm, two different donors of sperm
6 on this Q-tip. You only have one, another control that
7 rules out any type of theory or anything that might
8 stick to the wall being thrown at you.

9 So to suggest that because his brother killed
10 Officer Bohach, that all the criminalists in this case
11 somehow conspired to frame him is ludicrous,
12 preposterous, outlandish, and slanderous. It's
13 slanderous. It's absolutely impossible. It could not
14 have occurred, and it does not create any type of doubt,
15 certainly not reasonable doubt.

16 With respect to Mr. Peck's alibi -- I've
17 already shown you how this case was proved many times
18 over, with the victim's statements, the science, the
19 DNA, all the evidence we have in this case showing
20 beyond a reasonable doubt Mr. Peck's guilt. Now we have
21 to look at or consider his claim of alibi -- or should I
22 say multiple claims of alibi, because he's told the
23 Court under oath, in pleadings and motions to this
24 court, that he was in Las Vegas on August 9th, 1994, and

1 then that he was in California, that doctors and nurses
2 could tell you that he was in California on August 9th,
3 1994. Now, watch how that alibi defense has morphed,
4 watch how it's changed. I alluded to this yesterday
5 with Mr. Larry Peck on the stand. Sherry, Mrs. Gary,
6 has been communicating with Mr. Peck over the last
7 couple years, verbally over the phone and in letters.
8 She's been communicating with him, and she is trying to
9 come up with an August 9th excuse for Mr. Peck as to
10 where he could've been, but remember, both Mrs. Gary and
11 Mr. Larry Peck give different alibis for him.

12 Mr. Peck, coincidentally, also has two
13 different alibis in his own pleading, under oath, each
14 of them under oath. Both say, "I promise this is the
15 truth, I was in Vegas. I promise this is the truth, I
16 was in Lancaster, California." They're seven or eight
17 months apart, February of '08 and October of '08. In
18 February of '08, he says he was in Vegas. Well, he
19 sends Mrs. Gary out to find some witnesses --

20 THE COURT: Excuse me. I think the witness's
21 name was Mrs. Gray.

22 MR. CLIFTON: Gray, you're right. Thank you
23 very much.

24 He sends Mrs. Gray out to his sister to find

1 some witnesses, find him an alibi. So she finds Mr.
2 Carnahan, a close family friend of her and her
3 husband's, a close family friend. And we all agree that
4 Mr. Carnahan is not going to lie for anyone. He's going
5 to come in here and tell the truth. I don't think
6 there's any discrepancy about his credentials. But did
7 he give him an alibi? Absolutely not, and that's where
8 the problem starts.

9 So February of 2008, Mrs. Gray and Mr. Peck are
10 not going to be able to vouch for him, they're not going
11 to be able to verify his Las Vegas alibi, because Mr.
12 Carnahan thinks he saw him in Las Vegas, but it could've
13 been August 2nd, August 3rd, August 4th. Think about
14 it. Could it have even been 1992 and not 1994? Mr.
15 Peck stated in his questioning of witnesses -- I think
16 it was Leslie Krauser -- that he took lots of trips to
17 Las Vegas, lots of trips to California. She says she
18 doesn't remember long trips. He may have taken a day
19 trip or two-day trip or three-day trip to Las Vegas and
20 California, maybe even lots of them. We're not
21 disputing that he may have, but she says no way was he
22 gone four or five weeks from their marriage, no way was
23 he on this trip that he and his brother and his sister
24 have conjured up, that lasted potentially from July 15th

1 all the way to August 25th. That was Mrs. Gray's
2 testimony, July 15th or 17th, because of that phone
3 record that shows a phone call from her husband's
4 phone -- or from her father, her father's phone. It had
5 nothing to do with Mr. Peck, it was just a phone call
6 from California on July 17th. So from that phone bill
7 she's looking at, she's deducing that that means Mr.
8 Peck must've been down there with us, because Mr. Peck
9 must've made that call, because it was to somewhere in
10 Nevada. It wasn't Reno, it wasn't Sparks, somewhere in
11 Nevada. "That had to have been Mr. Peck who made that
12 call. So he was with us as early as July 17th." That
13 was a long trip. She doesn't know if he made the call
14 the first day he got there or the second day. So it
15 could've been anywhere from July 15th to 17th, and he
16 stayed either with her or went to Vegas and came back,
17 but she doesn't know of anywhere else he went. So from
18 California to Vegas, then back to California to stay
19 with her, and she saw him pretty much every day. The
20 only time she'd lose track of him was when she went to
21 work from 8:00 to 5:00. So she's giving him an alibi
22 for being in California between August 5th and August
23 25th. She said under oath, "He was with me."

24 Mr. Larry Peck said, "No." Under oath he said,

1 "He was with me in Las Vegas, because we were there
2 August 2nd and we stayed for -- he stayed with me there
3 for two weeks, approximately two weeks," which would run
4 through August 9th. Now think of this: Both his sister
5 and his brother have given him different alibis for the
6 same week, for a whole week. They're both accounting
7 for him. They're both doing their duty as a loyal
8 brother and sister in accounting for him and his
9 whereabouts, but nobody can realistically remember that
10 date.

11 They're trying to piece it together, and who's
12 orchestrating that piecing together or touching up
13 memories? His older sister, the mother figure of the
14 family. The older sister, Sherry Gray. Sherry Gray, by
15 her own admission and by everybody else's admission --
16 Mr. Carnahan's and even Mr. Peck, himself, in his
17 questioning -- you could see that she is the one that
18 is putting together what happened back in 1994.

19 How could it be 1994 if Mr. Carnahan said he
20 was in Nevada from 1977 to 1992? Did he misspeak? I
21 heard him say it was a '95 car that he was working on,
22 and when I asked him again, he said '85. So did he just
23 misspeak or did this really occur back in '92? The
24 receipt doesn't look quite right, because there's a

1 torch kit on there and Mr. Carnahan doesn't remember a
2 torch kit. There's 30 pounds of R-22 refrigerant. This
3 could've been purchased at any time by Larry Peck, Larry
4 Peck or Don Peck buying it for him or anything, because
5 Larry Peck was starting a long-term business. He was
6 going to be working on cars. None of them could say for
7 sure he started it in 1994. He could've bought numerous
8 items that dealt with refrigerant, vacuum pumps, even a
9 Penguin. This receipt didn't say a Penguin. The
10 checkbook that Ms. Gray was looking at doesn't show
11 anything about a large check for \$2800 or more. It
12 shows \$300. The bill that was shown to witnesses, Larry
13 Peck read off \$467. So it doesn't even match.

14 So who knows whether this is the right date,
15 but the ironic thing or the interesting thing -- I guess
16 the expected thing -- is that both Larry Peck and Mrs.
17 Gray erred and they both erred on the same portion of
18 time. They both made a mistake between August -- let's
19 say 7th or 8th and August 12th or 13th, because Mrs.
20 Gray said, "He left on August 25th and he was with me
21 for two weeks after he came from Vegas. He was with me
22 for two weeks." Do the math. So two weeks before the
23 25th goes back to the 11th, not the 9th. So she can't
24 account for him before the 11th, and when I asked her

1 about that, she changed it again. She screwed up twice.
2 First she said it was August 25th, then she said it was
3 August 25th and two weeks before, then she changed it
4 back when I asked her. So she's maintaining her alibi,
5 but she got confused.

6 I even showed her his statement under oath
7 saying he was in Las Vegas. I showed her that one
8 statement, and I don't remember the dates on the
9 statement, but February and October. I showed her those
10 statements and that's when she seemed to get a little
11 confused. Go by your memory, ladies and gentlemen, but
12 he has one for February 5th and the other one for
13 October, both 1998, both with different alibis. So she
14 got a little confused when I showed her the statement
15 that said -- under oath, Mr. Peck saying he was in Las
16 Vegas. She didn't know he had filed that. So she's
17 confused and she doesn't know where she is now.

18 So does she make the alibi for him or does
19 Larry Peck? But either way, Larry Peck also screwed up.
20 He said, "He was with me about August 2nd for three or
21 four days." Remember that? That was on direct
22 examination from his own brother, after they just spoke
23 for 20 minutes outside in the hallway or wherever. They
24 had just spoke for 20 minutes to get that story

1 straight, but that story's changed, that alibi has
2 changed. Nobody can get it straight. Larry Peck said
3 three or four days from August 2nd. That gets us up to
4 August 6th -- again, not including August 9th. And then
5 he changed it to, "Oh, maybe it was a couple weeks, he
6 stayed with me a couple weeks." why would he stay a
7 couple weeks if he's down there to help with Carnahan's
8 vehicle and he's there to see his dad who's terminally
9 ill? why would he stay a couple weeks with Larry Peck
10 in Las Vegas? They'd already done the car, his dad was
11 done with that. His dad apparently is back in
12 Lancaster, California, because he's got a deposit to a
13 bank on August 5th.

14 So does Dad and Frank split up, like some
15 witnesses say, or was this even the same trip? was this
16 even the right trip? All we know is Leslie Krauser
17 says, "He was never gone from our home in Reno-Sparks
18 for four or five weeks, never." She's adamant about
19 that. So was this even the same trip? was it several
20 trips, different trips to Vegas, to California, that
21 they tried to mold into one to give him an alibi for
22 August 9th? Either way, we don't have any definitive
23 proof at all. If anything, you have inconsistent proof.
24 You have two people saying he was in two different

1 places, his own witnesses. You have Mr. Peck, himself,
2 saying he's in two different places on August 9th, under
3 oath. So there's no definitive proof anywhere in this
4 alibi.

5 Now, there's just a couple things I want to
6 show you. First of all, this scar, which obviously is
7 going to come up by the defense. This is Exhibit
8 No. 20. This is the scar you can see right here. No
9 doubt it's a scar and no doubt that Linda Brown had it
10 photographed with this ruler here, and the ruler shows
11 centimeters, and that's clearly a scar. This is in
12 2004, and let's say it's an inch long. That's 10 years
13 after the crime. You'll never know, nobody will ever
14 know for sure what she felt. She couldn't see it, she
15 could only feel it. It was too dark.

16 Did she feel a mole or did she feel a scar? We
17 don't know, but Linda Brown during the search order went
18 back to photograph his back, and on the flank near the
19 lowest rib -- or down near the bottom of the back of the
20 ribs, toward the side and back of his left side, she
21 sees a mole that's about a centimeter long, that's
22 raised, and then she sees a scar, which does not appear
23 to be raised. I don't know if she testified to it, but
24 I'll give you that, it does not appear to be raised.

1 But what did that look like or what was that injury in
2 1994? Was it a raised injury like an abrasion, where
3 you scratch yourself or somebody scratches you and it
4 raises up the skin as it sloughs off and as it scabs.
5 Was this a little lengthier back then and this was the
6 part that scarred, because the rest was just the top
7 layer of skin that scratched? We don't know and we'll
8 never know. It's hard to even speculate. All we know
9 is that she felt something. It could've been a scratch
10 that healed. You'll see other photographs of his back
11 that actually show another scratch, but, again, this is
12 in 2004. This is Exhibit No. 17. In Exhibit No. 17 in
13 2004, you see a scratch on his back, but that's a recent
14 scratch. That obviously isn't something from 1994.

15 So we've got several things on his back that
16 seem to match what the victim identified as feeling --
17 not seeing, but feeling on his back. She doesn't
18 remember ever saying "two-inch." She couldn't say
19 whether it was a quarter inch, a half inch, an inch or
20 more, but in Peggy Stout's report in one or two places,
21 there is a place that it says two-inch scar. So that's
22 what she recalls the victim telling her. The victim
23 said under oath that she doesn't recall the exact
24 dimensions of this raised defect. She thought it was a

1 scar. So even if it's the mole, because she can't see
2 it, it makes sense that it could be the mole, because
3 it's a raised defect, a permanent defect on his body
4 that is raised, and you wouldn't know what it is when
5 you feel it. But the defense will come up here and
6 argue to you that because nobody saw a two-inch scar,
7 only a one-inch scar, that that raises a reasonable
8 doubt. Not so, ladies and gentlemen. She felt
9 something. She felt it and it felt raised and it felt
10 like a scar to her. She does not know the exact
11 dimensions.

12 Next we get to the composite drawing, the
13 descriptors in the composite, and Mr. Peck's photograph.
14 And I'm just going to put this over his head, because we
15 don't know exactly how to put in a computer sketch a
16 T-shirt being worn over the head. So it's going to be
17 covering the hair, only the bottom part of the hair is
18 going to be sticking out. It's going to look something
19 like this. This is the composite drawing that she did
20 in 1994 and then the November 1996 photograph of Mr.
21 Peck, and although this is a little dark here -- you
22 will have these with you in deliberations, you'll be
23 able to do exactly this. The beanie doesn't really do
24 justice, because it's not the same as a T-shirt, but

1 when you put something over his head like this and you
2 look at his ears, nose, mustache, chin, mouth
3 especially, eyebrows, eyes, that's extremely good. It's
4 an extremely good composite sketch of a person. I can't
5 even imagining it coming out that good if he weren't the
6 rapist. It doesn't make any sense. The DNA, this
7 picture, an intentional frame-up he's alleging, none of
8 that would make any sense unless he's the rapist. These
9 things all fit together, certainly beyond a reasonable
10 doubt. His alibi is the only thing we do have some
11 doubt on. There's no question you'd doubt the alibi,
12 because we don't even know what it is, and Leslie
13 Krauser tells you that the alibi could not be correct,
14 because he was never gone from her that long.

15 So, ladies and gentlemen, I'm going to speak
16 with you one more time -- hopefully I'll keep it
17 short -- in rebuttal to defense's closing argument, but
18 ladies and gentlemen, keep all of these things in mind,
19 the things you know, the facts that you know, not the
20 facts that you have to see if they stick to a wall or
21 the things you have to speculate about, the facts that
22 you know, and you determine whether you're satisfied
23 beyond a reasonable doubt as to Mr. Peck's guilt.

24 Thank you.

1 THE COURT: Thank you, Mr. Clifton.

2 Ladies and gentlemen, we will take a brief
3 recess and then you will hear closing argument on behalf
4 of defendant.

5 Court is in recess.

6 (Recess taken.)

7 THE COURT: Please be seated.

8 Ladies and gentlemen, you will now hear a final
9 argument by Mr. Lindsay on behalf of the defendant.

10 Mr. Lindsay?

11 MR. LINDSAY: Thank you, your Honor.

12 I'd like to think that Mr. Clifton and I are
13 friends, and I'm certainly hoping to be a little briefer
14 than he was. I mean that as a friend. I believe I
15 talked to you a little bit about a parallax. A parallax
16 is the distance between your eyes, and very simply
17 stated, it's how we have depth, it is how we achieve
18 depth perception, and he's part of the parallax and I'm
19 the other part of the parallax. I've got to tease him
20 just a little bit. He often used the phrase could have
21 been, et cetera, and I believe that he wants you to
22 believe that when he uses the phrase could've been, it's
23 not speculation, it's fact, and he's anticipated -- well
24 meaning, I understand, but he's anticipated that if I

1 use the phrase "coulda, woulda, shoulda," that it's
2 speculation, that it's make-believe, and I don't believe
3 that he thinks for a moment that I'm going to be
4 disingenuous. I don't believe he believes that, and I
5 can tell you that I respect him. He's a man of great
6 integrity and I believe he's doing his job as well as he
7 can, but I think we have to be a little bit fair here.

8 I didn't make this up. Somebody claimed -- and
9 I'll leave it to your memory -- that they were 8-inch to
10 12-inch army boots. I asked her on cross-examination
11 about the army boots, because I didn't know how big they
12 were, and she said they were 8 to 12 inches, and I
13 thought she said -- and again, your memory controls -- I
14 thought she said they were mid-calf. I'm not making
15 that up. I'm not asking you to speculate. I think
16 Candice said that. I think she said they were 8 to
17 12-inch boots. I think that's a fair and accurate
18 representation of all of your notes.

19 I didn't make up the two-inch scar. I don't
20 think I even brought it up. I'm sorry, but I didn't
21 make it up. I'm not saying counsel made it up, but you
22 were shown repeatedly the fact that she told the
23 officers in 1994 that whoever accosted her had army
24 boots, and she didn't say 8 to 12 inches at the time,

1 and so I asked her to clarify, but she did say
2 unequivocally -- and it's written down and you've seen
3 it repeatedly and it's been talked about repeatedly --
4 she did say there was a two-inch scar.

5 what's really incredible to me is that
6 counsel -- although we know that when he says coulda,
7 woulda, shoulda, that he's not speculating -- but you
8 tell me one person on that six-person photograph from
9 2003, 2004, 2005, whenever it is, where Mr. Peck is.
10 You have six faces and each one of them, for the
11 purposes of accuracy of this hearing, each one of them
12 matches, each one of them, not just Mr. Peck. They all
13 have mustaches and they all have a slightly disheveled
14 look. I'm not making that up; it's fact. All six of
15 them. All six of them. That's not make-believe, that's
16 not me asking you to believe that there's a pink
17 elephant in the room and nobody wants to talk about it.
18 We know the man who accosted Candice had a two-inch
19 scar. We know that because she's very fact-specific.

20 We also know -- and I'll try to cover some of
21 this right now, although it's further down in my notes,
22 but we also know that a great deal of her testimony here
23 does not match what she said in 1994. We know this for
24 sure. I said, "How long was the perpetrator in your

1 house?" And I hope you remember, because I have no way
2 of knowing, and she said about 45 minutes. I believe
3 that's what she said. Your memory controls, not mine.
4 I believe she said she spent about five minutes standing
5 up with him in the bedroom and another 10 minutes
6 standing up with him in the living room. This much is
7 for sure.

8 I'm doing my very, very best to be absolutely
9 accurate with everything I tell you, because you have
10 every right to disregard every word I say if I'm less
11 than 100 percent accurate with you, and I expect you to
12 do that. So I'm giving you the very best I can remember
13 and I'm giving it to you a hundred percent, or four
14 billion percent.

15 Counsel makes a great deal out of the family
16 coming in here, Sherry and Larry and William Carnahan,
17 who's not family, but he's a friend, and they are trying
18 to recreate what happened 15 years ago. And I think
19 it's fair to say that if you were to ask me or even
20 Mr. Clifton exactly where he was 15 years ago in August,
21 he might and I might have some memory of it. And it's
22 not a conspiracy, because if it was, it sure didn't
23 work, did it? We know the best-laid plans of mice and
24 men, we know for a fact that it wasn't a conspiracy. We

1 know that we have a family trying very hard and, in
2 front of you, failing. Because they weren't consistent,
3 were they? We have Sherry saying, "I believe they were
4 with me from the middle of July till the 21st" -- and I
5 hope I'm correct -- "of August." We have Larry who
6 comes in here and he says, "No, Frank was with me in Las
7 Vegas." We have William -- and I really appreciated
8 counsel acknowledging that, from all we can tell,
9 William Carnahan was giving us the best he could from
10 15 years ago. And, in fact -- I hope you remember -- I
11 got up and tried to remind him of the first conversation
12 I ever had with him in which he put my client there on
13 the weekend. Not on the 9th, which is a Tuesday; not on
14 the 10th, which was a Wednesday, but I believe he put my
15 client there either the weekend before or the weekend
16 after, and I think that's a fair statement, but he never
17 once claimed -- not to counsel, not to me, not to
18 anyone -- that he could say where Frank Peck was on the
19 9th and 10th. I believe he told you, from 15 years ago,
20 exactly what he remembered.

21 We know from Candice's own testimony that she
22 tried very, very, very hard to figure out who the heck
23 was in her room and we know that she was frightened to
24 death as well -- she should be -- and we know that she

1 was, with great alacrity, desperately trying to figure
2 out "Do I know this person?" She has a conversation
3 with him, she has a cigarette -- or he has a cigarette,
4 excuse me. She's trying really hard to figure out who
5 he is, and we know for a fact that when they show the
6 photographs of the six people -- and I apologize, I
7 don't know if they're in 2003 or 2004 or 2005 or even
8 2006, but I think it's fair to say that 10 years later,
9 she's shown a photographic line-up and she cannot
10 identify Frank Peck.

11 It's not unreasonable, it's not -- I have
12 often, as has all of you, met someone and you kind of
13 get a feeling you know them, but you don't remember them
14 from 10 years before. Sometimes I don't even remember
15 them from the day before, and it's just life. It's like
16 going to the grocery store and -- Does anyone know what
17 grocery store aphasia is? I suffer from it worst than
18 anyone. It's the inability, without a grocery list, to
19 remember why you went there. That's grocery store
20 aphasia. I have three teenagers, and I do my best, but
21 I know when their friends come, it will be gone.

22 So we know that she described him as 20 to
23 25 years of age. We know without any shadow of a doubt
24 that he has army boots. We're not doubting that. To

1 fall in love with illusion is to marry disappointment,
2 and I won't bore you with the rest of my dogma, but
3 that's how it begins. To fall in love with illusion is
4 to marry disappointment, and the only reason I mention
5 that is the obvious reason. We have an ex-wife who says
6 she can't remember any army boots. When she says she
7 doesn't remember army boots, I think you can believe
8 her. If there were army boots, she most certainly
9 would've told you. The two-inch scar -- if there were a
10 two-inch scar, I think without hesitation she would've
11 told you about the two-inch scar on the husband she
12 lived with for 10 years. I think she would've told you.

13 Now, some say that science is mostly art. Mr.
14 Fineman, the father of chaos, said -- he's dead, but he
15 allegedly said, "That which is not surrounded by
16 uncertainty cannot be the truth." I believe that is
17 because without humility, one simply cannot grow.
18 without humility, we do not grow. Without the ability
19 to question ourselves, we cease to grow.

20 And I know that counsel has made a great deal
21 about the fact I'm going to ask you to make-believe, but
22 what I've told you so far is 100 percent accurate and
23 what I have told you, I believe, came from the witness
24 stand. Well, Mr. Lindsay, tell us about DNA. I

1 actually spent some time reading about it, but it's not
2 evidence. All I got was confused and I'm probably worse
3 off, but I did get some philosophical jokes on
4 phenotypes, but they don't really help me much here.
5 This much is for sure: we know that in the late '90s,
6 a police officer is shot and we know that there is a
7 trial. As many of you know, law enforcement are related
8 to law enforcement. Many of my friends, believe it or
9 not, are law enforcement. I consider Dave a friend, and
10 I believe he's in law enforcement. I believe Judge
11 Adams is a friend of mine and he's in law enforcement.
12 It's a large umbrella that I use. I do think that when
13 a police officer is shot, it's fair to say that the case
14 is taken very seriously.

15 counsel has claimed in his opening that I
16 believe that everyone conspired and -- First of all,
17 before I get any further, I don't think he conspired
18 with anyone. I can guarantee you this: If he believed
19 in his heart there was a conspiracy -- and I'll tell it
20 to his face; I might as well do it here -- if he
21 believed in his heart that there was a conspiracy, I
22 don't think any of you would be here today. And my
23 client may be ready to throw his shoe at me, but I think
24 it's a fair statement that if he believed there was a

1 conspiracy, I don't think any of you would be here
2 today, and I think you know what I'm saying.

3 Do I think all the rest of the people
4 conspired? No, I don't for a nanosecond believe that.
5 I don't believe that at all. But I do know that in this
6 century, requests were made -- and I'm going to guess
7 here -- five times for my client's DNA. I think you
8 probably know better than I do, because you probably
9 wrote it down. There were five requests, and now
10 counsel gets to hear my speculation -- not that he
11 didn't speculate, because he certainly did on a number
12 of occasions. But it really only takes one person, it
13 doesn't take a conspiracy. Do I think there were false
14 reports written, intentionally false reports written?
15 No. Do I think that law enforcement is here trying to
16 do something immoral or unethical? No, I don't believe
17 that, but I do believe one person has the ability --
18 it's certainly immoral and it's certainly illegal. If
19 they were a lawyer, they could certainly be disbarred.
20 I do believe that one person has the ability to do
21 things that are less than ethical.

22 My client spent some time cross-examining and
23 talking about the lab problems, in other words, the FBI
24 lab problems. It's an imperfect world that we live in.

1 with my luck, you're all right-wing Republicans, but as
2 far as I know, they did not find weapons of mass
3 destruction. It's an imperfect world. We live in an
4 imperfect world.

5 Do I think that Mr. Clifton and all of the
6 people that have testified here are involved in some
7 sort of elaborate conspiracy to get my client? For what
8 it's worth, I'm not arguing that. I'm just asking you
9 to realize that an officer was shot, and in law
10 enforcement, that is just about as bad as it gets. I'm
11 asking you to realize that the person who did this had
12 army boots, which somehow were never seen by my client's
13 wife, and a two-inch scar. This isn't me make-
14 believing, this isn't me making it up. And I don't
15 think she's crazy about him. I think you can tell that
16 by just watching their exchange. I think if there were
17 army boots and a two-inch scar, I think it's fair to say
18 you would've heard about it and you would've heard about
19 it very loud and very clear.

20 I ask you to read carefully all of the jury
21 instructions -- and I hope this is all right with
22 counsel; I have diabetes, and so you'll see me in the
23 late afternoon sweating. I don't mean to be sweating,
24 and it doesn't affect my ability to practice law. I try

1 very hard to do all the right things, but I have moments
2 when I break into sweats, and the moment I stand up, I
3 feel a thousand times better, but my guess is that
4 you've seen me over there sweating, because my
5 experience with juries is that you guys watch everything
6 all the time, that's just my experience. And I
7 apologize, it's not an intentional act or anything. I
8 have Type 2 diabetes, and in the afternoons I tend to
9 get cold sweats or whatever the heck they're called.

10 I'd like to read 22A. "The defendant in this
11 case has introduced evidence for the purposes of showing
12 that he was not present at the time and place of the
13 commission of the alleged crime" -- that would be Reno,
14 Nevada -- "for which he is here on trial. If after
15 consideration of all of the evidence" -- being
16 completely fair to counsel -- "you have a reasonable
17 doubt that the defendant was present in Reno, Nevada" --
18 and it doesn't say Reno, Nevada, but you know it means
19 Reno, Nevada -- if you have a reasonable doubt that the
20 defendant was present at the time the crime was
21 committed, you must find him not guilty." That is the
22 law. The judge has read it and the judge has asked each
23 one of you to follow the law.

24 On Instruction 23, it tells you to deliberate.

1 Deliberation means that you all talk together and you
2 exchange views, and you might find that you disagree,
3 you might find you agree. I have no idea. However, I'm
4 reading from Instruction 23, which says, "You should not
5 be influenced to vote in any way on any question
6 submitted to you by the single fact that a majority
7 of the jurors or any of them favors such a decision."
8 In other words, you should not surrender your honest
9 convictions concerning the effect or weight of evidence
10 for the mere purpose of returning a verdict or solely
11 because of the opinion of the other jurors. There is a
12 Zen Buddhist saying that says when two people agree,
13 they cut the truth in half -- Bodi Dharma, my favorite
14 philosopher. At any rate, you are requested to
15 deliberate, but you are never requested, nor should you
16 ever give up your honest convictions.

17 Fifteen years ago, I don't believe there's one
18 of us that can tell anybody where we were without the
19 aid of -- and perhaps I'm wrong. Your mother passed
20 away in August of 1994, so you'd pretty much remember
21 that, or your sister was in chemotherapy in August of
22 1994, so you'd remember that.

23 We had some chain of custody evidence, and I
24 want to say that the doctor worked from 1996 to -- and

1 counsel will correct me if I'm incorrect, and perhaps
2 I'm wrong, but counsel quoted something that -- there
3 was an exchange between us and I thought I asked him if
4 it was human to err, that to err was a human quality,
5 and I thought that's what he said yes to. Again, your
6 memories control, but I think I simply asked him, Is it
7 a human condition to err? Is that in fact a part of our
8 make-up? And I thought he said, "Yes, that's a part of
9 it." We do know it was a busy evening. He knew that
10 from the notes, because he did not do the microscopic
11 examination. I'm not accusing anyone of lying from that
12 stand. If I had that evidence, I would've handed it to
13 you in a heartbeat. But we do know this beyond any
14 shadow of a doubt, the perpetrator had army boots and a
15 two-inch scar, and that is not make-believe and there is
16 nothing counsel can do about that evidence.

17 Peggy Stout in her report made some statements,
18 and I tried to write them down at the time. She claimed
19 that pursuant to Candice -- she claimed that Candice
20 said that Mr. Peck at the time this happened -- not Mr.
21 Peck, but whoever the perpetrator was, the person who
22 sat in the room with her said that he'd never done it
23 before, that he was very remorseful and he wanted to
24 shoot himself for what had happened. The person who sat

1 in the room in 1994 made those statements, and Peggy
2 Stout testified to that. And the reason that's
3 important is, that was not the testimony that came off
4 the stand, and so I guess it's fair to say to err is
5 human and that we all bring biases with us, no matter
6 who we are and no matter what we do.

7 Reasonable doubt requires you to simply use
8 your reasoning processes. It's the very first line out
9 of the statutory definition that you've been given. You
10 have reason to doubt here. You have a pair of boots
11 that were never seen by Mr. Peck's wife. You have a
12 two-inch scar -- and let's be honest. Every picture
13 you've seen matches the diagram that Candice made.
14 Every picture you've seen matches it.

15 I hesitate to use the next quote, and I use it
16 in many jury trials, but I don't want counsel to think
17 it's directed toward him. Mark Twain once said a lie
18 will go halfway around the world before the truth gets
19 up in the morning, and what I believe Mr. Clemens was
20 saying is that we tend to believe the worst about one
21 another. It is a human quality. Tell me what the
22 definition of gossip is. Gossip is pernicious and
23 negative. "Audacity, can you smell it?" That's a very,
24 very famous line from Tennessee Williams -- Big Daddy,

1 Cat On a Hot Tin Roof. We tend to believe the worst
2 about one another. It is a human quality. I think
3 that's all Mr. Twain was saying. If I go around and
4 tell you that somebody pays all their taxes, loves their
5 kids, treats their wife or husband like they were gods,
6 I think you'd tend to think that whoever I'm talking
7 about, I don't really know them. If I say they cheat on
8 their taxes, they cheat on their wives, they beat their
9 kids, somehow we believe it. We somehow tend to believe
10 the worst about one another. It's not right, it's not
11 wrong, it's just the human condition. In my opinion,
12 that's why we have presumption of innocence.

13 We know she looked really hard for the
14 45 minutes she's there. We know she's got five minutes
15 approximately in the bedroom and ten minutes in the
16 living room. We know she was trying very hard to
17 identify that person, but we know she wasn't entirely
18 candid, any more than the ex-wife was entirely candid.
19 It doesn't make them bad people, it just makes them
20 human beings. It's just the way people are. I didn't
21 make up the two-inch scar and I didn't make up the
22 boots, and I didn't make up the shooting of the officer.
23 Those are not speculations, and they are not in any way,
24 shape, or form made up by me.

1 Thank you for your patience and thank you for
2 your time. I think you have reason to doubt, you have
3 reason to doubt the case that's been brought before you
4 and I ask you to find my client not guilty.

5 Thank you.

6 THE COURT: Thank you, Mr. Lindsay.

7 Ladies and gentlemen, you'll now hear reply
8 argument by Mr. Clifton on behalf of the State.

9 Mr. Clifton.

10 MR. CLIFTON: Thank you.

11 Ladies and gentlemen, I know you're getting a
12 little tired; it's been a long morning. I will be brief
13 and you'll be off to your deliberations. First of all,
14 ladies and gentlemen, I agree with some of the things
15 Mr. Lindsay said. First and foremost, the alibi failed.
16 Those were his words, and I totally agree with that.
17 The attempts at this alibi failed miserably. There's no
18 question that nobody can put Mr. Peck's whereabouts into
19 evidence here on the night of August 9th, 1994, other
20 than Candice Inman. Candice Inman and the DNA and all
21 the other evidence in this case puts Mr. Peck in her
22 apartment in 1994. He was in the Reno-Sparks area, he
23 lived in the Reno-Sparks area, and she was raped in the
24 Reno-Sparks area. He matches the description. The DNA

1 is positive, it is a match. He is the source of that
2 DNA on her cheek and on her vagina. She is the only
3 witness here that puts him anywhere on August 9th, 1994,
4 and she puts him, by direct evidence and circumstantial
5 evidence, in her apartment brutally attacking her and
6 raping her.

7 Mr. Lindsay is correct, it may be an imperfect
8 world. You, like me and many others, were raised with
9 our parents telling us not everything in this world is
10 fair. Yes, it can be an imperfect world, seemingly and
11 actually, but even in an imperfect world, does the next
12 conclusion hold true, that in an imperfect world, you
13 can never trust the testimony of witnesses, you can
14 never trust the viability of scientific evidence? If
15 that's the case, then we should never do a criminal
16 trial or any other trial, because you can't trust it.
17 It's an imperfect world and so you can't trust anything.
18 That's the premise that Mr. Lindsay or Mr. Peck, or
19 both, are trying to relate to you, "we're gonna show you
20 all these problems," but how does that suggest anything
21 about impropriety in our DNA testing in this case?
22 There is nothing but speculation thrown at the wall to
23 see if it sticks. Nothing that they have given us
24 through their questioning of witnesses or through

1 evidence in this case says that because it's an
2 imperfect world, you can't trust the evidence in our
3 case.

4 Leslie Krauser -- and you go by your memory of
5 her testimony -- she never said he didn't have army
6 boots, she never said he didn't own army boots. Check
7 your memory, check your notes if you wrote them. What
8 she said was -- because Mr. Peck was very careful to ask
9 the question this way. He was the one cross-examining
10 her and the defendant asked her -- this is my memory,
11 and I also have it in my notes; I wrote it down. If you
12 believe I wrote it down wrong, go by your notes, don't
13 go by what I say. What I have, because I remember it
14 specifically, is that she was asked a pointed direct
15 question. "Have you ever seen me wear combat boots with
16 shorts?" That was the question that was asked of her.
17 He never, I don't think, ever used the word army boots.
18 He said, "Have you ever seen me wear combat boots with
19 shorts?"

20 "No, I haven't."

21 "What do I usually wear with shorts?"

22 "Tennis shoes."

23 So we'll give you that, he doesn't wear army
24 boots with shorts, but think about this, ladies and

1 gentlemen. If you're going to go somewhere to commit a
2 crime and be worried about being identified -- and you
3 know that's him, because -- I mean, you know the
4 perpetrator's worried about being identified, because
5 why else would you lift up your shirt and wear it over
6 your head like some type of scarf. So, obviously, the
7 person that committed this crime is concerned about
8 being identified. Why would he wear any clothing that
9 could identify him as who he is? Why would he wear a
10 specific hat, shirt, pants, shoes, anything that
11 somebody could say, "Yeah, I remember they were Air
12 Jordan basketball shoes." Why would he wear anything
13 that could ID him? If he's going to take the pains to
14 put the shirt up over his head, he's probably going to
15 wear something that he doesn't normally wear. Or if
16 somebody sees him in that apartment complex, running
17 from the scene with a cigarette in hand, they're going
18 to be describing clothing that's different than what he
19 would normally wear.

20 So there's nothing unusual there. So whether
21 he ever owned army boots or has access to army boots,
22 who knows, but the question was asked by him, has she
23 ever seen him wear combat boots with shorts, and she
24 said "No," and we'll stipulate to that. That's what I

1 remember her saying "no" to and we don't dispute that.

2 Mr. Lindsay said there were five requests for
3 the defendant's DNA. No. He's confusing that with the
4 number of tests, and there is a way you can count up
5 five tests and they all come back consistently with Mr.
6 Peck being a match, but there weren't five requests.
7 There were maybe three. The first one, we don't know
8 exactly where it originated from. It wasn't from Washoe
9 County. It wasn't Washoe County putting Mr. Peck's
10 buccal swabs and saliva into an envelope. It was a
11 request somewhere else. Like he said, he consents with
12 law enforcement. So he gave a sample of saliva. Those
13 buccal swabs are forwarded -- to get into the database,
14 they are forwarded to Washoe County. Washoe County is
15 the state database; they're also a local database. They
16 enter it -- when they get it in 2002, they eventually
17 enter it into the local, state, and national databases.

18 Now, remember, in 2001 when Renee Romero
19 entered the DNA profile of the Q-tip swab and the cheek
20 for the male portion of those two pieces of evidence,
21 when she entered that profile into the computer in 2001,
22 for a year and a half, it got no hits, nothing. It was
23 checked monthly, then checked weekly, no hits, because
24 Mr. Peck was not in the database. The local, state, and

1 national databases, if he were in there, it would've
2 been an automatic hit. He was not in those databases.

3 So when we got the sample in Washoe County, we
4 were asked to enter it into the state database. It
5 automatically gets into the local database also. So it
6 goes into the state database, goes into the national
7 database, and right away there's a hit. Right away when
8 it's entered into the computer, there's a hit from Mr.
9 Peck's DNA profile as a match.

10 So the first request was made by an unknown
11 person. We don't have that in evidence and you never
12 heard anything about that request. That's the request
13 that allowed Jeff Riolo to receive a packet of his
14 buccal swabs and put it in the database. The only other
15 two requests that were made in evidence here that you
16 heard about in this case were the two requests on the
17 seizure orders, and I take full responsibility for that.
18 You heard the testimony, those were initiated with my
19 assistance. They were in this case in 2004, December of
20 2004 and December of 2005, while Mr. Peck was outside
21 the County of Washoe. There was no doubt in those
22 results, there was no doubt in those seizure orders.
23 There was, though, a concern that the 2004 seizure order
24 was executed on Mr. Peck outside of Washoe County. Yet,

1 it was authorized by a Washoe County judge.

2 Now that we have newer case law, Zabetti versus
3 State, we have newer case law in Nevada indicating that
4 a district court judge does have statewide jurisdiction.
5 That case law is coming out about the same time that
6 we're doing that 2004 seizure order. So after the 2004
7 seizure order and before -- I believe it was before
8 Zabetti -- I decided -- and you heard the testimony that
9 that was my call -- let's do the seizure order again.

10 And there's certainly no evidence of any
11 impropriety or any doubt in the DNA result from the 2004
12 seizure order, but I wanted additional photographs of
13 his back. Let's see if that mole and that scar is still
14 there. They are. Let's see if these are permanent
15 defects, let's make sure that mole isn't a growth or
16 something that falls off. Let's get additional
17 photographs, let's get his height measured. The
18 height you heard from Detective Fiori was from the 2005
19 seizure order. Let's get his height measured, person
20 to person. Let's take the DNA again while we're down
21 there and we'll test it again. There was no reason to
22 doubt the result, but it was tested again.

23 So what we have is the original DNA profile
24 from the Q-tips being put into evidence in 2001 and

1 getting a profile, and that was Renee Romero, then we
2 have Mr. Peck's being tested in 2003 and getting a hit,
3 then we have Jeff Riolo confirming that. It's the same
4 test, it's really just one test being done twice. It's
5 the same two samples being run again and getting
6 confirmation. Then we have the seizure order in 2004
7 that Renee Romero gets the result on in early 2005 and
8 confirms again Mr. Peck's DNA on both samples, vaginal
9 and cheek. Then we have the 2005 seizure order and in
10 early 2006 Renee Romero runs it again, gets the exact
11 same match. Exact same profile, exact same match.
12 Everything's the same. The profiles from Mr. Peck are
13 the profiles from the male portion of the DNA from her
14 cheek and the male portion DNA from her vagina.
15 Everything matches every time.

16 So there weren't five requests. There were at
17 most three and only two from Washoe County. All the
18 tests confirmed each other, all of them matched. There
19 were no discrepancies in any of the testing.

20 So, ladies and gentlemen, you have extremely
21 strong evidence here of Mr. Peck's guilt. The alibi
22 clearly failed, and when you go back into the jury room,
23 I would ask yourselves two very critical questions. If
24 you're struggling at all with the evidence or if you

1 want to make some headway in your decision in this case,
2 ask two very important questions of yourselves. One is,
3 what in the world does Larry Peck's murder of Officer
4 Bohach have to do with this case? It was thrown up
5 against the wall in opening statements by Mr. Peck.
6 Throughout this case in questioning, it's been thrown at
7 you. Does it stick? Is there anything about the
8 shooting of Officer John Bohach by Larry Peck and his
9 later conviction of first degree murder with the use of
10 a deadly weapon for that crime, does that have anything
11 to do with this case? Is there any evidence that is
12 related to this case or are you being asked to
13 speculate? Are you being asked to say because his
14 brother, Frank Peck's brother killed Officer Bohach,
15 he's being framed now.

16 That's interesting. Why don't they just frame
17 Larry Peck and say he's the rapist. The Bohach shooting
18 was in 2001. Larry Peck could've been the rapist in
19 1994. Why don't they just frame him? No, they're going
20 to go after an innocent brother who had nothing to do
21 with the crime just to frame him, because, as he says,
22 he wouldn't testify against his brother. They tried to
23 get him to testify and he wouldn't testify truthfully or
24 otherwise against his brother. So he thinks that that

1 means that somebody conjured up a scheme to frame him.
2 Show me some evidence, show me any detail in this case
3 that came in under oath through this witness chair as
4 evidence to make that connection. Those dots do not
5 connect. So ask yourself that question. What does the
6 death of John Bohach have to do with this case, or is
7 that just speculation, hoping it sticks?

8 And then number two is something I alluded to
9 in my first closing. How could this possibly be Frank
10 Peck's sperm unless he's the rapist? How could his
11 sperm get on that Q-tip. Even intentionally, how could
12 someone frame him by doing that? How could his sperm
13 get on that Q-tip any other way than him being the
14 rapist? Because that evidence was taken and analyzed
15 and finished in 1994, as far as the presence of sperm
16 and the Q-tip being preserved and refrigerated or
17 frozen. That was all preserved back then and it's
18 capable of being tested and retested even today. How
19 did his sperm get on that Q-tip unless he was the
20 rapist?

21 If someone was going to frame him, are they
22 going to go through all the trouble of putting it on the
23 Q-tip? If they could somehow get his sperm, where are
24 they going to get it? Even if they got his sperm and

1 planted it on this Q-tip, then they'd have to go further
2 and also plant his saliva on that cheek swab. So we'd
3 have to have a frame-up that was extremely complex. Two
4 pieces of evidence have to be tampered with now, and
5 those two pieces of evidence, they were not tampered
6 with. They confirmed each other and they tell you the
7 one and only result beyond any reasonable doubt in this
8 case, ladies and gentlemen. The one and only result
9 from this evidence that you can deduce as reasonable,
10 logical, commonsense jurors is that Frank Peck is guilty
11 of the 1994 rape of Candice Inman.

12 Thank you.

13 THE COURT: Thank you, Mr. Clifton.

14 I'd like to address our alternate juror, Mrs.
15 Manalo. It's not necessary for you to remain in the
16 courthouse during the jury's deliberations, and when the
17 court recesses, you'll be excused. Please let the
18 bailiff know where you can be reached if you're needed
19 during deliberations, and of course, until a verdict is
20 reached by the jury, you are still instructed not to
21 discuss the case with anyone else or express any
22 opinion. I want to thank you now for your service as an
23 alternate juror in this case.

24 The clerk will please swear the bailiff to take

1 charge of the jury.

2 (Bailiff sworn.)

3 THE COURT: Court is in recess until the jury
4 returns.

5 (Recess taken until 3:15 p.m.)

6 THE COURT: Please be seated.

7 The record should reflect the presence of the
8 parties and counsel and in the absence of the jury in
9 this case. I wish to place on the record two matters.
10 First, I'll note for the record that the jurors and
11 alternate juror have been present during all sessions of
12 the trial, and secondly, the Court received two
13 questions from the jury. The first question is, quote,
14 "We want to see the envelopes to show the chain of
15 custody." Question two, "We want to see the DNA test
16 graphs." And there was a third question, which said,
17 quote, "The article regarding DNA from Forensic Journal
18 about two individuals having same DNA," end of quote.

19 The Court conferred with counsel and the
20 defendant and replied to all of these questions as
21 follows: Quote, "Please rely on your recollection of
22 the evidence at trial."

23 Mr. Clifton, on behalf of the State, do you
24 stipulate that I've accurately stated the questions and

1 the answer?

2 MR. CLIFTON: Yes, your Honor, and we had
3 agreed to that also.

4 THE COURT: Thank you.

5 Mr. Lindsay?

6 MR. LINDSAY: Yes, your Honor. We had agreed
7 to that answer, yes.

8 THE COURT: Mr. Peck?

9 MR. PECK: Yes, sir.

10 THE COURT: Thank you.

11 The Court has been advised by the clerk that
12 the jury has reached a verdict in this case. The
13 bailiff will please return the jury to the courtroom.

14 (Jury returns to the courtroom.)

15 THE COURT: Please be seated. Do the parties
16 stipulate to the presence of the jury?

17 MR. CLIFTON: Yes, your Honor.

18 MR. LINDSAY: So stipulated.

19 THE COURT: Ladies and gentlemen, the clerk has
20 advised the Court that the jury has reached a verdict in
21 this case. The foreperson of the jury will please hand
22 the verdict to the bailiff.

23 The clerk will please read the verdict of the
24 jury.

1 THE CLERK: "Verdict: We, the jury in the
2 above titled matter, find the defendant, Frank Peck,
3 guilty of sexual assault. Dated this 12th day of May,
4 2009. James Brockhaus, foreperson."

5 THE COURT: The clerk will please poll the
6 jurors as to their verdict.

7 THE CLERK: James Brockhaus, is this the
8 verdict to which you agree?

9 JUROR BROCKHAUS: Yes.

10 THE CLERK: Edna Getty, is this the verdict to
11 which you agree?

12 JUROR GETTY: Yes.

13 THE CLERK: Deirdre Lane, is this the verdict
14 to which you agree?

15 JUROR LANE: Yes.

16 THE CLERK: Kenneth Birchall, is this the
17 verdict to which you agree?

18 JUROR BIRCHALL: Yes.

19 THE CLERK: Linda Burkhardt, is this the
20 verdict to which you agree?

21 JUROR BURKHARDT: Yes.

22 THE CLERK: Melvin Cohen, is this the verdict
23 to which you agree?

24 JUROR COHEN: Yes.

1 THE CLERK: Ronald Hinzen, is this the verdict
2 to which you agree?

3 JUROR HINZEN: Yes.

4 THE CLERK: Matthew Rousse, is this the verdict
5 to which you agree?

6 JUROR ROUSSE: Yes.

7 THE CLERK: Linda McCarty, is this the verdict
8 to which you agree?

9 JUROR MCCARTY: Yes.

10 THE CLERK: Ryan Braun, is this the verdict to
11 which you agree?

12 JUROR BRAUN: Yes.

13 THE CLERK: Kim Brant, is this the verdict to
14 which you agree?

15 JUROR BRANT: Yes.

16 THE CLERK: Albert Vonthun, is this the verdict
17 to which you agree?

18 JUROR VONTHUN: Yes.

19 THE COURT: The Court orders a presentence
20 report and sets sentencing in this matter for Friday,
21 July 10, 2009, at 9 o'clock.

22 Ladies and gentlemen, I want to sincerely thank
23 you on behalf of the court for your participation as
24 jurors in this case. As you know, it was a very

1 difficult subject and the fact that you have responded
2 to the summons of the court to serve as jurors enables
3 our system to work. In this courtroom, over the years
4 of my tenure, we've had judges from every former
5 republic of the Soviet Union, from countries in Africa,
6 South America and elsewhere, who come here to observe
7 our system in which citizens decide all sorts of
8 controversies, civil cases as well as criminal cases of
9 every kind. You've also observed in this trial
10 something that is somewhat unusual, but it's also our
11 right as citizens. Each of you, as citizens, have the
12 right to represent yourself in the event you're charged
13 with a criminal offense. Justice William O'Douglass
14 said the jury is the only agency of government with no
15 ambition and no political gain to be had from their
16 verdict. He said the jury's role is essential to our
17 system.

18 Please feel free to contact me. I don't want
19 to discuss any aspect of the facts of the case with you,
20 but if you have any questions about our process or any
21 suggestions on how we can improve the administration of
22 justice in this department and the court, I'm welcome to
23 hear your suggestions. Thank you again for your
24 service.

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The jury is discharged.
Court is in recess.
(End of proceedings.)

--oOo--

1 STATE OF NEVADA)
2 COUNTY OF WASHOE) ss.

3 I, ROMONA MALNERICH, official reporter of the
4 Second Judicial District Court of the State of Nevada,
5 in and for the County of Washoe, do hereby certify:

6 That as such reporter, I was present in
7 Department No. 6 of the above court on Tuesday, May 12,
8 2009, at the hour of 8:30 a.m. of said day, and I then
9 and there took verbatim stenotype notes of the
10 proceedings had and testimony given therein upon the Jury
11 Trial in the case of THE STATE OF NEVADA, Plaintiff,
12 versus FRANK MILFORD PECK, Defendant, Case No. CR06-2580.

13 That the foregoing transcript, consisting of
14 pages numbered 1 to 76, both inclusive, is a full, true
15 and correct transcript of my said stenotype notes, so
16 taken as aforesaid, and is a full, true and correct
17 statement of the proceedings had and testimony given upon
18 the Jury Trial in the above-entitled action to the best
19 of my knowledge, skill and ability.

20 DATED: At Reno, Nevada, this 11th day of
21 October, 2009.

22 Romona Malnerich
23 _____
24 ROMONA MALNERICH, CCR #269

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Judge: BRENT ADAMS
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Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
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FRANK PECK
STATE OF NEVADA

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DAVID CLIFTON, ESQ.
FRANK PECK
STATE OF NEVADA

Code No. 4185

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

-oOo-

STATE OF NEVADA,)	
)	
Plaintiff,	)	Case No. CR06-2580
)	
vs.	)	Dept. No. 6
)	
FRANK MILFORD PECK,)	
)	
Defendant.)	
_____)	

TRANSCRIPT OF PROCEEDINGS
TRIAL
MAY 8, 2009
RENO, NEVADA

Reported By: Rebecca S. Martinelli, CCR No. 212

APPEARANCES:

For the Plaintiff: DAVID W. CLIFTON
 Deputy District Attorney
 Reno, Nevada

For the Defendant: PRO PER

 BRUCE LINDSEY, ESQ.
 Attorney at Law
 Reno, Nevada

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RENO, NEVADA, FRIDAY, MAY 8, 2009, 10:42 A.M.

-oOo-

THE COURT: Ladies and gentlemen, I apologize for the delay. Thank you for your patience. We are still right on schedule for the trial.

Mr. Clifton, you may call your next witness.

MR. CLIFTON: Thank you, Your Honor.

JEFFREY RIOLO,

called as a witness by the State herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CLIFTON:

Q Please state your full name.

A Jeffrey Riolo.

Q Spell both first and last name.

A J-e-f-f-r-e-y, R-i-o-l-o.

Q Your occupation, please.

A I'm a senior criminalist assigned to the DNA testing section of Washoe County Sheriff's Office, Forensic Science Division.

Q What kind of background and education do you have?

A I have a bachelor of science degree in

microbiology I obtained in 1987 from Northern Arizona University.

From there I worked at the University of Nevada, Reno performing molecular biology or DNA research for approximately 10 years. I was also in charge of a DNA paternity laboratory that determined whether one individual is related to another.

From there I joined the sheriff's office staff, and have been there for approximately 13 years and have been performing DNA testing on forensic cases during my 13 years there.

Q Going back to what year at Washoe County, then?

A In 1996 is when I started there.

Q And doing DNA the whole time you have been there?

A That's correct.

Q Your specialty, would you say, is DNA investigations or examinations?

A Yes.

Q DNA -- the science of DNA, can you describe a little bit how long it's been known to exist or how long we've been able to study DNA? A little bit of history on that?

A Yes. DNA was first discovered, I am pretty sure, in the '50s, and it's been -- are you referring to how

it's been used in forensic science or just in general or both?

Q Both.

A It was discovered around the 1950s. Since then it's obviously expanded to the point of we know that DNA is the genetic makeup of all living things, and it's the information that's in the DNA that makes everybody different and unique.

The DNA and any organism is different, say, for a bacteria, a human; and basically since 1950 DNA has been studied in every living organism throughout.

DNA became first introduced into forensic science in the late 1980s and definitely started being used in the 1990s, and the technology has evolved to the point of the testing that we use today.

Q So great advancement in DNA research and investigations in the last 10, 20, 30 years?

A Oh, yes.

Q And still ongoing, a lot more to go still?

A Yes.

Q In describing DNA for the jury, have you prepared a PowerPoint presentation that would help explain not just the history we have just gone over a little, but more in detail explain what DNA is?

A Yes, I have.

Q You brought that with you on a thumb drive here today?

A Yes, I did.

Q Are you ready? Do you have the remote up there?

A I do have the remote, yes.

Q Let me see. If we can go to the first screen, and then I'll just go right to you.

THE COURT: Jurors, I can't see what you're looking at. Can you see that or do you need the lights lowered a little bit?

A JUROR: It's fine.

THE COURT: Is it okay? Thank you.

You may proceed.

THE WITNESS: The presentation I have for you today talks about the quality assurance aspect of the Forensic Science Division. And then I talk in general about what DNA is, the actual chemical makeup of DNA and how it's used in forensic science.

The first slide we have up here indicates that we have been accredited by the American Society of Crime Lab Directors/Laboratory Accreditation Board since 1994.

What that means is we have an external agency come into our laboratory and review our policies and

procedures, our personnel background. And what that basically does is their ensuring that the testing that we do, the reports that we put out, and the people that are doing the testing are qualified to make the conclusions to the results that we obtain.

Now, let's talk about DNA. Every living thing has DNA. Whether it's human, plant or animal, you will have DNA. And it's the different way that DNA is made up that determines whether an individual is a human, a plant or an animal.

Inside every living thing are these things we call -- I'll call a cell. And the cell, if you look at it, look at it as a ball. Inside the ball is a smaller ball which is the nucleus. The nucleus is called the control center, because that tells the cell what to do, basically.

Inside the nucleus are these things called chromosomes. The chromosome actually houses the DNA, or the DNA package inside chromosomes. So that's -- if you want to look at the ball, the cell as a big ball, nucleus is a smaller ball, and the chromosomes are little smaller entities or balls that are holding the DNA together all inside that nucleus.

DNA comes from both parents. We get half our DNA

from Mom and half our DNA from Dad; from Dad in the form of sperm the DNA is in there, and the form of the egg in the mother's DNA. That's what makes the offspring.

So that's why if you look at your mom and your dad you have characteristics that look a little bit like both of them. And then also you will share some DNA with your brothers and sisters, also your relatives.

The DNA you have is unique to you unless you have an identical twin. Identical twins will have the same DNA.

Different biological evidence that we can obtain DNA from: Blood, semen, saliva, urine, hair, teeth, bone, tissue and sweat.

Now, in one individual all the DNA is the same. So that's why I can take, say, a saliva sample from an individual, and I can compare that to a blood sample and the DNA from that individual will be the same.

Different types of items that we can get DNA from: Anything that can hold or adhere biological evidence we can get, typically, DNA from; such as bloodstains, semen stains, licked areas, handled items, cigarette butt, saliva can leave it on the end of a cigarette butt, bottles and cans. Again, saliva and sweat, chewing gum, saliva in food.

In the laboratory what we'll do is we'll take a -- typically take a portion of the sample that we want to test, so whether it's blood, hair roots, saliva, sweat or tissue, and we'll place that into a small, what we call a microcentrifuge tube or a test tube.

From there we will apply a chemical. And what this chemical does is it gets rid of all that cell stuff. You know, that cell and the nucleus, all that stuff that's holding that DNA and the chromosome that's holding that DNA all together, what we're doing is we want to get rid of all that stuff and we just want the DNA, and that's what this chemical does. So at the end we have just the DNA in the tube.

We also perform an extraction called a differential extraction. We perform this extraction in the situation where if we have a vaginal swab or a semen stain, we'll put that sample under the tube and then we'll apply a chemical to that. And this chemical -- and let's go back one step.

In this tube we potentially have the sperm and then we potentially have epithelial cells, or the female DNA.

From there what we do is we take the sample, spin it, and we extract. And we apply a chemical to get the

female portion, and we call that the epithelial fraction. And then we will apply a different or harsher chemical to break open the sperm cells, and we'll get the male fraction or the sperm fraction.

The sperm actually have a harder cell membrane than the epithelial fraction. That's why from one piece of evidence we can -- from one piece of evidence we can end up with two DNA profiles.

So now once we have the isolated DNA, we want to analyze the DNA. And we analyze the areas that are called short tandem repeats, or we call it STRs for short. And before we actually get to the STR aspect, let's take a little closer look at the DNA itself.

DNA comes in the form of a double helix. A double helix is if you took a ladder and you twisted that ladder, that's pretty much what a double helix would look like. And the rungs of those ladders are made up of these things we call bases, and we call them adenine, thymine, guanine, and cytosine. And the bases actually combine with each other: A's always bind with T's, and G's always bind with C's.

And it's the order of those four bases that gives everybody their own unique DNA profile, unless you have an identical twin. And those four bases make up whether you

are going to be a human, whether you're going to be a plant, or whether you're going to be an animal. It's all those four bases.

The short tandem repeats we use in forensic science help us distinguish one person from another person. An example of a short tandem repeat would be AATG. That would be one repeat unit. What we're doing is looking to see how many times that's repeated. And if you look at this one example you have one, two, three times.

Now, everybody will have the same repeat unit at the specific location, but it's the number that is actually variable. So that's why these areas of DNA that we're looking at are very useful for identifying whether this DNA is from this person or this person, because we can include that individual or we can also exclude that individual.

The STR analyst looks at the number of repeats at the multiple locations on the DNA to obtain the DNA profile, so we're actually looking at the number of repeats.

And we will just take an illustrative look here. So say if we have Jack's DNA, half came from Mom, half came from Dad, or vice-versa. Now, what we're doing is looking to see the repeat. This is one repeat. We're

counting one, two, three, four. And the same thing over here, one, two, three, four, five, six. So Jack's area of DNA at the specific area, his DNA profile would be a 4,6. And we do this at 13 different areas, which helps give us a complete DNA profile.

And we have another example here of Jill's DNA. Again, half from Mom, half from Dad. 2 and 3. So we're counting up the repeats, DNA profile at that area is 2,3.

Humans have 23 pairs of chromosomes. Across these 23 pairs circled in yellow are the actual areas we're looking at in forensic science. Those are the areas that help us distinguish one person from another person.

We're also able to determine whether a sample is a male or a female sample. If it's a male sample, you'll see an X and a Y; and if it's a female sample, you'll just see the X.

Sometimes the amount of DNA that we isolate is small. So what we need to do is we need to make copies of the DNA, and we do this through a technique called PCR, which is a preliminary chain reaction.

And as a tangent, PCR is not only used in forensic science, but is also used in molecular biology worldwide. For example, for cloning, recombinant DNA for analysis of, say, whether this bacteria may be that nasty

strain of E-coli to virus analysis, PCR is used throughout the molecular biology community. It's also used, obviously, in forensic science.

What PCR is, is we take our DNA and we make copies of the DNA. We start out with one piece, and we put it through one cycle. The next cycle we end up with more copies, double; and third cycle, more; next cycle, more, and more. We do this for 28 cycles.

So from one piece of DNA, we exponentially have increased the amount of samples. So say from one plucked hair, which only has a few cells, we need to do this amplification process, and what we're doing is amplifying those STR areas that I was just talking about.

Once we have the amplified DNA, we put some chemicals -- or take a portion of the sample and put some chemicals into this. And we put it into an instrument called a capillary electrophoresis instrument. We say "CE" for short.

And what this capillary electrophoresis instrument does, is the sample goes in the tray right here (indicating). And there's a capillary that winds through the instrument, and it goes through and goes in front of a laser. The laser is right here (indicating).

Now, what happens is, as the DNA is traveling

through this capillary it's migrating by size. So you know those repeats I was talking about, that 2 repeats and 6 repeats? That smaller 2 will migrate faster than that larger 6 repeat. So now the 2 will go past the laser and it will be detected by the laser and the computer, and then the 6 will go by later and it will say, okay, this is a 6.

Very similar like if you were putting a straw into a cup and you were to sip the liquid out of the straw -- or out of the cup through the straw, that is what this capillary is doing, it's sipping the DNA through except the polymer that is inside the capillary allows it to separate by size. From there we end up with a DNA profile.

Right here on the top are the areas of DNA that we're using. This right here would be one area of DNA. This is another area -- excuse me a second.

Now, at the top we also have an area of DNA, another area of DNA -- we'll go down here. This is another area of DNA right here, and another area.

So there's 13 different areas. This is just illustrating a few of those.

The peaks that we have, these peaks right here and this peak right here, is the actual number of repeats.

And if you look at this number -- I am not sure if you can see it, but this is a 12 right here and a 15 right here. That -- those peaks or a wheel are actually transcribed into the table down here. So if you look at the table, what we have is across the top are the areas of DNA that we're looking at and down the side is the sample.

So we have our questioned evidence, which is a sample right here, and we're going to get DNA profile from that and we will transcribe that into the table. And again, we're determining whether it's a male or female sample, and we'll do that at all 13 different areas.

Now we will see, hey, does this one individual match that DNA profile? So we will get our reference standard from that individual. And what a reference standard is, is it's a known sample from that person.

It's a reference standard No. 1. We'll do the same thing. It's the same extraction process, get the electropherogram. And now we're looking to see what the DNA profile is from reference standard No. 1, and we're going to compare. Does 14,15 match up with 12,15? No. We're going to go down again. 17,18 match up with 17,17? No.

So if you follow that all the way down, that individual would be excluded because their DNA profile is

not matching up with that questioned evidence sample.

Now, we will do the same thing with the reference standard from, say, individual No. 2. Now we'll look to see if 12,15 --

(Cell phone interruption.)

THE COURT: Please remove the cell phone from the courtroom, please.

Thank you.

THE WITNESS: In reference standard No. 2, the first area of DNA we have a 12,15. Does 12,15 match the questioned sample? Yes. 17,17, yes. So if you follow that all the way down, reference standard No. 2, that individual is included as a source of that DNA, and reference standard No. 1 is excluded.

Now what happens is if -- actually, we're going to the next slide. Hold on.

So that reference standard No. 1 is excluded.

So in this next example, what typical results will we obtain? If we have a full DNA profile, we can say that in that full DNA profile from that questioned evidence is matching that reference standard from that individual and they're all matching all the way through. And the frequency number is rarer than 1 in 500 billion, then we can say that individual is the source of the DNA

unless they have an identical twin. So it would be one set of typical results we would see.

Sometimes we will not get a complete DNA profile, so I won't get a DNA profile at all those 13 different areas. So what we end up with is a partial profile.

In that situation what's happening is, if you look at this first area of DNA we have the peaks right here. That's nice. Peaks next area. But we're losing the DNA profile at this other area. The peaks are not there. There's a little bit right there and a little bit right there. What's happening is the DNA for some reason may be degraded or broken down so we only get a partial DNA profile.

If that occurs, what we do is we compare that to the reference standard, but we end up giving the frequency of the actual DNA profile. So, for example, it may be like, say, 1 in 500,000 instead of that 1 in 500 billion number.

Sometimes we'll end up with what we call a mixed pattern, and we can determine whether, sometimes, if there's a dominant profile or a minor profile.

So let's take a look at this first area right here. If you look at these peaks, this peak is a lot larger than that peak right next to it. And -- but

there's a small peak right here, and then there's a little larger peak and then a little smaller peak.

Well, those four peaks tell me that there's more than one individual's DNA there. There's definitely two people's DNA in that sample.

And I can tell that there's a dominant DNA profile, which are highlighted in the red, and then the minor DNA profile is in blue. So from there I can have this dominant profile and minor profile.

Sometimes we will end up with a DNA profile that is not dominant or minor. So if you look at this one example here, you can see that the peaks are now all basically of the same height. So now I cannot determine that there is a minor profile or dominant profile, but I can determine that there's more than one person's DNA there because there's four peaks there. And remember, humans only have two unless they're in the same areas from mom and dad, then they would have one. So there's definitely two people's DNA profiles there.

Also, we can determine whether the individual may be a relative of the sample. We can determine -- since we get 50 percent of our DNA from Mom and 50 percent from Dad, we can determine whether, hey, could this possibly be a son of the individual who left this DNA there? We can

also in criminal -- paternity cases, we can determine whether this fetal sample may be from the suspect.

And that concludes my presentation.

BY MR. CLIFTON:

Q Thank you. Mr. Riolo, that is a lot of information.

How did you absorb the ability to conduct this type of examination over the years? Was it through schooling, work training, on-the-job training? How would you -- how did you learn all this?

A All those. I have a bachelor's degree in microbiology. I worked in the molecular biology research field for close to 10 years. And prior to actually starting the analysis of forensic samples, I went through a training period. And then since then, we're also required to do continuing education.

And on an -- every six months we're required to do a proficiency test, which are basically an outside laboratory provides us samples. We have no idea what the results are supposed to be. We do the analysis, we report back to them, and it's evaluated.

Q How about with respect to the lab itself, the Washoe County Lab, is it the forefront or is it toward the tail-end of DNA research and examinations compared to the

rest of the country?

A We're in the forefront. We're very fortunate to have the latest technology and the very highly qualified individuals.

Q When you started in 1996, were they doing any DNA examinations at that time?

A Yes, we were.

Q RFLP, you've heard of that term or those initials?

A Yes, I have.

Q That was a type of DNA testing. Is it still used at all?

A It's not used in forensic science anymore, but it is used in other molecular biology fields.

Q Because you don't use it in forensic science, does that mean there was something wrong with it or just that we've progressed to better technology?

A We've progressed to better technology.

If I could give an example, in the RFLP technology, for us to get a DNA profile we'd need a stain the size of like a dime. Now, basically, we can get DNA from a plucked hair, which is a lot smaller.

Q And would that be the PCR application that you've just described here?

A That's correct.

Q The ability to do that is what allows you to get a smaller sample and get a DNA profile out of it?

A Yes.

Q And I think you said it's by repeating or duplicating, almost like growing the DNA; is that a fair statement?

A Sure.

Q Okay. But you're not changing the DNA profile, is that how I understand it?

A That is correct, yes.

Q So you're taking the DNA profile and making it -- duplicating it enough times, repeating it enough times to get a big enough sample to do a DNA test?

A That's correct.

Q Without the PCR application, then, when we're under RFLP, let's say when you started in 1996 or so, is it possible you could have some -- you used an eyebrow, how about some semen or some sperm heads, is it possible you could have too small a sample there to do it back in 1994 or '96 but you'd be able to do it now?

A Yes.

Q Do you know when Washoe County Lab was able to conduct the PCR amplification technique?

A The PCR FTR technology that we use right now we implemented in 1999, 2000.

Q Who is Renee Romero?

A Renee Romero is the laboratory director of the Washoe County Sheriff's Office.

Q Is she involved in DNA testing?

A Yes.

Q Was she there before you started?

A Yes, she was.

Q Was she part of training you or did she bring you along?

A Yes, she was.

Q And Maria Fassett, who is she?

A She is a criminalist at the Washoe County Sheriff's Office.

Q Is she still working in serology, do you know?

A Not currently, no.

Q Back in '96, when you started, do you know if she was?

A I want to say yes.

Q But she's gone from one field to another just as part of going into different areas of criminology, I guess?

A That's correct.

Q On this DNA, again, and the process, the procedures that are used, the ones you've described here in the DNA description, are these processes generally recognized throughout the scientific community as being reliable?

A Yes, they are.

Q You have been trained on these through all the methods you've said that encompasses in work, on-the-job training and all that?

A Yes.

Q Have you tested thousands, hundreds of thousands? What are we talking about?

A Have I tested --

Q Samples.

A -- samples? I would say thousands, not hundreds of thousands.

Q Used it, DNA testing, plenty of times where you're comfortable with it?

A Yes. Very.

Q Comfortable with the machinery?

A Yes.

Q You think you did a very good job and you're comfortable training, teaching?

A Yes.

Q Are you familiar with lab reports that are utilized -- standard report forms utilized in our Washoe County Lab?

A Yes.

Q What they look like?

A Yes.

Q I want to hand you what is No. 24.

MR. CLIFTON: If we have it, Miss Clerk.

Thank you, ma'am.

BY MR. CLIFTON:

Q Handing you 24, which is No. 1 for counsel's information. It's Exhibit No. 24 in laboratory report No. 1 by Maria Fassett.

Are you familiar with reports that look in this type of form from your laboratory?

A Yes.

Q And you are familiar with the case number at the top? You have been involved in working on that case? It's L2145-94?

A Yes.

Q Familiar with the author's name and/or signature on the back?

A Maria Fassett, yes.

Q In this particular case, did you also do a report

like that? In the same form, not on the same subject,
but --

A Yes.

Q -- a laboratory report.

A Yes.

Q Do you know if Renee Romero has done several in
this particular case?

A Yes.

Q What type of examination or investigation did you
do in that laboratory number in this case?

A I looked at the DNA profile from Frank Peck.

Q Okay. Did you have that in your lab, to your
knowledge, in 1996, when you started? The sample.

A No, we did not.

Q Did you have it, to your knowledge, in your lab
in the year 2000 or 2001 when PCR was starting?

A No.

Q When did you receive at the lab that sample from
Frank Peck, to your knowledge?

A His DNA sample was received in the lab in March
of 2002.

Q I want to talk a little bit about how you
received it for databases: Local, state and national
databases. Are you familiar with these?

A Yes, I am.

Q Can you describe for the ladies and gentlemen of the jury as to how you receive DNA samples such as Mr. Peck's from known agencies or databases?

A Yes. DNA samples arrive to our crime laboratory, and the DNA profiles are obtained from those samples. And what those samples basically are, are buccal samples or saliva samples.

If you took a Q-tip and swab the inside of your mouth, put it into a swab box or cardboard box, that's what the sample would be coming to our laboratory for.

Q Do you know how they swab the cheek, correct, for a buccal -- which is b-u-c-c-a-l -- a buccal swab, correct?

A Yes.

Q You already said saliva itself would be enough for DNA, correct?

A Yes.

Q Why is it that we actually swab the cells of the cheek, the inner cheek?

A It's just a better sample. You're able to scrape off more cells. There's more cells on the side your cheek per area than, say, in a saliva sample or spit.

Q But the saliva and the cheek, the blood, it all

still contains DNA, correct?

A That's correct.

Q All right. So you receive from these agencies or database samples of buccal swabs or some other type of samples?

A Originally we were receiving blood samples, but that was only for the first couple hundred samples. Now we only receive saliva samples or buccal swabs.

Q When you say "for the first couple hundred," are you referring back in the early '90s or are you referring to something else by a couple hundred?

A Early '90s, yes.

Q And you can do a DNA analysis with using the blood. Even today you could do it with blood, correct?

A That's correct.

Q But the buccal swab of the cheek area, the cells and/or saliva is suffice to get an accurate DNA?

A Yes.

Q Go ahead, then, for relating these agencies and the samples such as Mr. Peck's.

A So the samples would come into our laboratory, and we would take a portion of that sample and obtain a DNA profile.

That sample would then be placed into the local

DNA database, and then also be uploaded to a state DNA database, and then subsequently uploaded to a national DNA database.

Q In your investigation in this case, you received Mr. Peck's DNA sample for the first time in -- did you say March of '02?

A Yes.

Q What did you do with it or were you assigned to do with it, if anything?

A When that sample -- it was received in the laboratory, and it basically sat on the shelf until we were able to get a DNA profile from that or work on that sample. And that DNA profile was obtained on that sample in April of 2003.

Q Why the year delay or backlog, do you know?

A This portion of the DNA section -- our main focus in the laboratory is to do casework, and the samples that come in to be put into the database are second priority. And we just have a backlog where it takes us a little while to get to those samples.

Q By the time you get individual samples -- well, let me ask it this way: Are they coming in daily or is it coming in every week, do they come in all the time, or what?

A Currently we receive them twice a week from the different agencies.

Q Okay. When they come in, say one like Mr. Peck's, do you have any knowledge or information to know that it's going to match anything --

A No.

Q -- in your lab?

A No. We have no idea.

Q Do you have to have it -- do you have to be able to test it against something, a reference sample or something like that, or do you just automatically put it in to get a profile with every one of these that you receive?

A The profiles from these individuals, the reason we do those DNA profiles is to compare them to unknown DNA profiles that are also in the database.

Q It's possible, though, isn't it, when you run these samples and you get a profile it's not going to match anything?

A That's correct.

Q In this particular one, did you have occasion to run the profile of Mr. Peck as you received it from the lab, and then 13 months later, I guess, April of '03, did you have occasion to actually determine a profile?

A Yes. In April of '03 we -- just like any routine sample, it would come into the lab. We would do a DNA test on there, we'd get a DNA profile, and it would go in the database.

Q So nobody makes a specific request. It's just routine as they come in a year later, or however long it takes based on your funding and your backlog and your priorities. There was no request made, "Hey, test this sample. It might match something." It's just random routine.

A That's correct.

Q If I understand you correctly, you took Mr. Peck's sample yourself and actually ran a test in April of '03?

A In April of '03, yes.

Q Not knowing whether it was going to match anything, not expecting it to match anything.

A That's correct.

Q Did you determine that it did match something or did you get what I call a hit?

A Yes, we did. Once the DNA profile from Mr. Peck was put into the database, it did match up with an unknown male DNA profile from the vaginal swab of Candace Inman.

Q Were you involved in testing that vaginal swab or

did somebody else do that to get that profile?

A Somebody else did that.

Q Would that be Renee Romero, based on your knowledge of information?

A Yes.

Q And she's got other lab reports under this case number, correct?

A Yes.

Q She's available to testify today or will be at some point? I think she's coming in on a plane; is that correct?

A As far as I know, yes.

Q All right. So I'm sorry to take you a little bit out of order, but I can't put her on first and last, so let's just stay with where we are here.

Do you know or recognize this number by any chance, this control number or code number, P18945, as a reference number?

A P18945?

Q 948. I'm sorry.

A 948? Yes, I do.

Q What is that?

A That's a control number that has the vaginal swab from Candace Inman.

Q Is that the item you're referring to as Mr. Peck's sample matching when you did his test and comparison?

A Yes.

Q When you say you get a DNA profile from his sample that's received in the lab 13 months earlier, do you then plug the profile into a computer, or does the computer automatically search your database or what?

A The DNA profile is inputted into the computer. And then on a weekly basis we do a search -- at minimum on a weekly basis we do a search of the DNA profiles from the reference standards, and we compare them to the forensic unknowns in the various cases that we have.

Q So you're getting the DNA profile from Mr. Peck, and the computer is going to do it on a timely basis comparing it ongoing for as long as you have the DNA profile, correct?

A Yes. The profiles always stay in there, and they're continually searched.

Q So if I understand correctly, nobody told you to search this against a particular piece of evidence.

A That is correct.

Q You put it in the computer in April of '03. How long was it before you get the match, do you know?

A The match actually happened in April of '03, and that's what led to the reanalysis of the reference -- the sample from Frank Peck, which then led to me writing a report indicating that a new reference standard needed to be obtained from Frank Peck to confirm this match.

Q How many times did you run the test or did you attempt to confirm at all yourself? How many times did you run the test or did you attempt to confirm this match?

A Frank Peck's match?

Q Yes.

A Originally the sample was -- I obtained a DNA profile originally, and then we got the computer match, and I went back and pulled that same sample, did the DNA profile again.

Q Which sample? Mr. Peck's or --

A Mr. Peck's. I'm sorry. Yes, Mr. Peck's sample. And compared that again to the DNA profile obtained from the vaginal swab.

Q So that's the first time you actually have knowledge that P8 -- P18948 is the sample that might match Mr. Peck's DNA profile, correct?

A Correct.

Q In other words, the first time the computer found it by itself.

A Yes.

Q This time the computer tells you we have a hit, bells and whistles go off or something. You actually go back and physically pull that sample or just look up the DNA profile in your computer?

A The DNA profile from which sample?

Q Ms. Inman.

A What we do is we go back to the original notes of the individual who actually got that DNA profile, and we get a full --

Q Who was that?

A That would have been Renee Romero.

Q And do you know what year -- or I can ask her.

A I don't recall that.

Q That's fine. Go ahead.

A And then what we do is we take that DNA profile, that electropherogram, those little peaks, we take that DNA profile from that report and we compare it to the DNA profile from the individual that we just got a match on.

Q And you did that in this case?

A Yes.

Q What were your results?

A That the reference standards collected there was matching the male DNA profile from the vaginal swab taken

from Candace Inman, and that a new reference standard from Frank Peck needed to be obtained to confirm the match.

Q So you've already got a match or a hit from the computer. You've done another test to more or less check it or confirm it?

A Yes.

Q And you're still requesting that another confirmation be done or something like that, correct?

A Yes.

Q Are you unsure of your result or is there some reason why you think you need to go do another confirmation?

A We're not unsure of our results. When the buccal swab or saliva sample is collected to go into the database, they're collected in a form that does not require a chain of custody be associated with that sample.

So what we do is if we get a match, we ask the agency to go back and get a new reference standard under the chain of custody format to do the comparison again.

Q If I understand you correctly, and don't let me put words in your mouth, the sample you got from the DNA database says it's identified as Frank Peck's?

A Yes.

Q Is that correct?

But you didn't actually see the person take it from Frank Peck, either blood or --

A That's correct.

Q -- mouth, correct?

A Correct.

Q In this case it was, I think you said, swab's from the mouth?

A Yes.

Q Are there more than one swab?

A Typically there's two swabs that are taken at the time.

Q So then you get the hit and the confirmation, and then you request another confirmation so that we can maintain chain of custody and somebody can say, "I actually took this from Frank Peck"?

A Yes.

Q Is that satisfactory?

A Yes.

Q All right. Do you know if that was done in this case, by any chance, or were you involved with that?

A I have knowledge only because I know Renee Romero wrote a report regarding that, yes.

Q Would that have been later in time, like a year later or more?

A The approximate time I am not sure of.

Q Are you familiar with the term "seizure order"?

A Yes.

Q Have you seen those in your job as chief criminalist at Washoe County Lab as that's a way or method used to retrieve, with chain of evidence or chain of custody, a sample from a subject so that we can take that up to the lab and have you guys test it again for confirmation?

A Yes.

MR. CLIFTON: Thank you, sir.

THE COURT: Thank you.

Mr. Lindsey, Mr. Peck?

CROSS-EXAMINATION

BY MR. LINDSEY:

Q Good morning.

A Good morning.

Could you help me understand the word "contamination"? Are you familiar with that word?

A Sure.

Q Could you help me understand that and explain that to that jury.

A In general terms?

Q Yes.

A Contamination is when a -- in this particular case we're talking about DNA, contamination would be when you see a DNA profile in a sample that should not be there.

And I'll give you an example. When we do our testing, we take a sample, put it in -- take a portion of the sample, put in the small test tube. At the same time we have another test tube right next to it that doesn't have a sample in there.

So -- and then these two tubes, or multiple tubes, possibly, would be processed all the way through the whole DNA process. This one sample over here, the question sample, we will call it a saliva sample, was put into the tube. We expect to get a DNA profile. This tube over here that didn't have a sample in there, we don't expect to get a DNA profile. So it needs to basically be blank.

If contamination takes place, then what happens is we may see something in that tube that should be blank. And throughout the whole process of the DNA testing we have those different controls in place.

So contamination could take place, say, if somebody was cutting a sample. Say there was a large --

large volume of blood or something that -- and the sample -- this sample got partly into the blank tube, then there would be a problem in the overall process and we have to go back and figure out what happened and where that contamination came from.

Q Thank you. You talked about the DNA could be degraded?

A Yes.

Q Could you do the same?

A Sure. A sample could be degraded. What that means is if we have an optimal sample, we will get a DNA profile at all those 13 different areas. Sometimes what happens is bacteria, environmental conditions will start breaking down that DNA, so what happens is instead of that nice, long piece of DNA that we start out with, we only have a smaller portion of that. So the sample is degraded or broken down because of various environmental conditions or just the condition of the sample itself.

Q Thank you. You spoke of protocol and the fact that your protocol -- your protocol in your laboratory has been in fact examined by others; is that fair to say?

A Yes.

Q And your assumption in the work you do is that the protocol has been followed in each and every case; is

that fair to say?

A Yes.

Q Okay. Are you familiar at all with the literature that talks about lab error and protocol error and that brings into question DNA and some of the problems that have been faced with it?

A What literature could you be referring to?

Q This is a really blank question.

Have you ever read any articles that have brought into question DNA accuracy, you personally?

A Sure.

Q Okay. And what would be the nature of those articles?

A And I knew that question was going to come, and I'm trying to think of some stuff right now.

I'm just going back to the example that I just explained that there could be some kind of cross-contamination you detect in a blank.

If you had something specific, I could go on that.

MR. LINDSEY: We have this silly thing between us. Is it all right, Your Honor, if I move it a little bit to the right?

THE COURT: Sure.

MR. LINDSEY: I feel like I'm hiding in a hole here. Sorry.

THE WITNESS: No. That's much better.

MR. LINDSEY: Thank you.

BY MR. LINDSEY:

Q When we're talking about protocol, we're assuming, for lack of a better word, honesty, truthfulness for accuracy, correct?

A Yes.

Q I'm not trying to make it up. You're assuming the protocols of that have been absolutely followed as you yourself would want them to be, correct?

A Yes.

Q Okay. And if in fact there were ever an intentional violation of a protocol, then that would invalidate what we're talking about here today, would it not?

A If somebody intentionally didn't follow the procedure of the protocol, that would invalidate --

Q That would invalidate your findings. For instance, if we're going back to 1994, that's two years before you were there --

A Yes.

Q -- correct?

A Yes and no, because actually prior to 1996, when I joined the sheriff's office full time, when I was at the University of Nevada, Reno I was asked to help the crime lab at the Washoe County Sheriff's Office set up their DNA portion of the lab. So during that period of time, I was still associated with them to a point, yes.

Q But still, if somebody had intentionally violated protocol, wouldn't that invalidate the findings?

A In general, possibly.

Q Okay. I am not talking about human error. I am talking about if there was an intentional act.

A Possibly.

MR. LINDSEY: If I could have just one moment, Your Honor.

THE COURT: Okay.

MR. LINDSEY: Thank you for your patience.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Lindsey.

Mr. Clifton?

MR. CLIFTON: Yes, Your Honor. Thank you.

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REDIRECT EXAMINATION

BY MR. CLIFTON:

Q Mr. Riolo, are you aware of any problems with the protocol in this case, this particular investigation?

A No, I am not.

Q I don't know what Mr. Lindsey was referring to, so I'm sorry to sound so vague.

What if someone, instead of writing their name on the bottom of a laboratory report, which is probably protocol, they wrote their initials, would that invalidate the results?

A Would that invalidate the results? Well, typically that report probably wouldn't ever make it out of the lab because there's processes and procedures in place to detect that. So would it invalidate the -- I don't see why initials would invalidate any results.

Q If Ms. Fassett wrote "MF," she still could come in here and testify, "That's my initials. That's my report." The report is still valid, isn't it?

A Yes.

Q So what I'm getting at, doesn't it depend on which kind of protocol Mr. Lindsey is referring to?

A Yes.

Q But I guess it's pretty obvious that some things

could invalidate the results, correct?

A Yes, it could. Yes.

Q What's the chance of getting a result that doesn't match a person versus getting a no result or an error?

Can you describe -- like if you use the wrong procedure somehow, does the computer say "Error," or what? Or does it spit out a DNA profile that could be wrong?

A It wouldn't spit out a DNA profile that would be wrong. If, let's say for example -- if I could go with an example here.

In those tubes I add a chemical, remember that chemical I add to break open the DNA or just to get rid of all that and just get the DNA? Say, for example, if I didn't add -- add that solution to that chemical, or if there's two, three reagents or chemicals that need to go in there, say I left one out, then I wouldn't end up with DNA. I wouldn't end up -- but, you know, I wouldn't end up with any DNA, so I wouldn't end up with a profile. I wouldn't end up with a wrong a profile because there was no profile to be there.

Q So those chemicals you mentioned, I think I counted three or four chemicals that were used. I could be wrong because you said chemicals in some places, may be

more than one chemical. But when you use these chemicals, are these, again, generally recognized in using to extract the DNA, male, female, and all the other things you've described here?

A Yes.

Q And those are the chemicals you use or what are generally used throughout the nation in DNA testing?

A Yes. The procedures that we use, before we actually implement them in casework, we put them through what we call our validation studies to make sure, hey, if we use these is it going to give us the results we want.

So, for example, we would take, you know, everybody's DNA that we have in the laboratory and use those as controls because we know what their DNA profile is.

We would take that, put it through the process we're going to use for extraction of DNA and make sure that the profile that we get from those is sufficient. And if it is, then we can say that that validation study does substantiate the use of this procedure.

Q Were you having any trouble with the machine back in 2003 or any of the DNA processes during this particular exam of Mr. Peck's sample?

A There's no indication of any problems.

Q Do you have any reason not to trust the computers, quote, match or hit?

A No. Not at all.

Q With respect to Mr. Peck and the vaginal sample that was C18498, if I got my numbers right -- or 18948, anything that led you to believe this was not a trustworthy result?

A There's nothing that led me to believe that.

Q Do you trust that result at this time?

A Yes.

Q When you confirmed it, you got the same result?

A Correct.

Q Anything that led you to believe something wasn't working properly then?

A There is nothing.

Q How long after was that test versus the first? Do you know the difference?

A When the sample went into the database and then when the retest was done?

Q Well, it went into the database and the computer got a hit.

A Right.

Q How long did that take?

A The actual computer hit?

Q Yeah. From when you first put it in.

A Less than a minute for the hit.

Q So you receive the sample; you do what you need to do to prepare it; and as soon as you put it in the computer, within a minute you got a match?

A Yes. If it's going to match.

Q Right. If it matches. In this case it did.

A Yes.

Q So within a minute from putting it in, the computer was able to generate all the samples in the system and compare them.

A Yes.

Q And then how long did it take you to do the next test?

A It was probably less than a couple of weeks. I do not have the exact date.

Q It wasn't on the same day?

A No.

Q Couple weeks later you do it and it matches again.

A Correct.

MR. CLIFTON: Thank you. No further.

MR. LINDSEY: Just very briefly. I apologize,
Your Honor.

THE COURT: All right.

RE CROSS EXAMINATION

BY MR. LINDSEY:

Q The vaginal swab, et cetera, are taken in 1994, correct?

A To my knowledge, yes.

Q I am not -- it's not a trick question. It's 1994. We have been here.

A To my knowledge, yes.

Q Thank you. I am not trying to --
It would be August 9th, 10th of 1994. I'm just sharing that with you.

A Okay.

Q It's not a trick question.
That sat on the shelf, and the DNA profile was not made until when, if you know?

A I do not know exactly when the DNA profile was obtained from the vaginal swab. Renee Romero would be the one to ask that to.

Q But that was in fact in -- you don't know whether that was in 2001? I thought you testified to that earlier. I apologize.

A Not to the vaginal swab sample, no. I did not

testify to when that DNA profile was obtained.

Q Okay. I apologize I thought you had.

A That's all right.

MR. LINDSEY: Thank you, Your Honor.

THE COURT: Mr. Clifton?

MR. CLIFTON: Nothing further, Your Honor. Thank you.

THE COURT: Mr. Riolo, thank you. You're excused.

THE WITNESS: Thank you, sir.

(Witness excused.)

THE COURT: Counsel, please approach the bench.

(Off-the-record discussion at the bench.)

THE COURT: Ladies and gentlemen, we will take the lunch recess early today.

And as you may have heard from the last witness, the next witness is arriving from Las Vegas and I believe her plane arrives about 1:30. Arrangements have been made to transport her directly to the courthouse. So we will recess now until 2 o'clock. The trial will resume at 2 o'clock today.

During the recess, as usual, you're instructed not to discuss this case among yourselves or with anyone else. You're not to form or express any opinions

concerning the case, or read, listen, review news accounts of the case, if any.

Trial will resume at 2 o'clock.

Court is in recess.

(The noon recess was taken.)

1 RENO, NEVADA, FRIDAY, MAY 8, 2009, 2:06 P.M.

2 -oOo-

3 THE COURT: Mr. Clifton, call your next witness.

4 MR. CLIFTON: State's next witness will be
5 Ms. Renee Romero.

6 Ask you to step forward, face the clerk, raise
7 your right hand.

8 THE COURT: Ms. Romero, please take the witness
9 stand and be seated.

10 RENE E ROMERO,
11 called as a witness by the State herein, having been first
12 duly sworn, was examined and testified as follows:

13
14 DIRECT EXAMINATION

15 BY MR. CLIFTON:

16 Q Take a moment to catch your breath.

17 Did you just run here from the airport?

18 A Yes.

19 Q Take a moment, get comfortable, and tell us your
20 name.

21 A I'm Renee Romero, R-o-m-e-r-o.

22 Q Your employment or occupation?

23 A I am the director of the Washoe County Sheriff's
24 Office, Forensic Science Division.

1 Q Would that include the crime lab?

2 A Yes. That is the crime lab.

3 Q Where did you obtain any post-high school
4 graduate degrees?

5 A I have a bachelor's degree in chemistry with the
6 fulfillment of a bachelor's degree in forensic science
7 from Michigan State University, and a master's degree in
8 cell and molecular biology from the University of Nevada,
9 Reno.

10 Q Can you tell me the years?

11 A Pardon me?

12 Q Can you tell me the years you obtained those?

13 A I graduated from Michigan State in 1988, and from
14 UNR, I believe it was '94.

15 Q After you got your bachelor of science from
16 Michigan in '88, did you have an opportunity to come to
17 Nevada and work here?

18 A Yes. I was hired at the crime lab in March of
19 1989.

20 Q Before you obtained your master's?

21 A Yes.

22 Q So while you had your BS -- and what was -- in
23 molecular --

24 A From Michigan State, it's in chemistry. And I

1 completed two degrees at the same time, so you don't
2 receive two bachelor's, because I didn't have enough
3 credits. So it's a bachelor of arts and chemistry with
4 the fulfillment of a bachelor of science in forensic
5 science.

6 Q Why don't you tell us what the master's was in,
7 again.

8 A It's a master's of science in cell and molecular
9 biology.

10 Q And you obtained that or going to school while
11 working at Washoe County?

12 A Yes.

13 Q When you started with Washoe County in
14 approximately '89, what was your title? What were you
15 doing?

16 A I was hired as a criminalist. And for the first
17 two-and-a-half years of my employment there I was hired
18 into the trace evidence section.

19 And this was when DNA was first coming along in
20 our crime lab, as well as many others, and the individual
21 that was bringing DNA along wasn't enjoying it, and I
22 wasn't enjoying trace evidence so much, and we were
23 fortunate enough to be able to trade jobs. And they were
24 both at the criminalist level, so after a few years in

1 trace evidence, I was able to move into the DNA section.

2 Q And sounds like you were satisfied with that
3 move. You wanted that move.

4 A Yes.

5 Q So basically you started with DNA in its infancy,
6 at least at Washoe County Crime Lab.

7 A Yes, I did.

8 Q Now, DNA being in its infancy, DNA has been
9 around, or least discovered and researched, investigated
10 and examined, for a lot longer than back to 1989, correct?

11 A Correct.

12 Q So where would you say the Washoe County Crime
13 Lab was with respect to its involvement in DNA when you
14 started, and how progressive they were compared to the
15 rest of the country, would you say?

16 A I would say our crime lab was involved early on
17 in bringing the first technology into our laboratory. We
18 were also one of the pilot laboratories for what was
19 starting as the national DNA database.

20 Q I was a district attorney back then, too, when
21 you started, and I remember -- actually, before you
22 started -- samples would be sent out, that needed to be
23 researched or examined, to Quantico, Virginia, or the FBI
24 lab back East, or -- in the mid-'80s. Did you know about

1 that or hear about that?

2 A For DNA?

3 Q Yeah. When it first started.

4 A I can't speak to that.

5 Q Okay. How about with respect to Washoe County,
6 then, when you were starting, were you able to do some
7 type of limited DNA?

8 A When I was hired in 1989, no, we were not doing
9 testing on casework; research had started.

10 Q Right.

11 A About a year after that.

12 Q So before '89, if we needed something compared to
13 samples, we'd either have to send it out somewhere else or
14 what?

15 A I don't think it was available.

16 Q I see. So we were starting at the forefront?

17 A Yes.

18 Q Got it. And in 1989, then, describe what type of
19 technology was available to you or to Washoe County to do
20 a DNA comparison.

21 A The type of technology that we were starting to
22 research was a technology that has the acronym RFLP. And
23 it's a technology that looks at areas of our DNA that
24 repeats, but they're very long areas, they're very large

1 pieces of DNA; therefore, to do that type of technology,
2 you needed a large sample size.

3 And the way we were doing it, it took us about
4 three months, actually, to complete one case. We were
5 using radioactivity to detect the DNA, so there was a
6 development time for that to react.

7 Q And then DNA was progressing from thereon-after
8 in your career at the Washoe County Crime Lab?

9 A Yes.

10 Q The technology to compare samples?

11 A Yes.

12 Q I need to then go from 1989 to approximately
13 1994, the Washoe County Crime Lab was accredited by
14 American society of crime labs board of directors,
15 correct?

16 A Laboratory accreditation board, yes.

17 Q Even before that you were still doing DNA
18 comparisons, correct?

19 A I'm trying to recall when it first started, and,
20 you know, I'm sitting here and I can't remember if it was
21 1990 or 1992 that the first case was started. So yes, it
22 was quite likely a case was started prior to that date.

23 Q Tell us what that accreditation means to the
24 laboratory. What did it mean in 1994?

1 A It was a significant process. It's a group of
2 people coming through the laboratory, looking at all
3 areas, all aspects that the crime laboratory does at that
4 time, with the exception of crime scene investigation.
5 They didn't accredit that until later.

6 And it involves them looking at our proficiency
7 tests, making sure we're meeting the proficiency test
8 guidelines, looking at proficiency test records, looking
9 at our casework.

10 And there's a set of guidelines that this
11 particular agency has. But not only do they apply those
12 guidelines, they look at our own to make sure we do what
13 we say we do; so we have procedures and protocols, and do
14 we do what we say we do. And they look through all our
15 reports, and five per analyst, and check those, and they
16 look at quality assurance and safety, and various aspects
17 of the laboratory.

18 Q Before they were accredited at the lab, could you
19 still do the test and use them in court?

20 A Yes.

21 Q But now they're accredited as a lab, and you're
22 working there still as a criminalist?

23 A No. I am the director now.

24 Q No, in '94.

1 A Yes. Sorry.

2 Q And you were obtaining your master's degree at
3 that time?

4 A Yes.

5 Q So as a criminalist in 1994, were you familiar
6 with a person by the name of Maria Fasset?

7 A Yes.

8 Q As director now in 2009, are you her supervisor?

9 A Not directly, no.

10 Q But ultimately?

11 A I'm in her chain of command, yes.

12 Q Then you're the director. Who is above you?
13 Sheriff Haley or --

14 A I report to Undersheriff Vinger.

15 Q Okay. So do you have occasion to look at Maria
16 Fasset's work, be familiar with her -- over the years, not
17 just 2009 -- but from 1994 up to now have you seen her
18 work product?

19 A Yes, I have.

20 Q Are you comfortable with it?

21 A Yes.

22 Q She's been working there since the '80s, also,
23 correct?

24 A That's correct.

1 Q I need to direct your attention to Exhibit No. 24
2 in laboratory case number -- Exhibit 24 is in court here,
3 but laboratory case number L2145-94.

4 Are you familiar with that particular laboratory
5 case number?

6 A Yes, I am.

7 Q Have you worked in that particular case?

8 A Yes, I have.

9 Q With the lab, with Washoe County lab, in your
10 capacity as a director or your capacity as a criminalist
11 or both?

12 A As a criminalist.

13 Q And it's also in Sparks Police Department case
14 number, they're the investigating agency, their number
15 94-9292.

16 Are you still familiar with this case?

17 A Yes.

18 Q Exhibit No. 24, I'll purport to you, is a report
19 from Ms. Maria Fassett dated September 15th, 1994. I'll
20 hand that to you now.

21 Have you seen that before?

22 A Yes, I have.

23 Q Take a look at that. On the top you see the
24 laboratory case number and whatnot, correct?

1 A Yes, I see that.

2 Q Then under that it says, "Suspect McNaught,
3 Davis."

4 Do you see that?

5 A Yes.

6 Q Who enters that information in, if you know?

7 A The administrative staff. They get that
8 information off of the evidence request form.

9 Q And the evidence request form at this time was
10 requested by whom, or filled out by whom, as far as you
11 know from this?

12 A Based on this, the requesting person was
13 Detective Newhart.

14 Q So he's the one who would actually write the
15 suspect's name, correct?

16 A Yes.

17 Q In the request form.

18 A Yes.

19 Q Can they also write "Unknown"?

20 A Yes.

21 Q They can write whatever they want, I guess.

22 Okay. So at that time he writes Davis McNaught,
23 and then you see the victim's name there, correct?

24 A Yes, I do.

1 Q And you're working this case, and it's the same
2 victim name you've used in your reports; is that correct?

3 A Yes.

4 Q Down lower you'll see, under PS01, the victim's
5 name again, Candace Inman.

6 Do you see that?

7 A Yes.

8 Q There's a typo in the upper one, correct?

9 A Correct.

10 Q So name is Candace -- I'll represent to you she's
11 already testified here in court -- and up above, the
12 spelling is slightly off, correct?

13 A That's correct.

14 Q Still the same case we're referring to, and
15 you're still familiar with this case, correct?

16 A Yes.

17 Q Doesn't change anything as far as the substantive
18 results in any of these reports, to your knowledge?

19 A No.

20 Q As we go down further in her report, she
21 indicates that she tests some vaginal swabs.

22 Are you familiar with where I am, on the last
23 paragraph there?

24 A Yes.

1 Q And she indicates that the vaginal swabs may be
2 sufficient in quantity for limited blood grouping
3 analysis.

4 I'll represent to you these are vaginal swabs
5 from Candace Inman's vaginal vault from August 10, 1994,
6 and Maria Fassetts has already testified that she in fact
7 snipped off the tips of the Q-tips, and I think put them
8 in the refrigerator or freezer to preserve them.

9 I want to hand you an envelope that we've had
10 marked as Exhibit No. 22, and tell me if you recognize
11 that envelope.

12 A Yes, I do.

13 Q What does that contain or purport to contain, to
14 your knowledge?

15 A Well, the first thing I see is it contains the
16 chain of custody with my name on it, and it is labeled as
17 containing a reference standard from Candace Inman, and
18 also two vaginal swabs from the kit that was under control
19 number R04014.

20 Q So again, we're still talking about the same case
21 investigation, correct?

22 A Yes.

23 Q And all laboratory reports under that number
24 L2145-94 would be this investigation, correct?

1 A Yes.

2 Q When Ms. Fassett indicates that vaginal swabs may
3 be sufficient in quantity for limited blood grouping
4 analysis, I want you to concentrate on that line, and I
5 want to tell you one other fact that she testified to, and
6 that was that she did a -- she viewed a microscopic smear
7 from Q-tip onto a microscopic slide, the Q-tip being from
8 Candace Inman's vaginal cavity, she viewed them in a
9 microscope at 400 power under a -- with a grid approach,
10 and she found three sperm heads; no more, no less, a total
11 of three.

12 Taking that into account, together with the
13 vaginal swabs from the same person in the same area, and
14 that statement that they may be sufficient quantity for
15 limited blood grouping analysis, do you have any opinion,
16 based upon your education and training, as to whether or
17 not DNA would have been a possibility to test on either or
18 both of those samples, the three sperm heads or this
19 vaginal swab, that may be sufficient in quantity for
20 limited blood grouping analysis in 1994 under the state of
21 the technology in Washoe County Lab?

22 A No. At that time a sample that only indicated
23 three sperm heads from the swabbing would not indicate
24 that there was enough to do the RFLP DNA-type test that we

1 were using at that time.

2 Q Now, the microscopic slide has three sperm heads.
3 The Q-tip swabs are cotton, correct?

4 A Correct.

5 Q They could have more than three sperm heads,
6 correct?

7 A Yes.

8 Q But what we do know from Maria Fasset is that
9 they may be sufficient quantity.

10 What does limited blood grouping analysis mean to
11 you?

12 A That statement means to me that there's not
13 enough there to do DNA.

14 Q Have you ever heard of ABO grouping or ABO
15 typing?

16 A Yes.

17 Q Is that referring to blood being A, B or O or AB?

18 A Yes.

19 Q Could that be referring to something like that,
20 that maybe there's enough to do that type of analysis?

21 A It could, or another enzyme test called PGM.

22 Q Do either of those use up the sample, especially
23 if you're dealing with a small amount of sample?

24 A Yes. It could have, yes.

1 Q If you use up the sample, you may never use it
2 for something like DNA. Is that correct, or no?

3 A That is correct.

4 Q But at this time did you make the determination
5 back in 1994 not to test the sample for DNA?

6 A No.

7 Q Would that have been your job or Jeff Riolo's job
8 as DNA criminalist?

9 A No. We did not look at it after Maria determined
10 that it was insufficient.

11 Q Ms. Fassett has had a couple of different titles
12 in the crime lab in the last 25 years, correct?

13 A She's been a criminalist, but she's moved in
14 different sections, yes.

15 Q I knew, as soon as I said that, I was stating it
16 wrong.

17 She's been a criminalist but has gone into
18 different areas such as serology?

19 A Correct.

20 Q What else?

21 A Breath alcohol, and controlled substances.

22 Q And is it because she is not proficient or not
23 good, or is it because she's very good at all three of
24 those?

1 A Just for a change.

2 Q So back in '94 where was she, do you know?

3 A She would have been in serology at that time.

4 Q Would that include testing bodily fluids, doing
5 examinations?

6 A Yes.

7 Q Which is what we're talking about here?

8 A Yes.

9 Q What is your belief as to whether she would be
10 the one or not to have submitted it for DNA -- or making
11 that decision, let's put it that way, or whether it be you
12 or Mr. Riolo's?

13 A She may have discussed it with us. I can't
14 recall a conversation. But it would have been her job at
15 that point, if she only saw three sperm heads from the
16 vaginal swab, to not send it to DNA.

17 Q And I didn't mean to trick you by throwing
18 Mr. Riolo in there, because he got hired in 1996, but he
19 said see worked there with UNR, I guess.

20 A You're right. He wasn't there yet.

21 Q At least employed full time, but he might have
22 been going to UNR and working part time.

23 A He was working at UNR, and then there was a
24 period of time that he was working with the sheriff's

1 office bringing on the first technology.

2 Q So '94 this wouldn't be his type of decision.

3 A No.

4 Q It would be yours or Maria's.

5 A Yes. But -- yes.

6 Q And you didn't make that decision on this case?

7 A Not to my recollection, no.

8 Q Do you know if any such test was done from 1994
9 to, say, 2000 -- or through the '90s for either blood
10 grouping analysis or DNA comparison or profiling?

11 A It was not.

12 Q So for whatever reason it was not.

13 Now, if ABO typing were done and you got a
14 result, would it tell you a suspect?

15 A No.

16 Q Describe. How is that different than DNA? Why
17 wouldn't it?

18 A I'm not really understanding your question.

19 Q If you did ABO typing on that sample and you got
20 a result, A or B, do you now have a suspect?

21 A No. You have a blood-typing result.

22 Q Describe that for the ladies and gentlemen.

23 A You would have a result of type A, AB, O, and you
24 would need somebody to compare that to.

1 Q So a lot of people might have A blood or B blood
2 or O blood?

3 A Yes.

4 Q So you haven't narrowed it sufficiently to get to
5 a suspect, correct?

6 A Correct.

7 Q Has DNA technology gotten to that point where you
8 can possibly narrow it to a suspect?

9 A Still have to have something to compare it to.

10 Q Got you. So if you do a DNA test, you get a
11 result of what? What do you call it?

12 A You get a DNA profile.

13 Q Unless you have somebody to compare it to, it's
14 just a bunch of numbers or letters, or whatever it is. A
15 profile.

16 A Yes.

17 Q And they get a graph, an electropherogram?

18 A Yes.

19 Q So in any event or for whatever reason, this
20 sample was not tested until when, for DNA, to your
21 knowledge?

22 A Until the technology changed to technology that
23 has the acronym PCR testing, and areas of DNA that we're
24 looking at are called STRs.

1 Q The standard repeats?

2 A Yes.

3 Q What year or what date was that, if you know,
4 that that became available, that technology, to Washoe
5 County laboratory?

6 A In our laboratory we brought that on line in the
7 year 2000.

8 Q Now, when it came on line, did it cause a
9 floodgate, did it cause an influx of cases to go back and
10 test, or what?

11 A A couple things happened. There were some cases
12 that we, the analyst, recalled that there wasn't enough
13 DNA on, and so we pulled those to call an investigator to
14 see if they wanted them done.

15 And then also we tried to educate the
16 investigators to go back and look at your older cases that
17 you didn't initially get DNA results on and send those in,
18 because now, with this new technology, we can look at much
19 smaller amounts of DNA. We could look at a single hair
20 root, we could look at a bottle rim that had been licked.
21 It really changed the types of samples that we could get
22 DNA results from.

23 Q And they could be smaller samples and still yield
24 results?

1 A Yes.

2 Q After that technology advanced -- it sounds like
3 a significant advancement in DNA; is that correct?

4 A Yes.

5 Q After that advancement in 2000, did there come a
6 point in time the lab, or you yourself, did conduct a
7 DNA-type test on those vaginal swabs there that you
8 have -- what is that envelope, 22? Yellow sticker.

9 A Yes, 22.

10 Q When would that have occurred, or do you have the
11 date?

12 A I signed this out of evidence on 4/23/01.

13 I'm sorry. That doesn't make sense. I signed
14 this out of evidence on 11/26/01.

15 Q I paused there because 4/23 --

16 A Yes. I'm looking at my handwriting. The other
17 time was four twenty-three nine, to show you.

18 Q So November 26, 2001, about a year after PCR was
19 developed at the lab.

20 A Yes.

21 Q Was it requested, or was this one of the random
22 ones you referred to a minute ago?

23 A This was requested.

24 Q By whom?

1 A I believe it was investigator Greta Fye,
2 Detective Greta Fye.

3 Q When you go to get the sample, then, describe
4 where they are, how you find it -- I shouldn't say
5 "they" -- how you find the samples. Is it already stored
6 somewhere, or do you just go to the -- go ahead. Explain
7 that.

8 A Basically an evidence request -- examination
9 request form was submitted to the laboratory, and that
10 triggers a worksheet to be created, tells me there's a
11 request to do this DNA work, and it has a control number
12 on that request.

13 By that, I know to go down to our evidence vault
14 and retrieve this envelope from evidence.

15 Q Now, can you tell by descriptors on that envelope
16 that that sample was prepared or the Q-tips were cut by
17 Maria Fassett?

18 A Her initials appear on this in one area of it.

19 Q Okay. And I think she's already testified they
20 came from the sexual assault evidence kit R04014 for
21 Candace Inman.

22 Does it refer to that on that or not?

23 A Yes, it does.

24 Q And it was from envelope number 5, I believe,

1 vaginal Q-tips or vaginal --

2 A I don't get a specific envelope, I just get that
3 control number and vaginal swabs.

4 Q So you get that sample. On that envelope there,
5 what is it labeled as? What is in it?

6 Oh, I'm sorry. Right there on the back part.

7 A Okay. It's says, "Reference standard, Candace
8 Inman, R04014, vaginal swabs times 2."

9 Q So when you open those up -- that up in November
10 of '01, what do you find?

11 A That there's two small envelopes in here, and one
12 of them contains the reference sample from Ms. Inman and
13 the other one contains the vaginal swab tips.

14 Q And what is the reference sample of Ms. Inman
15 utilized for? What is it good for?

16 A That's utilized to develop a DNA profile from
17 her.

18 Q So it's from her blood?

19 A Yes.

20 Q And then the Q-tip without the stick or the head
21 of the Q-tip?

22 A The top portion of the swab stick, yes.

23 Q Now, seven years have gone by from '94 to 2001.

24 Does it indicate what's been done with that

1 sample since Maria Fassett placed it in refrigeration in
2 '94?

3 A No. There is just a chain of custody here.

4 Q Right. Where were you on that list? Where has
5 it gone to from '94 to 2001?

6 A To evidence and to me.

7 Q So it doesn't go back to Sparks Police Department
8 or to the agency or anything like that?

9 A No. We kept the sample.

10 Q So when this investigation became, as what
11 Detective Newhart called stagnant, between '94 and -- it
12 was the 2000s, that sample, according to the chain of
13 custody, stayed locked up in evidence at the lab?

14 A It stayed in evidence at the laboratory.

15 Q According to you, it hasn't been checked out
16 until you checked it out in '01?

17 A Yes.

18 Q Okay. So when you checked it out, you opened it
19 up, you see these things, what do you do with it to
20 determine a DNA profile?

21 A I take them through a process to extract the DNA
22 out of the samples, two different types of processes
23 because these are two different types of samples. One of
24 them has a potential to have sperm cells in it, the other

1 one is a single-source reference sample.

2 So on one of them I obtained a DNA profile from
3 the reference sample, and the other one I performed what
4 is called a differential extraction, where I attempt to
5 obtain two DNA profiles from the vaginal swab: One
6 representative of the sperm fraction, the other
7 representative of the vaginal wall.

8 Q Now, there doesn't have to be two different DNA
9 samples just because it's the vaginal swab itself,
10 correct?

11 A If there was no sperm there, then I would only
12 receive one DNA profile.

13 Q That's what I'm getting at. Vaginal secretions
14 would be a female DNA.

15 A Correct.

16 Q What is it about the testing that Maria Fassett
17 has done that's led you to believe there might be two; in
18 other words, you have to do a differential analysis?

19 A Just based on the fact that she identified sperm
20 heads.

21 Q In the microscopic slide, number one, correct?

22 A Yes.

23 Q And then also in the Q-tip of the acid
24 phosphatase.

1 A Acid phosphatase is a presumptive test.

2 Q And she said she had a positive on that. Are you
3 aware of that?

4 A I couldn't tell you that based on that report.

5 Q She's already testified. So if she has an acid
6 phosphatase test, I think it was weak, it was a weak
7 positive result, and you have three sperm heads on the
8 vaginal slide, does that give you some indication that
9 there may be two DNAs here?

10 A Yes.

11 Q When you do the test, does it make any difference
12 in the computer or to you, as a DNA analyst, whether you
13 have one or two?

14 In other words, say you didn't do the
15 differential test and you just did some regular testing
16 with DNA, what would it show?

17 A If I'm following you correctly, if I didn't do
18 the differential examination on the vaginal swab and there
19 was sperm present, I would most likely end up with a
20 mixture of DNA of the two different people in one result.
21 If there was no sperm present, then I would just get a DNA
22 profile indicative of the vaginal wall.

23 Q What I'm getting at is ways to show or check and
24 balances here. Even if you did not know to do

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA
Plaintiff,

vs.

FRANK PECK,
Defendant.

Sup. Ct. Case No. 65691
Case No. CR06-2580
Dept. 6

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1 A Yes, it would.

2 Q Number 94, does that sound familiar?

3 A Yes.

4 Q You've had occasion to testify in this case
5 once before; is that correct?

6 A I testified at the grand jury.

7 Q That was in 2006?

8 A I believe so.

9 Q All right. So did you review reports before
10 testifying then or here today?

11 A I brought my reports and I referred to my
12 reports at that time.

13 Q Do you have any independent recollection of
14 this case, not a lot, what do you think?

15 A Not a lot.

16 Q At the grand jury did you see some familiar
17 faces before you went in to testify?

18 A I saw them in the hallway, yes.

19 Q All right. But did you greet them? I'm not
20 talking about this case, of course, but you greeted
21 them, say hello?

22 A Yes, I did.

23 Q Would that include Nurse Hackworth, did you
24 recognize him her?

1 A I didn't remember her at the time. I
2 recognized her later.

3 Q And then would you recognize the victim,
4 Candace Inman?

5 A I was introduced her then. I didn't
6 recognize her before that.

7 Q So nothing independently about this case so
8 remarkable that you recognize all these people?

9 A No.

10 Q Kind of a standard rape investigation happens
11 a lot?

12 A It happened often. For me it did.

13 Q So you've investigated quite a few rapes?

14 A Yes, I did.

15 Q Been involved with quite a few
16 investigations?

17 A Yes, I did.

18 Q Were you working that shift? I guess it's
19 graveyard, or were you called in from home?

20 A I was working swing shift and I was checking
21 in at the station, I was called back.

22 Q Were you called back right then at midnight?

23 A I was called back the -- whatever the time.
24 I think it was five minutes to when I was called from --

1 that I had to go back to the scene.

2 Q Is that customary or common to work extra
3 hours like that?

4 A Yes, it was.

5 Q Did you go right to the station or right to
6 the address?

7 A From the station I went to the address.

8 Q When you got to the address who was there, if
9 you can recall?

10 A It was Officer Brown and Officer Clayton, I
11 think, were already on scene.

12 Q And by "Officer Brown", do you mean Michael
13 Brown?

14 A Yes.

15 Q There's also a Linda Brown that works at
16 Sparks PD?

17 A I understand she's a technician, yes.

18 Q Evidence?

19 A Yes.

20 Q So Michael Brown, you, and who else was
21 there?

22 A Officer Clayton.

23 Q John?

24 A John Clayton and myself.

1 Q So there's two females and a male. Do you
2 know a Cheryl Bartlett?

3 A I didn't see her that morning, I saw her --

4 Q You're the one who says two males and one
5 female is what I meant to say.

6 A Right.

7 Q Did you see Cheryl Bartlett there?

8 A In my notes, yes, she came in, took scene --
9 crime scene and took some, so she's their evidence.

10 Q So there's two female and two males?

11 A Yes.

12 Q Were they all there, all four of you, when
13 the victim was there?

14 A I don't know about -- when she came, I know
15 that the two males were there and myself came. I know
16 that the victim was there.

17 Q Do you remember the victim, Candace Inman,
18 having a little trouble talking to John, maybe the
19 males, Mike Brown?

20 A As a normal procedure when there was any type
21 of a rape or an instant like that where there's a female
22 present they talked to the female.

23 Q Did that happen in this case then?

24 A Yes, it was.

1 Q So you remember speaking to Ms. Inman?

2 A Yes, I do.

3 Q Are you there to get a formalized interview

4 from her or just calm her down or what?

5 A No, I was there to take the case. That was

6 my job.

7 Q Do you get a formal interview where it's

8 taped or anything like that?

9 A I tape the interview after we -- I met with

10 her and went and did the doctor's screening, I did the

11 whole thing. And then afterwards I went to the station

12 and typed the report or taped the report.

13 Q During examination that you just mentioned,

14 would that be the Saint Mary's Emergency Room --

15 A Yes, it was.

16 Q -- Dr. Dedolph, Nurse Hackworth?

17 A Yes.

18 Q And you're there?

19 A Yes.

20 Q Could you stay in the room, or do you leave

21 the room?

22 A I stay in the room.

23 Q You stay in the room?

24 A I stay in the room. I'm sorry I got a cough

1 drop in my mouth.

2 Q Oh. Do you generally stay in the room when
3 the examination's taking place?

4 A Yes.

5 Q Who else was in the room?

6 A Dr. Dedolph, the victim, Dr. Dedolph, the
7 nurse, and myself.

8 Q Four?

9 A Right.

10 Q Is that customary for the officer to stay
11 there, especially a female officer, is that okay to stay
12 in the room?

13 A Yes, it is.

14 Q If it were a male officer?

15 A I don't know what the procedures for male
16 officer, but I know what it is for myself.

17 Q And you do stay in the room?

18 A Yes, I do.

19 Q For what purpose?

20 A To collect evidence.

21 Q Was she crying? Was she upset?

22 A She was -- she was upset, but she was
23 controlled. She was trying to provide me with the best
24 information.

1 Q And during examination, you take custody of
2 certain evidence?

3 A Yes, I do.

4 Q I'll show you Exhibits 9 and 10 here. Tell
5 me, if you can tell from looking at these, whether
6 you're on that chain?

7 A Okay. That's my handwriting (indicating).

8 Q Which one are you referring to, the big one
9 or the small one?

10 A It's this one here (indicating).

11 Q That number 8, the smaller envelope?

12 A Yes.

13 Q Your handwriting on there indicating what?

14 A P marked as PS2 and sexual assault kit. Is
15 that what you wanted to know?

16 Q Yes. But your handwriting's on there or your
17 signature's on there to indicate what?

18 A To indicate that I received it.

19 Q Do you fill that envelope with the contents
20 or does somebody else give those to you?

21 A The nurses have -- gets them from the doctor
22 and the nurse gives them to me and I write the statement
23 on the envelope and take possession of it.

24 Q On number 8 there can you tell me type of

1 sample it would include, the small one?

2 A You said number 8. It says in the envelope
3 it's blood sample.

4 Q Blood sample from the victim?

5 A Right.

6 Q Does the doctor draw that or does the nurse,
7 do you know?

8 A I don't know which one.

9 Q One of them draws that and then puts it in
10 this envelope?

11 A Right.

12 Q Is the envelope sealed?

13 A Yes, it is.

14 Q I mean at that time, not now.

15 A No.

16 Q At that time.

17 A No, it -- we sealed it, I seal it after I
18 collect all the evidence.

19 Q Do you seal it if you're in the room?

20 A Right.

21 Q So you're saying you seal it in the room?

22 A Right. I seal everything. I put this --
23 this kit says sexual assault evidence kit is given to us
24 and we each keep one, I'm not sure what the procedure

1 was, but kept them in the car, how they were.

2 Q Do you know if sometimes nurses seal those or
3 do you always? Because you remain in the room.

4 A I would be the one to seal it. I would be
5 the last to take all the documents, put them in, and
6 then they would be sealed.

7 Q So in that particular kit that we're
8 referring to, number 8, the smaller envelope?

9 A Right.

10 Q That is her blood sample?

11 A Right.

12 Q You then seal it, and do what with it?

13 A If it's blood, put it in the -- in the
14 refrigerator at the station.

15 Q We gotta get to the station, though.

16 A Okay.

17 Q You're at Saint Mary's right now?

18 A Right, still at Saint Mary's I take the blood
19 from the -- from the nurse, I put in the envelope, and
20 then -- this is the only one that has to go in a
21 separate place in the station, so it's kept separately.

22 Q I see. And you take it to the refrigerator?

23 A Right.

24 Q Locker, is it a locked evidence box?

1 A The station -- the evidence room is locked,
2 but I don't remember if that was locked or not.

3 Q We'll ask Linda Brown, but would Linda Brown,
4 the evidence custodian, know how evidence was stored
5 once they get to the station?

6 A Yes, she probably would know.

7 Q I'll check with her. And the other envelope
8 is number 9, that's the bigger envelope, same question
9 do you recognize what this type of envelope would be
10 used for?

11 A Yes, it was for the kit itself.

12 Q Like other items?

13 A Sexual assault, it has other items. It has
14 -- I don't know what's indicated. It says envelope 1
15 says "Yes or No". I put "No." Envelope 2, "Underpants,
16 no".

17 Q That's okay. It has a listing of what, 12 or
18 13 things there?

19 A Right.

20 Q And you check yes or no whether it's in there
21 or not?

22 A That's correct.

23 Q If the envelope's put in there, would you
24 check yes?

1 A Yes, I would.

2 Q Now, there's one that was pubic brushing.
3 We've heard testimony that there was none done in this
4 case, but the envelope is still in there?

5 A Yes.

6 Q So that's not unusual or, I mean, that
7 doesn't cause you concern?

8 A No.

9 Q So you check yes if the envelope is if there?

10 A Yes.

11 Q You check no if you don't put the envelope in
12 there?

13 A That's right. I check no that there was no
14 envelope. With some of these things on them I put yes
15 if there was.

16 Q And some numbers what, 1 through 12, 13, how
17 many are on there?

18 A There's ten, eleven. BS, the blood sample,
19 then it has yes on the other, which is sheet from REMSA.
20 And then blank for the other, nothing's on that last one
21 so there's, like, ten, 13 items total.

22 Q And if we open that up and there's only eight
23 items there would be five that would be marked no, is
24 that -- you see what I'm saying?

1 A Yes.

2 Q I don't need the exact number.

3 A Okay.

4 Q There's an envelope missing inside that, from
5 3 to 6, and there's no 4 and 5 who the report is from,
6 and it probably says no 4 and 5, and also everything's
7 correct?

8 A Yes.

9 Q I got it. In that envelope, would it include
10 things like vaginal swabbing or vaginal swabs?

11 A If anything I receive from the nurse, I would
12 put in -- or either she or myself would put it in the
13 envelope.

14 Q Okay. Inside there there's a number 5.

15 A Okay.

16 Q I'll go ahead and pull it out.

17 A Okay. I see it there.

18 Q Number 5, what's it labeled as?

19 A Number 5 is vaginal or penile smears.

20 Q Is it a yes or a no?

21 A It's yes.

22 Q Meaning it would be -- it's sealed in here,
23 correct?

24 A Right.

1 Q When you log it into evidence --

2 A Right.

3 Q -- at Sparks PD?

4 A Yeah.

5 Q In here, number 5, is that what the envelope
6 would look like that is Exhibit 9b?

7 A Yes.

8 Q And the nurse would actually place that into
9 here, seal it up and place --

10 A Most likely she would.

11 Q And then you're responsible for taking this
12 sealed envelope with contents to the Sparks PD for
13 evidence, lock up?

14 A Right.

15 Q Do you know what happens to it after that?
16 Do you submit it for anything?

17 A I submit it that I had chain of custody, I
18 released it to the evidence. What happens beyond that,
19 I don't know.

20 Q So you don't usually take care of
21 transporting it to the lab or send it to the lab, or
22 even make the request --

23 A No.

24 Q -- to have it tested; is that correct?

1 A That's correct.

2 Q Thank you.

3 Now, your Honor, Exhibit Number 9, the
4 contents in there, are you comfortable with saying that
5 if they're checked on the front of that envelope and the
6 nurse put them in there, those would be locked into
7 evidence or put -- placed into evidence by you at Sparks
8 Police Department?

9 A Yes, I would.

10 Q That's good enough for now. In the interview
11 with the victim in this case, you had occasion to review
12 your report as to what she told you?

13 A Yes, I did.

14 Q Did she tell you his shirt was off?

15 A She said he wore it on his head like a
16 bandana.

17 Q Did she say he had silver nylon shorts on?

18 A Yes, he did.

19 Q White socks?

20 A Yes, he did.

21 Q Boots?

22 A Yes.

23 Q Small gold pinky ring on his left hand?

24 A Yes.

1 Q And then is this your wording or hers? Well,
2 or both. And what she thought was a scar?

3 A She was very aware, that's one of the reasons
4 that she talked to me and she said she put his hand out,
5 tried to trace his face, tried to trace his body.

6 Q You mean her hand?

7 A Her hands. And when she did she used --
8 excuse me. She used her right hand and traced him, his
9 back, on both sides, so she did try to get it because
10 there was only ambient light from the outside.

11 Q Right. But I'm referring more to this
12 statement what she thought was a scar. Did she say she
13 saw it or felt it?

14 A She felt it.

15 Q With her right hand or left?

16 A With this hand here (indicating), with her
17 right hand.

18 Q Is he facing her, is his back to her?

19 A He was laying on top of her, so it would be
20 he was facing her.

21 Q So her right hand feels it. Which side of
22 him would that be, then?

23 A Be his -- be his left side.

24 Q Have you seen your report where you wrote

1 right side?

2 A Yes.

3 Q So is that you saying -- well, describe it.

4 A From my report?

5 Q Yeah. Does that mean as he's facing her it's
6 on her right or does that mean it's his right side?

7 Which does it mean?

8 A She's using his left hand.

9 Q That's a right?

10 A Her right hand.

11 Q Okay. Her right hand and he's facing her, so
12 it would be his left side.

13 A But she takes her right hand and traces his
14 face, traces, to try to describe him to somebody else.

15 Q So she's using her right hand what she feels
16 on his back is on her right side?

17 A Yes.

18 Q But that would be his what?

19 A His left side.

20 Q Okay. So is that a little confusing there
21 the way that's written?

22 A I was trying to see where it was in here.
23 Yes, it is.

24 Q Because that says right side.

1 A It says, "On the right side, toward the back
2 of the rib cage".

3 Q So toward the back, toward the back here on
4 the rib cage (indicating), and it says "right side"?

5 A That's correct.

6 Q Are you saying it might be incorrect or is it
7 just confusing?

8 A No, that's what she said to me, but it's
9 confusing. It's confusing if you don't know.

10 Q Did she clarify where her right hand felt it?

11 A She was saying she was trying to trace his
12 face while he was facing her. He didn't have the
13 occasion for his back to be turned to her.

14 Q I know. Just listen to the question. Did
15 she say clearly it was her right hand that felt it?

16 A Yes.

17 Q That's all I'm asking. Then he had a
18 mustache, correct? She tell you that?

19 A I can look at my report.

20 Q I want you to look at this one. I'm sorry, I
21 don't mean to test your memory here.

22 A Thank you.

23 Q I'm right here.

24 A Okay. Approximately a day's growth of beard.

1 Q No, right above that which says mustache
2 right there?

3 A That she also stated that he had a mustache.

4 Q That's good. And day's growth of beard, did
5 you say?

6 A Approximately a day's growth of beard, yes.

7 Q Okay. Did she give you an age and a height
8 and description?

9 A She said he was a white male approximately 25
10 years of age.

11 Q Just a minute, slow down. Approximately 25
12 years of age?

13 A Right.

14 Q You don't have 20 to 25 in there, correct?

15 A No.

16 Q 25. Go ahead.

17 A Approximately five six. He's very slender
18 with dark hair.

19 Q Okay. Thank you. Do you know if she ever
20 gave you a weight, do you recall?

21 A No, I don't think she did.

22 Q Did she ever say whether he smoked a
23 cigarette or not?

24 A Yes, he did.

1 Q So we know he's a smoker?

2 A Yes.

3 Q Did she say he left with the cigarette, do
4 you recall that?

5 A No, I don't. I recall he asked for a light.

6 Q Did she say whether she knew him or
7 recognized him, either one?

8 A Neither one.

9 Q Neither one?

10 A Neither one.

11 MR. CLIFTON: Thank you. No further.

12 THE COURT: Thank you. Mr. Lindsay, Mr. Peck.

13 CROSS-EXAMINATION

14 BY MR. LINDSAY:

15 Q I am assuming I'm using the same reports, but
16 please look at them and correct me if I'm at all wrong.

17 A Okay.

18 Q Are these your reports?

19 A That's a face sheet and that's a narrative,
20 yes.

21 Q If I might very briefly -- yeah, there you
22 go. If I might very briefly leave them right there, I'm
23 gonna have to kind of look over your shoulder. I
24 apologize.

1 A Okay.

2 Q You can put them right down there. Is it
3 fair to say that you said she didn't see any weapons?
4 Is that fair to say from your report?

5 A That's what my report said.

6 Q And that she thought the door had been
7 jimmied, that there'd been a screw pulled out of the
8 track and that the door appeared to have been jimmied,
9 is that --

10 A She's talking about the sliding door in the
11 front.

12 Q Correct?

13 A Right.

14 Q Correct. Okay. And we've been over that and
15 I'm not gonna rego over what counsel has just done
16 regarding the right side, but it does, in fact, say the
17 right side towards the back of his rib cage, right?

18 A Right.

19 Q And that's simply just a mirrored backward --

20 A Right.

21 Q -- statement?

22 A Right.

23 Q But here and in both places we actually say
24 there was a two-inch scar. Is that fair to say?

1 A That's what it says here.

2 Q Was there any -- you wrote that, correct?

3 A Yes, I did.

4 Q And would you have ever written that if
5 that's not what she told you?

6 A Probably not. I don't think I'd make it up,
7 no. I wouldn't make it up.

8 Q Of course you wouldn't make it up. Okay.
9 And again, the very bottom it talks about left and
10 right-handed, and I don't know what that means. Do you
11 know what this means?

12 A That just asks if his behavior reached for
13 something with the right hand, if you think that he's
14 right-handed or left-handed, that's what it meant.

15 Q Okay. I apologize. So that she thought he
16 was --

17 A Think he's right-handed.

18 Q Okay. Okay. And above that I have
19 highlighted them, but you've checked them, I think
20 that's fair to say.

21 A Okay. It says -- this is on describing marks
22 or scars or marks or tattoos. It says, "I checked the
23 back torso, scar feature, two-inch scar, left side".

24 MR. LINDSAY: Thank you very much. Thank you

1 very much, ma'am. No further questions.

2 THE WITNESS: Thank you.

3 THE COURT: Thank you. Mr. Clifton.

4 REDIRECT EXAMINATION

5 BY MR. CLIFTON:

6 Q So there you say left side now?

7 A Yes.

8 Q We take it that's the same thing she's
9 feeling with her right hand?

10 A That's correct.

11 Q So there's an obvious inconsistency between
12 that one and the police report that said right side,
13 unless you're talking about her right side?

14 A Her right side.

15 Q Okay. Do you recall her telling you that he
16 had said he had felt bad about it to the extent that he
17 was sorry or he should just shoot himself?

18 MR. LINDSAY: Outside the scope, your Honor.

19 MR. CLIFTON: Your Honor, talking about what
20 the victim told him, that's what the whole cross was.

21 THE COURT: Overruled. You may answer.

22 BY MR. CLIFTON:

23 Q What the victim told you, I'm sorry.

24 Go ahead.

1 A He said that it was at the hospital that she
2 told me that he had been very remorseful. He sat on the
3 bed and told her he'd never done anything like that
4 before. He felt so bad he wanted to shoot himself.

5 Q Thank you. Do you have any independent
6 recollection of her saying two inches, describing two
7 inches, whether she did it with her hands and you made
8 the determination of two inches, or whether she said it?

9 A She must have said it because I wrote it, but
10 I don't know what she said. It's been a long time ago.

11 Q Did she describe it as, like, a
12 protrusion-type scar, do you know? Do you remember?

13 A No. She could just feel it.

14 Q You didn't ask her how she could feel it or
15 how she knew specifically --

16 A No.

17 Q -- that it was a scar?

18 A No, I didn't.

19 Q But earlier you said what she thought was a
20 scar so you must have had a reason to use that word.

21 A Well, she told me that, so I don't know.
22 Again, I don't know how we obtained our reports, if I
23 used her statement, if I used notes I took, I don't know
24 if -- it's been a long time. I don't keep that

1 information anymore.

2 Q Okay. Did you notice any swelling to her
3 left cheek?

4 A There was some swelling on one of her cheeks.
5 I think it was her left side.

6 Q In your report it indicates left cheek.

7 A Okay.

8 Q Is that correct?

9 A Yes.

10 MR. CLIFTON: Thank you. No further.

11 THE COURT: Thank you. Mr. Lindsay, anything
12 else?

13 MR. LINDSAY: No. Thank you very much.

14 THE COURT: Ms. Stout, thank you. You're
15 excused.

16 THE WITNESS: Thank you.

17 THE COURT: Please call the next witness.

18 THE WITNESS: All right. Thank you.

19 THE COURT: Please step forward, face the
20 clerk and raise your right hand.

21 GRETA WOYCIEHOWSKY,

22 called as a witness by the State herein,

23 being first duly sworn, was examined and

24 testified as follows:

1 THE COURT: Please take the witness stand and
2 be seated.

3 DIRECT EXAMINATION

4 BY MR. CLIFTON:

5 Q Please tell us your name.

6 A Greta Woyciehowsky, G-r-e-t-a. Last name is
7 W-o-y-c-i-e-h-o-w-s-k-y.

8 Q And your current employment?

9 A I'm employed by the City of Sparks Police
10 Department. My current position is I'm a Detective
11 Sergeant.

12 Q How long have you been with Sparks police?

13 A Sixteen-year anniversary is coming up on June
14 1st.

15 Q And back in 1994, I take it were you police
16 officer there?

17 A Yes, I was.

18 Q So you'd been there about a year at that
19 time, or so?

20 A Yes.

21 Q Do you know if you had occasion during that
22 time period to work on a case State -- well, not State
23 of Nevada versus anybody, but where the victim is
24 Candace Inman and case number 94-9292?

1 A During that time, no, I did not.

2 Q Had you ever even heard about that case in
3 1994?

4 A No.

5 Q When did you first become involved in that
6 particular case investigation through the Sparks Police
7 Department like from your supervisor being assigned to
8 it?

9 A I first learned of the case when the victim
10 made a request of the Sparks Police Department to
11 reexamine the evidence that was collected during the
12 sexual assault exam after the assault took place.

13 Q So to your knowledge, this would be Candace
14 Inman, correct?

15 A Yes, sir.

16 Q Was she aware that the case had been
17 stagnant, according to the Detective Neuharth's words,
18 in other words, it was just shelved because there was no
19 more leads to where else to go?

20 A We didn't discuss that at all.

21 Q Why would she be requesting that it be
22 resubmitted, if you know?

23 A She explained to me back in 1994 there was
24 very limited DNA analysis available, however, it had

1 passed its infancy stage and DNA profiles were able to
2 be determined, and because of that she asked for it to
3 be reexamined so that a suspect could potentially be
4 identified.

5 Q So something she could hear or even see on
6 the news or learn about DNA that it's progressed to the
7 point where maybe you could get DNA off smaller samples
8 now, something like that?

9 A That was my understanding.

10 Q All right. So what did you do?

11 A I contacted our evidence technician, Linda
12 Brown, I spoke with her about the case. Asked her how
13 to go about requesting a submittal of the vaginal swabs
14 in that case up to the lab to see if there was anything
15 usable, and she indicated to me she would take care of
16 it.

17 Q All right. Now, do you know from talking to
18 her just that time where the evidence was, like the
19 swabs, whether they had already been submitted to the
20 lab or not?

21 A We discussed that she would have to look into
22 it to find out where they were.

23 Q Did you later find out -- well, did you at
24 some point take over this case as case investigator?

1 A I did after Detective Neuharth retired.

2 Q At that time, or even thereafter, did you
3 later learn that it had been up to the lab as early as
4 1994, the evidence samples?

5 A My understanding is it was at the lab. I
6 don't know what the circumstances of it being there was.

7 Q Linda said she'd look into it. What happened
8 next?

9 A A short time later, I received a lab report
10 from Washoe County FIS indicating that a profile had
11 been extracted from the vaginal -- no, excuse me, from
12 the sperm that was located in the sexual assault exam.

13 Q Possibly from the Q-tip swab vaginal?

14 A My understanding was the sperm.

15 Q Okay. And so a DNA profile was obtained from
16 that. Do you know what year that was?

17 A That was in December of 2001.

18 Q Then what did you do?

19 A The case was then given to Detective
20 Neuharth. He had been assigned to another task force
21 and was out of the office, however, he had returned
22 because that task force was disbanded, and because he
23 was the case agent, the original case agent, when the
24 crime occurred in 1994, it was reassigned to him. And I

1 had no involvement until it was -- I think it was 2004,
2 sometime after he retired.

3 Q After he retired you had some involvement.
4 Would that include being assigned to the case by your
5 sergeant?

6 A Yes.

7 Q Who was your sergeant then, do you remember?

8 A Oh, boy. I don't recall.

9 Q But he assigned you --

10 A Yes.

11 Q -- to work on the case? And Detective
12 Neuharth was retired, or already retired?

13 A Yes.

14 Q Did you familiarize yourself more with the
15 case?

16 A I did.

17 Q In taking it on as case agent did you have
18 occasion to go through and look at what Detective
19 Neuharth had done?

20 A Yes.

21 Q Did you familiarize yourself a little bit
22 with the photo lineups, or at least notice that he had
23 shown photo lineups and photographs to the victim to see
24 if she could ID anybody in this case?

1 A Yes.

2 Q Did you notice that there were some sexual
3 offenders they were looking into? I have names if you
4 need them, but are you aware of that?

5 A Yes.

6 Q And did you want to reopen that and look at
7 those sexual offenders again? Were you satisfied in
8 what Detective Neuharth had done to either include or
9 exclude them as leads, or not?

10 A I was satisfied with the work that he had
11 done. There was nothing to indicate any of those
12 individuals were involved.

13 Q And did he, in fact, rule out those
14 individuals and basically close the case down saying we
15 have no suspect?

16 A He suspended the case. They had no leads as
17 to who may have committed the sexual assault.

18 Q And you were satisfied that it was a David
19 McNaught, I think a John Saterfield, do any of these
20 names sound familiar?

21 A The names do sound familiar.

22 Q And that Detective Neuharth had
23 satisfactorily ruled them out.

24 A Yes.

1 Q By checking at their work or check with their
2 employer, things like that?

3 A That I don't know. I know that he allowed
4 the victim to view photographs in a program of
5 photographic lineup and she was not able to pick anyone
6 out that she thought may have committed the crime.

7 Q But you were satisfied you didn't need to
8 reopen the investigation on those named individuals?

9 A Correct.

10 Q So when you're assigned to the case you think
11 in 2004?

12 A Yes.

13 Q You said that the FIS or the lab had made a
14 determination there was a DNA profile that they were
15 able to match from what you thought was the semen --

16 A Yes.

17 Q -- or the sperm. Was there any other lead or
18 any other steps that helped in your investigation from
19 the lab?

20 A I mean, when I got the lab report there was a
21 couple of other things that needed to be done in terms
22 of understanding where he lived at the time where --

23 Q Now, you're saying "he". We haven't got that
24 point yet.

1 A Okay.

2 Q All you said is you had a DNA profile.
3 That's just a good DNA profile?

4 A Okay.

5 Q Let me just jump right to are you familiar
6 with the April, 2003, report from Criminalist Jeffrey
7 Riolo?

8 A Yes, I am.

9 Q Where he does get a match, what we call a
10 hit?

11 A Yes.

12 Q On what suspect or what person?

13 A I received a lab report, or I reviewed --

14 Q Simple question. On what person?

15 A He was identified as Frank Peck.

16 Q Thank you. Did you investigate that person?

17 A Yes, I did.

18 Q Now, you said you were gonna do some followup
19 to find out where he lived. You mean at the time in
20 '94?

21 A Yes.

22 Q All right. Did you do other investigative
23 searches or other things that a detective would do to
24 try to find out, you know, more about that person?

1 A Yes.

2 Q Did there come a point in time where you
3 requested a seizure order --

4 A Yes.

5 Q -- on that person?

6 A Yes.

7 Q Did you attempt to obtain that with the
8 assistance of the District Attorney's office?

9 A Yes.

10 Q Would that have been myself?

11 A Yes.

12 Q Do you remember the date or the year even?

13 A It was -- the seizure order was requested in,
14 I believe it was December of 2004.

15 Q In the first one?

16 A Yes.

17 Q Do you know what judge you made the
18 application to?

19 A It was Judge Elliott.

20 Q District Court Judge here in Washoe County?

21 A Yes.

22 Q Did you request to obtain photographs from,
23 at least the waist up anyway, with Frank Peck without
24 his clothes on?

1 A Yes.

2 Q And for what purpose?

3 A Originally the victim had indicated that she
4 recalled some sort of scar on his upper torso.

5 Q Do you remember she said she saw the scar or
6 felt it?

7 A Felt the scar.

8 Q Or both?

9 A Felt the scar.

10 Q Did you interview her at all?

11 A I spoke with her. I did not do a formal
12 interview with her.

13 Q Did she ever give you a dimension or a
14 description of the scar or whatever?

15 A She gave a description in the report.
16 However, she did not give me a description.

17 Q Do you remember a description?

18 A It was about a two-inch scar.

19 Q Was that to Peggy Stout --

20 A Yes.

21 Q -- you recall? Okay. But she didn't
22 reiterate that to you.

23 A I don't recall conversation like that, no.

24 Q Did she say whether it was a protrusion or,

1 in other words, a bump-type scar or an indentation or?

2 A My memory was raised.

3 Q Raised. Okay. So when you go down or when
4 you determined where Mr. Peck is, it was within Washoe
5 County? Yes or no.

6 A No.

7 Q Was it in Nevada?

8 A Yes.

9 Q When you went to Mr. Peck outside of Washoe
10 County and executed the seizure on him, did you
11 participate in taking these photographs of Mr. Peck?

12 A I believe I did, limited, though.

13 MR. CLIFTON: Okay. If I can have two more
14 marked as next in order, your Honor?

15 THE COURT: You may.

16 COURT CLERK: 17 and 18.

17 (Exhibit 17 & 18 are marked.)

18 BY MR. CLIFTON:

19 Q Handing you what's been marked as 17 and 18.
20 Do you recognize this portion of Mr. Peck's body
21 depicted in these photographs?

22 A Yes.

23 Q And on 18, I think it is, clearly looks like
24 a female hand. Do you know that's yours or Linda Brown,

1 or who that is?

2 A That's my hand.

3 Q Okay. So in 2004, where you're executing the
4 seizure order outside Washoe County, you're looking at
5 his which side, left or right?

6 A This, his left side.

7 Q Left side to back area, more in the back or
8 close to the back?

9 A It seems to me that it was, hum, in between
10 the front and the back torso maybe, like, directly below
11 his armpit.

12 Q Do you know where shoulder blade is up here
13 (indicating)?

14 A Yes.

15 MR. CLIFTON: By the way, before I forget.

16 (Conference between attorneys.)

17 MR. CLIFTON: Your Honor, before I forget,
18 there's an Exhibit Number.

19 MR. LINDSAY: 14.

20 MR. CLIFTON: It's 13, actually.

21 MR. LINDSAY: Sorry.

22 MR. CLIFTON: I don't remember whose copy this
23 was, but there was a problem with the exhibit as far as
24 there's a rip or something's been written on it or -- so

1 I don't know what you call it. I found cleaner copies
2 that don't have it, your Honor, I'd like to replace.

3 THE COURT: All right. You may. Any
4 objection?

5 MR. LINDSAY: No, your Honor.

6 THE COURT: Thank you. Just substitute the
7 exhibits.

8 MR. CLIFTON: As number 13. Thank you.
9 Should I leave them both with the Court?

10 THE COURT: No, just withdraw one and
11 substitute the other.

12 MR. CLIFTON: Number 13. Thank you, your
13 Honor.

14 BY MR. CLIFTON:

15 Q Do you recall why that photograph was taken?

16 A I'm sorry. Say again, please?

17 Q Do you recall -- well, when you were there
18 executing seizure order were you looking for types of
19 defects, or protrusions or scars, things like that on
20 Mr. Peck's left side?

21 A Yes.

22 Q And in the positive composite, if you happen
23 to see it during your investigation of this case, and
24 your familiarity with the file, her description was left

1 side shoulder blade, I'm using the wrong one here, but
2 left side shoulder blade. Are you aware of that?

3 A Yes.

4 MR. LINDSAY: Thank you, counsel.

5 BY MR. CLIFTON:

6 Q This one comes in a little better. I don't
7 know what happened to that one. Shoulder blade. Okay.
8 So you were looking on the left side back flank area,
9 maybe under the shoulder blade where the picture's
10 taken?

11 A Yes.

12 Q And it's somewhere between the front and the
13 back. Let's just call it the side. Would that be fair?

14 A Yes.

15 Q And what would you describe that was
16 photographed there that depicted and a ruler was placed
17 next to this and whatever, about a centimeter long or
18 so?

19 A A raised reddened defect.

20 Q Okay. At that time, I guess you're just
21 calling it a defect, we don't know really what it is on
22 his body.

23 A I don't know what it is. I don't think I
24 could accurately say what it is.

1 MR. CLIFTON: Two more, I think. If I can
2 have these two marked, your Honor, as next in order?

3 THE COURT: You may.

4 COURT CLERK: 19 and 20.

5 (Exhibits 19 & 20 are marked.)

6 BY MR. CLIFTON:

7 Q Going to hand you two more photographs, and
8 these are getting closer up here. They're upside down,
9 19 and 20, where the ruler is right side up and look --
10 go ahead and look at these two that's also your hand
11 there in the photograph.

12 A Yes, it is.

13 Q Right. Now, if you look closely on the left
14 side of those two photographs you can see the defect
15 you've already described in 17 and 18, correct? Just
16 barely on the other side of the ruler?

17 A Oh, yes.

18 Q So this is a little further to the back from
19 where the defect was, correct?

20 A Yes.

21 Q And this is another picture taken, or two,
22 actually, with a measurement tape or a ruler or whatever
23 we want to call it, correct?

24 A Yes.

1 Q Can you look closely there, and I'm going to
2 put one up on the monitor, you have the other one, you
3 have to look pretty closely. See what I have on the
4 monitor in front of me there? Can you see that?

5 A Yes.

6 Q Now, this picture with the ruler in it that
7 both you and I are looking at, they're very similar,
8 number 19 and 20 was not taken for purpose of the mole;
9 is that correct?

10 A No, it was not taken for the purpose of
11 identifying the mark.

12 Q Because the mole is actually just behind the
13 ruler on the left side?

14 A Yes.

15 Q And here (indicating) we see a mark linear,
16 would you agree with that, you know, it's more of a line
17 than a circle? How would you describe it? Do you see
18 in the monitor there?

19 A I can't see anything that's easily
20 identifiable.

21 Q This picture was taken by you or Ms. Brown?

22 A Ms. Brown took the photograph.

23 Q Okay. So you submit the what we call a
24 return for seizure order; is that correct?

1 A Yes.

2 Q Did there come a point in time you requested
3 another seizure order?

4 A Yes.

5 Q When was that?

6 A That was approximately a year later, December
7 of 2005.

8 Q Did you go through Judge Elliott again?

9 A No.

10 Q What judge did you apply to?

11 A I applied to First Judicial Court, Judge
12 Maddox in Carson City.

13 Q William Maddox?

14 A Uh-hum, yes.

15 Q Is that where it was your understanding Mr.
16 Peck would be?

17 A Yes.

18 Q All right. And was that at my request?

19 A And was that a what?

20 Q Was that at my request?

21 A Yes.

22 Q There were a number of reasons you did the
23 seizure order, made another application?

24 A Yes.

1 Q Some of which being my request?

2 A Yes.

3 Q Did I request additional similar pictures or
4 request that you request that from the judge to take
5 more pictures of his back without clothes?

6 A Yes.

7 Q And did you see that or those or either of
8 those defects again on his back?

9 A When I went to -- when I participated in the
10 second seizure order, Detective Fiore was there with me,
11 along with evidence technician Linda Brown, and he was
12 present, directly present more so than I was at the time
13 that the photographs were being taken with the exception
14 of the photographs depicting his height.

15 Q I lost kind of where you were going versus
16 where I was going.

17 THE COURT: You didn't see Mr. Peck's back on
18 the second?

19 THE WITNESS: I don't recall that. I recall
20 assisting her with documenting his height.

21 MR. CLIFTON: I see.

22 THE WITNESS: Right. I wasn't directly
23 present right there. I don't recall seeing him the
24 second time.

1 BY MR. CLIFTON:

2 Q I got you. But you think Detective Fiore and
3 Ms. Brown might have been doing that?

4 A Ms. Brown definitely, and Detective Fiore was
5 more of a participant.

6 Q But it was part of the seizure order,
7 correct?

8 A Yes.

9 Q So do you even recall or know whether that
10 defect, you called it, was still on his back?

11 A I don't.

12 Q I'll check with the others, then. Did there
13 come a point in time where -- well, did you get
14 promoted? Did you get promoted?

15 A Yes, I did.

16 Q To?

17 A Sergeant.

18 Q Do you know when or what year?

19 A I do. May of 2005.

20 Q Oh, I see. So how did Detective Fiore get
21 involved, then?

22 A When I left the detective division in late
23 May, I resolved most of my cases with the exception of a
24 few, this being one of them. Detective Fiore had been

1 accompanying me to, for instance, the first seizure
2 order and had some knowledge about the case, and so I
3 passed it along to him. However, I still had quite a
4 bit of knowledge about the case and it wasn't until
5 after the second seizure order, I think, that Detective
6 Fiore did a lot more investigation at that time and
7 became more responsible for the case.

8 Q So if the '05 seizure order would have been
9 December of '05, so you were kind of moving on, he was
10 coming in?

11 A Yes.

12 Q And so when everyone went down to do that
13 seizure order, he took an active role in it also?

14 A Yes.

15 Q But you accompanied?

16 A Yes.

17 MR. CLIFTON: Thank you. No further.

18 THE COURT: Thank you. Mr. Lindsay.

19 CROSS-EXAMINATION

20 BY MR. LINDSAY:

21 Q Did you find the two-inch scar?

22 A No.

23 Q Did you look thoroughly?

24 A I think so.

1 MR. LINDSAY: Thank you very much.

2 THE COURT: Thank you. Mr. Clifton.

3 MR. CLIFTON: Thank you.

4 THE COURT: Thank you. Detective
5 Woyciehowsky, you're excused.

6 Please call the next witness.

7 MR. CLIFTON: Your Honor, I apologize. There
8 was just one question I didn't ask. Is it possible to
9 reopen?

10 THE COURT: You may. Go ahead.

11 MR. CLIFTON: Thank you.

12 REDIRECT EXAMINATION

13 BY MR. CLIFTON:

14 Q Looking at one of your reports, I thought it
15 was Miss Stout's. It was your report, actually. Do you
16 recognize that report?

17 A Yes.

18 Q All right. Let me ask you a question about
19 it. Do you recall whether she ever indicated that he
20 asked for a cigarette?

21 A It was in the report, yes.

22 Q And did she say what happened to the
23 cigarette that he smoked, did we ever find that, do you
24 know what happened?

1 A He walked out the door with it.

2 Q Left with it?

3 A Yes.

4 Q Still having a cigarette --

5 A Yes.

6 Q -- with him. Did she ever mention, to your
7 knowledge, that he might have had a weapon, do you know?

8 MR. LINDSAY: Objection. I think we're in
9 some kind of hearsay. I mean, I apologize to counsel,
10 but I don't believe this is the report of the witness.
11 Am I missing this? Isn't she reporting what other
12 people reported to her?

13 MR. CLIFTON: The victim, yes.

14 MR. LINDSAY: I apologize, I misunderstood the
15 question. I apologize, your Honor.

16 THE COURT: Thank you.

17 MR. LINDSAY: Thought we were referring to a
18 previous police report.

19 BY MR. CLIFTON:

20 Q This is your own police report?

21 A That is mine and I did speak with the victim
22 about the cigarette.

23 MR. LINDSAY: I apologize.

24 BY MR. CLIFTON:

1 Q Do you remember from the investigation in
2 this case her indicating that she thought he might have
3 had a weapon such as a knife? Do you remember that at
4 all?

5 A Yes.

6 Q Did she say where she thought that knife was
7 on his person?

8 A Potentially in his sock which was pulled up
9 his leg.

10 Q But he didn't pull the knife or she's not
11 definite?

12 A That I don't know.

13 MR. CLIFTON: Thank you. No further.

14 THE COURT: Mr. Lindsay, any questions?

15 MR. LINDSAY: Just one half second, your
16 Honor, one half second.

17 THE COURT: All right.

18 MR. LINDSAY: Thank you, your Honor. No
19 questions. Thank you very much.

20 THE COURT: Thank you. Detective
21 Woyciehowsky, you're excused.

22 Please call the next witness.

23 MR. CLIFTON: Detective Fiore.

24 Please step forward, raise your right hand, be

1 sworn in by the clerk.

2
3 LINDA BROWN,

4 called as a witness by the State herein,
5 being first duly sworn, was examined and
6 testified as follows:

7
8 THE COURT: Ms. Brown, please take the witness
9 stand and be seated.

10 DIRECT EXAMINATION

11 BY MR. CLIFTON:

12 Q Please tell us your name.

13 A Linda Brown.

14 Q Spell your last.

15 A B-r-o-w-n.

16 Q And your current occupation?

17 A Property and evidence technician, City of
18 Sparks.

19 Q Is that with City of Sparks Police?

20 A City of Sparks Police, yes.

21 Q How long have you been with the Sparks
22 police?

23 A Since 1988.

24 Q So almost 20 years. How long have you been

1 the evidence custodian?

2 A Since late 1995.

3 Q Directing your attention to August of 1994,
4 would you be familiar with evidence that was collected
5 through the Sparks Police Department in that year?

6 A I would be the custodian of that evidence.

7 Q I thought you said you became the custodian
8 in '95?

9 A In 1994, no. But after 1995, late 1995, it
10 would be in my custody, yes.

11 Q Right, but I agree. But I'm talking about in
12 1994 -- okay. I see what you're saying. Do you know
13 the procedure? Did you as a police officer in the '80's
14 and into the '90's know the procedures of evidence that
15 would be booked into the Sparks Police Department even
16 before '95?

17 A Yes. We would at that time, prior to
18 becoming an evidence technician, I was a -- a community
19 service officer, so I had opportunity to go out to the
20 scene and collect evidence and book it into the evidence
21 unit.

22 Q Perfect. So are you aware of what we call
23 sexual assault evidence kits?

24 A Yes.

1 Q Are you aware of how they look and how
2 they're logged into evidence at Sparks Police
3 Department?

4 A Yes. And on occasion I had opportunity to
5 participate in those type of cases.

6 Q I'm going to hand you Exhibits 8 and 9, 8
7 being the smaller of the two. These have been reported
8 to be sexual assault evidence kits, Part A and Part B,
9 two envelopes. Are you familiar with these at all?

10 A Yes. These are the units that we used then.

11 Q It's changed a little bit now?

12 A The envelopes have changed somewhat since
13 then and procedures have changed somewhat.

14 Q Over the years. And these would have a case
15 number on them, correct?

16 A Yes.

17 Q Like 94-9292?

18 A That would be our agency case number.

19 Q And they'd also have, generally speaking, a
20 number that would correspond with, say, Saint Mary's
21 hospital, things like that, the Washoe County Crime lab,
22 everywhere it goes to another as me might give it
23 another corresponding number?

24 A The kits at the time, each had unique

1 identifiers, they were numbered. And this particular
2 case the victim's assault kit they would have the R and
3 a number following after that. And these were unique to
4 each other.

5 Q So when you get something like that logged
6 in, say, to the refrigerator which would be Exhibit A
7 because it's a blood sample?

8 A Yes.

9 Q And then into the regular evidence locker,
10 which is Exhibit Number 9, they've already been
11 testified about that, what happens to them from that
12 point?

13 A They're logged into a book in the evidence
14 unit by the officers that are booking them in, and then
15 the evidence custodian would unlock that refrigerator
16 and retrieve it, book it into the refrigerator inside
17 the locker area.

18 Q And then after that, what generally happen,
19 say, to the -- like the blood sample if it's gonna be
20 tested?

21 A If it was going to be tested we would write
22 up a work order for the Washoe County Crime Lab which is
23 where our work goes, and it would be transported up
24 there.

1 Q And then do they stay there or do they
2 routinely or sometimes come back to Sparks PD?

3 A The majority of the time they'll get
4 processed or not processed, depending on the
5 circumstances, and then be returned to us.

6 Q Can you see the chain of custody on those
7 these two items, Exhibit A and Exhibit B, and the
8 agencies they've gone through, the individuals they've
9 gone through?

10 A Yes.

11 Q Do they look like standard procedures --

12 A These are.

13 Q -- in the chain of custody?

14 A Very much so, yes.

15 Q They go to lab, they get tested, sometimes
16 they come back, things like that?

17 A They may be tested more than once, it just
18 depends.

19 Q Have you had occasion to handle these?

20 A Yes, I have. I've transported those to the
21 crime lab for processing.

22 Q Over the years or do you remember?

23 A Over the years, since I've been in there
24 they've been transported -- looking at the chain of

1 custody they've been transported several times to the
2 crime lab.

3 Q And their chain of custody and condition has
4 been preserved, secured, safe?

5 A Yes, sir, they are.

6 Q All right. Now, from 1995 on, as evidence
7 custodian there at Sparks PD, did you have occasion to
8 work on or be involved with an investigation under case
9 number 94-92, which is the same case number here as
10 those packets, in addition to what you said you did with
11 that?

12 A I was called upon to do photography and
13 collect swabs.

14 Q Is photography one of your duties as evidence
15 custodian?

16 A Yes, it is, it's a large part.

17 Q So you not only preserve the evidence in the
18 evidence locker room, you also go out and seize or take
19 evidence?

20 A Yes.

21 Q And photograph?

22 A And photograph.

23 Q That's customarily a part of your duties?

24 A It customarily is part of my duty, yes.

1 Q Going to now 2004, do you recall having an
2 occasion to be requested to accompany Ms. Greta Fye,
3 Officer Fye, on the execution of a seizure order outside
4 of Washoe County?

5 A Yes, sir, I do.

6 Q Do you know if anyone else, other than she
7 and you, or do you recall?

8 A It was myself, Detective Fye, Detective
9 Fiore.

10 Q In '04?

11 A In '04, I believe.

12 Q Okay.

13 A I can refer to my notes.

14 Q That's okay. He went with you on the later
15 one in '05 for sure, correct?

16 A Yes.

17 Q Either way, in '04, did you have occasion to
18 photograph, pursuant to a seizure order authorized by a
19 judge here in Washoe County, and photograph a person by
20 the name of Frank Peck?

21 A Yes, sir, I did.

22 Q Would that include photos of his back or
23 unclothed area of his upper torso?

24 A Yes, it did include those areas.

1 Q I'm going to show you quite a few. First of
2 all, 17 and 18, one with the ruler and one without. Do
3 you recognize a photo such as this being taken by
4 yourself?

5 A Yes, I do.

6 Q And for what purpose was that taken?

7 A I understood that the victim in this case had
8 reported an irregularity in the body of this person and
9 this was to identify that irregularity or possible
10 irregularity.

11 Q Was it detected or noted on person, do you
12 recall?

13 A It was located on his left side, left lower
14 rib between his rib and his back area.

15 Q All right. Whose hand is that, yours or Ms.
16 Fye's?

17 A That's Detective Fye's.

18 Q Okay. Detective Fye's hand there holding the
19 ruler?

20 A She was assisting me, yes.

21 Q And you were taking the photographs?

22 A Yes.

23 Q Can you describe what part of his body that
24 is, specifically from this photograph?

1 A That is the left side on the left rib cage
2 lower ribs.

3 Q Okay. You're familiar with the pectoral or
4 chest muscle?

5 A That would be in the front part of the chest.

6 Q You can actually touch the screen. Go ahead
7 and touch the screen.

8 A Oh. So it is. The chest would be there
9 (indicating).

10 Q That's fine. So that's the very low --

11 A That would be pectoral/nipple area above
12 that.

13 Q Okay. So directly across from the lower pec
14 going on his left side, correct?

15 A Left side.

16 Q And go around toward the back --

17 A Towards the back, yes.

18 Q -- is what you see, is this (indicating)
19 whatever you want to call it, correct?

20 A It looks like a mole to me, but it could be a
21 growth of some kind.

22 Q All right. And we'll call it a mole. About
23 a centimeter, almost a centimeter long, correct?

24 A Uh-hum.

1 Q All right. Why was that photographed?

2 A I was told by the investigators that the
3 victim had reported feeling a feature on that side of
4 this person's body, and this was done for a reference.

5 Q So that's clear that's what the seizure order
6 was for this aspect --

7 A Was requested.

8 Q -- was for. Now, 19 and 20, 19 and 20 --
9 just a second. I'm handing you 19. 20's on the screen,
10 they're very similar pictures, and here's the ruler, and
11 I'm referring to this right here (indicating). Do you
12 remember specifically this picture being taken by any
13 chance?

14 A When it was taken?

15 Q No. Do you remember it being taken or?

16 A Yes. Yes, I do.

17 Q Let's back up. Do you recognize Greta Fye's
18 hand there?

19 A That would be her fingernails, yes.

20 Q And then you recognize the ruler?

21 A Yes.

22 Q And what portion of his body is this
23 (indicating), do you recall?

24 A This is on the left back area (indicating).

1 Q Okay. Do you recall why this was taken?

2 A I took this photograph because there appears
3 to be a scar feature there.

4 Q Okay. And so -- oops. Pursuant to the
5 seizure order, you go look for any abnormalities on his
6 back?

7 A Left side was.

8 Q Was it flank or side area?

9 A Yes, sir.

10 Q And so you located, it looks like, two areas
11 that were photographed, at least, correct?

12 A Yes.

13 Q You don't know for a fact which or what, if
14 anything, the victim is actually referring to, do you?

15 A No, I do not know at that time, no.

16 Q You were told to look for, basically, any
17 types of defects?

18 A Any kind of a defect or irregularity that
19 might appear raised or give a sensation of having a
20 raised edge.

21 Q This one doesn't look very raised, but do you
22 know -- have any idea of knowing how old it is or when
23 it was caused?

24 A No, I have no idea.

1 Q You referred to it as it looks like what, a
2 scar, did you see?

3 A I call it a scar defect, appears to be.

4 Q A little bit longer than the mole, I guess?

5 A Yes.

6 Q Okay. That's why those were taken?

7 A Yes.

8 MR. CLIFTON: Thank you. Move to admit 17,
9 18, 19, and 20.

10 MR. LINDSAY: Voir dire on those if I might,
11 your Honor?

12 THE COURT: You may.

13 VOIR DIRE

14 BY MR. LINDSAY:

15 Q 18. Can you see that (indicating)?

16 A Yes.

17 Q Does that appear to be a two-inch scar?

18 A No. It is a raised item.

19 Q Kind of like maybe a mole?

20 A That's what it appears to be to me, yes.

21 Q Not a trick question. Just compared to where
22 the mole is, this is, excuse me, Exhibit 20. I might
23 have this upside down or something.

24 MR. CLIFTON: There are two.

1 MR. LINDSAY: Apologize.

2 MR. CLIFTON: It's my fault, 19, 20 got marked
3 upside down, just tucked around the number upside down.

4 MR. LINDSAY: Then I think I've got it right
5 side up. I apologize.

6 BY MR. LINDSAY:

7 Q Is this the scar area we're talking about
8 (indicating)?

9 A May I see it closer?

10 Q I'm sorry. Absolutely, absolutely,
11 absolutely.

12 A Whoops, this feature here (indicating), yes,
13 these two features appear to be a scar feature to me.
14 These lines (indicating), I'm not sure if they are or
15 not, but there are lines.

16 THE COURT: Ms. Brown, would you show the jury
17 what you pointed to, please?

18 MR. LINDSAY: Yeah, I'm sorry. I kind of need
19 you to do that for the jury.

20 THE WITNESS: All right. Let me see what I
21 can do here.

22 MR. LINDSAY: That would be very nice.

23 THE WITNESS: Have to be close.

24 MR. LINDSAY: Would that be all right? Thank

1 you very much.

2 THE COURT: That's fine. Go ahead.

3 MR. LINDSAY: Thank you, your Honor, thank
4 you.

5 THE WITNESS: I'm pointing to these areas here
6 that appear to be, perhaps, a scar feature (indicating).

7 BY MR. LINDSAY:

8 Q Ma'am, could you move to the right so that
9 the other jurors could slowly see?

10 A Can you see that that I'm pointing to here?

11 JUROR NUMBER 4: Where?

12 THE WITNESS: There's lines here (indicating).
13 This line here, do you see it?

14 JUROR NUMBER 4: Okay.

15 THE WITNESS: Can you see the lines here
16 (indicating)? These features here (indicating)?

17 THE COURT: Thank you, Ms. Brown. Please
18 resume the witness stand. The record shall reflect the
19 witness has published to the jury the Exhibits -- was it
20 18?

21 MR. LINDSAY: It was Exhibit 20, your Honor.

22 THE COURT: Thank you, Exhibit 20 indicating
23 the area she's described in her testimony. You may
24 proceed.

1 BY MR. LINDSAY:

2 Q And I'm just gonna, just because everybody's
3 seen it, it's the same exhibit, I guarantee you, Exhibit
4 20, do you remember which way the mole is from there?

5 A The mole is to the front of it. In fact --

6 Q Thank you.

7 A -- you can barely see it right here under --
8 under the edge of the rib.

9 Q Thank you very much. Okay.

10 If I have one more moment, your Honor?

11 THE COURT: You may.

12 BY MR. LINDSAY:

13 Q -- and just for the record, is 19 -- I know
14 it's marked upside down. Is that the correct side up,
15 as far as we know?

16 A That is the correct side up. This is the
17 area, right here (indicating), of his left side.

18 Q And that's, again, the portion that you
19 believe might be a scar?

20 A What I thought might be a scar feature.

21 Q Perhaps might be a scar?

22 A Perhaps be.

23 MR. LINDSAY: Okay. If I might return these,
24 your Honor --

1 THE COURT: You may.

2 MR. LINDSAY: -- to the clerk so I don't
3 leave them up somewhere else?

4 BY MR. LINDSAY:

5 Q Do you have any special training in
6 identifying scars?

7 A Only personal ones. No, not specifically,
8 no.

9 Q You didn't have a medical --

10 A Actually, I did have seven years in a medical
11 office, and nurse's training prior to this.

12 Q Okay. And did you have specialized classes
13 in scar training?

14 A No, no, I can't say that I have.

15 MR. LINDSAY: Thank you very much, ma'am.

16 THE COURT: Thank you. Mr. Clifton.

17 MR. CLIFTON: Thank you.

18 CONTINUATION OF DIRECT EXAMINATION

19 BY MR. CLIFTON:

20 Q You did another seizure order request in
21 December of 2005 almost a year later, correct?

22 A Yes, yes, I did.

23 Q And that one was outside of Washoe County
24 also, correct?

1 A Yes, sir, it was.

2 Q And it was executed in Carson City?

3 A Yes.

4 Q Approved by Judge William Maddox, a district
5 judge in Carson?

6 A Yes, it was.

7 Q And it was again to take pictures of Mr.
8 Peck's back, right?

9 A Yes, it was.

10 Q This would be Larry Peck, the same person
11 that's sitting here in the courtroom?

12 A That would be Frank Peck.

13 Q Frank Peck; is that correct?

14 A Yes.

15 Q Okay. The same man that's sitting in the
16 courtroom today?

17 A Yes. He's very similar in appearance.

18 Q He is seated where in relation to me?

19 A I'm sorry?

20 Q Seated where in relation to --

21 A To --

22 MR. LINDSAY: Your Honor, I would stipulate
23 for the record if it would help counsel.

24 THE COURT: That's fine. Go ahead.

1 BY MR. CLIFTON:

2 Q The person you executed a seizure order on in
3 2004 and again in 2005, almost a year later?

4 A Yes, sir, it is.

5 Q You're getting more pictures of the back now,
6 correct?

7 A Yes.

8 Q When you observe his left flank area again in
9 2005, did you observe the same mole-type defect,
10 whatever you want to call it? It's been referred to as
11 a mole.

12 A Yes, I did.

13 Q Has it changed much?

14 A No, it didn't look like it had changed much
15 to me.

16 Q It's still there, right?

17 A It's still there.

18 Q During these two seizure orders, did you
19 seize any evidence from Mr. Peck?

20 A At the request of the seizure order, I
21 obtained what are called victim buccal swabs or buccal
22 swabs, which is a swab of the inside of his mouth.

23 Q B-u-c-c-a-l?

24 A B-u-c-c-a-l.

1 Q It's not buckle, like buckle?

2 A Not like a belt buckle, no.

3 Q So buccal. Buccal swabs are from his mouth,
4 you said?

5 A Are from the inside of the mouth, yes.

6 Q For what purpose?

7 A For testing for DNA. It's a great source for
8 testing for DNA.

9 Q Do you know or are you aware of how we used
10 to get samples for DNA from a person?

11 A Mostly from blood in the old days. Well --

12 Q The old days, okay.

13 A Ten years ago is old days in this.

14 Q So ten years ago or so we'd take blood from a
15 person either by consent or with a seizure order?

16 A Seizure order then, yes.

17 Q And here you don't have to be as invasive
18 taking blood, you can do it from saliva?

19 A From saliva. Actually, it's the cheek
20 tissue, epithelial cells within the cheek. Yeah,
21 they're very easy to obtain.

22 Q Did you do that type of swabbing?

23 A I do.

24 Q With what?

1 A We use, basically, it looks like a large
2 Q-tip, about seven inches long, they're sterile, each
3 and every one of them is sterile, and we will insert
4 them inside the mouth and victim or usually swab the
5 inside of their cheek to obtain that material.

6 Q You did that in both '04 and '05?

7 A Yes, I did.

8 Q They're already marked, I think. Yeah?
9 I'll hand you Exhibits 10 and 11.

10 Do you want these, Bruce?

11 MR. LINDSAY: Half a second.

12 BY MR. CLIFTON:

13 Q Exhibit Number 10, first of all, and then
14 number 11. Look at these two and tell me if you
15 recognize them.

16 A These are both my evidence tags with chain of
17 custody and the envelopes that contain the collected
18 items.

19 Q The items we just discussed?

20 A The buccal swabbings, yes.

21 Q Do you have one there for '04 and one there
22 for '05.

23 A Yes, I do.

24 Q Which one's '04? Exhibit Number 10, which is

1 the yellow sticker?

2 A Number 10 is the -- double check. Yes, '04.

3 Q And then number 11?

4 A Is the '05 envelope.

5 Q You do the swabbing yourself?

6 A Yes, sir, I do.

7 Q How many swabs or Q-tips?

8 A Usually two.

9 Q Any reason why?

10 A Just to have a backup.

11 Q So if we --

12 A In case there's more nuclear material that's
13 needed in --

14 Q If we consume one in testing you have
15 another?

16 A We'd have a backup, yes.

17 Q Do you know if that's similar to how they do
18 it in sexual assault evidence kits for vaginal exam?

19 A I believe they use two swabs.

20 Q We can -- if we have --

21 A I haven't actively taken any swabs from
22 sexual assault victim, but I recall one to two swabs.

23 Q Okay. So two swabs would be customary.

24 A Yes.

1 Q And you did that in '04 and '05 on Mr. Peck?

2 A Yes, I did.

3 Q What do you do with the swabs?

4 A They're packaged in a -- in a clean, new
5 sterile box and then packaged in an envelope to be
6 presented, stored, and then presented to a lab for
7 processing.

8 Q Did you determine if that Exhibit 10 and
9 Exhibit 11 for '04 and '05 that you processed in that
10 way?

11 A Well, the boxes would be inside, and...

12 Q But from the chain of custody on the outside
13 even.

14 A Yes, they were booked into evidence and then
15 they were -- well, it looks like the '04 one did not go
16 to -- let me double check here. Yes, it did go to the
17 lab. They both went to the lab.

18 Q But let's start before we get to the lab, do
19 you see your name and identifying features or signature
20 on those as booking them in the first place?

21 A Yes. My identifying number, LB1, which are
22 my initials, and the item number, which is the first
23 item I collected for Mr. Peck, chain of custody, and
24 then was brought back and booked into the Sparks PD

1 unit.

2 Q You're the one that prepared these documents
3 initially, correct?

4 A Yes, this is my handwriting and my paperwork.

5 Q Both in '04 and '05?

6 A Exhibit 10 and 11.

7 MR. CLIFTON: Move to admit, your Honor.

8 THE COURT: Any objection?

9 MR. LINDSAY: No.

10 THE COURT: They are admitted.

11 MR. CLIFTON: Thank you.

12 (Exhibits 10 & 11 are admitted into evidence.)

13 BY MR. CLIFTON:

14 Q Who does the request to have them taken to
15 the lab?

16 A Usually a detective will request it.

17 MR. LINDSAY: Your Honor, if I might just have
18 one moment with counsel?

19 THE COURT: Miss Brown, you referred to
20 Detective Fye. Is she now known as Woyciehowsky?

21 THE WITNESS: Woyciehowsky. She's Detective
22 Sergeant Woyciehowsky.

23 THE COURT: The lady who just testified before
24 you.

1 THE WITNESS: Yes.

2 THE COURT: Okay. Thank you.

3 MR. CLIFTON: Your Honor, like maybe the other
4 items of evidence we're not going to be introducing by
5 stipulation, we may not introduce any evidence, so I
6 withdraw the motion just because there's certain
7 writings on some of the exhibits.

8 THE COURT: All right. So you're not offering
9 those two exhibits at this time?

10 MR. CLIFTON: No.

11 THE COURT: All right. Go ahead. I agree
12 with counsel. All right. Thank you.

13 MR. CLIFTON: I have no further questions of
14 this witness.

15 THE COURT: Thank you. Mr. Lindsay, any
16 further questions of Ms. Brown?

17 MR. LINDSAY: Very, very briefly.

18 CROSS-EXAMINATION

19 BY MR. LINDSAY:

20 Q Didn't find the two-inch scar other than 19
21 and 20, those are the exhibits that I submit to you that
22 you showed to the jury.

23 A I'm sorry? Are there other scar features?
24 I'm sorry I missed your question.

1 Q The extent of a two-inch scar that you found
2 in your examinations would be reflected by Exhibit 19
3 and 20, the ones that you showed to the jury. Is that a
4 fair statement?

5 A I don't know that they appear to be two-inch
6 scars. I'd have to review the photograph.

7 Q Okay.

8 A They're scar features.

9 Q I apologize. Did you find a two-inch scar?

10 A I found a scar feature.

11 Q And those are depicted --

12 A In those photographs.

13 Q -- as well as you could in those
14 photographs. Is that fair to state?

15 A Yes.

16 Q And in 1994, you, in fact, were not involved
17 in the chain of custody. Is that fair to say?

18 A Not in 1994, no.

19 MR. LINDSAY: Thank you very much.

20 THE COURT: Thank you. Mr. Clifton, anything
21 further?

22 MR. CLIFTON: No additional.

23 THE COURT: Ms. Brown, thank you. You're
24 excused.

1 We'll take the afternoon recess at this time.

2 (Recess taken.)

3 THE COURT: Please call the next witness.

4 MR. CLIFTON: State would call Detective
5 Fiore. Detective, please step forward, face the clerk,
6 raise your right hand.

7

8 STEVE FIORE,

9 called as a witness by the State herein,
10 being first duly sworn, was examined and
11 testified as follows:

12

13 THE COURT: Detective Fiore, please take the
14 witness stand and be seated.

15 THE WITNESS: Yes, sir.

16

DIRECT EXAMINATION

17 BY MR. CLIFTON:

18 Q Sir, please state your name.

19 A My name is Steve Fiore, spelled F-i-o-r-e.

20 Q Your occupation, please?

21 A Police Officer for Sparks Police Department.

22 Q How long have you been with Sparks Police?

23 A Eighteen years.

24 Q During the 18 years, have you gone through

1 different units like Detectives or any specialized
2 units?

3 A Yes, I have. I currently am assigned to
4 Detective Division.

5 Q How long have you been a detective?

6 A Five years.

7 Q Directing your case specifically to a case
8 number 94-9292 involving a victim by the name of Candace
9 Inman, are you familiar with this particular
10 investigation?

11 A Yes, I am.

12 Q Did it involve a sexual assault
13 investigation?

14 A Yes, it is.

15 Q When did you first become assigned or
16 involved in it?

17 A Probably around 2004, maybe late 2003.

18 Q Do you remember the circumstances of why you
19 became assigned to it if it's such an old case?

20 A The original case was a Detective Neuharth,
21 who retired. The case was given to Detective
22 Woyciehowsky who became a sergeant, and when she became
23 a sergeant, I inherited the case.

24 Q In late '03 or early '04?

1 A '04, correct.

2 Q Were you working along side of her with her,
3 or were you the case agent now?

4 A I worked with her, but I was the case agent
5 at that point.

6 Q Do you recall having information that there
7 was a particular lead or particular hit on someone in
8 2003?

9 A Yes.

10 Q Was there a particular person by name?

11 A Yes. Frank Peck.

12 Q Did you undertake an investigation
13 surrounding that person?

14 A Yes, I did.

15 Q And was that based upon a DNA hit?

16 A Yes, it was.

17 Q From the lab?

18 A From Washoe County Lab, correct.

19 Q Were you familiar with Detective Neuharth
20 also undergoing some more investigation after that lead
21 or after that hit involving, say, photographic arrays or
22 pictures to present to the victim?

23 A Yes, I do. When that first happened, he did
24 a photo lineup because we had identified an individual

1 and we had never had that circumstance before in this
2 case, so he did a photo lineup with that person with
3 Frank Peck in the lineup.

4 Q And you were aware she was not able to
5 identify anyone in that lineup?

6 A That's correct, she did not identify him.

7 Q As being the assailant?

8 A Correct.

9 Q From that point, did you go further in the
10 investigation through other possible leads or other
11 information to find out about Mr. Peck?

12 A I did some investigation as far as
13 information we had about the fact that if he smoked
14 cigarettes at the time, and even if he was living in the
15 area at that time or where he was living, so those kind
16 of things.

17 Q So ten years later now you're looking back on
18 background information from 1994?

19 A Correct.

20 Q Did you have occasion to locate any
21 relatives, say, ex-wives, anything like that?

22 A Yes, I -- he was married to a person
23 identified as Leslie Peck at the time. And I did locate
24 her. She has since remarried and moved on with her

1 life, but she, obviously, remembered him because she
2 lived with him, was married to him for several years.

3 Q During what time period marriage?

4 A I don't remember the exact dates, but I know
5 it was into the '80's and '90's, late '80's, early
6 '90's.

7 Q Through 1995?

8 A Correct, yes.

9 Q Possibly up to 1996?

10 A 1996.

11 Q Did you have occasion to interview her or
12 speak to her?

13 A Yes, I did.

14 Q Did you have occasion to speak to her or
15 interview the victim in this case, Candace Inman?

16 A Yes, I did speak with Candace also.

17 Q Were you able to determine whether or not Mr.
18 Peck through Ms. Crowder or other relatives or other
19 people was a smoker?

20 A Yes. As a matter of fact, both Candace and
21 Leslie identified him as someone who smoked cigarettes
22 at that time.

23 Q Candace Inman doesn't know Mr. Peck, did she?

24 A No, she didn't know, she just knew that that

1 person at that time had a cigarette, smoked a cigarette.

2 Q Did Ms. Crowder and/or others indicate that
3 he is or isn't a smoker?

4 A That he is a smoker.

5 Q In your investigation in this case, did you
6 make -- just yes or no -- make a determination as to
7 whether Mr. Peck has a twin brother or sister?

8 A Yes, I did.

9 Q What was the result of that investigation?

10 A That there was no twin involved with Mr.
11 Peck.

12 Q That he doesn't have one?

13 A He does not have one.

14 MR. CLIFTON: Your Honor, this is an official
15 public document of a certification seal. It's Exhibit
16 Number 7, birth certificate. Move to admit.

17 MR. LINDSAY: It's been previously provided to
18 counsel, your Honor. No objection.

19 THE COURT: All right. It is admitted. What
20 Exhibit Number, please?

21 MR. CLIFTON: 7.

22 THE COURT: Thank you. Exhibit 7 is admitted.

23 (Exhibit 7 is admitted into evidence.)

24 BY MR. CLIFTON:

1 Q Take at look at that, Detective. Does that
2 birth certificate seem to apply to Mr. Frank Peck born
3 in 1962?

4 A Yes, it is.

5 Q March, I think, of 1962?

6 A March, 1962, March 2nd.

7 Q And does it indicate whether there was a twin
8 during this birth or not?

9 A It does say specifically that this is a
10 single male birth.

11 Q Indicating no twin or triplet or?

12 A That's correct.

13 Q From the State of California?

14 A Yes.

15 Q Correct?

16 A Right.

17 Q Were you involved in the seizure orders that
18 were applied for in December of 2004 and December of
19 2005?

20 A Yes, I did, I participated in both those.

21 Q Did you go to the location by participating
22 -- did you say -- do you mean you participated in
23 applying for them with the judges going to the scene to
24 execute them, or both?

1 A In 2005, I was involved with the whole
2 procedures going to the judge and then actually serving
3 the order. In 2004, I just helped orally serve the
4 order.

5 Q Let's start with 2004, then. Do you remember
6 was that outside Washoe County? Just yes or no.

7 A Yes, it was.

8 MR. CLIFTON: If I can have this marked as
9 next in order, your Honor?

10 THE COURT: You may.

11 COURT CLERK: Exhibit 21.

12 (Exhibit 21 is marked.)

13 BY MR. CLIFTON:

14 Q Thank you. I'll hand you Exhibit 21,
15 Detective. Tell me if you recognize this picture or
16 yourself within that picture, or both.

17 A Yes, I do recognize this picture.

18 Q Is that from 2004 or 2005, to your knowledge?

19 A 2005.

20 Q Figured that out when I was talking, sorry
21 about that. Let's go, then, to 2005. And was one of
22 the applications for that seizure order to request that
23 you be allowed to measure his height, Frank Peck?

24 A That was correct. That was on the seizure

1 order that we're to measure his height at that time.

2 Q Does Exhibit Number 21 depict you engaging in
3 that process?

4 A Yes, it does.

5 Q Who else in the photograph?

6 A That is Sergeant Woyciehowsky and myself.

7 Q I don't think we've ever spelled that name
8 for the court reporter. Can you spell her married name?

9 A No. If I spelled it, I'd spell it wrong, so.

10 THE COURT: I think it's W-a-y-b-i-e-s-k-y,
11 isn't it?

12 MR. CLIFTON: No, it's not B, I know.

13 THE WITNESS: I think it's W-o-y-c-h.

14 THE COURT: W-o-y?

15 MR. CLIFTON: W-o-y, I know that. I'll get it
16 for the court reporter. Sorry.

17 BY MR. CLIFTON:

18 Q All right. So Detective Fye, that's what
19 we've been calling her.

20 A Okay, right.

21 Q You, and who else?

22 A And Frank Peck are in the picture.

23 MR. CLIFTON: Exhibit Number 21, move to
24 admit, if it's not.

1 MR. LINDSAY: No objection, your Honor.

2 THE COURT: It is admitted.

3 MR. CLIFTON: Thank you.

4 (Exhibit 21 is admitted into evidence.)

5 BY MR. CLIFTON:

6 Q Can you see on your monitor there?

7 A Yes.

8 Q Fortunately, it's too long a photograph,
9 that's as far back as I can go. Exhibit Number 21 at
10 the bottom shows he's wearing shoes or boots?

11 A Some type of shoe, yes.

12 Q Okay. All right. And then so this is
13 measured from the floor and we're going up, correct?

14 A That's correct.

15 Q This is Exhibit Number 21. How tall did you
16 determine he was?

17 A Five feet seven inches to five feet seven and
18 a half inches.

19 Q All right. Now, this doesn't show up real
20 good on this, but it will be in evidence. You see the
21 black box there at the bottom of the measuring tape on
22 this right here (indicating)?

23 A Right.

24 Q That's six feet, correct?

1 A That's five feet.

2 Q Oh, five feet, sorry. Five feet, correct.
3 Just count the inches up and you have five seven to five
4 foot seven and a half, correct?

5 A Correct, just over five feet seven inches.

6 Q Okay. You were also present when they took
7 pictures, or did you assist in them taking pictures of
8 his back area?

9 A I was present when this picture was taken,
10 correct.

11 Q And in both '04 and '05?

12 A In both '04 and '05.

13 Q Did you see the same type of, we'll call it a
14 mole, the defect on his flank area?

15 A Yes, I did, both times.

16 Q Did you have occasion to check on Mr. Peck's
17 height and weight over the years?

18 A Yes. I looked at some different forms, DMV,
19 and some other forms that his height was listed during
20 that time frame.

21 Q Let's say from a period of about
22 approximately seven years, '89 to '96, can I have you
23 concentrate on that time frame?

24 A Okay.

1 Q Did you see his height in any of these public
2 documents?

3 A On two or three different documents I saw his
4 height as five feet six inches, and that was consistent
5 on all of them.

6 Q You never saw anything other --

7 A No, I never saw anything other.

8 Q As far as his height from your investigation
9 of this case, talking to witnesses and investigating
10 these DMV records over those years, did you determine
11 something happening to his weight one way or the other?

12 A Yeah, the weight would change anywhere from a
13 hundred fifty to a hundred sixty-five pounds.

14 Q Going which direction over time?

15 A It would start lower at 150 and then moving
16 up and was, like, 165.

17 Q Could you even tell any difference between
18 '04 and '05, or do you recall when you saw him in those
19 two times if he's been losing or gaining weight?

20 A Between those two times, no, I don't recall
21 any major difference that I noticed.

22 Q So five foot seven, 150 to 165 over that
23 seven-year period?

24 A Correct.

1 Q And generally speaking, gaining weight over
2 that?

3 A Starting lower and gaining weight.

4 MR. CLIFTON: Thank you, sir. No further.

5 THE COURT: Thank you. Mr. Lindsay.

6 CROSS-EXAMINATION

7 BY MR. LINDSAY:

8 Q Did you say you had anything to do with the
9 1994 investigation?

10 A Did I have anything to do with it? I mean,
11 actually what was happening? No. I mean, I reviewed
12 the case, but I did not.

13 Q No, I understand that in this century you
14 reviewed the case.

15 A Yes, correct.

16 Q I'm just simply asking in 1994 you were a
17 police officer?

18 A I was a police officer, yes.

19 Q But you were not in any way, shape, or form
20 involved with this?

21 A No, sir, not at all.

22 MR. LINDSAY: Thank you very much.

23 THE COURT: Thank you. Mr. Clifton.

24 MR. CLIFTON: No further.

1 THE COURT: Thank you, Detective Fiore, you're
2 excused. Please call the next witness.

3 MR. CLIFTON: Thank you, sir.

4 THE WITNESS: Yes.

5 MR. CLIFTON: State would call Maria Fassett
6 to the stand, please.

7 THE COURT: Counsel, could we run over the
8 Exhibit list while you're --

9 Ms. Fassett, please step forward, face the
10 clerk, raise your right hand and be sworn as a witness.

11 THE COURT: Counsel, could you return the
12 exhibit?

13 MARIA FASSETT,

14 called as a witness by the State herein,
15 being first duly sworn, was examined and
16 testified as follows:

17
18 THE COURT: Please take the witness stand and
19 be seated.

20 DIRECT EXAMINATION

21 BY MR. CLIFTON:

22 Q Please tell us your name.

23 A My name is Maria Fassett.

24 Q Spell your last.

1 A F-a-s-s-e-t-t.

2 Q And your occupation?

3 A I'm employed as a criminalist over at the
4 Washoe County Sheriff's Office in the crime laboratory.

5 Q How long have you been so employed?

6 A Twenty-five years now.

7 Q What type of education do you have in that
8 regard?

9 A I have my Bachelor of Science degree in
10 biochemistry that I received from the University of
11 California at Davis in 1977.

12 Q That's a four-year degree?

13 A Yes, a Bachelor of Science.

14 Q You got hired in Washoe County Lab
15 approximately 25 years ago?

16 A In 1994 I started.

17 Q I see. Where were you criminalist before
18 Washoe County?

19 A I was not a criminalist.

20 Q Oh, I thought you said 25 years. What did I
21 miss? 25 years?

22 A 1984.

23 Q Yeah.

24 A To present.

1 Q Twenty-five years?

2 A Twenty-five years.

3 Q And maybe I heard you wrong. Did you start
4 at Washoe County in '94 or '84?

5 A '84. Did I say '94?

6 Q It's okay.

7 A Sorry.

8 Q Blame it on me, that's okay. It's me. You
9 got hired as a criminalist. What type of duties would
10 you say you started out doing as a criminalist?

11 A My initial job was in the breath alcohol
12 program. I was taking care of the evidentiary breath
13 testing devices that were in use at that time,
14 calibrating them, repairing them, and also teaching
15 officers how to properly conduct evidentiary tests.

16 Q Did you broaden your duties after that?

17 A Yeah, that was approximately the first year
18 and a half. And in November of 1985, I moved over into
19 what was called the serology section at that time, where
20 I was looking at physical evidence; clothes, bedding,
21 any number of items for the presence of bodily fluids.
22 And at that time it was blood, semen, and saliva.

23 Q Any further after?

24 A I'm sorry?

1 Q Anything further after being a serologist?
2 Have you broadened any more?

3 A Duties, the needs of the laboratory change.
4 I had opportunities, then, to -- well, first of all, in
5 serology I was there for about 17 years doing the nature
6 of the job that I explained.

7 Then I moved over into the controlled
8 substance section, and that's analyzing the solid dose
9 drugs for the presence of controlled substances;
10 methamphetamine, cocaine, heroin and the like. And
11 approximately that was in 2001. And I still have duties
12 in that section, but all along I've had duties in the
13 breath alcohol section, so I'm kind of wearing different
14 hats.

15 Q Directing your attention now to 1994, so this
16 may be where one of us got it from, to 1994, did you
17 have occasion become involved in a case investigation
18 Sparks police number 94-9292 which was eventually given
19 a lab number of L2145-94?

20 A Yes, I did.

21 Q Do you recognize those numbers, and you were
22 -- had some involvement in that particular case?

23 A Yes, I recognize our laboratory number.

24 Q Okay. Did you actually prepare one or more

1 laboratory reports under that number, under that
2 laboratory number?

3 A I prepared one laboratory report.

4 Q And that would be --1?

5 A --1, yes.

6 Q All right. What was your involvement in that
7 case? What were you requested to do under that
8 laboratory number?

9 A The evidence that came in for that request
10 was what was called a sexual assault evidence kit, and
11 it also included a liquid blood sample for a reference
12 standard.

13 Q Are you familiar with these types of sexual
14 assault evidence kits?

15 A At the time I was, yes. That was one of my
16 primary duties was to go through the kits and find items
17 of biological value.

18 Q So this was nothing new to you at the time?

19 A That's correct.

20 Q And the evidence kit, we have it as two
21 parts, envelope A and envelope B is what we've been
22 referring to. These are number 8, the small one, and
23 number 9, the large one for this particular proceeding.
24 And the one you said was blood standard or blood sample,

1 I'd refer you to Exhibit 8. You can look through both
2 those pages and envelope. Can you tell me if that's
3 what you're referring to?

4 A Yes. Exhibit 8 was a liquid blood sample
5 that was submitted to the laboratory as a reference
6 standard.

7 Q What do you mean by "reference standard"?

8 A Items of evidence that had biological value,
9 be it blood, semen, or saliva, need to be compared to
10 determine the possible source of that blood, semen, or
11 saliva on evidence that's unknown. And when you can
12 compare it to known samples, then you can determine who
13 was the possible donor for that stain that you're
14 looking at.

15 Q And when you say reference standard or
16 reference sample, are you referring to it came from a
17 particular person?

18 A Yes.

19 Q Can you determine that from this envelope or
20 from this case?

21 A Yes. It was identified as coming from
22 Candace Inman.

23 Q All right. Now, there's a name up above in
24 your lab report, I don't know if you have that in front

1 of you, under suspect. It says Davis McNaught. I don't
2 know if you're familiar with that, and Mr. Peck brought
3 that up in his opening statement. Are you aware where
4 that comes from?

5 A No.

6 Q Okay.

7 A The case as it was submitted to me, the
8 request form that was filled out, the suspect was listed
9 as unknown.

10 Q Okay. But you typed this up. Do you or does
11 somebody in your office?

12 A Well, the -- I type up the body of the
13 report. The top part of the information is in the
14 computer system and gets filled out as the case
15 progresses.

16 Q So do you have any direct knowledge of David
17 McNaught as a suspect, or any other person in this case?

18 A No, I do not.

19 Q Okay. From that reference standard for
20 Candace Inman you can check it to determine whether she
21 is a donor or has left a particular sample of evidence,
22 say, bodily fluid somewhere, correct, at least you
23 compare the two?

24 A At the time I was not doing the comparison.

1 Q Okay. But you're saying that's what you
2 could do when this kind of sample is preserved properly
3 and brought --

4 A Yes, that's the purpose of the blood sample.

5 Q How about with respect to DNA back in 1994,
6 do you know -- from being a criminalist do you know at
7 all if blood samples were taken from people to try to
8 get a DNA, or did we do swabbing, or do you know?

9 A No. At the time we were taking liquid blood
10 samples, preparing a stain and preserving the stain
11 which is now a bloodstain for whatever type of
12 biological comparison was gonna be done.

13 Q Okay. Now I need to go to Exhibit Number 9,
14 this is gonna take us just a little bit longer.

15 A So you want 8 back.

16 Q Look at number 9.

17 A Yes.

18 Q And I'm going to show you some packets that
19 we took out from that. I'll hand you Exhibit 9a, 9b, c,
20 d, e and f. Just tell me if you have seen these items
21 before, to your knowledge.

22 A With regards to 9c, 9d, 9f, yes, they were
23 items that I at least either made note of the presence
24 in the sexual assault kit or I actually looked at the

1 contents.

2 Q And that would include in order, pubic hair
3 brushing reference, head hair reference, pubic hair and
4 saliva sample, victim Candace Inman. Would that be
5 correct?

6 A Yes.

7 Q I didn't ask you the same questions with
8 regard to Exhibit Number 9, big envelope. Does that
9 also refer to the same case numbers, lab numbers,
10 whatever's on there, and to the victim Candace Inman?

11 A Yes. All of these items belonged to the
12 sexual assault evidence kit, lab number 2145-94-1.

13 Q And victim's name Candace Inman was on there
14 like it was on Exhibit 8?

15 A Yes, the victim's name, so the big envelope.
16 Exhibit 9.

17 Q So c, d, e and f would refer to her pubic
18 hair brushing reference hair, reference head hair,
19 reference pubic hair, and saliva sample; is that
20 correct?

21 A Yes. They all belonged to same sexual
22 assault kit number.

23 Q And you opened these up and reviewed them or
24 examined them, correct?

1 A Some of these I did not perform an
2 examination, I just merely noted the presence in my
3 notes.

4 Q With regard to envelope number 7, which is
5 9c, pubic hair brushing?

6 A Yes.

7 Q Do you remember your result when you looked
8 into that?

9 A Yes.

10 Q What was it?

11 A That no hairs or fiber were observed in the
12 brushing.

13 Q In the pubic hair brushing?

14 A Correct.

15 Q Now, specifically with respect to, we'll
16 start with 9a, do you recognize that also?

17 A 9a is described as stains on skin.

18 Q Candace Inman?

19 A I would assume so, yes. There's no other
20 further direction where the sample was collected or from
21 whom, but it's all contained in the sexual assault
22 evidence kit.

23 Q Thank you. And I'm not trying to pinpoint
24 you or say that you actually did the drawing of any of

1 these samples, just everything in both of these Exhibit
2 8 and Exhibit 9, you can refer to. Exhibit 8 and 9, you
3 can refer to one victim name only and that's Candace
4 Inman; is that correct?

5 A Yes.

6 Q On this one called stains on skin, is it part
7 of your job as a criminalist to determine what part of
8 the skin it was obtained from?

9 A No.

10 Q What did you do with that particular 9a?

11 A Well, since I had no direction as far as
12 where the sample might be collected or what we're
13 looking for, I tested it for the presumptive presence of
14 semen with negative results.

15 Q Can you tell -- well, I don't need these to
16 be chain of custody on that or anything, but after you
17 do that is it still in the preserved enough state to
18 where somebody could do further testing, like, for DNA
19 or something like that from that?

20 A Oh, yes. Once a sample is dry, DNA is very
21 hardy and be looked at years down the line.

22 Q So what type of test did you do for presence
23 of semen?

24 A I did a presumptive test for the presence of

1 semen. It's called acid phosphatase.

2 Q And describe phosphatase versus phosphate.

3 A Phosphatase reference to the enzyme, and
4 that's found in high concentration in human semen. And
5 the substrate that it acts on in the body is acid
6 phosphate.

7 Q So phosphatase --

8 A That's the enzyme and that's what we're
9 looking for when we do a presumptive test for semen.

10 Q Your acid phosphatase test, does it change
11 that item there, the sample in any way in? In other
12 words, is it still preserved? Are you still -- how did
13 this change it, if at all?

14 A No. It did not change the sample that was
15 contained in this envelope.

16 Q What type of sample is in there? Is it a
17 Q-tip, is it gauze, what is it?

18 A They were a couple of two-by-two gauze
19 samples, pieces.

20 Q There's more than one?

21 A If I recall correctly, yeah.

22 Q Do you use just one?

23 A Actually, I don't use it. I take my own
24 Q-tip swab from the laboratory and apply solutions to

1 the end of that Q-tip and I hold it in contact with the
2 gauze so I can actually transfer some of whatever was on
3 this piece of gauze onto my Q-tip, and I perform my
4 tests on the Q-tip.

5 Q A sterile Q-tip?

6 A Yes.

7 Q So you're not transferring any DNA or any
8 other materials to that gauze in 9a there?

9 A No.

10 Q Do you return the gauze back into that
11 envelope, 9a, in that preserved state, then?

12 A Yes.

13 Q So it can be tested or retested for other
14 types of things?

15 A If necessary, yes.

16 Q Thank you. And do you secure it again or put
17 it back in your evidence vault or locker after you're
18 done with it?

19 A Well, what happens, it goes back into --
20 since I did not see any biological evidence on there --

21 Q Well, biological or semen or both?

22 A Well, I did not see any biological value, so
23 I returned it to the original envelope and put it back
24 into the sexual assault kit.

1 Q You say you checked it with an acid
2 phosphatase test for semen?

3 A Correct.

4 Q You didn't test it for DNA?

5 A No.

6 Q Okay. That's what I meant.

7 A Or any other biological fluid, so.

8 Q Right.

9 A I did not see any biological value to this.

10 Q Got it. So after you tested it for the acid
11 phosphatase for semen and you got a negative result, you
12 placed it back, did you then, or had you at any time
13 looked at Exhibit envelope number 5 which is --

14 MR. LINDSAY: 5.

15 BY MR. CLIFTON:

16 Q Which is Exhibit 9b? It's envelope number 5,
17 9b. I will take this one from you and now let's
18 concentrate on that one.

19 A Yes.

20 Q Have you seen that one?

21 A Yes. I examined the items contained in 9b,
22 Exhibit 9b. At the same time I was looking at the rest
23 of the sexual assault evidence.

24 Q Okay. And this we're calling 9a, I guess,

1 right?

2 A Yes.

3 Q That's a? Yeah, 9a was the stains on skin?

4 A Stains on skin.

5 Q So in 9b there's more than one item in there,
6 correct?

7 A Yes.

8 Q So we have three we have to go through. You
9 opened it, you saw all these, were you familiar with
10 those types of containers in there?

11 A Yes.

12 Q Let's start with -- go ahead and pull them
13 out again, if you can. Start with the Q-tips which, I
14 think, is the b3, if I recall correctly?

15 A Yes.

16 Q Okay. Do you recognize your writing on that?

17 A Oh, yes.

18 Q So you've seen that.

19 A Yes.

20 Q Did you examine it? Did you do any tests on
21 it?

22 A Yes.

23 Q What are these purported to be, as far as you
24 know?

1 A They're described as being vaginal swabs.
2 And they're just like the Q-tips with a wooden stick,
3 elongated wooden stick.

4 Q So you get the whole swab in there?

5 A Yes. Initially when I'm examining, it's a
6 whole swab, the stick, the swab tip.

7 Q Do you recall how many are in there?

8 A Two.

9 Q Is that customary?

10 A For the time, I believe so.

11 Q And is this for vaginal exam, vaginal swab?

12 A Vaginal swab.

13 Q Okay. What kind of testing do you do with
14 these?

15 A Again, I'm looking at it for the presumptive
16 presence of semen used my acid phosphatase test.

17 Q Same as you did the gauze from the stains on
18 skin?

19 A Yes.

20 Q Do you do that before or after looking at the
21 other two containers in that packet 9b 1 and b 2, or
22 does it matter?

23 A I can't remember the order. It doesn't
24 really matter.

1 Q Okay. Let me do -- let me go back to the
2 other ones, 9b 1 and 9b 2, and let's start with those; I
3 think it makes better sense for me. 9b 1 and 9b 2,
4 start with the 1, which should be the smaller one?

5 A Yes.

6 Q What is it labeled as?

7 A It is labeled as a motile sperm slide.

8 Q Are you familiar with that packaging?

9 A Yes.

10 Q Seen it before in these rape kits or --

11 A Yes.

12 Q These rape kits are pretty much standard or
13 customary?

14 A Yes. And, actually, at the time I was
15 putting the sexual assault evidence kits together
16 myself.

17 Q So you're very familiar with this type of
18 case and container?

19 A Yes.

20 Q Did you test that in any regard?

21 A No, sir.

22 Q Do you even open it?

23 A I just opened it to make sure there's an
24 actual slide in there.

1 Q Was there?

2 A Yes.

3 Q With a cover slip?

4 A Yes.

5 Q All right. So you had no more involvement
6 with that?

7 A Correct.

8 Q Let's go to 9b 2.

9 A Yes.

10 Q What is that labeled as?

11 A These are labeled as vaginal smears.

12 Q Go ahead. Have you looked at that --

13 A Yes.

14 Q -- during this investigation in 1994?

15 A Yes.

16 Q Would this be back in August or September, in
17 other words, close to the time that you're reviewing
18 these things?

19 A At the time I performed the examination was
20 the 30th of August, 1994. That was when I received the
21 kit from evidence.

22 Q Got it. Do you need gloves? Or we need you
23 to open that. You want gloves?

24 A Well, no, not to open it. I'm not gonna

1 touch the slides.

2 Q Don't touch them, that's fine. Does it look
3 customary or familiar to you?

4 A Yes. There's two slides in here.

5 Q To your knowledge -- well, do you prepare
6 those slides?

7 A Do I prepare the smears?

8 Q Yes.

9 A The smears.

10 Q Yes.

11 A No, that's done during the examination.

12 Q So these smears come to you from the
13 examination, what do you do with the slide?

14 A I will make note of it in my inventory and
15 then take one of the slides, and I will stain it. The
16 stain is two-step stain specific for semen and it
17 highlights the characteristics of the semen cell, and I
18 then look at it under the microscope.

19 Q You only use one slide?

20 A Yes.

21 Q Do you put a cover slip on one or both of
22 these slides?

23 A Just the one, the slide that I've stained.

24 Q Is this a bigger cover slip or a longer or

1 bigger than the one we saw in the motile sperm slide?

2 A Yes.

3 Q So you can kind of differentiate your cover
4 slips versus a lab tech or somebody else's?

5 A Well, cover slips come in many different
6 sizes, but if I'm gonna stain the whole slide I want to
7 look at the whole slide, the smear, so I use a bigger
8 cover slip.

9 Q My point being, if we look at the motile
10 sperm slide that we looked at a minute ago it has a
11 small cover slip, correct?

12 A Correct.

13 Q Here there's a big one on it, correct?

14 A Yes.

15 Q So you signed it, you looked at it under the
16 microscope at what power?

17 A I believe it was 400 X.

18 Q 400?

19 A Magnifying everything that I look at 400
20 times.

21 Q That's pretty big slide. How do you cover
22 the whole thing?

23 A You have to do a grid search.

24 Q So very painstaking, I guess?

1 A Not painstaking, but it's time consuming.

2 Q So you're actually going either cross or up
3 and down all the way through in the grid?

4 A I go left to right and then down a field, and
5 then go back and down a field, and go back and down a
6 field.

7 Q What was your result?

8 A I found three sperm heads in the fields that
9 I examined.

10 Q Is that a, customarily in your experience,
11 large amount, small amount, moderate amount?

12 A No, it was termed rare. That was my
13 terminology that I used.

14 Q Meaning why is it rare?

15 A I'm sorry?

16 Q Would three sperm heads be rare, is that a
17 lot, a little?

18 A It's rare. It's very low.

19 Q Very little?

20 A Yeah. Normally if you're looking at these
21 types of vaginal smears you can find anywhere from
22 numerous where every field that you're looking at under
23 the microscope you see numerous sperm heads or even
24 intact sperms with the tails attached. In this

1 particular case I had to examine the whole smear just to
2 come up with three sperm heads, so it's still a positive
3 for the presence of semen, sperm, but very few heads.

4 Q But you're comfortable with the conclusion
5 that there are three sperm heads on there that you
6 found?

7 A Yes.

8 Q You said something about the tails and the
9 heads. Is that one unit? Do they stay together or can
10 they separate?

11 A Well, initially they're one unit, and with
12 time they can fall off. The tails are -- I don't know
13 the term -- fragile.

14 Q Is that what makes the sperm head motile?

15 A Yeah, the sperm, the tail generates the
16 mobility.

17 Q Propulsion? Okay. And then the tails can
18 fall off. Can the head still be alive?

19 A I wouldn't term it as alive. It's viable, I
20 guess.

21 Q Were these heads that you see on what, August
22 30th, you said?

23 A August 30th, 1994.

24 Q Clearly dead?

1 A Well, at the time, yeah, they're dead, it's a
2 dried semen.

3 Q And you're only seeing the heads?

4 A Yes, no tails attached.

5 Q Do you try to confirm that or do another test
6 or check the other slide, anything like that? Or are
7 you satisfied your conclusion is there's a presence of
8 semen?

9 A Yes, I'm satisfied of what I saw was there.

10 Q Okay. So the other slide is still preserved,
11 hasn't even been stained?

12 A Exactly. Yeah, it has not been touched at
13 all.

14 Q By you.

15 A Correct, by me.

16 Q So anybody else could come in and still test
17 that and look for sperm heads or sperm, correct?

18 A Yes. And also they can examine the same
19 slide that I looked at.

20 Q Okay. What is the staining do to help you
21 locate semen?

22 A It colors, actually, different parts of the
23 cell, different color. Nucleus is stained red, other
24 features are stained blue.

1 Q Does it --

2 A Green, I guess. Yeah, it's called Christmas
3 tree stain.

4 Q Does it make it easier for you to locate?

5 A Yes, much easier.

6 Q Now, let's to go 9b 3, the Q-tips. You said
7 you did the acid phosphatase, you've already found semen
8 on the slide. Would you have done this test if you
9 hadn't, or would it be done either way?

10 A No, I'm still gonna look at the swabs,
11 because that's what ultimately would be looked at in the
12 laboratory setting for any type of biological
13 comparison.

14 Q What was the result of the acid phosphatase
15 presumptive test for semen?

16 A I got a positive result and noted that it was
17 a weak reaction and slow, so I could not make a
18 determination if semen was there or not there, and to
19 err on the safe side, I removed the swab tips to
20 preserve them for future testing.

21 Q Did you put down in your report a presumptive
22 positive?

23 A I put down positive. It's a presumptive
24 test, so that would be redundant.

1 Q That would be what?

2 A Redundant, if I put a positive presumptive
3 for presumptive test.

4 Q Okay. So just positive?

5 A Yes.

6 Q Meaning?

7 A I got a positive result for the presumptive
8 presence of semen.

9 Q Got it. Now, you said you would take the
10 Q-tip head or head, both of them?

11 A Yeah, the tips.

12 Q Of both?

13 A Of both, yes.

14 Q What do you do with those?

15 A They -- at the time? I snipped them off and
16 placed them in a -- a bindle, that's a folded piece of
17 paper, put that in a manila envelope, labeled it, sealed
18 it, and it goes into the freezer.

19 Q You didn't bring that with you, did you?

20 A No. Another criminalist has it.

21 Q Mr. Riolo --

22 A Yes.

23 Q -- brought it with him? We'll bring it in in
24 just a minute. On the vaginal swabs, from that

1 presumptive test that indicated a positive result, you
2 made a conclusion in your report about what it could
3 possibly be tested for or used for. Do you remember
4 this?

5 A I don't remember the exact word.

6 Q That the vaginal swab is maybe sufficient in
7 quantity for limited blood grouping analysis, do you
8 remember this?

9 A Yes.

10 Q Do you need to review the report?

11 A No, I saw it.

12 Q What is blood grouping analysis?

13 A It's my generic term for any type of.

14 Q Generic term for any type of?

15 A Blood grouping comparison or further
16 biological comparison, whether that be DNA, other tests
17 were available, but less commonly used at that time, PGM
18 typing, they're all biological markers that could be
19 used to determine possible origin of source.

20 Q Is blood Type A, B and O, is that a type of
21 blood grouping?

22 A Yes.

23 Q Now, you said limited blood grouping
24 analysis. Why did you use the word limited?

1 A Because of the week reaction that I got on
2 the swab tips, the weak positive for the presumptive
3 presence of semen coupled with the examination of the
4 smear that showed only three sperm heads.

5 Q Do I gather quickly that you need a
6 sufficient quantity to do certain types of tests?

7 A Yes.

8 Q DNA at the time in 1994, can I bring you back
9 15 years?

10 A Not for DNA testing, because that was a
11 separate section.

12 Q Do you know who Rene Romero is?

13 A Yes, I do.

14 Q Who is she?

15 A Right now she's the crime lab director.

16 Q Of Washoe County Lab?

17 A Yes.

18 Q Was she working there back in, say -- well,
19 put it this way. Did she, to your knowledge, do
20 additional tests on any of these -- of this evidence
21 have you seen in the chain of custody, by any chance?

22 A Yeah, I've seen her name, initials on some of
23 the items of evidence and signature on the chain of
24 custody.

1 Q Okay. So for DNA type questions and what we
2 did with this evidence on DNA would be referred to her
3 or Mr. Riolo?

4 A Yes.

5 MR. CLIFTON: Got it. I'm gonna get that
6 packet in, your Honor, chain of custody. Can I have Mr.
7 Riolo come with the evidence and I'll just have it
8 marked here --

9 THE COURT: You may.

10 MR. CLIFTON: -- directly from him to the
11 clerk? Thank you.

12 THE COURT: We need to do that during the
13 testimony of Ms. Fassett?

14 MR. CLIFTON: Yeah, because she's the one that
15 prepared that document.

16 THE COURT: Okay. What do you want to do?

17 MR. LINDSAY: I'm waiting for him to come
18 back. I'm waiting for Mr. Clifton to come back before I
19 say something.

20 THE COURT: All right. Say something.

21 MR. LINDSAY: There's a couple of matters
22 before you excuse the jury this evening that I would
23 like to cover. They're very short, they're very brief,
24 and I ask you not to excuse the jury until I've had a

1 moment with you in private with counsel.

2 THE COURT: All right. That's fine.

3 MR. LINDSAY: And counsel understands.

4 THE COURT: We can just approach the bench
5 maybe shortly before 5:00.

6 MR. LINDSAY: Thank you very much.

7 THE COURT: Thank you, Mr. Lindsay. Mr.
8 Clifton.

9 MR. CLIFTON: Your Honor, this is Mr. Riolo
10 who, for the record, is handing me two documents which
11 we'll have marked the two next in order, and I think I
12 can have him remain outside. He'll be my next witness.
13 I just wanted to make sure the chain is clear on the
14 record.

15 THE COURT: State your name for the record,
16 sir.

17 MR. RIOLO: Jeffrey Riolo.

18 THE COURT: The record reflects Mr. Riolo has
19 delivered these two documents to Mr. Clifton who he will
20 now have them marked by the clerk.

21 Thank you. And you're excused.

22 MR. CLIFTON: These are evidence envelopes,
23 your Honor. Do you need them?

24 MR. LINDSAY: Just make sure they're --

1 MR. CLIFTON: For the record, once again, your
2 Honor, I'm taking them out of the plastic envelopes and
3 just have these marked.

4 (Exhibits 22 & 23 are marked.)

5 MR. CLIFTON: There is no writing on the
6 plastic envelopes. They are Exhibits 22 and 23.

7 BY MR. CLIFTON:

8 Q Ms. Fassett, I'll ask you to observe these
9 items, tell me if you've had any connection with either
10 or both, any involvement.

11 A Yes, on Exhibit 22, what is in here is the
12 swab tips. Originally this was the swab tips.

13 Q The ones that you cut off, was it 9b 3, from
14 9b 3 which was the long Q-tip swabs that were in that
15 little box?

16 A Yes.

17 Q Was this 9b 3 and this is labeled as number
18 22, and it's Candace Inman R04014 vaginal swabs types 2;
19 is that correct?

20 A Correct.

21 Q So that would be the swab tips that you cut
22 off?

23 A Yes.

24 Q And you placed them into this envelope?

1 A Yes.

2 Q And then how are they preserved?

3 A They're in the freezer.

4 Q Did you have any connection with the DNA
5 extracts which is Exhibit Number 23?

6 A No, sir.

7 MR. CLIFTON: Thank you. No further
8 questions.

9 THE COURT: Thank you. Mr. Lindsay.

10 CROSS-EXAMINATION

11 BY MR. LINDSAY:

12 Q For the record, that was 1994, wasn't it?

13 A Yes.

14 Q Ma'am, you were questioned about 01, lab
15 report 1?

16 A --1, yes.

17 Q --1, I'm sorry. Because every time you go
18 through a case you guys just add a number, is that fair
19 to say, to the next lab report regarding a particular
20 case?

21 A That's how we keep our examinations straight,
22 that's -- you know, every time there's a new submission
23 it will be get a new lab request, a new lab report's
24 issued.

1 Q And it has a new number?

2 A Yes. Well, a new suffix.

3 Q Yes, I apologize. A new ending, 1, 2, 3,

4 4 --

5 A Yes.

6 Q -- 5, 6, 7, 8, 9, 10, 11?

7 A Some cases, yes.

8 Q And just for a moment I can let you look at

9 this. I believe this is what Mr. Clifton showed you.

10 Is that a fair statement? And is that the lab report

11 that you, yourself --

12 A Yes, in connection with this case.

13 Q Thank you. It's fair to say that you said

14 the presence of semen was "none detected", correct?

15 A For?

16 Q The vaginal smear vaginal swab tip we

17 received and are not retained the lab stains on the

18 skin. Excuse me.

19 A Okay.

20 Q The stains on the skin, I apologize, which

21 you have just testified to, no semen was detected. Is

22 that fair to say?

23 A Yes, for the stains collected off of the

24 skin.

1 Q Correct. And I would love to be able to tell
2 you which was the exact number that we just used, but
3 it's in the record. And you've identified it very
4 clearly. You also stated, I think, that the vaginal
5 swabs may be sufficient in quality, quantity for limited
6 blood grouping analysis, correct?

7 A Correct.

8 Q That would be AB, AO, BO and OO?

9 A That would be just as I explained earlier
10 with Mr. Clifton, that was a generic term for whatever
11 type of biological comparison.

12 Q The four blood types?

13 A No, no, no.

14 Q I apologize. Thank you.

15 A The ABO system is a subgroup of the
16 biological comparison that could be done, but it's not
17 limited to that.

18 Q Okay. Could you enlighten me slightly if it
19 would be?

20 A It could include DNA testing, if there was
21 enough material there. It could be we used to do even
22 size subgrouping for some of the testing.

23 Q Okay. So it wasn't just the AB, AO --

24 A No.

1 Q -- BO and OO.

2 A No, it was just kind of a code word for
3 there's evidence here, but it may be limited in size,
4 quantity.

5 Q Because they had weakness and et cetera --

6 A Yes.

7 Q -- as you've testified to. You weren't
8 doing DNA on this in 1994.

9 A I was not doing DNA during any part of my
10 career at the crime lab.

11 Q Okay. Is there any reason that this was or
12 wasn't referred for DNA testing at this time, that you
13 know of?

14 A Well, the primary reason why it was not
15 referred for DNA testing at the time is there was no
16 suspect.

17 Q Oh.

18 A And we required suspect and victim reference
19 standard, as I explained earlier, to do a comparison to
20 our unknown sample, so we're just erring on the cautious
21 side. We would remove anything of biological value,
22 place it in the freezer, for whatever may happen on down
23 the line.

24 Q Okay. I apologize for not knowing that, but

1 unless you actually find a suspect you don't actually do
2 a DNA on this?

3 A At the time, that was our policy that we
4 didn't -- we didn't do -- just go and look at the
5 biological evidence without having the standard to
6 compare it to.

7 Q Okay. So we would have one DNA if we would
8 have -- would have been her?

9 A Yes. You would assume on the vaginal swab
10 any contribution would -- part of it would come from the
11 victim.

12 Q And the other one would be whoever assaulted
13 her?

14 A Yes.

15 Q Is that a fair statement?

16 A Yes.

17 Q Okay.

18 A If there's semen present you would have a
19 combination of victim and suspect.

20 Q If there was semen present, then I'd have
21 enough to do a DNA analysis on the --

22 A Not necessarily. You'd have to look at the
23 quantity of semen present. It may be sufficient for DNA
24 testing, I don't know.

1 Q Okay. You weren't doing DNA testing?

2 A No.

3 Q You, yourself, have -- have you ever done DNA
4 testing?

5 A No, I have not.

6 Q Okay.

7 MR. LINDSAY: Your Honor? This witness has
8 testified to -- I'm going to just call it number one.

9 THE WITNESS: Okay.

10 MR. LINDSAY: Know that's the suffix.

11 THE WITNESS: My report.

12 MR. LINDSAY: Yes, your report. And I would
13 offer this into evidence, your Honor. I would ask that
14 it be marked and offered, and I believe it's going to be
15 allowed by counsel.

16 THE COURT: Any objection?

17 MR. CLIFTON: The only thing, your Honor, is
18 on the foundation at the top I just want to make sure
19 she did not have any involvement in putting that
20 information there, but I think --

21 THE COURT: I think Ms. Fassett's already
22 testified to that. You wrote the body of this report,
23 but not the caps on the top; is that correct?

24 THE WITNESS: Correct.

1 MR. CLIFTON: No objection.

2 THE COURT: With that understanding, then it
3 is admitted and it is Exhibit what, please, Mr. Lindsay?

4 COURT CLERK: 24.

5 THE COURT: 24 is admitted.

6 (Exhibit 24 is marked and admitted into evidence.)

7 MR. LINDSAY: No further questions. Thank you
8 very much, your Honor.

9 THE COURT: Thank you. Mr. Clifton.

10 MR. CLIFTON: Thank you.

11 REDIRECT EXAMINATION

12 BY MR. CLIFTON:

13 Q Ms. Fassett, you were asked a lot of DNA
14 questions there, and wouldn't Miss Romero be the one to
15 ask whether there is a sufficient quantity or not of
16 semen or seminal fluid or sperm here to do a DNA testing
17 on it?

18 A For this particular examination of the
19 evidence, yes, she was the analyst that looked at it.

20 Q Did you know when she looked at it?

21 A No, I do not.

22 Q And I don't know whether she did or not, but
23 I'm just saying that hypothetically that she could have
24 made a -- looked at it in '94 and made a determination

1 there was not enough to test for DNA; isn't that
2 correct?

3 A She could have.

4 MR. LINDSAY: Objection, speculative.

5 THE COURT: Sustained. The jury will
6 disregard the question and answer.

7 BY MR. CLIFTON:

8 Q Once you put these two samples, the gauze
9 from the skin stains on skin, and the vaginal Q-tip
10 extracts, the ones that you took off -- what do you want
11 to call them, tips?

12 A Swab tips.

13 Q The tips, one you put in the refrigerator and
14 freezer and preserve them, do you go back and check to
15 see who checks them out?

16 A I never removed the stains from the skin, the
17 gauze, that went back with the original sexual assault
18 kit, but yes, my involvement in the case ends at that
19 point in time, unless additional evidence like clothing
20 or bedding comes in, and then I would do the initial
21 examination.

22 Q So whether there is enough DNA or not, if you
23 were to submit it for DNA back in '94 and somebody did a
24 DNA sample, just could it possibly consume the sample

1 and not get a result; in other words, you'd lose
2 whatever you had, is that a possibility in '94, do you
3 know, or is that beyond your expertise?

4 A I don't want to make that determination.

5 MR. CLIFTON: We'll talk to Ms. Romero more, I
6 think, about this. Thank you. No further.

7 THE COURT: Anything further, Mr. Lindsay?

8 MR. LINDSAY: No further questions,

9 THE COURT: Ms. Fassett, you're excused.

10 THE WITNESS: Thank you, your Honor.

11 THE COURT: Please call the next witness.

12 MR. CLIFTON: Your Honor, the next witness is
13 Jeff Riolo. We have a computer disc we're going to have
14 to upload, it's the only thing, so he's going to be a
15 lengthy witness, your Honor, he's going to be a very
16 lengthy witness. I don't know if you want to start the
17 DNA presentation powerpoint, it's quite lengthy.

18 THE COURT: All right.

19 MR. CLIFTON: Good news is we're way ahead on
20 witness. I only --

21 THE COURT: Mr. Peck and counsel at the bench,
22 please?

23 (Conference at the bench.)

24 THE COURT: Ladies and gentlemen, we will

1 recess early this evening. Tomorrow morning, as I told
2 you, the Court has a calendar of other matters and it
3 will be my job to conclude that by 10:30, so we can
4 resume this trial promptly at 10:30.

5 I want to thank each of you again very
6 sincerely for being prompt. Every second our trial has
7 been on time, counsel and defendant have advised me that
8 we're actually ahead of schedule, which is wonderful.

9 I've asked the lawyers to consult the
10 dictionary as to the meaning of the word redundancy that
11 Ms. Fassett used in her testimony, and I think we'll be
12 fine.

13 Now, as you know, you are not to discuss this
14 case among yourselves or with anyone else. You are not
15 to form or express any opinion concerning the case
16 before it is submitted to you for decision. And you are
17 not to read, listen, or view news accounts of the case,
18 if any.

19 There was a news account of the case in the
20 newspaper this morning. Did anybody happen to see that?
21 All right. Sir, let me just ask you generally, did
22 seeing that article have any bearing in your service as
23 a fair and impartial juror in this case?

24 JUROR NUMBER 8: No, sir.

1 THE COURT: Are you completely confident that
2 you can continue to serve as a juror without being
3 influenced in any way, shape, or form by the article?

4 JUROR NUMBER 8: Yes, sir.

5 THE COURT: Thank you. Did anyone else happen
6 to see that article?

7 JUROR NUMBER 11: Saw the headline and turned
8 the page.

9 THE COURT: Did you read the article?

10 JUROR NUMBER 11: No.

11 THE COURT: I hope, because the Court's
12 instruction, once you saw the headline you didn't read
13 the article.

14 JUROR NUMBER 11: Right.

15 THE COURT: Now, I don't know if you read it--

16 JUROR NUMBER 11: I did not read it.

17 THE COURT: You did not see it.

18 JUROR NUMBER 11: I seen the picture and I got
19 rid of the whole page.

20 THE COURT: This is very important, ladies and
21 gentlemen. That tells me there probably will be some
22 coverage of this trial. And having done this job for 20
23 years I know that we just can't predict that. In cases
24 where I thought there would be little or no media

1 coverage a great deal of coverage occurs and visa versa.
2 Sometimes I think we had a what I thought was a very
3 significant trial in this department three weeks ago,
4 there wasn't even a mention of it anywhere, so it's a
5 little bit arbitrary, but we know now that because of
6 the article in the newspaper this morning it is
7 reasonable to expect that there will be media coverage,
8 at least in the newspaper. So please be extremely
9 fastidious about abiding by the Court's instruction, and
10 not to read, listen, or view any news accounts of the
11 case.

12 These two jurors have set a good example. If
13 you see something that you think might reference the
14 matter, you turn it off, you turn the page, or step away
15 from it and disregard it. If anybody else in our
16 community who may happen to know you starts to discuss
17 some aspects of the case because they've seen something
18 in the media, you've got to put up your hand and say
19 stop, I am a juror in the case, I can't discuss it,
20 period.

21 And then finally, of course, if anyone -- if
22 any information of any kind comes to your attention
23 during your service as a juror in this trial, please let
24 the bailiff know immediately and the lawyers and

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parties, and I will discuss that with you. Thank you again for your compliance with the admonitions of the Court.

The trial will resume at 10:30 tomorrow. Court is in recess.

(Proceedings continued until May 8, 2009, at 10:30 a.m.)

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1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

3 I, JULIE ANN KERNAN, official reporter of
4 the Second Judicial District Court of the State of
5 Nevada, in and for the County of Washoe, do hereby
6 certify:

7 That as such reporter I was present in
8 Department No. 6 of the above court on Thursday,
9 May 7, 2009, at the hour of 9:00 a.m. of said day, and I
10 then and there took verbatim stenotype notes of the
11 proceedings had and testimony given therein upon the
12 Jury Trial of the case of STATE OF NEVADA, Plaintiff,
13 vs. FRANK MILFORD PECK, Defendant, Case No. CR06-2580.

14 That the foregoing transcript, consisting of
15 pages numbered 1 through 320, both inclusive, is a full,
16 true and correct transcript of my said stenotype notes,
17 so taken as aforesaid, and is a full, true and correct
18 statement of the proceedings of the above-entitled
19 action to the best of my knowledge, skill and ability.

20
21 DATED: At Reno, Nevada, this 5th day of October, 2009.

22
23 /s/ Julie Ann Kernan

24 _____
JULIE ANN KERNAN, CCR #427

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

A filing has been submitted to the court RE: CR06-2580
Judge: BRENT ADAMS
Official File Stamp: 10-06-2009:17:18:13
Clerk Accepted: 10-07-2009:07:05:30
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS. FRANK MILFORD PECK (D6)
Document(s) Submitted: Transcript
Filed By: Julie Ann Kernan

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The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

DAVID CLIFTON, ESQ.

FRANK PECK

STATE OF NEVADA

1 4185

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3

4

IN THE SECOND JUDICIAL DISTRICT COURT

5

STATE OF NEVADA, COUNTY OF WASHOE

6

THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

7

8 THE STATE OF NEVADA,)

9 Plaintiff,)

10 vs.)

Case No. CR06-2580

11 FRANK MILFORD PECK,)

Dept. No. 6

12 Defendant.)

13

14

TRANSCRIPT OF PROCEEDINGS

15

JURY TRIAL
MAY 6, 2009

16

APPEARANCES:

17

For the Plaintiff: DAVID W. CLIFTON, ESQ.
Deputy District Attorney
One South Sierra St., 4th Floor
Reno, Nevada

18

19

20

For the Defendant: ROBERT BRUCE LINDSAY, ESQ.
Attorney at Law
596 California Avenue
Reno, Nevada

21

22

23

Reported by: ROMONA MALNERICH, CCR #269
MOLEZZO REPORTERS
(775) 322-3334

24

1 RENO, NEVADA, WEDNESDAY, MAY 6, 2009, 10:30 A.M.

2 --o0o--

3
4 THE COURT: Please be seated.

5 This is the time set for trial in case
6 CR06-2580, State versus Frank Milford Peck. Ladies and
7 gentlemen, this is a criminal case and it will consume
8 no more than five days. Inconvenience is not an excuse
9 from jury service, but all of us in this process realize
10 that by being here and responding to the summons of the
11 court, you are missing important obligations at home
12 with your families, at your jobs, and in your
13 businesses. So we'll try to use your time wisely.

14 Do counsel invoke the rule of exclusion?

15 MR. LINDSAY: Yes, your Honor.

16 THE COURT: So any persons who believe you may
17 be witnesses during the trial are now excused and you'll
18 be returned to the courtroom during your testimony.

19 Do the parties waive the reading of the roll
20 call of jurors?

21 MR. CLIFTON: The State does.

22 MR. LINDSAY: Yes, your Honor.

23 THE COURT: Thank you.

24 Ladies and gentlemen, if you've been summoned

1 for jury duty today, please stand, face the clerk, raise
2 your right hand and be sworn to truthfully answer
3 questions concerning your qualifications as jurors.

4 (Potential jurors sworn.)

5 THE COURT: Please be seated.

6 Ladies and gentlemen, the clerk will call forth
7 at random the names of certain persons, and as your name
8 is called, please step forward and be seated in the
9 upper tier of the jury box, left to right, and then in
10 the front tier, and then the chairs in front of the jury
11 box. We'll call a total of 31 persons for the jury
12 selection process. If your name is not called, you'll
13 still have to remain in the courtroom during jury
14 selection.

15 Ms. Clerk, you may proceed.

16 THE CLERK: Stephen Gillett, Richard Cheng,
17 James Brockhaus, Edna Getty, Deirdre Lane, Cindy
18 Ostrom-Grat, Joyce Humphreys, Christopher Disuanco,
19 Linda Burkhardt, Crystal Bacher, Melvin Cohen, Sheri
20 Lee, Stephanie Jennings, Ronny Brown, Lori Shults,
21 Matthew Rouse, Alexander Maldonado, Robert Trainer,
22 Linda McCarty, Patrick Gorman, Ryan Braun, Kim Brant,
23 Albert Vonthun, Francis Lane, Bruce Upton, Amy
24 Bruskotter, Christopher Lysdal, Luigi Sabini, Elisa

1 Manalo, Denise Carroll, Cheryl Nowak.

2 THE COURT: Ladies and gentlemen, I'd ask those
3 of you in the gallery whose names have not been called
4 to listen to the questions of the Court and counsel of
5 other potential jurors, so we can avoid repeating
6 ourselves, because you may be called forward during the
7 jury selection process.

8 Ladies and gentlemen, I'd like to begin our
9 jury selection process today by having each of you state
10 your occupation and that of anyone who lives with you.
11 I don't care who it is; if someone lives in your house
12 or your residence, please state your occupation and
13 theirs. We'll begin with Mr. Gillett.

14 POTENTIAL JUROR: I'm a geologist and my wife
15 is a veterinarian.

16 THE COURT: And by whom are you each employed,
17 please?

18 POTENTIAL JUROR: I'm self-employed and she is
19 employed by Charles River here in Reno. They used to be
20 in Sparks.

21 THE COURT: Thank you.

22 Mr. Cheng.

23 POTENTIAL JUROR: I'm a retired electronics
24 engineer. My wife also retired. We are both retired.

1 THE COURT: And what did she do prior to her
2 retirement?

3 POTENTIAL JUROR: She's a clerk with Hartford
4 Insurance.

5 THE COURT: Hartford Insurance. Thank you.
6 Mr. Brockhaus.

7 POTENTIAL JUROR: I'm retired. I was a
8 marketing executive with Zena Corporation. My wife is
9 retired. She was a teacher with the school district in
10 California.

11 THE COURT: And what did she teach, please?

12 POTENTIAL JUROR: She was an adult ed teacher.

13 THE COURT: Thank you.

14 Ms. Getty.

15 POTENTIAL JUROR: I'm a program manager for the
16 Department of Defense at Sierra Army Depot, and my
17 husband is a voc rehab specialist with the Veterans
18 Administration.

19 THE COURT: Thank you.

20 Ms. Lane.

21 POTENTIAL JUROR: I'm a kindergarten teacher,
22 Washoe County School District, and my husband is in
23 reinsurance; the company is Deans & Homer.

24 THE COURT: And what work does he do

1 specifically?

2 THE WITNESS: He's an underwriter.

3 THE COURT: Thank you, Ms. Lane.

4 Ms. Ostrom-Grat.

5 POTENTIAL JUROR: I'm an account executive for
6 CDS and my husband is assistant general manager for
7 Claim Jumper Restaurant.

8 THE COURT: All right, thank you.

9 Ms. Humphreys.

10 POTENTIAL JUROR: I work for Luce & Sons, which
11 is a beer and wine distributor, and my husband's retired
12 from the postal service.

13 THE COURT: Thank you.

14 Mr. Disuanco.

15 POTENTIAL JUROR: I'm a rep agent for
16 Integrated Airline Service. My dad works for the United
17 States Postal Service; my mom works for the State of
18 Nevada, she's a DMV technician; and my sister works at
19 Target, she's a cashier.

20 THE COURT: She's a cashier where?

21 POTENTIAL JUROR: Target.

22 THE COURT: At Target. Thank you.

23 Ms. Burkhardt.

24 POTENTIAL JUROR: I'm the secretary at the

1 University of Nevada Football Office.

2 THE COURT: Thank you.

3 Ms. Bacher.

4 POTENTIAL JUROR: I work for the University as
5 a field technician and my boyfriend is a sheriff for
6 Placer County.

7 THE COURT: And what do you mean, a field
8 technician? What do you do?

9 POTENTIAL JUROR: Irrigation.

10 THE COURT: For what department of the
11 University do you work?

12 POTENTIAL JUROR: CABNR, the College of
13 Agriculture and Biotechnology.

14 THE COURT: Thank you.

15 Mr. Cohen.

16 POTENTIAL JUROR: Hospital management trainer
17 for Health Care and Financial Management Systems.

18 THE COURT: And in what subjects do you train?

19 POTENTIAL JUROR: Budgeting.

20 THE COURT: Budgeting for hospitals.

21 POTENTIAL JUROR: For hospital managers, right.

22 THE COURT: All right, thank you.

23 Ms. Lee.

24 POTENTIAL JUROR: I'm a kindergarten teacher

1 with Washoe County School District. My husband is a
2 sergeant with the Washoe County sheriff's office.

3 THE COURT: Thank you. And what's his name,
4 please?

5 POTENTIAL JUROR: Patrick Lee.

6 THE COURT: Thank you. And did you happen to
7 know the other lady who's an elementary school teacher,
8 who's seated in the row behind you?

9 POTENTIAL JUROR: (Shakes head.)

10 THE COURT: No. Thank you.
11 Ms. Jennings.

12 POTENTIAL JUROR: I'm Stephanie Jennings. I'm
13 an x-ray tech, and my husband's a teacher for the Washoe
14 County School District.

15 THE COURT: And what does he teach?

16 POTENTIAL JUROR: He teaches science.

17 THE COURT: At what level?

18 POTENTIAL JUROR: High school, Sparks High
19 School.

20 THE COURT: Thank you.

21 Mr. Brown.

22 POTENTIAL JUROR: I'm an electrician. I was
23 employed till this morning. I'm supposed to be working
24 for Reliant Electric. My wife's retired from the

1 University; she was an administrative assistant.

2 THE COURT: In what department was she an
3 administrative assistant?

4 POTENTIAL JUROR: Hazardous waste and
5 management of some sort.

6 THE COURT: Okay, thank you.

7 Ms. Shults.

8 POTENTIAL JUROR: I'm a registered nurse at
9 Saint Mary's. My husband is a maintenance worker with
10 the Washoe County School District, and my daughter's a
11 gymnastics coach.

12 THE COURT: And where does she work?

13 POTENTIAL JUROR: Flips.

14 THE COURT: Thank you.

15 Mr. Rousse.

16 POTENTIAL JUROR: I'm a correctional officer
17 with the Federal Bureau of Prisons and my wife works at
18 the Reno Gazette-Journal as a obituary specialist.

19 THE COURT: And where are you stationed?

20 POTENTIAL JUROR: Herlong, California.

21 THE COURT: In Herlong, thank you.

22 Mr. Maldonado.

23 POTENTIAL JUROR: I'm a waiter for the Grand
24 Sierra.

1 THE COURT: Thank you.

2 Mr. Trainer.

3 POTENTIAL JUROR: I'm an electrical contractor.
4 My father is a greeter at Cabela's.

5 THE COURT: We had a trial two weeks ago where
6 an expert witness testified that -- or a manager at
7 Cabela's testified as to the average amount of time a
8 customer spends in Cabela's in Reno. Do you know what
9 it is?

10 POTENTIAL JUROR: It's like two hours, I think.

11 THE COURT: Three and a half hours. We're not
12 going to spend three and a half hours picking this jury,
13 though.

14 Ms. McCarty.

15 POTENTIAL JUROR: I work for my brother, I work
16 for his office in New York City.

17 THE COURT: And what work do you do?

18 POTENTIAL JUROR: Account executive.

19 THE COURT: What kind of account?

20 POTENTIAL JUROR: Title search. I work for his
21 mortgage company.

22 THE COURT: Mr. Gorman.

23 POTENTIAL JUROR: I'm a full-time business
24 student and I'm unemployed. My roommate is a

1 veterinarian.

2 THE COURT: Thank you.

3 Mr. Braun.

4 POTENTIAL JUROR: Soccer referee, volunteer
5 firefighter, and my girlfriend works for Sports
6 Authority as a cashier.

7 THE COURT: Thank you.

8 Ms. Brant.

9 POTENTIAL JUROR: I'm an elementary dean of
10 students for Washoe County School District and my
11 husband is a sales manager for Coors Distributing.

12 THE COURT: Thank you.

13 Mr. Vonthun.

14 POTENTIAL JUROR: I'm retired and my wife is an
15 R.N. I did landscaping work.

16 THE COURT: Thank you. And what kind of work
17 did she do as a registered nurse?

18 POTENTIAL JUROR: She's working at home for
19 Allure Medical, which is monitoring computers all over
20 the United States.

21 THE COURT: Is she doing home health care?

22 POTENTIAL JUROR: It's not home health care.

23 Actually, they're monitoring patients. They step on the
24 scale and then they ask a series of questions, and if

1 they don't answer the question right, then she calls
2 them.

3 THE COURT: So she, in effect, monitors
4 computer data. Is that it?

5 POTENTIAL JUROR: Essentially.

6 THE COURT: And that's in regard to what?
7 Treatment of patients?

8 POTENTIAL JUROR: Heart failure.

9 THE COURT: I see, okay. So these are health
10 care monitoring systems and she views the computer with
11 this information, and depending on that information, she
12 applies her expertise as a registered nurse and they ask
13 for follow-up.

14 POTENTIAL JUROR: And then after talking to the
15 patient, she will call the doctor if need be.

16 THE COURT: Okay. Thank you.

17 Mr. Lane.

18 POTENTIAL JUROR: I'm a heavy equipment
19 operator, a Local 3 member. My wife is an account exec
20 at Reno Apartment Guide.

21 THE COURT: Thank you.

22 Mr. Upton.

23 POTENTIAL JUROR: Vocational trainer for a
24 small nonprofit here in town. We employ and train

1 severely developmentally disabled adults. We teach them
2 how to do electrical assembly work. We have several
3 contracts with large corporations.

4 THE COURT: Thank you, Mr. Upton.
5 Ms. Bruskotter.

6 POTENTIAL JUROR: I'm an administrative
7 assistant for Stetson-Beemer Insurance, and my son works
8 for Lithia Subaru.

9 THE COURT: And what does he do for Lithia
10 Subaru?

11 POTENTIAL JUROR: Sells cars.

12 THE COURT: Mr. Lysdal.

13 POTENTIAL JUROR: I'm a retired firefighter
14 with the City of Reno and my wife teaches Special Ed at
15 Reno High School.

16 THE COURT: Thank you.
17 Mr. Sabini.

18 POTENTIAL JUROR: I'm a Local 350 pipefitter.
19 I'm working for Ray Heating right now. My girl, she's
20 an apprentice pipefitter and she's out of work right
21 now.

22 THE COURT: Ms. Manalo.

23 POTENTIAL JUROR: I'm retired and my husband is
24 retired also. We're retired from blackjack dealer, 21

1 dealer.

2 THE COURT: You were both blackjack dealers?

3 POTENTIAL JUROR: Uh-huh.

4 THE COURT: Okay. Thank you.

5 Ms. Carroll.

6 POTENTIAL JUROR: I'm a counter manager at
7 Macy's. My husband's self-employed.

8 THE COURT: And your husband what?

9 POTENTIAL JUROR: He's self-employed.

10 THE COURT: What does he do?

11 POTENTIAL JUROR: Construction. Just
12 maintenance, remodeling, things like that.

13 THE COURT: Thank you.

14 Ms. Nowak.

15 POTENTIAL JUROR: I'm a research scientist with
16 the U.S. Forest Service and my husband is a professor at
17 the College of Ag at the university here.

18 THE COURT: And what does he teach?

19 POTENTIAL JUROR: He teaches plant ecology
20 classes.

21 THE COURT: Thank you.

22 Ladies and gentlemen, do any of you know any of
23 the other persons seated with you in the front of the
24 courtroom?

1 Thank you.

2 Has any of you ever served on a jury before?

3 We'll start in the back.

4 Yes, sir, Mr. Cheng, when did you serve?

5 POTENTIAL JUROR: I think several years ago.

6 THE COURT: Was it in state or federal court?

7 POTENTIAL JUROR: It's here.

8 THE COURT: Was it right here in this

9 courtroom?

10 POTENTIAL JUROR: Yes, sir.

11 THE COURT: Was I the judge in the case?

12 POTENTIAL JUROR: Yes, sir.

13 THE COURT: Was it a civil or criminal case?

14 POTENTIAL JUROR: I think it was a criminal

15 case.

16 THE COURT: Can you tell me briefly the nature
17 of the case?

18 POTENTIAL JUROR: It was dismissed. I think
19 there's some incomplete evidence and it all got
20 dismissed on the case.

21 THE COURT: Do you remember anything about the
22 charge, what the charge was?

23 POTENTIAL JUROR: I think it's about drugs.

24 THE COURT: But in any event, before that case

1 was given to the jury for deliberation and decision, it
2 was dismissed.

3 POTENTIAL JUROR: Pardon, sir?

4 THE COURT: You never had an opportunity to
5 deliberate and decide that case. Right?

6 POTENTIAL JUROR: No, sir.

7 THE COURT: Because it was dismissed for some
8 reason.

9 POTENTIAL JUROR: Yes, sir.

10 THE COURT: All right. Is there anything about
11 that experience that leads you to believe you could not
12 be a fair and impartial juror in this case?

13 POTENTIAL JUROR: I don't know, sir.

14 THE COURT: All right. Well, this case is not
15 a drug charge of any kind. Do you believe you could be
16 a fair and impartial juror in this case?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: Is there anything about the fact
19 that I was the presiding judge in the other case that
20 would have a bearing in your service as a juror in this
21 case?

22 POTENTIAL JUROR: No, sir.

23 THE COURT: All right. Thank you.
24 Anyone else in the back row?

1 Yes, ma'am, when did you serve?

2 POTENTIAL JUROR: In 1990, I sat on a jury for
3 a criminal case from the prison in Susanville.

4 THE COURT: what was the nature of the charge?
5 Do you recall?

6 POTENTIAL JUROR: There were five men accused
7 of booting down someone in the shower.

8 THE COURT: was the jury able to reach a
9 verdict in that case?

10 POTENTIAL JUROR: Yes, we were.

11 THE COURT: would that jury service have any
12 bearing on your being a fair and impartial juror in this
13 case?

14 POTENTIAL JUROR: No.

15 THE COURT: Thank you.

16 Yes, ma'am, when did you serve?

17 POTENTIAL JUROR: About 10 years ago in
18 California. It was a civil case based upon a mental
19 health issue, I would say.

20 THE COURT: was the jury able to reach a
21 verdict in that case?

22 POTENTIAL JUROR: Yes.

23 THE COURT: In this case, you're going to
24 receive jury instructions that are different than what

1 you received in the other case. Can you set those aside
2 and follow the instructions of the Court as to the law
3 in this case?

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: would your prior service have any
6 bearing on your service as a fair and impartial juror in
7 this case?

8 POTENTIAL JUROR: No.

9 THE COURT: Thank you.

10 Anyone else in the back row?

11 Yes, ma'am.

12 POTENTIAL JUROR: 1999, I served on a -- it was
13 State of Nevada versus somebody. I was on the jury.

14 THE COURT: Do you recall the nature of the
15 charge?

16 POTENTIAL JUROR: Molesting his daughter.

17 THE COURT: And was the jury able to reach a
18 verdict in that case?

19 POTENTIAL JUROR: (Nodding.)

20 THE COURT: Now, in this case, the charge --
21 and it is only a charge, it's not evidence of any kind
22 against the accused, but there is one charge and the
23 charge is sexual assault. would you be able, if
24 selected as a juror, to base your decision only on the

1 evidence you receive in this trial and the instructions
2 of the law given in this case?

3 POTENTIAL JUROR: No, I don't think so.

4 THE COURT: why not?

5 POTENTIAL JUROR: I don't see any reason for
6 anybody to be sexually assaulted.

7 THE COURT: As I said, ma'am, that's just the
8 charge. That's not evidence of any kind against
9 anybody. Every criminal case has a charge. It might be
10 driving under the influence, it might be any number of
11 charges. The particular charge in this case is sexual
12 assault, and the fact that that is the charge really has
13 nothing to do with what the evidence is. Do you
14 understand that?

15 POTENTIAL JUROR: Uh-huh.

16 THE COURT: Could you base your decision only
17 on the evidence and not on the charge itself?

18 POTENTIAL JUROR: I guess so.

19 THE COURT: well, let me ask you this: As you
20 recall in your jury service in the other case, witnesses
21 came into court and they testified. Right?

22 POTENTIAL JUROR: Uh-huh.

23 THE COURT: And there were certain pieces of
24 paper or other exhibits that came into evidence during

1 the trial. You remember that? And then at the end of
2 the trial, the jurors went into the jury room and
3 reviewed the evidence and assessed the testimony of the
4 witnesses, reviewed any other evidence in the case under
5 the instructions of the court as to the law. Do you
6 remember that process?

7 POTENTIAL JUROR: Uh-huh.

8 THE COURT: So my question is, could you follow
9 the same process in this case?

10 POTENTIAL JUROR: Yes, I could.

11 THE COURT: And could you tell me your name
12 again, please.

13 POTENTIAL JUROR: Joyce Humphreys.

14 THE COURT: Okay, Ms. Humphreys, I want you to
15 think about that a little bit, because you did have a
16 reservation. The parties may ask you about it, but I
17 just want you to be completely confident. The charge is
18 not pleasant, it's a terrible charge, but it's only
19 that, it's a charge, and the jurors would have to watch
20 the witnesses carefully, listen as they testify, look at
21 any exhibits in evidence, and follow the instructions of
22 the Court. Do you think you can do that?

23 POTENTIAL JUROR: Yes.

24 THE COURT: Okay, thank you.

1 Anyone else in the jury box who's been on a
2 jury before?

3 Yes, sir, when did you serve?

4 POTENTIAL JUROR: In 2000.

5 THE COURT: And was that a civil or criminal
6 case?

7 POTENTIAL JUROR: It was criminal with Judge
8 Hardesty.

9 THE COURT: So it was in this building.

10 POTENTIAL JUROR: Yes.

11 THE COURT: Do you remember the nature of the
12 charge in that case?

13 POTENTIAL JUROR: Yes. It was a young man
14 stopped by the police and his vehicle was found with
15 illegal mushrooms in it.

16 THE COURT: Okay. Was the jury able to reach a
17 verdict in that case?

18 POTENTIAL JUROR: Yes.

19 THE COURT: would your jury service in that
20 case have any bearing on your being a fair and impartial
21 juror in this case?

22 POTENTIAL JUROR: No.

23 THE COURT: Thank you. Anyone else in the jury
24 box?

1 Yes, ma'am, when did you serve?

2 POTENTIAL JUROR: I believe it was 2002 or
3 three. I'm not sure.

4 THE COURT: Was that in state or federal court?

5 POTENTIAL JUROR: It was here. I was an
6 alternate. So I didn't actually --

7 THE COURT: Was it in this very courtroom?

8 POTENTIAL JUROR: It looks familiar.

9 THE COURT: They all kind of look the same.

10 POTENTIAL JUROR: I don't remember the judge.

11 THE COURT: And do you remember the nature of
12 the case at all?

13 POTENTIAL JUROR: It was an uncle who was
14 charged with molesting his niece.

15 THE COURT: Was the jury able to reach a
16 verdict in that case?

17 POTENTIAL JUROR: Uh-huh.

18 THE COURT: And was there anything about your
19 jury service in that case that would have any bearing on
20 your being a fair and impartial juror in this case?

21 POTENTIAL JUROR: No, sir.

22 THE COURT: Anyone else in front of the jury
23 box who's been a juror? Yes, sir, when did you serve?

24 POTENTIAL JUROR: About 20 years ago.

1 THE COURT: And was that in state or federal
2 court?

3 POTENTIAL JUROR: It was county court.

4 THE COURT: Here in Washoe County?

5 POTENTIAL JUROR: No, it was in California.

6 THE COURT: And was it a civil or criminal
7 case?

8 POTENTIAL JUROR: It was criminal.

9 THE COURT: And what was the nature of the
10 case?

11 POTENTIAL JUROR: Under the influence.

12 THE COURT: Was the jury able to reach a
13 verdict in that case?

14 POTENTIAL JUROR: Yes.

15 THE COURT: Was there any aspect of your jury
16 service that would have a bearing on your being a fair
17 and impartial juror in this case?

18 POTENTIAL JUROR: No.

19 THE COURT: Thank you, sir.

20 Anyone else? Yes, ma'am, when did you serve?

21 POTENTIAL JUROR: Approximately eight and
22 ten years ago, one for felony drunk driving -- you were
23 the judge -- and the other one for sexual assault and it
24 was Connie Steinheimer.

1 THE COURT: And let's go through each of those
2 briefly. First of all, as to both of them, is there any
3 aspect of your jury service in either case that would
4 have any bearing on your service as a fair and impartial
5 juror in this case?

6 POTENTIAL JUROR: No.

7 THE COURT: Is there any aspect of the fact
8 that I presided in one of those trials that might
9 somehow affect you in serving as a fair and impartial
10 juror in this case?

11 POTENTIAL JUROR: No.

12 THE COURT: In the other case with Judge
13 Steinheimer, the charge was sexual assault. Is that
14 correct?

15 POTENTIAL JUROR: Correct.

16 THE COURT: As I've indicated, that is the
17 charge in this case. The obligation of the juror is
18 first to recognize that the charge is just that, an
19 accusation. Do you understand that?

20 POTENTIAL JUROR: Yes.

21 THE COURT: And there will be evidence
22 presented during the trial. At the conclusion of the
23 trial, the jury will have to evaluate all that evidence
24 under the instructions of the Court and decide whether

1 or not the State has proved the charge by evidence
2 beyond a reasonable doubt. Do you understand that?

3 POTENTIAL JUROR: Yes.

4 THE COURT: Was that the process you followed
5 in the other trial?

6 POTENTIAL JUROR: Yes.

7 THE COURT: Do you think you'd be able to do
8 that in this case, uninfluenced by your experience in
9 the other case?

10 POTENTIAL JUROR: I do.

11 THE COURT: You're confident you can do that?

12 POTENTIAL JUROR: I am.

13 THE COURT: Thank you. Anybody else?

14 Ladies and gentlemen, have any of you ever been
15 the victim of a crime, any crime? Yes, sir.

16 POTENTIAL JUROR: I've been burglar'd a couple
17 of times. The perpetrators were never found.

18 THE COURT: So there wasn't a criminal
19 proceeding in that matter?

20 POTENTIAL JUROR: No, but there was a police
21 report filled out.

22 THE COURT: So there was a police report,
23 somebody came to your home, but there was nobody
24 apprehended.

1 POTENTIAL JUROR: That's correct.

2 THE COURT: would that have any effect on your
3 serving as a juror in this trial?

4 POTENTIAL JUROR: No.

5 THE COURT: Thank you.

6 Yes, sir.

7 POTENTIAL JUROR: We were victims of home
8 invasion in California in about 1990.

9 THE COURT: was there a legal process in that
10 case?

11 POTENTIAL JUROR: Yes, there was. They caught
12 the perpetrators.

13 THE COURT: And did you have to testify at a
14 legal proceeding?

15 POTENTIAL JUROR: No. We weren't home at the
16 time it happened.

17 THE COURT: And again, you know what the
18 question's going to be. Was there any aspect about that
19 experience in your life that would have any bearing on
20 your service as a fair and impartial juror in this case?

21 POTENTIAL JUROR: No, your Honor.

22 THE COURT: Thank you, sir.

23 Anybody else? Yes, sir.

24 POTENTIAL JUROR: My home's been burglarized.

1 There was a police report, and I don't think it would
2 affect my ability to serve.

3 THE COURT: Okay, we've picked our first juror.
4 Anybody else?

5 Now, think carefully about this for a moment.
6 Any experience in your life where you were the victim of
7 some sort of a crime.

8 All right. Now I want to ask you a question
9 that is intentionally vague. Is there anybody who's had
10 any experience in their life which you believe would
11 have such an impact that it would be very difficult for
12 you to serve in a case of this nature, an experience
13 that maybe you've had or a family member's had?

14 I'll give an example. Jurors often have to
15 deal with difficult issues. In this courtroom, we've
16 had cases involving burnings and paraplegia and infant
17 death, lots of things. Recently we had a case that
18 involved the death of an infant. Someone on the jury
19 panel had experienced that tragedy in their own family
20 recently. They just couldn't deal with the subject. On
21 the other hand, as I've noted, simply because there is a
22 charge, even though it may be an unpleasant charge,
23 we're expected as citizens to be able to evaluate the
24 evidence during the trial and not reach a decision based

1 upon the fact that it's this charge as opposed to some
2 other charge. So if there is anyone who believes that
3 something in your experience may undermine your ability
4 to follow the legal process I've described and be a fair
5 and impartial juror, I'd like to know that, and the
6 parties and I will meet with you briefly in chambers.
7 We don't need to discuss anything in the courtroom, but
8 I just need to know who would like to discuss that, if
9 anyone.

10 Okay, thank you.

11 Ladies and gentlemen, have any of you seen,
12 read, or heard anything about this case before coming to
13 court today?

14 Does each of you understand that in a criminal
15 case, the State is required to prove the charge by
16 evidence beyond a reasonable doubt, which is the highest
17 standard known to law. Do you each understand that?
18 The question in a criminal case is not, therefore,
19 whether the defendant's guilty or not guilty. The
20 question is, at the end of the trial, has the State
21 proved the charge by evidence beyond a reasonable doubt?
22 So the jury's job is to assess the weight and effect of
23 evidence presented during the trial. Does everyone
24 understand that?

1 Does everyone understand that under the
2 constitution of our country, no citizen can be required
3 or compelled to testify in a trial, and if a defendant
4 elects not to testify, the fact that he decides not to
5 testify cannot be used or considered in any way by the
6 jury. Do you all understand that?

7 Because the burden of proof is on the State to
8 prove the charge and that burden never changes, the
9 defendant never has an obligation to testify, to present
10 any evidence, or to call any witness. Does everyone
11 understand that?

12 During the trial, each of you will be
13 instructed that you may not discuss the case with anyone
14 else, and that means literally anyone -- not Twitter,
15 not blog, not computer, not family members or friends,
16 neighbors, employers, employees, coworkers -- no other
17 human until the case is concluded. Is everyone able to
18 abide by that admonition of the Court?

19 Likewise, you may not consult outside reference
20 works. There will be technical subjects discussed
21 during this trial, but you may not consult any outside
22 reference work anywhere, you may not visit any scene or
23 location mentioned during the trial. Does everyone
24 understand that?

1 Yes, ma'am.

2 POTENTIAL JUROR: I do work for a media corp.
3 so if there's any reference on CBS News or anything like
4 that --

5 MR. LINDSAY: Your Honor, I apologize, I can't
6 hear the juror.

7 THE COURT: could you restate it again, please.

8 POTENTIAL JUROR: I do work for a media corp.
9 so if there's any reference on CBS News, if it comes up,
10 I just have to state that.

11 THE COURT: well, you reminded me of the next
12 thing I have to bring up, and that is, jurors may not
13 view, listen, or watch any media accounts of this case
14 at all. Now, I don't know if there'll be media accounts
15 of the case. I kind of doubt it, but I don't know, and
16 so jurors would have to be alert to that. I realize
17 that in your job, you see media almost constantly.

18 POTENTIAL JUROR: It's in front of me, yeah.

19 THE COURT: So as a juror, your job is to make
20 sure that you don't expose yourself, even inadvertently,
21 to any report about this case, and it might be more
22 difficult for you than for others, but that would be
23 your responsibility during the five-day period of the
24 trial. Do you understand that?

1 POTENTIAL JUROR: Yes.

2 THE COURT: Could you do that?

3 POTENTIAL JUROR: Yes.

4 THE COURT: Okay, thank you.

5 Anyone else who has a problem on that subject?

6 Ladies and gentlemen, I'll now give the parties
7 an opportunity to introduce themselves to you and tell
8 you the names of people they expect to be witnesses
9 during the trial. The state in this case is represented
10 by Chief Deputy District Attorney Dave Clifton.

11 Mr. Clifton, would you introduce yourself to
12 the members of the jury panel and state the names of
13 persons you believe may be witnesses during the trial.

14 MR. CLIFTON: Certainly. Thank you, your
15 Honor.

16 As his Honor stated, my name's David Clifton
17 and I'm a chief deputy district attorney here in Washoe
18 County. I have been for about 25 years. The case is
19 called State versus Frank Peck. It involves the
20 following possible state witnesses: From Sparks Police
21 Department, John Clayton, Cheryl Bartlett-Dewey, Peggy
22 Stout, Greta Fye-Rochowski -- Greta Fye is her maiden
23 name -- Michael Brown, Sam Neuharth, Steve Peori, Linda
24 Brown. From Washoe County Sheriff's Office, Jeff

1 Riollo, Don Means, Renee Romero, Maria Fasett. And then
2 private individuals or civilians, Leslie Krauser,
3 Candice Inman. From Saint Mary's Hospital -- this is
4 back in 1994 -- Dr. Diedoff, Nurse Diane Hackwirth, Med
5 Tech Carol Phillips, and Social Service Worker Ann
6 Hilliard.

7 Thank you, your Honor.

8 THE COURT: Thank you.

9 Ladies and gentlemen, the defendant in this
10 case is Frank Milford Peck. Mr. Peck is representing
11 himself in the trial and he's advised by counsel, Mr.
12 Bruce Lindsay. Mr. Peck, would you introduce yourself
13 to the jury panel, please, and state the names of any
14 additional persons you believe will be witnesses during
15 the trial.

16 THE DEFENDANT: My name's Frank Peck. I've
17 been a resident of Nevada since 1984. I own a small
18 business here, an appliance service, and the additional
19 witnesses in this case --

20 MR. LINDSAY: Your Honor, could I speak for him
21 for just a moment, if that would be all right with the
22 Court?

23 THE COURT: Certainly, that's fine. Mr. Peck,
24 do you have any objection?

1 THE DEFENDANT: No.

2 THE COURT: Okay, thank you. Go ahead.

3 MR. LINDSAY: The only witness that might cause
4 some problems is Larry Peck, and none of you may have
5 any knowledge of him whatsoever. I bring it up because
6 if any of you know of Larry Peck, I believe he will end
7 up being a witness here and he is a man who was
8 convicted of shooting a police officer just a few years
9 ago. I'd just offer that information, your Honor.

10 THE COURT: All right, thank you.

11 Ladies and gentlemen, are any of you familiar
12 with the parties, the witnesses, or the lawyers who've
13 just been introduced to you?

14 Yes, ma'am.

15 POTENTIAL JUROR: I'm familiar with several. I
16 was the teacher of Greta Fye's son, Jackson Fye. I know
17 Renee Romero from contact with our children. I'm also
18 familiar with the Peck name due to the employment of my
19 husband.

20 THE COURT: Okay. And could you tell me your
21 name again, please.

22 POTENTIAL JUROR: Sheri Lee.

23 THE COURT: And Ms. Lee, without discussing the
24 details, your husband, who is employed by the Washoe

1 County Sheriff's Office, has discussed with you the case
2 that involved Mr. Larry Peck. Is that correct?

3 POTENTIAL JUROR: No, he hasn't discussed it
4 with me. However, due to the nature of his employment,
5 as the spouse of a law enforcement officer, I was
6 present at the funeral and --

7 THE COURT: Of Deputy Bohach?

8 POTENTIAL JUROR: Yes. I think he was a Reno
9 police officer, not a deputy.

10 THE COURT: well, I think he was a Washoe
11 County sheriff's deputy, but in any event, you went to
12 the funeral of the victim in that case?

13 POTENTIAL JUROR: I did.

14 THE COURT: Ms. Lee, the question is kind of
15 simple. As a juror, your job would be to evaluate the
16 weight or credibility of each witness based only on
17 their testimony or demeanor here in the courtroom during
18 the trial. Sometimes jurors know or have some passing
19 acquaintance of somebody who testifies during the trial.
20 Sometimes the relationship is such that they would
21 almost necessarily give greater or lesser weight to the
22 testimony of a witness because of their experience.
23 what do you think?

24 POTENTIAL JUROR: I'm not that involved with

1 any of the parties. I'm just acquainted with them, and
2 I don't believe that acquaintance would have a bearing
3 on the information that was presented in court.

4 THE COURT: well, it's a rather significant
5 circumstance, it seems to me, if you went to the funeral
6 of the victim in the murder case in which Mr. Larry Peck
7 was convicted. The jury is going to know and Mr.
8 Lindsay has already advised you that he's been convicted
9 of murder of a law enforcement officer, and so that will
10 be evidence you'll be entitled to consider in evaluating
11 Mr. Peck's testimony. Don't you think that having gone
12 to the funeral of the victim in that case, it will be
13 very difficult for you to assess Mr. Peck's testimony
14 just based on what he says and does here in the
15 courtroom during the trial?

16 POTENTIAL JUROR: If he's a witness in this
17 proceeding, I would have to take his involvement in this
18 proceeding and weigh his input on this proceeding, not
19 based on what he did before.

20 THE COURT: And that's true. Do you think you
21 could do that?

22 POTENTIAL JUROR: I do.

23 THE COURT: And do you think you could do that
24 with the other witnesses you mentioned?

1 POTENTIAL JUROR: I do.

2 THE COURT: Okay, thank you.

3 Anyone else who's familiar with any of the
4 lawyers, witnesses, or parties in this case? Yes, sir.

5 POTENTIAL JUROR: I'm just kind of wondering.
6 In 1980, I worked at a power house out in Bellamy and I
7 worked with a Larry Peck, and I'm just wondering if he
8 ever worked at the power house in Bellamy there in the
9 '80s.

10 THE COURT: Okay. The lawyers of the parties
11 can ask you questions about that. My question would be,
12 let's assume somebody testifies, and as they testify,
13 you realize "Oh, this is the guy I worked with at
14 Bellamy." would you be inclined to give his testimony
15 any greater or lesser weight because of that
16 circumstance?

17 POTENTIAL JUROR: I don't think so, no,
18 because -- I mean, we developed a friendship at that
19 particular time, but, you know, a lot of time has
20 passed.

21 THE COURT: well, as Ms. Lee just pointed out,
22 the important thing is, if it turns out to be that
23 person, could you evaluate their testimony based on what
24 they say and their conduct here in the courtroom during

1 the trial? For instance, you might have a prior
2 employment with somebody and from that experience you
3 say, "That's great, I believe them about anything." Or,
4 "I never liked the guy and there's nothing he can do to
5 persuade me." You're not faulted because you have a
6 prior exposure to a potential witness. It's just
7 whether or not that exposure would have any bearing on
8 your assessment of their testimony during the trial.

9 what do you think?

10 POTENTIAL JUROR: I think I'm okay there. I
11 don't think it would have any bearing on me, but I
12 thought I better just bring that up.

13 THE COURT: Right. Thank you.

14 Anyone else?

15 Now I'll permit the parties to ask you some
16 questions. We'll begin with Mr. Clifton on behalf of
17 the State. Mr. Clifton.

18 MR. CLIFTON: Thank you, your Honor.

19 Good morning again, ladies and gentlemen, and
20 thank you for bearing with us in what I assure you is a
21 very necessary and very important part of our criminal
22 justice system. Even though it may seem a little
23 tedious to you as we go through some of these questions,
24 I can assure you they are important to me and may be

1 important to the defendant in this case.

2 Ladies and gentlemen, the judge asked you if
3 you knew anything about this case, and Mrs.
4 Ostrom-Grat --

5 THE COURT: How do you spell your name really?

6 POTENTIAL JUROR: O-S-T-R-O-M, hiphen, G-R-A-F
7 as in Frank.

8 MR. CLIFTON: I know the judge said, "Do any of
9 you feel you know anything about this case," but we
10 haven't told you about this case yet. I think all I
11 said after the judge said that was that it was from
12 1994. I'm going to tell you just a little bit. Ladies
13 and gentlemen, on August 9th, 1994, 27-year-old Candice
14 Inman, I-N-M-A-N, was brutally attacked and raped in her
15 own home, her own apartment at the Stonegate Apartments,
16 445 Sullivan, Apartment No. 94, and that's in Sparks,
17 Washoe County, Nevada. Now I'll ask you again, does
18 anybody here feel they're familiar with this case? Did
19 you read any newspaper articles, if there were any on
20 this case? Are you familiar because you lived out in
21 that area or have heard of this case going back 15 years
22 now?

23 And as the judge has indicated to you, if you
24 do see a witness -- even though you didn't recognize the

1 names that I've read or that Mr. Lindsay has brought up,
2 it may be that you recognize Larry Peck from Bellamy or
3 somebody else in your past -- what we'd ask you to do if
4 that happens is, please don't tell any other jurors how
5 you know this witness or anything about that witness.
6 That is your specific information. Bring it to the
7 attention of the Court or the bailiff and we'll deal
8 with it individually, however the judge wants to handle
9 it, most likely in chambers. But if you feel you're
10 being influenced because you know a witness and you
11 didn't recognize the name here this morning, but as they
12 testify you recognize them in person and/or you
13 recognize their name at that point, you can always bring
14 it to the Court's attention, but don't share the
15 information, because it's not evidence in the case, of
16 how you know that person or what you believe about that
17 person. Is everybody okay with that?

18 There's so many rules that we have for jurors,
19 but, as the judge has mentioned, they're important
20 rules. A lot of times, we have a case where somebody
21 either wants to or does go out to the scene to look at
22 the crime scene. well, I can tell you right now,
23 15 years ago, the place was probably painted a different
24 color, all kinds of things can be different about it,

1 but you can't do that. You're not allowed to make any
2 independent assessment or investigation on your own, and
3 you all promise that you'll follow that, in addition to
4 what the judge said about not listening to any media
5 accounts or talking to any other human being. You can
6 talk to your dog or your cat if you want about this
7 case, but you cannot talk to a human being about this
8 case, other than you're busy, you're in trial, you're on
9 a jury. You can tell your husband or your family that,
10 that's okay, but you can't talk about the facts of the
11 case. Does everybody understand why that's important?

12 Ladies and gentlemen, is there anyone here --
13 and the judge asked you a little bit about being the
14 victim of a crime -- who feels that they have actually
15 had the personal experience of sitting in that chair
16 right there, the witness chair, whether you were a
17 victim or any other witness being subpoenaed to a
18 courtroom and sitting in front of a jury on a case?
19 Anybody? Civil or criminal. Does anybody feel they can
20 imagine that they'd be a little bit nervous sitting up
21 in front of this many people? Or if I asked you one by
22 one to come up here and talk for 10 minutes, do you
23 think you might feel a little nervous? That's
24 understandable as a human reaction.

1 Is there anyone here -- the ones I guess that
2 said they were the victims of a crime, home invasion,
3 burglary, a few of you. I believe -- if I heard you
4 correctly, none of you had to come into the courtroom
5 and testify, either nobody was caught or the case was
6 solved without you. Is there anybody here that believes
7 they did take part in the criminal justice system
8 against the accused and have to face that accused in
9 court, whether from a witness chair or from the back of
10 the courtroom? Just generally speaking, does anybody
11 have an opinion about that? How would you feel as a
12 rape victim, being in the courtroom facing the person
13 who did it to you or the accused in a criminal case,
14 where a criminal charge has been alleged. Do you think
15 that might make you a little concerned or nervous?

16 Ms. Carroll, how certain do you believe you'd
17 have to be before you convict somebody of a criminal
18 offense, something as serious as sexual assault?

19 POTENTIAL JUROR: A hundred percent.

20 MR. CLIFTON: A hundred percent. Thank you.

21 Do you think you'd be more convinced of
22 something that you observed yourself or of something
23 somebody told you happened? Do you think you'd be more
24 convinced if you saw somebody run a red light and

1 collide into another vehicle or if somebody told you?

2 POTENTIAL JUROR: Something I saw myself,
3 definitely.

4 MR. CLIFTON: How about -- you have friends and
5 family, I take it. If you have a family member or a
6 friend that you believe is trustworthy, do you think
7 you'd tend to believe that person, if they said the
8 light was green, over someone you'd never met, a
9 complete stranger, who said, "No, the light was red."

10 POTENTIAL JUROR: I wouldn't base the opinion
11 on knowing or not knowing someone. Again, it would be
12 based on the accuracy of the information.

13 MR. CLIFTON: So even if you knew somebody was
14 trustworthy, you wouldn't tend to automatically believe
15 them more than a complete stranger?

16 POTENTIAL JUROR: Not necessarily.

17 MR. CLIFTON: Let's go back to you being more
18 sure of something you saw than something a stranger said
19 they saw. Let's go back to that. You realize that if
20 you're picked on this jury, the same as the other 30
21 people and the possible jury panel, you're going to be
22 relying not only on what you saw and heard, but on what
23 a complete stranger tells you happened, from that
24 witness chair. Do you understand that?

1 POTENTIAL JUROR: Uh-huh.

2 MR. CLIFTON: And I have to ask you, how do you
3 believe you could ever be 100 percent certain? Because
4 you already said you'd be more certain of something you
5 saw yourself than you would if somebody told you. So
6 how do you believe you could ever be absolutely certain
7 of anything strangers tell you?

8 POTENTIAL JUROR: Because for me, I think it
9 has to do with the amount of information that I'm given
10 and the type of information that I'm given. So in
11 regards to being able to trust my own judgment, I have
12 no feeling on that.

13 MR. CLIFTON: Do you, and the rest of you in
14 the panel here, believe you could follow the judge's
15 instructions to follow the law as he instructs you at
16 the end of this trial, if you're picked to be on this
17 jury? Does everybody feel they could do that?

18 well, the judge is going to instruct you -- and
19 he already has a little bit -- he hasn't described it or
20 defined the term, but he's already told you it's a very
21 high standard that the state, myself, has as far as the
22 burden of proof, a very high standard to prove a
23 criminal matter. It's called beyond a reasonable doubt.
24 You may have heard that from the O.J. Simpson days,

1 which is when this case occurred, in 1994. Beyond a
2 reasonable doubt.

3 Do you understand, Ms. Carroll, that that does
4 not mean absolute certainty? So I have to ask that
5 question again. If the judge instructs that you have to
6 be convinced beyond a reasonable doubt, for many of the
7 reasons I just gave you -- you're not going to know
8 these witnesses, they're just strangers, you didn't
9 observe this yourself, you may never be able to be
10 100 percent certain on things that are told to you in
11 the courtroom, but you have an obligation to determine
12 if you can decide beyond a reasonable doubt that
13 somebody's guilty. Beyond a reasonable doubt, just
14 think about those terms a little bit, "reasonable" and
15 "doubt." Beyond a reasonable doubt. Do you understand
16 that that does not mean absolute certainty?

17 POTENTIAL JUROR: Uh-huh, I do.

18 MR. CLIFTON: Now, if I ask you that question
19 again, when the judge instructs you on the law of being
20 convinced beyond a reasonable doubt, before you can sign
21 that verdict of guilty, are you going to say, "I don't
22 care what that instruction says. I have to be
23 absolutely certain"?

24 POTENTIAL JUROR: The whole premise of being

1 here is under the judge's guidance. So it is up to the
2 entire jury to come to a conclusion as a unit. It's not
3 only one person.

4 MR. CLIFTON: Right, but every one of them has
5 to follow the law. All 12 have to follow the law to
6 determine someone's guilt, if he's guilty beyond a
7 reasonable doubt, not with absolute certainty.

8 POTENTIAL JUROR: Yes.

9 MR. CLIFTON: Okay. Are you going to be in
10 there thinking to yourself, "I may be convinced beyond a
11 reasonable doubt, but I'm still not going to agree to
12 sign this verdict of guilt, because I'm not absolutely
13 certain." Do you get that?

14 POTENTIAL JUROR: I think that I do, and, yes,
15 I would be able to be impartial in that arena, even
16 though I wouldn't have complete and total control of the
17 information, maybe, that I was getting. Is that what
18 you're getting at?

19 MR. CLIFTON: No. I can tell you right now, to
20 hold me to a burden of absolute certainty where you can
21 stake your life on something, I'm not going to say I can
22 do that. You don't know these witnesses, you've never
23 met them. You're going to have to learn from the
24 witness stand what these people are like and how they

1 testify, whether they're believable.

2 Ms. Ostrom-Graf, I've already called on you
3 once. Do you think you'd have to be absolutely certain
4 of somebody's guilt to convict them?

5 POTENTIAL JUROR: well, it goes back to if
6 there's anything that you're not -- that's calling you
7 away from being certain. So if there's evidence showing
8 that he didn't commit the crime, then I'm not certain.

9 MR. CLIFTON: No doubt, I agree, but are you
10 convinced beyond a reasonable doubt? That is the
11 standard.

12 POTENTIAL JUROR: well, how can you be
13 convinced beyond a reasonable doubt unless you were
14 there actually witnessing it?

15 MR. CLIFTON: You can be convinced beyond a
16 reasonable doubt to where you'd stake your life, it's
17 probably not going to happen in the courtroom. Does
18 everyone see where I'm going? Ms. Burkhardt?

19 POTENTIAL JUROR: Yes.

20 MR. CLIFTON: Let me put it another way, I
21 guess. When you're going in to deliberate, you're going
22 to talk about what the witnesses said and whether
23 they're believable. Correct?

24 POTENTIAL JUROR: Correct.

1 MR. CLIFTON: Are you going to listen to the
2 other jurors -- maybe six of them believed the witness,
3 six of them didn't. Are you going to be able to
4 deliberate and listen, or are you going to hold fast and
5 say, "I don't care what you tell me. I believe that
6 person or I didn't believe that person"? How do you
7 think you'll react?

8 POTENTIAL JUROR: My initial reaction would be
9 that I would listen to both sides of all the jurors.

10 MR. CLIFTON: In other words, deliberate and
11 make a decision after you've discussed it.

12 POTENTIAL JUROR: Yes.

13 MR. CLIFTON: would it surprise you all to hear
14 that sometimes jurors go back there, the 12 of them, and
15 you think everybody's going to vote this way and they go
16 in there and it's six to six. So what do you do? will
17 you keep deliberating and discuss it with all the
18 jurors? Can you all agree to do that?

19 That's going to be the instruction the judge is
20 going to give you, get in there and deliberate, even
21 though you may not have had the exact same impression of
22 the witnesses or impression of the evidence. Does that
23 surprise anybody? Does that shock anybody? Does that
24 mean there's a reasonable doubt? Just because six are

1 feeling one way and six are feeling another way, are you
2 automatically done?

3 Ms. Ostrom-Graf, are you done? You take your
4 first vote, it's six to six. Do you say, "Judge, we're
5 ready to go home"? We all hope you go in there and
6 everybody agrees and you're all happy. Instead of 12
7 angry men, it's 12 happy people, but that's your job.
8 It's a very, very important civil commitment to be on a
9 jury. It's your civil duty and it's very, very
10 important.

11 Ms. Bacher, what if you were sitting on a trial
12 in a murder case and your friend was sitting on a trial
13 the same day in a speeding ticket case or trespassing or
14 disturbing the peace. Do you think you'd have to be
15 more certain in your case to convict someone of murder
16 than probably your friend would for speeding?

17 POTENTIAL JUROR: No. I feel the importance
18 would be the same in your decision in either case.

19 MR. CLIFTON: I think that's the first time
20 I've ever gotten that answer. Everybody tells me that,
21 "Of course I'd have to be more sure on a murder or a
22 sexual assault." You're absolutely right. The legal
23 standard of beyond a reasonable doubt is exactly the
24 same for every crime. It doesn't matter if it's a

1 misdemeanor or a felony, speeding ticket, trespassing,
2 battery, sexual assault, murder. It's beyond a
3 reasonable doubt. Does that bother anybody? Does
4 anybody think, "Hey, sexual assault, I'm gonna have to
5 be more sure"?

6 Ms. Carroll, do you think you're going to have
7 to be more sure on a sexual assault case than you would
8 a trespassing case?

9 POTENTIAL JUROR: No.

10 MR. CLIFTON: Can everyone live with that?
11 That's the law, and part of the instructions the judge
12 will give you is, it doesn't matter, every criminal case
13 is beyond a reasonable doubt. Does everybody agree to
14 follow that?

15 I'm more than happy to do my job. I've been
16 doing it a long time and I'm happy to come in here and
17 put on our case, and I'll be the first one to tell you,
18 we're putting on our case to prove to you beyond a
19 reasonable doubt, but if you're going to hold me to an
20 impossible standard, we can let you go home now, because
21 if you're going to hold me to an absolute certainty,
22 it's basically impossible and it's not the law.

23 So can you all promise to hold the State of
24 Nevada, myself, to the burden of proof that the judge

1 instructs you on, which is beyond a reasonable doubt,
2 even in a sexual assault case? I see nobody shaking
3 their head "no." So you can all guarantee me of that.

4 Ms. Nowak, you're a forestry scientist?

5 POTENTIAL JUROR: Uh-huh.

6 MR. CLIFTON: What type of scientist? Is it
7 like a botanist?

8 POTENTIAL JUROR: Basically. I run the
9 paleontology lab for the Forest Service, looking at
10 plant life in different regions and global planet change
11 and what we can expect for plant life in the future and
12 resource management.

13 MR. CLIFTON: Do you get involved with DNA at
14 all?

15 POTENTIAL JUROR: No, that's not my end.

16 MR. CLIFTON: Is there anybody here who thinks
17 they have some type of expertise or knowledge, more than
18 you'd see on TV or read about, about DNA?

19 POTENTIAL JUROR: Well, I'm a professional
20 scientist.

21 MR. CLIFTON: Mr. Gillett?

22 POTENTIAL JUROR: Yes.

23 MR. CLIFTON: Dealing with DNA, or are you just
24 talking about your education?

1 POTENTIAL JUROR: Just education. I do a lot
2 of science writing. I've got a contract for a book
3 that's gonna be on nanotechnology, which is bioscience
4 at the molecular level.

5 MR. CLIFTON: When did you go to school to
6 become a scientist?

7 POTENTIAL JUROR: I got my Bachelor's in 1975,
8 I got my Ph.D. in 1981, and I was on the faculty of the
9 geology department at UNR up till '01, I guess it was.

10 MR. CLIFTON: And what was your major or minor
11 or your specialty?

12 POTENTIAL JUROR: Geology.

13 MR. CLIFTON: Geology, okay, which wouldn't
14 involve DNA.

15 POTENTIAL JUROR: well, I kind of have
16 broadened out since then, but --

17 MR. CLIFTON: And your Ph.D. was also in
18 geology?

19 POTENTIAL JUROR: Geology, yeah. Sunni at
20 Stonybrook, State University of New York.

21 MR. CLIFTON: So back in 1975, DNA wasn't as
22 advanced. Did you have any classes on it at all in
23 school?

24 POTENTIAL JUROR: Yeah. I went to Cal Tech, we

1 were required to take science classes. So, yeah, I had
2 a biology class at that time.

3 MR. CLIFTON: There's been a lot of advances in
4 DNA, wouldn't you agree, in the last couple of decades?

5 POTENTIAL JUROR: Oh, yeah.

6 MR. CLIFTON: But you aren't staying up to
7 speed or up to date on that, are you?

8 POTENTIAL JUROR: Not specifically, no.

9 MR. CLIFTON: There's going to be a lot of
10 science testimony, there's going to be DNA testimony in
11 this case. You're going to get a mini tutorial on DNA.
12 The expert witnesses that will be testifying will try to
13 make it simple, and they do a very good job. Does
14 anybody have a problem with that or think they know
15 something about DNA that might make them partial or
16 impartial -- or I should say partial to one side or the
17 other, or you'll be unfair to either side because of
18 something you know about DNA that you're either going to
19 trust or not trust?

20 Has anybody ever heard of the CSI effect? You
21 watch enough of these CSI shows and you think that's how
22 it's done in real life. Actually, this is one case
23 where it's going to be a little bit like that, the CSI
24 show. You're going to hear about cells and you're going

1 to hear about bodily fluids and stuff and how we all
2 have these DNA markers in our cells. Is there anybody
3 who's so afraid of that and just wants to run out of
4 this courtroom right now? Just so afraid of science or
5 statistics, you just couldn't handle it?

6 Some people hold the government to these kind
7 of standards that these actors portray on TV shows in
8 these one or two-hour programs. And I can tell you
9 right now, we're not going to have the case to you to
10 decide in two hours. There's no way. That's the first
11 thing I can tell you, but you will see some things. Is
12 there anyone with that CSI effect that's going to hold
13 the government or the State to the standards in a CSI
14 show or think this is how they do it on TV? Do you
15 understand it's not always the same as real life?

16 Does anybody know what DNA stands for? Do you
17 know, Mr. Gillett?

18 POTENTIAL JUROR: Deoxyribonucleic acid.

19 MR. CLIFTON: And Ms. Bruskotter, how would you
20 know that? Have you had education or are you just --

21 POTENTIAL JUROR: Just reading, some college.

22 MR. CLIFTON: Nothing to do with employment or
23 work?

24 POTENTIAL JUROR: No.

1 MR. CLIFTON: I still can't pronounce it right,
2 but you could probably spell it. Anything from all that
3 reading, you think, that's going to influence you?

4 POTENTIAL JUROR: No.

5 MR. CLIFTON: You're going to listen to the
6 experts. It may be exactly the same as what you read,
7 it may not, but you'll listen to what they have to say.
8 We're not asking any of you to put aside all your
9 knowledge from high school science classes, biology,
10 college, whatever. You can use your human experiences,
11 your life experiences, but if you have specific
12 independent expertise in an area, that's something we do
13 need to know. And I'm glad that I have at least two
14 people that know what DNA stands for and a little bit
15 about it, but you understand you can't be the expert on
16 the jury panel. It's what comes out of the witness's
17 mouth. You can't go in there and bring in all your
18 pamphlets and educational books and things you've read,
19 whether in your mind or the actual book. You understand
20 that?

21 Do you understand that, Mr. Gillett?

22 POTENTIAL JUROR: Yeah.

23 MR. CLIFTON: So even though you may have some
24 independent knowledge, you can't become the expert for

1 the other 11, but you certainly can use your own
2 knowledge of DNA. If one of our experts tells you it
3 stands for something different or it's wrong, you can
4 decide to disagree, that's okay, but you don't become
5 the knowledgeable expert for the other 11.

6 All right. Some of you here are working for
7 Saint Mary's Hospital. Yes, how long have you been with
8 Saint Mary's?

9 POTENTIAL JUROR: Since February.

10 MR. CLIFTON: And this is Mrs. Shults?

11 POTENTIAL JUROR: Yes.

12 MR. CLIFTON: February of this year?

13 POTENTIAL JUROR: Uh-huh.

14 MR. CLIFTON: As a nurse?

15 POTENTIAL JUROR: Uh-huh.

16 MR. CLIFTON: Where were you before that?

17 POTENTIAL JUROR: I've done travel nursing the
18 last two years, and then I worked at Washoe Medical
19 Center from '96 through 2007.

20 MR. CLIFTON: So you didn't recognize Dr.
21 Diedoff, Diane Hackwirth, Carol Phillips?

22 POTENTIAL JUROR: No.

23 MR. CLIFTON: You may have some specialized
24 knowledge as a nurse. Diane Hackwirth is a nurse. Have

1 you ever been involved in any type of sexual assault
2 evidence or rape kits?

3 POTENTIAL JUROR: No, uh-uh.

4 MR. CLIFTON: You may have some general nursing
5 knowledge, but probably nothing designed toward sexual
6 assaults, so that you know how they're investigated or
7 treated by nurses?

8 POTENTIAL JUROR: That's correct, I wouldn't
9 have any knowledge of that.

10 MR. CLIFTON: And was it your occupation, Mr.
11 Vonthun -- oh, it was your wife, I think, that was
12 dealing with computers and heart conditions.

13 POTENTIAL JUROR: Uh-huh.

14 MR. CLIFTON: So nobody else has specific
15 knowledge at Saint Mary's, especially back in 1994, or
16 know any of those witnesses by name.

17 Now, this gets a little bit more specific here.
18 Is there anyone who thinks they've ever worked with
19 sexual assault victims, physical trauma or injuries,
20 mental trauma, anything like that?

21 POTENTIAL JUROR: Yeah. When I was going to
22 school, I worked at the state hospital. There were
23 several incidences.

24 MR. CLIFTON: For the record, this is Mr.

1 Upton?

2 POTENTIAL JUROR: Yeah. I've worked with
3 developmentally disabled people for almost 40 years. So
4 I've seen some sexual assault things, not -- I mean,
5 allegations against people, I've been around it.

6 MR. CLIFTON: Have you seen the victims of the
7 alleged sexual assault?

8 POTENTIAL JUROR: Yes.

9 MR. CLIFTON: Have you seen the mental trauma,
10 physical trauma, or both?

11 POTENTIAL JUROR: We're trained to look for
12 that.

13 MR. CLIFTON: Which, the mental?

14 POTENTIAL JUROR: Yeah, changes in behavior,
15 you know.

16 MR. CLIFTON: But you're not involved in any of
17 the physical portions, the examination?

18 POTENTIAL JUROR: No.

19 MR. CLIFTON: Like a nurse might be at a
20 hospital.

21 POTENTIAL JUROR: No.

22 MR. CLIFTON: So it's more behavioral.

23 POTENTIAL JUROR: Yes.

24 MR. CLIFTON: And do you still do that?

1 POTENTIAL JUROR: I still work with that
2 population of people that have been in institutions,
3 group homes. Sometimes things happen and allegations
4 are made. That's just part of the environment.

5 MR. CLIFTON: Okay. So you maybe have some
6 expertise in a general manner and that would be part of
7 your life experiences, but you don't become the expert
8 and you understand that.

9 POTENTIAL JUROR: Absolutely.

10 MR. CLIFTON: And Mr. Lysdal?

11 POTENTIAL JUROR: Yes. Just on the scene of a
12 response from the fire department where we had a victim
13 of sexual assault, a female.

14 MR. CLIFTON: You indicated you're a retired
15 firefighter. Was that the Reno Fire Department?

16 POTENTIAL JUROR: Yeah.

17 MR. CLIFTON: So how many years did you work
18 there?

19 POTENTIAL JUROR: Almost 29.

20 MR. CLIFTON: I don't recognize your name
21 necessarily, but do you recognize me from an arson or
22 anything?

23 POTENTIAL JUROR: Yes.

24 MR. CLIFTON: I've done a lot of arson training

1 and investigations.

2 POTENTIAL JUROR: Uh-huh.

3 MR. CLIFTON: I think the judge did ask if you
4 knew any of the attorneys, but I don't think we've ever
5 met, have we?

6 POTENTIAL JUROR: No, uh-uh.

7 MR. CLIFTON: So you may know the name or we
8 may have crossed paths somewhere.

9 POTENTIAL JUROR: I think I've probably seen
10 you on the news or in the paper.

11 MR. CLIFTON: Because I do have some arson
12 experience and training as a DA, but I don't think I've
13 been involved with you on a specific case.

14 POTENTIAL JUROR: No.

15 MR. CLIFTON: And you were a firefighter, not
16 an arson investigator.

17 POTENTIAL JUROR: Yeah, I was a fire operator
18 and I drove the fire engine.

19 MR. CLIFTON: But you were never an arson
20 investigator.

21 POTENTIAL JUROR: No.

22 MR. CLIFTON: Thank you.

23 Mr. Sabini, on your questionnaire you wrote
24 some things on the back. You remember that? Kind of

1 being a little silly, a little funny.

2 POTENTIAL JUROR: Uh-huh.

3 MR. CLIFTON: Can you take this job seriously
4 as a juror?

5 POTENTIAL JUROR: Yeah.

6 MR. CLIFTON: Okay, we'll let it go at that. I
7 got a good laugh at it, but for this kind of trial --
8 there may be some circumstances that bring a little
9 humor into it, but it's a serious case. You understand
10 that?

11 POTENTIAL JUROR: Uh-huh.

12 MR. CLIFTON: Would anyone expect two people,
13 or you and another person to react exactly the same when
14 confronted with a traumatic event? Have you ever seen
15 on these surveillance videos they have at 7-Elevens and
16 the cashier's getting robbed at gunpoint, and half of
17 them just collapse and say "take the money" and back up,
18 and the other half chase them out the door and hit them
19 with a cane. Some people react one way, some people
20 react a different way. They're both still robbed, the
21 robbery still occurred, but you have different reactions
22 from what could be a traumatic event with a gun pointed
23 at you in an armed robbery.

24 Does everyone understand that type of human

1 behavior, that you can't expect a certain type of
2 result? Grieving isn't the same for everybody. Some
3 people cry, some people don't. Does everybody
4 understand that? Is there anyone who's ever been
5 confronted with a life or death situation, where you
6 seriously thought "I'm gonna die"?

7 You have, Ms. Burkhardt?

8 POTENTIAL JUROR: well, in an auto accident.

9 MR. CLIFTON: Actually, it's Mrs. Shults. An
10 auto accident?

11 POTENTIAL JUROR: Uh-huh.

12 MR. CLIFTON: And you thought you were injured
13 enough to where you thought you were going to die?

14 POTENTIAL JUROR: well, when we were skidding
15 upside down on Interstate 80, I had a little time to
16 think.

17 MR. CLIFTON: Oh, while it was happening.

18 POTENTIAL JUROR: Yeah.

19 MR. CLIFTON: And some people describe it as
20 slow motion and other people describe it as it went by
21 like that. So it's all different, correct?

22 POTENTIAL JUROR: Uh-huh, yep.

23 MR. CLIFTON: Has anybody ever had to face a
24 situation where you thought you were going to be killed

1 unless you did something? You give in to a rapist or
2 he's going to kill you. Has anybody ever been in any
3 kind of situation where you actually had that type of
4 traumatic event and you had to try to think, "Do I
5 fight, do I try to get out of this some way, or do I let
6 it happen and get it over with and hopefully it'll save
7 my life." Does anybody think they've ever been to that
8 level in their mental being?

9 Mr. Sabini?

10 POTENTIAL JUROR: Yeah, I got robbed in the
11 mountains about 20 years ago, when I was 19, by a couple
12 of guys with guns, and I called the sheriff's department
13 and they got them. I couldn't prove anything, because
14 it was food that they had. They kept all our personal
15 stuff and threw it over the side of the hill.

16 MR. CLIFTON: You were robbed at gunpoint?

17 POTENTIAL JUROR: Yeah.

18 MR. CLIFTON: And I don't think you mentioned
19 that you were a victim of a crime when Judge Adams --

20 POTENTIAL JUROR: well, you know, I didn't want
21 to bring it up.

22 MR. CLIFTON: That's okay.

23 POTENTIAL JUROR: But, yeah, I felt like going
24 back with a gun and shooting them.

1 MR. CLIFTON: But you see how sometimes, as
2 jurors, you have hidden biases -- or not so hidden -- or
3 prejudices, and we need to know that kind of stuff. We
4 need to know. Mr. Sabini, you don't know how important
5 that is for me and maybe the defense, that you went
6 through something like that and had that experience.
7 When a victim gets up on that stand and testifies, you
8 may relate to that or you may not. That's something
9 that we try to find out. How are these jurors going to
10 relate? Is there anything else you can think of that
11 the judge asked that you didn't answer?

12 POTENTIAL JUROR: No, uh-uh.

13 MR. CLIFTON: Anything else that the judge
14 asked that anybody can think of, where you thought "Oh,
15 maybe that would've been important." I can't tell you
16 how many times afterwards, after the trial's over, where
17 we find out they never told us about a situation that
18 was clearly one of the questions we asked or one of the
19 questions the judge asked, and either they think it
20 might be a little embarrassing or whatever. If there is
21 something that's so personal that you haven't brought it
22 up -- you had a death or a serious incident in the
23 family, that the judge was asking about and you didn't
24 want to bring up because you didn't want to talk about

1 it, you can raise your hand and let us know and the
2 judge will bring you into chambers -- it's very
3 informal -- and he'll ask you, so that we know. Because
4 it's not fair to us for you to hide that and go into the
5 jury room harboring that feeling that may cause you to
6 have a bias or prejudice to either side or against
7 either side. Do you all promise me that if you've
8 thought of something or something comes up, you'll raise
9 your hand and at least let us know?

10 Ms. Humphreys, are you contemplating or are you
11 just --

12 POTENTIAL JUROR: well, I'm just thinking.

13 MR. CLIFTON: Thinking, okay. You or anybody
14 else, raise your hand now and let me know. We don't
15 have to do it right now, we can do it when we're getting
16 ready to pick the final jury.

17 Mrs. Getty?

18 POTENTIAL JUROR: Lane.

19 MR. CLIFTON: Mrs. Lane, okay. Would you like
20 to go into chambers?

21 POTENTIAL JUROR: Uh-huh.

22 MR. CLIFTON: Thank you very much, I appreciate
23 that. Anybody else?

24 POTENTIAL JUROR: I would like to go into

1 chambers too.

2 MR. CLIFTON: Judge, I'm sorry, would you like
3 to do it now or another time, or should I just stop --

4 THE COURT: No, we'll do it at the recess.
5 That was Ms. Lane and -- sir, what is your name, please?

6 POTENTIAL JUROR: Brown.

7 MR. CLIFTON: And I really appreciate the
8 candor from all of you, because if you feel it's
9 important enough to raise your hand, it's something we
10 probably need to know. It may be nothing, we may just
11 write it down and move on or we may have to excuse you,
12 you never know, but we won't question you about it here
13 in the courtroom.

14 Anybody else? Okay, thank you. It's kind of
15 like say now or forever hold your peace.

16 Has anybody ever heard of re-victimization?
17 Mr. Gillett, what do you think it means?

18 POTENTIAL JUROR: Becoming a victim again
19 because of having to testify or whatever. So having to
20 relive the experience, in essence.

21 MR. CLIFTON: This case happened 15 years ago.
22 We're bringing it up again. Did everybody hear what Mr.
23 Gillett was talking about? That a victim may relive it,
24 they may break down on the stand or may not, but

1 sometimes people reliving something that they've put in
2 the past, it all comes gushing out. Sometimes it's a
3 good thing mentally, sometimes it's harmful, but they
4 could have a reaction. Does everybody understand that?
5 And re-victimization is one way to label it.

6 Is anybody familiar with what a rape victim
7 goes through? Say the physical exam, the personal
8 invasion of privacy, I guess. Nobody's worked in that
9 field in any way at a hospital? You're going to be
10 hearing about that in this case.

11 Just a couple more individual questions. Mr.
12 Cheng, you had a 1986 criminal matter that was
13 dismissed. I doubt I was involved in that case, but I
14 was a district attorney here in 1986. Do you know if I
15 was on that case, by any chance, when you were picked
16 for that jury?

17 POTENTIAL JUROR: That case was many years ago.
18 I just remember the judge was Judge Elliott. It was a
19 long, long time ago.

20 MR. CLIFTON: Well, he was a Sparks city
21 attorney, he wasn't a judge here in 1986. But do you
22 know who the prosecutor was? All I need to know is if
23 it wasn't me.

24 POTENTIAL JUROR: No, it wasn't.

1 MR. CLIFTON: Were you happy or upset that it
2 got dismissed? Did you want to go and deliberate and
3 decide the case, or were you happy you could go home and
4 forget all about it?

5 POTENTIAL JUROR: I would like to see the case.

6 MR. CLIFTON: Once you're picked on a jury,
7 you'd like to make a decision?

8 POTENTIAL JUROR: Not to make a decision, but
9 to know the final result.

10 MR. CLIFTON: Well, you know that, it was
11 dismissed. Didn't you say that?

12 POTENTIAL JUROR: Yes, but --

13 MR. CLIFTON: Whether he's guilty or not, okay.
14 There was an alternate juror and that's Mrs.
15 Jennings?

16 POTENTIAL JUROR: Jennings.

17 MR. CLIFTON: How did you feel about that? You
18 go through the whole case as an alternate, you probably
19 have some clue in your mind which way you're going to
20 vote, but then you don't get to vote.

21 POTENTIAL JUROR: Yeah, I would've liked to
22 have voted.

23 MR. CLIFTON: Was it anti-climactic?

24 POTENTIAL JUROR: I was kind of disappointed,

1 not being able to finish it.

2 MR. CLIFTON: But you don't hold any ill
3 feelings about that experience or hold it against the
4 government, the defense, or anybody else?

5 POTENTIAL JUROR: Uh-uh.

6 MR. CLIFTON: And did I hear you right, it was
7 a child molestation case?

8 POTENTIAL JUROR: Uh-huh.

9 MR. CLIFTON: There was somebody else I
10 couldn't quite hear. Ms. Bruskotter, you said DUI and
11 sexual assault. Were there verdicts in those two cases?

12 POTENTIAL JUROR: The DUI, yes, and the sexual
13 assault, no. I don't know if a hung jury -- is that a
14 verdict?

15 MR. CLIFTON: No, it's not. And that's okay,
16 you don't even need to go that far. All we need to know
17 is, did you come to a verdict or not?

18 POTENTIAL JUROR: No.

19 MR. CLIFTON: And that's all we really can ask.
20 We don't get into deliberations or ask you questions
21 about how you felt about it.

22 The other one's -- Mrs. Humphreys, you had in
23 1999 -- on your questionnaire, I think you said a civil
24 case and here you said criminal case, and you said it

1 was State of Nevada against -- were they suing for money
2 or was it a crime?

3 POTENTIAL JUROR: It was a crime.

4 MR. CLIFTON: And did you say you did come to a
5 verdict?

6 POTENTIAL JUROR: We did.

7 MR. CLIFTON: Mr. Cohen, mushrooms, possession
8 of. That was your case, right?

9 POTENTIAL JUROR: Right.

10 MR. CLIFTON: I've prosecuted one of those
11 cases before, but yours was in 2000?

12 POTENTIAL JUROR: 2000. The guy was driving
13 his brother's car --

14 MR. CLIFTON: I don't need all that. But you
15 did come to a verdict?

16 POTENTIAL JUROR: Yes.

17 MR. CLIFTON: And I wasn't the prosecutor.

18 POTENTIAL JUROR: I don't believe so.

19 MR. CLIFTON: Yeah, the one I did was way back
20 in the '80s. And that was here. Did you say that was
21 Judge Hardesty?

22 POTENTIAL JUROR: Yes.

23 MR. CLIFTON: Yeah, he's on the Supreme Court
24 now, chief justice. I think that's all I had there.

1 Can all of you promise me lastly, ladies and
2 gentlemen, that if you are picked to sit on this jury,
3 the lucky 12 or 13, counting the alternate, that you
4 will do your best to listen to the evidence and be fair
5 and impartial to both sides and determine the facts of
6 the case beyond a reasonable doubt? Can you all promise
7 me you'll do that?

8 Thank you. Your Honor, I'll pass for cause.

9 THE COURT: Thank you.

10 Ladies and gentlemen, I apologize for the fact
11 that this jury selection process has gone on as long as
12 it has. Our usual time for jury selection in this
13 department is 45 minutes. What it means is, we will
14 have to take a recess for lunch and resume this
15 afternoon. I'm very hopeful that we can finish the jury
16 process shortly after lunch recess. I'd like those
17 jurors who indicated they might want to meet with us in
18 chambers -- Ms. Lane, Ms. Humphreys, and Mr. Brown -- to
19 come to chambers at 1:15. The rest of us will resume
20 here in the courtroom at 1:30, and you'll have to take
21 exactly the same places you have here this morning.

22 During this lunch recess, you're instructed not
23 to discuss this case among yourselves or with anyone
24 else. You are not to form or express any opinions

1 concerning this case, or read, listen or view news
2 accounts of the case, if any. Again, those jurors I
3 mentioned will meet with us in chambers at 1:15 and the
4 remainder will return to the courtroom at 1:30. Now, if
5 the judge is late or a lawyer is late or a party is late
6 or a juror is late, we all have to wait. So please
7 let's do our very best to be on time, so we can resume
8 the proceedings exactly at 1:30.

9 Court is in recess.

10 (Proceedings in chambers.)

11 THE COURT: The record should reflect the
12 presence of the parties and counsel and the Court in
13 chambers with Potential Juror No. 1. Mr. Gillett, is
14 there a matter you wished to bring to our attention?

15 POTENTIAL JUROR: Yeah, actually, there were a
16 couple. I'm gonna be a volunteer judge in the Intel
17 Science Fair next Tuesday and Wednesday. This is a pro
18 bono thing, I'm not getting a dime for it. In fact, I
19 feel like it's a pay it forward type of thing, because I
20 was a science fair finalist many years ago.

21 THE COURT: well, the trial is expected to last
22 for five days, so obviously there's a conflict. You'll
23 have to forgo participation in that project. What's the
24 other thing?

1 POTENTIAL JUROR: well, I know a bit more about
2 DNA than perhaps came through in the courtroom. My
3 background is in geology, but I have been getting into
4 nanotechnology very heavily for about the last 15 years,
5 and nanotechnology is the organization of matter, of
6 molecular cells. I was a biology major also and I'm
7 very interested in resources application, and this is
8 all in my book that's forthcoming.

9 THE COURT: well, let me ask you this, Mr.
10 Gillett: How does nanotechnology relate to the science
11 of DNA?

12 POTENTIAL JUROR: One of the ways that you can
13 organize matter on a molecular scale is the DNA. So
14 it's not necessarily DNA, it's like doing nonbiological
15 things with DNA. I was approached, for example, by a
16 company last year in the Bay Area -- I can talk a little
17 bit about it, because there's patent protection and this
18 stuff is in open literature. They're using DNA strands
19 to try and -- well, not try -- they have organized
20 materials on the order of a single bacterium by
21 basically making the bacterium express certain proteins
22 which will bind to metals, and then you've got this
23 structure that should be very useful. And they were
24 asking me, "well, what do you think it's good for?" And

1 I said, "well, it's really cute, but I don't have any
2 applications right off the top of my head." So, anyhow.

3 THE COURT: well, here's the question. There
4 will be expert testimony in this trial concerning DNA,
5 and the jurors will be asked to assess that testimony
6 based only on the statements and the conduct of the
7 people who testify. You're entitled to use your common
8 sense, you're entitled to use your life experiences, but
9 you are not entitled to rely on any kind of information
10 other than what is received in the trial. Can you do
11 that?

12 POTENTIAL JUROR: well, see, that's where I
13 think I would have a problem. Now, if somebody says two
14 plus two is three, that's fine, but my background is
15 such that I know that's not true.

16 THE COURT: well, that's the other issue, and
17 that is, we can't have an additional witness in the jury
18 room. So, for instance, during deliberations you can't
19 say to your fellow jurors, "well, you heard X, but let
20 me tell you, based on my expertise as somebody who has a
21 Ph.D. in geology and has worked with DNA, the way it
22 really goes is Y." You can't do that. Would you be
23 able to follow that instruction?

24 POTENTIAL JUROR: well, your Honor, I can't do

1 that. Just being an intellectual, I'm not sure I can do
2 that.

3 THE COURT: I think you're intelligent enough,
4 I think you're capable enough to do that, but I have
5 reservations about it. So you're excused. You will be
6 called by the jury commission to serve in another trial.

7 Ms. Clerk, please call another juror.

8 THE CLERK: Deirdre Lane.

9 THE COURT: The record should reflect the
10 presence of the parties and counsel and the Court and
11 Potential Juror No. 5. Ms. Lane, was there a matter you
12 wished to the bring to the Court's attention?

13 POTENTIAL JUROR: Yes. You mentioned if there
14 was a death in the family recently that would possibly
15 affect my jury decision-making. My sister passed away
16 last month, so I'm still grieving.

17 THE COURT: I'm sorry to hear that. I'm sure
18 it's difficult for you and your family, but this trial
19 will only be five days. All of us, as citizens, have an
20 obligation to serve as jurors and all we ask of you is
21 that you're attentive during the process, that you
22 listen to the evidence, follow the instructions of the
23 Court, and try to reach a decision. Now, only you know
24 if you can do that or if you're going to be so

1 distracted about this tragedy in your family that you
2 can't do it. I don't know; you have to tell me.

3 It's very easy for you to say, "Oh, Judge, I'm
4 not sure I can do this" and you get excused, but most of
5 us, even with difficult problems in our personal lives,
6 can set those aside and be jurors, but some of us can't.
7 You tell me.

8 POTENTIAL JUROR: well, obviously, I'm very
9 emotional about it, but I think I could.

10 MR. CLIFTON: Your Honor, if I may.

11 Ms. Lane, are you able to work, are you still
12 working?

13 POTENTIAL JUROR: Yes.

14 MR. CLIFTON: And you're dealing with your kids
15 and you're preoccupied with them, so you're not thinking
16 about your sister's death, it's actually taking your
17 mind off of the death and the grieving. Right?

18 POTENTIAL JUROR: Yes.

19 MR. CLIFTON: well, this case is not dealing
20 with a death, so it might actually might help take your
21 mind off of it. Obviously, when you think about it is
22 when you get emotional. So -- and you haven't been
23 taking time off like the last week or this week, have
24 you?

1 POTENTIAL JUROR: No, uh-uh.

2 MR. CLIFTON: And probably nothing will be
3 mentioned in this case that could possibly remind you of
4 that. So does that make you feel a little better?

5 POTENTIAL JUROR: Oh, yeah. I mean, I do get
6 emotional when I talk about it, but I just thought I'd
7 be remiss if I didn't bring it to your guys's attention.

8 THE COURT: I just want to know one thing. I
9 know it's a very difficult time for you. I lost my twin
10 brother and my sister, my mom and my dad, all of them in
11 a short period of time. Are you able, though, during
12 the trial -- you know from teaching how important it is
13 to be an accurate listener and to carefully focus on
14 what's going on -- are you able to be attentive to the
15 evidence during the trial? Do you think you can do
16 that?

17 POTENTIAL JUROR: Yes.

18 THE COURT: Okay, thank you.

19 Mr. Peck, any questions?

20 MR. PECK: No.

21 THE COURT: Okay. Thank you, Ms. Lane. Thank
22 you for bringing that to our attention. Please step
23 outside and we'll resume in the courtroom as soon as we
24 can.

1 Is Ms. Humphreys available?

2 THE CLERK: I have Mr. Brown here, your Honor.

3 THE COURT: All right.

4 Mr. Brown, please be seated right here. The
5 record should reflect the presence of the parties,
6 counsel, and the Court and Potential Juror No. 14,
7 Mr. Brown.

8 Mr. Brown, was there a matter that you wanted
9 to bring to the Court's attention?

10 POTENTIAL JUROR: well, yeah. I'm a little
11 nervous about saying this in front of everybody here,
12 but when I was 18, I was a victim of sexual assault when
13 I joined the Air Force. I have handled it. I've never
14 said this to anybody in my whole adult life, and you
15 were talking about how it affects you, but I've blocked
16 it out. I don't know what my feelings or reaction will
17 be during this trial.

18 THE COURT: well, I appreciate your bringing
19 that information to my attention, Mr. Brown. I want you
20 to think about it for just a moment. It's obviously a
21 traumatic subject for you.

22 POTENTIAL JUROR: I've never talked about it
23 before.

24 THE COURT: The number one thing that we

1 emphasize over and over in the jury selection process is
2 the ability of jurors to decide the case based only on
3 the testimony of the witnesses and the evidence
4 introduced at trial. Do you think you can do that?

5 POTENTIAL JUROR: I just really, truly do not
6 know, as this thing progresses, how I'm gonna be
7 feeling.

8 THE COURT: Let me ask you this. It's also
9 important that jurors are able to be fair and impartial
10 to both sides. It is alleged in this case -- it is
11 charged in this case that Mr. Peck, the defendant, is
12 the perpetrator of the offense of sexual assault. What
13 the evidence will be, I have no idea, but that's the
14 nature of the charge. Do you think you can be fair and
15 impartial to both sides?

16 POTENTIAL JUROR: I have to be honest, I just
17 don't know.

18 THE COURT: Okay, Mr. Brown. I am going to
19 excuse you from jury service in this case, and the jury
20 commissioner will assign you to another trial.

21 POTENTIAL JUROR: That's fine.

22 THE COURT: Okay. Thank you, sir.

23 POTENTIAL JUROR: I just thought I should come
24 and tell you.

1 THE COURT: We appreciate it. Thank you for
2 coming to court today. You're excused.

3 And who is the next person?

4 THE CLERK: Maldonado.

5 THE COURT: The record should reflect the
6 presence of the Court and the parties and counsel and
7 Potential Juror No. 17, Mr. Alexander Maldonado.

8 Mr. Maldonado, was there a matter you wished to
9 bring to the Court's attention?

10 POTENTIAL JUROR: I'm sorry, I didn't hear you.

11 THE COURT: Is there a matter that you wished
12 to bring to the Court's attention?

13 POTENTIAL JUROR: Yes, sir. I have an
14 appointment today at 3:15 at the hospital. They're
15 performing lab work and pre-surgery lab work and
16 tomorrow I will have a surgery.

17 THE COURT: What is the nature of the surgery?

18 POTENTIAL JUROR: I have a catheter. So
19 they're going to remove something, some kind of tissue
20 from inside of me.

21 THE COURT: You have a catheter inside your
22 body now?

23 POTENTIAL JUROR: Right now, yes. I've had
24 this appointment already for a month.

1 THE COURT: what's your general problem that
2 requires surgery?

3 POTENTIAL JUROR: My general problem is
4 prostate -- well, it's not really prostate cancer; I
5 don't know how to describe it, but to be able to
6 urinate, I can't.

7 THE COURT: And the surgery tomorrow does what,
8 please?

9 POTENTIAL JUROR: They're going to -- what I
10 was told from the papers they gave to me is with the
11 surgical knife, electrical knife, they're going to
12 introduce -- I don't know how to explain it. I have the
13 papers in my car.

14 THE COURT: well, if that surgery were
15 postponed for a week, would it cause you any problems?

16 POTENTIAL JUROR: I will stay in the hospital
17 overnight and they will release me on Friday. They're
18 gonna keep me at the hospital.

19 THE COURT: No. I mean, if the surgery's not
20 performed because you're a member of this jury, would it
21 cause you any harm to postpone the surgery for a week?

22 POTENTIAL JUROR: It already has been postponed
23 by Dr. Kanellos, because they couldn't do it last week.

24 THE COURT: But my question is, if it has to be

1 postponed one more week, would that harm you in any way?

2 POTENTIAL JUROR: Not really, because I already
3 been waiting for a month. So what's gonna be another
4 week?

5 THE COURT: Do you know if you can get the
6 surgery rescheduled in another week?

7 POTENTIAL JUROR: To be honest, I have no idea.
8 Like I say, Dr. Kanellos already postponed it one week.
9 It was supposed to be done last week.

10 THE COURT: Can you call his office and find
11 out?

12 POTENTIAL JUROR: Sure.

13 THE COURT: What I'd like to know is if it can
14 be postponed for a week and if postponing it would hurt
15 you. If this is something that needs to be done and it
16 needs to be done tomorrow, I'll excuse you. If it can
17 be postponed for a week, then you'll need to serve on
18 the jury.

19 POTENTIAL JUROR: Well, to me, I been with this
20 kind of problem for three years already, and I'm taking
21 medicine. I'm on medicine already, Flomax and other
22 type of medicine that I don't remember the name. And to
23 me, the sooner is the best for me.

24 THE COURT: And are you able to manage with the

1 catheter?

2 POTENTIAL JUROR: Yeah.

3 THE COURT: well, the sessions of the trial
4 will be about an hour and a half each. would you be
5 able to sit for an hour and a half and be all right?

6 POTENTIAL JUROR: Yeah, I would be able, but
7 the thing is I have to -- they're gonna be waiting for
8 me at 3:15 at the hospital. I guess they call it
9 pre-registration and lab work.

10 THE COURT: what I want you to do right now is
11 call the doctor's office and find out two things. Can
12 all that be postponed until next week and is there any
13 risk to you by doing that?

14 POTENTIAL JUROR: Okay.

15 THE COURT: And then let the bailiff know as
16 soon as you can. Can you do that right now?

17 POTENTIAL JUROR: Sure.

18 THE COURT: Okay, thank you.

19 Do we have someone else?

20 THE CLERK: We have Ms. Humphreys.

21 THE COURT: All right.

22 The record should reflect the presence of the
23 parties and counsel and the Court and Potential Juror
24 No. 7, Ms. Humphreys.

1 Ms. Humphreys, we had a discussion with you in
2 the courtroom and it seemed to me you did have some
3 reservations about serving as a juror in this case, and
4 you've had some time to think about it now. What do you
5 think?

6 POTENTIAL JUROR: I guess I'm okay with it.

7 THE COURT: Well, are you or not? Believe me,
8 I don't want to say or do anything to try to persuade
9 you to be on this jury. You've been candid with us and
10 I think you have some reservations and you have some
11 concerns about your other jury service.

12 POTENTIAL JUROR: This is a doctor's note that
13 I've been under a doctor's care for an infection, and it
14 makes it kind of hard for me to walk up and down steps
15 and move.

16 THE COURT: If you had to sit in the jury box
17 for, say, an hour and a half at a time, do you think you
18 could do that?

19 MR. LINDSAY: Could you please show that note
20 to the judge?

21 THE COURT: Well, I don't know if Dr.
22 Delionback should be rendering opinions about whether
23 someone should serve on a jury.

24 You were on the other jury when?

1 POTENTIAL JUROR: 1999.

2 THE COURT: And that was a sexual assault
3 charge?

4 POTENTIAL JUROR: Actually, it was a
5 molestation case. It was Judge Hardesty.

6 THE COURT: And it was a family member or a
7 stepchild or something?

8 POTENTIAL JUROR: Yeah, and Gammick was the
9 district attorney.

10 THE COURT: He was the district attorney?

11 POTENTIAL JUROR: Yeah.

12 THE COURT: Do you remember the defense lawyer
13 by any chance?

14 POTENTIAL JUROR: I think the case was
15 Chandler, State of Nevada versus Chandler.

16 THE COURT: well, we've discussed this many
17 times in the courtroom, Ms. Humphreys, and I am inclined
18 to excuse you, but I want to know if you can decide this
19 case based only on the evidence at this trial and
20 nothing else. I also want to know if you can be fair
21 and impartial to both parties, and that's the part I'm
22 worried about. You seem to be very troubled about this
23 subject. I'm sure your jury service in the other case
24 was not pleasant.

1 POTENTIAL JUROR: No, it wasn't.

2 THE COURT: If it's really not a thing you can
3 do, just say so. That's all you have to do.

4 POTENTIAL JUROR: I hesitate because I don't
5 know that I could. You know, you don't know until
6 you're presented with the problems or the issues. I
7 guess I could.

8 THE COURT: Are you employed right now?

9 POTENTIAL JUROR: Yes.

10 THE COURT: What do you do?

11 POTENTIAL JUROR: I'm a license specialist for
12 Luce & Sons.

13 THE COURT: Ms. Humphreys, I am going to excuse
14 you from jury service. You will be assigned to another
15 case by the jury commissioner. Just go to the first
16 floor to the jury commissioner's office.

17 Okay. Do we have anyone else?

18 THE CLERK: I think that's it.

19 THE COURT: So what we'll do is, we'll resume
20 in the courtroom and I'll have the clerk call persons to
21 serve in the places of the ones just excused. I'll ask
22 them a few questions and then the district attorney can
23 ask just those jurors questions, and then we'll have the
24 defense examine the entire panel.

1 Court is in recess.

2 (Brief recess taken.)

3 THE COURT: Please be seated.

4 Ladies and gentlemen, thank you for being
5 prompt and thank you for your patience. The clerk will
6 call the names of persons to serve in the place of
7 jurors that have been excused during the recess,
8 beginning with Juror No. 1. Ms. Clerk?

9 THE CLERK: William Gallivan.

10 THE COURT: Mr. Gallivan, please step forward
11 and be seated in the first seat in the upper tier of the
12 jury box.

13 And Ms. Clerk, please state the name of a
14 potential juror to replace Juror No. 7.

15 THE CLERK: Kenneth Birchall.

16 THE COURT: Mr. Birchall, please step forward
17 and be seated in the upper tier of the jury box in the
18 next to the last seat.

19 And the clerk will now read the name of a
20 person to replace Potential Juror No. 14.

21 THE CLERK: Ronald Hinzen.

22 THE COURT: Mr. Hinzen, if you'll be seated in
23 the front, in that seat.

24 And then the clerk will call the name of a

1 person to replace Potential Juror No. 17.

2 THE CLERK: Jennifer White.

3 THE COURT: Ms. White, if you'll step forward,
4 and you'll be seated in the third chair from the left as
5 you face the first row in front of the jury box.

6 Okay. Ms. Clerk, does that conclude the names
7 of replacements for jurors that have been excused?

8 THE CLERK: Yes, your Honor.

9 THE COURT: Thank you. I'd like to briefly ask
10 you some questions, just those of you who've recently
11 joined us.

12 Mr. Gallivan, would you state your occupation
13 and that of your spouse or anyone who lives with you.

14 POTENTIAL JUROR: I'm a forklift driver for
15 Georgia Gulf.

16 THE COURT: Thank you, Mr. Gallivan. Have you
17 ever served on a jury before?

18 POTENTIAL JUROR: No.

19 THE COURT: Have you heard anything about this
20 case before coming to court today?

21 POTENTIAL JUROR: No.

22 THE COURT: And do you know any of the parties,
23 the witnesses, or the lawyers in the case?

24 POTENTIAL JUROR: No.

1 THE COURT: Do you understand that in this
2 trial, the burden is always on the State to prove the
3 charge by evidence beyond a reasonable doubt and the
4 burden never shifts to the defendant to produce any
5 evidence or to call any witness?

6 POTENTIAL JUROR: Yes.

7 THE COURT: Is there any reason, including
8 anything I've mentioned or counsel's mentioned or maybe
9 something we haven't mentioned, that would lead you to
10 believe you could not be a fair and impartial juror in
11 this trial?

12 POTENTIAL JUROR: No.

13 THE COURT: Thank you.

14 And Mr. Birchall, could you state your
15 occupation and that of anyone who lives with you?

16 POTENTIAL JUROR: Quality assurance, quality
17 enforcement for water, for the City of Reno, and my
18 daughter, Diane, goes to school.

19 THE COURT: She goes to school where?

20 POTENTIAL JUROR: Reed High School.

21 THE COURT: Thank you, Mr. Birchall. Based on
22 any of the questions of counsel or myself or anything
23 else that may have occurred to you, do you know of any
24 reason why you could not be a fair and impartial juror

1 in this case?

2 POTENTIAL JUROR: No, sir.

3 THE COURT: Have you ever served on a jury
4 before?

5 POTENTIAL JUROR: No, sir.

6 THE COURT: Have you ever been the victim of a
7 crime?

8 POTENTIAL JUROR: No, sir.

9 THE COURT: And Mr. Gallivan, I neglected to
10 ask you that. Have you ever been the victim of a crime?

11 POTENTIAL JUROR: No.

12 THE COURT: Mr. Birchall, have you seen, read,
13 or heard anything about this case?

14 POTENTIAL JUROR: No, sir.

15 THE COURT: And do you understand the State's
16 burden of proof in this case?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: Do you understand that as a juror,
19 you would have to base your decision only on what you
20 saw and heard in the courtroom during the trial and the
21 instructions of the Court as to the law and no other
22 basis? Do you understand that?

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: And you can be fair and impartial

1 to both sides in the case?

2 POTENTIAL JUROR: Yes, sir.

3 THE COURT: Thank you.

4 Mr. Hinzen, where are you?

5 POTENTIAL JUROR: Right here.

6 THE COURT: Mr. Hinzen, would you state your
7 occupation and that of anyone who lives with you.

8 POTENTIAL JUROR: I work for the Peppermill in
9 the bakery. I live by myself.

10 THE COURT: Thank you, Mr. Hinzen. Based on
11 the questions of the Court and counsel or any other
12 matter that may occur to you, do you know of any reason
13 why you could not be a fair and impartial juror in this
14 trial?

15 POTENTIAL JUROR: No, sir.

16 THE COURT: And have you seen, read, or heard
17 anything about the case before coming to court today?

18 POTENTIAL JUROR: No, sir.

19 THE COURT: Have you ever been on a jury
20 before?

21 POTENTIAL JUROR: No.

22 THE COURT: Do you know any of the parties, the
23 witnesses, or the lawyers in this case?

24 POTENTIAL JUROR: No.

1 THE COURT: Have you ever been the victim of a
2 crime?

3 POTENTIAL JUROR: No, sir.

4 THE COURT: Do you understand that the fact
5 there's an indictment in this case means that it's just
6 a charge, it's not evidence of any kind against the
7 accused? Do you understand that?

8 POTENTIAL JUROR: Yes, sir.

9 THE COURT: And you understand that the State's
10 obligation in the trial will be to prove the charge by
11 evidence beyond a reasonable doubt. Do you understand
12 that?

13 POTENTIAL JUROR: Yes.

14 THE COURT: And the defendant has no obligation
15 to testify or to present any evidence or to call any
16 witnesses. Is that clear?

17 POTENTIAL JUROR: Yes.

18 THE COURT: Ms. White, would you state your
19 occupation and that of anyone who lives with you.

20 POTENTIAL JUROR: My position is an inventory
21 manager at Seva Logistics. My husband's position is a
22 radio operations tech for AT&T.

23 THE COURT: And I know what AT&T does. What
24 does your company do?

1 POTENTIAL JUROR: Third-party logistics. We
2 handle Verizon wireless's telephone equipment.

3 THE COURT: Based on my questions to the jury
4 panel or Mr. Clifton's or anything else that may have
5 occurred to you, do you know of any reason why you could
6 not be a fair and impartial juror in this case?

7 POTENTIAL JUROR: I do have reasons, sir.

8 THE COURT: And what are those?

9 POTENTIAL JUROR: I would prefer to discuss
10 them in private, if that's an option.

11 THE COURT: All right, thank you. We will.

12 Do you know any of the parties, the witnesses,
13 or the lawyers in this case?

14 POTENTIAL JUROR: No.

15 THE COURT: Have you heard anything about this
16 case before coming to court today?

17 POTENTIAL JUROR: I do not believe so.

18 THE COURT: And have you ever served on a jury
19 before?

20 POTENTIAL JUROR: No, I have not.

21 THE COURT: All right, thank you.

22 Mr. Clifton, if you wish, you may examine the
23 new potential jurors.

24 MR. CLIFTON: Just very quickly. Thank you,

1 your Honor.

2 Mr. Gallivan, Mr. Birchall, and Mr. Hinzen,
3 you've been here all morning since 10:30. Is there
4 anything you want to tell me, the defense, or the judge
5 that we need to know? From any of our questions, does
6 anything come to mind that we need to know about?

7 And your Honor, I'll pass for cause those
8 three, and Ms. White, we'll hear from her in chambers.

9 THE COURT: Mr. Peck, you may examine the
10 panel.

11 MR. LINDSAY: Your Honor, could I do the voir
12 dire?

13 THE COURT: All right. Is that what you'd
14 like, Mr. Peck?

15 THE DEFENDANT: Yes.

16 THE COURT: All right, thank you.

17 Mr. Lindsay?

18 MR. LINDSAY: My French isn't really very good,
19 but voir dire, as far as I know, means to seek the
20 truth. So this is a chance for Mr. Clifton and I to
21 find out truthfully, with all of you, whether or not you
22 can be fair to Mr. Clifton and be fair to the defendant.
23 And that is really the only thing that voir dire has to
24 do with, to seek and speak the truth, to make sure that

1 we have a fair and impartial jury.

2 Now, I'm not going to beat it to death, because
3 counsel's been up here and the Court has been up here,
4 but I just have to tell you, this has got to be the most
5 emotionally charged kind of case one can imagine. Mr.
6 Clifton has been practicing -- I believe he told us two
7 and a half decades. I've been up here doing this,
8 whatever it is I'm doing, for some 37 years. I have
9 great respect for Mr. Clifton, he's a fine gentleman and
10 he's a fine lawyer, but this is an emotionally
11 charged -- the accusation itself is charged with
12 emotion. It just has to be, there's just no way
13 around it. I have three daughters and I have five
14 granddaughters. I don't know if I have to say any more
15 than that.

16 So what we're here to do is to look at you all
17 and say, Can you actually genuinely be fair? Can you
18 actually genuinely be fair? This is a case where --
19 and Mr. Clifton did a fine job of laying out what he
20 believes he's going to prove to you, and he's going to
21 do an opening statement for you in just a few minutes,
22 but this is a case where there's DNA evidence and where
23 we have a defense that -- I hate to say it at this
24 point, but I believe it's what we would call an alibi

1 defense. Simply stated, "I was not in Reno, Nevada in
2 August of '94."

3 So my first question to you -- and counsel
4 asked you about DNA. Do any of you think DNA is a
5 perfect science? Have any of you heard the word
6 corruption as used in regard to DNA? And I know that we
7 have law enforcement -- we have people that are married
8 to law enforcement. I've spent my life involved in what
9 I consider law enforcement, and many of my friends are
10 not just prosecutors, they're police officers. I know
11 that may sound like it's impossible, but it isn't. So
12 we have a case in which we have alibi evidence and we
13 have people that are going to come in here and tell you
14 things about where Mr. Peck was in August of '94. We
15 have a very fine lawyer who's going to cross-examine
16 them, but do any of you take umbrage with the concept of
17 an alibi? Are any of you saying, Gosh, that's just not
18 possible?

19 You're going to find out from the evidence that
20 nobody accused my client of anything until about 10
21 years later. So you have to just stop and ask yourself,
22 what were all of you doing 10 years ago on August 9th
23 and 10th? I mean, the sword cuts both ways, if that
24 makes any sense. The sword cuts both ways. What did

1 you have for breakfast this morning? That's easy
2 enough. what did you have for breakfast yesterday?
3 what did you have for breakfast 10 years ago? There's
4 not one person here who can tell me what they had for
5 breakfast on August 9th, 1994.

6 we have a case here in which we have DNA. So I
7 have to ask you, do any of you think that it is an
8 infallible science? Do any of you believe it's an
9 infallible science? Are you willing to listen to the
10 experts? Are you willing to take the instructions that
11 the judge is going to give you?

12 There was a wonderful dialogue between counsel
13 and you, something about being a hundred percent sure,
14 and that's not the law. Nobody here is going to say,
15 Gosh, they didn't prove it to a hundred percent
16 certainty. Mr. Clifton and I've done the dance before,
17 and I mean that in the most positive sense. We've tried
18 cases together, and he and I have been in this game a
19 long, long time and we're going to ask you to follow the
20 law. Think of it as two lawyers who sometimes look at
21 the same evidence and see two different things. I know
22 that sounds somewhat impossible, but it's really not.

23 And I like to think of judges as referees, and
24 you have an exceptionally wonderful referee who will

1 make sure that Mr. Clifton and I don't cross any lines,
2 but this is a sexual assault charge. I'm a father of
3 five, a grandfather of six. It's emotional enough for
4 me. I look at all of the women here and I look at all
5 of the men. I'm a man and I have an emotional reaction
6 to the charge. I have difficulty believing that women
7 don't have an emotional reaction to the charge, whether
8 or not you were ever unfortunate enough to have
9 something like that happen.

10 So I ask you to honestly search your souls. I
11 ask you to voir dire, to seek the truth within you. Can
12 you sit on this jury and -- I know we're going into
13 chambers, ma'am; I'm not speaking to you right now --
14 but can you sit on this jury with an emotionally charged
15 case -- and counsel's the first to tell you that an
16 indictment is no evidence at all. He's the first one to
17 tell you that. It's just a charge. There's the
18 presumption of innocence. Does anybody have any problem
19 with the presumption of innocence? If you were asked
20 right now to vote, what would you vote? Well, the judge
21 is going to tell you that my client is presumed innocent
22 until somebody gets on that stand and gives you evidence
23 that proves -- not a hundred percent, but beyond a
24 reasonable doubt, and that instruction is very clear.

1 we've both memorized it a long time ago.

2 Does anybody have any problem with the
3 constitutional right of the Fifth Amendment? Everybody
4 knows what taking the fifth is, don't we? I don't watch
5 enough television, but I think we all know what the
6 fifth means. You're going to be instructed about it.
7 My question is, will you follow it?

8 In this case, we have an ancillary matter,
9 which is that one of the witnesses was convicted of
10 shooting a police officer. Attending a funeral, that's
11 emotional. One of my very best friends died about two
12 weeks ago, and I'm telling you, it wasn't much fun.
13 It's emotional stuff, it's not much fun. But my
14 question is, if you search your hearts, are you able to
15 be fair to Mr. Clifton -- and I want you to be fair to
16 Mr. Clifton -- and are you able to be fair to Mr. Peck?
17 Is there anything that has happened in your past that
18 charges you with an emotion that makes you wonder?

19 There may well be an allegation of corruption
20 beyond the scientific corruption. There may well be a
21 charge that law enforcement corrupted it, that it wasn't
22 an accident. would that kind of an allegation make it
23 possible for you to sit on this jury and not feel that
24 you had to defend all of law enforcement? I've spent my

1 career defending law enforcement for free, my entire
2 career. If a police officer's charged, they can call me
3 and I step in and I defend them for free. But they're
4 human beings, they're just like you and me. They're
5 just like you and me.

6 Does anybody understand the concept of
7 protocol? Do you have any idea what the word protocol
8 means? There's a nurse here that knows what protocol
9 is. Protocol is what you're supposed to do in a perfect
10 world to gather evidence.

11 They say that public speaking is the thing that
12 people fear more than anything. They say they fear it
13 more than death. And so when I speak to a jury, I know
14 there's a reluctance. There's a reluctance to hold up
15 your hand, there's a reluctance to say things, there's a
16 reluctance to expose our souls, but I ask you all to
17 take a moment -- and if you don't mind, I'm going to
18 start with juror number one, and all I want is a head
19 shake. Will you promise that you can be fair to both
20 sides?

21 POTENTIAL JUROR: (Shakes head.)

22 MR. LINDSAY: You don't feel you can be fair to
23 both sides?

24 POTENTIAL JUROR: No, I don't.

1 THE COURT: why not?

2 POTENTIAL JUROR: DNA evidence is hard to look
3 past.

4 MR. LINDSAY: I'm sorry?

5 POTENTIAL JUROR: DNA evidence is hard to look
6 past.

7 THE COURT: what do you know about DNA
8 evidence, Mr. Gallivan?

9 POTENTIAL JUROR: Not much. what I've learned
10 is from the Simpson trial.

11 THE COURT: Did you serve as a juror in the
12 Simpson trial?

13 POTENTIAL JUROR: No.

14 THE COURT: I frankly am not sure whether there
15 was DNA evidence in the Simpson trial. Are you
16 confident of that?

17 POTENTIAL JUROR: I believe there was, but I'm
18 not sure.

19 THE COURT: I'm not sure there was either. The
20 question is this: The subject of DNA will be discussed
21 and there'll be witnesses who have some background on
22 that subject who'll testify. Now, as I commented
23 earlier, the weight or the effect of their evidence will
24 be determined by the jury. You might be very persuaded

1 by the evidence or you might not be, or you might have
2 doubts. I don't know, but that's not the point. The
3 point is -- and obviously we hear lots in the media
4 about DNA evidence, but the question is, can you just
5 listen to and assess the evidence on that subject, as
6 well as all the other subjects in this trial in this
7 case and make your decision based on what happens in
8 this courtroom?

9 POTENTIAL JUROR: Honestly, I don't think so.

10 THE COURT: Why not?

11 POTENTIAL JUROR: It's just a strong enough
12 science, that if it puts somebody there --

13 THE COURT: How do you know that?

14 POTENTIAL JUROR: At this point, I don't.

15 THE COURT: Do you happen to know that no DNA
16 evidence is of 100 percent certainty? Did you know
17 that?

18 POTENTIAL JUROR: I'm aware of that, but I
19 thought there were only three results from DNA, which is
20 it's a match, it's not a match, or you can't type it.

21 THE COURT: Did you know that DNA evidence is
22 not a match in the sense that fingerprints are a match?
23 Did you know that?

24 POTENTIAL JUROR: I wasn't aware of that.

1 THE COURT: The point is, this is a subject
2 about which we've all heard something, we've heard it on
3 TV or in the newspaper or somehow. And you bring up a
4 good point, Mr. Gallivan. There's a general sense that,
5 oh, my God, if they've got the DNA, the case is over.
6 You feel that in our society. All we ask you to do is
7 to come to this trial and learn what the evidence is in
8 this trial about DNA and other subjects that come up.
9 what did you tell me your profession was? I'm sorry.

10 POTENTIAL JUROR: Forklift driver.

11 THE COURT: My son's a forklift driver. If you
12 went to a class on forklift driving, would you say to
13 the teacher, "Look, I've heard all about this forklift
14 stuff. I'm just gonna drive it the way I want to drive
15 it." Do they let you do that in a warehouse?

16 POTENTIAL JUROR: No.

17 THE COURT: No. They give you information
18 about how to do the job and they expect you to do the
19 job based only on the information you receive in your
20 training. Right? And sometimes in the training, they
21 say, "well, you may have heard such and such about how
22 to do it, but here's the way you're supposed to do it."
23 Doesn't that come up sometimes?

24 POTENTIAL JUROR: Yes.

1 THE COURT: Being a juror is a job and the job
2 is simply to come to court and be attentive. We all use
3 our different life's experience, our common sense, and
4 people will come to court and they'll give us testimony
5 about things, and when you're asked to evaluate that
6 testimony, you do bring your common sense to the
7 courtroom, you do bring your life's experience to the
8 courtroom, but we ask you to evaluate it just based on
9 what you learn here as opposed to somewhere else. And
10 you've probably taught people how to operate a forklift
11 and you expect them to do their job based only on how
12 you instruct them to do it. Right?

13 POTENTIAL JUROR: Right.

14 THE COURT: And if they said, "I'm gonna do it
15 some other way that I heard about on TV," you'd say
16 "You're not doing your job." Right?

17 POTENTIAL JUROR: Right.

18 THE COURT: Okay. The job in this case is to
19 be attentive to the testimony and evidence, and at the
20 end of the trial, I'll give you some very simple rules
21 to follow and you'll follow those rules and decide
22 whether or not the State proved the charge by evidence
23 beyond a reasonable doubt. You can't do that?

24 POTENTIAL JUROR: I'd like to think I could,

1 but I'm not sure.

2 THE COURT: well, just think about it. There's
3 lots of subjects that come up in trial that we've heard
4 a lot about. DNA is one example. Plastic surgery, we
5 had a plastic surgery trial here last week. That's
6 another example, and we think we know stuff about these
7 subjects, we hear things about them, but -- and it's
8 actually kind of an easy job, because all we're saying
9 to jurors is, Don't worry about anything else you've
10 heard, don't worry about it. Come to the courtroom and
11 find out what there is to learn here from the human
12 beings who testify and then the judge gives you some
13 rules and you make a decision.

14 Now, do you think you can do that?

15 POTENTIAL JUROR: Probably.

16 THE COURT: I mean, it doesn't sound to me like
17 you've heard that much about DNA. Is this a subject
18 that you've studied?

19 POTENTIAL JUROR: No, it isn't.

20 THE COURT: what you've probably heard is, if
21 somebody's DNA is at X place, they were there. Have you
22 heard that?

23 POTENTIAL JUROR: Yes.

24 THE COURT: In this trial, you're going to hear

1 from people who actually know about that subject and
2 have studied it and have utilized it for years. They're
3 going to be asked questions by lawyers who've spent a
4 lot of time in this case in preparing to evaluate their
5 testimony.

6 I would assume that the subject has some
7 interest to you, doesn't it?

8 POTENTIAL JUROR: A little bit.

9 THE COURT: I mean, we had a construction trial
10 here last month. Doesn't that sound a little more
11 interesting than a construction trial?

12 So you're going to be, in effect, a witness to
13 what they say, all the witnesses, and then evaluate it.
14 Can you do that?

15 POTENTIAL JUROR: I can try.

16 THE COURT: Okay, thank you.

17 Go ahead, Mr. Lindsay.

18 MR. LINDSAY: I'd just like to share with you
19 that prior to this trial and prior to representing Mr.
20 Peck, I completely shared your belief that DNA was
21 infallible. And if I might, I'm just going to tell you
22 a very short joke. A genetic phenotype is the spider's
23 web. Its eight legs are the genetic trait, but the
24 spider web's the phenotype. The beaver makes the damn,

1 that's a phenotype. That's a shadow of a genetic trait.
2 Human beings have a phenotype. Some of us might build a
3 building, some of us might cross a river. My joke has
4 always been, the webs we build, especially when it comes
5 to men and women, are illusions. We build illusions,
6 and without them, none of us would be here. I'll leave
7 it at that, if that makes any sense whatsoever. There's
8 a lot more to genetics than you might expect. Arguably,
9 every thought you have is a phenotype implanted in your
10 genetic make-up, and it goes to your children.

11 Arguably, every time the spider changes the web, the
12 phenotype goes right to the next spider. That's why
13 they evolve so quickly.

14 You just need an open mind. We all have been
15 told that there is a golden standard to DNA, but I ask
16 you to at least open your minds, open your hearts and
17 realize that from that witness stand, you may find out
18 that may not be correct. The father of chaos theory,
19 Mr. Fineman, once said that which is not surrounded by
20 uncertainty cannot be the truth. I don't know if you
21 guys have read any books by Fineman, a brilliant man,
22 the Einstein of our last generation. That which is not
23 surrounded by uncertainty cannot be the truth.

24 That's what I'm talking about, having an open

1 mind. It is so easy to stop and say if somebody gets up
2 there and says there's DNA, then there's just nothing
3 left to talk about, but I think this is going to be an
4 enlightening experience for you and I think you should
5 cherish the opportunity, because I believe our phenotype
6 is to grow. I believe we have no other purpose than to
7 grow. That is our only obligation. That is all we're
8 here for. So open your mind.

9 I ask you sincerely, because it's a very, very
10 charged case. I had one juror telling me -- and I
11 appreciate that; I'm not wanting to pick on you at all.
12 That is truly voir dire, that is truly being truthful,
13 saying that DNA evidence sounds undisputable. Really,
14 what are you talking about, contamination? Somebody
15 couldn't possibly do something in a lab that would
16 change the outcome. Well, come on, folks. Hasn't
17 anyone heard about the officers in L.A. that planted
18 drugs, or the FBI labs -- and I'm not accusing this of
19 Mr. Clifton or his lab, but the FBI labs where they
20 confessed to wanting the police reports before they did
21 the work. Think about that. You don't need a police
22 report if I'm asking you for science. You don't need to
23 know anything but the science. I hope I'm making a
24 little bit of sense.

1 It's an emotionally charged case. There's DNA.
2 So all I'm asking for is that you're willing to say, "My
3 heart is not closed, my mind is not closed, I have not
4 decided this case. I will give the presumption of
5 innocence. I will listen to the instructions of the
6 court."

7 Mr. Clifton's an excellent lawyer. He'll be
8 here, without any doubt, moment by moment. It's not
9 like this is a one-sided deal. I always joke about the
10 parallax, the distance between your eyes. It's there
11 for a very good reason. Not because you might lose your
12 eyes, but without a parallax, you have no depth
13 perception. So he's one eye and I'm the other and we
14 are, for you, a parallax. We offer you depth
15 perception, but you are the ones who decide how deeply
16 you go.

17 Is there anyone here that cannot open their
18 hearts, cannot open their minds? Is there anyone here
19 who's going to shake your head if I go through each one
20 of you and say, Can you be fair? And you don't even
21 have to say a word, just shake your head and say yes or
22 no. If you can be fair, shake your head "yes." If you
23 can't be fair, shake your head "no." I don't think
24 that's asking for very much. Is everyone able to shake

1 their head "yes"? In all fairness, is everyone willing
2 to shake their head "yes"? I mean, it's the very least
3 that our system demands, and we do have the greatest
4 system going. The jury system is it. This is it,
5 folks.

6 Thank you for your patience, your Honor.

7 THE COURT: All right. Thank you.

8 And Mr. Clifton, Mr. Lindsay, with reservations
9 as to Ms. White, do you pass the jury panel for cause?

10 MR. CLIFTON: Yes, your Honor.

11 MR. LINDSAY: Yes, your Honor.

12 THE COURT: Ladies and gentlemen, what we'll do
13 at this time is take a recess, and during this recess
14 we'll meet briefly with Ms. White in chambers and then
15 the parties and I will exercise what are known as
16 preemptory challenges. Each side is entitled to excuse
17 a certain number of jurors, and we'll try to conclude
18 that process as soon as we can. When it is concluded,
19 we'll return here in the courtroom and all of you will
20 be seated in the gallery, and we'll call forth the names
21 of 13 persons to be the jury and the alternate juror for
22 this trial.

23 Now, during this recess, as I instructed you
24 earlier, you're not to discuss this case among

1 yourselves or with anyone else. You are not to form or
2 express any opinions concerning the case. You are not
3 to read, listen, or view news accounts of the case, if
4 any. Those of you in the gallery who've been called for
5 jury duty today must still remain while we complete this
6 last phase of the process.

7 Court is in recess.

8 (Proceedings in chambers.)

9 THE COURT: The record should reflect the
10 presence of counsel and the defendant and the Court and
11 Potential Juror No. 17, Ms. White.

12 Ms. White, was there a matter that you wanted
13 to bring to our attention?

14 POTENTIAL JUROR: I didn't know it was gonna be
15 this public. So I'm a little nervous. I have domestic
16 violence and rape in my history and I'm struggling with
17 this question on your panel.

18 THE COURT: It is a difficult subject. Can you
19 just tell me very, very briefly how long ago did these
20 events occur in your life?

21 POTENTIAL JUROR: I was raped when I was a
22 young lady, in my teens, and I was in a very violent
23 domestic relationship up until eight years ago.

24 THE COURT: Up until eight years ago. As you

1 know, the charge is sexual assault and that is a
2 difficult subject for a lot of people. The job of a
3 juror is to listen to the evidence, whatever it is, and
4 try to assess the weight and the credibility and the
5 value of that evidence, then I'll give the jury some
6 instructions about the process and you have to apply
7 those instructions and then answer this question at the
8 end of the trial: Did or did not the State prove that
9 charge by evidence beyond a reasonable doubt?

10 Now, the jury is not concerned with any penalty
11 that the law applies for the charge. The jury can't be
12 affected by the nature of the charge itself. As Mr.
13 Clifton pointed out, you probably heard when he said,
14 well, if it was a DUI case, if it was a shoplifting
15 case, if it was a murder case, the standard of proof and
16 the burden that the State has is just the same, and the
17 jury's job in any of those trials would be just the
18 same. The most important thing is your ability to base
19 your decision only on what happens here in the
20 courtroom, uninfluenced by something that may have
21 happened in your life. Do you think you could do that?

22 POTENTIAL JUROR: That's why I'm questioning my
23 ability, because I have great respect for you and the
24 judicial system. It's just when the question was asked

1 of me, I kind of internally did a gut check and I was
2 like, "Okay, I'm not sure." I don't want to be
3 difficult, it's just I'd rather be straight with you.

4 THE COURT: Do you think you can be fair and
5 impartial to both sides, or do you think you'd be
6 pulling a little extra for the State because you've
7 been a victim of domestic violence?

8 POTENTIAL JUROR: I think I would pull more for
9 the State, based on my past, and I just want to be
10 honest. That's where my gut check came from, and it's
11 no disrespect to the gentleman to my left, it's just the
12 truth.

13 THE COURT: Okay, Ms. White. I am going to
14 excuse you from jury service in this case, and you'll be
15 called by the jury commissioner to serve in another
16 case, if you'll just go downstairs to the first floor.
17 Thank you very much.

18 The clerk will please call the name of another
19 person to serve in the place of Ms. White and we'll
20 examine that person in chambers. We also have a
21 potential juror who apparently has indicated to the
22 bailiff that he may know Mr. Peck's sister. I don't
23 know anything about that. Do you have a sister?

24 THE DEFENDANT: Yes, but I can't imagine

1 someone in this area knowing my sister.

2 MR. LINDSAY: That's the only reason I didn't
3 ask about it.

4 THE CLERK: Lynne Simons.

5 THE COURT: Let's bring Ms. Simons in, please.

6 The record should reflect Potential Juror No.
7 17, Ms. Lynne Simons, and the Court, counsel, and the
8 defendant. Ms. Simons, could you state your occupation
9 and that of your spouse, if any, or anyone who lives
10 with you.

11 POTENTIAL JUROR: I'm an attorney. I was a
12 probate commissioner and court master in the Second
13 Judicial. I'm retired from that. I still do some
14 private mediations. My husband is an attorney with
15 Robison, Belaustegui, Sharp & Low.

16 THE COURT: Ms. Simons, have you ever served on
17 a jury before?

18 POTENTIAL JUROR: No.

19 THE COURT: Have you ever been the victim of a
20 crime?

21 POTENTIAL JUROR: Theft out of my car.

22 THE COURT: About how long ago was that?

23 POTENTIAL JUROR: One in law school, two from
24 our driveway.

1 THE COURT: would those incidents have any
2 bearing on your service as a fair and impartial juror in
3 this case?

4 POTENTIAL JUROR: No.

5 THE COURT: Do you know any of the parties,
6 witnesses, or the lawyers in this case?

7 POTENTIAL JUROR: I know who the lawyers are.
8 I know Dave Clifton, and I think Mr. Lindsay has
9 appeared in front of me before.

10 THE COURT: And Mr. Clifton, I assume you know
11 by the fact that he's the assistant district attorney.
12 Is that correct?

13 POTENTIAL JUROR: Correct.

14 THE COURT: Have you had any kind of personal
15 or professional experiences with either of these
16 gentleman that would have a significant bearing on your
17 service as a juror in this case?

18 POTENTIAL JUROR: No.

19 THE COURT: And based on the Court's questions
20 or counsel's questions or anything else that may have
21 occurred to you, do you know of any reason why you could
22 not be a fair and impartial juror in the case?

23 POTENTIAL JUROR: No.

24 THE COURT: Have you seen, read, or heard

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA
Plaintiff,

vs.

FRANK PECK,
Defendant.

Sup. Ct. Case No. 65691
Case No. CR06-2580
Dept. 6

RECORD ON APPEAL

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Case No. CR06-2580
 STATE vs FRANK PECK
 JULY 18, 2014

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 STATE vs FRANK PECK
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Case No. CR06-2580
 STATE vs FRANK PECK
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1 **CODE 1850**
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
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9 **STATE OF NEVADA,**

10 **Plaintiff,**

11 **vs.**

Case No. CR06-2580

12 **FRANK PECK,**

Dept. No. 6

13 **Defendant.**
14 _____ /

15 **JUDGMENT**

16 The Defendant, having been found Guilty by Jury, and no sufficient cause
17 being shown by Defendant as to why judgment should not be pronounced against him, the
18 Court rendered judgment as follows:

19 That Frank Peck is guilty of the crime of Sexual Assault, a violation of
20 NRS 200.366, a felony, as charged in Indictment, and that he be punished by
21 imprisonment in the Nevada State Prison for a Life with the possibility of parole, with
22 eligibility for parole beginning when a minimum of five (5) years has been served. This
23 sentence is to run consecutively to the sentence imposed in Case No. CR96-2687. The
24 Defendant is not entitled to credit for time served relating to this case. It is further ordered

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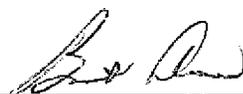
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1 that the Defendant pay the statutory Twenty Five Dollar (\$25.00) administrative
2 assessment fee and pay the One Hundred Fifty Dollar (\$150.00) DNA testing fee.

3 Dated this 10th day of July, 2009.

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7 DISTRICT JUDGE
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FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUL 10 2009

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

No. 53947

CRO6 2580

FILED

JUL 09 2009

TRACE J. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

FRANK MILFORD PECK,
Petitioner,
vs.
THE STATE OF NEVADA,
Respondent.

ORDER DENYING PETITION

This is a proper person petition for a writ of prohibition, or alternatively, a writ of mandamus. Petitioner seeks an order prohibiting the district court from sentencing petitioner because the State did not allegedly meet its burden of proving guilt beyond a reasonable doubt. We have reviewed the documents submitted in this matter, and without deciding upon the merits of any claims, we decline to exercise original jurisdiction in this matter. NRS 34.320; NRS 34.330; NRS 34.160; NRS 34.170. Accordingly, we

ORDER the petition DENIED.

[Signature] J.
Parraguirre

[Signature] J.
Douglas

[Signature] J.
Pickering

DC-9900009564-009
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 07/10/2009 04:15 PM
Washoe County 4128
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05-60927

cc: Frank Milford Peck
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

CASE NO. CR06-2580

STATE OF NEVADA VS. FRANK PECK

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

7/10/09
HONORABLE
BRENT
ADAMS
DEPT. NO. 6
B. Johnson
(Clerk)
L. Rosenthal
(Reporter)

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE

Deputy District Attorney Bruce Hahn represented the State. Defendant was present in pro per. Probation Officer James Rountree was also present. Defendant addressed the Court and made changes to the PSI report; Defendant further moved to set aside the jury verdict. Larry James Peck, previously sworn, resumed the stand, testified and excused.

COURT ORDERED: Defendant's motion to set aside jury verdict denied, Court proceeded with sentencing. The Defendant, having been found Guilty by Jury, and no sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court rendered judgment as follows: That Frank Peck is guilty of the crime of Sexual Assault, a violation of NRS 200.366, a felony, as charged in Indictment, and that he be punished by imprisonment in the Nevada State Prison for a Life with the possibility of parole, with eligibility for parole beginning when a minimum of five (5) years has been served. This sentence is to run consecutively to the sentence imposed in Case No. CR96-2687. The Defendant is not entitled to credit for time served relating to this case. It is further ordered that the Defendant pay the statutory Twenty Five Dollar (\$25.00) administrative assessment fee and pay the One Hundred Fifty Dollar (\$150.00) DNA testing fee. Defendant remanded to the custody of the Director of Prisons.

FILED

JUL 14 2009

HOWARD W. DONNERS, CLERK
By: *[Signature]*
DEPUTY CLERK

CASE No. CR-06-2580

Dept No. 6

CR06-2580 DC-9900009634-005
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 07/14/2009 02:10 PM
Washoe County 2515
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IN the Second Judicial District Court of the State of Nevada
IN AND for the County of Washoe

FRANK M. PECK

Defendant,

Notice of Appeal

-VS-

STATE of NEVADA

Plaintiff,

Comes Now, the Defendant, Frank M. Peck,
pro se, hereby gives Notice of Appeal to the
Nevada Supreme Court from the Verdict, Judgement
AND SENTENCE in the Above Action and hereby
invokes his Sixth amendment right to the
effective assistance of Counsel on Direct
Appeal.

Dated this 12th day of July 2009.

The undersigned affirms per NRS 239B.030 contains no
social security numbers.

[Signature]

Frank Peck Pro se

Certificate of Service

The attached Notice of Appeal has been
mailed to:

District Attorney
Dave Clifton ADA
75 Court St
Reno NV 89509

Frank Peck

Frank Peck Prose

FILED

JUL 14 2009

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

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CR06-2580 DC-9900009634-004
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 07/14/2009 02:10 PM
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

9 FRANK MILFORD PECK,

10 Appellant(s)

Case No. CR06-2580

11 vs.

Dept. No. 6

12 THE STATE OF NEVADA,

13 Respondent(s)

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16 CASE APPEAL STATEMENT

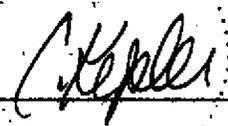
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- 18 1. Frank Milford Peck is the Appellant.
 - 19 2. The appeal is from a **Judgment/Order** file on or about **June 4, 2009**, by the
20 **Honorable Judge Jerome Polaha**.
 - 21 3. The parties below in District Court consisted of: **Frank Milford Peck** the
22 Defendant, and **The State of Nevada**, the Plaintiff.
 - 23 4. The parties herein in the Nevada Supreme Court consist of: **Frank Milford**
24 **Peck /Appellant**, and **The State of Nevada/Respondent**.
 - 25 5. Counsel on Appeal for Appellant, consists of: **Frank Milford Peck, Pro Per**
26 **Appellant #57106, Northern Nevada Correctional Center, P.O. Box 7000,**
Carson City, NV 89702.
 - 27 6. Counsel on appeal for Respondent is **Gary Hatlestad, Deputy District**
28 **Attorney – Appellant Division, P.O. Box 30083, Reno, NV 89520-3083.**

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- 7. In District Court Appellant was represented in Proper Person.
- 8. Appellant is represented in Proper Person in this appeal.
- 9. N/A in this case.
- 10. The Indictment was filed on November 8, 2006

Dated: July 14, 2009

Howard W. Conyers, Clerk of the Court,

By: 
Cathy Kepler, Appeals Clerk
(775) 328-3114

FILED

JUL 14 2009

HOWARD W. CONYERS, CLERK
By: *Cathy Kepler*
DEPUTY CLERK

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DC-990009634-003
CR06-2580
STATE VS. FRANK MILFORD PECK
District Court
Washoe County
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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FRANK MILFORD PECK,

Appellant(s)

Case No. CR06-2580

vs.

Dept. No. 6

THE STATE OF NEVADA,

Respondent(s)

CERTIFICATE OF CLERK

I hereby certify that the enclosed documents are certified copies of the original pleadings on file with the Second Judicial District Court, in accordance with the NRAP 3(e).

Dated: July 14, 2009

Howard W. Conyers, Clerk of the Court,

By: *Cathy Kepler*

Cathy Kepler, Appeals Clerk

DC-990009634-002
CR06-2580 FRANK MILFORD PECK 1 Page
STATE VS. FRANK MILFORD PECK 07/14/2009 02:10 PM
District Court Washoe County
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FILED

JUL 14 2009

HOWARD W. CONYERS, CLERK
By: *C. Kepler*
DEPUTY CLERK

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

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FRANK MILFORD PECK,
Appellant(s)

Case No. CR06-2580

vs.

Dept. No. 6

THE STATE OF NEVADA,
Respondent(s)

CERTIFICATE OF TRANSMITTAL

I hereby certify that the enclosed Notice of Appeal and other required documents (certified copies) were E-filed from the Second Judicial District Court to the Nevada Supreme Court.

Dated: July 14, 2009

Howard W. Conyers, Clerk of the Court,

By: *C. Kepler*
Cathy Kepler, Appeals Clerk

FILED

JUL 15 2009

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

HOWARD W. CONYERS, CLERK
By: *Howard W. Conyers*
DEPUTY CLERK

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 54168
District Court Case No. CR062580

CR06-2580
STATE VS. FRANK MILFORD PECK
District Court Washoe County
07/15/2009 09:30 AM
DC-9900009704-002
Page 1
1198
CKEPLI

RECEIPT FOR DOCUMENTS

TO: Frank Milford Peck #57106
Attorney General Catherine Cortez Masto/Carson City and Catherine
Cortez Masto, Attorney General
Washoe County District Attorney Richard A. Gammick and Gary H.
Hatlestad, Deputy District Attorney
Howard W. Conyers , District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

- 07/14/09 Filed Certified Copy of proper person Notice of Appeal.
Appeal docketed in the Supreme Court this day.
- 07/14/09 Filing Fee Waived: Criminal.

DATE: July 14, 2009

Tracie Lindeman, Clerk of Court

FILED

FRANK PECK 57106

NWCC Box 7000

Carson City NV 89702

09 JUL 17 AM 8:41

HOWARD W. CONYERS

BY [Signature]
DEPUTY

IN the Second Judicial District Court of the State of Nevada
IN and for the County of Washoe

FRANK PECK

Defendant,

VS

State of Nevada

Plaintiff,

Case No. CR-06-2580

Dept No. 6

REPLY TO SECOND RESPONSE TO Defendants Post-Trial Motions

Comes Now, the Defendant, Frank Peck, Prose, with his REPLY to the States Second Response to Defendants Post-Trial Motions and concedes that his Motion referred to By the State as #1, Motion for States witness list is now moot, and that Defendants #2 Motion to compel the return of the Defendants documents per NRS 7.055 Sup Ct rules 166(4), 173, 176, and 203, and DCR 11 and 20, should be granted, as this document confirms the Defendants Speedy trial violation, as to Defendants #3 Motion for New Counsel is constitutionally guaranteed Strickland v Washington, Gideon v Wainwright.

DC-990009791-011
CR06-2580
STATE VS. FRANK MILFORD PECK 3 Pages
District Court 07/17/2009 08:41 AM
Washoe County 3795
v.l.vvr

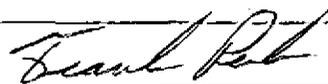
With regard to the Defendants' #4 Motion for Order directing Clerk to provide affidavit, that should have been dated 6-29-09 that also should be GRANTED, unless the State chooses to suppress this truthfull testament to Mr Lindsay's continual failures in this case.

HAINES V. KERNER, 404 US 519, 30 LEd2d 652, 92 Sct 594 (1972)

Pro se litigants pleadings are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers.

Dated this 13th day of July 2009.

The undersigned affirms no Social Security numbers p.s.c
NRS 239 B 030



Frank Peck PROSE

Certificate of Service

The attached Reply to Second Response to Debendant's
Post-Trial Motions was mailed to:

District Attorney
Bruce Hahn ADA
75 Court St
Reno, NV - 89509

Frank Peck

Frank Peck PROSE

CASE No. CR-06-2580

FILED

Dept No. 6

09 JUL 31 PM 2:53

In the Second Judicial District Court of the State of Nevada
IN and for the County of Washoe

HOWARD W. CONYERS

BY DEPUTY

FRANK M. PECK
Defendant,
-VS-

Motion to Compel the
Release of information
to the Defendant

State of Nevada
Plaintiff,

Comes Now, the Defendant, Frank Peck, prose,
hereby requests that this Court issue an Order
directing Robert Bruce Lindsay to provide the
Defendant with contact information for
Dr Llewellyn, the DNA Expert allegedly
consulted one month prior to trial.

Dated this 29th day of July 2009.

Per NRS 239.B.030 Contains No Social Security Numbers

and was mailed to:

DA

75 Court Street

Reno NV 89501

Frank M. Peck

Frank M. Peck Prose

DC-9900010298-019
CR06-2580
STATE VS FRANK MILFORD PECK
District Court 07/31/2009 02:53 PM
Washoe County 2490
IFLORES
DOC

DC-9900010168-007
CR06-2580
STATE VS. FRANK MILFORD PECK 1 Page
District Court 08/03/2009 08:39 AM
Washoe County 413
not
CKEPLER

FILED

AUG 03 2009

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD A. CONVERS, CLERK
By: *[Signature]*
DEPUTY CLERK

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54168 *CR06-2580*

FILED

JUL 31 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF LIMITED REMAND
FOR APPOINTMENT OF COUNSEL

This is a proper person appeal from a judgment of conviction. We remand this appeal to the district court for the limited purpose of securing counsel for appellant. See Evitts v. Lucey, 469 U.S. 387 (1985). The district court shall have 30 days from the date of this order to appoint counsel for appellant. Within 5 days from the date of appointment, the district court clerk shall transmit to the clerk of this court a copy of the district court's written or minute order appointing appellate counsel.

It is so ORDERED.

[Signature], C.J.

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk ✓

FILED

Electronically

08-07-2009:08:37:54 AM

Howard W. Conyers

Clerk of the Court

Transaction # 953029

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Petitioner,

vs.

THE STATE OF NEVADA,
Respondent.

Supreme Court No. **53947**

District Court Case No. **CR062580**

NOTICE IN LIEU OF REMITTITUR

TO THE ABOVE-NAMED PARTIES:

The decision and Order of the court in this matter having been entered on 07/09/09, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: August 4, 2009

Tracie Lindeman, Clerk of Court

By: A. Ingersoll
Deputy Clerk

cc: Howard W. Conyers, Washoe District Court Clerk ✓
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Frank Milford Peck

V5.706
09-17531

1 **Code : 2715**
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7 **THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 * * *

10 FRANK MILFORD PECK,
11 Appellant, Case No. : CR06-2580
12 vs. Supreme Court No. : 54168
13 STATE OF NEVADA, Dept No. : 6
14 Respondent.
15 _____/

16 **RECOMMENDATION AND ORDER APPOINTING COUNSEL**

17 On July 31, 2009, the Supreme Court entered an Order Of Limited Remand
18 For Appointment Of Counsel, remanding this Appeal to the District Court for the
19 limited purpose of securing counsel for Appellant;
20

21 NOW THEREFORE, IT IS HEREBY RECOMMENDED that Karla Butko, Esq., be
22 appointed to represent Appellant, Frank Milford Peck, on his direct appeal to the
23 Nevada Supreme Court. Said Counsel is to be paid pursuant to NRS 7.115 through
24 NRS 7.165 in an amount recommended by the Administrator and approved by the
25 Court.

26 ///

27 ///

///

1 Pursuant to the Supreme Court Order dated July 31, 2009, the District Court
2 Clerk shall transmit to the Clerk of the Supreme Court a copy of the District Court's
3 written Order appointing appellate counsel within five (5) days.

4
5 Dated this 14th day of August, 2009.

6
7 
8 _____
9 ROBERT C. BELL, ESQ.
10 APPOINTED COUNSEL ADMINISTRATOR

11 Pursuant to the Nevada Supreme Court Order in ADKT 411 and the Second
12 Judicial District Court's Model Plan to address ADKT 411, good cause appearing
13 and in the interest of justice,

14 IT IS HEREBY ORDERED that the recommendations of the Administrator are
15 hereby confirmed, approved and adopted.

16 DATED this 14th day of August, 2009.

17 
18 _____
19 CHIEF DISTRICT JUDGE
20
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CERTIFICATE OF SERVICE

CASE NO. CR06-2580

I certify that I am an employee of JUDGE CONNIE STEINHEIMER; that on the 14 day of August, 2009, I deposited in the county mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing addressed to:

Karla K. Butko, Esq.
P.O. Box 1249
Verdi, NV 89439

Frank Peck, #57106
NNCC
P.O. Box 7000
Carson City, NV 89702

Washoe County District Attorney
Appellate Division
VIA INTEROFFICE MAIL

Robert Bell, Esq.
Administrator
20 Winter St.
Reno, NV 89503


Audrey A. Kay
Judicial Assistant

ORIGINAL

FILED

2009 AUG 24 PM 4:31

HOWARD WILSON

BY DEPUTY

1 Code: 3870
2 KARLA K. BUTKO, ESQ.
3 State Bar No. 3307
4 P. O. Box 1249
5 Verdi, NV 89439
6 (775) 786-7118
7 Attorney for Defendant

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9
10 IN AND FOR THE COUNTY OF WASHOE

11 THE STATE OF NEVADA,
12
13 Plaintiff,

14 vs.

Case No. CR06-2580

15 FRANK MILFORD PECK,
16
17 Defendant.

Dept. No. 6

18 EX PARTE MOTION FOR TRANSCRIPTS AT TAXPAYERS' EXPENSE

19 Defendant/Appellant, FRANK MILFORD PECK, by and through
20 his court-appointed counsel, moves for an Order granting
21 Defendant/Appellant the transcript of the motion hearings and
22 jury trial of the case at taxpayer expense for preparation of
23 his appeal.

24 Notice of Appeal was filed properly on or about the 14th
25 day of July, 2009. Defendant/Appellant received a sentence of
26 life in prison with the possibility of parole. Mr. Peck
27 represented himself at the trial but was represented by Bruce
28 Lindsay, appointed counsel during the pre-trial stages of the
case. Karla K. Butko, Esq., has been court appointed to
represent him on direct appeal.

Defendant/Appellant cannot pay for the transcript due to
his indigence. Defendant/Appellant remains in custody in prison

KARLA K. BUTKO, LTD., A Professional Corporation
P.O. Box 1249, Verdi, NV 89439
(775) 786-7118

CR06-2580 DC-9900010730-001
STATE VS FRANK MILFORD PECK 3 Pages
District Court 08/24/2009 04:31 PM
Washoe County 2183
TFL/RFEC

KARLA K. BUTKO, LTD., A Professional Corporation
P.O. Box 1249, Verdi, NV 89439
(775) 786-7118

1 and is without financial resources to pay for the transcript.

2 The transcripts requested at this point in time include:

3 Date	Event	Court Reporter
4 May 6, 2009	Trial	
5 May 7, 2009	Trial	
6 May 8, 2009	Trial	
7 May 11, 2009	Trial	
8 May 12, 2009	Trial	
9 July 10, 2009	Sentencing	

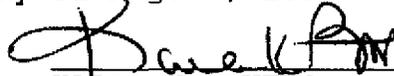
10 The Court Reporter designated for Department Six of the
11 Second Judicial District Court is Molezzo Reporters, 9460
Double R Blvd., Suite 103, Reno, NV 89521.

12 Portions of the transcript requested: 1) The entire
13 transcripts for the dates above.

14 Counsel requests that the voir dire section of the trial
15 be transcribed as appellate counsel was not present at the
16 proceedings and needs to review the jury selection process.

17 This notice requests a transcript of only those portions
18 of the district court proceedings which counsel reasonably and
19 in good faith believes are necessary to determine whether
20 appellate issues are present. I recognize that I must
21 personally serve a copy of this form on the above named court
22 reporter and opposing counsel.

23 DATED this 24th day of August, 2009.

24 

25 KARLA K. BUTKO
26 P. O. Box 1249
27 Verdi, NV 89439
28 (775) 786-7118
Attorney for Appellant
State Bar No. 3307

KARLA K. BUTKO, LTD., A Professional Corporation
P.O. Box 1249, Verdi, NV 89439
(775) 786-7118

CERTIFICATE OF SERVICE

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Pursuant to NRAP 25, I certify that I am an employee of Karla K. Butko, Ltd., P. O. Box 1249, Verdi, NV 89439, and that on this date I caused the foregoing document to be delivered to all parties to this action by

_____ placing a true copy thereof in a sealed, stamped envelope with the United States Postal Service at Reno, Nevada.

_____ personal delivery

_____ Facsimile (FAX)

_____ Federal Express or other overnight delivery

~~_____~~ Reno/Carson Messenger Service

addressed as follows:

Molezzo Reporters
9460 Double R. Blvd., #103
Reno, NV 89521

RICHARD GAMMICK
Washoe County District Attorney's Office
One South Sierra St. Fourth Floor
P. O. Box 30083
Reno, NV 89501
ATTN: Appellate Division

DATED this 24th day of August, 2009.



KARLA K. BUTKO

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the Social Security Number of any person.

DATED this 24th day of August, 2009.



KARLA K. BUTKO, ESQ.

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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6

IN AND FOR THE COUNTY OF WASHOE

7

THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

8

--oOo--

9

STATE OF NEVADA,

Case No. CR06-2580

10

Plaintiff,

Dept. No. 6

11

vs.

12

FRANK MILFORD PECK,

13

Defendant.

14

TRANSCRIPT OF PROCEEDINGS

15

SENTENCING

16

FRIDAY, JULY 10, 2009

17

APPEARANCES:

18

For the Plaintiff:

Bruce C. Hahn, Esq.

19

Deputy District Attorney

P.O. Box 30083

20

Reno, Nevada 89520

21

For the Defendant:

In Pro Per

22

For the Division of
Parole & Probation:

James Rountree

23

Reported By:

Leslie R. Rosenthal, CCR #819

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I N D E X
WITNESSES

DIRECT	CROSS	RE-DIRECT	RE-CROSS	VOIR DIRE
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WITNESS FOR THE DEFENDANT

LARRY JAMES PECK

BY: DEFENDANT PECK 21 23

BY: MR. HAHN 25

E X H I B I T S
MARKED ADMITTED REJECTED

NONE MARKED

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RENO, NEVADA, FRIDAY, JULY 10, 2009, 9:00 A.M.

-oOo-

THE COURT: We'll proceed in CR06-2580, State versus Frank Milford Peck.

This is the time set for sentencing in this case.

Mr. Peck, is Mr. Lindsay going to be assisting you this morning?

THE DEFENDANT: I don't see him.

THE COURT: He's in the courtroom.

Mr. Lindsay, are you appearing as his advisory counsel this morning? -

MR. LINDSAY: I apologize to the Court, I don't really know. I haven't asked.

THE COURT: Well, thank you for being present.

Mr. Rountree, are there any changes, corrections, or additions to the Presentence Report?

MR. ROUNTREE: No, Your Honor.

THE COURT: Thank you.

Mr. Peck?

THE DEFENDANT: Can I get one hand, please?

1 THE COURT: I'll just ask the correctional
2 officer, do you have --

3 THE OFFICER: I don't have a problem with it,
4 Your Honor.

5 THE COURT: All right. Thank you.

6 Mr. Peck, you may proceed with any
7 corrections, changes, or additions to the Presentence
8 Report -- -

9 THE DEFENDANT: Where would you like me to
10 start at?

11 THE COURT: -- or for -- to any argument in
12 mitigation of sentence.

13 THE DEFENDANT: Start with the Presentence
14 Investigation?

15 THE COURT: Yes, please.

16 THE DEFENDANT: My paperwork got a little
17 messed up.

18 Where would you like to start, Judge, with
19 the Presentence Investigation?

20 THE COURT: I'm sorry, I just asked you. Do
21 you have any changes, corrections, or additions as to the
22 Presentence Report?

23 THE DEFENDANT: Yes, yes, I do.

24 THE COURT: All right. You may proceed.

1 THE DEFENDANT: As soon as I can find it.

2 On Page 3 --

3 THE COURT: Okay.

4 THE DEFENDANT: Where it says "convictions."

5 THE COURT: Okay.

6 THE DEFENDANT: For the purposes of
7 sentencing, where it says "felony two," I believe that
8 should be a one.

9 And at the bottom --

10 THE COURT: That's correct.

11 Go on.

12 THE DEFENDANT: Where it says under "prior
13 terms on probation."

14 THE COURT: All right.

15 THE DEFENDANT: Over on honorable, instead of
16 one, that should be a two.

17 THE COURT: Is that correct, Mr. Rountree?

18 MR. ROUNTREE: I'm showing one honorable
19 discharge and one dishonorable, Your Honor.

20 THE COURT: There was an honorable discharge
21 on December 4, 1990, as reflected at the top of Page 4.

22 Mr. Peck, what other instance was there on --

23 THE DEFENDANT: Well, that would be on -- the
24 bottom of Page 3 would be an honorable. All conditions

1 complete -- shall I just read off the conditions --

2 THE COURT: Well, that would be correct. I
3 agree with that.

4 All right. I've made that correction on
5 Page 3 to reflect two honorable discharges -- or maybe,
6 actually, I guess it doesn't make any difference, but it
7 could reflect two honorable discharge -- or one honorable
8 discharge, and if you see that other, and it says one
9 diversion to dismiss, I assume that relates to the 1981
10 charge on the bottom of Page 3, is that right,
11 Mr. Rountree?

12 MR. ROUNTREE: I believe so, Your Honor.

13 THE COURT: All right. But in any event,
14 they're equivocal.

15 But go ahead.

16 THE DEFENDANT: Okay. On the -- on Page 4,
17 the fourth box down, the conviction for sexual assault is
18 two counts.

19 I guess I'm going to object to that being on
20 here, because it's a subject of a post conviction
21 petition that's pending --

22 THE COURT: Well, that may be, but the
23 criminal history entry is accurate.

24 Go ahead.

1 THE DEFENDANT: Well, because it was
2 sustained in violation of Sixth Amendment -- Fifth and
3 Sixth Amendment.

4 THE COURT: I understand. The proceedings
5 that may be pending concerning the reliability of the
6 conviction.

7 Go ahead.

8 THE DEFENDANT: Okay. On Page 5, Section 6,
9 the bottom the offense synopsis, where it says that the
10 arrest was on September 4th of 2007, that's incorrect.
11 The arrest was effective on April of '04.

12 THE COURT: All right.

13 THE DEFENDANT: And I have a question for the
14 Court.

15 On Page 7, where, you know, in your
16 Mirandize, they tell you that your attorney will be
17 appointed free of charge for you.

18 Well, why is it that they charge you for
19 attorneys if in Miranda warning you're guaranteed an
20 attorney at no charge?

21 THE COURT: There's no recommendation that
22 you've been charged.

23 THE DEFENDANT: Right.

24 THE COURT: So it's an --

1 Go ahead.

2 THE DEFENDANT: That's all I have on the
3 Presentence.

4 THE COURT: All right. Thank you.

5 Is there any argument or evidence that you
6 wish to present in mitigation of sentence?

7 THE DEFENDANT: Yes. I have a -- I have a
8 statement of allocution and legal cause why judgment of
9 sentence ought not be imposed. All the issues are raised
10 under the Nevada constitution.

11 First, my heart goes out to the victim,
12 Ms. Inman (phonetically), however, I had absolutely
13 nothing to do with what happened to her. My involvement
14 in this case was a product of official misconduct.

15 My refusal to cooperate in the investigation,
16 the prosecution and coverup of the friendly fire death of
17 Reno Police Officer John Bohach.

18 Investigators have possessed my DNA profile
19 since 1996. Not 30 days after my refusal to cooperate a
20 court order was issued to obtain yet another -- another
21 sample of my DNA.

22 However, investigators sat on the Court order
23 for six months.

24 During those six months investigators

1 allegedly developed a profile from forensic evidence on a
2 cold case ignored by investigators for seven years, until
3 four months after I refused to testify against my
4 brother.

5 Very little was done to solve Ms. Inman's
6 case, when it could have been solved 15 years ago by
7 fingerprint evidence from the actual perpetrator.

8 Since Ms. Inman showed the police exactly
9 where her attacker touched the doorknob, that those
10 fingerprints would have belonged to me, you better
11 believe matched to me.

12 This case is not about truth, this case is
13 not about justice. This case is about revenge.

14 I was absolutely not in Nevada on August 9th,
15 1994, when this crime was committed.

16 When I realized my attorney had no intention
17 to challenge the evidence, I realized I had no choice but
18 to do it myself.

19 As horrifying as this decision was, it paled
20 in comparison to the realization that even though not a
21 single continuance had been requested in this case, the
22 trial judge, incredibly, was not going to allow me access
23 to the very records that are essential to enroll an
24 expert, crucial to the defense that my lawyer had failed

1 to secure, nor was he going to allow me but four days to
2 prepare for trial. At this point the defense was
3 devastated and doomed.

4 This is exactly the type case that the
5 statute of limitations was to prevent. To prevent the
6 actual prejudice that has occurred in this case. And
7 it's also the exact type of case that is not allowed to
8 be prosecuted on DNA evidence alone without more in the
9 United Kingdom and throughout Europe. Because DNA is so
10 easily manipulated, mixed up, mislabeled, contaminated or
11 planted.

12 If not for the extreme passage of time and
13 intentional delays of the State to bringing this charge
14 and the incurred prejudice to the defendant, the
15 defendant would have been able to prove his alibi beyond
16 any doubt.

17 Crime lab director, Renee Romero, committed
18 perjury when she testified that she did not have any DNA
19 for me to contaminate -- excuse me, to contaminate the
20 evidence with.

21 In actuality, she tested my DNA within days
22 of the evidentiary sample in this case, not to mention
23 the four samples taken from me prior to 2001, and all
24 analyzed by Ms. Romero, not including the evidence in

1 this crime lab available since 1996, also analyzed by
2 Ms. Romero.

3 I did not receive a fair opportunity to
4 prepare a defense. I was afforded four days to prepare
5 for trial. I had no choice but to waive my Sixth
6 Amendment right to counsel, as both my attorneys failed
7 and flat out refused to request the critical records and
8 current data absolutely necessary to defend this case.

9 An expert cannot even become involved in a
10 case like this until after the proper records are
11 available for review, which did not happen in this case.
12 Until auto rands, lab notes, air logs, and electronic
13 data, and alike, are available, there is little, if any,
14 assistance that an expert could provide, citing Dubose
15 versus State, 662 S.2nd 1189, Alabama, 1995.

16 It appears by both counsel's refusal to
17 request these crucial records, and trial judge denied my
18 plead for a chance to request these critical records, it
19 appears that the Washoe County crime lab and its analysts
20 are being shielded from outside scrutiny reminiscent with
21 what was going on within the Houston Police Department
22 crime lab scandal in 2003.

23 My Sixth Amendment right to due process was
24 violated by the Washoe County Sheriff's Department when

1 they refused to take possession and file my pretrial
2 motions, and pretrial petition for Habeas Corpus at the
3 Washoe County Jail on May 3rd, 2009.

4 Those motions consisted of the motions to
5 suppress DNA, based on the perjury committed by the
6 detective, Gretta Fye, and her affidavits in front of
7 Judge Elliott and Maddox. And a motion for an
8 admissibility hearing on the DNA evidence under Gallo
9 versus Del Pharmaceuticals, in light of the fact that the
10 extraction blanks have been found to be meaningless,
11 putting into question the validity and integrity of the
12 entire testing process.

13 Quote, "where there are no controls there can
14 be no validity," unquote.

15 I was denied my Sixth Amendment right to
16 confront and examine witnesses due to the sheriff's
17 office refusal to take possession and file my subpoenas
18 in motion to produce witnesses.

19 My due process rights were also violated
20 under Project versus State by Mr. Lindsay's failure --
21 failed attempts to involve an expert only 21 days prior
22 to trial, and with absolutely no discovery from the crime
23 lab, critical for the expert to review, with a minimum of
24 100 hours to review a case normally required.

1 The role of suitable experts cannot be
2 overlooked in their ability to review the tests, and at
3 times compel the testing lab to withdraw the evidence,
4 which may very well have happened in this case.

5 This case gave new meaning to the term eagle
6 eye and an uneven hand.

7 The State has prejudiced the defense by
8 appointing an unqualified attorney that is banned from
9 the Nevada Supreme Court for Middleton versus State.

10 The State by appointing Mr. Lindsay, violated
11 the defendant's Fifth and Fourteenth Amendment right to
12 due process.

13 The State knew that Mr. Lindsay could not
14 protect his client's due process rights, considering he
15 cannot appeal any adverse rulings by the District Court.

16 No wonder he refused to file any of the
17 requested pretrial motions or petitions.

18 Another example of Mr. Lindsay's perfunctory
19 performance in this case is the notice of appeal he wrote
20 dated 13 days after his client's right to appeal had
21 expired.

22 The State, in addition to appointing him a
23 qualified attorney, Mr. Lindsay does not have the
24 scientific competence or specialized understanding, the

1 complex science of DNA, to have defended this case.

2 Also, Mr. Lindsay claimed that he's never
3 been informed about any alibi witnesses, not only absurd,
4 but is belied by the record.

5 If he would have bothered to read the
6 pleadings on file in this case he would have found that
7 this precise issue was one of the reasons the defendant
8 was forced to withdraw Ken McKenna from this case, yet
9 another example Mr. Lindsay's deficient performance in
10 this case.

11 If the defense would have had access to an
12 expert, would have had -- would have been proven that the
13 DNA at the trial was unreliable, and in fact did not come
14 from the defendant in this case.

15 It was the product of a mislabeled mistake
16 from the 1996 evidence, lab accident, clerical mistake,
17 sample mix up, cross-contamination, a false issue or an
18 intentional act.

19 If the proper records and data would have
20 been requested and reviewed by an expert, the outcome in
21 this trial would have been no doubt been different.

22 It was obvious from an issue of the jury's
23 questions that the defendant being virtually unarmed with
24 no relevant records, no expert, no time to prepare, no

1 attorney, and no experience, was able to instill doubt in
2 the minds in at least some of the jurors.

3 If an attorney's errors are attributable to
4 the defendant than it's not unreasonable for a defendant
5 to complain about an attorney's total lack of regard for
6 his client, or his client's case.

7 It is my belief and contention that
8 Mr. Lindsay pleaded with the State failed to retain an
9 investigator or a DNA expert, or laboratory, except in a
10 last minute bid to look effective, was a deliberate act
11 of judicial economy, there could be no other explanation.

12 In turn, denying his client of his right to a
13 meaningful defense and a fair trial.

14 I've been chastised and unfairly accused of
15 trying to derail these proceedings by the judge and the
16 prosecutor.

17 I want to remind you, gentlemen, I am
18 fighting for my very life, and for the -- and for the
19 very information that would allow me to defend this case.

20 If this is what you call trying to derail the
21 proceedings, then perhaps you've lost sight at what's at
22 stake in this program.

23 This trial is so fundamentally unfair that
24 counsel's failure to even seek the assistance of an

1 investigator 'til the first day of trial, or he didn't
2 serve copies of the two whole motions on his client filed
3 in this case, the prosecutor's claim of benevolence from
4 Mr. Lindsay couldn't be further from the truth.

5 Mr. Lindsay treated his client with a total
6 lack of regard, possibly due to the fact that he thought
7 he had cancer, I don't know.

8 Mr. Lindsay has been totally unavailable as
9 shown in front of this clerk when Mr. Lindsay stated that
10 he would tend to my legal needs while I remained in the
11 Washoe County Jail.

12 Not once did Mr. Lindsay appear, if he had I
13 would have been able to file my pretrial writ and
14 motions.

15 All this coupled with the uncorrected
16 perjured testimony of the State's witness in chief, and
17 the prosecutor's underhanded attempts to get the victim
18 to identify the defendant when having her attend pretrial
19 hearings was fowl considering the victim was told my name
20 years ago.

21 Due to counsel's failure to investigate and
22 interview existing witnesses, or to locate additional
23 witnesses, he would have found that one potential witness
24 that was present during the time period in question, and

1 lived next door to Larry Peck, was a Las Vegas
2 metropolitan police officer.

3 Mr. Lindsay even failed to subpoena known
4 witnesses.

5 Mr. Lindsay's perfunctory attitude toward his
6 client and his client's case leaves his client to believe
7 counsel's acted -- is nothing more than an advocate for
8 the prosecution.

9 Mr. Lindsay could not have done the less in
10 this case.

11 The one thing I must say Mr. Lindsay did do,
12 with an unmatched level of skill and expertise, was to
13 serve up his client to the prosecutor on a silver platter
14 by providing his client with absolutely no meaningful
15 pretrial challenges, motions, research, or investigation.

16 Last page, almost.

17 The trial judge's selected acceptance of the
18 defendant's motions, and refusal to file, accept or
19 address the defendant's pretrial petition for writ of
20 habeas corpus, and deny the defendant's motion to vacate,
21 without even reading it. And the trial judge's failure
22 to adhere to specific performance of the defendant's
23 motion to proceed in pro se, which inclusive was time to
24 prepare for trial, was not only an abusive discretion,

1 but also violates the defendant's constitutional right to
2 due process, and to confront the evidence to be used
3 against him at trial, and confirmed an apparent bias --
4 an apparent bias that was the concern prior to trial.

5 This Court should not strip the defendant of
6 his sword and his shield to receive a fair trial.

7 For the reasons and resulting
8 uncontrovertible prejudice and fundamental interference,
9 and procedural due process of the violations -- and
10 violations, the Fourth, Fifth, Sixth, and Fourteenth
11 Amendments of the United States Constitution -- United
12 States and Nevada Constitution, this Court should vacate
13 the jury's false, perverse, and defective verdict, and
14 enter a judgment notwithstanding the verdict.

15 I also have an objection here.

16 The defense would object to any judgment or
17 sentence being imposed in violation of the ex-post facto
18 clause of the United States Constitution Article 1,
19 Section 9, of Clause 3 and 10, in that the Nevada Revised
20 Statute 171.081 all of the legal rules of evidence
21 required at the time of the commission of the offense.

22 Every law that alters legal rules of evidence
23 receives less or different testimony than the law
24 required at the time of the commission of the offense in

1 order to convict the offender, violates Article 1,
2 Section 9, Clause 3 and 10, of the U.S. Constitution, 171
3 S.2nd 880.

4 The statute of limitations begins -- began
5 with the discovery of the offense, encouraged law
6 enforcement officers to promptly investigate reports and
7 gather and process evidence of those offenses, that
8 scheme also promotes speedy prosecutions that permit an
9 accused mount a defense, before witnesses' memories have
10 faded and evidentiary trail have grown cold.

11 The construction of NRS 171.081 instead words
12 dilatory investigation permits prosecutions to proceed
13 based sometimes on DNA evidence alone, without more.
14 Based simply on the State's assertion that it could not
15 determine the alleged perpetrator until some new
16 scientific tests have been developed, thus changing the
17 latter rules of evidence and altering the type of
18 testimony required at the time of the commission of the
19 offense, and violation Article 1, Section 9, Clause 3 and
20 10 of the U.S. Constitution, and in this case the
21 doctrine of laches.

22 And also since the Court failed to address my
23 pretrial petition, writ of habeas corpus, I would like to
24 slap a new cover on it, and file it as a --

1 THE COURT: Mr. Peck, you may serve and file
2 whatever pleading you wish in the case, but as I
3 indicated earlier, this is the time for you to make a
4 statement in mitigation of sentence or just cause or
5 legal excuse for why sentence should not be imposed.

6 THE DEFENDANT: Well, I do have one witness
7 I'd like to put on the stand.

8 THE COURT: All right. You may.

9 THE DEFENDANT: I'd call Larry Peck.

10 Oh, another matter, Your Honor, I have some
11 pretrial motions that I'd like some rulings on -- not
12 pretrial --

13 THE COURT: As I said, if you have any post
14 trial motions, petitions, or any other documents you
15 wish to file, you may file them with the clerk, and serve
16 counsel, this is the time for sentencing in this case.

17 THE DEFENDANT: Right. They've been filed.
18 I'm seeking rulings on post trial motions -- motions to
19 correct manifest injustice.

20 THE COURT: This is the time for sentencing,
21 Mr. Peck.

22 Is Mr. Peck available, please?

23 THE DEFENDANT: I also have a pending
24 petition for prohibition and mandate in the Supreme

1 Court, that I believe should be procedurally ruled on
2 before this Court can impose sentence.

3 THE COURT: Mr. Peck, you've been previously
4 sworn as a witness in the case, please take the witness
5 stand and be seated.

6 LARRY JAMES PECK,

7 Having previously been sworn, testified as follows:

8

9 THE COURT: Mr. Peck, please state your name
10 for the record.

11 THE WITNESS: My name is Larry James Peck.

12 THE COURT: All right. Thank you.

13 Mr. Frank Peck, you may proceed.

14 DIRECT EXAMINATION

15

16 BY DEFENDANT PECK:

17 Q After you were -- after the trial, did you
18 remember something about a witness that was present in
19 Las Vegas during the time that this crime occurred?

20 A Yes, I did.

21 Q And who -- you remember this after the other
22 trial, right?

23 A Right. And I didn't remember it. I didn't
24 have presence of mind at the time of this neighbor of

1 mine, that lived next door, to verify --

2 Q Now, who was he?

3 A His name is John Sullivan.

4 Q And who is that?

5 A He's the son of John Sullivan, Sr., Clark
6 County of Las Vegas, the sheriff, the county sheriff.

7 Q So he's the son of the sheriff, correct?

8 A Correct.

9 Q And he was your neighbor?

10 A Yes.

11 Q And he witnessed that I was there with you
12 during the time period that this crime occurred?

13 A Absolutely. There was arrangements made by
14 my dad to give John money, and it was 40, 50 bucks
15 involved, to assist me with making the errands that I
16 had -- do you want me to go on with that?

17 Q No. Not really. That's just a basis of --

18 A All right.

19 THE DEFENDANT: I'm going to make a motion
20 for a new trial based on new evidence.

21 THE COURT: Mr. Peck, the Court is not going
22 to adjudicate any portions at this time.

23 I've said several times already this is the
24 time for sentencing.

1 Q You can't recall the date that it occurred to
2 you?

3 A Pardon?

4 Q You cannot recall the date that it occurred
5 to you?

6 A Not the specific date. But I know that when
7 Frank and dad left, arrangements had been made for John
8 to drive me around to do my necessary errands, and it was
9 financed for gas money by my pop. So I know that John
10 knew that Frank, pop, and I were there to --

11 THE COURT: Have you talked to Mr. Sullivan?

12 THE WITNESS: Pardon?

13 THE COURT: Have you talked to Mr. Sullivan?

14 THE WITNESS: No.

15 THE COURT: Do you know where he is?

16 THE WITNESS: I have not a clue.

17 THE COURT: Do you know whether or not he
18 would have been available at the time?

19 THE WITNESS: I don't know.

20 THE COURT: So you never talked to him about
21 what his testimony might have been?

22 THE WITNESS: Pardon?

23 THE COURT: You never talked to him about
24 what his testimony might have been?

1 THE WITNESS: No. But I would assume that he
2 would verify it.

3 THE COURT: Okay.

4 MR. HAHN: I waive any further questions.

5 THE COURT: All right. Thank you.

6 THE DEFENDANT: Briefly?

7 THE COURT: Okay.

8 REDIRECT EXAMINATION

9

10 BY DEFENDANT PECK:

11 Q Did Mr. Lindsay ever contact you and ask you
12 any questions about anything?

13 A Never, not a word.

14 THE DEFENDANT: That's all.

15 THE COURT: Thank you, Mr. Peck, you're
16 excused.

17 (Witness excused).

18 THE COURT: Is there any additional evidence,
19 argument, or statement you wish to make, Mr. Peck?

20 THE DEFENDANT: Yes.

21 There's a couple federal case cites that I
22 think I should put on the record in support of the
23 ex-post facto extension, and as -- whatever it was.

24 Flores-Leon V INS, 272 F.3rd 433, Seventh

1 Circuit, 2001, ex-post facto clause prohibits the
2 retrospective advocacy to criminal laws and materially
3 disadvantaging defendant.

4 Or Snowden v. Lexmark Intern, Incorporated
5 (phonetically), 273 F.3rd 620, Sixth Circuit, 2001.

6 And U.S. v. Miranda, 197 F.3rd 1357, Eleventh
7 Circuit, 1999, ex-post facto clause flatly prohibits
8 retroactive application to the legislation, that's it.

9 THE COURT: Thank you.

10 Mr. Hahn?

11 MR. HAHN: With regard to the PSR as to the
12 factual corrections or additions or changes, Judge, on
13 Page 3 under Roman Numeral V, criminal record, I believe
14 that Mr. Rountree properly indicated that there were, in
15 fact, two felony convictions, and that's based on a
16 conviction of Count I, and Count II relating to the
17 sexual assault with the arrest date of November 17, 1996.

18 I think perhaps Mr. Peck simply misstated
19 that as being one incident, so to speak, that would have
20 been two separate convictions.

21 THE DEFENDANT: For sentencing purposes --

22 THE COURT: There were two convictions in
23 that case, two felonies.

24 MR. HAHN: Correct.

1 THE COURT: All right.

2 MR. HAHN: Yes.

3 THE COURT: Okay.

4 THE DEFENDANT: Stemming from the same
5 incident.

6 THE COURT: Mr. Peck, would you please not
7 interrupt?

8 THE DEFENDANT: I'm sorry.

9 THE COURT: It is correct. It is stemming
10 from the same incident and they were both charged and
11 considered by the jury in one trial, right?

12 MR. HAHN: Yes. Judge, with regard to the
13 sentence options, as the Court is aware, the Court does
14 have an option here.

15 The option is life in prison, with the
16 possibility of parole after five years, or any definite
17 term of five years or more with parole eligibility after
18 five years has been served, and of course that's because
19 of the events stated here being as pled in the
20 indictment, August of 1994.

21 So the Court has an option here, and I'm
22 recommending the Court that the life imprisonment option
23 be the one that the Court imposes.

24 Judge, you heard the evidence, I'll simply

1 state the obvious here. This is his third sexually
2 related offense. This is his second -- second sexual
3 assault transaction, so to speak for purposes of what we
4 have here, as identified in the Presentence Investigation
5 Report, so it's really his second rape conviction as to a
6 particular victim. And, Judge, in this case, as you've
7 heard, this matter is fairly aggravated.

8 This -- the evidence shows that this man,
9 Mr. Peck, cut the screen, he entered this woman's home,
10 he waited in the shower for the opportune time, he
11 threatens her, and then he rapes her.

12 After all these other encounters with law
13 enforcement, Judge, this is what this man is still up to.
14 And accordingly, I believe the life imprisonment option
15 is the appropriate one.

16 I'm not aware of any victim who wishes to
17 offer any additional information, beyond what's
18 identified in the Presentence Investigation.

19 THE COURT: Thank you.

20 Is there anyone present on behalf of the
21 victim in this case who would like to be heard?

22 The motion to set aside the jury verdict and
23 judgment is denied.

24 It is the order and judgment of the Court, as

1 to the defendant Frank Milford Peck, that in addition to
2 the \$25 administrative assessment fee, \$150 DNA genetic
3 marker testing fee, he's hereby sentenced to a term of
4 life, in the Nevada State Prison, with a minimum parole
5 eligibility after five years has been served.

6 This sentence is consecutive to and not
7 concurrent with the sentence imposed in CR96-2687.

8 The defendant is not entitled to any credit
9 for time served in this case.

10 Court is in recess.

11 MR. HAHN: Thank you, Your Honor.

12 (Proceedings concluded.)

13

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1 STATE OF NEVADA)

2) ss.

3 COUNTY OF WASHOE)

4 I, LESLIE R. ROSENTHAL, Certified Court
5 Reporter in and for the State of Nevada, do hereby
6 certify:

7 That the foregoing proceedings were taken by
8 me at the time and place therein set forth; that the
9 proceedings were recorded stenographically by me and
10 thereafter transcribed via computer under my supervision;
11 that the foregoing is a full, true and correct
12 transcription of the proceedings to the best of my
13 knowledge, skill and ability.

14 I further certify that I am not a relative
15 nor an employee of any attorney or any of the parties,
16 nor am I financially or otherwise interested in this
17 action.

18 I declare under penalty of perjury under the
19 laws of the State of Nevada that the foregoing statements
20 are true and correct.

21 Dated this 12th day of August, 2009.

22
23 /s/ Leslie R. Rosenthal
Leslie R. Rosenthal, CCR #819

24

CR06-2580 DC-9900010874-110
STATE VS FRANK MILFORD PECK 2 Pages
District Court 09/01/2009 03:23 PM
Washoe County 2610
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CODE : 2610

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HOWARD W. CONYERS

BY M. K. [Signature]
DEPUTY

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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THE STATE OF NEVADA,

Plaintiff,

Case No.: CR06-2580

vs.

Dept. No.: 6

FRANK MILFORD PECK,

Defendant.

NOTICE REGARDING TRANSCRIPT AT PUBLIC EXPENSE

Pursuant to the *Motion for Transcripts at Taxpayers' Expense* filed by Defendant, Frank Milford Peck, Counsel has requested that trial transcripts for dates May 6, May 7, May 8, May 11 and May 12, 2009, and July 10, 2009, sentencing transcripts be prepared and provided at public expense;

The Administrator, having reviewed the Motion filed herein, and good cause appearing hereby approves preparation of trial transcripts for dates May 6, May 7, May 8, May 11 and May 12, 2009, and July 10, 2009, sentencing transcripts at public expense for Counsel, Karla K. Butko, Esq.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the Social Security Number of any person.

Dated this 1 day of September, 2009.

[Signature]
ROBERT C. BELL, ESQ.
APPOINTED COUNSEL ADMINISTRATOR

CERTIFICATE OF SERVICE

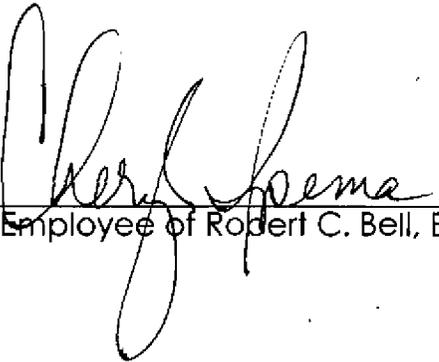
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Pursuant to NRCPC 5(b), I certify that I am an employee of Robert C. Bell, Esq., and that on the 1ST day of September, 2009, I caused service to be completed by:

- Personal Delivery
- Delivery Via Professional Courier
- Sending Via Federal Express or Other Overnight Delivery Service
- Depositing For Mailing in the U.S. Mail With Sufficient Postage Affixed Thereto
- Delivery Via Facsimile Machine to Fax Number

a true and correct copy of the NOTICE REGARDING TRANSCRIPTS AT PUBLIC EXPENSE addressed to:

Karla K. Butko, Esq.
PO Box 1249
Verdi, NV 89439

By: 
Employee of Robert C. Bell, Esq.

CR06-2580 DC-9900011774-002
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District Court 09/10/2009 12:07 PM
Washoe County
nnc TFI APP

CASE No. CR-06-2580
Dept No. 6

FILED

09 SEP 10 PM 12:07

IN the Second Judicial District ^{HOWARD W. CONYERS} ~~Court~~ of the State of Nevada
BY [Signature]
IN and for the County of WASHOE

Frank Peck
Defendant,
-VS-

Motion for
Court Order

State of Nevada
Plaintiff,

Comes Now, the Defendant, FRANK M. PECK, PRO SE, herein requests that this Court issue A Court Order UN-SEALING documents regarding payment of investigative AND DNA Expert services AS the Defendant HAS the right to know what involvement these individuals had with the Defendants CASE. The Defendant herein requests ANY AND ALL documents in the possession of the State regarding SAME.

PER NRS 239B 030 CONTAINS NO SOCIAL SECURITY NUMBERS OF ANY PERSON AND HAS BEEN MAILED TO:

DAVE CLIFTON
75 Court St
Reno NV 89501

[Signature]
FRANK PECK PRO SE V5.745

1 4185

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6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

9 ---o0o---

10 STATE OF NEVADA,) Case No. CR06-2580
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12) Dept. No. 6
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Plaintiff,)
vs.)
FRANK MILFORD PECK,)
Defendant.)
_____)

TRANSCRIPT OF PROCEEDINGS

16 JURY TRIAL
17 MAY 7, 2009, RENO, NEVADA

18 APPEARANCES:

19 For the Plaintiff: DAVID W. CLIFTON, ESQ.
20 Deputy District Attorney
21 One S. Sierra Street, 4th Floor
22 Reno, Nevada 89520

23 For the Defendant: ROBERT BRUCE LINDSAY, ESQ.
24 596 California Avenue
Reno, Nevada 89509

The Defendant: FRANK MILFORD PECK, In Pro Per
Reported by: JULIE ANN KERNAN, CCR #427, CP, RPR
Computer-Aided Transcription

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1 RENO, NEVADA; THURSDAY, MAY 7, 2009; 9:00 A.M.

2 ---o0o---

3
4 THE COURT: Ladies and gentlemen, thank you
5 very much for being prompt this morning.

6 Ms. Inman, please resume the witness stand.
7 Mr. Clifton, you may resume examination.

8 MR. CLIFTON: Thank you very much, your Honor.

9 CONTINUATION OF DIRECT EXAMINATION

10 BY MR. CLIFTON:

11 Q Go ahead and get comfortable, Ms. Inman. I
12 want to digress just a little bit to recap where we left
13 off, and a couple other things. On Exhibit 2 and 3 --

14 Your Honor, I move to admit, first of all, 2
15 and 3?

16 MR. LINDSAY: No objection, your Honor.

17 THE COURT: They are admitted.

18 (Exhibits 2 & 3 are admitted into evidence.)

19 BY MR. CLIFTON:

20 Q Do you have -- I showed you these
21 photographs, this one at least, yesterday?

22 A Yes.

23 Q Can you tell from this photograph whether
24 your cheek was -- on the left side was slightly swollen?

1 A Yes.

2 Q And you remember that injury?

3 A Yes.

4 Q Can you tell me or describe to the jury a
5 little more? Did it hurt, did it discolor, anything
6 like that?

7 A It hurt a lot, it discolored, it took -- that
8 was taken, you know, just a few hours afterwards, so
9 later on it bruised and swelled more.

10 Q And discolored by bruising you mean?

11 A Yeah, blueish, purplish.

12 Q Okay. You said that could have happened when
13 he grabbed your face or hit you in the face?

14 A He grabbed my face and everything happened
15 really fast to be -- you know, to say at that moment
16 absolute fear, I didn't know what was going on, so he
17 grabbed my face, forced me down, so it could have -- it
18 was the pressure from his hand and it could have been
19 when I hit the floor.

20 Q And it was fairly dark in the bathroom?

21 A Yes.

22 Q You didn't see exactly where he came from?

23 A No.

24 Q The shower, I guess, is next to the toilet

1 here (indicating), and there's a wastebasket in the
2 bathroom.

3 A Yes. In front of the shower and toilet.

4 Q Just normally when you go in the shower do
5 you go to the right side or the left side?

6 A I would have gone to the side away from the
7 toilet.

8 Q The left side?

9 A The left side.

10 Q When you enter and exit the shower?

11 A Yes.

12 Q Can you say for sure he did or didn't come
13 from there?

14 A I can't say for sure because I don't know.
15 Came out of nowhere. I...

16 Q The police later took photographs of your
17 bathtub. Are you aware of that?

18 A Yes.

19 Q Did you also see your bathtub yourself later
20 at some point?

21 A No.

22 Q You never went back to that apartment?

23 A No.

24 Q Okay. Well then, let's do it this way. I'll

1 hand you Exhibit Number 6 and you tell me if you can
2 recognize this as being your bathtub or not, even though
3 you didn't ever go back to that apartment?

4 A Yes.

5 Q That does look like your bathtub?

6 A Yes, that's the starfish and everything I put
7 in on the wall.

8 Q That would be how it looked as far as the
9 decals and stuff like that on August 9th --

10 A Yes.

11 Q -- 1994?

12 A Yes.

13 MR. CLIFTON: Move to admit Exhibit 6.

14 MR. LINDSAY: No objection, your Honor.

15 THE COURT: It is admitted.

16 MR. CLIFTON: Thank you.

17 (Exhibit 6 is admitted into evidence.)

18 BY MR. CLIFTON:

19 Q You see some dirt in the bottom of that tub?

20 A Yes.

21 Q See what I'm talking about?

22 A Yes.

23 Q You want me to bring it to you or?

24 A No, I can see.

1 Q Do you know if your bathtub was in that
2 condition on August 9th before this happened?

3 A No.

4 Q Describe what condition it was in as you
5 usually keep your bathtub.

6 A Relatively clean. That looks like there's
7 dirt and mud and sticks or something in there.

8 Q Do you see this right here (indicating)?

9 A Yes. Looks like a shoe print or a boot
10 print.

11 Q Would that be from you?

12 A No.

13 Q Would that be there, to your knowledge,
14 before this event happened?

15 A No.

16 Q I mean as far as last time you saw your
17 tub --

18 A It was not there.

19 Q -- the tub was cleaner?

20 A Yes.

21 Q And throughout the rest of that photo and the
22 rest -- well, the rest of that photo you see a similar
23 type mud or dirt?

24 A Yes.

1 Q You have no idea how it got there?

2 A No.

3 Q Exhibit Number 4, you've already identified
4 this.

5 I'd move to admit this at this time, your
6 Honor?

7 THE COURT: Any objection?

8 MR. LINDSAY: No objection, your Honor.

9 THE COURT: It is admitted.

10 (Exhibit 4 is admitted into evidence.)

11 BY MR. CLIFTON:

12 Q Thank you. Remember I showed you this
13 picture yesterday?

14 A Yes.

15 Q And we'll call it a white resin chair there?

16 A Right.

17 Q Are you familiar with that chair? Is it
18 yours?

19 A It's not mine. It belonged to the neighbors
20 that are directly across from that -- it came from their
21 patio.

22 Q I'll show you Exhibit Number 5. I'm going to
23 overlap these just to save time. Exhibit Number 5,
24 remember this photo I showed you yesterday?

1 A Yes.

2 MR. CLIFTON: Move to admit Exhibit 5.

3 MR. LINDSAY: No objection, your Honor.

4 THE COURT: It is admitted.

5 MR. CLIFTON: Thank you.

6 (Exhibit 5 is admitted into evidence.)

7 BY MR. CLIFTON:

8 Q Were we laid the foundation for this
9 yesterday, you recognize this as your lot, how it looked
10 on or about August 9th or 10th of 1994.

11 A Yes.

12 Q Do you remember this?

13 A Yes.

14 Q Apartment complex. And this was taken -- if
15 this was taken either before or after this event, the
16 chair's not there currently in this area, correct?

17 A Correct.

18 Q And your apartment's right here (indicating),
19 I think you said earlier? You can actual touch the
20 screen.

21 A Yes.

22 Q Just touch the screen.

23 A It's right there (indicating).

24 Q Put a circle. Touch it hard. We'll put a

1 circle around there or something. Okay. And that's
2 your apartment.

3 Now, where would this white resin chair
4 normally have been? Where were the neighbors that owned
5 that chair?

6 A The neighbors would have come from here
7 (indicating), that was their patio.

8 Q Where you've just put the other mark on the
9 screen here (indicating)?

10 A Yes.

11 Q Okay. If you touch it hard enough it should
12 make an arrow, but I think we all can see it. That
13 would be just under the -- near the light post or the
14 lamp post?

15 A Right.

16 JUROR NUMBER ONE: Could you move that over a
17 little?

18 MR. CLIFTON: Yes, sir. Thank you.

19 JUROR NUMBER ONE: Thank you.

20 BY MR. CLIFTON:

21 Q I keep forgetting the jury has the one
22 monitor here, I'm probably in the way, too, but you've
23 pointed to just near the lamp post on the south side of
24 this photograph, correct?

1 A Correct.

2 Q Okay. And you have no idea how that chair
3 got under your window?

4 A No.

5 Q And you say you're certain it was there when
6 you came home at 10:00?

7 A It was not there.

8 Q I wanted one other question on the bathroom
9 area. When this person, let's say, attacked you,
10 grabbed your face, you said he threw you to the ground,
11 or how'd you get to the ground?

12 A He shoved me to the ground.

13 Q Shoved? Okay. He shoved you to the ground.
14 And you said there was an elbow in the back of you you
15 said yesterday?

16 A That's what it felt like, yeah.

17 Q When you went down, can you remember if you
18 injured your face on the floor when you went down, like,
19 either on his hand or on the rug or there in the
20 bathroom, or whether you injured it when he hit you, or
21 is it too much of a blur?

22 A It's kind of a blur. He hit me and forced me
23 down at the same time. It could have been -- happened
24 at the same time.

1 Q Do you remember your face striking anything
2 or when you went down?

3 A I remember his hand coming across my face and
4 grabbing me.

5 Q Do you remember your face or head hitting
6 anything when he pushed you down?

7 A I can't be certain.

8 Q Got it.

9 A All I know is there was force that put me to
10 the ground, the elbow in the back, the hand across the
11 face, and being shoved to the floor, so it could have
12 happened at the same time.

13 Q Okay. You were wearing little bit of a heel
14 yesterday. Are you wearing flats or heels today? I
15 didn't see.

16 A Maybe one inch.

17 Q One-inch heels. And how tall are you?

18 A Five seven.

19 Q And this person, you said you got a chance to
20 stand near during this incident?

21 A Yes.

22 Q How did that come about?

23 A When he was getting ready to leave, he stood
24 up and I was standing up, so I was able to get a good

1 idea of the height.

2 Q Do you remember how tall you told the police?

3 A He wasn't any taller than I was.

4 Q Okay. Could he have been shorter?

5 A Could have been shorter, but he wasn't any
6 taller than I was.

7 MR. CLIFTON: I guess we might as well mark
8 this one, your Honor. I think Mr. Peck presented this
9 to the jury in opening. I don't mind using his copy if
10 he wants me to. This is my copy and it does have
11 highlights, as did his. I don't really care whether we
12 get a clean copy or not.

13 MR. LINDSAY: Your Honor, we've obviously used
14 it in our opening statement so.

15 THE COURT: It will be admitted. What is the
16 number, please?

17 MR. CLIFTON: Thank you.

18 COURT CLERK: It will be 13.

19 THE COURT: Exhibit 13 is admitted.

20 (Exhibit 13 is marked and admitted into
21 evidence.)

22 BY MR. CLIFTON:

23 Q Should be a way to clear that arrow that you
24 have on there. You just -- see where I touched? You

1 touch the screen right before where it says "Clear all",
2 above clear all.

3 Exhibit Number 13, now, do you recognize what
4 this is?

5 A Yes.

6 Q Tell us.

7 A That is the composite sketch that was drawn
8 up by the police officer, investigator at the time.

9 Q Have you ever heard of the name Detective
10 Asher?

11 A Yes.

12 Q Is that who was helping you with this
13 computer sketch?

14 A Yes.

15 Q And did you start with Detective Neuharth, or
16 do you know if you ever met with Sam Neuharth?

17 A I've met Sam Neuharth.

18 Q Where did you start or what were you
19 attempting to do with him that you guys did not get that
20 far?

21 A I really don't remember that far back, that's
22 been a long time.

23 Q Because indicates completed by Detective
24 Asher, correct?

1 A Correct.

2 Q And Neuharth is signed as the detective just
3 to the right of that. See that?

4 A Right.

5 Q Detective Asher is now the police chief in
6 Sparks. Are you aware of that?

7 A No.

8 Q But you remember him sitting down with you
9 and doing this?

10 A Yes.

11 Q Let's go, then, up top. You see the crime
12 sexual assault nurse, 94-9292?

13 A Yeah.

14 Q And there's a dash after 94. Date of
15 occurrence, August 9th, the address, all these things
16 are correct?

17 A Yes.

18 Q Now, you give a suspect description here.
19 Can you see that?

20 A Yes.

21 Q What is your description to the police?

22 A That he was white, he was male, he was -- his
23 build was thin. He was five six, a hundred fifty
24 pounds, 20 to 25 years old.

1 Q Look at complexion.

2 A Right.

3 Q Does that -- what does that mean?

4 A It says light. It just means that he was
5 white, not Hispanic or not...

6 Q So Caucasian?

7 A He was Caucasian, right.

8 Q But you already indicated that he seemed to
9 have a tan in August?

10 A It would seem, but it was dark, you know.

11 Q And then eyes, what did you write for eyes?

12 A Dark.

13 Q Hair?

14 A Dark.

15 Q Length?

16 A Unknown. Seemed to be short, but unknown
17 because he had -- the -- the shirt wrapped around his
18 head.

19 Q So this beanie type thing doesn't really do
20 your composite sketch?

21 A Not really.

22 Q Just physical, in fairness, as far as what he
23 had around his head?

24 A No.

1 Q Now, identifying marks, what did you say in
2 here?

3 A Scar on left side, it's...

4 Q Well, complete scar. It doesn't say side.
5 What does it say?

6 A Scar on left -- I guess it says blade, so I'm
7 saying it's shoulder blade.

8 Q Okay. And now, "LF" is what you're referring
9 to, left?

10 A I believe that's what was written.

11 Q And it's crossed out, something right below
12 LF. Do you see that?

13 A Right.

14 Q Do you know what happened there, can you
15 explain?

16 A I think that that was because they were --
17 because I was describing it, they were thinking it was
18 the right side because I touched with my right hand, so
19 it was corrected because I said no, it was my right hand
20 so it would have been on his left side.

21 Q So this little description between right and
22 left started that soon in this case?

23 A Right. Because it had -- this was early,
24 early in the morning, I had been from the hospital up

1 all night, so I was trying to get them to understand and
2 know it was my right hand, but would have been his left
3 side because he was facing me.

4 Q Do you remember testifying in this case once
5 before under oath?

6 A Yes.

7 Q Would have been the grand jury? November, I
8 believe, in 2006?

9 A Yes.

10 Q And you remember even then you were
11 describing it as your right hand touching his side?

12 A Right.

13 Q And then I -- or you think it was me who got
14 it mixed up and called it his right side?

15 A Correct.

16 Q So how long has this been happening?

17 A It's happened a few times just because I use
18 my right hand, and then somebody will think that I'm
19 saying the right, but it's actually not. My right hand
20 on his left side.

21 Q As he's facing you?

22 A As he's facing me.

23 Q So here as early as when, when did you give
24 this composite sketch?

1 A That was the morning -- well, that would have
2 been the morning of the 10th.

3 Q So as soon as the 10th after this incident,
4 so within, we'll say, hours, a day, let's say within a
5 day, already there was some confusion over you meant his
6 left or his right side?

7 A Right.

8 Q So left side?

9 A But it was corrected right away when I seen
10 that they had it wrong, I...

11 Q Okay. And then I can even zoom in on this.
12 I have no idea if that's a rip or what happened to the
13 paper there, but can you see where I'm referring to?

14 A Right.

15 Q You see the word "blade"?

16 A Right.

17 Q And there's something above it?

18 A Right.

19 Q Do you know what that said or says?

20 A It looks like it probably said shoulder
21 blade.

22 Q Okay. Now, the shoulder blade, if I'm
23 correct in my anatomy, is right here (indicating),
24 correct?

1 A Right.

2 Q Can't quite reach mine. And this thing you
3 felt, are you absolutely certain it was directly on the
4 shoulder blade?

5 A No. It was on the side.

6 Q Okay.

7 A On the side lower here (indicating). They
8 wrote shoulder blade, and that could have been just
9 tired, exhausted just trying to -- to, you know, get
10 through it and so they -- but it was right here
11 (indicating).

12 Q Kind of the flank area?

13 A The flank, yeah. I mean, running my hand
14 here it would have been here (indicating).

15 Q Have you used the word back before to the
16 police?

17 A I've used the word back.

18 Q So somewhere between the side and the back?

19 A In this area (indicating).

20 Q Not up on the neck?

21 A No.

22 Q Not down by the waist?

23 A No.

24 Q And definitely on his left side to back?

1 A Correct.

2 Q Good enough. Okay. On the age here, you see
3 what age you put down?

4 A Yes.

5 Q Can you describe -- tell us a little bit
6 about your descriptions of age? Are you good estimate
7 of age?

8 A I'm not good at estimating age. I never have
9 been.

10 Q I'm not saying you're right or wrong, even in
11 this case. All right?

12 A All right.

13 Q I'm just trying to describe ability to
14 describe someone's age.

15 A In this instance or in any instance?

16 Q Generally speaking, anyone you don't know,
17 whether you're right or wrong.

18 A Generally speaking, I'm probably not -- I'm
19 probably not very good with estimating age.

20 Q Have you screwed up even your own age?

21 A Always.

22 Q Always. Now, the other day I asked you, and
23 we get your birth date, and I think I give you the
24 mathematics number once, but you described your own age

1 telling people?

2 A Yeah.

3 Q Tell us what you're talking about.

4 A Well, because I don't like to feel any older
5 than I am, so I sort of skip back a few years and so...

6 Q Purposely or accidentally?

7 A On purpose.

8 Q Okay. But are you good at describing your
9 age? I mean, I thought you meant accidentally you don't
10 remember your age even.

11 A If somebody asks me how old I am, I know how
12 old I am.

13 Q Okay. Got it. With this person describing
14 his age, did you purposely lower his age in any way?

15 A No.

16 Q So you're saying when you hit 29 or
17 something, you say you're 29 when you hit 30, you're
18 still 29 to someone?

19 A Yeah.

20 Q I understand. And with respect to developing
21 an estimate of somebody else's age, though, would you
22 say you're good at it or bad at it?

23 A I wouldn't think that I was that great at it.
24 I'm mean, I'm probably just as average of anybody else

1 as trying to determine an age on something.

2 Q I think we determined yesterday if you were
3 born December of 1996, on this date you would have been
4 almost 28, so 27 plus?

5 A Yes. Right.

6 Q And was this person younger than you, your
7 age, or older than you as you -- well, you told the
8 police 20 to 25. That's clearly younger than you,
9 correct?

10 A Right.

11 Q How certain were you of that?

12 A I wasn't real certain. I was coming up with
13 something that was sort of, you know -- let me back up.
14 If somebody asked me at that point how old he would have
15 been I would have said that he was -- I would have said
16 20 to 25, but he was -- he was around my age.

17 Q Well, would you say closer?

18 A But when I say 20 to 25, that's --

19 Q Do you remember using the word he was
20 younger?

21 A He wasn't older. He wasn't an older guy, so
22 he was a younger man.

23 Q So when you said he was a younger man, he was
24 young, did that mean younger than you or just he's not

1 in his 40's, 50's, or 60's?

2 A That he's not 40's, 50's or 60's, he was a
3 younger man.

4 Q He has this T-shirt over his head. Can you
5 say for certain that he is older than you or younger
6 than you for certain?

7 A For certain I could say that he wasn't that
8 much older.

9 Q No, just ask -- just answer -- just can you
10 say for certain he was younger than you and/or can you
11 say for certain he's older than you?

12 A No.

13 Q All right. Would you say he's closer to the
14 20 or 25 when you gave that description of 20 to 25?

15 A I would say 25.

16 Q Closer to 25 than 20?

17 A Closer to 25.

18 Q Could he have been older than you, are you
19 saying he absolutely wasn't -- he could have been?

20 A He could have been.

21 Q All right. But anyway, you told him here 20
22 to 25. Have you also said in descriptions, either to
23 the police or in testifying, that he could actually even
24 be a little bit older than you, you're not quite --

1 A I've said that, yes.

2 Q -- completely sure?

3 A Yes.

4 Q Do you have any -- I know it's been 15 years,
5 but is there any more current estimate, or should we
6 just rely on 20 to 25? I mean it's an estimate,
7 correct?

8 A It's an estimate. Hum, I would say that, you
9 know, even 15 years later that I would say that he was a
10 younger man, not old past his 20's, but not that much of
11 an age difference from me.

12 Q And you were 27 at the time?

13 A I was 27. He was probably close to my age.

14 Q Let's just go with that. And you didn't know
15 this man still to this day?

16 A No.

17 Q You don't think you ever knew this man; is
18 that correct?

19 A No.

20 Q Is that correct?

21 A That's correct.

22 Q Accent, speech, you said -- who wrote this,
23 you or him, or Detective Asher?

24 A I didn't write this. I think Neuharth wrote

1 that.

2 Q This was the person that was doing the
3 composite with you?

4 A Right.

5 Q And it says, "Accent, speech; not
6 applicable". What does that mean?

7 A There was no accent.

8 Q Speech was normal, English?

9 A Normal English, yes.

10 Q Clothing, you see what you wrote here?

11 A Yes.

12 Q Can you read it?

13 A "Purple silk shorts, white shirt, brown
14 boots."

15 Q Do you remember him -- do you remember him
16 wearing anything else, jewelry, anything else?

17 A He had a pinky ring on.

18 Q Did you tell the police that?

19 A Yes.

20 Q Do you know if it was on the left or the
21 right hand?

22 A Think it was on the left.

23 Q Do you know which finger?

24 A The pinky.

1 Q Okay. And that you see here in Exhibit
2 Number 13, correct?

3 A Yes.

4 Q "Gold band on pinky finger," and it doesn't
5 say which hand. What do you remember telling the
6 police?

7 A I think it was the left hand.

8 Q Okay. On the pinky finger, so no other rings
9 that you felt or saw?

10 A No.

11 Q Any other jewelry that you felt or saw?

12 A No.

13 Q Now, yesterday I was asking you about, hum,
14 the incident itself, and you said there was
15 conversation, but I don't remember exactly where the
16 conversation started and we left off yesterday. Do you
17 remember if he said anything to you at the time he
18 shoved you down on the floor in the bathroom?

19 A Hum, he said something to me to the effect
20 of, hum -- it blanks.

21 Q Okay.

22 A That it blanked.

23 Q Well, don't worry about it. Do you know he
24 said this there then or he said where are you going to,

1 toward the bed or where?

2 A He said something in the interim, don't fight
3 and I won't hurt you, something like that.

4 Q Yesterday you couldn't remember this. Do you
5 recall this?

6 A Yeah.

7 Q You recall I asked you more about this last
8 night or yesterday after we left the courtroom?

9 A Yeah.

10 Q All right. Did it come back to your memory,
11 do you remember, or is that so long ago that you still
12 don't know?

13 A It's so long ago and I think just parts of it
14 I black out, so I mean, you can ask me that, but I mean,
15 I'm not --

16 Q All right. And you told me that yesterday?

17 A I know more of the other conversation that I
18 had later.

19 Q Before we get to that conversation, and let
20 me stick this with one. Would your memory have been
21 better at the time you did this computer sketch and
22 interviewed with the police than it is now 15 years
23 later?

24 A Yes.

1 Q Let me show you the composite sketch and is
2 already admitted, this is number 13, this is what's
3 written in the composite sketch. Go ahead and review
4 that. Tell me if you remember him saying that word or
5 if you're just going by what this says because you don't
6 really remember at all.

7 A I don't completely remember. I know that he
8 had comments to me at the time that he hit me. I just
9 don't remember. I've blocked out some of that, so.

10 Q Could this statement that you told Detective
11 Asher have been at the time he either hit you, threw you
12 on the floor, or shoved you into the bedroom?

13 A Yes.

14 Q Leave it at that. We'll just kind of leave
15 it kind of open there. And what was that statement,
16 according to this composite sketch, that the detective
17 wrote down that you told him?

18 A Don't scream or fight me and I won't hurt
19 you.

20 Q Does that sound like something that could
21 have happened?

22 A Yes.

23 Q You didn't make it up or lie to the police
24 officer, correct?

1 A No.

2 Q Did you lie about anything to the police
3 officer?

4 A No.

5 Q All right. Not even your age.

6 A No.

7 Q Thank you. You were upset about this,
8 correct?

9 A Yes.

10 Q Were you crying?

11 A Hum, in the beginning when the police got
12 there, no, I was composed. I was just doing what I had
13 to do. When we got into the ambulance is when I started
14 to.

15 Q Okay. You were upset the entire time and you
16 did kind of break down emotionally and start crying at
17 some point?

18 A Yes.

19 Q All right. Did other people see you either
20 at the hospital or in the ambulance or back at the
21 house?

22 A Yes.

23 Q Would that include officers or detectives?

24 A Yes.

1 Q Now, with being traumatized with that did you
2 think affected your statement or do you think they're
3 accurate here to the detectives, not only Asher but also
4 Neuharth?

5 A They're accurate.

6 Q Going to the sketch now, and we'll go back to
7 more of what he said to you and talked about in a
8 minute. I just want to finish with this Comp-U-Sketch.
9 Here's what you described a little bit more about him.
10 Can you read that to us?

11 A Eyebrows and mustache, wore T-shirt over
12 head.

13 Q Did you tell him what color the eyebrows and
14 mustache were?

15 A It doesn't have it written there, but it was
16 dark, dark hair, dark hair, dark eyebrows, dark eyes.

17 Q Do you remember that?

18 A Yes.

19 Q You remember that?

20 A Yes.

21 Q That's all I have. Whoops. No, that's all I
22 have on the -- well, I don't know if you can see it on
23 the Comp-U-Sketch on number 13, but under the mustache
24 did you tell the officers he had, like, a day's growth

1 of beard like you told us yesterday?

2 A Yes.

3 Q I don't know. I guess they tried to put that
4 in?

5 A They tried. With that -- that was hard, that
6 computer program, so he was trying to put in the growth
7 around.

8 Q So you remember talking to him about it?

9 A Yeah.

10 Q Okay. That's good enough.

11 Now, when he attacked you and raped you, you
12 said it was vaginal intercourse in its normal meaning.
13 Did we get to whether or not he finished or how it
14 ended? I don't remember if we talked about that
15 yesterday or not.

16 A No.

17 Q Can you tell us the sexual intercourse
18 itself, how did it stop or end?

19 A It stopped when he ejaculated.

20 Q Where did he ejaculate?

21 A Inside me.

22 Q How do you know that?

23 A Because I felt it.

24 Q Did you know he had finished from his

1 reactions or actions?

2 A Yes.

3 Q Did he say anything about it?

4 A No.

5 Q Do you know if he was wearing a condom or
6 not?

7 A He was not.

8 Q You're pretty certain of that?

9 A He was not.

10 Q Are you pretty certain of that?

11 A Yes.

12 Q And so he ejaculated inside of you. Did he
13 move? Did he get off you or did he --

14 A He moved, he got off me, hum, and, hum, he
15 started to seem to get agitated. He asked me for a
16 cigarette. At the time I smoked.

17 Q What do you mean, "agitated" about what?

18 A He seemed nervous. He started pacing and --
19 hum.

20 Q In the bedroom or somewhere else?

21 A In the bedroom. Hum. He asked for a
22 cigarette and I got him a cigarette. I was trying to
23 keep him calm, hum, you know, I was trying to get him
24 out. I was scared that he was gonna do more to me, so I

1 was trying to talk to him calmly. I was trying to get
2 him out. He had the cigarette. He was smoking. I'm
3 looking at the phone and I'm looking at the door, and
4 I'm just thinking just stay calm, and just try to keep
5 him calm. He moved in towards the living room while he
6 was smoking the cigarette. At this time I still had
7 nothing on. And I was telling him, you know, just go.
8 I won't tell anybody, I won't say anything, it's okay,
9 you need to just leave.

10 There was a -- another part of a conversation
11 that happened before that, I'll go back a little bit,
12 was that I said to him, you know, why did you do this?
13 You didn't need to do this. You know, you could have
14 just talked to me.

15 And he said "You would have never talked to
16 me. You would have had nothing to do with me", so I was
17 trying to sort of be calm with him. He got to the point
18 where he was near the door. He started pacing. He was
19 sweating. He started to get nervous. He was agitated
20 and I'm trying to get him out the door because I know
21 the phone is right behind me. And he did at one point
22 open the front door, but at the front door there's a
23 light that comes down, and --

24 Q Inside or outside the door?

1 A Outside the front door. And so when he
2 opened the door, he saw the light and it -- he -- it
3 showed him on him and it made him even more upset, and
4 I'm thinking he's not gonna leave, you know, he's not
5 gonna leave, he needs to get out of here. So he's
6 getting more nervous and I was getting more scared. So
7 he -- hum, he pushed the door back shut and I said look,
8 I'll turn around, I won't look at you, I promise, just
9 go. Just go. I won't say anything, just leave. And
10 finally after a minute he did. He opened the door and
11 he went out. Problem was is that's it's a self-locking
12 door and I stayed there for a minute and -- because I
13 didn't know where he'd come from in the first place, the
14 door didn't close all the way, and in order for this to
15 lock you have to close it all the way. So I gave it, I
16 don't know, maybe a second and I just lunged and I
17 slammed the door shut and I went to the phone.

18 Q Is there a dead bolt on the door?

19 A There -- I don't remember exactly. I think
20 there's a dead bolt, but it self locks when you close
21 it, it's a self-locking door.

22 Q Either way, you made sure the door --

23 A The door was shut, I knew it was locked once
24 I could get it closed.

1 Q Then after -- let me finish my whole question
2 before you start. So you made sure the door was secured
3 locked?

4 A Yes.

5 Q Did he ever talk to you in a sympathetic way
6 almost like he was sorry for what he had done?

7 A No.

8 Q All right. You don't remember him ever
9 saying he was sorry for what he had done?

10 A No.

11 Q Okay. When he did talk to you about this
12 conversation about you would never have talked to him
13 anyway, remember what you were referring to a minute
14 ago?

15 A Yes.

16 Q Let's go back to that. Were you trying to
17 find out anything from him?

18 A I was just trying to keep him calm.

19 Q Do you know if you were trying to determine
20 in your own head whether you knew this person or not?

21 A No, I was just trying to keep him calm. I
22 was trying to stay friendly and that that would keep him
23 calm and so he would leave and not hurt me. At that
24 point I was afraid that if he didn't leave that he was

1 gonna kill me.

2 Q Earlier in the night maybe in the bathroom
3 you were saying you were wondering who this was?

4 A Yes.

5 Q Who could be doing this, correct?

6 A Yes.

7 Q At this point when you're talking about this
8 conversation had you made up in your mind, acknowledge
9 that you didn't, or did know this person?

10 A I did not know him.

11 Q So now you know you don't know him?

12 A I did not know him.

13 Q Do you know if he had seen you or if you had
14 seen him around, say, in the Laundromat or somewhere in
15 the apartment complex?

16 A I wouldn't have known.

17 Q When you were asking him, or when you talk to
18 him, I'm sorry, or he was talking to you, how did it
19 come up that -- why did you say why did you do this, why
20 didn't you just talk to me or something like that?

21 A He had said something about having seen me,
22 and I said, "Well, then why didn't you just come up and
23 talk to me? Why did you do this?"

24 Q Do you remember what he said about having

1 seen you, by any chance?

2 A I'm not completely clear.

3 Q Okay.

4 A But I know that that's what -- that's why I
5 responded the way I did.

6 Q And you said what?

7 A I said, "Then if you had seen me, why didn't
8 you just come up and talk to me, why did you do this?"

9 And he said, "You would have never talked to
10 me anyway".

11 Q So originally this person was, I guess the
12 word is, attacking you in the bathroom, correct?

13 A Yes.

14 Q And now he's conversing with you, correct?

15 A Correct.

16 Q His mood is changed or being nicer, how would
17 you describe it?

18 A He was agitated. He was nervous. He was
19 becoming more and more nervous and more -- was sweating.
20 He was pacing. He was becoming agitated and telling me
21 not to look at him and he was -- it was my feeling that
22 he was becoming more upset and more angling towards
23 doing something to me so that I wouldn't say anything.

24 Q To whom?

1 A To the police, to anyone.

2 Q Did you tell him whether you would, or not?

3 A I told him I wouldn't. I told him "I won't
4 tell anybody, I won't do anything, I won't call the
5 police, just go".

6 Q Do you remember him saying anything with
7 regard to whether he'd ever done this before or not?

8 A I don't remember that.

9 Q Okay. When the police come -- well, first of
10 all, you called what number? Who did you call?

11 A 911.

12 Q Do you have any relatives here in Reno; mom,
13 dad, sister, brother back then?

14 A My dad was here. My mother was living in
15 Fallon at the time.

16 Q So you called 911 and that was your first
17 call?

18 A Yes.

19 Q How soon after you made sure the door was
20 secured?

21 A A second from the time that door slammed shut
22 I got the phone in my hand.

23 Q Up to that point did you see him with any
24 weapon?

1 A I didn't -- I didn't see anything specific.
2 I thought what I saw, and I believe this is in the
3 reports, is I describe it as a sheath of some sort in
4 his boot that led me to believe that he had a knife.

5 Q Do you know how the screen got cut, by any
6 chance?

7 A No.

8 Q Did you leave any sharp objects around
9 outside or --

10 A No.

11 Q -- that could be used? All right. And you
12 didn't know that screen was cut at the time this
13 occurred, correct?

14 A No.

15 Q All right. What boot did you see it in, left
16 or right, if either?

17 A I can't be certain. It may be in one of the
18 reports as to which side I saw it.

19 Q It doesn't matter, I'm just trying to find
20 out what you remember. Could you see the whole thing or
21 just part of it?

22 A Part of the sheath that would have come out
23 of the boot.

24 Q And what do you mean by "sheath," just so the

1 jury understands?

2 A What holds a knife, the sheath that holds a
3 knife that you put a knife into that holds it in place.

4 Q Could you see the handle?

5 A That's what I was thinking that I saw was the
6 handle and a knife pushed into the boot at boot height.

7 Q You know the sheath is -- usually the handle
8 sticks out so you're grabbing the knife?

9 A Exactly.

10 Q Is that what you're referring to?

11 A That's what I'm referring to.

12 Q Do you know, ever see a handle chrome, black,
13 wood, metal?

14 A I didn't see anything chrome. If I could
15 remember seeing anything it would have been something
16 dark of wood nature. It was a shape. It was a shape of
17 something that was offset from a boot. It looked like
18 there was something in the boot that would say that this
19 is the handle of the knife.

20 Q Did he ever threaten to use it or threaten
21 you with it?

22 A No.

23 Q Did he ever say he had a weapon?

24 A No.

1 Q He ever pull it out of the sheath, if there
2 was one?

3 A No.

4 Q Can you say with one hundred percent
5 certainty there was one?

6 A Not with a hundred percent certainty, but I
7 would say 80 percent certainty.

8 Q Okay. With or without the knife, were you
9 scared --

10 A Yes.

11 Q -- even if he didn't have a knife?

12 A Yes.

13 Q Were you afraid for your life?

14 A Yeah.

15 Q Okay. When you told him you wouldn't tell
16 the police and then you ended up calling, did that scare
17 you?

18 A No.

19 Q Was it important to you to make sure you
20 report this?

21 A Yes.

22 Q You call the police. Did they say they'd
23 send someone out?

24 A Yes.

1 Q How soon after did they arrive?

2 A It was just a few minutes. The dispatch had
3 me stay on the phone until the police were at the door,
4 then she let me know that they were there, and that I
5 could open the door.

6 Q Did you look through a peep hole or did you
7 have one?

8 A I had a beep hole.

9 Q Did you look through it?

10 A I looked through it.

11 Q And you confirmed it was police?

12 A Yes.

13 Q You opened the door?

14 A Yes.

15 Q Did you grab the handle?

16 A Yes.

17 Q Same handle that the perpetrator had just
18 grabbed to open the door the first one or two times?

19 A Yes.

20 Q All right. So now you're touching that
21 handle, you open the door. Do you let him in?

22 A Yes.

23 Q How many were there?

24 A There was one female police officer, I

1 believe that was Peggy Stout, and then there was, I
2 think, two or three other males, and then the ambulance.

3 Q Had you ever met any of them before?

4 A No.

5 Q Including Peggy Stout?

6 A No.

7 Q How did you know her name?

8 A Because she was with me and I just remember
9 her name.

10 Q That's fine. There was also a Cheryl
11 Bartlett. Do you remember that name, by any chance?

12 A I remember the name.

13 Q Could she have been there?

14 A Yes.

15 Q So it's possibly two females?

16 A Yes.

17 Q Do you remember the name John Clayton or Sam
18 Neuharth?

19 A I remember Sam Neuharth, John Clayton, yes.

20 Q Do you know if any of them were there at the
21 time?

22 A I don't know that they were there at the
23 time. At that time is when I started to go into shock
24 and so -- you know.

1 Q Do you remember Officer Clayton, John Clayton
2 trying to come up to talk to you?

3 A When I was sitting in the chair in the
4 kitchen, yes.

5 Q That's in your apartment?

6 A Yes.

7 Q So he's there at some point?

8 A Yes.

9 Q And did either he or you decide that it might
10 be better for you to speak to a female --

11 A Yes.

12 Q -- officer?

13 A Yes.

14 Q Was that because of your composure at the
15 time?

16 A I think it's my composure, and I think it's
17 just, you know, feeling more comfortable speaking with a
18 female at the time rather than a man.

19 Q Who did you speak to?

20 A I believe it was Peggy. It was a female
21 officer and it's been a long time, but it was either
22 Peggy or it was another female officer was with me.

23 Q Then you said you went into shock.

24 A Yeah.

1 Q Can you describe it for us? How do you know
2 that?

3 A Well, I was pretty composed up until the
4 point when they took me outside. They put me on the
5 stretcher for the ambulance, and we went past the window
6 and I looked over and I saw the chair and I saw the
7 window cut and I just started losing it because I was
8 just floored to know that I was sitting in my house and
9 somebody had come in while I was sitting there. I just
10 couldn't understand it.

11 When they got me into the ambulance, shock is
12 weird, it does -- I had suppressed so much to try to get
13 through the situation that it was coming out and there
14 was a lot of people around me, there was people looking
15 at me. There was -- when I'm in the ambulance the light
16 is on, so I started to shut down. I didn't want people
17 around me, I didn't want people looking at me. I didn't
18 want anybody touching me. I started shaking very bad.
19 Hum. And that continued all the way through the
20 hospital.

21 Q All right. That's what you're referring to
22 what you believe was shock?

23 A Yeah.

24 Q When you get to the hospital, do you know if

1 you were examined?

2 A Yes, I was.

3 Q Do you remember them taking these pictures
4 that I showed you, number 2 and 3?

5 A Yes, I do.

6 Q Were you examined internally vaginally?

7 A Yes.

8 Q Do you remember the doctor's name?

9 A I don't recall his name.

10 Q All right. Dr. Dedolph, D-e-d-o-l-p-h, I
11 believe. Does that sound familiar or?

12 A The name sounds familiar.

13 Q Anybody else you remember being with you?

14 A There was people there, but by that time I
15 was pretty shut down. I -- I wouldn't look up, I
16 wouldn't look at anybody. I was just shaking.

17 Q Do you remember Peggy Stout being there?

18 A Peggy Stout was there. They had a female
19 officer in the room with me and there was another nurse
20 in there.

21 Q All right. Peggy Stout's a female officer.
22 And then do you know the name Diane Hackworth?

23 A Yes.

24 Q Who would that have been?

1 A The nurse, I believe.

2 Q All right. Let's call her Nurse Diane. Does
3 it sound familiar?

4 A Yeah.

5 Q Did you have occasion to see some of these
6 people testifying before you or after you at the grand
7 jury hearing in 2006?

8 A Yes.

9 Q All right. Did you explain to these medical
10 professionals in front of Peggy Stout what had happened
11 to you?

12 A Yes.

13 MR. LINDSAY: Objection, your Honor, as to
14 time, because he has just mentioned 2006 and we're
15 talking about 1994. I'm just simply asking for
16 clarification.

17 THE COURT: All right. Please rephrase.
18 Sustained.

19 MR. CLIFTON: Thank you, counselor.

20 BY MR. CLIFTON:

21 Q In 1994, August 10th, when you were at the
22 hospital, the emergency room I take it?

23 A Yes.

24 Q What hospital, do you know?

1 A Saint Mary's.

2 Q Were you explaining to Dr. Dedolph, Nurse
3 Diane what had happened to you with Peggy Stout there in
4 the room?

5 A Yes.

6 Q Were they gathering evidence from this
7 physical exam, to your knowledge?

8 A Yes, they were.

9 Q Would that include swabbing with the vagina
10 internally?

11 A Yes.

12 Q Did they take a blood sample, do you recall?

13 A Yes.

14 Q Anything else you can recall?

15 A They did a swab of my cheek and of my mouth.
16 They also did -- they -- they plucked pubic hair. And
17 they x-rayed me, for -- for any sort of physical damage
18 to my face.

19 Q What was the result of that?

20 A Just bruising, contusion, bruising.

21 Q So no fracture?

22 A No fracture.

23 Q And do you remember anything called a pubic
24 brushing or pubic hair brushing?

1 A They didn't do that.

2 Q All right. You don't remember that, or they
3 didn't do it?

4 Okay. You told them that there was sexual
5 intercourse, correct?

6 A Yes.

7 Q Did you tell them whether he ejaculated
8 inside you or not?

9 A Yes, he did.

10 Q And you told them that and they -- either the
11 doctor or the nurse or nurse practitioner, whatever
12 Diane Hackworth is, actually did a swab of your vagina?

13 A Yes.

14 MR. CLIFTON: Thank you. I have no further.

15 THE COURT: Thank you. Mr. Peck.

16 MR. LINDSAY: Is it all right if I take cross,
17 your Honor? I believe I'll be doing cross.

18 THE COURT: Okay. Thank you.

19 CROSS-EXAMINATION

20 BY MR. LINDSAY:

21 Q I understand that you've testified that time
22 went into kind of a warp. Is that fair to say?

23 A In certain places.

24 Q Okay. Can you give us an estimate of how

1 long the assailant person was in your apartment?

2 A I would say about 45 minutes, 30 to 45
3 minutes.

4 Q Okay. And how much of that time would be
5 after he -- you were off the bed?

6 A Ten minutes.

7 Q So for about ten minutes you're standing up
8 and he's standing up. Is that fair to say?

9 A Yes.

10 Q And you're in the bedroom at the very
11 beginning of that ten minutes. Is that fair to say?

12 A I would say that we were in the bedroom
13 first, and that would have been about five minutes. And
14 then into the living room, about 15, ten, so in the
15 bedroom for approximately five, then moving towards the
16 living room for about ten.

17 Q Okay. And during this time, is it fair to
18 say you're trying to figure out who this person is?

19 A I'm trying to get him to leave.

20 Q Okay.

21 A And I'm looking at him to see if there's
22 anything that I can recognize or notice about him.

23 Q Right. You're kind of doing both at once;
24 you wanting him desperately to leave your home?

1 A Yes.

2 Q Is that fair to say?

3 A Yes.

4 Q You're frightened?

5 A Yes.

6 Q But you're also trying to get as much detail
7 as is possible under the circumstances.

8 A Yes.

9 Q Okay. For instance, is it fair to say he had
10 boots on?

11 A Yes.

12 Q Some kind of army boots.

13 A They were just brown boots.

14 Q Okay.

15 A Brown boots. I mean, you could describe them
16 as army boots. I may have done that at some point,
17 boots.

18 Q I'm not trying -- I don't want you to think
19 because I said army boots --

20 A It says -- no, it's not that, I'm just saying
21 he had brown boots on that.

22 Q Okay. How high did the boots come up, if you
23 remember? Just the best guess you can give us.

24 A Up towards the calf.

1 Q Okay. Is that six-inch, eight-inch boots?
2 I'm talking about from the bottom of the boot. And
3 again, it's just an estimate.

4 A It would have come up from his heel to the
5 base of the calf, so 12 inches.

6 Q Okay. So it's about a 12-inch boot?

7 A Eight to 12, depending.

8 Q It goes to the bottom of his calf and you
9 believe it's a brown boot. It's a dark boot.

10 A It's a dark boot.

11 Q Does it lace in the front?

12 A Not certain.

13 Q Okay. You've mentioned that he had -- and
14 again, please correct me if I'm wrong, he had a pinky
15 ring on his left hand?

16 A He had a pinky ring on, yes, his left hand.
17 I believe it was his left hand.

18 Q Okay. I mean, to the best of your memory.

19 A To the best of my memory, he had a pinky ring
20 on. Whether it was his left or right, I would have to
21 see the exact -- I don't remember what -- what finger I
22 told them that it was on. My memory would have been
23 very fresh at that time.

24 Q Okay. But a pinky ring is the ring on the

1 last finger?

2 A Correct.

3 Q The pinky finger?

4 A Yes.

5 Q On either the left or the right hand?

6 A Yes.

7 Q Did he have any other rings on?

8 A Not that I'm aware of.

9 Q Okay. Did you get a pretty good look at his
10 hands?

11 A I didn't notice any other jewelry except for
12 the pinky ring.

13 Q Okay. Did he have a wedding band on, if you
14 noticed?

15 A I didn't notice anything except the pinky
16 ring.

17 Q You spent -- and I understand these are
18 approximates, I understand that. You spent about five
19 minutes standing and watching him and perhaps as much as
20 maybe ten minutes in the other room --

21 A Yes.

22 Q -- approximately. And during that time,
23 you're watching him, correct?

24 A Yes.

1 Q You give him a cigarette at some point?

2 A In the bedroom, yes.

3 Q Okay. And you actually have some
4 conversation with him.

5 A Yes.

6 Q And you're obviously looking at him as well
7 as you can. Correct?

8 A Yes.

9 Q There's no bright light on. Is that fair to
10 say?

11 A Not a bright light, ambient light.

12 Q There's ambient light that's coming in from
13 the windows --

14 A Yes.

15 Q -- et cetera? There's a momentary light when
16 the door opens, correct?

17 A Correct.

18 Q There after you're shown a lot of pictures,
19 correct?

20 A From what?

21 Q Pictures to try to identify the assailant.

22 A I don't remember completely if they showed --
23 there -- there was photos that they did show me at one
24 point to see if I could pick him out from a photo

1 lineup.

2 Q Okay. And you've actually been shown photos
3 of Mr. Peck, haven't you?

4 MR. CLIFTON: Your Honor, I object. How would
5 she know that? Nobody's -- the detective's not gonna
6 tell her it's Mr. Peck.

7 THE COURT: Well, I don't know if she knows it
8 or not. We'll find out.

9 MR. CLIFTON: Well, if he wants to use the
10 photo lineup, your Honor, that might be easiest way she
11 can say.

12 THE COURT: It's just a simple question.
13 Overruled. Do you know if you were shown a photograph
14 of Mr. Peck?

15 THE WITNESS: I was shown a photo lineup and I
16 couldn't pick anybody out from that photo lineup.

17 BY MR. LINDSAY:

18 Q And I apologize, because counsel is correct.
19 I didn't know.

20 And so no one ever said, by the way, this is
21 Mr. Frank Peck and --

22 A No, they showed me a photo lineup. I wasn't
23 able to pick him out and nobody said anything.

24 Q Okay. So you've been shown lineups and you

1 simply have been unable to pick anyone out. Is that a
2 fair statement?

3 A Correct.

4 MR. LINDSAY: Could I have one moment with
5 counsel?

6 THE COURT: You may.

7 (Conference between counsel.)

8 BY MR. LINDSAY:

9 Q We've had some discussion about the left and
10 right hand, stage left, stage right in the theatre.
11 You're certain that you thought you felt -- I
12 understand, but you thought you felt a two-inch scar,
13 and if I've got this wrong, please correct me, with your
14 right hand, correct?

15 A I felt with my right hand down his side on
16 this side (indicating) something raised.

17 Q Which would have been his --

18 A Which would have been his left side.

19 Q Left side?

20 A Right.

21 Q And you described it, and this is fair to
22 say, in 1994, you described it as what you believed was
23 a two-inch scar. Is that fair to say?

24 A I'm not certain what I described it as

1 specifically back then. I know that I've described it
2 as raised something on his side, possibly a scar.

3 Q Okay. If they wrote down the two-inch scar--

4 MR. CLIFTON: Objection. Your Honor, I need
5 more foundation on that. I have never seen that. If
6 he's asking what somebody wrote down I need more
7 foundation for that question.

8 THE COURT: Is there some report or statement
9 you'd like to show the witness?

10 MR. CLIFTON: Talking about somebody else's
11 writing. I don't recognize that.

12 THE COURT: If there's a report or statement
13 that uses that phrase, you may show it to Ms. Inman.

14 MR. CLIFTON: Thank you, your Honor.

15 MR. LINDSAY: I apologize, I couldn't hear the
16 Court. I'm sorry.

17 THE COURT: If there's a report or statement
18 that contains that phrase or some other phrase that's
19 related to this subject, you can show it to the witness.

20 MR. LINDSAY: I'd like to show counsel first,
21 if I might, your Honor?

22 THE COURT: You may.

23 MR. CLIFTON: Your Honor, I'll withdraw the
24 objection.

1 THE COURT: Thank you. You may proceed.

2 BY MR. LINDSAY:

3 Q Do you remember telling Peggy Stout that you
4 thought it was a two-inch scar?

5 A I don't remember telling her that, but if I
6 did tell her that, then if it's -- then that's probably
7 true.

8 Q Okay. And if she wrote that down would you
9 have any reason to doubt that that's what you said?

10 A No.

11 Q Okay. And your memory, certainly in '94, is
12 better than your memory in 2009. Is that fair to say?

13 A In some instances, yes.

14 Q Okay. Fair to say memory fades with time?

15 A Memory can fade with time, yes.

16 MR. LINDSAY: Your Honor, if I might have one
17 moment with my client?

18 THE COURT: You may.

19 (Conference between attorney and defendant.)

20 BY MR. LINDSAY:

21 Q Did you at any point get a chance to look
22 into his mouth at his teeth at all?

23 A No.

24 Q Not that you can remember.

1 A No.

2 Q Is that fair to say?

3 A No, I did not.

4 MR. LINDSAY: Thank you very much, your Honor.
5 Thank you, ma'am.

6 THE COURT: Thank you, Mr. Lindsay. Mr.
7 Clifton.

8 MR. CLIFTON: Thank you.

9 REDIRECT EXAMINATION

10 BY MR. CLIFTON:

11 Q You've always described this thing on his
12 side or back as a mole, correct? I'm sorry, a scar,
13 correct?

14 A I've described it as a scar.

15 Q And still to this day, you didn't ever see a
16 mole, correct?

17 A I didn't see anything. I felt it.

18 Q What you felt he -- can you say for sure it
19 wasn't an abrasion like something -- someone coming
20 through the window scraping himself versus a scar, or
21 can you say one or another?

22 MR. LINDSAY: Objection, leading.

23 MR. CLIFTON: It's neither or --

24 THE COURT: Overruled. You may answer.

1 THE WITNESS: It was something raised on his
2 side that I felt with my hand. I would have described
3 it at that time as a scar. I -- not having seen it, I
4 would have only -- would have -- would not have known if
5 it was a scratch, if it was a -- I've never thought
6 about the window. At the moment from the very beginning
7 it was something raised like a scar on his side that I
8 felt with my hand.

9 BY MR. CLIFTON:

10 Q All right. And you've never called it a
11 mole, correct?

12 A No.

13 Q All right. What you're telling the police is
14 what you're feeling, and you don't know, or do you,
15 whether it's fresh or an old injury like a scar --

16 A I don't know.

17 Q -- or something not a scar at all, not an
18 injury like a mole.

19 A It could have been. All I know is it was
20 something raised on his side, and at the time I would
21 have described it as a scar.

22 Q And the size of it, could you tell if it was
23 square, round, pointed, linear, or what?

24 A It was linear, but it was on the side. It

1 was raised. I mean, the absolute specifics of it, I
2 don't think I ever got so specific with that mark except
3 for to say that it was there and I felt it.

4 Q Okay. Could it have been a quarter inch, a
5 half inch, or two inches?

6 A It could have been any range of those.

7 Q Did you ever, to your knowledge, tell the
8 police -- well, strike that.

9 MR. CLIFTON: Let's go ahead and have this
10 marked, I guess, number 14.

11 (Exhibit 14 is marked.)

12 BY MR. CLIFTON:

13 Q To this day as you sit there you still don't
14 know whether it's an injury, a defect, other type of
15 defect, or a mole or what on the back, correct?

16 A No.

17 Q All right. You described it the best you
18 could?

19 A Yes.

20 MR. CLIFTON: Your Honor, I think we have a
21 stipulation on this Exhibit Number 14 is a photographic
22 array, a photo lineup. I don't think she can identify
23 the individuals, but counsel and myself will stipulate
24 per his request that this is a 1996 photograph of Frank

1 Peck that's number 4 in this lineup.

2 THE COURT: Is that correct?

3 MR. LINDSAY: Yes, your Honor. I apologize.

4 THE COURT: All right. Thank you. Exhibit 14
5 is admitted. Go ahead.

6 (Exhibit 14 is admitted into evidence.)

7 BY MR. CLIFTON:

8 Q Thank you very much. Ms. Inman, go ahead and
9 look at this. Look at these individuals. Have you seen
10 -- this is what we call photographic array or
11 photographic lineup. Did Detective Sam Neuharth shows
12 you these?

13 A Yes.

14 Q Do you remember -- pardon me.

15 A Yes.

16 Q All right. Now, this one, I don't know if
17 you remember which one you saw when, and perhaps we can
18 stipulate to this, but this one you wouldn't have seen
19 until much later, probably 2004?

20 A Correct.

21 Q Do you remember seeing some back in '94?

22 A I think they did show me some in '94.

23 Q Many of these, and you couldn't identify
24 anybody?

1 A Right.

2 Q Then this one came later. Are you aware of
3 that?

4 A I did see photo lineups later on.

5 Q Okay. I'll go ahead and refer to you this
6 one did come later, and I'll represent you to we'll have
7 Detective Neuharth coming in after you, he is the next
8 witness. Do you remember him showing you these
9 lineups --

10 A Yes.

11 Q -- both in 1994 and maybe sometime later --

12 A Yes.

13 Q -- maybe in 2004?

14 A Right.

15 Q All right. So this one's 2004. We've
16 already stipulated that Frank Peck is number 4. You've
17 already indicated that you could not ID anyone from this
18 photographic lineup or any of the other photographic
19 lineups, correct?

20 A Correct.

21 Q As the assailant.

22 A Correct.

23 Q Does this person have a mustache?

24 A Yes.

1 Q Do all of the people in this photo lineup
2 have a mustache?

3 A Yes.

4 Q Okay. Is this person white?

5 A Yes.

6 Q Does this person have black hair, black
7 mustache, and black eyebrows?

8 A Yes.

9 Q You can't see it very well, but could he have
10 a one-day growth and beard? You can't see it very well
11 in this picture, but is that possible?

12 A It's possible.

13 Q Even though it's, of course, taken at a much
14 different time. This is 1996?

15 A Right.

16 Q There are some similar features here, aren't
17 there, would you agree with that?

18 A Yes.

19 Q But yet you didn't tell the police for sure
20 this was him. Correct?

21 A Correct.

22 Q Did you ever rule out all these people? Did
23 you ever say this couldn't be him, this couldn't be him,
24 this couldn't be him, or did you just say I don't

1 recognize anybody from this?

2 A I don't remember what I said to them at the
3 time.

4 Q We'll ask Detective Neuharth. You didn't
5 identify anybody, though, do you remember excluding
6 anybody out of all the pictures you saw?

7 A I don't remember.

8 Q Okay. Get that composite sketch again. Now,
9 I know this picture's dark and black and white, but dark
10 eyes?

11 A Yes.

12 Q I don't know. What kind of complexion would
13 you say? Again, it's black and white picture, it's hard
14 to say, but how would you describe in this picture?

15 A White Caucasian.

16 Q Okay. I'm going to put these two next to
17 each other. And, of course, disregard the beanie. Put
18 a piece of paper over it because there was no hat on
19 this individual, correct?

20 A Correct.

21 Q All right. So we're looking at your
22 composite and this 1996 picture of Mr. Peck. What do
23 you think, similarities or not?

24 A Yes, similarities.

1 Q Can you say by looking at it right now Mr.
2 Peck, as he sits here today, or as he was in this 1996
3 picture, is not the assailant?

4 A Excuse me?

5 Q Can you say by looking at this picture or by
6 looking at Mr. Peck here in court that he's not the
7 assailant?

8 A No.

9 Q Okay. Look at the mouth. Look at the
10 mustache. Look at the nose. Look at the ears. The
11 jaw, are the features, are those features similar --

12 A Yeah.

13 Q -- to you in those two photos?

14 A Yes.

15 Q But as you sit here right now, you look at
16 Mr. Peck, is it true that you can not identify him as
17 the assailant even as he sits here today even by looking
18 at him?

19 A No. It's been 15 years. I...

20 Q That's okay. Is it correct you can not him
21 as he sits here right here by looking at him?

22 A No.

23 Q Do you remember being subpoenaed or asked to
24 come down here for a motion hearing two weeks ago?

1 A Yes.

2 Q And was that at my request?

3 A Yes.

4 Q Do you remember that this case had been set
5 for trial a number of times and there's been motions to
6 continue the trial again?

7 A Yes.

8 Q You remember being asked to please come down
9 to that?

10 A Yes.

11 Q You sat through that hearing. Do you
12 remember how long it lasted?

13 A One a couple weeks ago?

14 Q Yes.

15 A Five, ten minutes.

16 Q Did you hear Mr. Peck speak --

17 A Yes.

18 Q -- in that hearing?

19 A Yes.

20 Q Did he have many discussions with the court?

21 A Yes.

22 Q The case had been continued in 2007 for
23 trial. It had been continued in 2008?

24 MR. LINDSAY: Objection, relevancy.

1 THE COURT: Sustained.

2 BY MR. CLIFTON:

3 Q All right. Do you remember me telling you
4 there was gonna be a motion to continue the trial?

5 A Yes.

6 Q All right. Do you remember when Mr. Peck
7 spoke -- well, strike that.

8 After the hearing -- I didn't walk in here
9 with you or walk out of here with you; is that correct?

10 A Correct.

11 Q In fact, I had a whole caseload of cases to
12 do that morning, correct?

13 A Yes.

14 Q And you sat here with the victim assistant
15 from the DA's office, correct?

16 A Yes.

17 Q Do you remember her name?

18 A I don't remember her name.

19 Q Christine sound familiar?

20 A Christine, yes. Sorry.

21 Q And you left with her. You came with her and
22 left with her, correct?

23 A Yes.

24 Q After the hearing she told me you said

1 something. Do you remember saying something to her?

2 A Yes.

3 Q And was that here in the courtroom when you
4 noticed it, or was it when you left the courtroom that
5 you said this?

6 A It was both. I said something to her inside
7 the courtroom and something outside.

8 Q What is it you told her?

9 A I told her that his voice sounded familiar.

10 Q Describe, tell us now what you recognize or
11 what sounded familiar.

12 A His voice was not a deep, heavy voice, it was
13 almost like a child-like voice that wasn't deep or a
14 light voice. I recognize the voice.

15 Q You do recognize the voice?

16 A Yeah.

17 Q That's two different statements. One is
18 sounds familiar, one is I recognize his voice.

19 A The voice was familiar. The voice was
20 familiar. It was something that stood out when he
21 spoke. I couldn't have picked him out by looking at him
22 if he was walking down the street, but when he spoke in
23 the courtroom, the voice was familiar.

24 Q As you look at him here in the courtroom, you

1 could see him walking down the street or walking in this
2 courtroom you wouldn't know he's the assailant?

3 A No.

4 Q What about from his voice?

5 A From his voice, it would make me think -- the
6 voices, it's -- when you hear something like that it's
7 something you don't forget and the voice is distinct.
8 It has a distinct sound to it, to me.

9 Q And you sat and listened to him discuss with
10 the judge numerous things, correct?

11 A Yes.

12 Q It wasn't that just yes, sir, no, sir type
13 hearing, correct?

14 A Correct.

15 Q Did you get a chance to hear the voice well
16 enough from in the courtroom in the back versus Mr. Peck
17 being up here?

18 A Yes.

19 Q Do you feel you got a good enough sounding of
20 his voice to recognize it?

21 A Yes.

22 Q Did I ask you to come listen to him talk?

23 A No.

24 Q All right. But you told Christine from the

1 victim witness center at the DA's office both here in
2 the courtroom and when you went out what? Do you
3 remember how you said it?

4 A I said, "His eyes look familiar, his voice, I
5 would recognize his voice. His voice is familiar.

6 Q Okay. "I would recognize his voice." In
7 other words, you're saying that to her while you're
8 hearing him speak?

9 A Yes.

10 Q Did you recognize his voice?

11 A Yes.

12 Q All right. Now, again, looking at Mr. Peck,
13 looking at these composite pictures, one that you drew
14 on the computer and taking into account now his speech,
15 his voice.

16 A Yes.

17 Q What's your opinion?

18 A It's him.

19 MR. CLIFTON: Thank you. No further
20 questions.

21 THE COURT: Thank you.

22 MR. LINDSAY: If I might, your Honor?

23 THE COURT: Mr. Lindsay.

24 / / /

1 I didn't want to come to, and I think that it was
2 finally asked that, you know, you probably -- it's
3 getting closer to trial, you probably want to just kind
4 of get comfortable so that you're not so terrified when
5 you come into the courtroom.

6 Q But they let you know, didn't they, that they
7 had, in fact, indicted Mr. Peck, didn't they?

8 A I knew that he had been indicted from the
9 grand jury a long time ago.

10 Q So before you walked into the court that day
11 is it fair to say you knew he had already been indicted
12 for that. Is that fair to say?

13 A I knew he had been indicted, yes.

14 Q So you knew that the State believed that he
15 was the assailant. Is that fair to say?

16 A I'm not sure I understand what you're saying.

17 Q Well, we know --

18 A The State indicted him, yes, so they would
19 believe that he -- yes.

20 Q You were thoroughly told that the man you
21 were gonna go listen to and the man you were gonna go
22 see was, in fact, the man that had been indicted. Is
23 that fair to say, ma'am?

24 A Yes.

1 Q And so from 15 years ago, you've been told
2 we've got him, right? I'm talking about the State.

3 A I don't believe that -- I'm not sure what
4 you're saying. The case -- it happened 15 years ago.
5 How long they've had him, is the way you phrase it, I'm
6 not -- I know from the grand jury indictment, that from
7 that point.

8 Q My points are very simple. You're not just
9 wandering through the courthouse, you've been told where
10 to go, what to expect, who you're gonna see, and what
11 the State intended to do. Is that a fair statement?

12 A Yes.

13 Q So there has been an awful lot of suggestion
14 on the part of the State that this is, in fact, the
15 assailant, is there not?

16 A He was indicted by the grand jury, so I guess
17 I'm just not sure what you're trying -- I was asked
18 several times to come to the court and I didn't come
19 just because they wanted me to get familiar with the
20 process of what was going to happen, so that I wasn't so
21 shocked by -- and so as it came closer to trial, I was
22 asked to come down and see what was going to be going
23 on.

24 Q Okay. But you were asked to come on a day

1 when Mr. Peck would be speaking, correct?

2 A Yes.

3 Q And you were asked to come to a courtroom in
4 which Mr. Peck was at. Is that fair to say?

5 A Yes.

6 Q And none of that's accidental at all, is it?

7 MR. CLIFTON: Objection, your Honor. And your
8 Honor, I'll stipulate we requested her to come down. If
9 he wants that, I'll stipulate to it. It wasn't an
10 accident.

11 THE COURT: She's answered the question.

12 MR. LINDSAY: What's your objection?

13 MR. CLIFTON: She can't --

14 THE COURT: Stop it. New question, please.

15 MR. CLIFTON: Thank you.

16 BY MR. LINDSAY:

17 Q You're sure he wore a pinky ring. Is that
18 fair to say?

19 A Yes.

20 Q And you're sure he wore boots that were eight
21 to 12 inches from the floor to the calf?

22 A I would say that he had boots on that came up
23 towards his mid calf, under his calf, yes.

24 Q I'm, actually, just trying to restate what --

1 A Yes.

2 Q -- I believe you've told us here.

3 A Yes.

4 Q And then you were asked to come and listen to
5 someone that you knew had already been indicted. Is
6 that fair to say?

7 A I was asked to come down by the office to
8 come down and view the hearing, yes.

9 MR. LINDSAY: Okay. Thank you, your Honor.

10 THE COURT: Thank you. Mr. Clifton.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. CLIFTON:

13 Q And Miss Inman, I think you've already said
14 it. You were requested to come down on a number of
15 occasions for court proceedings, correct?

16 A Right.

17 Q And did you know I was one that made that
18 request?

19 A Yes.

20 Q In fact, we also subpoenaed you for the grand
21 jury to testify, correct?

22 A Yes.

23 Q All right. Did I ever tell you how to pick
24 anybody out in a courtroom or in a lineup or anything

1 like that?

2 A No.

3 MR. CLIFTON: This isn't coming in very good
4 on this. It's a little dark on this. It's very dark.
5 I don't even know if the jury can see that very well.

6 I'm going to do one other thing, your Honor.
7 I'll move to admit the same photograph in 8 by 11 form.

8 MR. LINDSAY: From 1996, counsel?

9 MR. CLIFTON: Yes. This is the exact same
10 photograph.

11 MR. LINDSAY: Thank you, your Honor.

12 THE COURT: It is admitted. Do you have a
13 number?

14 MR. CLIFTON: It's going to be 15 or 14?

15 COURT CLERK: 15.

16 MR. CLIFTON: 15, your Honor. And I'd move to
17 admit it. Counsel has seen it.

18 THE COURT: Any objection to Exhibit 15? Mr.
19 Lindsay, any objection to --

20 MR. LINDSAY: No objection. I'm sorry, your
21 Honor.

22 THE COURT: It is admitted. Go ahead.

23 MR. CLIFTON: Thank you.

24 (Exhibit 15 is marked and admitted into

1 evidence.)

2 MR. CLIFTON: May I publish it to the jury
3 also, your Honor?

4 THE COURT: You may.

5 MR. CLIFTON: And I believe there's a
6 stipulation. I'll do Detective Neuharth also, but is
7 there a stipulation this is the same 1996 photograph?

8 MR. LINDSAY: I am assuming that he's going to
9 say that, counsel, and taking your words that that's
10 what he's gonna tell you.

11 MR. CLIFTON: Well, all right.

12 MR. LINDSAY: Yes. The answer is yes. I am
13 assuming that picture is a 1996 photograph of Mr. Peck
14 that was used in the photo lineup.

15 MR. CLIFTON: It's the same shirt and
16 everything in the photograph, your Honor. It's,
17 actually, a negative photograph, so the shirt collar is
18 the opposite, but it's the same shirt. It's just one
19 goes left, one goes right, it's like a negative
20 photograph or mirror image.

21 BY MR. CLIFTON:

22 Q But when you were shown the lineup, Ms.
23 Inman, you were shown a smaller version of photographs
24 of people, correct?

1 A Yes.

2 Q So more like we're looking at here on the
3 monitor?

4 A Yes.

5 Q You weren't shown this big color photograph,
6 this 8 by 11, correct?

7 A No.

8 Q But in either event, the one that is -- the
9 monitor there in the six-pack, the photo array --

10 A Correct.

11 Q -- is how you saw it.

12 A Yes.

13 Q All right. Looks quite different than he
14 does here today in court, doesn't he?

15 A Yes.

16 Q Now, when you were asked to come down for the
17 hearing, did anybody tell you you had to be familiar
18 with something or you had to recognize anything or
19 anything like that?

20 A No.

21 Q In fact, wouldn't you agree we knew you knew
22 you have not been able to identify this man out of a
23 picture, correct?

24 A Right. I've told that repeatedly.

1 Q Did anybody put any expectation on you that
2 you're going to have to identify this man in court?

3 A No.

4 Q When you recognized the voice, did I or
5 anybody else say hey, pay close attention to his voice,
6 see if you recognize it?

7 A No.

8 Q Did I tell you at any point that he was gonna
9 be speaking to the judge or in court that day?

10 A No.

11 Q In fact, just yesterday I told you isn't it
12 true I told you I didn't know if he'd be cross-examining
13 you today; isn't that correct?

14 A Right.

15 Q And, in fact, he didn't. I don't even know
16 if you've heard him speak in this courtroom today, did
17 you?

18 A No.

19 MR. CLIFTON: Your Honor, I'm going to ask for
20 an actual physical presentation of Mr. Peck. I'm not
21 gonna have him speak, she's already heard him speak in
22 court, but I'm going to have him at least stand up, if I
23 may. I'd move for that right now.

24 THE COURT: You may.

1 MR. CLIFTON: Thank you.

2 THE COURT: Mr. Peck, please stand.

3 BY MR. CLIFTON:

4 Q Ms. Inman, there's a few things we can do in
5 court, I have the exact words you say I thought he said
6 to you that night, but you've already heard him speak,
7 correct?

8 A Yes.

9 Q How about his height, consistent or
10 inconsistent with the assailant?

11 A Consistent.

12 Q How about his weight? It's been 15 years,
13 but how would you describe his weight?

14 A He's gained weight since then.

15 Q So the man was thinner than this?

16 A Yes.

17 MR. CLIFTON: Thank you. He may sit down.

18 It's fine.

19 THE COURT: Thank you, Mr. Peck.

20 MR. CLIFTON: Thank you. No further.

21 THE COURT: Thank you. Anything further?

22 MR. LINDSAY: Yeah, I have to, your Honor, I'm
23 sorry.

24 THE COURT: All right. Go ahead.

1 A I was asked to come to this courtroom that
2 day, yes.

3 Q Where he was. Is that fair to say?

4 A Yes.

5 MR. LINDSAY: I have no further questions at
6 this time. I don't know if counsel will, but if
7 counsel's finished I have a very brief motion to make
8 outside the presence of the jury, your Honor. Thank
9 you, your Honor.

10 THE COURT: All right. May Ms. Inman be
11 excused as a witness?

12 MR. CLIFTON: Yes.

13 THE COURT: Ms. Inman, you're excused. Thank
14 you. And I'll excuse the jury at this time for the
15 morning recess. You are excused.

16 (Jury leaves courtroom.)

17 THE COURT: The record should reflect the
18 absence of the jury and the presence of the parties.
19 Counsel, Mr. Lindsay.

20 MR. LINDSAY: Your Honor, I would move to
21 strike the testimony regarding his voice. I believe
22 it's absolutely unduly suggestive. I believe it was
23 done with her knowledge, as she's testified to, that he
24 had been indicted, that he was the man the State was

1 seeking to prosecute. And I believe they brought a
2 very, very -- I mean, it is -- it's one thing to stop in
3 court and say stand up and rise. It's even another
4 thing to stand up in court, but they -- they went out of
5 their way to give the most suggestive possible
6 identification, and I believe it should be suppressed
7 and I believe the statements should be -- the statements
8 regarding the voice, I believe that those should be, in
9 fact, stricken, and I believe the jury should be
10 instructed to disregard them. Thank you, your Honor.

11 THE COURT: Thank you. The motion is denied.
12 Court is in recess.

13 (Morning recess.)

14 THE COURT: Please call the next witness.

15 MR. CLIFTON: State would call retired
16 Detective Sam Neuharth. Please step forward, raise your
17 right hand.

18
19 SAMUEL LEE NEUHARTH,
20 called as a witness by the State herein,
21 being first duly sworn, was examined and
22 testified as follows:

23
24 THE COURT: Mr. Neuharth, please take the

1 witness stand and be seated.

2 DIRECT EXAMINATION

3 BY MR. CLIFTON:

4 Q Please tell us your name.

5 A Samuel Lee Neuharth.

6 Q Spell your last.

7 A N-e-u-h-a-r-t-h.

8 Q Are you currently retired?

9 A Yes, I am.

10 Q From what occupation?

11 A Police officer.

12 Q How long were you employed?

13 A About 27 years.

14 Q As a police officer?

15 A Yes.

16 Q And were you in different types of divisions
17 such as Detectives, things like that?

18 A Yes.

19 Q Did you work on a task force for nine years,
20 something like that?

21 A Seven years.

22 Q Seven years? Okay. And so in those years do
23 you recall if you ever had occasion to become involved
24 in an investigation under a case number 94-9292 where

1 the victim's name is Candace Inman?

2 A Yes.

3 Q Do you remember if that was in 1994?

4 A Yes.

5 Q From the case number you can tell that also?

6 A Yes.

7 Q Would you say your recollection over the last
8 15 years is very good, somewhat good, or you do know you
9 worked on the case and that's about it?

10 A I know that I worked on the case.

11 Q Okay. And you have done reports in the case,
12 do you know that?

13 A Yes, I have.

14 Q And if we have to, we can refresh your
15 recollection with a report?

16 A That's correct.

17 Q Because it's a very old case. Would that be
18 okay?

19 A Yes.

20 Q Thank you. Do you recall having occasion in
21 the late night hours or early morning hours of August
22 9th, August 10th, 1994, going to 445 Sullivan Lane, The
23 Stonegate Apartments, to investigate a claim of rape?

24 A I didn't respond to that location, I

1 responded to the station at the request of my sergeant.

2 Q Okay. Do you know if you went back to that
3 location at some later time?

4 A Yes, I did.

5 Q Let's start with your first response, then.
6 Sergeant John Morrow, is that one of your sergeants back
7 then?

8 A Yes.

9 Q John Morrow requested you to report to where?

10 A The Sparks Police Department.

11 Q Where was he calling you from?

12 A Believe --

13 Q Where were you when he called you?

14 A I was at my house.

15 Q So police officer's kind of like firemen
16 sometimes, you have to work 24/7 or be on call?

17 A On call.

18 Q So you were getting on call. Were you in sex
19 crimes at that time?

20 A No, I was not.

21 Q Just standard detective work?

22 A Just general assigned detective.

23 Q On call. You get called out to the station
24 by Sergeant Morrow. Did you go there?

1 A Yes, I did.

2 Q Did you get briefed on the case or just told
3 to go somewhere else or?

4 A I was briefed by Sergeant Morrow about the
5 case.

6 Q Then where did you respond to?

7 A I was -- attempted to do an interview there
8 at the station with the victim.

9 Q So when you went to the Sullivan Lane address
10 that might even been -- it must have been, from what
11 you're saying, until after the victim had already been
12 taken from her house, her location, correct?

13 A That is correct.

14 Q Do you know if she'd been to the hospital
15 yet?

16 A Yes.

17 Q So what time would you say you had occasion
18 to see her, or do you recall?

19 A I do not recall. All I know it was after
20 midnight, so.

21 Q After Sergeant Morrow briefed you, did you go
22 directly to see if the victim was available to speak to
23 her?

24 A No, I did not. I was apprised that she would

1 be brought over there.

2 Q So she hasn't arrived yet?

3 A Yes.

4 Q Was that your next duty, then, was to try to
5 interview her, or were you doing anything else first?

6 A That was my next assigned duty was to try and
7 interview her.

8 Q Did you get a chance to meet with her?

9 A Yes, I did.

10 Q Can you describe her composure?

11 A She was very distraught.

12 Q Distraught. Where was this, at the station?

13 A Yes, it was.

14 Q This would be Sparks Police Department in
15 Sparks, Washoe County, Nevada?

16 A Yes.

17 Q And was this after she'd been to the
18 emergency room, then?

19 A Yes, sir.

20 Q Was she crying? What do you mean by
21 distraught? How would you describe it?

22 A Well, she was crying. She was shaking. Her
23 voice was rattly, you know, somebody who's been
24 traumatized; shock, if you will.

1 Q You've seen those kind of victims before?

2 A Yes.

3 Q Including rape victims?

4 A Not very many rape victims because that
5 wasn't my main assignments, but yes.

6 Q But appearance, attitude, demeanor was
7 consistent with traumatized persons you've seen before?

8 A Yes.

9 Q Nothing too unusual?

10 A No.

11 Q Were you able to speak to her or interview
12 her?

13 A I attempted to, but she was unable to talk to
14 me.

15 Q So you don't feel you got too much
16 information from her?

17 A Not very much at all.

18 Q Do you know what Comp-U-Sketch is?

19 A Yes, I do.

20 Q Were you familiar with those, or certified to
21 do those, or trained in that at all?

22 A I was trained in it, but however, Detective
23 Asher is the one that completed the Comp-U-Sketch on
24 this case.

1 Q Did you start one or were you gonna try to do
2 one?

3 A No.

4 Q Okay. Was she in a condition that you felt
5 she'd able to do one at the time you talked to her?

6 A I believe she was from the description that
7 we had received, the initial information that I had
8 received from the case.

9 Q Do you remember ever indicating in a report
10 or anywhere else that she seemed too distraught for you
11 to do a Comp-U-Sketch, or is that not something you
12 would do?

13 A It's not something that I would do normally--

14 Q Okay.

15 A -- so.

16 Q So do you set it up with Detective Asher to
17 do that, or does Sergeant Morrow?

18 A I requested Sergeant -- requested Detective
19 Asher at the time to do it.

20 Q All right. So you had at least considered
21 the Comp-U-Sketch, or that it should be done with this
22 victim?

23 A Yes.

24 Q I see. Do you take her to Detective Asher,

1 did he come to do it, do you know?

2 A He was there at the station.

3 Q So do you know if they did attempt to do it?

4 A Yes, I do know that they attempted to.

5 Q Were you part of that at all? Did you take
6 any participation in it?

7 A No, I did not. Not that I recall anyway.

8 Q Did you ever see the final product?

9 A Yes, I did.

10 Q Did you attempt to gather up either photo
11 arrays or photos to show the victim?

12 A Yes, I did.

13 Q And would this be more than, say, six or
14 twelve?

15 A I believe there was two, possibly three
16 different sets that I put together.

17 Q So you're showing her pictures. Now, counsel
18 brought up a question earlier of whether these are
19 original pictures? I'm not sure quite what that means,
20 but original -- maybe color versus black and white, or
21 are they pictures you're just gathering up that you have
22 in your possession putting together and compiling and
23 just showing to her, it's like black and whites, copies,
24 whatever?

1 A No, they're compiled through a computer and
2 put in a format where there's six per page.

3 Q From a computer?

4 A Yes.

5 Q All right. So then I guess it's safe to say
6 they're probably not an original like three by five type
7 thing?

8 A No, they're not.

9 Q The computer takes those pictures, tries to
10 arrange them in a way that looks similar, fairly similar
11 to each other?

12 A Correct.

13 Q Do you have enough of a description from
14 either Detective Asher and/or the victim to put together
15 these subject photos to show her?

16 A Age, range, height, color of hair, facial
17 features, yes, I believe we did.

18 Q Back in 1994, you as a detective, would you
19 be looking into known sex offenders to compile some of
20 their photos for this?

21 A Yes.

22 Q And did you find some of those to throw in to
23 show her?

24 A Yes.

1 Q Do you remember some names; John Saterfeld,
2 John Franklin Smith, David Douglas McNaught, and Allen
3 Lee Adams, do those sound familiar?

4 A I don't recall the names of the subjects that
5 I pulled up on the system, but those do sound familiar.

6 Q It could have been a lot more than that?

7 A Could have been, yes.

8 Q Okay. And in any event, the number of photos
9 you had were one per person. You didn't have two or
10 three of the same person, correct?

11 A No, I did not.

12 Q So it was one per person?

13 A That is correct.

14 Q And it was quite a few, more than ten or
15 twelve.

16 A I believe so, yes.

17 Q Okay. When you showed her these photos or
18 photographic arrays or computerized generated arrays, do
19 you tell her she has to identify anybody?

20 A No, she doesn't.

21 Q What's your standard litany?

22 A We have a form that she has to read and --
23 which stipulates, you know, if you can't identify
24 somebody, if you can't, then don't.

1 Q It's very generic, very neutral --

2 A Yes.

3 Q -- or was she able to identify after you said
4 that?

5 A No, she was not.

6 Q Could or would not?

7 A Well, I don't know whether she could not or
8 would not, she just couldn't or she didn't.

9 Q Didn't, that's probably a better word. She
10 didn't identify anybody or wasn't able to identify
11 anybody out of those photos that you picked out?

12 A That is correct.

13 Q Did you have any specific knowledge any one
14 of those individuals were the assailant?

15 A No, I did not.

16 Q So you're handing her, basically, a clean
17 slate of photographs not believing any one of these
18 people was necessarily the assailant?

19 A That is correct. It was just an
20 investigative tool to see if any of them were had.

21 Q And so some of them may have been convicted
22 sex offenders?

23 A They may have been, yes.

24 Q She wasn't ever able to identify anybody.

1 Are you familiar with a detective in this case with the
2 results of her sexual assault examination?

3 A I was later apprised of it and -- yes.

4 Q The fact that semen was found --

5 A That's correct.

6 Q -- in her vaginal vault?

7 Did you or anyone else, to your knowledge,
8 request that it be tested for DNA or tested in any
9 manner to proceed with the investigation.

10 A I was apprised that it was requested by
11 Detective Greta Fye.

12 Q This would have been in 1994?

13 A I don't recall what date -- what year she did
14 it.

15 Q Okay. But in 1994 did you see any elaborate
16 lab reports that indicated there was presumptive for
17 semen and that there was not enough to do DNA, but just
18 --

19 MR. LINDSAY: Objection, leading.

20 BY MR. CLIFTON:

21 Q Have you seen the lab reports?

22 A All of them?

23 Q Well, I don't know how many there were back
24 then but the 1994 ones.

1 A I don't recall seeing those at all.

2 Q Okay. Then how were you apprised? Were you
3 just told that the lab reports or what?

4 A Yes, I was apprised by Detective Fye.

5 Q Okay. Do you know if that was in 1994 or
6 some later time?

7 A I don't recall whether it was in '94 or at a
8 later time because I was already assigned somewhere
9 else.

10 Q What happened to you, then, after she
11 couldn't -- Miss Inman could not pick anybody or did not
12 pick anybody out of the photo lineup photos arrays or
13 individual pictures? Did the case progress, to your
14 knowledge, or did it stagnate?

15 A It was stagnant when I left to go to a task
16 force, so I don't know what happened to the case after
17 that until I was apprised by Greta Fye.

18 Q Do you remember even doing a report saying
19 that, basically, the case is at an end, it's cold?

20 A Yes.

21 Q It's, basically, gonna be shelved, we have no
22 investigative leads I can work on at this time?

23 A That is correct.

24 Q What about those people I mentioned and any

1 other photographs or any other leads, did you exhaust
2 those during your investigation?

3 A Yes, we did.

4 Q In what manner or shape or form?

5 A Through the photo lineups and interviewing
6 some of them and verifying that they were at work during
7 the time that the alleged crime occurred.

8 Q So if they find they were at work you would
9 -- when you say verify, is that like confirm?

10 A Verify with their employer that they were, in
11 fact, there.

12 Q All right. When the case was what you're
13 saying, stagnant, does that mean you exhausted those
14 leads, in other words, you ruled these people out as
15 being the assailant?

16 A Yes.

17 Q And you're satisfied you did that in 1994?

18 A Yes.

19 Q There was one particular one that Mr. Peck
20 mentioned earlier, I don't know if any of these names
21 stand out to you individually, but he mentioned a David
22 Douglas McNaught. Anything specific about him that you
23 recall?

24 A Not that I recall.

1 Q All right. But all of these, Smith,
2 McNaught, Adams, Saterfeld, you're satisfied they were
3 ruled out as being the culprit?

4 A To the best of my recollection, yes.

5 Q So the case sits in 1994. What do you do?
6 Where does your employment take you?

7 A My employment takes me to a task force with
8 the Federal Bureau of Investigation.

9 Q In what year, do you know?

10 A '94.

11 Q That same year. So after August 10th of
12 1994, before the end of the year you're reassigned?

13 A Yeah. It was within a month of that, I
14 believe.

15 Q Did there come a point where you did get
16 called back into this case?

17 A I believe in '03 I was notified that there
18 was a match to the DNA.

19 Q From Washoe County Crime Lab?

20 A Yes.

21 Q Did that involve a particular person?

22 A I don't recall the investigate -- you talking
23 about what suspect or?

24 Q Yes, not the person that did the test, the

1 suspect.

2 A Yeah. It did come back to a specific
3 individual.

4 Q Name?

5 A Mr. Frank Peck.

6 Q Were you assigned, then, to follow up that
7 matching DNA hit, or was somebody else assigned to that,
8 or both?

9 A I believe both of us were. I was still at
10 the task force in '03 when the information came back.

11 Q So who was the other detective?

12 A Detective Fye.

13 Q F-y-e?

14 A Yes.

15 Q She's now working for Detectives. You're in
16 the task force, so did the two of you work together or
17 did she become the case agent?

18 A She became the case agent, per se.

19 Q Didn't you, in fact, prepare another
20 photographic array or lineup?

21 A Yes, I did.

22 Q And even though she's case agent why was it
23 decided that you probably should be the one to prepare
24 that, do you know?

1 A I believe she was on vacation at the time. I
2 can't swear to that, but I -- you know, that's my
3 belief.

4 Q In either event, is that customary even
5 though you're on task force, you come in and prepare a
6 photo lineup?

7 A Yes.

8 Q Let me show you Exhibit Number 14. Tell me
9 if you recognize this.

10 A It's a computer-generated photo lineup that
11 was done in -- this one doesn't have the date to when it
12 was done, case number on it.

13 Q I think we have a stipulation that it's a
14 1996 photograph of Mr. Peck.

15 A Yes.

16 Q And it was prepared by you; is that correct?

17 A That is correct.

18 Q So it's a photographic array that includes
19 Mr. Peck and other similar individuals?

20 A Yes.

21 Q All with mustaches?

22 A Yes.

23 Q Similar range of age?

24 A Yes.

1 Q Okay. So is that computer generated -- does
2 the computer pick out which pictures are similar enough,
3 or not?

4 A Yeah, you put in the parameters, along with
5 whatever suspect comes up, and then it generates a photo
6 lineup.

7 Q So the computer generates this. You're not
8 involved with manipulating these photos in any way?

9 A Not even the placement.

10 Q That's what I was going to ask. The computer
11 chooses it to put in number 4?

12 A Correct.

13 Q That's interesting. Okay. So you did
14 nothing to suggest or manipulate in any way that she had
15 to pick out somebody in this lineup.

16 A No.

17 Q Do you remember what her answer was or if she
18 was able to identify anybody?

19 A I showed her the photo lineup admonishment,
20 had her read it, and asked her to look at the photos,
21 and if she could identify it, to identify it, and she
22 could not.

23 Q Could not. Same admonition, then, it's all a
24 generic form?

1 A Yes.

2 Q So it's not telling her she has to pick out
3 anybody or that --

4 A No.

5 Q -- anybody particular is or isn't in this
6 photographic array?

7 A No.

8 MR. CLIFTON: Okay. No further.

9 THE COURT: Thank you. Mr. Lindsay.

10 MR. LINDSAY: Briefly, if I might.

11 CROSS-EXAMINATION

12 BY MR. LINDSAY:

13 Q Detective, how many photos lineups, do you
14 remember, did you do in '94?

15 A I believe there was two, possibly three.

16 Q How many did you do in 2003?

17 A Only the one.

18 MR. CLIFTON: Your Honor, I apologize. Are we
19 talking about this case or?

20 MR. LINDSAY: I think we're talking about this
21 case. I'm not trying to confuse you.

22 MR. CLIFTON: I don't understand the dates
23 that Mr. Lindsay just used, 2003.

24 / / /

1 BY MR. LINDSAY:

2 Q I thought, and please correct me, when did
3 you do the lineup in this century, if you remember?

4 A Which lineup are you talking about, the one
5 where your client --

6 Q The photo lineup.

7 A I understand that, but for this particular
8 case, I've done a total of two, three, maybe four at the
9 most.

10 Q And what would be the years of those, if you
11 know?

12 A The first two or three were in 1994, and the
13 second set was in '03, I believe.

14 MR. CLIFTON: I thought you said '04.

15 BY MR. LINDSAY:

16 Q I apologize, but I thought you had testified
17 that you thought in '03 you'd done that lineup.

18 That's all right. I'm sorry, counsel.

19 MR. CLIFTON: It was '04.

20 THE WITNESS: That's my recollection, it's
21 either '03 or '04, so.

22 MR. LINDSAY: I know.

23 THE WITNESS: I don't recall the exact year,
24 okay? So.

1 BY MR. LINDSAY:

2 Q Yeah, it could have been '04. Is that fair
3 to say?

4 A Yes, because I know in '04 is when I
5 submitted the case to the DA's office --

6 Q Okay.

7 A -- so.

8 Q So you had three in '03 -- in '94? Excuse
9 me, got me going into '03. You had three in 1994,
10 correct?

11 A Yeah, two or three, I believe it was, yeah.

12 Q And all of the ones that you showed in '03 or
13 '04, you're not trying to be ambiguous when you went
14 back into the case, you say you had one, two, maybe
15 three different lineups?

16 A In '04, I believe, if we're gonna stick with
17 that, I believe there was only one photo lineup.

18 Q And that included Mr. Peck, correct?

19 A That is correct.

20 MR. LINDSAY: Thank you very much.

21 THE COURT: Thank you. Mr. Clifton, anything
22 further?

23 MR. CLIFTON: Very briefly.

24 / / /

1 REDIRECT EXAMINATION

2 BY MR. CLIFTON:

3 Q Sir, you said you referred the case to the
4 District Attorney's office in 2004?

5 A That is correct.

6 Q That's the first time?

7 A Yes.

8 Q In other words, we didn't have a suspect
9 before that hit or matched on that DNA you were
10 referring to in '03?

11 A Yes, we did have -- I mean, in '03 we were
12 notified of that, but I didn't submit it until '04.

13 Q My point is before that hit in '03, there
14 would have been no reason to submit to the DA before
15 that because we didn't have a suspect?

16 A No.

17 Q Somebody to do an arrest warrant on or
18 anything?

19 A That is correct, we did not.

20 Q Got you. And at the DA's office do you know
21 if I was the one that received the case from its
22 inception?

23 A I don't know if you were the one that
24 received it from the inception. But I was advised that

1 you had the case and/or, actually, you're the one I
2 contacted regarding the case, and -- and you are the one
3 that advised me to submit it to your attention.

4 Q That was 2004?

5 A That is correct.

6 Q All right. Do you know if seizure order or
7 seizure orders that we contemplated doing in this case,
8 was this when you were with later Detectives?

9 A With later Detectives.

10 MR. CLIFTON: Thank you, sir. No further.

11 THE COURT: Thank you, Mr. Neuharth, you're
12 excused. Please call the next witness.

13 MR. CLIFTON: Thank you. Let's call Carole
14 Phillips, please.

15 THE COURT: Ma'am, please step forward, face
16 the clerk, raise your right hand and be sworn as a
17 witness.

18
19 CAROLE R. PHILLIPS,

20 called as a witness by the State herein,
21 being first duly sworn, was examined and
22 testified as follows:

23
24 THE COURT: Please take the witness stand and

1 be seated.

2 DIRECT EXAMINATION

3 BY MR. CLIFTON:

4 Q Please state your name, ma'am.

5 A Carole R. Phillips.

6 Q Spell your last name.

7 A Phillips, P-h-i-l-l-i-p-s.

8 Q Are you currently employed?

9 A No, sir.

10 Q You retired?

11 A Yes, sir.

12 Q Directing your attention back to 1994, were
13 you employed then?

14 A Yes, sir.

15 Q Directing your attention further to August
16 10th, 1994, the very, very early morning hours of that
17 morning, do you know if you were working that day?

18 A I'm sure I was because my name is on some of
19 the things.

20 Q Okay. And what were you employed as?

21 A I am a medical technologist. At that time I
22 was the graveyard; I believe I was still classified as a
23 lead.

24 Q Lead?

1 A Yes.

2 Q For what hospital?

3 A Saint Mary's hospital.

4 Q Can I call it a med tech?

5 A Yes, sir.

6 Q As a med tech or medical technician?

7 A Technologist.

8 Q Technologist. What were some of your duties?

9 A I drew blood, I ran blood, I processed all
10 blood, at least specimens, whatever test the doctor
11 ordered.

12 Q Microscopic tests?

13 A Microscopic.

14 Q What type of educational background do you
15 have?

16 A I have a four-year Bachelor of Science degree
17 from the University of Utah.

18 Q In what area?

19 A In medical technology.

20 Q Okay. And what year was that?

21 A That I graduated in 1975.

22 Q So in 1994, at Saint Mary's, do you recognize
23 any of the names; Dr. Dedolph?

24 A Yes, sir.

1 Q Nurse Diane Hackworth?

2 A Yes, sir.

3 Q And did you testify at the grand jury in this
4 case?

5 A No, sir.

6 Q Okay. Have you seen any people you
7 recognize?

8 A Diane is out in the hall. I recognize Diane.

9 Q In the hall. You remember the name and you
10 recognize her?

11 A Uh-hum.

12 Q Did you normally work with these people, Dr.
13 Dedolph and Nurse -- or Nurse Diane Hackworth?

14 A Yes.

15 Q You said you would do whatever, basically,
16 the doctor ordered you to test --

17 A Correct.

18 Q -- is that correct?

19 A Yes.

20 Q I want to direct your attention now to August
21 9th, well, the morning of August 10th, 1994. Could you
22 have been working that morning as a medical technologist
23 and involved in collecting or testing samples of
24 evidence in a possible rape case?

1 A Yes, sir.

2 Q Is that something you normally do?

3 A Yes, sir.

4 MR. CLIFTON: For the record, this is Exhibit
5 Number 9. And your Honor, it was unsealed and opened
6 again, not opened before, but opened again so that we
7 could mark the evidence, Exhibit 9, the outer envelope,
8 and then a through --

9 COURT CLERK: a through i.

10 MR. CLIFTON: I have the contents, and there's
11 actually one envelope that has subcontents in there that
12 are marked as 9.

13 THE CLERK: 9b 1, 2, and 3.

14 MR. CLIFTON: We're going to be using that
15 item at this time. I think there's only one envelope I
16 need with this witness. May I approach the witness
17 after showing counsel, Judge, that we're going to be
18 using with this witness?

19 If I may, your Honor?

20 THE COURT: You may.

21 MR. CLIFTON: Thank you.

22 BY MR. CLIFTON:

23 Q Do you recognize this kind of kits or
24 envelopes?

1 A Yes, sir.

2 Q Seen them before?

3 A Uh-hum.

4 Q Yes?

5 A Yes, sir.

6 Q This one you can see dates on here of August
7 10th, 1994, correct?

8 A Uh-hum. Yes.

9 Q And you can see the victim's name, Candace
10 Inman here?

11 A Uh-hum.

12 Q Now, you don't actually meet the victim or
13 examine the victim yourself, correct?

14 A No, sir.

15 Q Case number 94-9292 with the sexual kit
16 number R04014. See all that?

17 A Yes, sir.

18 Q You're familiar with those types of --

19 A I am.

20 Q -- numbers and content and descriptors?

21 A Yes.

22 Q I'm going to take out now exhibit,
23 specifically, 9b. Let me show counsel.

24 MR. LINDSAY: Is that b or d?

1 MR. CLIFTON: b as in boy.

2 MR. LINDSAY: Thank you.

3 BY MR. CLIFTON:

4 Q 9b I've just taken out of Exhibit Number 9
5 that was originally sealed before we marked these
6 things. And how would you describe what this is?

7 A The envelope?

8 Q Yes.

9 A It's an evidence envelope.

10 Q You've seen them before?

11 A Yes.

12 Q This look familiar and it's labeled as what?

13 A Let me put my glasses on. It's labeled as
14 R04014 envelope number 5. This says vaginal or penile
15 swab or swabs.

16 Q And --

17 A It's dated --

18 Q No, after swabs.

19 A Or smears, swabs/smears.

20 Q Swabs/smears. You familiar with those terms
21 meaning what they are?

22 A Yes, sir.

23 Q Okay. First of all, 9b 3.

24 A Is a swab.

1 Q Or swabs?

2 A Yeah, depending on however many is in there.

3 It's got plural.

4 Q Exactly. Okay. And two other items --

5 A Uh-hum.

6 Q -- which are 9b 1. See that?

7 A Uh-hum.

8 Q And 9b.

9 A b2.

10 Q 2? Okay. Let's concentrate on those right

11 now.

12 A Right.

13 Q Do you see the labels on those?

14 A Yes, sir.

15 Q As what?

16 A Smears and slides.

17 Q What's the label?

18 A Motile sperm slide and vaginal smears.

19 Q Are you familiar with those kind of terms?

20 A Yes, sir.

21 Q Motile sperm slide. Describe what motile

22 sperm means to you.

23 A That is sperm that is moving.

24 Q Still alive?

1 A Still alive.

2 Q And has the tails on it?

3 A Has tails, that's what moves it.

4 Q That's what moves it, propels it?

5 A Uh-hum.

6 Q So they're sperm heads with tails?

7 A Right.

8 Q Still alive?

9 A Yes.

10 Q Do you get involved in those kind of items to
11 test?

12 A Yes, sir.

13 Q For what?

14 A Well, I look for them for the doctors. They
15 want to know if there's motile sperm present.

16 Q And was that ordered, or could that be
17 ordered by Dr. Dedolph to you --

18 A Yes.

19 Q -- on a case such as numbers you've seen --

20 A Yes.

21 Q -- with the name Candace Inman?

22 A Right.

23 Q When you're given that assignment are you
24 handed anything by the doctor or the nurse?

1 A I'm handed a slide with a drop on it and
2 asked to scan that slide for motile sperm or sperm,
3 period.

4 Q For what?

5 A Any kind of sperm, motile or not motile.

6 Q And this slide is a microscopic slide?

7 A Yes, sir.

8 Q Little glass --

9 A Yes, sir.

10 Q -- slide that we use on microscopes?

11 A Right. These are holders for those slides.

12 Q And you're familiar with these?

13 A Yes.

14 Q Use them all the time in sexual assault kits
15 as a medical technologist?

16 A Yes.

17 Q When Dr. Dedolph or Nurse Hackworth, someone
18 like that hands one to you and you're to test for those
19 things, using a microscope that you said?

20 A Yes, sir.

21 Q Any other kind of tests?

22 A No. I put a cover slip on it and then look
23 at it under a microscope.

24 Q And the cover slip does what?

1 A It helps spread it out and it keeps the fluid
2 from getting on the microscope head.

3 Q Do you use any other solutions or stains to
4 highlight or exemplify what you're looking for?

5 A No, sir.

6 Q So you're just doing a bare view under a
7 microscope?

8 A Right.

9 Q At what power, do you know?

10 A I think it was about a hundred x, a hundred
11 times.

12 Q Can you see sperm at a hundred x?

13 A Oh, yes, quite easy.

14 Q All right. So there's no standard that you
15 have to go to over a hundred x in order to see a sperm.

16 A I also a 250 on there. It's possible I could
17 have gone down for it if I wanted to, if I needed to.

18 Q But 100 allows you to see a little bit more
19 of the area?

20 A Bigger area.

21 Q Okay. And you look -- you're not just
22 looking once and stopping, you're doing a scan, correct?

23 A You do a scan, you do upside, across, down
24 the other, back and forth like that.

1 Q All right. I'm going to open this motile
2 sperm slide. You see the case number R04014 --

3 A Same number.

4 Q -- identifying the sexual assault kit, same
5 number as Candace Inman as victim, correct?

6 A Yes.

7 Q Let's go ahead and open this. And I want to
8 show you this slide, I don't think I even need to take
9 it out, but do you recognize this or do you recognize
10 this kind of thing --

11 A Yes.

12 Q -- as a microscopic slide?

13 A That's microscopic slide with a small cover
14 slip on.

15 Q Do you use small cover slips or the large?

16 A I would have used large.

17 Q That's what you typically do?

18 A Yes.

19 Q This was the small cover slide?

20 A Yes.

21 Q Let's go ahead and take it out. Anything
22 else about this slide?

23 A Other than it's nice and dried by this time.

24 Q Fifteen years?

1 A Yes.

2 Q It looks like a motile sperm?

3 A It looks like what I would look for for
4 motile sperm, yes.

5 Q Okay. In this particular case, you've been
6 subpoenaed here to testify, correct?

7 A Yes, sir.

8 Q Are you able to determine that you worked on
9 this particular case, in other words, do you have notes?
10 Do you go by medical documents and reports or what?

11 A My writing is on one of the medical reports
12 where Diane asked me to put it in the report for her.

13 Q Okay.

14 A And I wrote "No motile sperm seen".

15 Q All right.

16 A And I believe I put the case number on it.

17 Q I'm going to show you something in just a
18 minute. Before we do that, before we take these gloves
19 off, let's go through this other one --

20 A Okay.

21 Q -- which is 9b. It says vaginal smears,
22 correct?

23 A Uh-hum.

24 Q Do you know if you typically test these?

1 A No, do not.

2 Q So these are something that are taken from
3 the victim and bypass you?

4 A Yes.

5 Q You didn't do a microscopic exam of these
6 that you are aware of?

7 A I would not have touched those.

8 Q And then they would be sent up to wherever
9 this stuff goes after this leaves the hospital?

10 A Right.

11 Q Thank you.

12 MR. CLIFTON: At this time, your Honor --
13 well, I won't move to admit anything until you go
14 through the medical reports.

15 BY MR. CLIFTON:

16 Q Medical reports are from what hospital?

17 A Saint Mary's.

18 Q Did you have occasion to look at them before
19 then?

20 A I --

21 Q Have you seen them before?

22 A This paperwork?

23 Q Yeah.

24 A Just at the pretrial hearing. Otherwise, no.

1 Q Okay.

2 A And, of course, when I signed it.

3 Q Okay. I'm going to show them to you again.

4 A Uh-hum.

5 Q You can look through as much of it as you
6 want, but until you tell me you recognize it, let me
7 know when you want me to stop, recognize it, or don't
8 recognize?

9 A With the glasses. Yeah, this is page -- and
10 it says "no sperm seen".

11 Q Wait. Way ahead of me.

12 A Sorry.

13 Q Just tell me do you recognize this
14 document --

15 A Yes, I do.

16 Q -- as being what type of document?

17 A This looks like the emergency room record.

18 Q And there's a lot more pages there, too.

19 A Oh, yes.

20 Q You're specifically identifying or referring
21 to one page, correct?

22 A Yes, sir.

23 Q And you recognize this from the case number,
24 the victim's name, all these kinds of things?

1 A I didn't know the victim's name at the time.

2 But the case number and --

3 Q Does it match Exhibit 9?

4 A Yes, it does.

5 Q Is that Candace Inman?

6 A Yes.

7 Q And there's a date and a case number?

8 A I do not see a date on here. Actually,
9 there's a date, I guess there's a date someplace. Oh.

10 Up top there's a date.

11 Q Is it consistent with August 10th or there
12 after, whenever the report was drafted?

13 A Yes, it is.

14 Q Everything consistent there with this same
15 sexual assault kit that we've looked at?

16 A Yes, it is.

17 Q Now, you said there is some information there
18 that appears to be, did you say, your writing?

19 A It's my handwriting.

20 Q Great. What did you write?

21 A I wrote "No sperm seen".

22 Q What is --

23 A R04014 with a dash, my initials, and then in
24 parenthesis I wrote my full name and my title. "MT."

1 Q Do you relay that information to Dr. Dedolph
2 or Nurse Hackworth, to your knowledge?

3 A I would have related it to one, possibly
4 both of them at this point in time. I couldn't tell you
5 exactly what order or which one.

6 Q What is the purpose for doing a motile sperm
7 examination?

8 A It corroborates the victim's statements right
9 there, right then and there without further testing.

10 Q But here it didn't corroborate or --

11 A No.

12 Q -- at least it didn't add additional evidence
13 that there was sperm, correct?

14 A That's right.

15 Q Is that inconsistent -- let's put it that
16 way. Does that mean she is not telling the truth?

17 A No, sir. I wrote none seen, not negative.

18 Q Describe what that means.

19 A That just means that on the particular piece
20 of slide, evidence that I got, I did not see any sperm.

21 Q Is that inconsistent with somebody -- let me
22 stop there and lay a little more foundation. Do you
23 know what this smear is prepared from?

24 A It's supposed to be off of swabs.

1 Q From?

2 A Probably from the vaginal cavity.

3 Q If there was sexual intercourse, horizontal
4 sex or anything of sexual intercourse, would be swabs of
5 the vaginal cavity. Yes?

6 A Yes.

7 Q That a doctor would do or the nurse would
8 do --

9 A Yes.

10 Q -- one or the other?

11 A Right.

12 Q And then who actually smears the swab onto
13 the slide?

14 A I don't know which one does it. They hand it
15 to me already smeared.

16 Q But I mean, it's them, not you.

17 A Right.

18 Q You put the cover slip on it?

19 A Yes.

20 Q All right. What are some of the reasons --
21 have you ever experienced that you've got a negative --
22 I'm sorry, you didn't say negative --

23 A That's right.

24 Q -- you said no --

1 A None seen.

2 Q -- no sperm or semen?

3 A No sperm.

4 Q No sperm seen, which is different than a
5 negative.

6 A Yes, sir.

7 Q You said no sperm seen. You got the case,
8 the evidence kit number there and your initials. Have
9 you ever seen you come to that conclusion and later
10 found out in the case, this one and others, one, that
11 there was actually some sperm found?

12 A Yes, sir.

13 Q Is that unusual?

14 A No.

15 Q Give me some reasons why it might not be.

16 A Small, low sperm count, sperm like to stick
17 to the swabs, possibly the swab wasn't totally swabbed
18 onto that little bitty slide.

19 Q Well enough, you mean?

20 A It's even possible that it could have been on
21 the slide, but simply not in any of the fields I looked
22 at even though I would have gone across, you know, quite
23 a ways across it.

24 Q Do sperm tend to go to particular areas or

1 coagulate, or are they attracted to certain things
2 during these exams likes the edge of the slide, the
3 cover slip, anything like that?

4 A No. Had they done that, had that been a
5 routine, I would have definitely run the outside edge,
6 and that's not what we usually do.

7 Q You say they do tend to --

8 A They stick with the cotton swabs.

9 Q So if he doesn't do well enough on the smear
10 you might not get it?

11 A That's possible.

12 Q Or low sperm count. All right.

13 A Yes.

14 Q Is there any guarantee when he does these
15 swabs that he is gonna get all or even most of the semen
16 in the vaginal cavity?

17 A No, sir.

18 Q You said it wasn't unusual, so it's happened
19 before?

20 A Yeah.

21 Q Doesn't surprise you?

22 A No.

23 Q It's not -- so is it not inconsistent with
24 her having semen in her vagina?

1 A It's not inconsistent, no.

2 Q I'll tell you that there was an exam done by
3 the Washoe County lab. Are you familiar with Washoe
4 County lab?

5 A I know it's there. I've never been there. I
6 don't know any of the personnel.

7 Q Do you know what equipment they use or what
8 tests they run to determine --

9 A Not really.

10 Q -- sperm? If three sperm heads, three sperm
11 heads were found on a slide, and we'll get into which
12 slide maybe with that witness, but would that be --
13 would that shock you if three heads were found even on
14 your motile sperm slide?

15 A No, sir.

16 Q It's possible they may have been there and
17 you just didn't see them?

18 A It's quite possible.

19 Q Okay. Three sperm heads, is that a lot?

20 A Not really.

21 MR. CLIFTON: Thank you. No further.

22 THE COURT: Thank you. Mr. Lindsay.

23 MR. LINDSAY: If I may approach, your Honor? I
24 just want to make sure that I'm on the same page as she

1 is.

2 THE COURT: You may.

3 CROSS-EXAMINATION

4 BY MR. LINDSAY:

5 Q Is this the page that you've been looking at,
6 ma'am?

7 A Yes, sir.

8 Q Okay. Good. Counsel has asked you,
9 suggested that there are simply endless possibilities,
10 correct?

11 A I don't know about endless, but there are
12 quite a few.

13 Q There's also the very real possibility
14 there's no sperm because you didn't find any. Isn't
15 that fair to say?

16 A I really couldn't say because my training is
17 I report none seen, motile seen, nonmotile seen. I do
18 not report negative.

19 Q Is it fair to say that in 1994, on August
20 10th, and I'll show you if you'd like because the date
21 is actually at the very bottom of that page --

22 A Okay.

23 Q -- typed in, correct?

24 A Right. It's where I saw it.

1 Q I'm sorry. Fair to say on that date that you
2 did not, and I'm just gonna try to quote you, you wrote
3 "no sperm seen" --

4 A That's right.

5 Q -- "in R04014", correct?

6 A Yes, sir.

7 Q Dash CR, and then you put your name, Carole
8 Phillips?

9 A That's right.

10 Q And you put initials MT, being medical
11 technician?

12 A Technologist, please.

13 Q Technologist, I apologize. There's nothing
14 equivocal about that statement, correct?

15 A No, sir.

16 Q Yeah. You didn't see any sperm --

17 A That's right, I didn't see --

18 Q -- on the 10th of August in 1994?

19 A That's right.

20 MR. LINDSAY: Thank you very much.

21 THE COURT: Thank you. Mr. Clifton.

22 MR. CLIFTON: Very briefly.

23 / / /

24 / / /

REDIRECT EXAMINATION

BY MR. CLIFTON:

Q Are you familiar with any tests that you or others have done where you take a known sample of either semen or bacteria or something from a known culture and put it on a slide and don't see anything in the microscope?

A Oh, yes.

Q How is that possible?

A Once again, they stick to the cotton, not that many there, the area that was swabbed didn't have any, or very few.

Q Or it's on that slide and you just don't see it?

A Or it could be on the slide somewhere that I didn't check, yes, even though I scan quite a bit of it.

Q Has that ever happened with a known bacteria culture?

A Yes.

Q Is bacteria kind of like semen, you need a microscope to see it?

A For me, yes, more so.

Q Has that happened to you?

A My specimen back some years ago, yeah.

1 Q Describe. What do you mean?

2 A I had a very bad infection, really bad knee
3 infection. They never found one bacteria, not one.

4 Q You're saying it happened to you, personally?

5 A Yes, sir.

6 Q I thought you meant at work.

7 A It happened to me personally. They never
8 found a thing, but I sure had one raging infection.

9 Q So you knew there was bacteria which will
10 cause the infection?

11 A Yes, right.

12 Q I got you.

13 A And I had antibiotics for it.

14 Q At work would it be bacteria or any other
15 thing you test have you taken known samples --

16 A Yes.

17 Q -- and come out with a negative?

18 A Not known samples. Not known samples.

19 Q Oh.

20 A Unknowns.

21 Q But have you -- all right. Is it possible to
22 get a known sample like bacteria, swab it, take a swab,
23 put it on a slide, and still as a medical technologist
24 not see the bacteria?

1 A It's possible, yes.

2 Q Why is it then that you do this testing? You
3 said it's to, basically, corroborate? I don't know if
4 you used that word.

5 A It's immediate verification of the patient's
6 statements.

7 Q And here you didn't get that immediate
8 verification?

9 A No.

10 Q But it doesn't mean the opposite?

11 A It does not mean negative opposite.

12 Q Does it determine or make a determination as
13 to how the doctors are gonna treat the person?

14 A I don't believe so, no.

15 Q Aren't they already given all the STD drugs
16 and anything else they're gonna be given for?

17 A As far as I know, they have their protocol
18 which they follow; I have mine which I followed.

19 Q So they could be given pregnancy drugs,
20 sexually transmitted disease drugs, all that?

21 A Yes, sir.

22 Q Not based upon what your result is?

23 A No.

24 Q Is that correct?

1 A Yes, that is correct.

2 Q So that is all done or determined with or
3 without your result?

4 A Yes.

5 MR. CLIFTON: Thank you. No further.

6 THE COURT: Thank you, Ms. Phillips, you're
7 excused.

8 THE WITNESS: All right.

9 THE COURT: Please call the next witness.

10 THE WITNESS: You want these back?

11 THE COURT: Pardon me?

12 MR. CLIFTON: I'll take them.

13 THE COURT: Thank you.

14 MR. LINDSAY: Your Honor, if I might? I would
15 like to mark and offer, and I don't know if counsel has
16 any problem with this.

17 MR. CLIFTON: Not at all.

18 THE COURT: The witness has already discussed
19 it.

20 MR. LINDSAY: It is the statement -- excuse
21 me, your Honor.

22 THE COURT: That's fine. It is admitted. Is
23 that Exhibit 16?

24 COURT CLERK: Yes, it is.

1 THE COURT: Exhibit 16 is admitted.

2 (Exhibit 16 is marked & admitted into evidence.)

3 MR. CLIFTON: Are you just doing one page?

4 THE COURT: Ma'am, please step forward, face
5 the clerk, raise you right hand and be sworn as a
6 witness.

7

8 DIANE HACKWORTH,

9 called as a witness by the State herein,

10 being first duly sworn, was examined and

11 testified as follows:

12

13 THE COURT: Please take the witness stand and
14 be seated.

15

DIRECT EXAMINATION

16 BY MR. CLIFTON:

17 Q Please state your name.

18 A Diane Hackworth.

19 Q Spell your last.

20 A H-a-c-k-w-o-r-t-h.

21 Q Your employment?

22 A I am the Chief Nurse Officer for the
23 HealthSouth Rehabilitation Hospital in Tucson, Arizona.

24 Q How long have you been there in Tucson?

1 A Two years.

2 Q And all two years at that nursing facility?

3 A Yes.

4 Q Say that again, Chief Nursing?

5 A Officer.

6 Q Officer. Were you employed before that?

7 A Yes.

8 Q Where were you employed?

9 A Reno.

10 Q At various hospitals or just one?

11 A Various hospitals. I worked for Saint Mary's

12 hospital for 20 years. I worked for HealthSouth Rehab

13 for two years, and then for Renown Rehab for three and a

14 half years.

15 Q I think I'm going to be referring to your

16 Saint Mary's employment, and I'm going to direct you to

17 August 10th, 1994, the very early morning hours. Could

18 you have been working at Saint Mary's then?

19 A Yes.

20 Q Do you know what your title was then?

21 A I was the Emergency Department Manager.

22 Q For the whole department or just over the

23 nurses or what?

24 A For the whole department over nursing --

1 Q Okay.

2 A -- operations.

3 Q And did you have administrative duties,
4 nursing duties, or both?

5 A Both.

6 Q Is there a number of people you oversaw or
7 just the people that were in the emergency room there
8 that were nurses?

9 A Just the people in the emergency room.

10 Q Directing your attention again to that date,
11 did you have occasion or have you reviewed reports which
12 refreshed your recollection on working that night and
13 being involved in a sexual assault kit, a specific one
14 with a victim by the name of Candace Inman, do you
15 recall this?

16 A Yes, I do recall.

17 Q Have you seen medical reports on that?

18 A Yes, I have.

19 Q And we have those, if you need to take a look
20 at those, but I'm going to also hand you what's marked
21 as Exhibit Number 9. Are you familiar with these type
22 of packaging?

23 A Yes, I am. It looks like the sexual assault
24 kit that you use in an emergency department.

1 Q And the same in Tucson, or is it different in
2 Tucson?

3 A We don't -- I don't do them in Tucson.

4 Q In Saint Mary's is this the typical type of
5 packet you would use for a sexual assault kit?

6 A Yes, it is.

7 Q And I think there's another item also that
8 goes along with it. These were together when we first
9 -- when they were first presented to court. This is
10 what's called envelope B. Do you recognize this
11 envelope?

12 A Yes, I do.

13 Q This type of envelope, this is Exhibit Number
14 8.

15 A Yes, I do.

16 Q Okay. So I'll hand you both 8 and 9. Tell
17 me, look through these and tell me if you can determine
18 if you have ever handled this particular one or worked
19 with --

20 A Yes, I have. This is my printing and my
21 signature.

22 Q What was the first thing, your what?

23 A My printing.

24 Q Printing.

1 A Are you -- is that the big one, Exhibit 8?

2 Q The small one, Exhibit 8. Look at number 9
3 also.

4 A It is my handwriting also.

5 Q Describe for the ladies and gentlemen what a
6 sexual assault evidence kit is or what you do with
7 those.

8 A When someone presents to the emergency
9 department having claimed that they've been sexually
10 assaulted, we pull out a special kit with an envelope
11 and a whole procedure that you must follow to collect
12 evidence, and to keep that evidence in what they call a
13 chain of evidence, so you never leave the victim once
14 you've started this, you preferably stay with the victim
15 and with the evidence and sign off to each person that
16 you hand it off to so that you can testify, if ever
17 needed, that this was the evidence collected.

18 Q So this evidence kit is directly or designed
19 for one victim?

20 A Yes.

21 Q And one victim only?

22 A Yes.

23 Q In this case do you know the victim's name?

24 A Yes.

1 Q First of all, give -- do you know what the
2 evidence kit number is, R number?

3 A R04014.

4 Q And the name of the victim?

5 A Candace Inman.

6 Q And this particular item, Exhibit 8 and 9,
7 both of them, you specifically have printed and/or
8 signed off on?

9 A Yes.

10 Q I guess that's A. And you've printed your
11 name and signed it, correct?

12 A Yes.

13 Q On both of those exhibits?

14 A Yes.

15 Q Indicating that you worked this particular
16 victim or this case?

17 A Yes.

18 Q Do you know if there was a doctor involved?

19 A There would have been a doctor involved.

20 Q Have you ever heard the name Dr. Dedolph?

21 A Yes. I worked with Dr. Dedolph in the ER.

22 Q Could he have been involved in this case
23 also?

24 A Yes.

1 Q And we'll get to the medical records and
2 you'll be allowed to see it in a moment, but he
3 certainly was one that you worked with in sexual
4 assault, emergency room --

5 A Yes.

6 Q -- type investigation? All right. Male
7 doctor versus female doctor, how do they determine what
8 a victim would be more comfortable with?

9 A In 1994, we didn't have any female emergency
10 room doctors.

11 Q Any female?

12 A Emergency room doctors, physicians, so they
13 wouldn't have had a choice.

14 Q Now or since then?

15 A Since then if there are females present it
16 would be the victim's choice or the doctor's choice.

17 Q Perfect. So wouldn't have been unusual for
18 Dr. Dedolph to have done a sexual assault exam --

19 A Not at all.

20 Q -- in 1994?

21 A Not at all.

22 Q And he's done those before with you?

23 A Yes.

24 Q On this particular date, then, with this

1 particular victim, what testing is determined to be done
2 by the doctor versus the nurse? Does he determine who
3 does what testing or examination?

4 A The doctor overall has responsibility and
5 accountability for anything that's decided. The
6 protocol would naturally lead him through some steps,
7 but it would be his option to do some tests or not to do
8 some tests, not the nurses.

9 Q And he's in charge?

10 A He's in charge.

11 Q So if something like taking blood for later
12 comparison or evidentiary testing from the victim, would
13 that be a nurse, a phlebotomist, a doctor, who would
14 typically do that?

15 A The doctor would order it. Either the nurse
16 or the phlebotomist, depending on who had more ready
17 experience or the experience.

18 Q But in any event, who's responsible for
19 putting these kits, or who --

20 A The nurse is.

21 Q Is that you?

22 A That would be me.

23 Q Then go to the one, number 8, smaller one.
24 What would you typically put in that packet? What is

1 that packet designed for?

2 A It's marked envelope b, reference blood
3 sample.

4 Q And what does that mean to you?

5 A That means that I would have collected a
6 blood sample and put it in a tube and put it in this
7 envelope and signed it off to the next person to receive
8 it.

9 Q Which is who?

10 A Peggy Stout received it as chain of custody.

11 Q S-t-o-u-t.

12 A Yes.

13 Q And she works for whom, if you know?

14 A Hum, I don't know.

15 Q Okay. Could she be a police officer?

16 A Yes.

17 Q So a police officer or a detective can be
18 there in the room to maintain the chain of custody?

19 A Absolutely.

20 Q And then do you put these items in the
21 packet, or does the detective or officer or what?

22 A I put them in the packet in the presence of
23 the officer and seal it and sign it, as well as the
24 officer signs it also.

1 Q So the reference sample here of blood would
2 be whose blood?

3 A This would be the victim's blood.

4 Q Can you determine that from looking at this
5 that the protocol was followed, and that her blood was
6 taken either by you or somebody else in your presence,
7 and her blood was placed into this envelope and sealed?

8 A Yes.

9 Q That is all correct?

10 A Yes, it is.

11 Q And then that sealed envelope is maintained
12 in the chain of evidence or the chain of custody with
13 the officer that you've identified as Peggy Stout?

14 A Yes.

15 Q That's all I need for A. And the blood is
16 taken from the victim at what part of their body, do you
17 know?

18 A Generally from the arm.

19 Q Then Exhibit Number 9 now, same kind of
20 questioning. What type of things go into this evidence
21 envelope?

22 A This would be any other materials that the
23 doctor collected during exams. In this one would be any
24 stains or smears that he tested for.

1 Q Go through both sides of that envelope. Does
2 this envelope contain a number of items, not just
3 smears?

4 A Yes.

5 Q In other words, it's designed for the rest of
6 the kit; is that correct?

7 A Yes.

8 Q Okay. Things including hairs or hair
9 samples, vaginal smears?

10 A Saliva.

11 Q Quite a few things, saliva and those kind of
12 things are taken from whom?

13 A Those are taken by the physician from the
14 victim in my presence, in the officer's presence.

15 Q Could some of them be taken by the nurse or
16 you or somebody?

17 A They could.

18 Q But all in that room you're dealing with one
19 victim, it's not getting confused with any other case?

20 A No.

21 Q Is that how it's all designed and set up for?

22 A That's how it's designed and set up for.

23 Q Okay. So in this packet, it's indicated or
24 marked whether we should have saliva, pubic hair

1 samples, pubic hair brushing evidence, Q-tip swabs from
2 the vaginal cavity, correct, all these kind of things?

3 A Correct.

4 Q Go back to the chain of custody there. Are
5 you signed off on this, then, as indicating those items
6 were either gathered and put in here or not gathered at
7 all?

8 A Yes, that's my signature.

9 Q On pubic brushing, can you determine whether
10 that was gathered at all?

11 A It's marked yes here.

12 Q Okay. That's -- there is a kit, pubic
13 brushing. Let's go to that envelope number 7. Have you
14 had a chance to check your notes on that?

15 A No, I have not.

16 Q Okay. Do you know -- do you know offhand
17 whether or not that would have to include pubic brushing
18 or are there some times when you don't do?

19 A Pubic brush was not done on all victims that
20 came in on the rape cases that I assisted in.

21 Q What would determine -- what's a good reason
22 why it would or wouldn't be?

23 A If a victim came in and had changed clothes,
24 had showered, had waited a day to present, we would

1 probably not do pubic hair brushing.

2 Q All right. In this case, she had panties on
3 when the rape was starting or, you know, took the
4 panties off. Then she was put in other clothes to come
5 down, or she put on other clothes, either way, to come
6 down to the hospital.

7 A Uh-hum.

8 Q So do you know whether clothes they put on
9 could be old and have other --

10 MR. LINDSAY: Objection.

11 MR. CLIFTON: Strike that.

12 MR. LINDSAY: Your Honor, I just apologize,
13 but I don't remember that testimony having yet come into
14 this trial.

15 THE COURT: Don't speculate. If you happen to
16 know the answer to the question, you may answer it. If
17 you don't, don't speculate based on what you may have
18 heard from somebody else. Do you happen to know that?

19 THE WITNESS: No, I'd have to refer to my
20 nurse's notes.

21 THE COURT: All right. Thank you. Next
22 question.

23 BY MR. CLIFTON:

24 Q Do you know whether the victim had clothes on

1 when she arrived at the emergency room?

2 A I would assume so, but I'd have to see my
3 nurse's notes.

4 Q If she had clothes on, would you have any way
5 of knowing whether the clothes themselves may have had
6 other pubic hairs or other evidence inside those
7 clothes, if they're not washed, if they're not clean?

8 A I would ask as part of my exam in checking
9 them in.

10 Q So when you do the pubic brushing, you're
11 saying that sometimes we purposely wouldn't do it?

12 A Yes.

13 Q Because they've had on different clothes or
14 changed clothes?

15 A Yes.

16 Q So in this case can you determine whether or
17 not it was done -- go ahead and open the envelope, if
18 you want.

19 A Well, the envelope is not sealed with a
20 signature so I would assume it was not done.

21 Q Okay. And is there any other reason you can
22 think of why you wouldn't do it?

23 A The only reason I would think of is that her
24 presentation did not warrant a pubic brushing test at

1 the time.

2 Q What do you mean?

3 A Meaning?

4 Q Referring to clothing.

5 A Referring to clothing.

6 Q Any other presentation you're talking about,
7 or just clothing?

8 A No.

9 Q But it's not sealed like you indicated.
10 Okay. And would the brush go in here (indicating)?

11 A Yes.

12 Q Anything else?

13 A The brush and whatever matter was collected.

14 Q That's what I mean, how do you collect it?

15 A The doctor when he went to do the exam would
16 take the envelope and the brush and would brush any
17 brushings into the envelope and then seal it and sign
18 it, or I would sign it.

19 Q Okay. When you're brushing are you brushing
20 directly into here or are you brushing onto something?

21 A You're brushing -- as I recall, to the best
22 of my recollection, you're brushing into the envelope.

23 Q Okay. What are you looking for in a pubic
24 brushing, what are you trying to gather?

1 A Any evidence that the person who assaulted
2 the victim would have left behind.

3 Q Possible --

4 A Hairs.

5 Q Huh?

6 A Hairs, saliva.

7 Q Now, what about the swabbing of the vaginal
8 cavity, are you familiar with that?

9 A Yes.

10 Q Who typically does that, the nurse or the
11 doctor?

12 A The physician.

13 Q Any kind of instruments used?

14 A They use a pelvic speculum to open up the
15 cavity so that they can access it for salivium, would do
16 swabbing.

17 Q What do they use for swabbing?

18 A They use the swabs that come in the kit.

19 Q Describe what they are.

20 A They're usually large, to the best of my
21 recollection. It's been a while since I've seen any
22 cotton tipped applicators, and they swab around the
23 entry, inside vaginal canal.

24 Q Is it more than one usually?

1 A Usually.

2 Q How many?

3 A Two, three.

4 Q Do you know the purpose of that?

5 A The purpose of that is to collect any
6 evidence that may be left behind by, again, the person
7 who assaulted them. We're looking for semen, saliva,
8 any other particle.

9 Q I like that, let you finish, but my question
10 was a little different. Why they using more than one
11 swab, if you know?

12 A Oh. They use more than one swab because they
13 just want to make sure that they get as much material as
14 they can and that they send it off for, I believe, to
15 different examples, different testing.

16 Q So we have a little more evidence if we use
17 one of the Q-tips, we have another one left over?

18 A Yes, absolutely.

19 Q Can one Q-tip gather more of the evidence
20 sample than another one swabbing?

21 A Not to my knowledge.

22 Q Okay. Are they swabbed, like you said,
23 circularly, I think you said?

24 A I believe so. I've not done the swabbing.

1 Q Okay.

2 A I'm just kind of remembering the physician
3 doing that turn.

4 Q Do they go in at the same time, the swabs?

5 A No. One at a time.

6 Q Okay.

7 A So they could be different areas of the
8 vaginal cavity, or I think there were -- yeah, probably
9 all around in a circular motion.

10 Q But I mean one could maybe hit an area
11 slightly different than another?

12 A Absolutely.

13 Q But they do at least one sometimes, mostly
14 two usually?

15 A Uh-hum.

16 Q Generally two?

17 A Generally two or three.

18 Q All right. Let's to go that envelope. Would
19 that be handed to you, by any chance?

20 A That would be handed to me.

21 Q All of these have been opened to mark as
22 evidence. This is Exhibit Number 9b, which came out of
23 number 9, the sealed envelope?

24 A Uh-hum.

1 Q These have been opened. I'm taking out
2 Exhibit 9b 3. See what I'm referring to?

3 A Yes.

4 Q Can you tell me if you recognize that?

5 A Yes. That looks like the swab tips the
6 physician would have handed me to go into the envelope
7 in the kit.

8 Q Then they go into the envelope?

9 A Uh-hum.

10 Q We've labeled it as 9b 3, I think I said, and
11 you see on the outer envelope 9b?

12 A Uh-hum.

13 Q It's listed as vaginal or penile swab/smears,
14 correct?

15 A Correct.

16 Q And 9b 3 has R04014, vaginal swabs, correct?

17 A Correct.

18 Q And so you would place it into here
19 (indicating)?

20 A Correct.

21 Q Which is 9b?

22 A Uh-hum.

23 Q Then do you place it into number 9, that
24 evidence kit?

1 A I would either place it in or I would hand it
2 to the officer that was in there to place into the kit.

3 Q Inside this there is also a 9b 1 and a 9b 2.
4 Are you familiar with these two items?

5 A Those look -- appear to be slides.

6 Q How would they generally be used in evidence
7 kit?

8 A The physician would smear a slide as well as
9 present the Q-tip for testing.

10 Q When you say "smear a slide", what's he
11 smearing a slide with?

12 A With the Q-tip, the cotton-tipped applicator
13 that he had taken samples from inside the vagina.

14 Q One or both?

15 A I don't know right off the top of my head
16 from recollection. It would either be one or both.

17 Q I'm not going to take these out, but I'm
18 going to open this one labeled vaginal smears. You see
19 that?

20 A Uh-hum.

21 Q 9b 2. How many slides do you see in there?

22 A There's two slides in there.

23 Q That is all in the same kit, R04014, correct?

24 A Yes.

1 Q This one right here, the number's right here
2 on it?

3 A Uh-hum.

4 Q So if it's two slides can you say whether or
5 not each slide was from one Q-tip or they each had their
6 own Q-tip, or do you know?

7 A I do not recall.

8 Q The other one there is 9b 1, I think it is?
9 Yeah, 9b 1. It says, "Motile sperm slide". Do you see
10 that?

11 A Yes.

12 Q Okay. Describe what that one is used for, if
13 you know.

14 A That one would have been, hum, smeared with
15 one of the applicators and given to a lab tech at the
16 hospital to look at.

17 Q Do you know who Carole Phillips is?

18 A I recall Carole Phillips from -- is a medical
19 technologist working at the same time I was.

20 Q At Saint Mary's?

21 A Saint Mary's.

22 Q Is she a type person that that could be
23 handed to?

24 A Yes.

1 Q And would do a microscopic exam or testing?

2 A Yes.

3 Q All right. I'm not taking this out, but just
4 looking at it. Do you see the slide?

5 A Yes.

6 Q Then does she return this to someone like
7 you, Carole?

8 A She would need to get it back to the rape kit
9 so it would probably come back to me.

10 Q With that again, R04014, again on same case
11 evidence kit number?

12 A Correct.

13 Q And then it's placed in here (indicating)?

14 A Uh-hum.

15 Q And sealed either by you or Detective Stout?

16 A Correct.

17 Q And that's all placed back into Exhibit
18 Number 9 and sealed?

19 A Correct.

20 Q And are you there when they seal Exhibit 9,
21 or is that something the detective does?

22 A Yes, I am there.

23 Q So the final product is sealed and into it
24 looks like two envelopes, A and B.

1 A Correct.

2 Q Do you know what happens to them after that?

3 A They go with the officer.

4 MR. CLIFTON: Okay. Let's put all these back
5 in there, then. And 9b is the important one, might as
6 well go ahead and introduce 9b at this time, your Honor.

7 THE COURT: Any objection?

8 MR. LINDSAY: I'd like to just look at it for
9 just one moment --

10 THE COURT: You may.

11 MR. LINDSAY: -- if I might, your Honor.

12 (Conference between attorneys.)

13 MR. LINDSAY: No objection, your Honor.

14 THE COURT: Thank you. Exhibit 9b is
15 admitted.

16 MR. CLIFTON: Thank you.

17 (Exhibit 9b is admitted into evidence.)

18 BY MR. CLIFTON:

19 Q I'm sorry. Exhibit Number 8 I would move to
20 admit at this time too, your Honor, from the foundation
21 of this witness herself. And her name is written and
22 signed on there and that she did place that evidence,
23 bloodstain, or sample of the victim into that exhibit.
24 It's Exhibit Number 8.

1 And you sealed Exhibit Number 8 also --

2 A Yes.

3 Q -- or it was sealed in your presence?

4 A Yes.

5 MR. CLIFTON: I'd move to admit.

6 MR. LINDSAY: I apologize, your Honor. If I
7 may have one moment, just one moment?

8 MR. CLIFTON: Your Honor, I'll retract Exhibit
9 8. I'm not going to move for admission at this time.

10 THE COURT: All right. You may proceed.

11 MR. CLIFTON: Thank you.

12 BY MR. CLIFTON:

13 Q Handing you Exhibit Number 9a, what type of
14 envelope would that be used for?

15 A It's marked "stains on skin".

16 Q Are you familiar with that type of label?

17 A Yes, I am. I cannot recall exactly what type
18 of medium, but that's where we would rub some -- either
19 a strip or something on to collect evidence if the
20 victim noted that they were kissed or licked or somehow
21 had evidence that may be on other parts of their body.

22 Q Could it be a gauze swabbing of something
23 like a cheek?

24 A It could be.

1 Q Is that something that would be reflected
2 either in your notes or in the medical reports, or in
3 this Exhibit Number 9 itself? You can look at the outer
4 envelope, if you want.

5 A It should be on the evidence collection sheet
6 and my notes.

7 Q And this -- from what you can see in Exhibit
8 Number 9 --

9 A Uh-hum.

10 Q -- and from this envelope, and the
11 signatures or the documentation, that it was
12 collected --

13 A Yes.

14 Q -- from victim Inman?

15 A Uh-hum.

16 Q Okay.

17 A According to my documentation, the victim was
18 kissed on her face and on her vagina, so I would have
19 used collection material for her face.

20 Q But you wouldn't make it with the vagina?

21 A No.

22 Q All right. So this means stains on skin, not
23 genitalia?

24 A Correct.

1 Q That's done with other means and methods?

2 A Correct.

3 Q And so here does it indicate what part of the
4 face was kissed or licked?

5 A No, just face.

6 Q So would you be the one doing the gauze
7 swabbing, or would it be somebody else?

8 A That would be me.

9 Q Could it be the left cheek, just could it be?
10 Is there anything inconsistent with that from what you
11 see there?

12 A From what I see in the documentation it would
13 most likely have been the left cheek because that's
14 where she also had bruising, so I would guess that it
15 seemed like everything happened on the left cheek.

16 Q Okay. Maybe an assumption, but either way,
17 there's nothing inconsistent with possibly being from
18 the left cheek, correct?

19 A No.

20 Q Okay. Thank you.

21 MR. CLIFTON: Move to admit Exhibit 9a at this
22 time.

23 THE COURT: Any objection?

24 BY MR. CLIFTON:

1 Q That's something that that envelope would be
2 put back into Exhibit Number 9 also, correct?

3 A Correct.

4 MR. LINDSAY: No objection, your Honor.

5 THE COURT: It is admitted.

6 (Exhibit 9a is admitted into evidence.)

7 MR. CLIFTON: You can go ahead and look at those
8 medical reports if it helps refresh your recollection if
9 that's okay with court and counsel?

10 I want to ask her about the medical records.
11 Are you okay with her reviewing, refreshing --

12 THE COURT: You can use those to assist in
13 refreshing your recollection.

14 MR. LINDSAY: I mean, I just want to just ask
15 her.

16 THE COURT: I want both sides to know what
17 you're looking at.

18 BY MR. CLIFTON:

19 Q Ms. Hackworth, you said earlier it would help
20 refresh your recollection a little bit if you were able
21 to look at the medical reports and notes, correct?

22 A Correct.

23 Q I've handed you now the medical reports, both
24 counsel have these. Does that help you a little bit

1 remember what happened that 15 years ago now?

2 A It helps me put into place what I would have
3 done and why I made the decisions to collect or not
4 collect material.

5 Q And is all that consistent with what you've
6 already testified about?

7 A Yes, it is.

8 Q Because I wanted to go with your protocol and
9 with your memory first. Now we can look to the reports
10 just briefly.

11 On the pubic hair hair brushing, did you learn
12 or can you determine anything additional from the
13 medical reports, or is that something you might not have
14 done because she may have had additional clothes or
15 changed clothes?

16 MR. LINDSAY: Your Honor, if I might, I would
17 just like to, first of all, have counsel ask whether it
18 refreshed her memory.

19 BY MR. CLIFTON:

20 Q Go ahead.

21 THE COURT: I think you did that. If you
22 didn't, these documents refresh your memory on the
23 subject?

24 THE WITNESS: Yes.

1 THE COURT: All right. Thank you. You may
2 proceed.

3 BY MR. CLIFTON:

4 Q Go ahead. How does it refresh your
5 recollection?

6 A I look at my charting and I have that the
7 patient arrived with a swelling to the left cheek,
8 change of clothes done in apartment prior to transport.
9 Per the medics, her underpants remained with Sparks
10 Police Department at the scene.

11 Q What does that tell you about pubic hair
12 brushing, if anything?

13 A That tells me that we probably deferred the
14 pubic hair brushing due to the fact that we did not feel
15 we'd collect any evidence.

16 Q All right. And that would explain why maybe
17 no evidence other than the brush and maybe some paper
18 might be in that envelope?

19 A Yes.

20 Q With respect to any other evidence collected,
21 anything else you've learned, anything that sticks out?
22 If not, I'll go through a couple things. Just anything
23 you want to tell us that refresh --

24 A I noted that the evidence collecting was

1 protocol with a rape kit that an exam, vaginal exam and
2 swab collection was done by Dr. Dedolph and that a sperm
3 motility slide was collected.

4 Q Is Carole Phillips listed in your handwriting
5 in your report, do you see there?

6 A Yes. Carl is Dr. Dedolph.

7 Q Would Carole be mentioned, referred to the
8 medical technologist who did the motile sperm
9 examination microscopically?

10 A Yes, she is.

11 Q She'd be the one you'd get the slide back and
12 put it into that evidence envelope?

13 A Yes.

14 Q Now, specifically with the result of that
15 motile sperm slide there's two indications in that
16 report, and I think they're highlighted there for you.
17 First of all, let's start with the one that's in your
18 handwriting. Do you recall stating in your records or
19 reports who made the determination that there was no
20 sperm seen?

21 A I have charted here "No sperm per Dr. Dedolph
22 and Carole from lab".

23 Q How do you know it was Dr. Dedolph that made
24 that determination?

1 A I don't. It could have been a phone call
2 into the room that Dr. Dedolph took from Carole and told
3 me and I charted.

4 Q So it doesn't mean Dr. Dedolph with the
5 speculum or anything else is actually making a decision
6 as to whether there's sperm or not in the vagina?

7 A No.

8 Q Certainly doesn't mean that, is that what
9 you're saying?

10 A It does not mean --

11 Q We'll check with Dr. Dedolph. I'm going to
12 go ahead and bring him in. But you see where it says in
13 your writing that it was Dr. Dedolph and/or whatever it
14 says, Carole Phillips, who made that determination,
15 correct?

16 A Correct.

17 Q And you're saying you can't say positively
18 both of them said that --

19 A No.

20 Q -- or both of them made a determination?

21 A No.

22 THE COURT: All right. Thank you. We'll stop
23 here for the lunch recess.

24 Ladies and gentlemen, during this recess

1 you're instructed not to discuss this case among
2 yourselves or with anyone else. You are not to form or
3 express any opinions concerning the case, or read,
4 listen, or view news accounts of the case, if any.

5 The trial will resume at 1:30 this afternoon,
6 1:30 this afternoon.

7 There is a matter I wish to place on the
8 record with the parties and so the jury will be excused
9 at this time. Counsel and the parties will remain in
10 the courtroom. You are excused.

11 (Jury leaves courtroom.)

12 THE COURT: The record should reflect that
13 these proceedings are outside the presence of the jury.
14 I just wanted to briefly mention to counsel and Mr. Peck
15 what I'd like to do. Settle jury instructions on Monday
16 at 10:30, and I'm confident we can do that so that we
17 can resume the trial at 1:00.

18 I'd also like to make just a brief record
19 concerning Mr. Lindsay's earlier motion regarding Ms.
20 Inman's testimony of her identification of the
21 defendant. There are two considerations the Court has.
22 First of all is whether or not the circumstances are so
23 unduly suggestive as to lead to substantial likelihood
24 of irreparable misidentification. I don't find that's

1 the case here. Ms. Inman was brought to the court. She
2 knew that the defendant would be present. I don't know
3 whether or not she knew the defendant would speak.
4 Ordinarily defendants in pretrial proceedings don't
5 speak or speak very little, but in any event, at the
6 proceeding she attended that Mr. Peck did speak to some
7 extent in addressing the Court, she was not asked to
8 identify him. She was not asked to pay attention to
9 his movements, or his voice or any other aspect of his
10 conduct. And I find her testimony is credible when she
11 testified that in court and shortly thereafter outside
12 the courtroom she noticed this defendant's voice as
13 striking. And it moved her to conclude that the
14 defendant was the perpetrator of this offense.

15 I've also considered this between the NRS
16 48.035 and balanced its probative value versus unfair
17 prejudice of the defendant and the other considerations
18 in that statute. And I find that the probative value is
19 not substantially outweighed by those considerations
20 and, therefore, the testimony should have been and was
21 admitted.

22 We'll resume the trial at 1:30. Court is in
23 recess.

24 (Lunch recess.)

1 THE COURT: Mr. Clifton.

2 MR. CLIFTON: Thank you, your Honor.

3 BY MR. CLIFTON:

4 Q Ms. Hackworth, please take the witness stand.
5 You're still under oath. Are you aware of that?

6 A Yes, I am.

7 THE COURT: Let's see if we can move the pace
8 along about five times more quickly than we have been,
9 maybe ten.

10 MR. CLIFTON: I can do three times.

11 THE COURT: Three times, okay. That's good.
12 I'll take three times.

13 MR. CLIFTON: We're going to move really fast,
14 your Honor, in the next five or six witnesses, I assure
15 you.

16 THE COURT: Thank you.

17 BY MR. CLIFTON:

18 Q Ms. Hackworth, the writing on this medical
19 report which is the page, I think, counsel and I both
20 showed you, what page number is --

21 MR. LINDSAY: Yes, yes. I've actually --

22 BY .MR. CLIFTON:

23 Q Can you tell whose writing that is on that
24 majority of that page?

1 A Some of the writing is Dr. Dedolph's and some
2 of the writing is mine.

3 Q All right. How about where it says, "No
4 semen seen", do you recognize that writing, or not?

5 A That looks like it might be Dr. Dedolph's.
6 That is not mine.

7 Q Are you familiar with Carole Phillips'
8 writing?

9 A Her writing, no.

10 Q She's already indicated that that was her
11 writing. Could that be possible?

12 A That could be possible. Her name is signed
13 there.

14 Q Okay. Right next to where it says, "No semen
15 seen, R04" --

16 A Correct.

17 Q -- "014"?

18 A Correct.

19 Q And her initials and her written name?

20 A Correct.

21 MR. CLIFTON: Okay. Thank you. No further
22 questions.

23 THE COURT: Thank you. Mr. Lindsay or Mr.
24 Peck.

CROSS-EXAMINATION

1
2 BY MR. LINDSAY:

3 Q You looked at your notes to explain why there
4 was no combing, correct?

5 A Yes, sir.

6 Q And I'm not a doctor and I'm not a nurse, but
7 it would seem that one would be thorough and do it
8 anyway. Am I just being naive?

9 A I don't know that I would say it was naive.
10 I can tell you that it was not always done.

11 Q And you know there was a microscopic
12 examination done and that no semen was seen that's in
13 the reports, correct?

14 A The slide was taken to our laboratory.

15 Q And as far as the actual swabbing, that's all
16 actually done by the doctor, correct?

17 A Yes.

18 Q Okay. And you would think that in your
19 experience it would be two to three swabs. Fair to say?

20 A As best as I can recollect.

21 Q Yeah. Just as a general protocol.

22 A Yes.

23 Q Do you know if a DNA analysis was done in
24 1994 on this?

1 A No, I do not know.

2 MR. LINDSAY: No further questions. Thank
3 you.

4 THE COURT: Thank you. Mr. Clifton.

5 MR. CLIFTON: No further.

6 THE COURT: Thank you, ma'am, you're excused.

7 THE WITNESS: Thank you.

8 THE COURT: Please call the next witness.

9 MR. CLIFTON: Dr. Dedolph, please.

10 THE COURT: Please step forward, Doctor, and
11 raise your right hand for the clerk.

12

13 RICHARD DEDOLPH, M.D.,

14 called as a witness by the State herein,

15 being first duly sworn, was examined and

16 testified as follows:

17

18 THE COURT: Doctor, please take the witness
19 stand and be seated.

20

DIRECT EXAMINATION

21 BY MR. CLIFTON:

22 Q Tell us your name.

23 A Richard Dedolph.

24 Q Spell your last.

1 A D-e-d-o-l-p-h.

2 Q And your occupation?

3 A I'm a retired emergency physician.

4 Q Where did you obtain your medical degree?

5 A The University of Utah.

6 Q And your bachelor degree before that?

7 A I got a Bachelor's degree at the University
8 of Nevada.

9 Q What years are we talking about for those two
10 degrees?

11 A I finished my Bachelor's degree in 1975. And
12 I got my M.D. in 1986.

13 Q And after '86 you did an internship where?

14 A Valley Medical Center in Fresno.

15 Q Do you specialize, or did you, while you were
16 working?

17 A I went to -- I did a special of emergency
18 medicine residency at that same hospital.

19 Q How long -- you say you've been an emergency
20 room doctor before you retired?

21 A How long?

22 Q Yeah.

23 A Fifteen years.

24 Q I want to direct your attention to 1994.

1 Were you working as an emergency physician at that time?

2 A I was.

3 Q And at what hospital, if you know?

4 A Saint Mary's.

5 Q And invite your attention to August 10th,
6 early morning hours, the graveyard shift of that
7 particular morning of 1994. Do you know if you were
8 perhaps working that morning?

9 A I was.

10 Q You've had occasion to review some medical
11 reports in preparation for today's hearing --

12 A I have.

13 Q -- and testimony?

14 A Yes.

15 Q And you've determined that you were working
16 that day in the emergency room as a doctor --

17 A Correct.

18 Q -- at Saint Mary's?

19 A Yes.

20 Q In the emergency room back then, did it
21 entail possibly doing a rape protocol or rape evidence
22 kit preparation when a victim claimed she's been
23 recently raped?

24 A Yes.

1 Q And had you done those before this date?

2 A Many times.

3 Q Dozens, maybe hundreds, what do you think?

4 A Maybe a hundred.

5 Q All right. Were there any female doctor
6 emergency room physicians at that time, or are you
7 aware?

8 A I think we had one on staff at Saint Mary's.
9 I'm not sure, but I think so.

10 Q Would she be working the same shift you do,
11 or a different shift?

12 A We only had one doctor on at time.

13 Q So if you're working, she's not?

14 A Right.

15 Q So if a female rape victim comes to Saint
16 Mary's, claim she's been raped, she doesn't get a choice
17 and there's no determination made as to whether she gets
18 a male or a female doctor; is that correct?

19 A That is correct.

20 Q All right. And under the protocols in 1994,
21 are you familiar with a rape evidence kit --

22 A Yes.

23 Q -- sexual assault kit? That was yes?

24 A Yes.

1 Q I'm sorry I interrupted you. I want to show
2 you Exhibit Number 8 and 9. These are two items that
3 are stapled together, but they are now two separate
4 items, 8 and 9; the small one is number 8, the large one
5 is number 9. Can you look at those packets or envelopes
6 and determine if that looks consistent with what you
7 recall from the protocol in 1994 for preserving evidence
8 in evidence kits?

9 A Well, this is a sexual assault evidence kit.

10 Q Okay.

11 A Although I never actually was involved with
12 the kit, the nurse would do that.

13 Q So do you do some of the examination?

14 A Yes.

15 Q All right. What did you do with the items
16 from the results of the examination?

17 A I hand them back to the nurse.

18 Q Are you familiar with the Nurse Diane
19 Hackworth?

20 A Yes.

21 Q Familiar with that name?

22 A Oh, yes.

23 Q And did you see her out here just preceding
24 you in testimony here today this afternoon?

1 A I did, yes.

2 Q Is the first time you've seen her in what, a
3 lot of years?

4 A First time since probably 2001.

5 Q So 2001. Is that when you retired?

6 A That's when she left.

7 Q Okay. And did the two of you work together
8 doing sexual assault rape -- rape -- sexual assault
9 evidence kits and evidence examinations in the past
10 before that date?

11 A I don't know if I had done a sexual assault
12 exam with her. See, she was the department manager and
13 so she ordinarily wouldn't do that.

14 Q She was more administrative?

15 A Yes.

16 Q She testified that she had done them before,
17 so that could have been without you?

18 A Oh, I'm sure she had, yeah, but I'm not sure
19 it was with me.

20 Q Okay. Is there a standard protocol, or do
21 you just guide the entire examination?

22 A There's a standard protocol, yeah.

23 Q Under the standard protocol and your practice
24 who would normally do the vaginal examination

1 internally?

2 A The doctor would.

3 Q That would be you?

4 A Yes.

5 Q Describe how you would undergo that.

6 A Well, I would insert a metal speculum into
7 the vagina and so I could visualize the vaginal walls
8 and cervix, look for any evidence of injury. It's,
9 basically, the same as an annual OB/GYN exam.

10 Q Do you recall ever using any swabs, Q-tip
11 style swabs?

12 A Yes.

13 Q Is that a standard protocol?

14 A That's standard protocol.

15 Q Is there a certain number you would use?

16 A I'm sure it was at least two, but I -- it's,
17 you know, been 15 years since I did that exam.

18 Q But you would use two, generally?

19 A Yeah. I think there was at last three.

20 There might have been three or four, I really don't
21 remember.

22 Q But more than one is what I'm getting at.

23 A More than one, yes.

24 Q Why would there be more than one, do you

1 know?

2 A No, I don't know exactly.

3 Q Just part of the protocol?

4 A That's part of the protocol. I mean, one of
5 them is used to make a wet mount slide, but then that
6 one goes back in the kit, too.

7 Q All right. So we have at least two, that's
8 all we need. We don't need an exact number, at least
9 two?

10 A At least two.

11 Q You're satisfied that would not have been in
12 this particular rape exam if you did one August 10th?

13 A Oh, yes, yes.

14 Q Standard protocol for you. All right. Now,
15 on August 10th, and you've reviewed the medical reports,
16 you said there's a Candace Inman, victim, who alleged
17 she was raped. She was brought into the emergency room
18 at Saint Mary's. Are these the medical records you're
19 referring to?

20 A Yes.

21 Q Who else would be in the room other than you
22 and the victim and Nurse Hackworth, if anybody?

23 A That would generally be all. Sometimes at
24 Saint Mary's we have scribes which were especially

1 trained premedical students to fill out the reports that
2 might be there, but I wouldn't think there was anybody
3 there that time of night.

4 Q The detective officer, do you remember if it
5 was a he or she?

6 A I don't.

7 Q Do you have any case specifically like any
8 physical memory of, or is it just the medical records
9 that you're really going by?

10 A No. It was a very routine case and I'm just
11 going by the medical record.

12 Q And that's fine. Thank you.

13 Did the medical records reflect whether there
14 were any others in the room other than you?

15 A I think they just reflected the three of us
16 there.

17 Q You said an officer, nurse, doctor, and
18 victim?

19 A There's not usually an officer in the room
20 when you're doing the exam. The officer has to come
21 before, the exam's not done.

22 Q When you get the exam done and all the
23 evidence is compiled together, are the envelopes sealed,
24 to your knowledge?

1 A Yes, I'm sure they are.

2 Q And then who hands them to the officer or
3 detective?

4 A The nurse.

5 Q In a sealed condition right from her hands to
6 the detective?

7 A Preserving chain of evidence hopefully.

8 Q But the detective doesn't actually watch the
9 examination?

10 A No.

11 Q Okay. Are you familiar with the name of
12 Carole Phillips?

13 A Yes.

14 Q Who is she?

15 A She was a medical technician at Saint Mary's
16 in the lab.

17 Q I know she didn't use the word technician.

18 A Medical -- I don't know exact title.

19 THE COURT: Technologist.

20 MR. CLIFTON: Technologist, there you go.

21 BY MR. CLIFTON:

22 Q Let's use her correct title, medical
23 technologist. And how would you use her, if at all, as
24 a doctor?

1 A Well, they performed all the lab tests, and
2 in this case she examined the slide I prepared.

3 Q What kind of slide and what did you prepare
4 it from?

5 A It's a plain glass slide, you swab some of
6 the vaginal secretions onto the slide, put several drops
7 of saline solution.

8 Q When you say swabbing vaginal excretions, are
9 you talking internally?

10 A Internally, yes.

11 Q Not on the outside also, or just internally?

12 A No, it would be just internally in terms of
13 wet mount slides as far as there is slides done
14 externally, but this would be just internally.

15 Q So internally with at least one -- two or
16 more swabs when we remove those, you take one of the
17 swabs and smear it on the wet mount?

18 A Yes.

19 Q The wet mount is like a microscopic slide?

20 A A microscopic slide, yeah.

21 Q You just take the Q-tip and just smear it on
22 there?

23 A Well, you have a couple of drops of saline or
24 you'll damage the secretions with the possibility of

1 seeing any sperm. And then after that you put on a
2 cover slip, and then it needs to be examined under a
3 microscope.

4 Q When you hand the slide to Carole Phillips,
5 is it directly from you to her, or do you know, or
6 through the nurse or what?

7 A I don't remember in this case. Most cases I
8 examined it myself, so I take the slide, walk down the
9 hall to the lab and look at it, and then bring it back
10 and hand it to the nurse, but this night was very busy
11 and so we got the lab to do that part.

12 Q And you noticed that from the medical
13 reports, or you just remember?

14 A Well, I know because Carole Phillips examined
15 it and ordinarily it would be just me.

16 Q But you're concluding that from the medical
17 reports where you see that she examined it, right?

18 A Yes.

19 Q All right. Got it. Who does then Carole
20 Phillips report back to with the results, do you know?

21 A I don't know in this particular case. I'd
22 suspect that they called the result back --

23 Q Okay.

24 A -- but --

1 Q I'll hand you the reports again, you can look
2 at them again. I am assuming they're going to be the
3 same ones that you looked at, and on the emergency room
4 record you can see some handwritten items all throughout
5 that page, correct?

6 A Correct.

7 Q Is any of that your writing?

8 A Most of it's my writing, but not all of it.

9 Q Do you see something that you believe is
10 Carole Phillips, or at least not yours?

11 A It says, "No sperm seen".

12 Q Is that your writing?

13 A And that is not my writing, that is someone
14 else's writing.

15 Q Is your writing right above or right below
16 that?

17 A My writing is right above that, where it
18 says, "Wet mount".

19 Q So under wet mount, it's written "No sperm
20 seen with" CR or CP, whatever the initials were that she
21 wrote?

22 A It says "CR".

23 Q And Carole Phillips?

24 A Yes. I don't know who CR is.

1 Q Well, we have maiden names and stuff
2 involved, don't worry, it's all right. But do you see
3 Carole Phillips written right there?

4 A Yes.

5 Q I think it's on the next page or a couple
6 pages later. I think it's highlighted. Yes. This is
7 Nurse Hackworth. Do you recognize her writing or can
8 you tell this is hers?

9 A Sure, it is hers.

10 Q And if you read it you can deduce it, I
11 think, too. Look where it's highlighted there. Have
12 you reviewed this part of the record where Nurse
13 Hackworth indicates that no sperm was found by Dr.
14 Dedolph and Carole Phillips, do you see that?

15 A I do see that.

16 Q How would you describe the correctness of
17 that statement?

18 A It's not correct.

19 Q And why is it not accurate?

20 A Because I didn't examine the slide to look
21 for any sperm on it.

22 Q And how do you know that?

23 A Well, both of us wouldn't have examined it.

24 Q So it's usually just a one-person thing?

1 A Usually it's just me, but this time to hasten
2 things along and to keep me attending to all the other
3 things going on in the emergency department at this
4 time, the medical lab did it.

5 Q When you treat a rape victim for sexually
6 transmitted diseases, possible pregnancy, you do that
7 kind of thing, don't you, in the emergency room?

8 A Yes.

9 Q Is that done regardless of the motile sperm
10 result?

11 A Regardless, yes.

12 Q So what's the usefulness of the motile sperm
13 test?

14 A If you see motile sperm, then you know that
15 there was a vaginal intercourse within a certain
16 specified time.

17 Q So the experience will only be alive and
18 tails, in other words, motile for what, certain hours or
19 days, or did you know?

20 A What I was taught was about 72 hours, but I'm
21 not -- I'm not a hundred percent, but it's a certain
22 period of time, it's more than just hours.

23 Q Is there a difference between sperm being
24 alive or living in a vaginal cavity, still able to live

1 and be able to impregnate a female versus motile sperms
2 where the tails are still functioning, are you aware of
3 that?

4 A Uh-hum.

5 Q So which happens first? Does the sperm die
6 or do the tails fall off before it dies?

7 A I don't know.

8 Q Okay.

9 A No.

10 Q In this case, because medical technologist
11 Carole Phillips has indicated in her writing she's
12 already testified that she found no semen, you're
13 confident that you didn't also make a test in this case?

14 A I did not make a test in this case.

15 Q You're confident?

16 A I'm confident of that.

17 Q You can deduce that from the medical records,
18 can't you?

19 A Yes. And the fact that I would not have
20 wasted the time to go down there and do a test that a
21 qualified person had already done. It's busy at
22 midnight at Saint Mary's in August.

23 Q I got you. So when Nurse Hackworth wrote
24 that you can say confidently that that was not you that

1 did this determination.

2 A Yes.

3 MR. CLIFTON: Okay. I'll take those back from
4 you. Thank you, sir. No further.

5 THE COURT: Thank you. Mr. Lindsay.

6 CROSS-EXAMINATION

7 BY MR. LINDSAY:

8 Q If I might? You had a busy evening?

9 A It's typically busy in August at night.

10 Q From your own testimony and from just
11 reviewing the notes, it's pretty obvious you had a busy
12 night, I mean, just from looking at the records?

13 A Right.

14 Q Because you, in fact, would have done the
15 examination if you had the time?

16 A Correct.

17 Q And so that kind of gives us a red flag that
18 it was a busy night?

19 A Yes.

20 Q Do people make errors when they're busy?

21 A Yes.

22 Q It's human quality, isn't it? It's life?

23 A It is, yeah.

24 MR. LINDSAY: Thank you very much, your Honor.

1 THE COURT: Thank you. Mr. Clifton.

2 REDIRECT EXAMINATION

3 BY MR. CLIFTON:

4 Q Do you know of any errors you made in making
5 the swabbing of the vaginal cavity or the microscopic
6 slide or smear?

7 A I do not believe I made any errors.

8 Q So you can be busy and not make errors also;
9 is that correct?

10 A Right, yeah.

11 Q And here, in fact, there was no sperm found,
12 right?

13 A Right.

14 Q According to Carole Phillips?

15 A Yes.

16 MR. CLIFTON: Thank you. No further.

17 THE COURT: Thank you, Dr. Dedolph, you're
18 excused. Please call the next witness.

19 MR. CLIFTON: Thank you.

20 THE COURT: Ma'am, please step forward, face
21 the clerk, raise your right hand and be sworn as a
22 witness.

23 Face this lady, please.

24

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PEGGY STOUT,

called as a witness by the State herein,
being first duly sworn, was examined and
testified as follows:

THE COURT: Please take the witness stand and
be seated.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. CLIFTON:

Q Ma'am, please tell us your name.

A My name is Peggy Stout.

Q Are you currently retired?

A Yes, I am.

Q From what occupation?

A As being a police officer.

Q And go ahead and spell your last name for the
record.

A S-t-o-u-t.

Q And when you were a police officer what
agency would that have been for?

A The last place I worked was Sparks Police
Department full time. Well, actually Reno City
Attorney's Office.

1 Q Before Reno City Attorney was that Sparks
2 Police Department?

3 A Before Reno City Attorney was legislative
4 police. Before that Kelly, and before that was the
5 Sparks Police Department.

6 Q I need to go all the way back to Sparks
7 Police Department. Would that include 1994?

8 A Yes, it did.

9 Q Were you an officer or detective?

10 A I was an officer.

11 Q Directing your attention to case number
12 94-9292, I'm not sure if you will recollect this from
13 the case number, but you remember being involved on the
14 morning of August 10th, 1994, in an investigation
15 surrounding Candace Inman?

16 A Yes. It was on -- it was actually midnight,
17 so it was 9th and 10th.

18 Q So what --

19 A 9th and 10th. It was midnight.

20 Q So midnight going into the 10th --

21 A Right.

22 Q -- of August? And that would include the
23 address of The Stonegate Apartments, did you know, 445
24 Sullivan?

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA
Plaintiff,

vs.

FRANK PECK,
Defendant.

Sup. Ct. Case No. 65691
Case No. CR06-2580
Dept. 6

RECORD ON APPEAL

VOLUME 4 OF 13

DOCUMENTS

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 JULY 18, 2014

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Code No. 4185

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

-oOo-

STATE OF NEVADA,)	
)	
Plaintiff,	)	Case No. CR06-2580
)	
vs.	)	Dept. No. 6
)	
FRANK MILFORD PECK,)	
)	
Defendant.)	
_____)	

PARTIAL TRANSCRIPT OF PROCEEDINGS
EXAMINATION OF RENEE ROMERO

TRIAL

MAY 8, 2009

RENO, NEVADA

Reported By: Rebecca S. Martinelli, CCR No. 212

APPEARANCES:

For the Plaintiff:

DAVID W. CLIFTON
Deputy District Attorney
Reno, Nevada

For the Defendant:

PRO PER

BRUCE LINDSAY
Attorney at Law
Reno, Nevada

I N D E X

STATE WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>REXCROSS</u>
RENEE ROMERO	4	54	57 62 66	64 65

1 RENO, NEVADA, FRIDAY, MAY 8, 2009, 2:06 P.M.

2 -oOo-

3
4 THE COURT: Mr. Clifton, call your next witness.

5 MR. CLIFTON: State's next witness will be
6 Ms. Renee Romero.

7 Ask you to step forward, face the clerk, raise
8 your right hand.

9 THE COURT: Ms. Romero, please take the witness
10 stand and be seated.

11 RENE E ROMERO,

12 called as a witness by the State,
13 who, having been first duly sworn, was examined
14 and testified as follows:

15
16 DIRECT EXAMINATION

17 BY MR. CLIFTON:

18 Q Take a moment to catch your breath.

19 Did you just run here from the airport?

20 A Yes.

21 Q Take a moment, get comfortable, and tell us your
22 name.

23 A I'm Renee Romero, R-o-m-e-r-o.

24 Q Your employment or occupation?

1 A I am the director of the Washoe County Sheriff's
2 Office, Forensic Science Division.

3 Q Would that include the crime lab?

4 A Yes. That is the crime lab.

5 Q Where did you obtain any post-high school
6 graduate degrees?

7 A I have a bachelor's degree in chemistry with the
8 fulfillment of a bachelor's degree in forensic science
9 from Michigan State University, and a master's degree in
10 cell and molecular biology from the University of Nevada,
11 Reno.

12 Q Can you tell me the years?

13 A Pardon me?

14 Q Can you tell me the years you obtained those?

15 A I graduated from Michigan State in 1988, and from
16 UNR, I believe it was '94.

17 Q After you got your bachelor of science from
18 Michigan in '88, did you have an opportunity to come to
19 Nevada and work here?

20 A Yes. I was hired at the crime lab in March of
21 1989.

22 Q Before you obtained your master's?

23 A Yes.

24 Q So while you had your BS -- and what was -- in

1 molecular --

2 A From Michigan State, it's in chemistry. And I
3 completed two degrees at the same time, so you don't
4 receive two bachelor's, because I didn't have enough
5 credits. So it's a bachelor of arts and chemistry with
6 the fulfillment of a bachelor of science in forensic
7 science.

8 Q Why don't you tell us what the master's was in,
9 again.

10 A It's a master's of science in cell and molecular
11 biology.

12 Q And you obtained that or going to school while
13 working at Washoe County?

14 A Yes.

15 Q When you started with Washoe County in
16 approximately '89, what was your title? What were you
17 doing?

18 A I was hired as a criminalist. And for the first
19 two-and-a-half years of my employment there I was hired
20 into the trace evidence section.

21 And this was when DNA was first coming along in
22 our crime lab, as well as many others, and the individual
23 that was bringing DNA along wasn't enjoying it, and I
24 wasn't enjoying trace evidence so much, and we were

1 fortunate enough to be able to trade jobs. And they were
2 both at the criminalist level, so after a few years in
3 trace evidence, I was able to move into the DNA section.

4 Q And sounds like you were satisfied with that
5 move. You wanted that move.

6 A Yes.

7 Q So basically you started with DNA in its infancy,
8 at least at Washoe County Crime Lab.

9 A Yes, I did.

10 Q Now, DNA being in its infancy, DNA has been
11 around, or least discovered and researched, investigated
12 and examined, for a lot longer than back to 1989, correct?

13 A Correct.

14 Q So where would you say the Washoe County Crime
15 Lab was with respect to its involvement in DNA when you
16 started, and how progressive they were compared to the
17 rest of the country, would you say?

18 A I would say our crime lab was involved early on
19 in bringing the first technology into our laboratory. We
20 were also one of the pilot laboratories for what was
21 starting as the national DNA database.

22 Q I was a district attorney back then, too, when
23 you started, and I remember -- actually, before you
24 started -- samples would be sent out, that needed to be

1 researched or examined, to Quantico, Virginia, or the FBI
2 lab back East, or -- in the mid-'80s. Did you know about
3 that or hear about that?

4 A For DNA testing?

5 Q Yeah. When it first started.

6 A I can't speak to that.

7 Q Okay. How about with respect to Washoe County,
8 then, when you were starting, were you able to do some
9 type of limited DNA testing?

10 A When I was hired in 1989, no, we were not doing
11 testing on casework; research had started.

12 Q Right.

13 A About a year after that.

14 Q So before '89, if we needed something compared to
15 samples, we'd either have to send it out somewhere else or
16 what?

17 A I don't think it was available.

18 Q I see. So we were starting at the forefront?

19 A Yes.

20 Q Got it. And in 1989, then, describe what type of
21 technology was available to you or to Washoe County to do
22 a DNA comparison.

23 A The type of technology that we were starting to
24 research was a technology that has the acronym RFLP. And

1 it's a technology that looks at areas of our DNA that
2 repeats, but they're very long areas, they're very large
3 pieces of DNA; therefore, to do that type of technology,
4 you needed a large sample size.

5 And the way we were doing it, it took us about
6 three months, actually, to complete one case. We were
7 using radioactivity to detect the DNA, so there was a
8 development time for that to react.

9 Q And then DNA was progressing from thereon-after
10 in your career at the Washoe County Crime Lab?

11 A Yes.

12 Q The technology to compare samples?

13 A Yes.

14 Q I need to then go from 1989 to approximately
15 1994, the Washoe County Crime Lab was accredited by
16 American society of crime labs board of directors,
17 correct?

18 A Laboratory accreditation board, yes.

19 Q Even before that you were still doing DNA
20 comparisons, correct?

21 A I'm trying to recall when it first started, and,
22 you know, I'm sitting here and I can't remember if it was
23 1990 or 1992 that the first case was started. So yes, it
24 was quite likely a case was started prior to that date.

1 Q Tell us what that accreditation means to the
2 laboratory. What did it mean in 1994?

3 A It was a significant process. It's a group of
4 people coming through the laboratory, looking at all
5 areas, all aspects that the crime laboratory does at that
6 time, with the exception of crime scene investigation.
7 They didn't accredit that until later.

8 And it involves them looking at our proficiency
9 tests, making sure we're meeting the proficiency test
10 guidelines, looking at proficiency test records, looking
11 at our casework.

12 And there's a set of guidelines that this
13 particular agency has. But not only do they apply those
14 guidelines, they look at our own to make sure we do what
15 we say we do; so we have procedures and protocols, and do
16 we do what we say we do. And they look through all our
17 reports, and five per analyst, and check those, and they
18 look at quality assurance and safety, and various aspects
19 of the laboratory.

20 Q Before they were accredited at the lab, could you
21 still do the test and use them in court?

22 A Yes.

23 Q But now they're accredited as a lab, and you're
24 working there still as a criminalist?

1 A No. I am the director now.

2 Q No, in '94.

3 A Yes. Sorry.

4 Q And you were obtaining your master's degree at
5 that time?

6 A Yes.

7 Q So as a criminalist in 1994, were you familiar
8 with a person by the name of Maria Fasset?

9 A Yes.

10 Q As director now in 2009, are you her supervisor?

11 A Not directly, no.

12 Q But ultimately?

13 A I'm in her chain of command, yes.

14 Q Then you're the director. Who is above you?
15 Sheriff Haley or --

16 A I report to Undersheriff Vinger.

17 Q Okay. So do you have occasion to look at Maria
18 Fasset's work, be familiar with her -- over the years, not
19 just 2009 -- but from 1994 up to now have you seen her
20 work product?

21 A Yes, I have.

22 Q Are you comfortable with it?

23 A Yes.

24 Q She's been working there since the '80s, also,

1 correct?

2 A That's correct.

3 Q I need to direct your attention to Exhibit No. 24
4 in laboratory case number -- Exhibit 24 is in court here,
5 but laboratory case number L2145-94.

6 Are you familiar with that particular laboratory
7 case number?

8 A Yes, I am.

9 Q Have you worked in that particular case?

10 A Yes, I have.

11 Q With the lab, with Washoe County lab, in your
12 capacity as a director or your capacity as a criminalist
13 or both?

14 A As a criminalist.

15 Q And it's also in Sparks Police Department case
16 number, they're the investigating agency, their number
17 94-9292.

18 Are you still familiar with this case?

19 A Yes.

20 Q Exhibit No. 24, I'll purport to you, is a report
21 from Ms. Maria Fasset dated September 15th, 1994. I'll
22 hand that to you now.

23 Have you seen that before?

24 A Yes, I have.

1 Q Take a look at that. On the top you see the
2 laboratory case number and whatnot, correct?

3 A Yes, I see that.

4 Q Then under that it says, "Suspect McNaught,
5 Davis."

6 Do you see that?

7 A Yes.

8 Q Who enters that information in, if you know?

9 A The administrative staff. They get that
10 information off of the evidence request form.

11 Q And the evidence request form at this time was
12 requested by whom, or filled out by whom, as far as you
13 know from this?

14 A Based on this, the requesting person was
15 Detective Newhart.

16 Q So he's the one who would actually write the
17 suspect's name, correct?

18 A Yes.

19 Q In the request form.

20 A Yes.

21 Q Can they also write "Unknown"?

22 A Yes.

23 Q They can write whatever they want, I guess.

24 Okay. So at that time he writes Davis McNaught,

1 and then you see the victim's name there, correct?

2 A Yes, I do.

3 Q And you're working this case, and it's the same
4 victim name you've used in your reports; is that correct?

5 A Yes.

6 Q Down lower you'll see, under PS01, the victim's
7 name again, Candace Inman.

8 Do you see that?

9 A Yes.

10 Q There's a typo in the upper one, correct?

11 A Correct.

12 Q So name is Candace -- I'll represent to you she's
13 already testified here in court -- and up above, the
14 spelling is slightly off, correct?

15 A That's correct.

16 Q Still the same case we're referring to, and
17 you're still familiar with this case, correct?

18 A Yes.

19 Q Doesn't change anything as far as the substantive
20 results in any of these reports, to your knowledge?

21 A No.

22 Q As we go down further in her report, she
23 indicates that she tests some vaginal swabs.

24 Are you familiar with where I am, on the last

1 paragraph there?

2 A Yes.

3 Q And she indicates that the vaginal swabs may be
4 sufficient in quantity for limited blood grouping
5 analysis.

6 I'll represent to you these are vaginal swabs
7 from Candace Inman's vaginal vault from August 10, 1994,
8 and Maria Fasset has already testified that she in fact
9 snipped off the tips of the Q-tips, and I think put them
10 in the refrigerator or freezer to preserve them.

11 I want to hand you an envelope that we've had
12 marked as Exhibit No. 22, and tell me if you recognize
13 that envelope.

14 A Yes, I do.

15 Q What does that contain or purport to contain, to
16 your knowledge?

17 A Well, the first thing I see is it contains the
18 chain of custody with my name on it, and it is labeled as
19 containing a reference standard from Candace Inman, and
20 also two vaginal swabs from the kit that was under control
21 number R04014.

22 Q So again, we're still talking about the same case
23 investigation, correct?

24 A Yes.

1 Q And all laboratory reports under that number
2 L2145-94 would be this investigation, correct?

3 A Yes.

4 Q When Ms. Fasset indicates that vaginal swabs may
5 be sufficient in quantity for limited blood grouping
6 analysis, I want you to concentrate on that line, and I
7 want to tell you one other fact that she testified to, and
8 that was that she did a -- she viewed a microscopic smear
9 from Q-tip onto a microscopic slide, the Q-tip being from
10 Candace Inman's vaginal cavity, she viewed them in a
11 microscope at 400 power under a -- with a grid approach,
12 and she found three sperm heads; no more, no less, a total
13 of three.

14 Taking that into account, together with the
15 vaginal swabs from the same person in the same area, and
16 that statement that they may be sufficient quantity for
17 limited blood grouping analysis, do you have any opinion,
18 based upon your education and training, as to whether or
19 not DNA would have been a possibility to test on either or
20 both of those samples, the three sperm heads or this
21 vaginal swab, that may be sufficient in quantity for
22 limited blood grouping analysis in 1994 under the state of
23 the technology in Washoe County Lab?

24 A No. At that time a sample that only indicated

1 three sperm heads from the swabbing would not indicate
2 that there was enough to do the RFLP DNA-type test that we
3 were using at that time.

4 Q Now, the microscopic slide has three sperm heads.
5 The Q-tip swabs are cotton, correct?

6 A Correct.

7 Q They could have more than three sperm heads,
8 correct?

9 A Yes.

10 Q But what we do know from Maria Fasset is that
11 they may be sufficient quantity.

12 What does limited blood grouping analysis mean to
13 you?

14 A That statement means to me that there's not
15 enough there to do DNA testing.

16 Q Have you ever heard of ABO grouping or ABO
17 typing?

18 A Yes.

19 Q Is that referring to blood being A, B or O or AB?

20 A Yes.

21 Q Could that be referring to something like that,
22 that maybe there's enough to do that type of analysis?

23 A It could, or another enzyme test called PGM.

24 Q Do either of those use up the sample, especially

1 if you're dealing with a small amount of sample?

2 A Yes. It could have, yes.

3 Q If you use up the sample, you may never use it
4 for something like DNA. Is that correct, or no?

5 A That is correct.

6 Q But at this time did you make the determination
7 back in 1994 not to test the sample for DNA?

8 A No.

9 Q Would that have been your job or Jeff Riolo's job
10 as DNA criminalist?

11 A No. We did not look at it after Maria determined
12 that it was insufficient.

13 Q Ms. Fasset has had a couple of different titles
14 in the crime lab in the last 25 years, correct?

15 A She's been a criminalist, but she's moved in
16 different sections, yes.

17 Q I knew, as soon as I said that, I was stating it
18 wrong.

19 She's been a criminalist but has gone into
20 different areas such as serology?

21 A Correct.

22 Q What else?

23 A Breath alcohol, and controlled substances.

24 Q And is it because she is not proficient or not

1 good, or is it because she's very good at all three of
2 those?

3 A Just for a change.

4 Q So back in '94 where was she, do you know?

5 A She would have been in serology at that time.

6 Q Would that include testing bodily fluids, doing
7 examinations?

8 A Yes.

9 Q Which is what we're talking about here?

10 A Yes.

11 Q What is your belief as to whether she would be
12 the one or not to have submitted it for DNA testing -- or
13 making that decision, let's put it that way, or whether it
14 be you or Mr. Riolo's?

15 A She may have discussed it with us. I can't
16 recall a conversation. But it would have been her job at
17 that point, if she only saw three sperm heads from the
18 vaginal swab, to not send it to DNA.

19 Q And I didn't mean to trick you by throwing
20 Mr. Riolo in there, because he got hired in 1996, but he
21 said see worked there with UNR, I guess.

22 A You're right. He wasn't there yet.

23 Q At least employed full time, but he might have
24 been going to UNR and working part time.

1 A He was working at UNR, and then there was a
2 period of time that he was working with the sheriff's
3 office bringing on the first technology.

4 Q So '94 this wouldn't be his type of decision.

5 A No.

6 Q It would be yours or Maria's.

7 A Yes. But -- yes.

8 Q And you didn't make that decision on this case?

9 A Not to my recollection, no.

10 Q Do you know if any such test was done from 1994
11 to, say, 2000 -- or through the '90s for either blood
12 grouping analysis or DNA comparison or profiling?

13 A It was not.

14 Q So for whatever reason it was not.

15 Now, if ABO typing were done and you got a
16 result, would it tell you a suspect?

17 A No.

18 Q Describe. How is that different than DNA? Why
19 wouldn't it?

20 A I'm not really understanding your question.

21 Q If you did ABO typing on that sample and you got
22 a result, A or B, do you now have a suspect?

23 A No. You have a blood-typing result.

24 Q Describe that for the ladies and gentlemen.

1 A You would have a result of type A, AB, O, and you
2 would need somebody to compare that to.

3 Q So a lot of people might have A blood or B blood
4 or O blood?

5 A Yes.

6 Q So you haven't narrowed it sufficiently to get to
7 a suspect, correct?

8 A Correct.

9 Q Has DNA technology gotten to that point where you
10 can possibly narrow it to a suspect?

11 A Still have to have something to compare it to.

12 Q Got you. So if you do a DNA test, you get a
13 result of what? What do you call it?

14 A You get a DNA profile.

15 Q Unless you have somebody to compare it to, it's
16 just a bunch of numbers or letters, or whatever it is. A
17 profile.

18 A Yes.

19 Q And they get a graph, an electropherogram?

20 A Yes.

21 Q So in any event or for whatever reason, this
22 sample was not tested until when, for DNA, to your
23 knowledge?

24 A Until the technology changed to technology that

1 has the acronym PCR testing, and areas of DNA that we're
2 looking at are called STRs.

3 Q The standard repeats?

4 A Yes.

5 Q What year or what date was that, if you know,
6 that that became available, that technology, to Washoe
7 County laboratory?

8 A In our laboratory we brought that on line in the
9 year 2000.

10 Q Now, when it came on line, did it cause a
11 floodgate, did it cause an influx of cases to go back and
12 test, or what?

13 A A couple things happened. There were some cases
14 that we, the analyst, recalled that there wasn't enough
15 DNA on, and so we pulled those to call an investigator to
16 see if they wanted them done.

17 And then also we tried to educate the
18 investigators to go back and look at your older cases that
19 you didn't initially get DNA results on and send those in,
20 because now, with this new technology, we can look at much
21 smaller amounts of DNA. We could look at a single hair
22 root, we could look at a bottle rim that had been licked.
23 It really changed the types of samples that we could get
24 DNA results from.

1 Q And they could be smaller samples and still yield
2 results?

3 A Yes.

4 Q After that technology advanced -- it sounds like
5 a significant advancement in DNA; is that correct?

6 A Yes.

7 Q After that advancement in 2000, did there come a
8 point in time the lab, or you yourself, did conduct a
9 DNA-type test on those vaginal swabs there that you
10 have -- what is that envelope, 22? Yellow sticker.

11 A Yes, 22.

12 Q When would that have occurred, or do you have the
13 date?

14 A I signed this out of evidence on 4/23/01.

15 I'm sorry. That doesn't make sense. I signed
16 this out of evidence on 11/26/01.

17 Q I paused there because 4/23 --

18 A Yes. I'm looking at my handwriting. The other
19 time was four twenty-three nine, to show you.

20 Q So November 26, 2001, about a year after PCR was
21 developed at the lab.

22 A Yes.

23 Q Was it requested, or was this one of the random
24 ones you referred to a minute ago?

1 A This was requested.

2 Q By whom?

3 A I believe it was investigator Greta Fye,
4 Detective Greta Fye.

5 Q When you go to get the sample, then, describe
6 where they are, how you find it -- I shouldn't say
7 "they" -- how you find the samples. Is it already stored
8 somewhere, or do you just go to the -- go ahead. Explain
9 that.

10 A Basically an evidence request -- examination
11 request form was submitted to the laboratory, and that
12 triggers a worksheet to be created, tells me there's a
13 request to do this DNA work, and it has a control number
14 on that request.

15 By that, I know to go down to our evidence vault
16 and retrieve this envelope from evidence.

17 Q Now, can you tell by descriptors on that envelope
18 that that sample was prepared or the Q-tips were cut by
19 Maria Fasset?

20 A Her initials appear on this in one area of it.

21 Q Okay. And I think she's already testified they
22 came from the sexual assault evidence kit R04014 for
23 Candace Inman.

24 Does it refer to that on that or not?

1 A Yes, it does.

2 Q And it was from envelope number 5, I believe,
3 vaginal Q-tips or vaginal --

4 A I don't get a specific envelope, I just get that
5 control number and vaginal swabs.

6 Q So you get that sample. On that envelope there,
7 what is it labeled as? What is in it?

8 Oh, I'm sorry. Right there on the back part.

9 A Okay. It says, "Reference standard, Candace
10 Inman, R04014, vaginal swabs times 2."

11 Q So when you open those up -- that up in November
12 of '01, what do you find?

13 A That there's two small envelopes in here, and one
14 of them contains the reference sample from Ms. Inman and
15 the other one contains the vaginal swab tips.

16 Q And what is the reference sample of Ms. Inman
17 utilized for? What is it good for?

18 A That's utilized to develop a DNA profile from
19 her.

20 Q So it's from her blood?

21 A Yes.

22 Q And then the Q-tip without the stick or the head
23 of the Q-tip?

24 A The top portion of the swab stick, yes.

1 Q Now, seven years have gone by from '94 to 2001.
2 Does it indicate what's been done with that
3 sample since Maria Fasset placed it in refrigeration in
4 '94?

5 A No. There is just a chain of custody here.

6 Q Right. Where were you on that list? Where has
7 it gone to from '94 to 2001?

8 A To evidence and to me.

9 Q So it doesn't go back to Sparks Police Department
10 or to the agency or anything like that?

11 A No. We kept the sample.

12 Q So when this investigation became, as what
13 Detective Newhart called stagnant, between '94 and -- it
14 was the 2000s, that sample, according to the chain of
15 custody, stayed locked up in evidence at the lab?

16 A It stayed in evidence at the laboratory.

17 Q According to you, it hasn't been checked out
18 until you checked it out in '01?

19 A Yes.

20 Q Okay. So when you checked it out, you opened it
21 up, you see these things, what do you do with it to
22 determine a DNA profile?

23 A I take them through a process to extract the DNA
24 out of the samples, two different types of processes

1 because these are two different types of samples. One of
2 them has a potential to have sperm cells in it, the other
3 one is a single-source reference sample.

4 So on one of them I obtained a DNA profile from
5 the reference sample, and the other one I performed what
6 is called a differential extraction, where I attempt to
7 obtain two DNA profiles from the vaginal swab: One
8 representative of the sperm fraction, the other
9 representative of the vaginal wall.

10 Q Now, there doesn't have to be two different DNA
11 samples just because it's the vaginal swab itself,
12 correct?

13 A If there was no sperm there, then I would only
14 receive one DNA profile.

15 Q That's what I'm getting at. Vaginal secretions
16 would be a female DNA.

17 A Correct.

18 Q What is it about the testing that Maria Fasset
19 has done that's led you to believe there might be two; in
20 other words, you have to do a differential analysis?

21 A Just based on the fact that she identified sperm
22 heads.

23 Q In the microscopic slide, number one, correct?

24 A Yes.

1 Q And then also in the Q-tip of the acid
2 phosphatase.

3 A Acid phosphatase is a presumptive test.

4 Q And she said she had a positive on that. Are you
5 aware of that?

6 A I couldn't tell you that based on that report.

7 Q She's already testified. So if she has an acid
8 phosphatase test, I think it was weak, it was a weak
9 positive result, and you have three sperm heads on the
10 vaginal slide, does that give you some indication that
11 there may be two DNAs here?

12 A Yes.

13 Q When you do the test, does it make any difference
14 in the computer or to you, as a DNA analyst, whether you
15 have one or two?

16 In other words, say you didn't do the
17 differential test and you just did some regular testing
18 with DNA, what would it show?

19 A If I'm following you correctly, if I didn't do
20 the differential examination on the vaginal swab and there
21 was sperm present, I would most likely end up with a
22 mixture of DNA of the two different people in one result.
23 If there was no sperm present, then I would just get a DNA
24 profile indicative of the vaginal wall.

1 Q What I'm getting at is ways to show or check and
2 balances here. Even if you did not know to do
3 differential analysis and you did tests regularly, you
4 said you would probably come up with a mixed DNA sample or
5 mixed profile.

6 Is that immediately apparent to you when you look
7 at it, or do you get some stranger's DNA? Do you get a
8 profile of some other person or do you get a profile
9 showing that you've got more than one here?

10 A I would get a profile that shows more than one.

11 Q Wouldn't that tell you, then, that maybe you
12 better do the differential analysis?

13 A Oh, you need to do it before that. You're done
14 at that point in time.

15 Q Oh, so you went right to the differential
16 analysis, and you had indicators that you should anyway.

17 A Yes.

18 Q Did you have any trouble doing that test?

19 A No.

20 Q Any trouble following protocol?

21 A No.

22 Q Any trouble with the machinery, the chemicals or
23 anything about the test?

24 A No.

1 Q Did you get a result?

2 A Yes.

3 Q Did you find two separate DNAs?

4 A Yes, I did.

5 Q Did you find profiles for a female and a male?

6 A Yes.

7 Q And you can detect that?

8 A Yes.

9 Q The female extract or the female DNA profile, did
10 it match anybody?

11 A That matched Candace Inman.

12 Q From her blood or her reference sample?

13 A Yes.

14 Q And the remainder that you have left, can you
15 determine it's one and only one male DNA profile?

16 A Yes.

17 Q So you don't have a mixture of two or three
18 males.

19 A No, I do not.

20 Q And that's something that is immediately apparent
21 to you in the electropherogram?

22 A Yes, it is.

23 Q So when you do the male section of this DNA
24 profile and you get a profile, you get a result, do you

1 have a match? Do you know who the suspect is?

2 A No.

3 Q Similar to what I asked you before, that you just
4 have a profile?

5 A Correct.

6 Q So what can you do with that profile now?

7 A I can put it into the DNA database.

8 Q Is that local, national, state, both, all three?

9 A All three.

10 Q Did you do that?

11 A Yes, I did.

12 Q What year was that, or date?

13 A I put that in -- looking at my notes, if I may --
14 in 2001, at the end of my analysis in December.

15 Q I hope it was before November.
16 So it was after you did the 11/26 examination in
17 '01, and it was in December of 2001.

18 A Yes.

19 Q So pretty much right away after you get your DNA
20 results.

21 A Yes.

22 Q No reason to hold off on it?

23 A No.

24 Q I mean, the database was up and running by then?

1 A Yes, they were.

2 Q When you put it in the databases, national, state
3 and local, how often is it checked in case the database is
4 expanded or updated?

5 A At that point I believe it was being checked on a
6 monthly basis, now it is checked weekly.

7 Q And how would you determine whether you get a
8 match or a hit?

9 A It would show up electronically on the computer
10 system that there was a match, and that we need to
11 investigate and see if that was a true match.

12 Q Do you have to be there present to see it, or do
13 bells and whistles go off?

14 A No. Right now what happens is we upload our data
15 every Friday to the national system, and Monday morning
16 just come in and check the computer and look for a match
17 report, basically.

18 Q How about in '01 or '02?

19 A It's not as sophisticated. I can't recall
20 exactly how it happened then.

21 Q Could it be, though, that you went for a year and
22 you had a hit or a match and you didn't notice it on your
23 computer database?

24 A No.

1 MR. LINDSAY: Objection; speculation.

2 THE COURT: Don't speculate. You may answer
3 without speculating, Ms. Romero.

4 BY MR. CLIFTON:

5 Q Why is that not possible?

6 Did you answer? I'm sorry.

7 A I said no.

8 Q Why would that be not possible?

9 A Because once the match shows up, you'd look at it
10 and determine what to do next.

11 Q Was that part of your job and Mr. Riolo's job?

12 A Mr. Riolo's job.

13 Q When did you become director?

14 A Officially last June.

15 Q Of '08?

16 A Yes.

17 Q Did you go directly from criminalist to director,
18 or was there a chief or assistant anywhere?

19 A I also held the role, and still do, as DNA
20 technical leader, and was also a supervising criminalist.

21 Q So this sample DNA profile of a male from her
22 vaginal swabbing is put in the system in November and
23 checked monthly back then.

24 Do you know when Jeff Riolo got a hit on it?

1 Have you seen that in his report?

2 A I have seen in his report that he got a hit on
3 it.

4 Q Before he gets a hit now, we didn't have any
5 other hits before that, correct?

6 A Correct.

7 Q So that means it's being checked monthly and
8 we're not getting any matches.

9 A That's correct, on this case.

10 Q And he indicated that in 2002 Mr. Frank Peck's
11 sample became part of the database or databases.

12 Are you aware of that?

13 A I believe it became part of the database in 2003.

14 Q 2003. I think you're right. 2003.

15 So approximately a year to two years has gone by
16 with no matches, and in 2003 Mr. Riolo gets a hit or a
17 match.

18 A Correct.

19 Q And that, I think, was April. Does that sound
20 right?

21 A I believe his report was issued in April 2003.

22 Q Okay. When he gets that match, and he testified
23 he confirmed it, then he requested that it be confirmed
24 again, I guess, another way, with a direct chain of

1 custody.

2 Are you aware of how that works?

3 A Yes.

4 Q Is that how you operate, the same way?

5 A Yes, we do.

6 Q So the entire lab, that's the protocol?

7 A Yes.

8 Q He then requests to whom to get another sample
9 from Mr. Peck?

10 A He would have written what we call an
11 investigative lead report to Sparks PD requesting them to
12 collect an evidentiary sample from Mr. Peck.

13 Q And either late 2004 or early 2005, did you get a
14 request from Greta Fye, according to your reports and your
15 documentation, to test this sample now obtained from a
16 seizure order from Mr. Peck?

17 A I did get two evidentiary samples, both late in
18 the year of '04 and '05. I'd have to look at my notes to
19 tell you if they came from Greta Fye. I just know it's
20 Sparks PD.

21 Q Do you recognize from your report there the
22 initials LB1 and LB3 as identifying documentation or
23 identifying features of those samples from Mr. Peck?

24 A They were labeled that way. The first one was

1 labeled LB1, the second was LB3.

2 Q So LB1 would be from '04 that you received or
3 tested in '05?

4 A Yes.

5 Q All right. Exhibit No. 10, can you describe what
6 that is?

7 A This is labeled as LB1 under the Sparks Police
8 Department case number 94-9292, and it states it's a swab
9 box containing buccal swabs from right cheek of Frank M.
10 Peck.

11 Q And that's LB1. Where did you first see that?
12 You're on the chain of custody, I take it.

13 A Yes.

14 Q Where did you first obtain it?

15 A From --

16 Q Where and when.

17 A From our evidence section on January 4 of 2005.

18 Q How does it get to your evidence section, if you
19 know the protocol?

20 A Sparks PD brings it over.

21 Q Does that appear as though that occurred,
22 according to that chain of custody? Is that how it would
23 have come to you in this particular case?

24 A Yes.

1 Q Then when you get it, is it in a sealed
2 condition, or do you have evidence techs open it, or what?

3 A It's booked into evidence in a sealed condition.
4 The evidence technicians do not open it. I received it in
5 a sealed condition.

6 Q So chain of custody is being maintained on
7 Mr. Peck's buccal swab from his cheek in this sample,
8 correct?

9 A Yes.

10 Q When you opened it, how many Q-tips did you find?

11 A I would need to refer to my notes. I believe
12 two.

13 Q That's fine. It's generally more than one,
14 though?

15 A Yes.

16 Q That's customary?

17 A Yes.

18 Q Do you test them both or do you save one and test
19 one?

20 A We do not test them both, we save one.

21 Q When you test one, do you use the whole thing up
22 sometimes, or do you only try to use part of it?

23 A Sometimes we use half.

24 Q In this particular case, do you recall?

1 A I would need to look at my notes.

2 Q It's not that pertinent.

3 So you take one Q-tip swab out, and how do you
4 test it? Do you swab a smear onto a microscope-type
5 testing, or do you put it right into the computer for DNA?

6 A I basically cut the white, fluffy part off of the
7 swab, put that into a tube, and start the DNA process to
8 extract the DNA off of that swab.

9 Q So for these swabs that are from the saliva and
10 the cells and skin on the inside of the cheek, correct,
11 and also you have things like the vaginal swab, which is
12 vaginal extract, and possibly semen extract, are they
13 tested the same way in the DNA procedure? Do they both
14 just get cut off and put into the machine?

15 A They start out the same way in that I cut a
16 section of the swab off or I cut a section of the blood
17 swatch off and put that into a tube and go through a
18 several-step process.

19 Q Would it be a different step process of
20 extraction for something -- buccal swab from the cheek
21 versus a vaginal swab at this point? Is it a different
22 extraction or is it the same?

23 A At one point it turns into a differential
24 extraction for the vaginal swab. It starts out I put them

1 in tubes, if I am trying to follow you.

2 Q That's correct.

3 So they're tested the same way up to a certain
4 point.

5 So when the point changes, you said, is the
6 differential analysis because the vaginal swab, you
7 had reason to believe it had more than one DNA type in
8 there, correct?

9 A That's correct.

10 Q Whereas the swab from Mr. Peck you expected to be
11 one?

12 A Yes.

13 Q So was there anything unusual or not customary
14 about that particular testing process on your part?

15 A No.

16 Q Did you gain a result?

17 A Yes, I did.

18 Q You're testing now his buccal swab sample from
19 his cheek and you got a DNA profile.

20 A Yes, I did.

21 Q Did you compare that DNA profile to anything?

22 A I compared that to the DNA profile from the
23 vaginal swab.

24 Q And your result?

1 A I found that the DNA profile from the Frank Peck
2 reference standard matched the sperm fraction DNA profile
3 from the vaginal swab.

4 Q This is the first and only match you've had --
5 I'm sorry strike that.

6 This is consistent with Jeff Riolo's match and
7 confirmatory match from his database sample, Frank Peck.
8 Am I correct?

9 A Yes. That is correct.

10 Q Is there a need to or do you ever go back and
11 compare Frank Peck's known saliva through this chain of
12 custody approach versus the database sample that Mr. Riolo
13 used?

14 A In effect, you are doing that because you have
15 already made that initial comparison with the database
16 sample to the vaginal swab and had stated that is the
17 same; therefore, it follows that if the next sample is the
18 same, they're all equal.

19 Q So if I'm following you right, we have the
20 vaginal extraction of the male portion of that Q-tip swab
21 from Candace Inman, you have Mr. Peck's sample from the
22 database that Mr. Riolo analyzed, and your sample now, and
23 all three are the same profiles?

24 A That is correct.

1 Q Now, you have another one. It's No. 11. I don't
2 know if I gave it to you or not.

3 No. 11, same types of questions: What is this
4 and when did you first see it?

5 A This is labeled LB3, and it's under the Sparks
6 Police Department case number 94-9292, and it is buccal
7 swabs from Frank Peck, and I checked this out of our
8 evidence on January 24th of 2006.

9 Q LB3 -- do you know Linda Brown from Sparks Police
10 Department? Have you met her?

11 A I have met her, yes.

12 Q Those are her initials?

13 A I'm not familiar with her handwriting.

14 Q No. Linda Brown, LB --

15 A Right. Yes. Those are her initials, yes.

16 Q I am not saying she signed, I don't need to ask
17 you if that's her signature.

18 Okay. LB3 is from approximately a year later,
19 correct?

20 A Yes.

21 Q From LB1.

22 Same process? You can tell there that you've
23 seen this and been on the chain of custody?

24 A Yes.

1 Q Go through the same testing process?

2 A Yes, I did.

3 Q It's a year later now. Was it any more advanced,
4 or are we worried about anything like that?

5 A No change.

6 Q Mr. Riolo said something about he had 13 DNA
7 characteristics that they tested.

8 Has it been expanded up to 15? Do you know what
9 I'm talking about?

10 A Yes. There was a change in amplification kits
11 that we utilize. We went from a two-step process, where
12 we had to use two separate amplification kits in order to
13 get the results of all 13 areas of DNA, and that was
14 evolved to one kit to get all 13 areas. And then,
15 additionally, the manufacturer put two more areas in that
16 kit.

17 Q And that's based on technology advancing in DNA?

18 A Yes.

19 Q Even with 13 characteristics, was it sufficient
20 to get a match?

21 A Yes.

22 Q And under 15, now, I guess it's more
23 discriminate, even easier to come up with a match? You
24 have more things to test? I don't know how else to ask

1 it.

2 A It's still the 13 characteristics that are
3 frequently searched in the DNA database. I am not sure
4 what you're asking.

5 Q Don't worry about it.

6 Under either approach, would you expect to get
7 the same result from a particular sample? In other words,
8 one may be more discriminate than the other, but you still
9 get the same profile?

10 A Yes.

11 Q If you use one sample and test it the way you did
12 it years ago and the way you do it today, both under PCR,
13 one with 13 characteristics and one with 15, the same
14 blood and the same saliva will come up with the same
15 profile?

16 A Yes. But you have two additional areas on the
17 second test, two additional results.

18 Q Did you have those you additional results in the
19 '04 and the '05 samples? Your test would be '05 and '06.

20 A Yes, I believe so.

21 Q So little more technology, it's advanced now, you
22 run the test on this one, too. What is your result?

23 A My result is the same. The second sample that I
24 received also matched the sperm fraction from the vaginal

1 swab as well as the previous reference sample.

2 Q So if I'm counting correctly now, we have a total
3 of five at your lab and they're all consistent, and the
4 exact same DNA profile, vaginal swab, male extract.
5 Mr. Riolo's two and the two you did.

6 A But Mr. Riolo would have tested the same sample.

7 MR. LINDSAY: Twice.

8 BY MR. CLIFTON:

9 Q Twice, correct. I hear you.

10 So we have five tests, but one Mr. Riolo was on
11 the exact same sample.

12 A Okay.

13 Q Well, four tests. I'm sorry. The first was just
14 a sample from the swab.

15 So four more times we're comparing to that.
16 Mr. Riolo's are two times on the same sample.

17 A Yes. That is correct.

18 Q So what is your opinion about whether this
19 confirmatory test that was requested by Mr. Riolo did in
20 fact confirm that Mr. Peck was the source of the DNA on
21 that vaginal swab of Ms. Candace Inman?

22 A My analysis of the samples of Frank Peck and the
23 vaginal swabs show that he is the source of the DNA of the
24 sperm fraction on the vaginal swab.

1 Q Mr. Riolo mentioned something about 1 in 500
2 billion. I think he said rarer than 500 billion.

3 Is that a threshold or something?

4 A That is a threshold at our laboratory. Once we
5 obtain a matching DNA profile, the next step is to
6 determine how often we would expect to see that DNA
7 profile.

8 And when we reach a statistical frequency of
9 rarer than 1 in 500 billion, then we make the
10 determination that that individual is the source of the
11 DNA from the crime scene sample.

12 Q Unless he has an identical twin?

13 A Unless there is an identical twin, correct.

14 Q If I could rule out identical twin here, what is
15 your opinion about Mr. Peck?

16 A My opinion is that, based on my analysis, he is
17 the source of the DNA from the sperm fraction from the
18 vaginal swab of Candace Inman.

19 Q When Mr. Riolo requested a confirmation or that
20 Sparks PD should do the confirmation, has that been done,
21 in your opinion now?

22 A Yes.

23 Q More than once?

24 A Yes.

1 Q And both times confirmed the same result?

2 A That is correct.

3 Q Thank you.

4 How important is it to refrigerate samples?

5 Sometimes we have to bring them to court and stuff and
6 they're sitting at room temperature. Can you describe
7 that?

8 A Refrigeration, freezing is the best preservation
9 for biological evidence, but we have learned over time
10 that it actually can be preserved, basically, at room
11 temperature in an office-type environment, and it would be
12 fine as well.

13 Q Haven't you in fact seen samples on cases we have
14 worked on together where there have been samples found
15 outside on concrete, bloodstains, samples like that out in
16 the sun, sometimes the rain, if it's dry, and you still
17 get DNA off it?

18 A That is correct.

19 Q So room temperature wouldn't necessarily degrade
20 DNA for any period of time to where you think you
21 automatically wouldn't be able to get a result?

22 A No. I don't believe that would happen.

23 Q There are some things that could affect it, like
24 extreme heat, correct?

1 A Extreme heat, high humidity and mold.

2 Q Did you have any of those in any of these tests,
3 that you're aware of, present?

4 A I did not.

5 Q Is there anything about the protocol that you can
6 think of that could have affected the trustworthiness, the
7 veracity of these results?

8 A No.

9 Q There's one more report that I've got to refer
10 you to where you tested stains-on-skin sample, which is
11 your report number L2145-94-7 and -9.

12 Are you aware of this report?

13 A Yes. I have a copy with me.

14 Q Directing your attention to the envelope number
15 3, which was from the evidence kit R04014 from Candace
16 Inman, the same sexual assault kit you referred to before.

17 Did you have occasion to review and examine the
18 contents of envelope 3?

19 A Yes, I did.

20 Q I'll hand you Exhibit No. 9-A at this time, and
21 tell me if that looks familiar.

22 And let me take those three back from you,
23 please. Go ahead.

24 A Yes, it does. This has the identifying markers

1 on it of R04014, envelope number 3, stains on skin, and my
2 initials appear on it, as well as our laboratory number
3 and the date that I examined it.

4 Q What date was that?

5 A 12/22 of 2004 is when I started.

6 Q Who made the request, or is this some other way
7 you came to examine this?

8 A Based on my report, it is also by the Detective
9 Greta Fye.

10 Q Do you know if it came in at the same time as one
11 of the others or not?

12 A I received it in 2004.

13 Q Okay. When you looked at it in 2004, what were
14 you requested -- or what did you compare it to as far as
15 DNA profile?

16 A At the end of 2004 and into 2005, I did this
17 analysis, and what I did was I extracted DNA from the
18 stains-on-skin sample to develop a DNA profile, and I
19 compared that DNA profile to the reference samples that I
20 previously obtained DNA profiles on in this case that was
21 Inman, and then also it had, actually, the Frank Peck
22 sample at the same time on this analysis.

23 Q So the stains on the skin, were you familiar with
24 Maria Fasset's previous report that we already talked

1 about? I already took it from you. I'm sorry.

2 But were you aware of the fact that she tested it
3 for semen and got negatives?

4 A Yes, I am.

5 Q So when she gets negative for semen, what does
6 that tell you about whether you should test it for two
7 DNAs or one?

8 A If there's been no semen sperm cells identified,
9 then I would not perform the differential extraction.
10 Because the only types of cells that can be separated are
11 sperm cells. You can't separate blood cells from saliva
12 cells or skin cells. They all have a similar-type
13 coating. Sperm cells have a tougher coat around them, so
14 the differential extraction process you can break open
15 everything except for the sperm cells, and then go back
16 and break open the sperm cells.

17 So since there was no indication of sperm cells
18 on this sample, I did not do a differential extraction.

19 Q Interesting. So you do your regular DNA testing,
20 but isn't it possible it could have more than one person's
21 DNA?

22 A Yes, it could.

23 Q So explain how -- does that cause any
24 complications, or how does that come up?

1 A If we have what I would call an intimate sample,
2 being that that would be a sample taken directly off a
3 person's body -- maybe they have been licked or kissed or
4 something, for example -- that area could be swabbed or
5 take some gauze and wipe it.

6 And from that I could perform a DNA test. And I
7 would expect to see some DNA from the individual's body
8 that was taken from, so the victim, and then I would be
9 able to determine if there was a foreign DNA profile --
10 when I say "foreign," I mean foreign to the victim -- and
11 I could look at a mixture and determine if there was DNA
12 foreign to the victim.

13 Q Do you get an electropherogram from this type of
14 testing, too?

15 A Yes, I do.

16 Q In that electropherogram, then, are you able to
17 extract out Candace Inman's DNA?

18 A Yes. It's a single electropherogram, but you can
19 use her reference sample to determine what contributions
20 she's making to the mixture.

21 Q Okay. And by electropherogram, in case it's not
22 clear -- let's just go ahead and go back to a few on this
23 screen.

24 Are these the electropherograms that you see on

1 your monitor there?

2 A Yes.

3 Q These are portions of the electropherograms?

4 A Yes.

5 Q So is it safe to say that the electropherogram
6 that you're getting is indicating Mr. Peck's DNA profile
7 are the same in all these tests?

8 A They're not exactly the same.

9 Q How do you explain that?

10 A Because the electropherogram from the stains on
11 skin is a mixture of DNA.

12 Q No, no. I meant the other -- meant --

13 Okay. I'm done with that question.

14 Are you able to determine a foreign DNA to
15 Candace Inman in this stains-on-skin sample?

16 A Yes, I am.

17 Q I was talking about the other ones you did
18 before. Say the last two, from the seizure orders of '04
19 and '05, did those two electropherograms look the same?

20 A Yes, they did.

21 Q Those would be exact DNA profiles, mirror images
22 of each other, or if you put one on top of the other?

23 A They would not be mirror images, they'd be the
24 same.

1 Q The same. Okay. Mirror images, I know, is
2 reverse.

3 This one, then, the stains on skin, it's not
4 differential analysis.

5 Does it take a subjective mind to differentiate
6 them out or is it the computer that does it?

7 A Well, you do get a computer printout.
8 Electropherogram is a computer printout that indicates the
9 size of the DNA at each location, but then it takes human
10 eyes to evaluate the profile.

11 Q Were you able to do that?

12 A Yes.

13 Q Based upon your training and experience with
14 these electropherograms, what was the result that you came
15 up with?

16 A On the stains on skin?

17 Q Yes.

18 A I determined that, based on my analysis in
19 comparing the foreign DNA profile from the stains on skin
20 to the reference samples in this case, that Mr. Peck is
21 the source of the DNA that was foreign to Ms. Inman on the
22 stain-on-skin sample.

23 Q Were you able to determine that a frequency of
24 more than 1 in 5 -- rarer than 1 in 500 billion is the

1 frequency?

2 A The frequency of occurrence in the matching DNA
3 profile was rarer than 1 in 500 billion, yes.

4 Q And that allowed you to deduce Mr. Peck as the
5 source?

6 A That is correct.

7 Q Frequency of occurrence in the DNA profile?

8 A Yes.

9 Q I'd rather use your words than try to paraphrase
10 you.

11 Can you click the clicker there to the arrow that
12 goes forward.

13 You recognize the screen?

14 A Yes.

15 Q And you recognize those control numbers, P18948
16 and W112837?

17 A Yes, I do.

18 Q And this is actually your Power Point slide, I
19 guess; is that correct? Let's just say it's your
20 information.

21 A It's my information, yes.

22 Q You were out of town. I had Mr. Riolo make this.
23 I assume he made this Power Point?

24 A Dr. Lisa Smyth-Roam made the Power Point.

1 Q The slide?

2 A Yes, she did.

3 Q Is the information on the slide consistent with
4 your results?

5 A Yes, it is.

6 Q And the control number items, do you recognize
7 those?

8 A Yes, I do.

9 Q Go ahead and explain this slide, then.

10 A This slide is just, basically, a table indicating
11 the results that I have verbally stated to you already,
12 indicating the result for the vaginal swab matching Frank
13 Peck, and concluding that he is the source of the sperm
14 fraction from the vaginal swab.

15 And then also a tabular result stating that from
16 the stains-on-skin sample, that Mr. Peck is the source of
17 the foreign-deduced DNA profile from the stains on skin.

18 MR. CLIFTON: Thank you very much. No further.

19 THE COURT: Mr. Lindsay.

20

21 CROSS-EXAMINATION

22 BY MR. LINDSAY:

23 Q Is it fair to say --

24 MR. LINDSAY: I apologize, but, Your Honor, can I

1 move that thing left or right for a second? I apologize.
2 We're in no man's land.

3 Standing behind Mr. Clifton probably makes him
4 feel insecure, and I don't mean to do that.

5 MR. CLIFTON: Is that okay, counsel?

6 MR. LINDSAY: That's fine. Thank you very much.

7 BY MR. LINDSAY:

8 Q Ma'am, you make this sound as if this is fairly
9 infallible, correct?

10 A If that's the way you heard it.

11 Q Has your testimony ever been found to be false
12 and misleading in Nevada?

13 A I do have a particular case out of Elko, Nevada,
14 where the statistics, the frequency of occurrence, it
15 ended up what is called the prosecutor's fallacy, and what
16 that is, is where it gets turned into rather than a
17 statement of frequency of occurrence of this profile is 1
18 in 500 billion, that type of thing, to an association of
19 chance of match, and it's not a correct way to make the
20 association.

21 I am not saying that the chance these two samples
22 would match is 1 in X, I'm saying that this is how often
23 this profile occurs.

24 And there is a case in Elko, Nevada -- trying to

1 remember the year -- early on, and we did have a situation
2 where it ended up -- I did not answer the question
3 correctly after awhile of testimony, and it did end up
4 sounding as if that was for the association of the match.

5 Q In fact, the case was reversed, wasn't it?

6 A No. It's at the Ninth Circuit right now. It's
7 not done, it's in the process.

8 Q Okay. Your testimony was -- and, please, your
9 testimony was later discredited, is that fair to say,
10 regarding DNA evidence, correct?

11 A I don't believe it's -- the process is done yet.
12 This is still ongoing. The Ninth Circuit is determining
13 what to do with the case, whether they're going to retry
14 it or not.

15 MR. LINDSAY: If I might have one moment, Your
16 Honor.

17 THE COURT: Yes.

18 BY MR. LINDSAY:

19 Q Have you ever heard of Larry Peck?

20 A I'm sorry. Larry?

21 Q Have you ever heard of Larry Peck?

22 I'm sorry. I don't mean to be --

23 A I know there's another individual by the name of
24 Peck, but I do not recall his first name.

1 Q Officer Bohach?

2 A Yes. I am familiar with that situation. I just
3 didn't recall the first name.

4 MR. LINDSAY: Your Honor, that's all the
5 questions I have at this time.

6 I would ask, unless -- is she available next
7 Monday at all for a very short recall?

8 THE COURT: Ms. Romero, would you be available on
9 Monday if we needed to recall you?

10 THE WITNESS: Yes, I am.

11 THE COURT: Will you be here?

12 THE WITNESS: Yes.

13 THE COURT: Okay. Thank you.

14 MR. LINDSAY: Thank you very much, Your Honor.

15 THE COURT: With that reservation, Mr. Clifton?

16 MR. CLIFTON: Thank you, Your Honor.

17

18 REDIRECT EXAMINATION

19 BY MR. CLIFTON:

20 Q Officer Bohach and Larry Peck, does that have
21 anything to do with your testing in this case?

22 A No, it does not.

23 Q Did you take samples from one case and put them
24 in another? I mean, cross-up samples from that case to

1 this case?

2 A No.

3 Q I don't know how else to ask you: Is there
4 anything about that case that affected your analysis in
5 this case?

6 A No.

7 Q Trying remember when that case was. 2001, I
8 believe, if I have my dates right.

9 You did one test in 2001 here in your report,
10 correct? Your report was 2001, I recall.

11 A Yes, there is one.

12 Q Did you know Officer Bohach as an officer?

13 A No.

14 Q Is there any reason to believe that you would be
15 influenced by that case? Because an officer was shot and
16 killed, that would affect how you did your analysis in
17 this case?

18 A No.

19 Q You've testified as an expert before, correct?

20 A Yes, I have.

21 Q Many times qualified as expert in Nevada?

22 A Yes.

23 Q Many times here in Washoe County, even?

24 A Yes, I have.

1 Q And other counties around the state?

2 A Yes.

3 Q Thank you. That that you called prosecutor's
4 fallacy, I don't know who put the blame on it or who we
5 call it, but there's been cases like that around the
6 nation, haven't there?

7 A Yes, there have.

8 Q And it's all in how you say the result, correct?

9 A All in how you're stating the statistical
10 frequency, yes.

11 Q It didn't mean even in that case that you said
12 somebody's DNA was there that wasn't, did it?

13 A No.

14 Q As a matter of fact, I had you repeat it and I
15 wrote it down because I wanted to make sure I got it
16 right, it's in the term "frequency of occurrence" of the
17 DNA profile, correct?

18 A That's correct.

19 Q In other words, wouldn't that be like saying you
20 can't take them out of the possibles?

21 A That's absolutely correct. It is not a matter of
22 odds.

23 Q So this DNA profile of Frank Peck, you would
24 expect to see a frequency of no more than 1 in 500 billion

1 samples.

2 A The number reflects how often I would expect to
3 observe that DNA profile.

4 Q Okay. Stick with that wording, then.

5 MR. CLIFTON: Thank you very much.

6 MR. LINDSAY: Your Honor, if I might reserve for
7 a possible callback on Monday.

8 THE COURT: You may.

9 This concept might be a little subtle,
10 Ms. Romero. Is this an expression of how often you would
11 expect to see that particular DNA profile at this
12 particular location?

13 THE WITNESS: No. In general.

14 THE COURT: Could you just explain the concept
15 one more time for the jury, please.

16 THE WITNESS: When we obtain a DNA profile, a
17 matching DNA profile, the next thing that we do is
18 determine, when they match, what does that mean? How
19 often would I expect to see that DNA profile? What is the
20 weight of that match? All right.

21 And we have three population databases, and we
22 put that DNA profile into those three different population
23 databases. And from that a calculation is performed on
24 how often we would expect to see that profile in the

1 Caucasian, Hispanic and African American populations.
2 It's not necessarily just Nevada, it's in general in those
3 populations.

4 And once the frequency is rarer than 1 in 500
5 billion in all three of those populations, then we make
6 the conclusion that the individual is the source of that
7 DNA profile.

8 THE COURT: That's an assessment of how often one
9 would expect to see that DNA profile.

10 THE WITNESS: Yes.

11 THE COURT: Just encountered in the world.

12 THE WITNESS: Yes.

13 THE COURT: And that's different depending on the
14 population, Caucasian versus other populations, correct?

15 THE WITNESS: There are slight differences, yes.
16 The numbers are slightly different.

17 THE COURT: Were the numbers different in this
18 case?

19 THE WITNESS: Yes.

20 THE COURT: All right. Was there any
21 significance in those differences?

22 THE WITNESS: They're far over 1 in 500 billion.

23 THE COURT: In the other populations?

24 THE WITNESS: In all three populations.

1 THE COURT: I see. Okay. Thank you.

2 Counsel, additional questions of Ms. Romero at
3 this point?

4 MR. CLIFTON: Certainly.

5
6 REDIRECT EXAMINATION

7 BY MR. CLIFTON:

8 Q Ms. Romero, is there any problem in asking what
9 those numbers are?

10 A If I may refer to my notes, it's not a problem.

11 Q Before you do that, isn't it true that the way
12 DNA has become so discriminate now, you can get numbers in
13 the quintillions; isn't that correct?

14 A Yes, that's correct.

15 Q Let's see what they are in this case.

16 The threshold, you said, was 500 billion, as a
17 threshold, to be safe, though, correct?

18 A That is our threshold to make the statement that
19 the individual is the source of the DNA profile.

20 Q How many people are in the world, do you know?

21 A I don't know that number exactly, but I believe
22 it's around 6 billion.

23 Q All right. Thank you.

24 A The numbers are, in the Caucasian population, 1

1 in -- approximately 1 in 759 quadrillion.

2 MR. CLIFTON: That's all I need because we're
3 only talking Caucasian here.

4 But, Your Honor, would you like a little bit
5 more, or Mr. Lindsay? I don't want to confuse things, but
6 we're talking Caucasian population.

7 THE COURT: Why don't you just go ahead, if she
8 has those results.

9 THE WITNESS: I do have the results.

10 THE COURT: All right. You may.

11 THE WITNESS: In the African American population,
12 it's approximately 1 in 19 quintillion.

13 And in the Hispanic population, it is
14 approximately 1 in 332 quadrillion.

15 BY MR. CLIFTON:

16 Q You know, I don't know how many zeroes are in
17 quintillion.

18 A A lot.

19 Q I really don't.

20 A In quintillion, you have 1, 2, 3, 4, 5 -- 6 sets
21 of 3 zeroes after the 19.

22 Q So 18 zeroes. And in quadrillion?

23 A Three less.

24 Q So 15 sets of zeroes.

1 MR. PECK: I have to ask a question. May I ask a
2 question?

3 RE-CROSS-EXAMINATION

4 BY MR. PECK:

5 Q What math you're using, is that the Bayesian
6 theory that you're using? Is that Bayes' theory?

7 A No, it's not.

8 Q What theory is that?

9 A This calculation is based on the National
10 Research Council report and how they suggest this
11 performance math.

12 If you're asking if it's a likelihood ratio, it's
13 not a likelihood ratio-type statistic.

14 Q I have some information that says that the
15 chances of two individuals that are not related having a
16 DNA profile that is exact are 1 in 3 trillion, but it
17 occurs. As a matter of fact, I understand they found
18 people in Europe, who are unrelated, with the exact same
19 DNA profile on 13 STRs.

20 A I am not aware of that.

21 Q I have it here somewhere. That's incredible.

22 THE COURT: Anything further?

23 MR. LINDSAY: One question, if I might, and I
24 apologize. I understand there's two lawyers over here,

1 and I understand. I would ask counsel to allow me, and
2 the Court to allow me just --

3 MR. CLIFTON: No objection.
4

5 RE CROSS EXAMINATION

6 BY MR. LINDSAY:

7 Q Everything that you've testified assumes that the
8 protocol in '94 is correct and that there has been no
9 intentional, just use the broad word, corruption in any
10 way, shape or form by anyone. And I am not talking about
11 you. I am not talking you.

12 But that is -- is that a fair statement?

13 A Yes. I mean, my results are based on the
14 evidence that I had.

15 Q You're assuming that from '94 forward there has
16 been absolutely no intentional corruption whatsoever of
17 the evidence that has been presented by the State; is that
18 a fair statement?

19 A Yes, I am.

20 MR. LINDSAY: Thank you very much.

21 THE COURT: Anything else?

22 ///

23 ///

24 ///

1 REDIRECT EXAMINATION

2 BY MR. CLIFTON:

3 Q Are you aware of any conspiracy, corruption, or
4 any intentional wrongdoing with any of this evidence?

5 A I am not.

6 Q Again, I have no idea what he is referring to.
7 Is there anything in the reports or anything in
8 this evidence chain, any of these samples, that you have
9 seen that causes you concern?

10 A No. There is nothing that has caused me any
11 concern.

12 Q Now, given -- Dr. Dedolph was the doctor. He's
13 already testified that he did the vaginal Q-tip samples
14 and took the swabs from Ms. Inman.

15 You're not guaranteeing to us that he didn't take
16 those swabs and take them over to another emergency room
17 and swapped them with another victim or something, right?

18 A I would have no idea.

19 Q So you only can guarantee from what you see here;
20 but you see no intentional or any other type of deception,
21 corruption or misconduct.

22 A No. And the vaginal swab itself, by getting the
23 DNA profile from the victim, from the vaginal vault, that
24 matches the victim reference sample, serves as an internal

1 control that that swab came from her.

2 Q How about this, something like this: The stain
3 on skin that you said also matches Mr. Peck had no semen
4 on it, according to the acid phosphatase test, correct?

5 A Correct.

6 Q So doesn't that kind of rule out the likelihood
7 that it was somehow contaminated with the Q-tip swabs from
8 the vaginal swabs which were semen?

9 A I can tell you the results of my analysis.

10 MR. CLIFTON: Thank you. No further questions.

11 THE COURT: Thank you, Ms. Romero, you are
12 excused. And we do need you to return. We'll notify you
13 as early as we can. Thank you.

14 THE WITNESS: Thank you.

15 (End of requested partial transcript.)
16
17
18
19
20
21
22
23
24

1 STATE OF NEVADA,)
2 COUNTY OF WASHOE.)

3
4 I, REBECCA S. MARTINELLI, Certified Shorthand
5 Reporter of the Second Judicial District Court of the
6 State of Nevada, in and for the County of Washoe, do
7 hereby certify:

8 That I was present in Department No. 6 of the
9 above-entitled Court and took stenotype notes of the
10 proceedings entitled herein, and thereafter transcribed
11 the same into typewriting as herein appears;

12 That the foregoing transcript is a full, true
13 and correct transcription of my stenotype notes of said
14 proceedings.

15 DATED: At Reno, Nevada, this 9th day of May,
16 2009.

17
18 /s/ Rebecca S. Martinelli
19 REBECCA S. MARTINELLI, CCR No. 212

FILED

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Howard W. Conyers

Clerk of the Court

Transaction # 767924

QUESTION 1

We want to see the envelopes to show the chain of custody.

QUESTION 2

We want to see the DNA Test result graphs.

Please rely on your recollection of the evidence presented at trial.

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Howard W. Conyers

Clerk of the Court

Transaction # 767925

The article regarding DNA
from Forensic Journal about
2 individuals having the
same DNA.

Please rely on your recollection of the evidence at trial.

1 CODE 1885
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR06-2580

11 v.

Dept. No. 6

12 FRANK PECK,

13 Defendant.
14 _____/

15 LADIES AND GENTLEMEN OF THE JURY:

16 It is my duty as judge to instruct you in the law that
17 applies to this case, and it is your duty as jurors to follow the law
18 as I shall state it to you, regardless of what you may think the law
19 is or ought to be. On the other hand, it is your exclusive province
20 to determine the facts in the case, and to consider and weigh the
21 evidence for that purpose. The authority thus vested in you is not
22 an arbitrary power, but must be exercised with sincere judgment,
23 sound discretion, and in accordance with the rules of law stated to
24 you.
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26 Instruction No. _____/

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If in these instructions, any rule, direction or idea is stated in varying ways, no emphasis thereon is intended by me and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions as a whole and to regard each in the light of all the others.

Instruction No. 2

1 If, during this trial, I have said or done anything which
2 has suggested to you that I am inclined to favor the position of
3 either party, you will not be influenced by any such suggestion.

4 I have not expressed, nor intended to express, nor have I
5 intended to intimate, any opinion as to which witnesses are or are
6 not worthy of belief, what facts are or are not established, or what
7 inference should be drawn from the evidence. If any expression of
8 mine has seemed to indicate an opinion relating to any of these
9 matters, I instruct you to disregard it.

1 The defendant in this matter, FRANK PECK, is being tried
2 upon an Indictment which was filed on the 8th day of November, 2006,
3 in the Second Judicial District Court, charging the said defendant,
4 FRANK PECK, with:

5 SEXUAL ASSAULT, a violation of NRS 200.366, a felony,
6 (F1000) in the manner following, to wit:

7 That the said defendant on or about the 9th day of August
8 A.D., 1994, or thereabout, within the County of Washoe, State of
9 Nevada, did willfully, and unlawfully subject CANDACE INMAN to sexual
10 penetration against her will, in that the defendant caused the victim
11 to submit to sexual intercourse at 445 Sullivan Lane, #94, Sparks,
12 Washoe County, Nevada.

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18 To the charge stated in the Indictment, the defendant,
19 FRANK PECK, pled "NOT GUILTY".

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26 Instruction No. 4

V4.507

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An Indictment is a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused, and does not create any presumption or permit any inference of guilt.

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The penalty provided by law for the offense charged is not to be considered by the jury in arriving at a verdict.

Instruction No. 6

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Neither the prosecution nor the defense is required to call
as witnesses all persons who may appear to have some knowledge of the
matters in question in this trial.

Instruction No. 2

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Nothing that counsel say during the trial is evidence in the case.

The evidence in a case consists of the testimony of the witnesses and all physical or documentary evidence which has been admitted.

Instruction No. 8

1 It is a constitution right of a defendant in a criminal trial
2 that he may not be compelled to testify. Thus the decision as to
3 whether he should testify is left to the defendant on the advice and
4 counsel of his attorney.

5 You must not draw any inference of guilt from the fact that
6 he does not testify, nor should this fact be discussed by you or enter
7 into your deliberations in any way.

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There are two types of evidence which the jury may consider in this case. One is direct evidence, such as the testimony of an eyewitness. The other is circumstantial evidence, the proof of a chain of circumstances pointing to the existence or non-existence of another circumstance.

The law makes no distinction between direct and circumstantial evidence, but requires that before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

1 Intent may be proved by circumstantial evidence. It rarely
2 can be established by any other means. While witnesses may see and
3 hear and thus be able to give direct evidence of what a defendant
4 does or fails to do, there can be no eyewitness account of a state of
5 mind with which the acts were done or omitted, but what a defendant
6 does or fails to do may indicate intent or lack of intent to commit
7 the offense charged.

8 In determining the issue as to intent, the jury is entitled
9 to consider any statements made and acts done or omitted by the
10 accused, and all facts and circumstances in evidence which may aid
11 determination of state of mind.

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It is the duty of each side of a case to object when the other side offers testimony or other evidence which a party believes is not admissible.

When the court has sustained an objection to a question, the jury is to disregard the question and may draw no inference from the wording of it or speculate as to what the witness would have said if permitted to answer.

Jury Instruction No. 11

1 A person is qualified to testify as an expert if he or she
2 has special knowledge, skill, experience, training, or education
3 sufficient to qualify him as an expert on the subject to which his or
4 her testimony relates.

5 Duly qualified experts may give their opinions on questions
6 in controversy at a trial. To assist you in deciding such questions,
7 you may consider the opinion with the reasons given for it, if any,
8 by the expert who gives the opinion. You may also consider the
9 qualifications and credibility of the expert.

10 You are not bound to accept an expert opinion as
11 conclusive, but should give to it the weight to which you find it to
12 be entitled. You may disregard any such opinion if you find it to be
13 unreasonable.

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1 To the jury alone belongs the duty of weighing the evidence
2 and determining the credibility of the witnesses. The degree of
3 credit due a witness should be determined by his or her character,
4 conduct, manner upon the stand, fears, bias, impartiality,
5 reasonableness or unreasonableness of the statements he or she makes,
6 and the strength or weakness of his or her recollections, viewed in
7 the light of all the other facts in evidence.

8 If the jury believes that any witness has willfully sworn
9 falsely, they may disregard the whole of the evidence of any such
10 witness.

1 Although you are to consider only the evidence in the case
2 in reaching a verdict, you must bring to the consideration of the
3 evidence your everyday common sense and judgment as reasonable men
4 and women. Thus, you are not limited solely to what you see and hear
5 as the witnesses testify. You may draw reasonable inferences which
6 you feel are justified by the evidence, keeping in mind that such
7 inferences should not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, passion,
9 prejudice, or public opinion. Your decision should be the product of
10 sincere judgment and sound discretion in accordance with these rules
11 of law.

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Every person charged with the commission of a crime shall be presumed innocent unless the contrary is proved by competent evidence beyond a reasonable doubt. The burden rests upon the prosecution to establish every element of the crime with which the defendant is charged beyond a reasonable doubt.

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In every crime there must exist a union or joint operation of act and intent.

The burden is always upon the prosecution to prove both act and intent beyond a reasonable doubt.

1 A reasonable doubt is one based on reason. It is not mere
2 possible doubt, but is such a doubt as would govern or control a
3 person in the more weighty affairs of life. If the minds of the
4 jurors, after the entire comparison and consideration of all the
5 evidence, are in such a condition that they can say they feel an
6 abiding conviction of the truth of the charge, there is not a
7 reasonable doubt. Doubt to be reasonable, must be actual, not mere
8 possibility or speculation.

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A person who willfully subjects another person to sexual penetration against the victim's will is guilty of sexual assault. Sexual penetration means any intrusion, however slight, of any part of a person's body, including sexual intercourse in its ordinary meaning.

Jury Instruction No. 18

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Sexual assault does not require a showing that the defendant employed force to achieve his objective, but only that the act was committed against the will of the victim.

Jury Instruction No. 19

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A victim of sexual assault is not required to do more than her age, strength, surrounding facts and all attending circumstances make it reasonable for her to do in order to manifest her opposition.

Jury Instruction No. 20

1 The word "willfully," when applied to the intent with which
2 an act is done or omitted and as used in my instructions, implies
3 simply a purpose or willingness to commit the act or to make the
4 omission in question. The word does not require in its meaning any
5 intent to violate law, or to injure another, or to acquire any
6 advantage.

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1 Physical force is not a necessary ingredient in the
2 commission of the crime of sexual assault. The crucial question is
3 not whether the victim was "forced" to engage in sexual intercourse,
4 but whether the act was committed without his or her consent. There
5 is no consent where the victim is induced to submit to the sexual act
6 through fear of death or serious bodily injury.

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The defendant in this case has introduced evidence for the purpose of showing that he was not present at the time and place of the commission of the alleged crime for which he is here on trial. If, after a consideration of all the evidence, you have a reasonable doubt that the defendant was present at the time the crime was committed you must find him not guilty.

Instruction No. 22(a)

1 It is your duty as jurors to consult with one another and to
2 deliberate, with a view of reaching an agreement, if you can do so
3 without violence to your individual judgment. You each must decide
4 the case for yourself, but should do so only after a consideration of
5 the case with your fellow jurors, and you should not hesitate to
6 change an opinion when convinced that it is erroneous. However, you
7 should not be influenced to vote in any way on any question submitted
8 to you by the single fact that a majority of the jurors, or any of
9 them, favor such a decision. In other words, you should not
10 surrender your honest convictions concerning the effect or weight of
11 evidence for the mere purpose of returning a verdict or solely
12 because of the opinion of the other jurors.

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Upon retiring to the jury room you will select one of your number to act as foreperson, who will preside over your deliberations and who will sign a verdict to which you agree.

When all twelve (12) of you have agreed upon a verdict, the foreperson should sign and date the same and request the Bailiff to return you to court.



DISTRICT JUDGE

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CODE 4245

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR06-2580

v.

Dept. No. 6

FRANK PECK,

Defendant.

VERDICT

We, the jury in the above-entitled matter, find the
defendant, FRANK PECK, NOT GUILTY of SEXUAL ASSAULT.

DATED this _____ day of _____, 20__.

FOREPERSON

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR06-2580

11 v.

Dept. No. 6

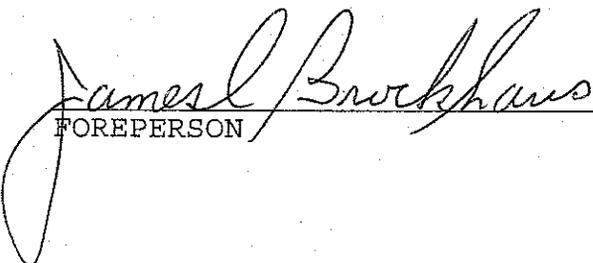
12 FRANK PECK,

13 Defendant.
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15 VERDICT

16 We, the jury in the above-entitled matter, find the
17 defendant, FRANK PECK, GUILTY of SEXUAL ASSAULT.

18 DATED this 12 day of MAY, 2009.
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22 FOREPERSON
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MAY 18 2009

HOWARD W. CONNERS CLERK
By: *[Signature]*
DEPUTY CLERK

In the Supreme Court of the State of Nevada

FRANK M. PECK

D.C. CASE NO. CC-06-2580

Appellant,

Emergency

-vs-

Appeal from Denial of Motion

The State of Nevada

for New Counsel

Respondent.

ON Appeal from the Second Judicial District Court in and for the County of Washoe; The Honorable Brent Adams Presiding.

Comes Now Defendant/Appellant pro se, Appealing the denial of Defendant's Motion for New Counsel. Attorney Robert Bruce Lindsay is ineffective in that he failed to file the requested Notice of Appeal from the denial of Defendant's Motion to Recuse Judge Brent Adams, Proof Evidenced from the date on the Notice being 13 days after the Defendants right to Appeal had Expired. Defendant told Lindsay to Move Ahead with specific discovery only after Def knew his time to Appeal had Expired, But Defendant saw date on Notice. Atty Lindsay has made threats of violence toward Def in front of Court.

CR06-2580
DC-9900009303-010
STATE VS FRANK MILFORD PECK 2 Pages
District Court 05/18/2009 04:27 PM
Washoe County 2515
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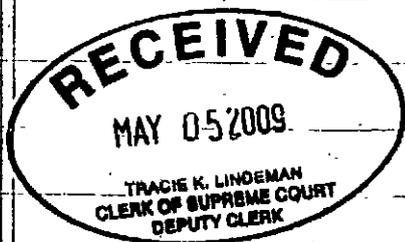
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MAY 05 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

ON 4-22-09.

Attorney Bruce Lindsay has not kept in contact with his client, he has totally disregarded his clients theory of defense, Mr Lindsay has divulged trial strategy and impeachment information vital to the defense. Mr Lindsay's conduct on 4-22-09 threatening his client is outrageous. Defendant has learned Mr. Lindsay is Banned from the Nevada Supreme Court. ON 4-22-09 Mr Lindsay lied to the district court saying he is allowed in the Supreme Court but told his client he would have to get him another less experienced lawyer if I wanted to appeal. The Defendant needs a loyal, zealous, advocate that the Constitution provides and guarantees.

For these, and other reasons the Appellant respectfully requests that this honorable court direct an order to the lower court to appoint new counsel.

Dated this 23rd day of April 2009.



Frank Peck
Frank Peck Prose

CR06-2580 DC-9900008303-011
STATE VS FRANK MILFORD PECK 2 Pages
District Court 05/18/2009 04:27 PM
Washoe County 1310
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FILED

MAY 18 2009

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

CODE 1310

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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

**FRANK MILFORD PECK,
Appellant(s)**

Case No. CR06-2580

vs.

Dept. No. 6

**THE STATE OF NEVADA,
Respondent(s)**

CASE APPEAL STATEMENT

1. **Frank Milford Peck** is the Appellant.
2. The appeal is from a **Minute/Bench Order** file on or about **April 22, 2009** by the **Honorable Brent Adams**.
3. The parties below in District Court consisted of: **Frank Milford Peck**, the Defendant, and **The State of Nevada**, the Plaintiff.
4. The parties herein in the Nevada Supreme Court consist of: **Frank Milford Peck/Appellant**, and **The State of Nevada/Respondent**.
5. Counsel on Appeal for Appellant, consists of: **Frank Milford Peck/Pro Per Appellant, #P00105283, Washoe County Sheriff's Department, Detention Center, 911 Parr Blvd. Reno, NV 89506**.
6. Counsel on appeal for Respondent is **Gary Hatlestad, Deputy District Attorney – Appellant Division, P.O. Box 30083, Reno, NV 89520-3083**.

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7. In District Court Appellant was represented **By Robert Bruce Lindsay, Esq.**

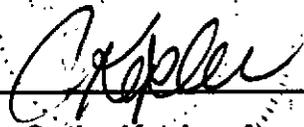
8. Appellant is represented in **Proper Person** in this appeal.

9. N/A in this case.

10. The **Indictment** was filed on **November 8, 2006**.

Dated: **May 18, 2009**

Howard W. Conyers, Clerk of the Court,

By: 

Cathy Kepler, Appeals Clerk
(775) 328-3114

FILED

MAY 18 2009

HOWARD W. CONYERS, CLERK
By: *Cathy Kepler*
DEPUTY CLERK

1350

CR06-2580 DC-9900008903-012
STATE VS. FRANK MILFORD PECK 1 Page
District Court 05/18/2009 04:27 PM
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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

FRANK MILFORD PECK,

Appellant(s)

Case No. CR06-2580

vs.

Dept. No. 6

THE STATE OF NEVADA,

Respondent(s)

CERTIFICATE OF CLERK

I hereby certify that the enclosed documents are certified copies of the original pleadings on file with the Second Judicial District Court, in accordance with the NRAP 3(e).

Dated: May 18, 2009

Howard W. Conyers, Clerk of the Court,

By: *Cathy Kepler*
Cathy Kepler, Appeals Clerk

FILED

MAY 18 2009

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

1365

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK MILFORD PECK,

Appellant(s)

Case No. CR06-2580

vs.

Dept. No. 6

THE STATE OF NEVADA,

Respondent(s)

CERTIFICATE OF TRANSMITTAL

I hereby certify that the enclosed Notice of Appeal and other required documents (certified copies) were E-filed from the Second Judicial District Court to the Nevada Supreme Court.

Dated: May 18, 2009

Howard W. Conyers, Clerk of the Court,

By: *[Signature]*

Cathy Kepler, Appeals Clerk

CR06-2580 DC-9900008303-013
STATE VS FRANK MILFORD PECK 1 Page
District Court 05/18/2009 04:27 PM
Washoe County 1365
DOC. CKEPLEF

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CASE NO. CR06-2580

STATE OF NEVADA VS. FRANK MILFORD PECK

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

05/11/09
HON. BRENT ADAMS
DEPT. NO. 6
T. Cervantes
(Clerk)
T. Herbert
(Reporter)

JURY TRIAL

Deputy D.A. David Clifton represented the State.
Defendant was present acting in pro per, with advisory counsel Bruce Lindsay.
William Carnahan called by Bruce Lindsay, sworn, testified and cross-examined by counsel Clifton.
The Court inquired if any juror had read or seen any coverage of this case over the weekend?
Each juror responded "no".
Outside the presence of jury, the Court canvassed the Defendant regarding his right not to testify and noted it was his decision alone to make and advised him further to discuss said rights with his advisory counsel.
Recess taken.
The jury returned to the courtroom.
Counsel for State requested the Court Reporter to read back a portion of Mr. Carnahan's testimony; SO ORDERD.
Larry Peck called by Defendant, sworn, testified and cross-examined by counsel Clifton.
Renee Romero heretofore sworn was called by Defendant, testified and cross-examined by counsel Clifton.
Defendant rested.
Leslie Crouser called by counsel Clifton, sworn, testified and cross-examined by counsel Lindsay and the Defendant.
State rested.
Court admonished and excused the jury.
COURT ORDERED: The trial continued until Tuesday, May 12, 2009 at 8:30 a.m.
Defendant remanded to the custody of the Sheriff.

CASE NO. CR06-2580

STATE OF NEVADA VS. FRANK PECK

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

5/6/09
Page 2

JURY TRIAL

Candice Inman, called by counsel for the State, sworn and testified.
State's Exhibits 1, 1a, and 12 offered, no objection, exhibits admitted
into evidence

Witness continued on direct examination.

At 5:00 p.m. Court ordered recess taken, jury admonished. Trial
continued to Thursday, May 7, 2009 at 9:00 a.m.

Defendant remanded to the custody of the Sheriff.

CASE NO. CR06-2580

STATE OF NEVADA VS. FRANK PECK

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTINUED TO
5/7/09 HONORABLE BRENT ADAMS DEPT. NO. 6 B. Johnson (Clerk) J. Kernan (Reporter)	<u>CONTINUED JURY TRIAL</u> Deputy District Attorney David Clifton represented the State. Defendant present in pro per. Bruce Lindsay present as advisory counsel. Candice Inman, previously sworn, resumed the stand and was continued on direct examination. State's Exhibits 2-6 offered, no objection, exhibits admitted into evidence. State's Exhibit 13 marked for Identification. Witness continued on direct examination, cross examined and redirect examined. State's Exhibit 14 and 15 marked and offered, no objection, exhibits admitted into evidence. Counsel for State moved for a physical presentation of Defendant; so ordered. Witness further examined by respective counsel and excused. Outside the presence of the jury, counsel Lindsay moved to strike the testimony of witness Inman regarding her representation of the Defendant's familiar sounding voice. COURT ORDERED: Motion to strike testimony denied. Jury present. Samuel Neuharth, called by counsel for the State, sworn and testified, cross examined by counsel Lindsay, redirect examined, witness excused. Carol Phillips, called by counsel for the State, sworn and testified, cross examined by counsel Lindsay, redirect examined, witness excused. Defendant's Exhibit 16 marked and offered, exhibit admitted into evidence. Diane Hackworth, called by counsel for the State, sworn and testified. State's Exhibits 9b and 9a offered, no objection, exhibits admitted into evidence. At 12:00 p.m. Court ordered recess taken, jury admonished.	

CASE NO. CR06-2580

STATE OF NEVADA VS. FRANK PECK

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

5/7/09

CONTINUED JURY TRIAL

Outside the presence of the jury, Court clarified its ruling as to the motion to strike testimony, prior ruling to stand.

Court stood in recess.

At 1:30 p.m. Court reconvened with all parties present. Jury present. Diane Hackworth, previously sworn, resumed the stand and was continued on direct examination, cross examined by counsel Lindsay and excused.

Dr. Dedolph, called by counsel for the State, sworn and testified, cross examined by counsel Lindsay, redirect examined and excused.

Peggy Stout, called by counsel for the State, sworn and testified, cross examined, redirect examined and excused.

Greta Woyciehowsky, called by counsel for the State, sworn and testified.

State's Exhibits 17-20 marked for Identification.

Witness continued on direct examination, cross examined and excused.

Linda Brown, called by counsel for the State, sworn and testified.

State's Exhibits 17-20 offered, witness examined on voir dire.

Direct examination was resumed.

State's Exhibits 10 and 11 offered, no objection, exhibits admitted into evidence.

After conferring with advisory counsel, counsel for the State moved to withdraw offer of Exhibits 10 and 11; so ordered.

Witness cross examined by counsel Lindsay and excused.

Steve Fiore, called by counsel for the State, sworn and testified.

State's Exhibit 7 offered, no objection, exhibit admitted into evidence.

State's Exhibit 21 marked and offered, no objection, exhibit admitted into evidence.

Witness cross examined and excused.

CASE NO. CR06-2580

STATE OF NEVADA VS. FRANK PECK

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

5/7/09

CONTINUED JURY TRIAL

Maria Fassett, called by counsel for the State, sworn and testified State's Exhibits 22 and 23 marked and offered, no objection, exhibits admitted into evidence.

Witness cross examined.

Defendant's Exhibit 24 marked and offered, no objection, exhibit admitted into evidence.

Witness continued on cross examination, redirect examined and excused.

At 4:30 p.m. Court ordered recess taken, jury admonished. Trial continued to Friday, May 8, 2009 at 9:00 a.m.

Defendant remanded to the custody of the Sheriff.

CASE NO. CR06-2580

STATE OF NEVADA VS. FRANK PECK

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTINUED TO
5/8/09 HONORABLE BRENT ADAMS DEPT. NO. 6 B. Johnson (Clerk) R. Martinelli (Reporter)	<u>CONTINUED JURY TRIAL</u> Deputy District Attorney David Clifton represented the State. Defendant present in pro per. Bruce Lindsay present as advisory counsel. Jeffrey Riolo, called by counsel for the State, sworn and testified, cross examined by counsel Lindsay, redirect examined, recross examined, witness excused. At 11:45 a.m. Court ordered recess taken, jury admonished. At 2:00 p.m. Court reconvened with all parties present. Jury present. Renee Romero, called by counsel for the State, sworn and testified, cross examined by counsel Lindsay, questioned by the Court and by Defendant. Witness reserved for possible callback. Counsel for the State moved to return biohazard exhibits 8, 9, 10, 11, 22 and 23 to the Police Department labs; no objection. Court ordered exhibits returned to the labs during the duration of the trial. Exhibits 13, 17-20 offered by the State, no objection, exhibits admitted into evidence. State rested. Sherry R. Gray, called by counsel Lindsay, sworn and testified. Exhibits 25-28 were marked for Identification by advisory counsel. Witness continued on direct examination, cross examined. At 4:50 p.m. Court ordered recess taken, jury admonished. Trial continued to Monday, May 11, 2009 at 1:00 p.m. Defendant remanded to the custody of the Sheriff.	

CASE NO. CR06-2580

STATE OF NEVADA VS. FRANK PECK

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONTINUED TO
5/12/09 HONORABLE BRENT ADAMS DEPT. NO. 6 B. Johnson (Clerk) R. Malnerich (Reporter)	<u>CONTINUED JURY TRIAL</u> Deputy District Attorney David Clifton represented the State. Defendant present in pro per. Bruce Lindsay present as advisory counsel. In chambers, Court and counsel settled jury instructions on the record. At 9:00 a.m. Court reconvened with all parties present. Jury present. Court read the jury instructions 1-26 aloud. Opening, answering and closing arguments presented by respective counsel. At 11:17 a.m. the Bailiff was sworn to take charge of the jury. The jury retired to deliberate. Alternate juror excused. At 3:16 p.m. the jury returned the following verdict. VERDICT We, the jury in the above-entitled matter, find the defendant, FRANK PECK, GUILTY of SEXUAL ASSAULT. DATED this 12 day of May, 2009 /s/ James Brockhaus FOREPERSON Jurors were polled at the Court's direction and in response to the question, "Is this the verdict to which you agree? each juror answered "Yes." Whereupon the Court directed the Clerk to record the verdict. The jury was thanked and excused. Court ordered Presentence Investigation and matter continued for entry of judgment and imposition of sentence to Friday, July 10, 2009 at 9:00 a.m. Defendant remanded to the custody of the Sheriff	

EXHIBITS

Plaintiff: State of Nevada

PATY: David Clifton

Defendant: Frank M. Peck

DATY: Pro Per

Case No: CR06-2580

Dept. No: 6

Clerk: B. Johnson

Date: 5/6/09

Exhibit #	Party	Description	Marked	Offered	Admitted
1	Pltf	Large diagram of 445 Sullivan Lane #94	5/6	x	5/6
1-a	Pltf	8x11 of Exhibit 1	5/6	x	5/6
2	Pltf	Photograph – Candace Inman, cheek injury	5/6	x	5/7
3	Pltf	Photograph – Candace Inman	5/6	x	5/7
4	Pltf	Photograph – window screen, curtain, chair	5/6	x	5/7
5	Pltf	Photograph – pathway to apartment/lamp post	5/6	x	5/7
6	Pltf	Photograph - bathtub	5/6	x	5/7
7	Pltf	Birth Certificate of Frank Peck	5/6	x	5/7
8	Pltf	Envelope containing Blood Sample of Candace Inman	5/6		withdrawn
9	Pltf	Envelope containing Sexual Assault Evidence Kit	5/6		withdrawn
9a	Pltf	Stains on Skin	5/6		withdrawn
9b(1-3)	Pltf	Vaginal/Penile Swabs and Slides	5/6		withdrawn
9c	Pltf	Pubic Hair Brushing	5/6		withdrawn
9d	Pltf	Reference Head Hair	5/6		withdrawn
9e	Pltf	Reference Pubic Hair	5/6		withdrawn
9f	Pltf	Saliva Sample	5/6		withdrawn
9g	Pltf	History of Assault, page 1	5/6		withdrawn
9h	Pltf	History of Assault, page 2	5/6		withdrawn
9i	Pltf	Sexual Assault Protocol	5/6		withdrawn

EXHIBITS

Plaintiff: State of Nevada

PATY: David Clifton

Defendant: Frank M. Peck

DATY: Pro Per

Case No: CR06-2580

Dept. No: 6

Clerk: B. Johnson

Date: 5/6/09

Exhibit #	Party	Description	Marked	Offered	Admitted
10	Pltf	Envelope containing swab box, buccal swabs (2) of Peck	5/6		withdrawn
11	Pltf	Envelope containing buccal swabs (2) of Peck	5/6		withdrawn
12	Pltf	Photograph – bathroom	5/6	x	5/6
13	Pltf	Composite sketch by Det Asher	5/7	x	5/8
14	Pltf	Copy photo lineup	5/7	stip	5/7
15	Pltf	1996 Photograph – Frank Peck	5/7	x	5/7
16	Deft	St Mary's Emergency Record, Candace Inman	5/7	x	5/7
17	Pltf	Photograph – Frank Peck, left side, mole, taken by L. Brown	5/7	x	5/8
18	Pltf	Photograph – Frank Peck, left side, rib area, taken by L. Brown	5/7	x	5/8
19	Pltf	Photograph – Frank Peck, left side, scar feature	5/7	x	5/8
20	Pltf	Photograph – Frank Peck, left side, raised defect	5/7	x	5/8
21	Pltf	Photograph – Frank Peck taking measurements	5/7	x	5/7
22	Pltf	Envelope with 2 swab tips (cut)	5/7		withdrawn
23	Pltf	Envelope with DNA extracts vaginal swabs	5/7		withdrawn
24	Deft	WCSO Report of Maria Fassett, Analyst	5/7	x	5/7
25	Deft	AT&T Statement	5/8		

EXHIBITS

Plaintiff: State of Nevada

PATY: David Clifton

Defendant: Frank M. Peck

DATY: Pro Per

Case No: CR06-2580

Dept. No: 6

Clerk: B. Johnson

Date: 5/6/09

Exhibit #	Party	Description	Marked	Offered	Admitted
26	Deft	Invoice, Johnstone Supply from Las Vegas NV	5/8		
27	Deft	BofA Transaction Record, Donald J. Peck	5/8		
28	Deft	Check register belonging to Donald J. Peck	5/8		

1 4185

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6

IN THE SECOND JUDICIAL DISTRICT COURT

7

STATE OF NEVADA, COUNTY OF WASHOE

8

THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

9

STATE OF NEVADA,

Department 6

10

Plaintiff,

Case No. CR06-2580

11

vs.

12

FRANK MILFORD PECK,

13

Defendant.

14

Pages 1 to 64, inclusive.

15

TRANSCRIPT OF PROCEEDINGS

16

MOTION TO PROCEED PRO SE

17

Friday, May 1, 2009

18

A P P E A R A N C E S:

19

FOR THE PLAINTIFF:

DAVID W. CLIFTON

DEPUTY DISTRICT ATTORNEY

1 South Sierra St., So. Tower

Reno, NV 89502

20

21

FOR THE DEFENDANT:

ROBERT BRUCE LINDSAY

PUBLIC DEFENDER

596 California Avenue

Reno, NV 89509

22

23

24

REPORTED BY:

Christina Herbert, CCR #641

Molezzo Reporters, 322.3334

1 RENO, NEVADA -- FRIDAY, MAY 1, 2009 -- 9:00 A.M.

2 -o0o-

3 THE COURT: This proceeding is in case CR06-2580,
4 State versus Frank Milford Peck, and this is the time set by
5 the Court for hearing pursuant to Faretta, F-a-r-e-t-t-a,
6 versus California 422 U.S. 806, the case decided by the
7 United States Supreme Court in 1975 as well as cases decided
8 thereunder.

9 And the purpose of this hearing is to consider the
10 defendant's motion to represent himself in this action, which
11 was filed April 22nd, 2009. Mr. Peck, of course, I advise
12 you you're under no obligation to make any statement of any
13 nature at this hearing and, if you do so, any statement you
14 make may be used against you. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Thank you. Please face the clerk,
17 raise your right hand and be sworn as a witness.

18 (Defendant sworn.)

19 THE COURT: Mr. Peck, please take the witness stand
20 and be seated. And the record should also reflect the
21 presence of Mr. Lindsay and Mr. Clifton on behalf of the
22 State. Mr. Peck, please state your full name.

23 THE DEFENDANT: Frank Milford Peck.

24 THE COURT: And what is your date of birth, sir?

1 THE DEFENDANT: 3/2/62.

2 THE COURT: And you're how old again?

3 THE DEFENDANT: Forty-seven years old.

4 THE COURT: Thank you. And what is the extent of
5 your education, sir?

6 THE DEFENDANT: High school equivalency.

7 THE COURT: And when was that obtained?

8 THE DEFENDANT: 1979.

9 THE COURT: And you have not attended any other
10 educational institutions in any subjects since then?

11 THE DEFENDANT: Yes, I have. I have graduated from
12 Nevada Gaming Institute of Technology.

13 THE COURT: When was that?

14 THE DEFENDANT: 1984, I believe.

15 THE COURT: And what subjects did you study there?

16 THE DEFENDANT: Electrical engineering, integrated
17 circuit design.

18 THE COURT: I assume the gaming institute is not an
19 institution that confers degrees. Is that correct?

20 THE WITNESS: No.

21 THE COURT: Did you receive a certificate in some
22 subject?

23 THE DEFENDANT: Yes.

24 THE COURT: In what?

1 THE DEFENDANT: Integrated circuit design.

2 THE COURT: And how long a course of study was
3 that?

4 THE DEFENDANT: That was 2 years.

5 THE COURT: And can you tell me, please, your
6 employment history generally.

7 THE DEFENDANT: I'm the previous owner of American
8 Appliance here in Reno.

9 THE COURT: And that's what, a retail appliance
10 store?

11 THE DEFENDANT: It was the sales and service of
12 major home appliances and I also serviced commercial
13 equipment.

14 THE COURT: How long did you own that company?

15 THE DEFENDANT: Four years.

16 THE COURT: What did you do before that?

17 THE DEFENDANT: I worked for Montgomery Wards for
18 five years.

19 THE COURT: And what did you do for them?

20 THE DEFENDANT: Service major home appliances and
21 everything else that they sold, lawn tractors and exercise
22 equipment and boat motors, things like that.

23 THE COURT: What did you do prior to that time?

24 THE DEFENDANT: I worked for Sears and Roebuck for

1 five years in Los Angeles.

2 THE COURT: Was that also in the sales and service?

3 THE DEFENDANT: Service of major home appliances.
4 Refrigeration.

5 THE COURT: And I'm sorry. That was for five
6 years?

7 THE DEFENDANT: Uh-huh.

8 THE COURT: All right. What else did you do?

9 THE DEFENDANT: Before that I worked for a company
10 in the San Bernadino Mountains, Purington Appliance and
11 before that I worked for an air conditioning company in Palm
12 Springs.

13 THE COURT: So most of your work life has been in
14 the field of repair of, let's say, a broad range of
15 appliances --

16 THE DEFENDANT: Yes, sir.

17 THE COURT: -- and other machines. Is that
18 correct?

19 THE DEFENDANT: Yes, electrician.

20 THE COURT: Is the firm American Appliance still
21 active?

22 THE DEFENDANT: I don't know.

23 THE COURT: Okay. And have you ever been charged
24 with a crime before?

1 THE DEFENDANT: Other than the crime that I'm in
2 prison for?

3 THE COURT: Well, why don't we state for the record
4 the crime you're in prison for today is what?

5 THE DEFENDANT: Sexual assault.

6 THE COURT: All right. And you were convicted of
7 that when?

8 THE DEFENDANT: In 1996 -- or '98, thereabouts.

9 THE COURT: And what sentence did you receive in
10 that case?

11 THE DEFENDANT: I received two consecutive terms of
12 10 to life.

13 THE COURT: And were you represented by counsel in
14 that case?

15 THE DEFENDANT: Yes, I was.

16 THE COURT: Was there only one count of sexual
17 assault?

18 THE DEFENDANT: No. There were two counts.

19 THE COURT: That's why you received the two
20 consecutive terms?

21 THE DEFENDANT: Yes.

22 THE COURT: And by whom were you represented?

23 THE DEFENDANT: By Dennis Widdis.

24 THE COURT: Now, did you take any role in that case

1 other than, obviously, the role of a defendant?

2 THE DEFENDANT: I was active with the investigation
3 and things of that nature.

4 THE COURT: Were you out of custody prior to the
5 conviction in that case?

6 THE DEFENDANT: No. I was never out of custody.

7 THE COURT: All right. What did you do to assist
8 Mr. Widdis?

9 THE DEFENDANT: Um, just with ideas on what to
10 investigate, who to investigate and how to proceed with the
11 defense.

12 THE COURT: So you shared with him information
13 about potential witnesses and evidence?

14 THE DEFENDANT: Sure.

15 THE COURT: Did you share any role in legal
16 research?

17 THE DEFENDANT: No. I didn't have any access to
18 any legal research as I was in the Washoe County Jail.

19 THE COURT: So the legal research in that case was
20 conducted by Mr. Widdis?

21 THE DEFENDANT: Yes, that's correct.

22 THE COURT: Did you make any complaint in that case
23 by your counsel?

24 THE DEFENDANT: Well, I filed some ineffective

1 assistance of counsel claims on post-conviction.

2 THE COURT: So you filed for a petition for habeas
3 corpus relief on the grounds that Mr. Widdis didn't provide
4 effective representation of counsel?

5 THE DEFENDANT: Yeah. My main complaint was he
6 failed to poll the jury on a valid not guilty because Judge
7 Kosach at the conclusion of the first jury trial, the jury
8 came in -- came back with a signed not-guilty verdict on at
9 least one count.

10 And it was learned through the bailiff that they
11 had reached a verdict on one count but, because of the
12 voluntariness verdict that was also given in that case, um,
13 the judge called a mistrial because of the voluntariness
14 form.

15 THE COURT: So there was a second trial?

16 THE DEFENDANT: Yes.

17 THE COURT: And you were convicted at a second
18 trial?

19 THE DEFENDANT: Yes.

20 THE COURT: And Mr. Widdis represented you there at
21 the second trial?

22 THE DEFENDANT: Yes.

23 THE COURT: And do you have a pending claim against
24 Mr. Widdis that he was ineffective?

1 THE DEFENDANT: Yes.

2 THE COURT: What's the nature briefly of that
3 claim?

4 THE DEFENDANT: Well, it's before your Honor. My
5 petition for the habeas corpus is pending in your court on
6 the case that I'm in prison on now. And the contentions are,
7 you know, obviously, double jeopardy, the lesser included
8 offense that was asked for and rejected and some other
9 claims.

10 THE COURT: Who was the presiding judge in the
11 second trial?

12 THE DEFENDANT: Well, it was Judge Kosach.

13 THE COURT: Do you know why -- this doesn't have
14 much to do with our hearing this morning, but do you know
15 yeah your petition for habeas corpus relief based on Mr.
16 Widdis' representation in that case is in this department?

17 THE DEFENDANT: Yes. Because we had to call -- we
18 called the judge as a witness and --

19 THE COURT: Okay.

20 THE DEFENDANT: -- so it has been removed from him
21 and put in your court.

22 THE COURT: All right. And it was your decision to
23 call Judge Kosach as a witness in that case?

24 THE DEFENDANT: It was my attorney, Robert Glenn's,

1 decision.

2 THE COURT: I neglected to ask you that. You were
3 represented by counsel --

4 THE DEFENDANT: At the evidentiary hearing.

5 THE COURT: -- in the petition.

6 THE DEFENDANT: Yes.

7 THE COURT: And who was that, please?

8 THE DEFENDANT: That was Robert Glennen.

9 THE COURT: Robert Glennen?

10 THE DEFENDANT: G-l-e-n-n-e-n.

11 THE COURT: Thank you. And that matter is pending?

12 THE DEFENDANT: No. The subsequent petition that I
13 have filed is pending. That was denied by your Honor
14 pursuant to Rule 41(b).

15 THE COURT: And then what happened to it? Did it
16 go to the Nevada Supreme Court?

17 THE DEFENDANT: Yes. I appealed it to the Supreme
18 Court and they said that it was -- you abused your discretion
19 in dismissing the petition but they said the error was
20 harmless.

21 THE COURT: Was the decision of this court affirmed
22 or reversed or modified in the Supreme Court?

23 THE DEFENDANT: It was affirmed.

24 THE COURT: All right. And then you filed another

1 petition?

2 THE DEFENDANT: Yes.

3 THE COURT: This is all in regard to the conviction
4 you're presently serving the sentence for. Right?

5 THE DEFENDANT: That's correct.

6 THE COURT: And what's the status of that petition?

7 THE DEFENDANT: Well, it's pending in your court.

8 THE COURT: And are you representing yourself in
9 that matter?

10 THE DEFENDANT: Yes.

11 THE COURT: Have you applied for appointment of
12 counsel in that case?

13 THE DEFENDANT: Yes, I have.

14 THE COURT: And is there a reason why you've
15 applied for appointment of counsel in that case but you're
16 seeking to represent yourself in this case?

17 THE DEFENDANT: Yes.

18 THE COURT: What is that?

19 THE DEFENDANT: Well, um, what do you want to know?
20 Do you want to know the reason why --

21 THE COURT: I want to know why in the other case
22 presently pending in this court, which you filed, you've
23 requested appointment of counsel but in this case, this
24 proceeding we're here for today, Case CR06-2580, you're

1 requesting not to have counsel and to represent yourself.

2 THE DEFENDANT: Okay. Well, um, it's always better
3 to have counsel, I guess, is an answer to your question. I
4 would prefer to have counsel in that petition to help me
5 argue those issues.

6 THE COURT: Right. And the question was,
7 obviously, that's true. It's universally true that it's
8 better to be represented by counsel than not, at least in my
9 opinion.

10 In that case which reviews the performance of
11 counsel in a case in which you were charged and convicted of
12 sexual assault, you're requesting, I would think reasonably,
13 to have counsel appointed.

14 THE DEFENDANT: Uh-huh.

15 THE COURT: In this case you are requesting to
16 represent yourself. And my question is, if it is reasonable,
17 as you pointed out, to have counsel in that case, which is
18 the case involving the conduct of counsel and a case of
19 similar nature to this case, why isn't it reasonable to have
20 counsel in this case?

21 THE DEFENDANT: I would prefer to have counsel in
22 this case but your Honor has denied by motion for new
23 counsel. Mr. Lindsay has --

24 THE COURT: Right. The Court has already

1 determined that Mr. Lindsay will be your counsel. And the
2 question is, Why do you feel it's better to have no counsel
3 in this case and have counsel in your other case?

4 THE DEFENDANT: That's not it, judge. I would
5 prefer to have counsel in all matters, of course, but in this
6 case I feel that I'll be better served representing myself.

7 THE COURT: Because?

8 THE DEFENDANT: Because Mr. Lindsay has done
9 nothing. He has -- I would prefer the assistance of my
10 notes. Can I get my notes?

11 THE COURT: We'll have the bailiff get the notes.
12 Let me just ask, Mr. Peck -- I don't have the file of the
13 other action pending, but as you know the indictment in this
14 case CR06-2580 charges sexual assault, a violation of NRS
15 213.366, a felony, and that is the same as the two charges of
16 which you were convicted in the other case. Is that correct?

17 THE DEFENDANT: Yes, that's correct.

18 THE COURT: Okay. Now, tell me -- I've already
19 decided the question about the disqualification of Mr.
20 Lindsay. The issue before the Court at this time is whether
21 or not you can -- the Court will permit you to represent
22 yourself. So tell me why you want to do that.

23 THE DEFENDANT: Because I feel like I could do a
24 better job, bottom line.

1 THE COURT: And why do you think you can do a
2 better job?

3 THE DEFENDANT: Well, I've been studying the law
4 for 10 years now and Mr. Lindsay has -- his actions are
5 reprehensible. I've never had such a bad experience with an
6 attorney.

7 THE COURT: Let me ask you about your experiences
8 with attorneys, Mr. Peck. You haven't really been satisfied
9 with anybody who's represented you, have you?

10 THE DEFENDANT: I think Dennis Widdis did a good
11 job especially --

12 THE COURT: Isn't Mr. Widdis the subject of your
13 now second complaint --

14 THE DEFENDANT: Yes.

15 THE COURT: -- contending that you were deprived of
16 your constitutional right to effective counsel because of his
17 misconduct in that case?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. And can you think of any
20 other attorney who's represented you about whom you have not
21 complained?

22 THE DEFENDANT: Yeah. Robert Glennen.

23 THE COURT: Pardon me?

24 THE DEFENDANT: I didn't make any claims against

1 Robert Glennen.

2 THE COURT: And he's representing you on something?

3 THE DEFENDANT: No, he's not representing you at
4 all.

5 THE COURT: Okay. Let me look at your statement
6 that was filed in support of this motion. In that statement
7 you refer to Mr. McKenna. Now, I take it you -- it was your
8 intention that Mr. McKenna represent you in this case.

9 THE DEFENDANT: No, it was not my intent at all. I
10 was not represented by counsel at the arraignment and
11 Mr. McKenna just happened to be in the courtroom and
12 volunteered --

13 THE COURT: Let me read your sentence, "Mr. Peck
14 has had to dismiss his first attorney, Ken McKenna." What
15 does that mean? Was Mr. McKenna your lawyer or not your
16 lawyer?

17 THE DEFENDANT: Yes, he was.

18 THE COURT: All right.

19 THE DEFENDANT: He appointed himself.

20 THE COURT: Did you have to dismiss him?

21 THE DEFENDANT: Yes, I did.

22 THE COURT: Because?

23 THE DEFENDANT: Because he admitted to me that his
24 life had been threatened and that, essentially, he had taken

1 a dive in my brother's case.

2 THE COURT: Let me tell you outright and for the
3 record I don't believe what you just said. I presided in the
4 trial of your brother's case. Mr. McKenna did an
5 extraordinarily fine job. In my view, for whatever it's
6 worth, he saved your brother's life in that case.

7 THE DEFENDANT: And I thanked him for that.

8 THE COURT: And it's your view that you couldn't
9 have him represent you in this case because he took a dive in
10 that case. Is that right, quote, Took a dive?

11 THE DEFENDANT: This is exactly what Mr. McKenna
12 told me in front of his law assistant, Megan, when they came
13 down to see me. He told me that his life was threatened in
14 the hallways of this court by law enforcement if he didn't
15 back off the friendly fire theory at trial, and so help me
16 God that's what he told me.

17 THE COURT: He told you that he, quote, took a dive
18 in that case?

19 THE DEFENDANT: No. Those are my words.

20 THE COURT: Those are your words attributed to him?

21 THE DEFENDANT: Yes.

22 THE COURT: And I'm telling you I don't believe
23 that. I presided at the trial. I saw every witness. I saw
24 what Mr. McKenna did. And I think, again, he did a superb

1 job. For anybody to suggest that he took a dive or was less
2 than effective for Mr. Peck in that case is ludicrous.

3 THE DEFENDANT: Well, I'm just telling you what he
4 told me.

5 THE COURT: And I'm telling you I don't believe it.

6 THE DEFENDANT: Well, you're entitled to it.

7 THE COURT: If you want to call Mr. McKenna as a
8 witness, you may.

9 Now, tell me -- you've brought your papers to the
10 witness stand now. List precisely the reasons you wish to
11 represent yourself in this case.

12 THE DEFENDANT: Okay. I've written to Mr. Lindsay
13 approximately 12 times. He's never written me back, not
14 once. I have no idea what his stationery looks like. In 190
15 days Mr. Lindsay's done nothing to move this case forward.
16 To date he's done nothing except recently talking to a local
17 expert in a lab which is a breach of his agreement with his
18 client, to use an out-of-state lab and expert.

19 THE COURT: What right do you have to insist that
20 Mr. Lindsay use an out-of-state expert? You might think it's
21 a good idea, he might not think it's a good idea, but you
22 don't have a right to insist that he use an out-of-state
23 expert. Do you understand that?

24 THE DEFENDANT: Well, the facts of the case, I

1 think, warrant the use of an out-of-state lab.

2 THE COURT: I believe that you think the facts of
3 the case warrant the use of the out-of-state lab. If your
4 lawyer elects to use a local expert, he may do so. He's not
5 bound to select his expert based on what you think. Do you
6 understand that?

7 THE DEFENDANT: Well, he agreed with me that an
8 out-of-state lab would be used so ...

9 THE COURT: Do you understand what I just said?

10 THE DEFENDANT: I understand what you said but he
11 also agreed with me that an out-of-state lab would be used.

12 THE COURT: Okay. But, instead, he decided to
13 consult with a local expert.

14 THE DEFENDANT: Against my wishes, yes.

15 THE COURT: You don't have the authority to
16 determine who he consults with as an expert. Go on to the
17 next item.

18 THE DEFENDANT: Okay. Mr. Lindsay hasn't asked for
19 his client's alibi witnesses or documentary evidence in
20 support of an alibi defense.

21 THE COURT: Was there a notice filed in this case?

22 THE DEFENDANT: Yes, I filed it.

23 THE COURT: Thank you. Go ahead. And you want to
24 give me a list of the alibi witnesses, please.

1 THE DEFENDANT: I did. They're in the --

2 THE COURT: Is that in the notice?

3 THE DEFENDANT: Yes, they are.

4 THE COURT: All right. Go ahead.

5 THE DEFENDANT: So that I would not lose -- "The
6 defendant had to file his own notice of alibi so as not to
7 lose the right to call these witnesses. Mr. Lindsay has
8 continually lied to his client and has a total lack of regard
9 for his client's decisions and agreements with his client."

10 THE COURT: What did he lie to you about?

11 THE DEFENDANT: Well, he's lied to me about
12 everything he said he was going to do.

13 THE COURT: What did he lie to you about?

14 THE DEFENDANT: When he told me, first of all --

15 THE COURT: You mean every single word he's told you
16 is a lie?

17 THE DEFENDANT: Basically. Well, he hasn't done
18 anything that he said he was gonna do, so, yeah, he lied
19 about what he said he was gonna do.

20 THE COURT: List the statements that he's made to
21 you that you believe were false.

22 THE DEFENDANT: First and foremost, about using the
23 outside lab.

24 THE COURT: We've already discussed that. You told

1 me that you had an discussion with him about an expert, that
2 you both agreed to use an outside lab and he's consulted with
3 a local expert. Is that it on that subject?

4 THE DEFENDANT: Yes.

5 THE COURT: All right. What's the next subject?

6 THE DEFENDANT: Well, he told me he was gonna
7 Mr. -- Mr. Clifton had taken statements from Dr. Deodorf and
8 Nurse Carol Phillips, okay, which isn't true. If they are,
9 they're not part of the record. I've not seen them.

10 THE COURT: Well, how do you know that's not true?

11 THE DEFENDANT: Because I asked him for them and he
12 never gave them to me. He refused to --

13 THE COURT: What did he tell you the statements
14 were?

15 THE DEFENDANT: He also told me he was gonna go see
16 them, go talk to them. He never did.

17 THE COURT: Just listen to my questions. Do not
18 move to another subject. You just told me that Mr. Lindsay
19 told you that Mr. Clifton had talked to Dr. -- who was it?

20 THE WITNESS: Dr. Deodorf.

21 THE COURT: And a nurse. Right?

22 THE DEFENDANT: Yes.

23 THE COURT: How do you know that is not the case?

24 THE DEFENDANT: Well, he never produced the

1 statements.

2 THE COURT: How do you know it is not the case?

3 THE DEFENDANT: Well, I'm assuming it's because he
4 never produced them and every time --

5 THE COURT: Why would you assume it's true instead
6 of assuming it's false? Are you just assuming it's false?

7 THE DEFENDANT: Well, I've never seen them. I've
8 continually asked him for that.

9 THE COURT: So your basis for believing that it is
10 false is because Mr. Lindsay didn't give you the written
11 witness statements?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. What's the next thing?

14 THE DEFENDANT: Well, half of my notes are gone.
15 They confiscated one of my folders and some of my notes are
16 gone -- at the Washoe County Jail. Also the -- his failure
17 to file the requested notice of appeal.

18 THE COURT: Oh, is this on the disqualification
19 issue?

20 THE DEFENDANT: Yeah.

21 THE COURT: Now, in that case you're probably aware
22 of the Nevada cases on self-representation, aren't you,
23 Mr. Peck?

24 THE DEFENDANT: Yes.

1 THE COURT: So you know the process we're entering
2 into here today?

3 THE DEFENDANT: Yeah.

4 THE COURT: All right. Now, in this case you moved
5 to disqualify this court. Right?

6 THE DEFENDANT: Yes.

7 THE COURT: On the ground that?

8 THE DEFENDANT: Bias.

9 THE COURT: Because?

10 THE DEFENDANT: Of my brother's case.

11 THE COURT: All right. So your theory was, because
12 I've been the presiding judge in your brother's case, I was
13 disqualified from seeing this case. Right?

14 THE DEFENDANT: Yes.

15 THE COURT: Now, I will tell you now there's no
16 case authority anywhere in the United States that supports
17 that view. That request was answered by me and then the
18 matter was referred to Department 10 for decision. Do you
19 remember that?

20 THE DEFENDANT: That's correct, yeah.

21 THE COURT: And then the next thing you did was you
22 moved to disqualify Judge Elliott, the second judge, the
23 judge sitting on your motion for disqualification. Right?

24 THE DEFENDANT: Yes.

1 THE COURT: And your basis to disqualify him was
2 what?

3 THE DEFENDANT: Well, because he had signed off on
4 one of the seizure orders and they were going to be a point
5 of contention in the trial.

6 THE COURT: And Judge Elliott decided that was not
7 a basis to be disqualified -- for him to be disqualified.
8 Right?

9 THE DEFENDANT: Right. We stipulated.

10 THE COURT: And then Judge Elliott denied your
11 motion to disqualify me, and now you're claiming that Mr.
12 Lindsay has not provided you adequate representation in this
13 case because he failed to appeal that decision by Judge
14 Elliott.

15 THE DEFENDANT: That's correct.

16 THE COURT: And I'm telling you that any such
17 appeal, just as the two motions you filed, are totally
18 frivolous. So what's the next thing?

19 THE DEFENDANT: Well, he didn't -- if I didn't tell
20 him -- if you believe that I told him not to appeal, that's
21 absurd, because he didn't even write the appeal until the 9th
22 of January.

23 THE COURT: I'm telling you it doesn't make any
24 difference. There's nothing to appeal. There's no issue.

1 There was no legal basis to move to disqualify me and there
2 was no legal basis to move to disqualify Judge Elliott and,
3 therefore, there's no prejudice or injury of any kind or
4 nature by virtue of someone's failing to appeal that
5 decision.

6 THE DEFENDANT: Well, I disagree because --

7 THE COURT: I don't care if you disagree. I'm just
8 telling you that's what I'm finding. Now, go on to the next
9 thing.

10 THE DEFENDANT: Well, there was also a contention
11 in that -- that the reasons for that appeal were that my
12 belief was that you had had ex parte communication with Judge
13 Roger Hunt with regard to my federal petition.

14 THE COURT: Judge Roger Hunt? That's totally
15 false. I haven't talked to Roger Hunt in -- oh, my Lord --
16 probably over 20 years. What on earth are you talking about,
17 Mr. Peck? Roger Hunt, the United States -- is he a
18 magistrate judge or --

19 THE DEFENDANT: Yes, he is. He's the chief federal
20 judge down in Vegas.

21 THE COURT: What are you saying?

22 THE DEFENDANT: Well, judge, it looked to me that
23 when we had the hearing, okay, to dismiss the alternative
24 public defender's office, you got very upset because of --

1 because my federal -- pending federal petition I had a claim
2 against the public defender's office, okay, which
3 disqualified the public defender's office and the alternate
4 public defender's office.

5 THE COURT: You had a claim against every lawyer
6 and judge who's shown up in your life for years, Mr. Peck.
7 Now, get back to this thing about Mr. Hunt. You have some
8 claim about my communicating with judge Hunt?

9 THE DEFENDANT: Yes.

10 THE COURT: What is it?

11 THE DEFENDANT: Well, it was my belief that you
12 communicated with Judge Hunt, because not 45 days after my
13 petition had been pending for years, you made comments about
14 how long has this petition been pending and then not 45 days
15 after the hearing, I get my COA and my petition denied in its
16 entirety.

17 THE COURT: Do you realize that one of the issues
18 the Court's deciding in this hearing is your competency,
19 essentially, your judgment, not to be a competent lawyer or
20 to competently represent yourself, but to competently,
21 knowingly and voluntarily make this decision.

22 And you're sitting there telling me under oath that
23 you have some idea that I had some communication with Judge
24 Roger Hunt about some proceeding you brought in the United

1 States District Court, and I am telling you that is
2 100 percent false. It's irrational to make such a statement.
3 It's offensive and it tells me your judgment is significantly
4 impaired.

5 Now, tell me any other reasons you don't like Mr.
6 Lindsay and we'll proceed with the hearing.

7 THE DEFENDANT: That's how it appeared to me,
8 judge.

9 THE COURT: Well, it's false.

10 THE DEFENDANT: Okay.

11 THE COURT: And you have absolutely no basis to
12 make that claim because it is false. There could be no
13 evidence of any such communication because it never occurred,
14 and yet, apparently, you put that in a petition somewhere.
15 Right?

16 THE DEFENDANT: Yeah.

17 THE COURT: Where did you put that?

18 THE DEFENDANT: What do you mean?

19 THE COURT: What petition? You said you included
20 that in a petition of some kind.

21 THE DEFENDANT: No, it's not included in a petition
22 anywhere.

23 THE COURT: Where is that statement?

24 THE DEFENDANT: Well, I can't say.

1 THE COURT: What do you mean you can't say?

2 THE DEFENDANT: Well, I can't say.

3 THE COURT: I don't understand what you mean.

4 THE DEFENDANT: Well, I could be held in contempt
5 if I say by another entity.

6 THE COURT: All right. Go on and list anything
7 else you have to say about Mr. Lindsay.

8 THE DEFENDANT: "By Mr. Lindsay's own hand, he had
9 written the notice of appeal late, 45 days after the hearing,
10 after Judge Elliott denied the motion to recuse judge Brent
11 Adams.

12 "Mr. Lindsay's unprofessional actions threatened
13 his client, repeatedly asking, How much have you paid me, are
14 bizarre considering he's appointed, implying that, if I don't
15 pay, I don't get a defense. Counsel's failures and actions
16 are unconscionable and fall below the demands of the Sixth
17 Amendment and amount to no counsel at all.

18 "For these and other reasons, coupled with the
19 district court's denial of the defendant's motion for new
20 counsel, the defendant has made a substantial showing that
21 counsel is ineffective and, therefore, refuses said counsel
22 for trial. The defendant left with the choice to stand trial
23 with Bruce Lindsay or represent himself is a decision no
24 client should have to make. This client has no other option

1 but to represent himself."

2 THE COURT: Thank you. Mr. Clifton, do you have
3 any questions of the defendant?

4 MR. CLIFTON: Yes, your Honor, and may it please
5 the Court.

6 BY MR. CLIFTON:

7 Q I've read that statement that you're talking about
8 about Judge Hunt and I believe I read it in your motion to
9 disqualify Judge Adams. Would that be a correct statement?

10 A Yeah.

11 Q Just a minute ago you said you would be in contempt
12 if you told us where it was written.

13 A That's not the only place it's written.

14 Q Well, why didn't you tell the judge that's where
15 it's written?

16 A Well, I didn't --

17 Q You made that statement in a signed, verified
18 petition to recuse Judge Adams. Correct?

19 A Yeah, that's correct.

20 Q On your request to appeal Judge Elliott's decision
21 not to recuse himself and not to recuse Judge Adams, are you
22 familiar with an order dismissing appeal filed July 15th,
23 2008, which would just be a few months before that hearing
24 you had with judge Elliott where the Nevada Supreme Court

1 told you you cannot appeal issues that there isn't a
2 statutory right to appeal? Do you remember this order I'm
3 talking about?

4 A Yeah, I remember that order.

5 Q It was filed July 15th, 2008, an order dismissing
6 one of your other appeals from Judge Adams. It went up to
7 the Nevada Supreme Court dealing with the potential conflict
8 of counsel. Do you remember appealing that decision?

9 A Yeah.

10 Q And the Nevada Supreme Court told you, quote, Our
11 review of this appeal reveals a jurisdictional defect. The
12 right to appeal is statutory. Where no statute or court rule
13 provides for an appeal, no right to appeal exists." Do you
14 remember this?

15 A Yes.

16 Q Can you tell me where the right to appeal Judge
17 Elliott's decision exists in our statutes?

18 A No.

19 Q There isn't one, is there?

20 A I don't know. I don't have access to any legal
21 resources whatever right now.

22 Q Mr. Lindsay does, doesn't he?

23 A Yes.

24 Q If Mr. Lindsay believes he can't statutorily appeal

1 that decision, he may decide not to do it, but you're still
2 gonna hold it against him. Is that correct?

3 A If it's not allowed, I wouldn't hold it against
4 him.

5 Q Well, you don't know of any statute that does allow
6 it, do you?

7 A No, I don't.

8 Q And the Court has basically told you, unless you
9 have a statutory right, don't appeal. Right?

10 A Right.

11 Q In fact, Mr. Lindsay did go over with you and
12 prepare a notice of appeal and you told him not to file it.
13 Do you remember that?

14 A That's not correct.

15 Q Do you remember the DNA expert where, I assume --
16 I'm assuming now that this is probably how it happened. You
17 tell me if I'm wrong -- that told you, if I get a DNA expert
18 and they agree with State's DNA testing, that might be used
19 against you. I might call that witness, the State might call
20 the witness to the stand. Did you ever have that discussion?

21 A I don't recall that, no.

22 Q And, in fact, when that discussion -- type of
23 discussion happened, you're the one that told him not to go
24 forward with the DNA testing. Isn't that true?

1 THE DEFENDANT: No, that's not true.

2 MR. CLIFTON: Thank you. I have nothing further.

3 THE COURT: Mr. Peck, let me just review a few
4 other matters with you.

5 You understand that you have a right to a jury
6 trial in this case?

7 THE DEFENDANT: Yes.

8 THE COURT: You understand that you have the right
9 to call and have witnesses examined in the trial?

10 THE DEFENDANT: Yes.

11 THE COURT: You understand that the State has the
12 obligation to prove the charges in the indictment by evidence
13 beyond a reasonable doubt?

14 THE DEFENDANT: Yes.

15 THE COURT: And you understand that, if you're
16 found guilty, you could appeal?

17 THE DEFENDANT: Yes.

18 THE COURT: I want to focus for a moment on
19 something we've touched on earlier because it's extremely
20 serious. First of all, tell me what you understand the
21 charge to be.

22 THE DEFENDANT: Sexual assault.

23 THE COURT: What are the elements of that offense?

24 THE DEFENDANT: That I did willingly and knowingly

1 and voluntarily submit someone to sexual assault against
2 their will.

3 THE COURT: All right.

4 THE DEFENDANT: I don't have the indictment in
5 front of me but that's the basis.

6 THE COURT: Well, let me just refer to it. That's
7 generally true -- what you've said is generally true. The
8 charge is that on August 9th, 1994, or thereabout within
9 Washoe County, Nevada you willfully and unlawfully subjected
10 Candace Inman, I-n-m-a-n, to sexual penetration against her
11 will in that you caused her to submit to sexual intercourse.
12 Do you understand that that's the charge?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. Who do you understand the
15 witnesses will be in this trial?

16 THE DEFENDANT: Um, well, there will be three alibi
17 witnesses that I'll be calling. There will be Renae Rumero,
18 the forensic examiner.

19 THE COURT: You tell me the alibi witnesses' names,
20 please.

21 THE DEFENDANT: I have them here.

22 THE COURT: Do you have the names handy?

23 THE DEFENDANT: I have them here somewhere. The
24 alibi witnesses, first one is Larry Peck. His address is NSP

1 PO --

2 THE COURT: I think we're all familiar with
3 Mr. Peck. Next.

4 THE DEFENDANT: Sherry Gray, 5448 Wallaby Street,
5 Yucca Valley.

6 THE COURT: Okay.

7 THE DEFENDANT: California. 92284. Telephone
8 Number (760)369-9740. The other alibi witness is William
9 Carnahan. His P.O. Box is 334. He lives in Geysterville,
10 G-e-y-s-t-e-r-v-i-l-l-e, California.

11 THE COURT: Are you sure it's "Geyster" and not
12 "Geyserville"?

13 THE DEFENDANT: No. It's Geysterville, and 95441.
14 His phone number is (707)894-4939. And there will be some
15 other witnesses called that are not on the list. There will
16 be some --

17 THE COURT: Those are who?

18 THE DEFENDANT: They're from the crime lab. Edward
19 Fisch, Ronald Young, and I don't recall the other guy.
20 They're fingerprint examiners that I'll be calling.

21 THE COURT: Fingerprint -- is there some reason
22 you're calling three?

23 THE DEFENDANT: Well, they all three did different
24 examinations.

1 THE COURT: And those are from the Washoe County
2 Crime Lab?

3 THE DEFENDANT: Yeah.

4 THE COURT: All right. Who else?

5 THE DEFENDANT: Um, I'll be calling Ken McKenna and
6 his assistant.

7 THE COURT: For what purpose?

8 THE DEFENDANT: For establishing and supporting the
9 fact that there was a threat made to him.

10 THE COURT: All right.

11 THE DEFENDANT: Let's see. I don't have my witness
12 list with me, judge, but off the top of my head --

13 THE COURT: All right. Who are the State witnesses
14 you expect in this trial?

15 THE DEFENDANT: I believe I'm gonna call Ed Burger
16 -- he's another one of the witnesses that I'm gonna call.
17 Maria Fassett, and there's gonna be a detective called Greta
18 Fye. Any other witnesses, I'm not aware of at this point.

19 THE COURT: All right. Do you know whether the
20 State intends to call the alleged victim in this case?

21 THE DEFENDANT: Do I know?

22 THE COURT: Yes.

23 THE DEFENDANT: I'm sure they're going to call.

24 THE COURT: All right. So --

1 THE DEFENDANT: I have very few questions for her.

2 THE COURT: So Ms. Inman would also be a witness by
3 the State?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. Now, to get back to the subject
6 I wanted to bring up a moment ago, I believe there is very
7 substantial evidence demonstrating that, not only is this
8 request to represent yourself untimely, but it is for the
9 purpose of delaying and disrupting the proceeding.

10 THE DEFENDANT: That's not my intent at all, judge.

11 THE COURT: I know. I'm telling you my
12 observations. The number of frivolous claims and petitions
13 and appeals, challenges to lawyers, challenges to judges that
14 you've raised over the years demonstrates to me that your
15 chief objective is to derail the legal process at every turn.

16 Now, on the other hand, as I've told you in the
17 last proceeding, Mr. Peck, there will be a trial in this case
18 and the trial will occur shortly. And the charge, as you've
19 noted, is a very serious charge. Do you happen to know the
20 maximum possible penalty the Court could impose if you're
21 found guilty in this case?

22 THE DEFENDANT: Five to life.

23 THE COURT: Five to life, yes.

24 THE DEFENDANT: Uh-huh.

1 THE COURT: So in this trial you are literally
2 betting your life.

3 THE DEFENDANT: Yes, I am.

4 THE COURT: I happen to believe very strongly in
5 the jury process. I believe very strongly in the laws and
6 rules that govern that process, including a defendant's
7 presumption of innocence, a defendant's right not to be
8 compelled to be a witness in the proceeding, a defendant's
9 right to call witnesses, to testify or not, whether he or she
10 so chooses.

11 And that the nature of the process essentially is
12 for the jury to determine whether or not the State in any
13 case as to any particular charge has met its burden of proof
14 beyond a reasonable doubt. If you've read the case as
15 decided under Feretta -- and I'm sure you've looked at many
16 of them -- a chief theme in each of those hearings is the
17 court's effort to demonstrate to a defendant how unwise,
18 imprudent, irrational, risky it is to represent yourself. We
19 all know the expression that a person who represents himself
20 has a fool for an attorney.

21 I can tell you that in the nearly 20 years as a
22 judge and almost 35 years as a lawyer in the few instances
23 I've seen defendants actually represent themselves at the
24 trial, it's been ludicrous. It's been the worst possible

1 thing they could do.

2 A related concern is, if the Court permits you to
3 represent yourself, then as a matter of law you never after
4 that have a claim for competence of counsel because you're
5 not the lawyer. You can come in and make every mistake in
6 the book and, if you're convicted, you're not going to be
7 able to set aside that conviction based on your conduct.

8 The Court has no obligation to appoint advisory or
9 assistant counsel. The Court certainly has no obligation to
10 reorganize the timing of events in the case to accommodate
11 you.

12 Mr. Peck, we certainly don't know each other at
13 all. I said earlier I'm just frankly outraged that you'd
14 make some ridiculous statement somewhere, whether it's the
15 Judicial Discipline Commission or the district court or
16 wherever that I had some conversation with Roger Hunt about
17 you. That's just nuts. It's false. I don't know why you'd
18 ever do it.

19 But listen to me, I had a twin brother who passed
20 away several years ago from Leukemia. If you were my twin
21 brother -- and I mean this with all earnest -- I would say to
22 you do not represent yourself in this case. I would say to
23 you Mr. Lindsay's been a lawyer for over 25 years. He's had
24 every kind of criminal case there is. He, in my view, is one

1 of the most persuasive and effective courtroom attorneys I've
2 ever seen. I would listen to him and cooperate with him and
3 let him serve you as your lawyer.

4 But your decision about representing yourself is
5 your own to make subject to the Court's determination on
6 these timeliness and voluntariness issues. But, Mr. Peck, I
7 truly just want you to think about this very carefully, and
8 if you -- if you decide to make that decision, then I will
9 decide whether or not it's appropriate to entertain.

10 THE DEFENDANT: This has dominated my thoughts for
11 months now. It's all I've been able to think about. If Mr.
12 Lindsay would work with me I would love to have him, but I
13 cannot trust him because he doesn't do what he says he will
14 do.

15 THE COURT: Mr. Peck, do you realize just in this
16 little hearing this morning the list of the lawyers and
17 judges you told me, in effect, you don't trust? I don't know
18 who you trust. You file this petition with this ridiculous
19 falsehood about me and Judge Hunt.

20 THE DEFENDANT: I'm glad it's false, judge.

21 THE COURT: You gave me a statement about Ken
22 McKenna, that he took a dive in the case in which I thought
23 he was about the best advocate I've ever seen --

24 THE DEFENDANT: I'm not making this up, judge.

1 THE COURT: I don't know what you're doing. But I
2 just want you to -- when all is said and done, you are the
3 person who decides, subject to the Court's approval, if you
4 want to represent yourself.

5 THE DEFENDANT: I have.

6 THE COURT: And I just want you to tell me if
7 you've thought about it for five months, maybe there's
8 nothing else to add on the subject. I've done my best to ask
9 you questions about a range of issues that I think are
10 pertinent to the Court's consideration, and we'll leave it at
11 that. Is there anything else you want to tell me on the
12 subject?

13 THE DEFENDANT: No. I have to represent myself.

14 THE COURT: Okay. Thank you. You may step down.

15 And, Mr. Lindsay, let me just ask a few questions
16 of you as an officer of the Court. As to the alibi witnesses
17 that Mr. Peck mentioned, have those been contacted or
18 interviewed, do you know?

19 MR. LINDSAY: It is the first time I've heard their
20 names, their phone numbers or their addresses in my entire
21 life right this second. As to the charge that he did not
22 tell me to not file the notice of appeal, I don't care that
23 it's frivolous. I would have filed it anyway. That came
24 from the Nevada State Prison so it's a matter of record.

1 They've got the tape-recording of him calling me. I'm sorry,
2 your Honor.

3 THE COURT: Okay.

4 THE DEFENDANT: That doesn't exist.

5 THE COURT: Mr. Peck, don't interrupt.

6 THE DEFENDANT: I'm sorry.

7 THE COURT: What about these witnesses? You've
8 never heard these names before?

9 MR. LINDSAY: Your Honor, I could say it again. I
10 have first heard about them and I have written them down as
11 they came from that witness stand.

12 But I want one other thing to be known: Mr. Peck
13 went to some length to tell me more about DNA than I knew
14 when I met him last at prison and we decided -- and this must
15 be known -- the victim cannot identify my client as the
16 perpetrator. That's a fair statement, I believe, counsel.
17 The witness cannot identify my client as the assailant.
18 That's fairly large, your Honor.

19 There is a lot of question about all of that, and
20 at my last meeting with my client, which, by the way, was a
21 very positive meeting, in my mind; in other words, we had no
22 agreement. We spoke of DNA. I said in my opinion this is a
23 DNA case. The only link between their allegation and you
24 lies solely, wholly and only with DNA evidence.

1 And, for the record, as an officer of the court --
2 and I'm happy to be sworn, your Honor -- my client, I then
3 said, Do you have an expert, do you have a lab, because he
4 had an enormous knowledge of DNA that I did not have. And he
5 said I do not. I do not have an expert or a lab, and I said,
6 Well, that's really my job. And I went out --

7 THE COURT: Mr. Peck, be seated. Now, you're not
8 gonna interrupt anybody. Nobody interrupted you and you're
9 not gonna interrupt anybody. Go ahead, please.

10 MR. LINDSAY: I believed, because it was a DNA
11 case, that I had a responsibility to go as well as I could
12 through this man's file regarding that DNA investigation and
13 regarding words like "contamination," which have a scientific
14 meaning and regarding the storage and regarding the
15 collection and regarding the genetic markers, thirteen
16 standard genetic markers -- I'm sorry, your Honor. I
17 apologize. If I have might have just a second.

18 For the record, I've been with -- I've been at his
19 office with his investigator and I went through his file
20 upside-down. I could tell him what the documents were from
21 ten feet away. I went through his file, your Honor. I have
22 met with my DNA expert. I have given notice -- I'm not
23 saying that, if I was on the case, I'm gonna call her or not
24 call her -- but I've gotten a gentleman's agreement from

1 counsel that no matter what, no matter what, he has agreed as
2 a gentleman and as an officer of the court and as an
3 honorable human being to not call my client's expert unless I
4 choose to call her, Dr. Amy Lewellen.

5 Your Honor, that is an agreement, and I believe
6 counsel is shaking his head yes. So he has agreed that, if I
7 choose not to call her, he will not call her.

8 MR. CLIFTON: That's correct, your Honor.

9 THE COURT: Did you have some understanding with
10 Mr. Peck that you would use a DNA lab or expert from out of
11 the state?

12 MR. LINDSAY: We spoke of it. I asked him
13 specifically, because he had an enormous knowledge of DNA and
14 he handed me some articles. He taught me things I had no
15 idea about it. I spent some time reading DNA since then.

16 And I said, Do you have an expert or a lab, and he
17 looked at me and he said no to both, which, in all honesty
18 and candidness with the Court, surprised me. Because I was
19 pretty certain he was gonna give me the name of the guy that
20 could hit the long ball or the doctor that could hit the long
21 ball and the lab that would be impeccable.

22 He -- he said, I do not. I have -- and I said,
23 which I believe is my appropriate responsibility, Well, you
24 know, that's really my job, to go get a lab and an expert.

1 It's not his job. It's my job. All right.

2 THE COURT: All right.

3 MR. LINDSAY: My expert, for the record, has met
4 with their expert. My expert has met with me, obviously,
5 prior to, but also subsequent to. And, for the record, I
6 have gone through his file, and I apologize, your Honor. I
7 have had the flu this week. I actually don't remember the
8 Court's question. I'll not feeling very good right now.

9 THE COURT: Thank you, Mr. Lindsay, for appearing
10 here today. You've answered the question I asked. So, in
11 effect, you have thoroughly reviewed the State's evidence,
12 the State's witnesses, the State's DNA evidence. You've
13 explored the opportunity of obtaining the defense expert.

14 It is -- it is difficult to represent difficult
15 clients. Mr. Peck is litigious, as I've noted earlier in
16 talking to him. He's one of the most litigious people I've
17 ever seen. But, that doesn't alter counsel's obligation to
18 provide effective representation.

19 On the other hand, somebody could be so offensive,
20 so obnoxious, so contentious that a person trying to
21 represent them just can't do their job. What's your view?
22 Do you think you could represent Mr. Peck in this case or are
23 you fed up with him?

24 MR. LINDSAY: Your Honor, I lost my temper with

1 Mr. Peck. I believe when he spoke about Mr. Birch --

2 THE COURT: Well, I lost my temper when he accused
3 me of making a phony claim that I had a conversation with
4 Judge Hunt.

5 MR. LINDSAY: It was inappropriate behavior on my
6 part. I lost my temper with my client because I believed he
7 was threatening me. I believe that he thought that one for
8 sure way to get rid of me was to -- this Court's aware of
9 what happened in the last trial I was in. I believe this
10 Court knows that. I was stabbed by my client in front of the
11 jury.

12 And I'm gonna just put on the record I, in fact,
13 went to the hospital and that I've had two months of a doctor
14 thinking I had cancer and I've had four months of more tests
15 than anybody should ever have to go through. And it turns
16 out I do have a little bit of problem that probably stem, not
17 from the stabbing, but from the treatment. All of that
18 aside, it hasn't been much fun. For two months I actually
19 thought I had cancer. My doctor thought I had cancer. I
20 don't, for the record, have cancer. Most of the tests --
21 literally all of the tests came back negative except for two
22 of them within the last three weeks. I believe that my anger
23 toward Mr. Peck had to do with my frustration with my medical
24 condition, your Honor. I have -- and I do --

1 THE COURT: Well, on the positive side, Mr. Peck
2 seems intelligent. He has spent a lot of time looking at the
3 law, he tells me. He's filed many legal pleadings. Although
4 they've been unsuccessful, he knows how to draft them. You
5 tell me he did a great deal of DNA research.

6 Unless he's insane, I would think he wants to
7 assist his counsel in defense of the case and, as you pointed
8 out, there's a very remarkable feature to this case, which is
9 the alleged victim apparently can't identify the defendant.
10 So if there is a triable issue about the technology or DNA
11 results, it could be a very defensible case.

12 I know nothing about the evidence or the witnesses,
13 but from what you tell me you've got a client who is
14 desperately involved in the case, intelligent, produces
15 information but, as he's demonstrated here in the courtroom
16 today, can be awfully hostile and say things right to your
17 face that are false.

18 So what do you do? Can you represent this
19 gentleman or not? That's all I really want to know.

20 MR. LINDSAY: He moved to get rid of me before we
21 had the argument in there. I mean, he moved to get rid of me
22 as soon as I saw the DNA expert. I'm sorry. That's the
23 problem. I -- the truth is he and I share one very close
24 friend, Dennis Widdis, and I have spoken with Dennis Widdis

1 this week and he has asked me --

2 THE COURT: The lawyer he sued twice in two other
3 writ petitions.

4 MR. LINDSAY: Mr. Widdis and I are friends, and I
5 think you know that, for decades.

6 THE COURT: I think he's a fabulous criminal
7 lawyer.

8 MR. LINDSAY: He's a pain for any D.A. that has to
9 deal with him and God bless Dennis. And he has personally
10 asked me to do whatever I can and to not give up on Mr. Peck.
11 And Dennis has gotten me to promise -- and I was going to
12 offer this, your Honor, pro bono, if he chooses to get me off
13 this case, I will sit back here pro bono, your Honor, just in
14 case he needs anything. I'm offering my services free for
15 the entire trial that he has, unless he wants me out or
16 unless the Court insists that I not be here, and so that's a
17 -- that's something that Mr. Widdis asked me to do.

18 As far as losing my temper with him, I did lose my
19 temper with him. I took what he said to be a belief on his
20 part that I would sit passively around while somebody stabbed
21 me and I lost my temper, your Honor. I lost my temper.

22 THE COURT: Let me ask you about the timing of the
23 trial. I know the district attorney has indicated that,
24 because of the availability of a witness or two on behalf of

1 the State, the State would prefer to start the trial next
2 Wednesday and have the trial Wednesday, Thursday, Friday and,
3 if necessary, into Monday. What's your view on that?

4 MR. LINDSAY: I have all that time off. I have a
5 Monday morning matter that I'll have to move or find another
6 counsel -- probably Mr. Widdis will take that for me pro
7 bona. I think that would be a fair exchange if I'm here for
8 that time. My calendar has been made available. I've told
9 counsel that I will make my calendar available.

10 Your Honor, I'm a defense lawyer. I will do simply
11 everything I possibly can as a lawyer to defend Mr. Peck or
12 anyone else that you ever see me in court with, and I will do
13 that no matter what. I will do that no matter what. And I
14 don't have the second gear and I don't want to have the gear
15 and, if you ever see it in me, throw me out of your court,
16 would you please.

17 THE COURT: Thank you. Mr. Clifton?

18 MR. CLIFTON: I have nothing to add, your Honor.
19 Certainly I'd prefer to have Mr. Lindsay stay on the case
20 and, at the very least, if Mr. Peck is allowed to represent
21 himself, obviously the Court should consider any additional
22 factors or admonitions to Mr. Peck that are listed in Supreme
23 Court Rule 253, Subsection 2. There's a whole page worth,
24 and I have them if you need them.

1 THE COURT: Is there anything I didn't cover?

2 MR. CLIFTON: You went through most of them.

3 There's a few more at the end, this is if you're inclined to
4 let him represent himself. And then we ask that, if he does
5 represent himself, that Mr. Lindsay be allowed to standby or
6 advisory counsel.

7 THE COURT: Would the witnesses for this trial be
8 available if we started a week from Monday?

9 MR. CLIFTON: No, your Honor. I did check, your
10 Honor. When we set it on the 4th, that's the first week
11 after school gets out. I told everyone if you have any
12 children or school vacations that you're planning to go to
13 after school, please put them off for a week. One is going
14 to Hawaii on the 11th and one going to Arizona, so I can't
15 possibly have my witnesses there the week of the 11th but, if
16 we start on the 6th, I can get them on and off Thursday or
17 Friday.

18 THE COURT: Okay. Thank you. Mr. Peck, let me
19 review with you, if I may, some other considerations that are
20 set forth in Nevada Supreme Court Rule 253. As you may know,
21 Rule 253 doesn't apply directly to this proceeding but the
22 considerations in that rule are derived from case law on the
23 subject of self-representation, so I'd like to go through
24 those with you.

1 The first one is something we've already discussed
2 and I tried to stress it much more strongly than in this
3 rule, and that is that self-representation is often unwise
4 and that you may conduct a defense to your own detriment. Do
5 you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Also, I want to advise you that a
8 proper person defendant, that is, somebody who represents
9 themselves, is responsible for knowing and complying with the
10 same procedural rules as lawyers and cannot expect help from
11 the judge in complying with the procedural rules. Do you
12 understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: In other words, you can't represent
15 yourself and then come in and say, well, gee, I didn't get my
16 jury instructions in on time or I don't know how to proceed
17 with the voir dire process. If you represent yourself,
18 you're deemed to follow the same process as parties
19 represented by lawyers. Do you understand that?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: And you understand that you will not be
22 allowed to complain on appeal about the competency or
23 effectiveness of your representation? Do you understand
24 that?

1 THE DEFENDANT: Yes, I understand that.

2 THE COURT: You understand that the State in this
3 case will be represented by experienced, professional counsel
4 who will have the advantage of skill, training and ability?

5 THE DEFENDANT: Yes.

6 THE COURT: I want to pause on that subject for
7 just a minute. Mr. Peck, I'm being as honest as I can be.
8 I've told you already Mr. Lindsay is a superb advocate in
9 criminal cases. I've seen him here in this courtroom be
10 successful and in difficult cases, in serious cases such as
11 yours.

12 I would tell you the same thing about Mr. Clifton.
13 He's tried one of the most complex criminal cases of any
14 prosecutor I've seen. On July 4th I will have served in this
15 position 20 years. He tried both of the longest trials I've
16 had in this courtroom, very difficult cases, one case
17 involving virtually eight weeks of complicated scientific
18 evidence. So that's who you're up against. Do you
19 understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay. And do you understand that
22 you're not entitled to any special library privileges?

23 THE DEFENDANT: Yes, I understand that but I have a
24 question about that.

1 THE COURT: Yes?

2 THE DEFENDANT: I understand that there's no -- I'm
3 not entitled to special library privileges but what about
4 normal library privileges?

5 THE COURT: You'll be entitled to the privileges of
6 using legal materials wherever you're incarcerated, the
7 Washoe County Jail or Nevada State Prison or any other
8 facility.

9 THE DEFENDANT: Well, I have another question about
10 that. The only place that supplies any legal materials would
11 be Nevada prison.

12 THE COURT: Okay. Then that would be the place you
13 ought to be incarcerated and, of course, that won't be during
14 the trial. You'll have to be confined in the Washoe County
15 Jail during the trial.

16 THE DEFENDANT: Well, I have a question about that
17 too. Wouldn't that be prudent, to allow me to be able to
18 work through setbacks through trial with my own legal
19 resources?

20 THE COURT: To do what?

21 THE DEFENDANT: Well, in case there's a setback
22 during the trial, something that I need to work through, I
23 need to have my tools, you know. I need to be able to be
24 where, in other words, NDOC, can deliver me and --

1 THE COURT: You're not gonna go back and forth to
2 the Nevada State Prison during each day of trial. You'll be
3 confined in the Washoe County Jail. If it's determined by
4 the Court that there's information necessary for you to have
5 during the trial, then the Court will make that available to
6 you. I should tell you that your jury instructions will be
7 submitted with the State's on the first day of trial.

8 And let me also advise you that somebody such as
9 yourself who is unfamiliar with legal procedures may allow
10 the prosecutor an advantage, may not make effective use of
11 your legal rights and may make tactical decisions that make
12 unintended consequences. Do you understand that?

13 THE DEFENDANT: Yes. May I speak with Mr. Lindsay?
14 May I have an opportunity before this decision is rendered?

15 THE COURT: I thought you made your decision,
16 Mr. Peck. That's why we've been spending an hour on this
17 subject.

18 THE DEFENDANT: Yes, I know. I would like a chance
19 to speak to him.

20 THE COURT: Okay. Let me just conclude, if I may,
21 with the canvass of these important rights and then, if you
22 wish to speak to Mr. Lindsay, you may.

23 THE DEFENDANT: Okay.

24 THE COURT: The effectiveness of the defense may

1 well be diminished by the defendant's dual role as attorney
2 in the case. Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: I've seen that firsthand, Mr. Peck.
5 I've sat here as a judge in a trial and seen a defendant --
6 I'll give you an example -- in an armed robbery case. And he
7 goes up to the witness and says, What did the perpetrator
8 do -- he's playing the lawyer now -- and the witness says,
9 You pointed a gun at me and you said, Give me the money. Do
10 you see how ludicrous that is?

11 THE DEFENDANT: Absolutely.

12 THE COURT: The jury laughed and the gentleman was
13 convicted in five minutes and received a very substantial
14 prison sentence. I frankly don't know how one human being in
15 a trial can be the advocate and be the defendant. I don't
16 know how. But that's what this consideration is pointing
17 out.

18 THE DEFENDANT: And may I?

19 THE COURT: Sure.

20 THE DEFENDANT: In this case there's been no
21 identification of anyone, so wouldn't the motion in limine
22 exclude the victim from saying that I'm the guy?

23 THE COURT: Well, it's a little late for motions in
24 limine, but the short answer is no, it wouldn't preclude --

1 well, let me make it simple.

2 I can't tell you what the basis or opposition or
3 result of a motion in limine may be, so I don't know. I
4 don't know if the State's witness is going to offer to
5 testify that you are the perpetrator and, if so, I don't know
6 the basis for that testimony. I can't give you a ruling on
7 that subject. I'm just trying to point out that the only
8 reason I used the --

9 THE DEFENDANT: I understand.

10 THE COURT: -- robbery example, that was a case in
11 which, of course, the victim claimed to be able to identify
12 the perpetrator and also identified him on film, by the way.
13 The point of that was not the victim identification. The
14 point of that story was to demonstrate to you how ludicrous
15 it is for a person to try to be the lawyer and be the
16 defendant.

17 Now, just think of it. I want you to picture this:
18 You're sitting there during the trial. The theory of the
19 State is you committed sexual assault by overcoming the will
20 of the victim to have intercourse with her a long time ago,
21 many years ago. And you're sitting there and they're talking
22 about you. The whole case is against you. And you're
23 sitting here and you're being the person they're talking
24 about and the advocate of your case. It's just ridiculous.

1 THE DEFENDANT: I'm in an impossible position.

2 THE COURT: I can't imagine anything worse. I
3 think a person who represents themselves actually does the
4 most anybody can do to help the State's case against them.
5 If I were a prosecutor, I would want every single defendant
6 to represent themselves. That's how strongly I feel about
7 that. I think it can make a weak case stronger for the State
8 and puts the defendant in a ridiculous situation. Can I -- I
9 probably shouldn't do this. Is your brother's case still
10 pending somewhere?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. Then I shouldn't comment on
13 that.

14 THE DEFENDANT: Somewhere, I think -- oh, he has a
15 petition pending in your court as well.

16 THE COURT: Well, good. Did you write that?

17 THE DEFENDANT: No, sir.

18 THE COURT: Okay. Well, I won't use that case as
19 an example, but I thought that case -- and I'll tell you
20 again. I've told Mr. McKenna many times, I've mentioned it
21 at seminars and teaching venues -- he just did a remarkable
22 job.

23 But your brother did a remarkable job. It came to
24 the point of the trial where he gives a statement in

1 allocution, a statement before the jury decides the sentence.
2 This was at the penalty phase. And, as you know, the State
3 sought the death penalty in that case. I'm trying to
4 remember who the prosecutor was --

5 MR. CLIFTON: Mr. Gammick and Mr. Hall.

6 THE COURT: That's right. And I'll just say that I
7 thought it was very eloquent and very moving and very
8 powerful. It was very short. It was very short. I can't
9 imagine how that would have -- how that would have happened
10 if he'd been his own lawyer during the trial. He would have
11 lost the power of that moment.

12 Okay. The next thing I want to mention is we've
13 discussed your age, education, literacy, background and prior
14 experience and familiarity with legal proceedings. I will
15 just ask briefly about your health, Mr. Peck. I assume
16 you're in good health.

17 THE DEFENDANT: Yes.

18 THE COURT: Are you taking any medication or are
19 you under the influence of any alcohol or other drugs?

20 THE DEFENDANT: No.

21 THE COURT: Have you had any mental health history,
22 any counseling or treatment by mental health professionals?

23 THE WITNESS: No.

24 THE COURT: Have you been threatened or coerced in

1 any way by anyone to waive your right to an attorney?

2 THE DEFENDANT: No.

3 THE COURT: Do you -- do you understand that you do
4 have the right to representation at no cost if you're unable
5 to pay for a lawyer?

6 THE DEFENDANT: Yes.

7 THE COURT: We've discussed the elements of each
8 crime and we've discussed the penalties.

9 THE DEFENDANT: Uh-huh.

10 THE COURT: And we have discussed a little bit the
11 defenses. Obviously, one defense would be that the State
12 can't prove the charge by evidence beyond a reasonable doubt.
13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: And alibi would be another defense.
16 We've discussed that; that is, that you literally weren't
17 there when the crime occurred. Right?

18 THE DEFENDANT: Yes.

19 THE COURT: And we've discussed the issues
20 concerning the reliability of the DNA results. Right?

21 THE DEFENDANT: Uh-huh.

22 THE COURT: Are any other defenses that come to
23 your mind as you stand here today?

24 THE DEFENDANT: Well, there's the possibility of

1 scientific fraud.

2 THE COURT: Okay. You mean -- I'll use it in the
3 ordinary language, then, corruption or some facts that would
4 render the DNA evidence unreliable.

5 THE DEFENDANT: Either accident, mistake or
6 outright fraud.

7 THE COURT: I'll just call it reasons to believe
8 the DNA results are not accurate.

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. And you understand that the
11 Court may appoint standby counsel, who, in the event the
12 Court terminates your self-representation, would become
13 appointed counsel and represent you in the remaining
14 proceeding?

15 THE DEFENDANT: Yes.

16 THE COURT: But you understand, of course, the
17 Court is never obligated to appoint standby counsel?

18 THE DEFENDANT: Yes.

19 THE COURT: And if standby counsel is appointed,
20 counsel is not required to advise or provide you with legal
21 advice.

22 THE DEFENDANT: Yes.

23 THE COURT: In other words, standby counsel isn't
24 very much. It's simply somebody, such as Mr. Lindsay, being

1 available and maybe if you have a question he can help you.
2 But he's not acting as your lawyer or your legal
3 representative.

4 And, again, you can never later make a claim, even
5 if you have standby counsel, that you were not adequately
6 represented, if the Court permits you to represent yourself.
7 Do you understand?

8 THE DEFENDANT: Right.

9 THE COURT: All right. We'll take a brief recess.
10 You may confer with Mr. Lindsay and then we'll resume. Court
11 is in recess.

12 (Recess taken.)

13 THE COURT: Mr. Peck, anything further?

14 THE DEFENDANT: No, sir.

15 THE COURT: The Court has carefully examined the
16 defendant as well as considered the context in which the
17 defendant's request to represent himself was made.

18 In Alliance versus State 106 Nevada page 438 the
19 Nevada Supreme Court noted that as to the timeliness of the
20 request for self-representation, if such a request is made
21 well before trial, the right to self-representation is deemed
22 to be timely as a matter of law and may not be denied absent
23 justification other than timeliness.

24 Secondly, if the request is made shortly before or

1 on the day of trial, the Court may, in its discretion, deny a
2 request as untimely unless there's reasonable cause to
3 justify the lateness of request. And, third, of course, if
4 the request is made during trial, the Court has very large
5 measure of discretion to grant or deny the request.

6 Criminal defendants have an unqualified right to
7 self-representation so long as there is a voluntary and
8 intelligent waiver of right to counsel. Courts sometime
9 permits self-representation to be denied where, for instance,
10 the defendant's request is untimely or the request is
11 equivocal or the request is made solely for purposes of delay
12 or the defendant abuses the right of self-representation by
13 disrupting the judicial process, the case is especially
14 complex requiring the assistance of counsel -- that's another
15 basis for denial -- or the defendant is incompetent to
16 voluntarily and intelligently waive his right to counsel.

17 A Court may deny a defendant's request to represent
18 himself when the case is so complex that the defendant would
19 virtually be denied a fair trial if allowed to proceed
20 without counsel. A request may be denied where it is
21 untimely; that is, where it's not made within a reasonable
22 time before trial and there's no cause justifying the
23 lateness of the request. The Court, of course, may deny
24 requests for self-representation on the day of trial or on

1 the eve of trial.

2 The Court in this case has also followed the
3 guidance of Nevada Rule -- Nevada Supreme Court Rule 253,
4 although this is not a death penalty proceeding. I believe
5 the consideration as set forth in Subsection 2 are pertinent
6 as well as those in Subsection 3 and, therefore, I have
7 canvassed Mr. Peck on those subjects.

8 The Court has also relied on the case of Harris
9 versus State found at 113 Nevada page 799. This case is
10 significant because in this case a number of the same
11 considerations were raised as are raised in this case. I
12 would also note that the defendant does not have a
13 constitutional right to advisory counsel. The district court
14 has no duty to appoint advisory counsel when the defendant
15 elects to represent himself.

16 One prominent consideration by the Court in this
17 matter is the untimeliness of the defendant's request. And,
18 as I've noted, Mr. Peck throughout the history of this case
19 and in other proceedings has brought a number of petitions
20 and applications to courts for relief, the district court and
21 several judges and the Nevada Supreme Court. He's been
22 unsuccessful. He's challenged, without basis, my ability to
23 sit on this case. He's challenged, without basis, Judge
24 Elliott's ability to decide the issue of disqualification.

1 He's complained about a number of lawyers who have sought to
2 represent him.

3 And I think all those circumstances together with
4 the timing of this request demonstrate forcefully that one
5 motive of Mr. Peck in requesting to represent himself is to,
6 as I put it, derail the legal proceedings and delay or defeat
7 the legal process, and this he will not be allowed to do.

8 That consideration would certainly warrant the
9 Court in denying the defendant's motion to represent himself.
10 On the other hand, I've had an extended interrogation of
11 Mr. Peck this morning. He seems to be a very intelligent
12 person. He has a background on a number of legal subjects
13 related to criminal law. As Mr. Lindsay has represented to
14 the Court, Mr. Peck has taken a keen interest in his own case
15 and has conducted extensive research on the subject of DNA
16 identification, even exceeding that of his own counsel.

17 Mr. Peck did file a notice of alibi witnesses in
18 this case, although it was improper for him to do so because
19 he was represented by counsel at the time. He did file that
20 motion -- I mean that notice some weeks ago. And the
21 defendant, I think, well understands, as I've made very, very
22 clear to him, the extreme risk and inadvisability of
23 representing himself. I frankly can't think of any other
24 question or consideration I might have raised to try to

1 STATE OF NEVADA)
)SS.
2 COUNTY OF WASHOE)

3 I, CHRISTINA MARIE HERBERT, official reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify:

6 That as such reporter, I was present in Department No. 6
7 of the above court on Friday, May 1, 2009, at the hour of
8 9:00 a.m. of said day, and I then and there took verbatim
9 stenotype notes of the proceedings had and testimony given
10 therein in the case of State of Nevada, Plaintiff, versus
11 FRANK MILFORD PECK, Defendant, Case No. CR06-2580.

12 That the foregoing transcript is a true and correct
13 transcript of my said stenotype notes so taken as aforesaid,
14 and is a true and correct statement of the proceedings had
15 and testimony given in the above-entitled action to the best
16 of my knowledge, skill and ability.

17 DATED: At Reno, Nevada, this 3rd day of May 2009.
18

19 /S/ Christina Marie Herbert, CCR #641

20 Christina Marie Herbert, CCR #641
21
22
23
24

FILED

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

MAY 21 2009

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

FRANK MILFORD PECK,
Appellant,
vs
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 53826
District Court Case No CR062580

CR06-2580 DC-9900009409-0021
STATE VS FRANK MILFORD PECK 1 Page
District Court 05/21/2009 09:04 AM
Washoe County
1188
KRELF

RECEIPT FOR DOCUMENTS

TO: Frank Milford Peck #57106
Attorney General Catherine Cortez Masto/Carson City and Catherine
Cortez Masto, Attorney General
Washoe County District Attorney Richard A. Gammick and Gary H.
Hatlestad, Deputy District Attorney
Howard W. Conyers , District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

- 05/19/09 Filed Certified Copy of proper person Notice of Appeal.
Appeal docketed in the Supreme Court this day.
- 05/19/09 Filing Fee Waived: Criminal.

DATE: May 19, 2009

Tracie Lindeman, Clerk of Court

FILED

CASE No. CR-06-2580

Dept No. 6

09 MAY 22 AM 11:21

HONORABLE JUSTICES

IN The Second Judicial District Court of the State of Nevada

IN AND for the State of Nevada

Frank M. Peck

Motion to Correct CONST

Defendant,

MANIFEST INJUSTICE

- vs -

Weight of the Evidence

State of Nevada

Plaintiff

Comes Now, the Defendant, FRANK M. PECK, Prose, herein requests that the Trial Judge, Brent Adams, corrects the MANIFEST INJUSTICE, committed at the close of evidence in the above intitled case, in that the trial Judge failed to spontaneously enter a Directed Verdict of Not Guilty, due to the fact that not one shred of evidence was presented at trial linking the Defendant to the crime, ie, no DNA Profiles were ever admitted into evidence. No Reference Standard or Evidentiary or comparison evidence was ever submitted to the Jury; only uncorroborated testimony of the prosecutions witness in chief, crimelab director Rene Romero, who's testimony has been found to be false, misleading, inaccurate and ~~misleading~~ unreliable. Troy Don Brown (9th Cir May 2008).

V4.618

DC-990008642-020
 CR06-2580
 STATE VS. FRANK MILFORD PECK 5 Pages
 District Court 05/22/2009 11:21 AM
 Washoe County
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This conviction cannot stand, as the state did not prove anything at trial by clear and convincing evidence, only the uncorroborated testimony of the state's witness, as evidenced by the questions by the jury, they wanted to see the evidence - actual display of profiles and overlay of any matching profiles, - Electropherogram - "EVIDENCE",

Trial Judge Brent Adams knows that the only reason Mr. Peck waived his right to counsel was to seek discovery of the records believed to be exculpatory under Brady v Maryland, in the possession of the Washoe County Crime Lab. The denial of Mr. Peck's motion to vacate trial so the defendant can seek discovery of the underlying records from the crime lab, WITHOUT EVEN READING THE MOTION, was not only an abuse of discretion but was also a violation of the defendant's due process rights under the U.S. and Nevada Constitutions.

GRAY V. KLAUSER, 282 F3d 633 (9th Cir. 2002).

A state may not arbitrarily prevent defendant from presenting evidence that is material, trustworthy, and important to his defense.

MASON V MITCHELL 320 F3d 604 (6th Cir. 2003). Criminal trial is fundamentally unfair if state proceeds against indigent defendant without making sure he has access to raw materials integral to building effective defense.

Mr Peck made a substantial showing of the need for substitution of counsel, Mr Peck also made a valid request for discovery crucial to the Defense to challenge the states DNA Evidence, that Pre-trial Counsel refused to request, and even lied to his client, stating, the request had been made, in turn causing defendants waiver of counsel.

The failure of the trial Judge to Grant these crucial motions not only denied Mr Peck of his right to a fair trial; his right to examine ~~the~~ and challenge the evidence against him, his right to put on a meaningful defense.

Mr Peck, Before, During and after and currently, is being deprived of any legal or research materials and is working from limited books only retained in his cell and should be liberally construed HAINES V KERNER 404 U.S. 519, 30 LEd2d 652, 92 Sct 594 (1972).

All claims brought herein are brought under the US and Nevada Constitutions and their respective Amendments.

U.S. V. GESTON 299 F3d 1130 (9th Cir 2002)

To secure reversal under plain error standard, defendant must prove that: (1) There was error, (2) The error was plain, and (3) the error affected substantial rights.

It was plain error to deny defendants motion for COUNSEL AND DISCOVERY these errors obviously affected substantial rights.

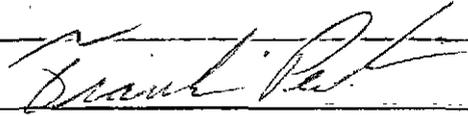
It was also plain error of constitutional magnitude for the trial judge not to sua sponte, enter Directed Verdict of Not Guilty.

U.S. V. BAUTISTA 252 F3d 141 (2nd Cir 2001)

Absence of evidence in criminal case is valid basis for Reasonable Doubt.

In the interest of Justice the Trial Judge, Brent Adams should enter a Directed Verdict of Not Guilty or at the very least order a New trial so that Mr Peek receives a fair trial with proper discovery and the effective assistance of counsel he was not afforded by the U.S. and Nevada Constitutions.

Dated this 14th day of May 2009.



Frank Peck Prose

Certificate of Service and Affirmation
that this Motion to correct Manifest Injustice
does not contain Any social security
Numbers of Any person per NRS 239B.030
And has been mailed to:

Dave Clifton DPA

75 Court Street

Reno NV 89509



Frank Peck Prose

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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF WASHOE

8

THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

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STATE OF NEVADA,) Case No. CR06-2580
11)
) Dept. No. 6
12 Plaintiff,)
 vs.)
13) TRANSCRIPT OF PROCEEDINGS
FRANK MILFORD PECK,)
14)
 Defendant.)
15 _____)

16

MOTION TO CONFIRM TRIAL
APRIL 22, 2009, RENO, NEVADA

17

APPEARANCES:

18

For the Plaintiff: DAVID W. CLIFTON, ESQ.
19 Deputy District Attorney
One S. Sierra Street, 4th Floor
20 Reno, Nevada 89520

21

For the Defendant: ROBERT BRUCE LINDSAY, ESQ.
22 596 California Avenue
Reno, Nevada 89509

23

The Defendant: FRANK MILFORD PECK
24 Reported by: JULIE ANN KERNAN, CCR #427, CP, RPR
Computer-Aided Transcription

1 RENO, NEVADA; WEDNESDAY, APRIL 22, 2009; 9:21 A.M.

2 ---o0o---

3
4 THE COURT: Ladies and gentlemen, I apologize
5 sincerely for the delay this morning. The first matter
6 is CR06-2580, State versus Frank Milford Peck. This is
7 the time for the motion to confirm trial.

8 Mr. Lindsay and Mr. Clifton, are we confirming
9 the trial in this matter?

10 MR. LINDSAY: Your Honor, it certainly is
11 going to be going to trial. I believe my client wants
12 to make a statement to you, but just for the record, I
13 believe I have hired an expert that is willing -- Dr.
14 Lewellyn, who is willing to meet, and I am hoping that
15 it can be arranged prior to trial with counsel's expert.
16 That is my deepest hope, so that I can get a complete
17 and absolute thorough review by my expert.

18 Your Honor, this is a DNA case, that's what
19 this is, and I'm hopeful that's gonna be arranged. I
20 have been given materials, I have been transporting
21 those to my expert. I do believe we have a slight
22 scheduling conflict and I have no objection to it, I
23 have nothing else set the rest of that week.

24 And, your Honor, I believe that my client

1 wants to address you because after our last talk about
2 DNA, I believe he's moved to remove me as counsel, your
3 Honor, and so I would ask you to allow him to speak --

4 THE COURT: All right. Thank you.

5 MR. LINDSAY: -- if that's all right.

6 THE COURT: You talked to Mr. Lewellyn?

7 MR. LINDSAY: Dr. Lewellyn, yes, her. She.

8 THE COURT: Dr. Lewellyn? And you're going to
9 arrange a meeting with her and the State's expert on the
10 DNA.

11 MR. LINDSAY: I am hoping to arrange that
12 because it gives me the thorough, most thorough ability
13 to examine whether there was contamination when the 13
14 markers made. I've done what little I can as a layman
15 to come to know what DNA means and I know that me
16 standing in the lab with counsel and with his expert is
17 not going to cut it, so that's what we're trying to do
18 is arrange to have the doctors meet and counsel and I
19 meet so that we have a thorough -- there are issues with
20 DNA and it sounds like there aren't, but there always
21 are.

22 THE COURT: She's also received from you the
23 reports to review, right?

24 MR. LINDSAY: Yes, your Honor. And I have

1 filed notice with counsel, I believe he has notice of
2 her as an expert on the phone. He's known about her
3 from before I filed the notice. None of this is a
4 surprise, your Honor.

5 THE COURT: All right. Thank you. And how
6 long do you expect the trial will be?

7 MR. LINDSAY: I'm going to guess three days.
8 And I know we have some scheduling problems and I'm not
9 objecting to -- I believe it's going to be a two-day
10 continuance? And I would just like to inform the Court
11 that in my -- if my expert can't physically be there --
12 she's also a teacher. If she can't physically be there,
13 I'm going to ask that we have a transcript made of the
14 expert testimony, your Honor, so that I can hand that to
15 her that evening to prepare her for the next day so that
16 she will have that. Your Honor, I'm just making the
17 obvious request, your Honor.

18 THE COURT: Okay. Thank you. Mr. Clifton.

19 MR. CLIFTON: Thank you, your Honor. A couple
20 of things. First of all, we have pretty much open file
21 discovery in this case, your Honor, and I have provided
22 Mr. Lindsay with everything to date that we have, that I
23 can get to him. Nothing -- in addition to the reports
24 on the DNA, I have given him the powerpoint presentation

1 that our DNA expert will be utilizing, and I know he's
2 giving that to his expert.

3 He has asked me if his expert can meet with my
4 expert this morning. I don't know what their protocol
5 is. I have to check with our lab and see if they can
6 arrange that or are willing to do something like that,
7 especially in-house at their own lab. We don't want
8 somebody coming up there and checking our lab out
9 without our knowledge or, you know, whatever she's
10 doing, so I have to check with Rene Romero, who's my
11 number one expert on the DNA test result, and if she is
12 agreeable to that I certainly am, I will request that
13 she meet with Dr. Lewellyn.

14 THE COURT: I think it's a reasonable request.
15 If for whatever reason she's reluctant to do that we'll
16 have a phone conversation and discuss it and I won't
17 order it at this point, but I do think it's reasonable
18 and I hope they're able to work that out.

19 MR. CLIFTON: Okay.

20 THE COURT: What about the timing of the
21 trial?

22 MR. CLIFTON: Here's mostly the State's
23 concern, your Honor. This trial date has been set, and
24 sometime ago I did check with my experts, and two of my

1 experts have concerns that week in the early part of the
2 week, Monday through Wednesday, one is not available
3 until Thursday, one's not available until Friday,
4 they're out of state. There is things that they'd
5 rather not move if they could help it at all. I can
6 check with Mr. Lindsay, he's never had a problem with
7 that. I did call your secretary at least twice in the
8 last couple weeks to let her know, give your office a
9 heads that up this will be something we hope the Court
10 can accommodate. What we'd be asking is to start the
11 trial on something like Wednesday. I know you have
12 criminal court, as we are here this morning on
13 Wednesdays, so I don't have any objection. I would ask
14 that we either start Wednesday afternoon or Thursday
15 morning, it would take us into the next week. I had
16 your secretary -- I think she said you are available and
17 could probably accommodate.

18 THE COURT: Why don't -- if it's possible, why
19 don't we just start the trial on the following Monday so
20 we can start at nine instead of 10:30? Are your
21 witnesses available then?

22 MR. CLIFTON: I'm sure those two are, but I
23 haven't checked with all other witnesses.

24 THE COURT: Okay.

1 MR. CLIFTON: We could try that. I absolutely
2 wouldn't want to have my doctors or nurses call and say
3 I'm not available that week because you told me to be
4 available on the week of the 4th, but either way, your
5 Honor, I will let the Court and Mr. Lindsay know I'm
6 available at any time.

7 THE COURT: Well, let's do this. We'll keep
8 the trial date set as it is. And I frankly don't know
9 if the following Monday is available, but it may be. If
10 it is, I'd prefer to do that and then we try it for
11 three days or, at the most, four days that Monday. If
12 it's not available, then we'll start on the Wednesday of
13 the week that is presently set.

14 MR. CLIFTON: A.m. or p.m.?

15 THE COURT: Pardon me?

16 MR. CLIFTON: A.m., in the morning, or the
17 afternoon?

18 THE COURT: Yes. We'd start at 10:30
19 Wednesday. Do you not want to start on the Wednesday?

20 MR. CLIFTON: I can tell you and Mr. Lindsay,
21 your Honor, I will know this week. I have pretrial
22 conference with my witnesses this week and I'll check
23 with all of them.

24 THE COURT: All right. Thank you. Mr. Peck,

1 if you wish to make a statement you may do so, but
2 please understand that you're not obliged to make any
3 statement and that, of course, any statement you do make
4 needs to be used against you.

5 THE DEFENDANT: Yeah, Judge. I wish to remove
6 Mr. Lindsay as counsel. Have you receive my motion for
7 new counsel?

8 THE COURT: I'm just looking at the file right
9 now, Mr. Peck, and the only motion I see is a motion to
10 reconsider the petition for habeas corpus, and that was
11 filed on April 14th? Your motion, that's been filed
12 since then?

13 THE DEFENDANT: I have filed a motion on the
14 10th of March.

15 THE COURT: Let me just see if it's in here.

16 MR. CLIFTON: Your Honor, I don't know if you
17 actually receive these under seal or receive them at
18 all, but if they're filed by Mr. Peck they are fugative
19 documents and I would be opposed to anything that isn't
20 filed by Mr. Lindsay.

21 THE COURT: Well, I believe documents filed by
22 the defendant himself requesting relief are fugative
23 documents, but a motion to relieve his counsel is a
24 motion he's permitted to file.

1 MR. LINDSAY: And your Honor, it's very
2 important that Mr. Peck be allowed to speak this morning
3 as to that, and it's important that the Court allow him
4 to address you, I believe --

5 THE COURT: Okay. Let me --

6 MR. LINDSAY: -- as to his concerns
7 concerning me as his lawyer.

8 THE COURT: Let me just see if I can find the
9 motion, Mr. Peck, it should be in here. I see the
10 motion for transcripts, was that filed about the same
11 time?

12 THE DEFENDANT: Yeah.

13 THE COURT: Okay.

14 THE DEFENDANT: That was filed on the 24th,
15 motion for transcripts.

16 THE COURT: And the motion as to counsel is
17 filed when again, please?

18 THE DEFENDANT: On March 10th.

19 THE COURT: All right. Here we are, Motion
20 For New Counsel filed on March 10th, okay? You may
21 proceed.

22 THE DEFENDANT: Mr. Lindsay is not qualified
23 to be my attorney, Judge. He's not qualified -- he's
24 not allowed to practice in the supreme court. If he

1 were inclined to file any pretrial motions he wouldn't
2 even be able to appeal them if they were denied. As you
3 can see from the Notice of Appeal that I asked him to
4 file on November 25th when we had the recusal hearing,
5 he didn't -- didn't even write the Notice of Appeal
6 until January 9th, which was 13 days after my right to
7 appeal had expired. And it's my belief that he did that
8 because he's not allowed to practice in the supreme
9 court. He told me he was gonna get me an attorney to do
10 that, but he never did, a Tommy Qualls. He said that
11 they wouldn't give it to him.

12 THE COURT: Mr. Lindsay?

13 MR. LINDSAY: Your Honor, actually, I am
14 allowed to practice in front of Nevada Supreme Court.
15 I'm in front of them right now in a case out of
16 Yerington. I can file a Notice of Appeal on any case
17 any time. The only reason I didn't file a Notice of
18 Appeal is he called me on the phone, he said, "Mr.
19 Lindsay, if I'm gonna lose you as my trial counsel I
20 don't want you filing Notice of Appeal", that's what he
21 told me.

22 I said, "I can't guarantee what's gonna
23 happen. You get a new lawyer, I don't know what's gonna
24 happen". I did not file a Notice of Appeal based on his

1 own request to me. And that's the only reason I didn't
2 file it. And I didn't file a Notice of Appeal on any
3 case anywhere any time.

4 THE COURT: Is it correct that a Notice of
5 Appeal was filed on January 9th?

6 MR. LINDSAY: I don't think it was filed. I
7 don't think it was ever filed, your Honor.

8 THE COURT: Well --

9 MR. LINDSAY: He called me and asked me not to
10 file it.

11 THE COURT: I'm just looking at Mr. Peck's
12 motion, and he says that the motion was not written,
13 that the Notice of Appeal was not written until January
14 9th, 13 days after the defendant's trial appeal had
15 expired. Is that correct?

16 MR. LINDSAY: I filed -- I had a Notice of
17 Appeal in the file a month before that and had he not
18 called me and said -- I disagreed, that's true, I
19 disagreed with the appeal, but I believe it was
20 frivolous, but I was ready to file it, and he called me
21 and said, "Mr. Lindsay, if there's a chance I'm gonna
22 lose you as my lawyer, my trial lawyer, I don't want you
23 filing a Notice of Appeal". And that only had to do
24 with the recusal, your Honor, that's what that was

1 about. And that's the only reason I did what I did.

2 And, of course, I am allowed to file any
3 notice I want with any case, whatsoever. And I am in
4 front of the supreme court right now, I have a nice
5 fight going along with them, but that's a part of life.

6 THE DEFENDANT: In addition to Mr. Lindsay
7 just recently here in the jury box threatening me with
8 physical violence in front of these officers.

9 MR. LINDSAY: Your Honor? He talked about Mr.
10 Bunch and I warned him that he shouldn't do that. He
11 told me about Mr. Bunch stabbing me and I really think
12 that's something he shouldn't try. So yes, I am very,
13 very, obviously, upset.

14 THE COURT: Thank you. Next matter is
15 CR09-0770 --

16 THE DEFENDANT: Your Honor, I have a motion
17 I'd like to file. I'll proceed in pro se?

18 THE COURT: The motion is denied. Mr. Peck,
19 as I've noted, if you wish to file motions concerning
20 your counsel, you may do so. All other applications to
21 the Court for orders must be filed by your counsel.

22 THE DEFENDANT: He's fired. I'm proceeding
23 pro se.

24 THE COURT: You may file whatever you wish,

1 and if you wish to have a hearing on your ability to
2 represent yourself, we'll set that matter for hearing.
3 Until then, Mr. Lindsay is not discharged as your
4 counsel.

5 THE DEFENDANT: Then I'd like to file this
6 motion to proceed pro se in open court.

7 THE COURT: You may do so. And we'll set that
8 matter for a hearing. I'd like to do that as soon as
9 possible because if Mr. Peck is going to represent
10 himself and, of course, Mr. Lindsay would be discharged
11 and we don't have long to prepare for the trial, Mr.
12 Peck, I will tell you now there will be no continuance
13 of the trial. Do you understand that?

14 THE DEFENDANT: Sure.

15 THE COURT: Okay.

16 THE DEFENDANT: So you'll give me no
17 opportunity to prepare or research or anything.

18 THE COURT: You've been represented, in my
19 view, by very, very competent counsel throughout this
20 proceeding and the case has been set for trial and we'll
21 proceed to trial, Mr. Peck.

22 THE DEFENDANT: I'd like to file this. May I
23 approach the clerk?

24 THE COURT: Just a moment, please. Just hand

1 that to your counsel and he'll give it to the clerk,
2 provide copies for counsel for the State. And we'll set
3 this matter for a hearing as to Mr. Peck representing
4 himself on Wednesday, April 29th, 2009, at 9:00.

5 MR. CLIFTON: Thank you, your Honor.

6 THE COURT: And I'm sorry for the delay, but
7 we just don't have any more time on the calendar this
8 morning. That's the earliest we can bring you back to
9 court. Thank you.

10 (Proceedings continued until April 29, 2009,
11 at 9:00 a.m.)

12 ---o0o---

1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

3 I, JULIE ANN KERNAN, official reporter of
4 the Second Judicial District Court of THE STATE of
5 Nevada, in and for the County of Washoe, do hereby
6 certify:

7 That as such reporter I was present in
8 Department No. 6 of the above court on Wednesday,
9 April 22, 2009, at the hour of 9:21 a.m. of said day,
10 and I then and there took verbatim stenotype notes of
11 the proceedings had and testimony given therein upon the
12 Motion to Confirm trial of the case of STATE OF NEVADA,
13 Plaintiff, vs. FRANK MILFORD PECK, Defendant, Case No.
14 CR06-2580.

15 That the foregoing transcript, consisting of
16 pages numbered 1 through 14, both inclusive, is a full,
17 true and correct transcript of my said stenotype notes,
18 so taken as aforesaid, and is a full, true and correct
19 statement of the proceedings of the above-entitled
20 action to the best of my knowledge, skill and ability.

21
22 DATED: At Reno, Nevada, this 28th day of May, 2009.

23 /s/ Julie Ann Kernan

24 _____
JULIE ANN KERNAN, CCR #427

CR06-2580 DC-9900009677-024
STATE VS FRANK MILFORD PECK 4 Pages
District Court 06/02/2009 08:50 AM
Washoe County 2490
DOC TFI DPEC

FILED
JUN 2
09 MAY 93 AM 8:50
HOWARD W. CONYERS
BY *[Signature]*
DEPUTY

IN THE 2ND JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF Washoe

FRANK PECK)
Petitioner/Plaintiff,)
vi.)
State of Nevada)
Respondent/Defendant.

Case No. CR-06-2580
Dept. No. 6
Docket No. _____

MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD ^{AND} ~~REQUEST~~
REQUEST FOR RECORDS/COURT CASE DOCUMENTS

COMES NOW, Petitioner/Plaintiff, FRANK M. PECK, pro per,
and respectfully moves this Honorable Court for it's Order withdrawing Robert
Bruce Lindsay, Esq., as the Attorney of Record in the above-entitled matter.

This Motion is made and based upon Nev. Rev. Stat. 7.055, and Nev. Sup. Ct. Rules 166(4), 173,
176, and 203, and Rules 11 and 20 of the Rules of the District Courts of the State of Nevada.

POINTS AND AUTHORITIES

Nev. Rev. Stat. 7.055, provides that:

An attorney who has been discharged by his client shall, upon demand...immediately
deliver to the client all papers, documents, pleadings and items of tangible personal
property which belong to or were prepared for that client.

See also Nev. Sup. Ct. Rule 166(4):

Upon termination of representation, a lawyer shall take steps to the extent reasonably
practicable to protect a client's interests, such as ...surrendering papers and property to
which the client is entitled...".

Petitioner/Plaintiff would respectfully point out to this Court and the attorney of record that there

is controlling law on this issue. This citation of authority is precautionary only. In the cases of In Re Yount, 93 Ariz. 322, 380 P.2d 780 (1963), and State v. Alvey, 215 Kan. 460, 524 P.2d 747 (1974), both cases dealt with a factual situation involving a withdrawn attorney refusing to deliver to a former client his documents after being requested to do so by the client. The Court in Yount, supra, ordered the attorney disbarred, while in Alvey, supra, the Court had the attorney censored.

In most situations it is obviously not necessary to notify the parties when the attorney withdraws from a case, but when the client wishes to remove his attorney and represent himself in person, it is required by these Statutes and Rules that the client request the Court of action to issue a certificate releasing the attorney of record. Under such statutes it is necessary for the party to present his request for the change in order for the court in making an order withdrawing the attorney of record, and to make formal demand to the Attorney for the return of all papers and property.

Therefore, let this Court be so notified that this is the desire of the Petitioner/Plaintiff herein that the aforementioned attorney of record be withdrawn and the same shall be for any other attorney(s) which could possibly be subscribed and documented as attorney(s) of record in this case, so that further actions in the above-entitled cause can be conducted by the Petitioner/Plaintiff in proper person.

Further, Petitioner/Plaintiff hereby makes formal demand upon Robert Bruce Lindsay, Esq., for the return of his entire file, including, but not limited to all papers, documents, pleadings and items of tangible personal property which belong to or were prepared on my behalf to me at the address set forth in this pleading.

Further, it is requested of this Court that it issue an Order directing the named attorney of record that he turn over to the Petitioner/Plaintiff the entire case file, without costs, including, but not limited to, the trial transcripts or guilty plea transcript, all briefs on appeal, and all other papers and police reports relating to this matter, so that Petitioner/Plaintiff may prosecute an appeal/post-conviction with a minimum amount of delay.

CONCLUSION

WHEREFORE, all of the above stated reasons, Petitioner/Plaintiff respectfully requests this Honorable Court to grant his Motion for Withdrawal of Attorney of Record in accordance with this Court's fair and just consideration of the facts of the case.

DATED this 2nd day of April, 2009.

Respectfully submitted,
Frank Peck
Petitioner/Plaintiff

CERTIFICATE OF SERVICE

I hereby certify pursuant to N.R.C.P. 5(b) that I am the Petitioner/Plaintiff in the foregoing Notice of Motion and Motion for Withdrawal of Attorney of Record or in the Alternative, Request for Records/Court Case Documents on this 2nd day of April, 2009, I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the Ely State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

2nd Jud Dist Court Clerk
75 Court Street
Reno NV 89501
Robert Bruce Lindsay
596 California Av
Reno NV 89509

District Attorney
Dave Clifton
75 Court Street
Reno NV 89509

DATED this 2nd day of April, 2009.

Frank Peck
Petitioner/Plaintiff

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion to

Withdraw Counsel And Request for documents
(Title of Document)

filed in District Court Case No. CP-06-2580

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-OR-

B. For the administration of a public program or
for an application for a federal or state grant.

[Signature]
(Signature)

5/2/09
(Date)

CR06-2580
DC-990000677-025
STATE VS. FRANK MILFORD PECK 3 Pages
District Court 06/02/2009 08:50 AM
Washoe County 1020
TFC

FILED

JUN 2
09 MAY 33 AM 8:50

HOWARD W. SCHYERS

BY [Signature]
DEPUTY

CASE No. CR-06-2580

Dept. No. 6

IN the Second Judicial District Court of the State of NEVADA
IN and for the County of WASHOE

FRANK PECK Addendum to Motion
Defendant, To correct manifest
-v- Injustice
State of Nevada
Plaintiff,

Comes Now, the Defendant, Frank Peck, Prose with his Addendum to the Motion to Correct Manifest Injustice, hereby Adds AND files the Motion to VACATE TRIAL so the Defendant CAN SEEK Discovery of the underlying Laboratory records that ARE CRUCIAL to the DEFENSES Ability to CHALLENGE the DNA Evidence, THAT WAS DENIED by the trial Judge without EVEN READING it.

Dated this 22th day of May 2009.

[Signature]

Frank Peck Prose

cc file

V4.642

CASE No CR-06-2580

Dept 6

IN the Second Judicial District Court of the State of NEVADA

IN and for the County of WASHOE

FRANK PECK

DEFENDANT,
-VS-

STATE OF NEVADA

PLAINTIFF,

Motion to VACATE TRIAL so the
DEFENDANT CAN SEEK Discovery of
the underlying Laboratory Records
that ARE CRUCIAL to the defenses
ability to CHALLENGE the DNA EVIDENCE

Comes Now, the Defendant, Frank Peck, Prose, hereinafter Mr Peck, PRAYS
this Court will VACATE the current trial date so the Defendant can
REQUEST CRUCIAL records CRITICAL to the defense. to properly
CHALLENGE the DNA evidence being used against Him at Trial.

RECIPROCAL DISCOVERY IS NOT SUFFICIENT IN A DNA CASE. Full Disclosure
of the underlying Laboratory Records is ESSENTIAL, United States -
V- Agurs, 427 U.S. 97, 96 S. ct 2392 (1976). Brady v. MARYLAND, 373
U.S. 83 83 S. ct. 1194 (1963). Armstrong v. State 96 Nev. 175 605 P2d 1142

(1980). Boggs v. State 95 Nev 911 604 P2d 107 (1979). A Key Aspect
of Discovery in DNA cases is the Electronic data produced by the
computer - controlled genetic analyzers that are currently used
to "type" DNA samples. Analysis of the computer files can not only
REVEAL undisclosed problems AND support ALTERNATIVE interpretations
of the findings, but also, these files can be CRUCIAL for
detecting instances of scientific fraud such as that committed by
Jacoueline Blake of the FBI and Sarah Blair of Orchid-Cellmark.

This is why Mr Peck has chosen to Represent himself AS BOTH
of his Attorneys, either didnt know or didnt CARE to request
These AND other CRUCIAL RECORDS ABSOLUTELY NECESSARY TO
be reviewed for exculpatory content AND to properly
CHALLENGE the DNA.

orig

Mr PECK has asserted his Constitutional Right to Represent himself at Trial, Now he MUST "FORCEFULLY DEMAND" his Sixth Amendment Right to EXAMINE the EVIDENCE AGAINST him, AND time to PREPAIR for Trial.

This Court CANNOT possibly EXPECT Mr PECK To proceed to trial (4) FOUR DAYS AFTER A FARETTA hearing!

Bruce Lindsay was supplied with a comprehensive discovery REQUEST dated 12/18/08 it was obviously ignored.

This MOTION is NOT for UN-WARRANTED delay.

This MOTION is of PARAMOUNT IMPORTANCE to the DEFENSE of this CASE.

To DENY this MOTION is to DENY Mr PECK his CONSTITUTIONAL RIGHT TO DUE PROCESS AND A FAIR TRIAL UNDER THE U.S. AND NEVADA CONSTITUTION.

Dated this 3rd day of May 2009.

Frank Peck Prose
FRANK PECK PROSE

DC-950008677-026
CR06-2580
STATE VS FRANK MILFORD PECK 3 Pages
District Court 06/02/2009 08:50 AM
Washoe County 2490
IFLORES
DOC

CASE No. CR-06-2580
Dept No. 6

FILED

09 JUN -2 11:04

In the Second Judicial District Court ~~HOWARD WILSON~~ State of Nevada
In and for the County of ~~Washoe~~ Clark

FRANK PECK Defendant, Motion for Substitution
of Counsel for Sentencing
VS
State of Nevada Plaintiff,

Comes Now, the Defendant, Frank Peck, Pro se hereby requests that this Court Appoint Substitute Counsel for sentencing, even though this Court has vouched for Counsel Robert Bruce Lindsay, Counsel did not lift a finger to adequately represent Mr Peck by his numerous pre-trial failures leading to Mr Peck having no choice but to attempt to remove Counsel which Mr Peck felt was the only way to obtain proper discovery in this case. Mr Peck was totally ignored by Counsel Lindsay Mr Peck's requests that an expert review Crimelab directors work and perform independent testing, if necessary, Lindsay totally ignored his client.

Mr Lindsay's Actions, Lying to his client AND to this Court, for instance, that his client NEVER told him about his Alibi witness, is Absurd.

These issues will be addressed in post appeal proceedings but ARE CAUSE for New Counsel.

Mr Peck feels that Mr Lindsay has acted AS AN Advocate for the Prosecution in this case against this Defendant.

Mr Peck needs a Loyal Advocate that will ARGUE COLLATERAL CONSEQUENCES, parole considerations brought on by the Ex post facto application of the extension of the statute of limitations AND the like. FLORES-LEON V. INS. 272 F3d 433 (7th Cir 2001).

The ex post facto clause prohibits the retrospective application of the criminal laws that materially disadvantage a defendant. Mr Peck requested that Mr Lindsay file his Pre-trial Writ, pre-trial challenge to Ex post facto Application of Extension of Statute of Limitations, as collateral consequences will make punishment more burdensome. All was ignored by Lindsay, as such, Defendant was Justified in his request for New Counsel.

For these, AND MANY OTHER REASONS, MR PECK respectfully requests that this Court, Appoint Substitution Counsel for Sentencing.

Dated this 26th day of May 2009.

Frank Peck

Frank Peck Prose

Certificate of Service and Affirmation pursuant to NRS 239 B. 030 this Motion for Substitution of Counsel for Sentencing does Not Contain Social Security Numbers of ANY PERSON AND HAS BEEN MAILED TO:

DAVE CLIFTON ADA

75 COURT STREET

RENO, NV. 89509

Bruce Lindsay

596 CALIFORNIA AV

RENO, NV 89509

Frank Peck

Frank Peck Prose

cc file

FILED

CASE No. CR-06-2580

09 JUN -8 PM 3:15

Dept No. 6

HOWARD W. GUYERS

BY

[Signature]
DEPUTY

IN the Second Judicial District Court of the State of NEVADA
IN and for the County of Washoe

FRANK PECK
Defendant,

MOTION to SHOW CAUSE
for failure to object to
DNA EVIDENCE

v

State of NEVADA
Plaintiff,

Comes Now, the Defendant, Frank M Peck, Prose hereinafter Mr Peck requests that this Court grant relief from WAIVER UNDER NRS 174.105 2, the court for CAUSE MAY grant relief from the waiver.

Prior to trial Mr Peck was transported to court for Motion to confirm/facetta hearing, the hearing was postponed and Mr Peck was unexpectedly remanded to the county Jail without his research and case file. Mr Peck's work was spread out in his cell, NDOC effectively shuffled and shipped most but NOT ALL Mr Peck's paperwork as of this writing Mr Peck has been unable to locate the objections he had prepared for trial additionally Sheriff Deputy's daily scrambled Mr Peck's legal file Making it impossible to remain organized.

DC-990009922-043
CR06-2580
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 06/08/2009 03:15 PM
Washoe County
IFLORES
DOC

In short, it was impossible to recover from this separation and shuffling of Mr Peck's Legalwork/ casefile in just 4 days. Not to mention daily scrambling by Deputy's. During cross examination of prosecution witness Rene Romero, Mr Peck attempted to object to the DNA due to the fact that the Journal of Forensic Science has confirmed that controls put in place by scientists, have been found to be meaningless and cannot uphold the validity and integrity of the testing process, but Mr Peck without his research was unable to recall the cite in which to object under Daubert v. Dow Pharmaceuticals as this information was contained in Mr Peck's Reference Manual on Scientific Evidence which was left at NDOC.

Mr Peck also prior to trial attempted to file Motion for Admissibility hearing regarding DNA evidence and discovery and a Motion to Suppress illegally obtained Evidence See Attached Exhibits. These Motions were refused by Sheriff's Deputy's under federal law they should have been filed, and would have been timely, and at the very least justify relief from waiver.

Dated this 1st day of June 2009.

Cert service & Affirmation per 239 B 030 NO Social Security Numbers
Mailed to ADA Dave Clifton 75 Court Street Reno NV 89509

Frank Peck

V4.649

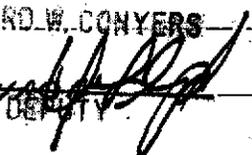
FILED

District Court case No. CR-06-2580

Second Jud Dist Court Dept 6

09 JUN -9 PM 2:12

HOWARD W. CONYERS

In the Supreme Court of the State of Nevada
BY 
DEPUTY

FRANK M. PECK
Petitioner,

Petition for Writ of
Prohibition AND MANDATE

- VS -

STATE OF NEVADA

Plaintiff,

COMES NOW, the DEFENDANT/PETITIONER, FRANK PECK, pro se, hereinafter Mr. PECK, seeks redress in this Honorable Court for AN Order directing the Lower Court to prohibit its exceeding the Jurisdiction in pronouncing sentence where NO EVIDENCE was presented during trial that would satisfy Due process 5th amendment proof beyond A REASONABLE doubt, in that in this DNA ONLY CASE there were NO ACTUAL profiles of ANY kind presented to the JURY AS ACTUAL EVIDENCE, NO EVIDENTIARY OR MATCHING profiles of ANY kind. THE JUROR'S QUESTIONS WERE that they wanted to SEE the DNA RESULTS. There WASNT ANY, so AS A result, they were instructed to decide the CASE with NO ACTUAL EVIDENCE. The petitioner requests this Honorable Court direct the Lower Court to enter A directed Verdict of Not Guilty.

V4.650

CR06-2580 DC-990009482-046
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 06/09/2009 02:12 PM
Washoe County 3645
ncc TMHITF

Certificate of Service and Affirmation per NRS 239 B.030
the proceeding Petition for Writ of Prohibition and
Mandate contains NO Social Security Numbers of any
person and was mailed to:

Clerk

2nd Jud Dist

75 Court St

Reno, NV, 89509

DAVE Clifton ADA

75 Court Street

Reno, NV, 89509

Dated this 3rd day of June 2009.

Frank Peck

Frank Peck Pro Se

FILED

JUN 09 2009

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD W. CONYERS, CLERK

By: *[Signature]*
DEPUTY CLERK

No. 53826

CR06-2580

FILED

JUN 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
[Signature]
DEPUTY CLERK

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying a motion for the appointment of new counsel. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Our review of this appeal reveals a jurisdictional defect. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). No statute or court rule provides for an appeal from an order denying a motion for appointment of new counsel. Accordingly, we

ORDER this appeal DISMISSED.¹

[Signature: Cherry]
_____, J.
Cherry

[Signature: Saitta]
_____, J.
Saitta

[Signature: Gibbons]
_____, J.
Gibbons

¹We deny as moot appellant's request to withdraw his appeal in a letter received in this court on May 26, 2009.

194-652

CR06-2580
DC-990000828-030
STATE VS FRANK MILFORD PECK 2 Pages
District Court 06/09/2009 02:39 PM
Washoe County 4127
NOC
CKEPLER

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

ORIGINAL

FILED

2009 JUN 12 PM 3:38

HOWARD W. CONYERS
BY *A. Simpson*
DEPUTY

CODE 3880
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,
Plaintiff,
v.
FRANK PECK,
Defendant.

Case No. CR06-2580
Dept. No. 6

RESPONSE TO DEFENDANT'S POST-TRIAL MOTIONS

COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and DAVID W. CLIFTON, Chief Deputy District Attorney, and hereby responds to defendant FRANK PECK's numerous post-trial Motions and Petitions.

ARGUMENT

Defendant FRANK PECK was convicted by jury on May 12, 2009, of the felony offense of Sexual Assault. Since that date, defendant proceeding in pro se, has filed a plethora of motions, addendums to motions, petitions and notices.

Many of these pleadings are clearly untimely; i.e. Petition for Writ of Habeas Corpus, Motion to Vacate Trial, Motions to Show

CR06-2580
STATE VS FRANK MILFORD PECK 5 Pages
District Court 06/12/2009 03:38 PM
Washoe County
vii.nv
3880

1 Cause and Notice of Appeal. Some have no legal merit whatsoever; i.e.
2 Petition for Writ of Prohibition and Mandate (sic) and Motions to Show
3 Cause. Lastly, several contain errors in addition to any of the
4 foregoing. See e.g. Motion to Correct Const (sic) Manifest Injustice
5 and Motion for Directed Verdict.

6 In short, each and every one of defendant's post-trial
7 pleadings should be denied or otherwise disposed of summarily for
8 serious procedural violations and/or lack of jurisdiction. If this
9 Honorable Court should desire a substantive or further response to any
10 of defendant's pleadings, Plaintiff could certainly provide same.

11 However, at this time it does appear appropriate to note that
12 in these Court documents PECK alleges he was prejudiced both by having
13 counsel and also by representing himself. As strange as this may seem,
14 it is simply a testament to PECK's continuous intent on derailing the
15 prosecution's attempt to bring him to justice.

16 In fact, what PECK actually received with the blessing of the
17 Court and benevolence of defense counsel, was the dual benefit of
18 representing oneself pursuant to one's wishes, while also having
19 complete access to and even authority over a licensed, experienced
20 attorney. Mr. Lindsay was extremely gracious in his willingness to do
21 this. He acted not as standby counsel, but essentially as legal
22 servant to defendant, subservient to PECK's decision-making power over
23 all trial matters. This was defendant's request and he was fortunate
24 to get it. Your undersigned has never experienced a case wherein a
25 defendant succeeds in a motion to represent himself and then still
26 receives the full assistance of an attorney handling any portion of the

1 trial defendant desires, while defendant still maintains control over
2 decisions, legal and otherwise. Peck's complaints in this regard are
3 without merit.

4 CONCLUSION

5 Based upon the foregoing, Plaintiff hereby respectfully
6 requests that defendant's post-trial Motions and Petitions be denied.
7 If the Court should desire additional response on any particular issue
8 or pleading, Plaintiff would be happy to comply.

9 AFFIRMATION PURSUANT TO NRS 239B.030

10 The undersigned does hereby affirm that the preceding
11 document does not contain the social security number of any person.

12 Dated this 12th day of June, 2009.

13 RICHARD A. GAMMICK
14 District Attorney
15 Washoe County, Nevada

16
17 By David W. Clifton
18 DAVID W. CLIFTON
19 1653
20 Chief Deputy District Attorney

CR06-2580
DC-990009448-110
STATE VS. FRANK MILFORD PECK 1 Page
District Court 06/18/2009 08:33 AM
Washoe County 2490
DOC SSTINCH

CASE No. CR-06-2580

Dept No. 6

FILED

09 JUN 18 AM 8:33

IN the Second Judicial District Court of the State of Nevada

IN and for the County of Washoe

HOWARD W. COFFEE
BY [Signature]
DEPUTY

FRANK PECK
Defendant
- vs -

Motion to produce witness
LARRY PECK for testimony ON
Friday July 10th, 2009.

State of Nevada
Plaintiff

Comes Now, the Defendant, FRANK PECK, prose hereby moves this Court for AN Order to produce LARRY PECK for testimony ON Friday July 10th, 2009 from the NEVADA State Prison on 5th Street, in Carson City, NEVADA.

The undersigned does hereby Affirm the preceding document does NOT contain Social Security Numbers of ANY person AND was mailed to: NRS 239 B 030

DAVE Clifton ADA
75 Court Street
Reno NV 89509

Dated this 15th day of July 2009.

[Signature]
Frank Peck Prose

CR06-2580
STATE VS FRANK MILFORD PECK 4 Pages
District Court
Washoe County
NCC

DC-9900009167-045
MILFORD PECK 4 Pages
06/18/2009 02:26 PM
3790
TFL NPEC

c.de: 3790

FRANK PECK 57106
NCC Box 7000
Carson City NV 89702

FILED
09 JUN 18 PM 2:26
HOWARD W. CONYERS
BY *[Signature]*
DEPUTY

IN the Second Judicial District Court of the State of Nevada
IN and for the County of Washoe

FRANK PECK

Defendant

CASE No. CR-06-2580

-VS-

Dept No. 6

STATE OF NEVADA

Plaintiff

REPLY TO RESPONSE TO DEFENDANTS POST TRIAL MOTIONS

Comes Now, the Defendant, Frank Peck, prose herein
replies to the States response to Defendants post-trial
motions and petitions.

Legal Notice & Argument

Mr Peck, until sentencing, will continue to be Segregated
with NO access to legal library as such prose litigants
pleadings are to be construed liberally and held to less strin-
gent standard than formal pleadings drafted by lawyers; if
Court can reasonably read pleadings to state valid claim on
which litigant could prevail, it should do so despite failure
to cite proper legal authority.

V4.660

CONFUSION OF LEGAL THEORIES, POOR SYNTAX AND SENTENCE CONSTRUCTION, OR LITIGANTS UNFAMILIARITY WITH PLEADING REQUIREMENTS HAINES V. KERNER, 404 US 519, 30 L Ed 2d 652, 92 S Ct 594 (1972). US V. SEESING, 234 F3d 456 (9th Cir 2000).

Mr Peck Admits his Notice of Appeal is premature, AS TO THE JURISDICTION OF THIS COURT HAS NOT BEEN DIVESTED AND CAN ADDRESS THESE MOTIONS.

Mr Peck's Attempt to file Motion to vacate trial WAS TO MAKE IT PART OF THE RECORD, AS IT WAS DENIED OVER THE PHONE, WITHOUT BEING READ BY THE TRIAL JUDGE.

Mr Peck WAS NOT ONLY PREJUDICED BY THE PASSAGE OF TIME BEFORE CHARGES BEING FILED BUT WAS ALSO PREJUDICED BY HIS COUNSEL'S FAILURE TO REQUEST ADEQUATE DISCOVERY TO EVEN BEGIN TO CHALLENGE THE SO CALLED DNA EVIDENCE IN TURN LEAVING Mr Peck NO CHOICE BUT TO WAIVE HIS 6th AMENDMENT RIGHT TO COUNSEL TO OBTAIN PROPER DISCOVERY ONLY TO BE DENIED BY THE TRIAL JUDGE.

Mr Peck's MOTIONS ARE MERITORIOUS AND SUBSTANTIVE. Mr Peck HAD NO CHOICE BUT TO WRITE MOTIONS IN PENCIL ON COLORED PAPER IN THE COUNTY JAIL AND THE MOTION TO SHOW CAUSE WAS TO EXPLAIN THE ADVERSITY Mr Peck FACED IN THE COUNTY JAIL AND THEIR REFUSAL TO FILE HIS MOTIONS.

It is the responsibility of the Trial Judge to make sure that A Defendant who chooses to represent himself be afforded the Ability to file pleadings from the County Jail this Defendant WAS NOT afforded this right resulting in A due process violation so severe that the ensuing trial resulted in A miscarriage of Justice.

Mr Peck has not filed any frivolous Motions, Mr Peck is fighting for his very life and has not in any way tried to DE-RAIL proceedings.

As for Mr Lindsay's gracious willingness to act as standby counsel, Mr Peck, once, the Trial Judge denied Mr Peck's Motion to vacate trial so the defendant can seek Discovery of the underlying Laboratory records that are crucial to the defenses Ability to challenge the DNA evidence, Mr Peck told Mr Lindsay he was going to ENVOKE his right to counsel But Mr Lindsay said it would be AN ADVANTAGE AND that he has NEVER had AN opportunity to be in this position AND that I should leave things AS they ARE.

CONCLUSION

Based on the foregoing, the Defendant respectfully requests that the Defendants post-trial Motions AND Petitions be addressed and that due to the fact the Defendant was denied his right to a fair trial should be GRANTED A NEW TRIAL.

Certificate of Service and Affirmation per NRS 239B.030
this Reply to response to Defendants post trial Motions and
petitions does not contain social security numbers of
any person and has been mailed to:

DAVE CLIBTON A DA

75 Court St

Reno, NV, 89702

Dated this 16th day of June 2009.


Frank Prose Prose

DC-9900009167-048
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 06/18/2009 02:45 PM
Washoe County 4055
TFL/DFC
DC: 06-2580
District Court
Washoe County
Nev.

FILED

09 JUN 18 PM 2:45

HOWARD W. CONYERS

BY [Signature]

CASE No. CR 06 2580
Dept 6

IN the Second Judicial District Court of the STATE OF NEVADA
IN AND for the County of Washoe

FRANK PECK
Defendant
- vs -
STATE OF NEVADA
Plaintiff

Subpoena AND Notice
to produce NRS. 174.305
To 174.385

Comes Now, the Defendant, FRANK PECK, Prose hereinafter
Mr PECK requests production of witness':

- Richard Burger WCSO Employee
- Ed Fish "
- Ronald Young "
- Ken Mc Kenna AND Assistant MEGAN - ATTORNEY RENO
- LARRY PECK - NSP
- CSI BARTLETT SPD

Dated this 3rd day of May 2009.

F Peck Prose

Affirmation per NRS 239B.030

This Subpoena and Notice to produce contains NO
Social Security numbers of any person

Dated this 16th day of June 2009



Frank Pick Prose

Code: 3490

CASE No CR-06-2580

Doc 6

FILED

In the Second Judicial District Court of the State of NEVADA
IN AND FOR THE COUNTY OF WASHOE

HOWARD W. CONYERS
BY: *[Signature]*

CR06-2580 DC-9900009167-046
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 06/18/2009 02:46 PM
Washoe County 2490
JEL:OREE
noc

FRANK PECK
Defendant
VS-
State of Nevada
Plaintiff

Motion for Admissibility
Hearing Regarding DNA
Evidence and Discovery of
Underlying Laboratory Records

NRS 174.285 NRS 52.015 52.435

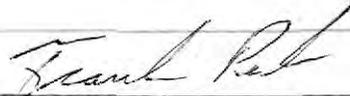
Comes Now, the Defendant, Frank Peck, Pro Se, hereinafter, Mr Peck with his motion for Admissibility hearing regarding the DNA Evidence to Be used in the pending trial the Defendant Mr Peck Objects to the Admission of said Evidence under the provisions of Doubert vs Dow Pharmaceuticals in that the Evidence has Not been properly challenged By former defense Counsel Mr Peck intends on filing A proper discovery request for the Laboratory's underlying records that MUST be provided or the trial will be A SHAM AND A DENIAL of due process will ENSUE, This crimelab is being shielded from outside scrutiny AS WAS THE Houston Police department crimlab.
Dated this 3rd day of MAY 2009,

[Signature]
Frank Peck Pro Se

Affirmation per NRS 239B030

This Motion for Admissibility hearing regarding DNA Evidence And Discovery of Underlying Laboratory records contains NO Social Security numbers of ANY person

Dated this 16th day of June 2009.



Frank Peck Prose

CASE No CR 06-2580

DEPT 6

IN the Second Judicial District Court of the State of Nevada
IN AND for the County of Washoe

FILED

09 JUN 18 PM 2:46

HOWARD W. CONYERS

BY *[Signature]*
DEPUTY

DC-990009167-047
CR06-2580
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 06/18/2009 02:46 PM
Washoe County
JEL,ORE
1000

Frank Peck
Defendant
VS -
State of Nevada
Plaintiff

Motion to Suppress
Illegally obtained
Evidence

NRS 174.125 179.085 179.335

Comes Now, the Defendant, Frank Peck, Prose, Herein -
after, Mr Peck requests that this court Suppress the
illegally obtained ^{DNA} pursuant to FRANKS V DELA-
WARE. in that Detective Greta Fyi gave knowingly
ly FALSE information to obtain Seizure Orders
for Evidence from Frank Peck. Det Greta Fyi did
knowingly under oath, Give FALSE testimony to
two Judges that Frank Peck has a 2" Scar on
His BACK. Also the second seizure order was obtained outside
The Jurisdiction of this Court,
Perjured testimony requires suppression
under the FRANKS decision.

Dated this 3rd day of MAY 2009.

Frank Paul Rose

Affirmation pursuant to NRS 239B 030

This Motion to Suppress does NOT contain Social Security Numbers of ANY person.

Dated this 16th day of June 2009.

Frank Peck

Frank Peck Prose

DC-9900009079-030
CR06-2580
STATE VS FRANK MILFORD PECK 2 Pages
District Court 06/19/2009 03:36 PM
Washoe County 1260
DOC TFI OFF

ORIGINAL FILED

2009 JUN 19 PM 3:36

HOWARD W. CONYERS

BY *Howard W. Conyers*
DEPUTY

CODE 1260
Richard A. Gammick
#001510
P.O. 30083-3083
Reno, NV. 89520
(775)328-3200
Attorney for Plaintiff

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR06-2580

11 v.

Dept. No. D06

12 FRANK MILFORD PECK 57106,

13 Defendant.

14 _____
15 APPLICATION FOR ORDER TO PRODUCE PRISONER

16 COMES NOW, the State of Nevada, Plaintiff herein, by and
17 through RICHARD A. GAMMICK, District Attorney of Washoe County, by
18 BRUCE C. HAHN, Chief Deputy District Attorney, and alleges as
19 follows:

20 1. That LARRY PECK, (BAC#77562), is presently incarcerated
21 at the Nevada State Prison, Carson City, Nevada.

22 2. That the above FRANK MILFORD PECK 57106, is scheduled
23 for a sentencing before the Second Judicial District Court on July
24 10, 2009, at 9:00 AM, and that LARRY PECK, (BAC#77562), is a
25 necessary witness in this sentencing.

26 ///

V4.670

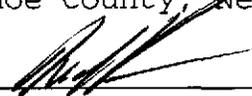
1 WHEREFORE Applicant prays that an Order be made pursuant to
2 NRS 174.325 ordering the appearance of the said LARRY PECK,
3 (BAC#77562), before the Second Judicial District Court, and from time
4 to time thereafter at such times and places as may be ordered and
5 directed by the Court for such proceedings as thereafter may be
6 necessary and proper in the premises, and directing the execution of
7 said Order by the Sheriff of Washoe County, Nevada.

8 AFFIRMATION PURSUANT TO NRS 239B.030

9 The undersigned does hereby affirm that the preceding
10 document does not contain the social security number of any person.

11 DATED this 19 day of June, 2009.

12
13 RICHARD A. GAMMICK
14 District Attorney
15 Washoe County, Nevada

16 By 
17 BRUCE C. HAHN
18 5011
19 Chief Deputy District Attorney

20
21
22
23
24
25
26 DA #327992/

CR06-2580
STATE VS FRANK MILFORD PECK 2 Pages
District Court 06/24/2009 10 45 AM
Washoe County 3340
NOC

FILED

2009 JUN 24 AM 10:45

ORIGINAL

HOWARD W. CONYERS
BY *[Signature]*
DEPUTY

CODE 3340
Richard A. Gammick
#001510
P.O. 30083-3083
Reno, NV. 89520
(775)328-3200
Attorney for Plaintiff

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,
10 Plaintiff, Case No. CR06-2580
11 v. Dept. No. D06
12 FRANK MILFORD PECK 57106,
13 Defendant.

14 _____/
15 ORDER TO PRODUCE PRISONER

16 IT APPEARING to the satisfaction of the above-entitled
17 Court that it is necessary that LARRY PECK, (BAC#77562), presently
18 incarcerated in the Nevada State Prison, Carson City, Nevada, be
19 brought before the Second Judicial District Court in the above-
20 entitled action,

21 NOW, THEREFORE, IT IS HEREBY ORDERED that pursuant to the
22 provision of NRS 174.325, the Warden of the Nevada State Prison,
23 Carson City, Nevada, bring the said LARRY PECK, (BAC#77562), before
24 the Second Judicial District Court on July 10, 2009, at the hour of
25 9:00 AM, and from time to time thereafter at such times and places as

26 ///

1 may be ordered and directed by the Court for such proceedings as
2 thereafter may be necessary and proper in the premises.

3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the preceding
5 document does not contain the social security number of any person.

6 DATED this 23 day of June, 2009.

7
8 
9 _____
10 DISTRICT JUDGE
11
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FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUL 01 2009

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 53826 By: Howard W. Conyers
HOWARD W. CONYERS, CLERK
DEPUTY CLERK

District Court Case No. CR062580

REMITTITUR

TO: Howard W. Conyers, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: June 30, 2009

Tracie Lindeman, Clerk of Court

By: A. Ingersoll
Deputy Clerk

cc (without enclosures):
Hon. Brent T. Adams, District Judge
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Frank Milford Peck

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUL 01 2009

Howard W. Conyers
District Court Clerk

CR06-2580 DC-990009998-017
STATE VS. FRANK MILFORD PECK 1 Page
District Court 07/01/2009 08:26 AM
Washoe County 4145
noC
CKEPLER

V4674 15211

FILED

JUL 01 2009

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,

Supreme Court No. 53826

vs.

THE STATE OF NEVADA,
Respondent.

District Court Case No. CR062580

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER this appeal DISMISSED."

Judgment, as quoted above, entered this 4th day of June, 2009.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 30th day of June, 2009.

Tracie Lindeman, Supreme Court Clerk

By: _____
Deputy Clerk

A. Ingersoll

CR06-2580 DC-9900009388-018
STATE VS FRANK MILFORD PECK Page
District Court 07/01/2009 08:26 AM
Washoe County 4111
CKEPLP



FILED

JUL 01 2009

HOWARD W. CONYERS, CLERK
by *Howard W. Conyers*
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 53826

CR06-2580

FILED

JUN 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
by *Tracie K. Lindeman*
DEPUTY CLERK

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying a motion for the appointment of new counsel. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Our review of this appeal reveals a jurisdictional defect. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). No statute or court rule provides for an appeal from an order denying a motion for appointment of new counsel. Accordingly, we

ORDER this appeal DISMISSED.¹

Cherry

Cherry

J.

Saitta

Saitta

J.

Gibbons

Gibbons

J.

¹We deny as moot appellant's request to withdraw his appeal in a letter received in this court on May 26, 2009.

0914070

CR06-2580 DC-9900009388-019
STATE VS FRANK MILFORD PECK 3 Pages
District Court 07/01/2009 08:26 AM
Washoe County 4127
DOC CKEPLEF

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk



CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: June 30, 2009

Suzanne Court Clerk, State of Nevada

A. Ingram Deputy

V4.678

CR05-2580 DC-9900009448-111
STATE VS. FRANK MILFORD PECK 1 Page
District Court 07/02/2009 04:19 PM
Washoe County 2490
DOC SSTINCHF

RECEIVED

JUL -2 2009

CASE No. CR-06-2580

HOWARD W. CONYERS, CLERK

FILED

Dept No. 6

By _____ Deputy Clerk

2009 JUL -2 PM 4:19

HOWARD W. CONYERS

IN the Second Judicial District Court of the State of NEVADA

DEPUTY

IN AND for the County of Washoe

Frank Peck
Defendant

- vs -

State of Nevada
Plaintiff

Motion to compel Attorney
Bruce Lindsay to Return
Specific Document to
Defendant.

Comes Now, the Defendant, Frank Peck, prose
hereby requests that this Court issue AN Order
directing Robert Bruce Lindsay to return the
Arrest Report, dated April, 2004 to the
Defendant.

Dated this 30th day of June 2009.

Contains NO Social Security Numbers of any person NRS 239 B 030
and has been mailed to:

DAVE Clifton ADA
75 Court Street
Reno, NV. 89509

Bruce Lindsay
596 California Av
Reno, NV. 89509

Frank Peck

Frank Peck Prose

V4.679

CR06-2580 DC-9900009448-112
STATE VS. FRANK MILFORD PECK 1 Page
District Court 07/02/2009 04:44 PM
Washoe County 2490
DOC SSTINGHF

CASE No. CR-06-2580
Dept No. 6

FILED

2009 JUL -2 PM 4:44

HOWARD W. LAYERS

In the Second Judicial District Court BY the State of Nevada
IN and for the County of Washoe
DEPUTY

Frank Peck Motion for New Counsel
Defendant, for Motion for New Trial
- VS -
State of Nevada
Plaintiff,

Comes Now, the Defendant, Frank Peck, prose hereby requests that this Court Grant an Order appointing New Counsel for Motion for New Trial based on the prejudice created by Counsel's pre-trial failures to request specific discovery of the Washoe County Crime Lab essential to involve a defense Expert AND by prejudice created by the trial Judge's failure to consider, or even read, the defense's Motion to Vacate so defendant can seek discovery of records critical to the defendant's defense. Du Bose v. State, 662 So. 2d 1189 (Ala. 1995). Crocket v State Nev.

Defendant is entitled to counsel for Motion for New trial Robinson v. Norris, 60 F3d 457 (8th cir 1995).
This motion contains No social security numbers of any person per NRS 239B.030 AND WAS MAILED TO DAVE CHITTON 75 COURT ST RNO, 89509.

Frank Peck
Frank Peck VA.680

CR06-2580 DC-990009449-113
STATE VS. FRANK MILFORD PECK 1 Page
District Court 07/02/2009 04:45 PM
Washoe County 2475
SSTINCH
DOC

CASE No, CR-06-2580

Dept No, 6

FILED

2009 JUL -2 PM 4:45

In the Second Judicial District Court of the State of NEVADA
IN AND FOR THE County of Washoe
BY Howard W. Conyers DEPUTY

FRANK PECK

Defendant

Motion to Strike

-VS-

State of NEVADA

Plaintiff

Comes Now, the Defendant, FRANK PECK, prose with a motion to strike the filing of Defendants Pre trial Petition for writ of HABEAS Corpus AS A Post-Conviction Petition for writ of HABEAS Corpus, AS the Pre trial writ should have been filed within A motion to file and show cause why several pre-trial motions were not filed due to the Defendant being prevented from filing said motions by washoe county Sheriff Deputies and Bruce Lindsay and this Court.

Therefore the Defendant requests that this Court strike the filing of the Defendants Pre trial writ AS A post conviction petition.

DOES NOT CONTAIN SOCIAL SECURITY NUMBERS PER NRS 239 B 050 AND HAS BEEN MAILED TO:
DAVE CLIFTON ADA
75 COURT ST
RENO NV 89509

Frank Peck
Frank Peck Prose

V4.681

CR06-2580 DC-9900009448-114
STATE VS. FRANK MILFORD PECK 1 Page
District Court 07/02/2009 04:45 PM
Washoe County 2490
n0c SSTITNCHF

CASE No CR-06-2580

Dept 6

FILED

2009 JUL -2 PM 4:45

HOWARD W. CONYERS

BY NEVADA
DEPUTY

IN the Second Judicial District Court of the State of Nevada
IN and for the County of Washoe

Frank Peck
Defendant,

-vs-

State of Nevada
Plaintiff,

Motion for Order directing
Clerk to provide Affidavit

Comes Now, the Defendant, Frank Peck, prose hereby requests an Order directing the Clerk of this Court to provide an Affidavit of facts surrounding the conversation between Mr Lindsay, Mr Peck and the Clerk on 5-5-09 wherein, Mr Lindsay stated that if Mr Peck agreed to remain in the County jail Mr Lindsay would visit and tend to Mr Peck's legal needs. Mr Peck has made a previous request but was ignored.

Mr Lindsay in collusion with the State never met with Mr Peck further denying Mr Peck of his 5th and 14th Amendment right to due process Preventing Mr Peck of filing any pre trial motions.

Mr Peck affirms No Social Security Numbers NRS 239B 030 and has been mailed to Dave Clifton ADA 75 Court St Reno 89509

Frank Peck
Frank Peck Pro se

V4.682

CR06-2580
STATE VS. FRANK MILFORD PECK
District Court
Washoe County
DC-9900009448-115
07/07/2009 10:07 AM
3870
SSTINCHE

CASE No CR-06-2580
Dept No 6

FILED

2009 JUL -7 AM 10:07

IN the SECOND JUDICIAL DISTRICT COURT of the STATE of NEVADA
BY Howard W. Conyers
DEPUTY
IN AND for the County of Washoe

FRANK PECK
Defendant,
-VS-

Request for the States
Witness' NAMES to be
USED AT SENTENCING

State of Nevada
Plaintiff,

Comes Now, the Defendant, Frank Peck, prose,
hereby requests the NAMES AND ANY other information
in the STATES possession with regard to ANY
witness the State intends on presenting testimony,
on July 10th 2009.

The undersigned affirms no social security numbers NRS 239.6030
and was mailed to:

DAVE CLIFTON ADA
75 COURT ST
RENO NV 89509

Dated this 29th day of JUNE 2009.

Frank Peck
Frank Peck Prose

CASE No. CR-06-2580

Dept No. 6

FILED

09 JUL -7 PM 2:33

HOWARD W. CONYERS

DEPUTY CLERK

DEPUTY

In the Second Judicial District Court of the State of Nevada
IN AND for the County of Washoe

FRANK PECK
DEFENDANT,

-VS-

STATE OF NEVADA
PLAINTIFF,

Motion for hard copy of
CD of DNA Tutorial
Presentation presented
At Trial

COMES NOW, the DEFENDANT, FRANK PECK, prose
hereby requests that this Court provide the Defendant
with a photocopy of each and every slide depicted in
the State's Presentation as it was not provided to
the Defendant prior to trial. AS PURSUANT TO
NRS 171.1965, 174.235 through 174.295.

Dated this 2nd day of July 2009.

Frank Peck Prose

Contains No Social Security numbers per NRS 239.B.030

And was mailed to: Dave Clifton ADA

75 Court St

Reno NV 89509

Frank Peck Prose

V4.684

CR06-2580 DC-9900009450-076
STATE VS. FRANK MILFORD PECK 1 Page
District Court 07/07/2009 02:33 PM
Washoe County 2490
NVC

CR06-2580 DC-9900009519-063
STATE VS. FRANK MILFORD PECK 4 Pages
District Court 07/07/2009 03 26 PM 3880
Washoe County
ncc
SSTINCHP

ORIGINAL FILED
2009 JUL -7 PM 3:26

CODE 3880
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

HOWARD W. CONYERS
BY *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

FRANK PECK,

Defendant.

Case No. CR06-2580
Dept. No. 6

SECOND RESPONSE TO DEFENDANT'S POST-TRIAL MOTIONS

COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and BRUCE HAHN, Chief Deputy District Attorney, and hereby files the instant consolidated response to defendant's five *pro se* motions filed after the State's initial Response of June 12, 2009.

The State has no opposition to defendant's hand-written "Motion to Produce Witness..." dated July 15, 2009; arrangements have been made for the same by the State.

The State opposes four of the defendant's recent hand-written motions, namely, 1) "Request for ...State's Witness' Names

///

1 (sic)" dated June 29;¹ 2) "Motion to Compel Attorney...to Return...
2 Document" dated June 30; 3) "Motion for New Counsel for Motion for
3 New Trial" (undated) and 4) "Motion for Order directing Clerk to
4 provide Affidavit" (undated). The defendant elected to not offer any
5 legal authority his prayers in the first three motions. Accordingly,
6 his prayers should be summarily denied. McKinney v. Sheriff, 93 Nev.
7 70 (1977); Maresca v. State, 103 Nev. 669 (1987); NRS 178.552. While
8 the defendant does offer minimal persuasive, incomplete and
9 inapposite (state statute specific) legal authority for his fourth
10 motion, he neglects to offer any cogent arguments or factual basis

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¹ No witnesses are currently anticipated for the State.

1 for his repeated allegation of "prejudice."² As such, his fourth
2 motion should be summarily denied. Williams v. State, 88 Nev. 164
3 (1972); Rhyne v. State, 118 Nev. 1 (2002).

4 Finally, the State takes no position on the defendant's
5 fifth recent motion: a separate handwritten, undated "Motion to
6 Strike [Petition for Writ of Habeas Corpus]."

7 AFFIRMATION PURSUANT TO NRS 239B.030

8 The undersigned does hereby affirm that the preceding
9 document does not contain the social security number of any person.

10 Dated this 7 day of July, 2009.

11 RICHARD A. GAMMICK
12 District Attorney
13 Washoe County, Nevada

14
15 By 
16 BRUCE C. HAHN
17 5011
18 Chief Deputy District Attorney

19
20
21
22 0706CR0625808
23
24

25 ² A "Motion for New Trial" as he so identifies in his pleading is now time-barred.
26 NRS 176.515(4). As to his right to counsel for future proceedings, the defendant
vehemently asserted his right to self-representation to trial and sentencing.
Because he has not waived that right, his self-representation remains intact
through sentencing without prejudice to renew his request for counsel on direct
appeal. Arajakis v. State, 108 Nev. 976, 980-981 (1992).

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA
Plaintiff,

vs.

FRANK PECK,
Defendant.

Sup. Ct. Case No. 65691
Case No. CR06-2580
Dept. 6

RECORD ON APPEAL

VOLUME 3 OF 13

DOCUMENTS

APPELLANT

Frank Peck #57106
H D S P - P O Box 650
Indian Springs, Nevada 89070

RESPONDENT

Washoe County District Attorney's
Office
Terrance McCarthy, Esq.
P O Box 11130
Reno, Nevada 89502-3083

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5 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

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9
10 STATE OF NEVADA,) Case No. CR06-2580
11)
12 Plaintiff,) Dept. No. 6
13 vs.)
14 FRANK MILFORD PECK,) TRANSCRIPT OF PROCEEDINGS
15 Defendant.)
_____)

16 MOTION IN RELIEF
MAY 28, 2008, RENO, NEVADA

17 APPEARANCES:

18 For the Plaintiff: DAVID W. CLIFTON, ESQ.
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20 For the Defendant: JOSEPH D. MERKIN, ESQ.
Deputy Public Defender
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22 FRANK MILFORD PECK

23 The Defendant:
24 Reported by: JULIE ANN KERNAN, CCR #427, CP, RPR
Computer-Aided Transcription

25 CONTINUATION OF APPEARANCES:

JENNIFER J. LUNT, ESQ.
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1 RENO, NEVADA; WEDNESDAY, May 28, 2008; 9:42 A.M.

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3
4 THE COURT: The next matter is CR06-2580,
5 State versus Frank Milford Peck.

6 Is the defendant in custody?

7 MR. MALONE: He is, your Honor.

8 THE COURT: Thank you. This is the time set
9 for the hearing on the motion in relief Washoe County
10 representation which was filed April 30, 2008.

11 Mr. Clifton, does the State have any objection
12 to the motion?

13 MR. CLIFTON: No, your Honor. Well, your
14 Honor, we really don't have an interest in this motion
15 other than --

16 THE COURT: Correct.

17 MR. CLIFTON: -- to see that he gets counsel
18 that has no conflict.

19 THE COURT: Right.

20 MR. MALONE: Your Honor, I do have a
21 correction to make on the record as well.

22 THE COURT: Okay.

23 MR. MALONE: Your Honor, in my affidavit I
24 stated that in Mr. Peck's federal habeas corpus petition
25

1 that I made no claim against the Washoe County Public
2 Defender's Office. It does appear that in his habeas
3 claim, federal habeas claim, that his third ground,
4 which is a -- which is stayed, the trial court committed
5 reversible error allowing the defendant's wife to
6 testify against him.

7 There is an allegation added to the end of
8 that claim that attorney Vaughn Hall failed to inform
9 client at arraignment that there is a privilege to
10 assert. My understanding is that arraignment Mr. Peck
11 pled guilty. I apologize to the Court for the -- pled
12 not guilty, excuse me, I apologize to the Court, my
13 claim in the affidavit that there was no allegation made
14 against that office. I don't believe that that's
15 actually a real claim. The true claim is submitted
16 under a fair trial claim. And certainly at a
17 arraignment where you're entering a not guilty plea I
18 don't believe that there is a -- number one, that's not
19 time when you would assert a marital privilege. I do
20 have a copy of the habeas corpus claim for the Court.

21 THE COURT: Well, is Mr. Peck representing
22 himself in that claim or is he represented by counsel?

23 MR. MALONE: He is representing himself, your
24 Honor.

25 THE COURT: Mr. Peck, is it your intention in

1 that claim to assert a claim of incompetence of counsel
2 concerning the failure to assert the marital privilege?

3 THE DEFENDANT: Yes, sir, that's correct.

4 THE COURT: Well, Mr. Malone, how wouldn't
5 that create a conflict with the public defender's
6 office?

7 MR. MALONE: Your Honor, the Washoe County
8 Public Defender did not represent Mr. Peck at trial.
9 The claim is that they represented him at the
10 arraignment. I don't believe that there's any issue
11 regarding --

12 THE COURT: That was the only time that the
13 representation was at the arraignment?

14 MS. LUNT: At the preliminary hearing and at
15 the arraignment, and then Mr. Peck retained Dennis
16 Widdis. There were two trials. There were, actually,
17 two different state orders as well on the ineffective
18 assistance, one filed in 2001 by Judge Kosach, one filed
19 by you, I believe, in 2003, both addressing Mr. Peck's
20 concerns about trial and appellate counsel, so by the
21 time it actually came to court at the state court level
22 the allegations were against Mr. Widdis. Mr. Widdis was
23 privately retained, he was no long a member of public
24 defender's office.

25 THE COURT: Right. It is true that the only

1 participation in the Washoe County Public Defender's
2 Office in this case was representation at the
3 preliminary examination and at the arraignment.

4 MS. LUNT: That's correct.

5 THE COURT: And Mr. Peck, you're not alleging
6 any incompetence of counsel by the public defender at
7 those two proceedings, are you?

8 THE DEFENDANT: Yes, I am.

9 THE COURT: What?

10 THE DEFENDANT: Failure to advise me that I
11 had spousal privilege from preventing my wife from
12 testifying in trial.

13 THE COURT: But you weren't represented by the
14 public defender's office at trial.

15 THE DEFENDANT: At arraignment I was. That's
16 an ineffective assistance of counsel claim.

17 THE COURT: What does that have to do with
18 whether or not your spouse could testify at the trial?

19 THE DEFENDANT: I'm sorry?

20 THE COURT: What if the public defender only
21 represented you at the preliminary examination and at
22 the arraignment, how would those be occasions to discuss
23 with the public defender the spousal privilege?

24 THE DEFENDANT: Well, it's incorp --

25 THE COURT: Is that something you discuss with

1 your trial counsel?

2 THE DEFENDANT: It's incorporated in my issue
3 in front of the federal court. The judge hasn't decided
4 the merits.

5 THE COURT: Was the issue ever raised at the
6 preliminary examination?

7 THE DEFENDANT: I'm sorry, sir, I'm hard of
8 hearing.

9 THE COURT: I'm sorry. Was the issue ever
10 raised at the preliminary examination?

11 THE DEFENDANT: Yes. Yes, sir.

12 THE COURT: Did she testify at the preliminary
13 examination?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Ms. Lunt.

16 MS. LUNT: Your Honor, I don't have the
17 preliminary hearing transcript so I'm not sure whether
18 or not she was -- it's been a while since I've looked at
19 spousal privilege. I believe the privilege is actually
20 hers to waive to decide whether or not to testify, not
21 his. I have to -- the state of law was in 1996 which, I
22 believe, when that case went to trial, '96 or '97.

23 THE DEFENDANT: '97.

24 MS. LUNT: So it's been sometime, and I don't
25 know if what the status of the privilege was. However,

1 I do think the issue would be what happened at trial and
2 whether or not it was raised at trial because that's
3 truly the point where that argument would be made.

4 THE COURT: I don't think he's contending if
5 maybe she shouldn't have testified at the preliminary
6 examination and that she had, and if she hadn't there
7 wouldn't be sufficient evidence for a finding of
8 probable cause. I don't know. I haven't examined the
9 condition.

10 MS. LUNT: I would assume, your Honor, knowing
11 Mr. Widdis and the types of motions he files in, he
12 believed that to be initially an issue that would have
13 been raised. It certainly would have been raised prior
14 to trial.

15 THE COURT: Well, sure. Whatever Mr. Widdis'
16 performance really isn't the subject of this motion, who
17 cares. The question is, did the Washoe County Public
18 Defender represent the defendant and is there any
19 conflict arising from that representation? And if there
20 isn't, then his representation in this case would be
21 back to public defender's office, and if there is, then
22 it should remain with the alternate public defender's
23 office.

24 I think I need to look a little more carefully
25 to see what happened at the preliminary examination.

1 And I, too, am a little rusty on privilege. I know
2 there's a competency privilege and there's a
3 communication privilege and the communication privilege
4 survives the marriage and the competency privilege
5 doesn't, and I don't know offhand who can waive. I
6 think either spouse can assert the competency privilege,
7 but I'm not sure. I'm just not sure.

8 Mr. Peck, were you married to your wife at the
9 time she testified at the preliminary examination?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Well --

12 THE DEFENDANT: Privilege stated that I had
13 the right to, or the privilege to prevent her from
14 testifying.

15 THE COURT: Well, let's do this, Mr. Peck. I
16 want you to submit through your counsel, Mr. Malone, any
17 -- I don't need to see your whole writ petition or any
18 of that, but any claim you are making specifically as to
19 an incompetence of counsel claim on the part of the
20 public defender's office at the preliminary examination.
21 I assume you're not making a claim as to the
22 arraignment, are you?

23 THE DEFENDANT: It's also in there, yes, it's
24 incorporated.

25 THE COURT: What did your public defender do

1 wrong at the arraignment?

2 THE DEFENDANT: Well, he failed to inform me
3 that I had a privilege to prevent my wife from
4 testifying.

5 THE COURT: What does that have to do with his
6 presence at the arraignment? Your wife testified at the
7 preliminary examination and at the trial; is that
8 correct?

9 THE DEFENDANT: Right.

10 THE COURT: And you're claiming your counsel
11 at the preliminary examination and a different lawyer at
12 the trial failed to assert a marital privilege, right?

13 THE DEFENDANT: Failed to inform me that I had
14 a privilege.

15 THE COURT: All right. The communication
16 privilege or the competency privilege or both, or you
17 don't know?

18 THE DEFENDANT: I'm not sure, sir.

19 THE COURT: Okay.

20 MR. MALONE: Your Honor?

21 THE COURT: Yeah.

22 MR. MALONE: I can read the portion of Ground
23 3 of the habeas corpus petition that sets forth the
24 claim.

25 MS. LUNT: We have a spare copy, we'll have it

1 marked and admitted now. It's a petition, Writ of
2 Habeas Corpus filed October 3rd, and states its grounds
3 there that also has copies of this Court's order and the
4 Department 6 order a copy has already been provided to
5 Mr. Clifton.

6 THE COURT: Thank you. Just file that as
7 Exhibit 1 to this proceeding.

8 MS. LUNT: Page 7 is where he mentioned --

9 MR. MALONE: Your Honor, if you would like him
10 to read that portion --

11 THE COURT: Hold on just a moment. Okay. So
12 I've got the petition in front of me and where were we
13 going?

14 MR. MALONE: Your Honor, we're going to the
15 bottom of the paragraph following Paragraph B where it
16 becomes --

17 THE COURT: What page?

18 MS. LUNT: Page 7.

19 MR. MALONE: Page 7, your Honor.

20 THE COURT: Okay. Now, you were represented
21 at the suppression hearing by Mr. Widdis, right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And at the trial by Mr. Widdis?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Now, the only allegation

1 you've made as to the public defender in this Ground 3
2 is that Mr. Hall failed to inform you at arraignment
3 that there was a privilege to assert, right?

4 THE DEFENDANT: That's correct.

5 THE COURT: Is that the only time you ever saw
6 Mr. Hall at the arraignment?

7 THE DEFENDANT: Yeah.

8 THE COURT: You didn't see him before or after
9 that?

10 THE DEFENDANT: No.

11 THE COURT: And it's your view that at the
12 arraignment it was his job to discuss the marital
13 privilege with you.

14 THE DEFENDANT: Yes.

15 THE COURT: Didn't you plead not guilty at the
16 arraignment?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. Well, the Court finds that
19 isn't a conflict. Is there anything else?

20 MS. LUNT: That's the only mention we can find
21 of Vaughn Hall as far as the motions being made by Mr.
22 Peck.

23 THE COURT: There's no reference to the
24 conduct of the public defender at the preliminary
25 examination.

1 MS. LUNT: Not that we could find, your Honor.
2 All of the other claims, your Honor, deal with trial
3 counsel and appellate counsel.

4 THE COURT: Well, Mr. Peck has advised me that
5 the only time he ever saw or met with Mr. Hall was at
6 the arraignment.

7 THE DEFENDANT: I made a mistake.

8 THE COURT: And it's his contention that at
9 the arraignment, that Mr. Hall failed to inform him of
10 the marital privilege. I don't know of any case in the
11 United States that requires a lawyer at the time of
12 arraignment to discuss the marital privilege with his
13 client and, therefore, I don't believe that that
14 constitutes a conflict of interest in this case. That
15 being the only ground asserted in --

16 MR. MERKIN: Your Honor, before you make a
17 ruling, may I be heard?

18 THE COURT: Yes.

19 MR. MERKIN: Joe Merkin for the public
20 defender's office. The alternate public defender was
21 gracious enough to notify me of today's hearing. Your
22 Honor, we look at this case is a procedural history
23 which has taken on a life of its own. It's the policy
24 of my office that if in cases where your -- where a
25 court -- it's now the policy of my office that if there

1 is a conflict found within our office in a case, that it
2 will only take a case back when there's a court order.
3 We'd ask that in any court order finding that there is
4 no conflict that you find that there is no appearance of
5 impropriety in us further representing the defendant.
6 We feel in this particular case that there is an
7 appearance of an impropriety I made representations to
8 this Court based on my only meeting or only discussion
9 with Mr. Peck, and that was that he had sued the Washoe
10 County Public Defender's Office and Mr. Hall who was a
11 former employee of the office. And made those
12 representations to this court in open court and what
13 that was the basis upon which we asked for a relief of
14 counsel.

15 I don't know if any of the other areas in the
16 case would cause a conflict such as the complaining
17 witness, whether he represented her or other issues, but
18 we certainly placed in a precarious position like Mr.
19 Peck, my former client, and I haven't had the privilege
20 of speaking to him since that date because I don't
21 represent him, but he's made -- I've made
22 representations to the Court that I believed were
23 accurate. Whether they are or not, if you look at his
24 pleadings, Judge, it's clear that they're imperfect in
25 their substance. Nothing within these pleadings stops

1 him from on the drive back to Carson City amending them
2 and achieving what his goal seems to be and that --

3 THE COURT: Are you filing an amended and
4 litigate until doom's day?

5 MR. MERKIN: If he adds the name of Mr.
6 Specchio or Mr. Bosler or someone else in the office
7 we're back here again. You have the ability to appoint
8 counsel.

9 THE COURT: Create a conflict. Mr. Peck has
10 to allege facts that creates some kind of conflict of
11 interest, and the only claim in Ground 3. I don't know
12 what claims he may make. As I said, he can amend this
13 petition until doom's day and sue anybody he wants to
14 sue, that's his prerogative, but I have to determine
15 whether there's a conflict of, or potential conflict of
16 interest based on the present facts, and the only
17 allegation that's made in Ground 3 is that Mr. Hall
18 failed to -- first of all, Ground 3 isn't even directed
19 to counsel, Ground 3 contends that the trial court
20 committed reversible error in allowing the defendant's
21 wife to testify against him and it raises the marital
22 privilege under NRS 49.295, and concludes that it was
23 error to require Mrs. Peck to testify against her
24 husband.

25 And then he adds a sentence which says,

1 "Attorney Vaughn Hall failed to inform client at
2 arraignment that there was a privilege to assert." He
3 just told me in this courtroom a few minutes ago he only
4 saw Mr. Hall at the arraignment, didn't talk to him
5 before or since, and believes that at the arraignment
6 Mr. Hall was obliged to discuss the marital privilege
7 with him.

8 Well, as I said, I'm not aware of any case
9 anywhere that suggests there's an obligation of counsel
10 to discuss the marital privilege with his client at the
11 arraignment.

12 MR. MERKIN: If the Court feels comfortable
13 ruling on his underlying merits, I don't think that
14 would be appropriate today, but if you feel comfortable
15 ruling on the underlying merits of whether there is an
16 appearance of an impropriety and us going forward and
17 representing him --

18 THE COURT: Well, it's the -- the petition is
19 -- who is pending before United States District Court?

20 MR. MERKIN: I believe it is in federal court?
21 Yes, your Honor.

22 THE COURT: For Judge McKibben?

23 MR. MERKIN: I am -- well, I'm not sure which
24 judge is assigned the case. I've heard him state at the
25 table, Judge.

1 THE COURT: I don't know. What does this
2 court do? There's a question pending, it's a serious
3 question pending before the United States District
4 Court, the District of Nevada. Under Title 28, the
5 United States Code, Section 2254, as I am well aware, is
6 the jurisdiction of the United States District Court to
7 adjudicate the petition. It's not this Court's
8 jurisdiction. On the other hand, what do you do when
9 the only conflict is an allegation which, in my view,
10 can't possibly be the ground of relief for anybody
11 anywhere?

12 MR. MERKIN: Isn't that really Judge Hunt's
13 decision? And the problem is he's placed us in a
14 difficult position, the petitioner, my former client.
15 In those rare circumstances, and they are, if you look
16 at the empirical evidence, rare, where a client actually
17 doesn't threaten to file suit which I submit to you is
18 not a basis.

19 THE COURT: Right.

20 MR. MERKIN: Well, your Honor, but in this
21 court in the past there have been unique occasions when
22 the threat of a lawsuit has been a basis to relieve
23 private counsel, but in this case, we have this rare
24 occasion when he is actually perfected the filing of a
25 lawsuit.

1 Now, in speaking with absolute candor we all
2 here know what his intention is. His intention is that
3 -- that he wished not just to bring cause of action
4 against Mr. Widdis, but against the Washoe County Public
5 Defender's Office. And it's fair to assume that on the
6 drive back to Carson City today, he may perfect yet
7 another amendment to his -- to these -- to his pleadings
8 which will further delay these proceedings. As in
9 Article 3, Section 3, Judge, of an original
10 jurisdiction, you can do what I'm going to do, what I
11 suggest to you, your Honor, and that is if you feel it's
12 inappropriate for the alternative public defender to
13 represent him you can appoint independent counsel in
14 this case. You've done that in other cases in the past.

15 THE COURT: Well, but that's not the question.
16 The only question -- the only basis for relieving the
17 alternative public defender would be the
18 disqualification of public defender's also not the
19 appointed counsel.

20 MR. MERKIN: I understand.

21 THE COURT: Do you have any other thoughts on
22 this?

23 MS. LUNT: Your Honor, at this point I don't
24 believe that there is an indication there is a conflict
25 with Washoe County Public Defender's Office based upon

1 --

2 THE COURT: Well, I don't think there is, but
3 isn't that -- isn't that the job of the United States
4 District Court to decide? A petitioner can allege
5 anything. Thousands and thousands of these petitions
6 are filed in United States District Court every day, I
7 dealt with it for five years in Federal Public
8 Defender's Office. If the Petitioner alleges -- well,
9 the problem is even if what the Petitioner says is true,
10 that the public defender didn't discuss with him the
11 marital privilege at the time of the arraignment, it's
12 inconceivable to me that any judge, any judge in the
13 world would say that's a basis for some kind of relief
14 or that that is -- that it supports an incompetency of
15 counsel claim. And that's the only reference he makes
16 to the Washoe County Public Defender's Office, but I'm
17 sure I have the jurisdiction to decide that. And while
18 Mr. Peck is awaiting a decision we can go to trial in
19 November.

20 MS. LUNT: Your Honor, I don't think you need
21 the jurisdiction to decide that issue. I think what you
22 look at is whether or not there is a conflict at this
23 point shown --

24 THE COURT: Yeah.

25 MS. LUNT: -- with the public defender's

1 office, and I don't believe there is.

2 THE COURT: Well, he's made a claim. He's
3 made a claim, no matter how unfounded I think it is,
4 he's made a claim that the public defender representing
5 him at the arraignment violated his Constitutional
6 rights by failing to discuss with him at the arraignment
7 the spousal privilege. Now, it's a claim, and it's not
8 a claim that this Court's called upon to decide.

9 MS. LUNT: That's true. But my concern, then,
10 your Honor, is that the clients in every case can file
11 claims --

12 THE COURT: That's right.

13 MS. LUNT: -- in order to pick and choose who
14 their attorney should be.

15 THE COURT: That's right.

16 MS. LUNT: That could have disastrous
17 consequences --

18 THE COURT: It would.

19 MS. LUNT: -- on the system. It could cost
20 the county literally in very short order hundreds of
21 thousands of dollars.

22 THE COURT: If this Court has the jurisdiction
23 to decide that, then I can decide it. If, for instance,
24 Mr. Peck filed an affidavit in this case and said I
25 think there's a conflict and here's why and repeats the

1 same facts he has in the petition, I would find, as I've
2 said, there is no conflict as a matter of law and the
3 public defender represents him, but he's made
4 manufactured claim in United States District Court and I
5 don't know how I can find before the petition's even
6 been submitted -- by the way, it says this was filed on
7 October 3rd, 2005? What's happened in the last couple
8 of years, two and a half years?

9 THE DEFENDANT: We overcame the motion to
10 dismiss, we overcame exhaustion, we overcame procedural.

11 THE COURT: Where does it stand now
12 procedurally?

13 THE DEFENDANT: It's in the hands of Judge
14 Robert Hunt.

15 THE COURT: You mean it's been submitted for
16 decision?

17 THE DEFENDANT: Yes.

18 THE COURT: How long has it been submitted?

19 MS. LUNT: Your Honor, we have the docket
20 sheet, if we can answer that question?

21 THE DEFENDANT: The final brief was filed May
22 30th of 2007.

23 THE COURT: So it's been submitted since last
24 May.

25 THE DEFENDANT: One year.

1 MR. MERKIN: Your Honor, obviously, what are
2 we to do, then, if Judge Hunt, the Honorable Judge Hunt
3 rules against and he takes it to the 9th Circuit? And
4 this is a rare case, Judge, in our years practicing
5 together in this courtroom.

6 THE COURT: Judge Hunt is not insane. He is
7 not going to find that the defendant had to be advised
8 of the marital privilege at the time of his arraignment.

9 MR. MERKIN: I'm not passing judgment on that,
10 your Honor. I'm saying if that he gets a ruling which
11 he doesn't agree with, he, meaning the Petitioner, he
12 files to the 9th Circuit and we're before your court in
13 the same issue.

14 THE COURT: What about Ms. Lunt's argument?
15 Any person can pick and choose their lawyer by saying,
16 oh, I'm filing a claim, which is as easy to do as it is
17 to get the form and, therefore, sue a public defender
18 because I want the other office.

19 MR. MERKIN: I don't know if it's
20 inappropriate to quote Justice Agosti in this courtroom,
21 however, Justice Agosti, I had this issue with her many
22 years ago, and she said Mr. Merkin, there are two
23 grounds upon which they can relieve their lawyer, one is
24 if they physically assault their lawyer I'm going to
25 relieve them, and the second is if they have actually

1 perfected a filing of a cause of action, regardless of
2 the merits.

3 Now, in our practice of, I'm very proud to say
4 next month marks 20 years I've been in the public
5 defender's office, I don't think I've had two handfuls
6 of clients who have perfected causes of action, filed
7 them in any court of competent jurisdiction. They'll
8 threaten all the time what they're going to do, your
9 Honor, but actually filing a lawsuit against the office
10 is still a rare occasion.

11 MS. LUNT: Your Honor, I'm not sure the public
12 defender's office was even served with this.

13 MR. MERKIN: Was served. I wouldn't know,
14 your Honor, I wouldn't know. We don't have his file in
15 our office.

16 THE COURT: I'm not sure you would be served.
17 The respondent is not the public defender's office, the
18 respondent is, in this case, Warden Nevin.

19 MR. MERKIN: Was who?

20 THE COURT: Warden Nevin. You don't name
21 public defenders, Mr. Peck did this right, he's
22 petitioning all persons as respondents, because he is
23 the respondent, he is the person in custody. It's
24 brought under 2254, which is the avenue for state court.
25 He needs to bring request for habeas corpus relief under

1 Title 28 to the Federal Court. What does it say?

2 MR. MERKIN: I do have a docket sheet on 2-15,
3 2008, was an order denying a motion for a preliminary
4 injunction signed by Roger Hunt. If I can approach?

5 THE COURT: Well, I don't know what the motion
6 for preliminary injunction was for. Is that pertinent
7 to what we're talking about now?

8 THE DEFENDANT: No.

9 THE COURT: What is that about?

10 THE DEFENDANT: That was the Department of
11 Corrections took my typewriter.

12 THE COURT: Okay.

13 MS. LUNT: And your Honor, just for the
14 record, the mere fact that he filed and mentioned Vaughn
15 Hall's name does -- to me doesn't mean there is an
16 allegation specifically included in there. It's very
17 clear he's making allegations, at best. As trial
18 counsel it's very clear he's made allegations against
19 his appellate attorney, but no actual lawsuit that's
20 been filed.

21 THE COURT: Let me ask you this, Mr. Peck.
22 I'm looking at the petition; you probably memorized this
23 thing. I want you to distinguish between the claim and
24 the facts that you've alleged. Where have you made a
25 claim that the public defender acted incompetent?

1 THE DEFENDANT: Where have I made the claim?

2 THE COURT: Yes.

3 THE DEFENDANT: Well, in virtually every
4 petition that I've written.

5 THE COURT: Well, you cite the 6th Amendment
6 literally listing it, but your claim in Ground 3 was
7 that the trial court committed reversible error in
8 allowing the defendant's wife to testify against him. I
9 just don't know. Do you have any authority that you
10 presented to the United States District Court supporting
11 the fact that the lawyer at the arraignment has an
12 obligation to advise you of the marital privilege?

13 THE DEFENDANT: Yes. Yes.

14 THE COURT: What is that?

15 THE DEFENDANT: I'm at a disadvantage. I had
16 no idea I was coming to court today. I have no
17 paperwork with me.

18 THE COURT: I'll give you week to submit to me
19 -- now, listen to me very carefully. I want you to
20 submit to me every bit of authority you have from any
21 court in the United States to the effect that your
22 counsel at arraignment has an obligation to confer with
23 you about the marital privilege. I don't need to know
24 what the statute says on the marital privilege or the
25 trial counsel's conduct or the Court's error in

1 permitting your spouse to testify. You've made one
2 allegation in this petition which has been pending for
3 years so there's no reason to go back to court and amend
4 it and say I forgot these other 15 things Mr. Hall did,
5 because if you do that it will tell me that it's just a
6 maneuver to try to get the Alternate Public Defender in
7 this case, so I want you to rely on the one sentence
8 that you alleged in Ground 3 and give me every stitch of
9 authority you have to the effect of counsel at the
10 arraignment has an obligation to advise you of the
11 marital privilege. I'll give you one week to do that
12 and then I will decide this motion.

13 THE DEFENDANT: May I say something?

14 THE COURT: Sure.

15 THE DEFENDANT: I believe it was adjudicated
16 as an ineffective assistance of counsel claim in a state
17 habeas.

18 THE COURT: What was?

19 THE DEFENDANT: The failure to inform me that
20 I had the privilege.

21 THE COURT: At arraignment.

22 THE DEFENDANT: And preliminary hearing.

23 THE COURT: You have put in this petition
24 which has been pending for years one sentence concerning
25 the public defender's office. And that sentence alleges

1 that your counsel at the arraignment should have advised
2 you about the marital privilege, and I want to see the
3 authority you have to support that, a conclusion by any
4 court anywhere that a lawyer has the obligation at
5 arraignment to advise a client of the marital privilege.
6 You have not alleged anything about the preliminary
7 examination, despite having the opportunity for many
8 years to do that, so I'm not interested in a new claim,
9 because it has no weight with me. I want you -- I want
10 to know as for this claim, okay?

11 THE DEFENDANT: I do believe I made a mistake,
12 your Honor, and the -- it was in the --

13 THE COURT: You mean for years and years it
14 just occurred to you to think of it, didn't think of it
15 at preliminary hearing? I think you're trying to
16 manipulate me so you can disqualify the public defender
17 and have the Alternate Public Defender, and I'll repeat
18 it one more time. You have a week within which to
19 submit to the Court and counsel for the public
20 defender's office and the Alternate Public Defender's
21 Office any legal authority you have demonstrating that
22 it is unlawful or denial of your right to counsel or due
23 process or any other Constitutional rights for counsel
24 to failure to advise you of marital privilege at the
25 time of the arraignment, okay?

1 Court is in recess.

2 MR. MERKIN: Your Honor, could this matter be
3 set for two weeks from today?

4 THE COURT: We'll reset it. The trial date
5 will not change. And I want to make that clear too, Mr.
6 Peck. In the unlikely event the Court decides to
7 substitute counsel your trial date will not change. It
8 will go forward in November, period.

9 This matter is continued until Wednesday, June
10 25th, 2008, for a hearing on the request to be relieved
11 as counsel.

12 MR. MERKIN Your Honor, with all due respect,
13 I have a trial with you on the 23rd, if it could be the
14 18th or the 23rd?

15 THE COURT: Okay. Let me take a look.

16 MR. MERKIN: That will be a real busy day for
17 --

18 THE COURT: How about the 27th?

19 MR. MERKIN: That's fine. Thank you, Judge.

20 THE COURT: All right. June 27th, Friday at
21 9:00. Thank you.

22 Court is in recess.

23 (Proceedings continued until June 27, 2008, at
24 9:00 a.m.)

25 ---o0o---

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1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

3 I, JULIE ANN KERNAN, official reporter of
4 the Second Judicial District Court of the State of
5 Nevada, in and for the County of Washoe, do hereby
6 certify:

7 That as such reporter I was present in
8 Department No. 6 of the above court on Wednesday,
9 May 28, 2008, at the hour of 9:42 a.m. of said day, and
10 I then and there took verbatim stenotype notes of the
11 proceedings had and testimony given therein upon the
12 Motions of the case of State of Nevada, Plaintiff, vs.
13 FRANK MILFORD PECK, Defendant, Case No. CR06-2580.

14 That the foregoing transcript, consisting of
15 pages numbered 1 through 30, both inclusive, is a full,
16 true and correct transcript of my said stenotype notes,
17 so taken as aforesaid, and is a full, true and correct
18 statement of the proceedings had and testimony given
19 upon the Motions of the above-entitled action to the
20 best of my knowledge, skill and ability.

21
22 DATED: At Reno, Nevada, this 16th day of June, 2008.

23 /s/ Julie Ann Kernan

24 _____
25 JULIE ANN KERNAN, CCR #427

CR06-2580 DC-990003461-101
STATE VS. FRANK MILFORD PECK 1 page
District Court 06/27/2008 02:03 PM
Washoe County 2515
DOC TCERVANT

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK M. PECK,
DEFENDANT,

CASE NO: CR06-2580

FILED

VS.

DEPT. NO: 6

JUN 27 2008

THE STATE OF NEVADA,
PLAINTIFF. /

HOWARD W. CONYERS, CLERK
By: *Howard W. Conyers*
DEPUTY CLERK

NOTICE OF APPEAL

NOTICE is herein given that, Frank M. Peck, Defendant In Proper Person, does hereby Appeal to the Supreme Court of the State of Nevada from the denial of Defendant's Judicial Notice filed on June 12, 2008 and denied on June 27, 2008. Defendant further requests that all proceedings be stayed until Judicial review by the Supreme Court is complete.

Defendant also requests that all pertinent documents and notices be transmitted to the Supreme Court for review forthwith.

DATED THIS 27TH DAY OF JUNE 2008.

Frank Peck

Frank M. Peck
Defendant In Proper Person

FILED

JUN 30 2008

HOWARD W. CONYERS, CLERK
By: *Cathy Kepler*
DEPUTY CLERK

1350

CR06-2580 DC-990003481-030
STATE VS. FRANK MILFORD PECK 1 Page
District Court 06/30/2008 11:44 AM
Washoe County 1350
nmr CKFB/FF

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

9 **FRANK MILFORD PECK,**

10 **Appellant(s)**

Case No. CR06-2580

11 **vs.**

Dept. No. 6

12 **THE STATE OF NEVADA,**

13 **Respondent(s)**

14 _____
15
16 **CERTIFICATE OF CLERK**

17
18 I hereby certify that the enclosed documents are certified copies of the original pleadings
19 on file with the Second Judicial District Court, in accordance with the NRAP 3(e).

20
21 **Dated: June 30, 2008**

Howard W. Conyers, Clerk of the Court,

22
23
24 **By:** *Cathy Kepler*

Cathy Kepler, Appeals Clerk

CR06-2580 DC-990003481-031
STATE VS. FRANK MILFORD PECK 1 Page
District Court 06/30/2008 11:44 AM
Washoe County 1965
CKFPLP

FILED

JUN 30 2008

HOWARD W. CONYERS, CLERK
By: *C. Kepler*
DEPUTY CLERK

1365

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

**FRANK MILFORD PECK,
Appellant(s)**

Case No. CR06-2580

vs.

Dept. No. 6

**THE STATE OF NEVADA,
Respondent(s)**

CERTIFICATE OF TRANSMITTAL

I hereby certify that the enclosed the Notice of Appeal and other required documents (certified copies) were delivered to the Second Judicial District Court mailroom system for transmittal to the Nevada Supreme Court.

Dated: June 30, 2008

Howard W. Conyers, Clerk of the Court,

By: *C. Kepler*
Cathy Kepler, Appeals Clerk

JUN 30 2008

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

CODE 1310

CR06-2580 DC-9900003481-032
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 06/30/2008 11:44 AM
Washoe County 1310
CKE:EPF

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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FRANK MILFORD PECK,

Appellant(s)

Case No. CR06-2580

vs.

Dept. No. 6

THE STATE OF NEVADA,

Respondent(s)

CASE APPEAL STATEMENT

1. Frank Milford Peck is the Appellant.
2. The appeal is from a Judgment/Order on or about June 27, 2008 by the Honorable Brent Adams. As of today June 30, 2008, no Order has been filed.
3. The parties below in District Court consisted of: Frank Milford Peck, the Defendant, and The State of Nevada, the Plaintiff.

The parties herein in the Nevada Supreme Court consist of: Frank Milford Peck /Appellant, and The State of Nevada/Respondent.

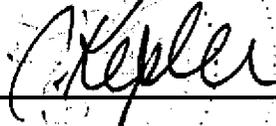
4. Counsel on Appeal for Appellant, consists of: Frank Milford Peck/Pro Per Appellant #57106, Northern Nevada Correctional Center, P.O. Box 7000, Carson City, NV 89702.
5. Counsel on appeal for Respondent is Gary Hatlestad, Deputy District Attorney – Appellant Division, P.O. Box 30083, Reno, NV 89520-3083.

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- 6. In District Court Appellant was represented by **Patrick McGinnis, Assistant Public Defender.**
- 7. Appellant is represented in **Proper Person** in this appeal.
- 8. N/A in this case.
- 9. The **Indictment** was filed on **November 8, 2008.**

Dated: June 30, 2008

Howard W. Conyers, Clerk of the Court,

By: 

Cathy Kepler, Appeals Clerk

(775) 328-3114

FILED

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

JUL 03 2008

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 51948
District Court Case No. CR062580

CR06-2580 DC-9903003517-002
STATE VS. FRANK MILFORD PECK 1 Page
District Court 07/03/2008 11:16 AM
Washoe County 1188
CKFPI

RECEIPT FOR DOCUMENTS

TO: Frank Milford Peck #57106
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Howard W. Conyers, District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

- 07/01/08 Filing Fee Waived: Criminal.
- 07/01/08 Filed Certified Copy of proper person Notice of Appeal.
Appeal docketed in the Supreme Court this day.

DATE: July 01, 2008

Tracie Lindeman, Clerk of Court

By: *[Signature]*
Deputy Clerk

FILED

JUL 18 2008

HOWARD W. CONNORS, CLERK
By: *[Signature]*
DEPUTY CLERK

CR06-2580 DC-9900009637-010
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 07/18/2008 09:18 AM
Washoe County 4127
CKFPI/FR

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

CR06-2580

No. 51948

FILED

JUL 15 2008

TRACIE K. ANDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying a document labeled "judicial notice of potential conflict with counsel." Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

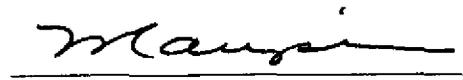
Our review of this appeal reveals a jurisdictional defect. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.¹ No statute or court rule provides for an

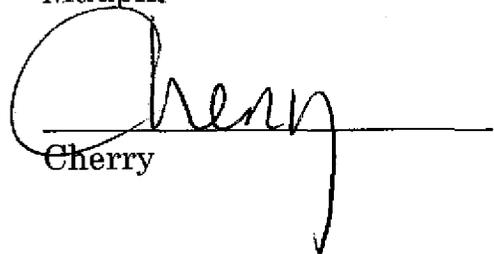
¹Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990).

appeal from an order denying the aforementioned document. Accordingly,
we

ORDER this appeal DISMISSED.


_____, C.J.
Gibbons


_____, J.
Maupin


_____, J.
Cherry

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
~~Washoe District Court Clerk~~

Code No. 4185

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

-oOo-

STATE OF NEVADA,)	
)	
Plaintiff,	)	Case No. CR06-2580
)	
vs.	)	Dept. No. 6
)	
FRANK MILFORD PECK,)	
)	
Defendant.)	
_____)	

TRANSCRIPT OF PROCEEDINGS
Motion to Relieve
Alternate Public Defender's Office
As Counsel
Friday, June 27, 2008
RENO, NEVADA

Reported By: STEPHANI L. LODER, CCR No. 862

APPEARANCES:

For the Plaintiff: DAVID WAYNE CLIFTON
Deputy District Attorney
Reno, Nevada

For the Defendant: JOSEPH MERKIN
Deputy Public Defender
Reno, Nevada

and

JOHN E. MALONE
Alternate Deputy Public Defender
Reno, Nevada

Parole and Probation: KIM STRONG

Court Services: MARY LOGAN

1 RENO, NEVADA, FRIDAY, JUNE 27, 2008, 9:05 A.M.

2 -oOo-

3
4 MR. MERKIN: Your Honor, could we take up the
5 Peck matter?

6 THE COURT: All right. The next matter is
7 CR06-2580, State vs. Frank Milford Peck. Has the office
8 of the alternate public defender been noticed of the
9 defendant's pleading file on June 12th, 2008?

10 MR. MALONE: We have, Your Honor.

11 THE COURT: All right. The record should reflect
12 the Court has received defendant's judicial notice, a
13 pleading entitled Judicial Notice of Potential Conflict
14 With Counsel filed June 12th. And you may proceed,
15 Mr. Merkin.

16 MR. MERKIN: Judge, I have several alternative
17 ways I suggest you proceed. I've read his motion, and
18 although it was filed by a layman, I would suggest it's
19 persuasive. I think he makes an argument that neither
20 office should represent the defendant. I'd ask you to
21 consider that first.

22 THE COURT: All right. Thank you. Mr. Clifton,
23 what's the State's position?

24 MR. CLIFTON: The State opposes that motion, Your

1 Honor, vehemently. If that were true, if that were the
2 law, why did we adopt the alternative public defender's at
3 all? Because everyone knows a lot of the attorneys moved
4 from one office to the other. Doesn't mean the conflict,
5 theoretical conflict, would transverse over to the other
6 office. He would have to show an actual conflict.

7 And I would cite for Your Honor's edification,
8 *Mickens v. Taylor*, which is U.S. Supreme Court 122,
9 Supreme Court 1237. One thing that they say in that case
10 is the defects in assistance that have no probable effect
11 on the trial's outcome do not establish a constitutional
12 violation.

13 So it's a two-prong test, Your Honor. Mr. Merkin
14 has jumped right to the second prong.

15 The first prong is whether Mr. Von Hall was
16 ineffective at all or whether that representation of
17 Mr. Peck has caused a conflict such that we have to at
18 least inquire or look in to whether it's an actual
19 conflict or a theoretical conflict.

20 I think Your Honor hit it on the head last time
21 that simply representing him at the preliminary hearing
22 does not establish a conflict. That's also discussed in
23 the *Mickens* case in its --

24 THE COURT: If you remember the last hearing, I

1 think we focused on the arraignment, and I found that
2 failure to advise the defendant of the spousal privilege
3 at the arraignment under any standard I've ever seen does
4 not constitute ineffective assistance of counsel.

5 And then I suggested to Mr. Peck that if he had
6 any ground that he felt he could assert based upon
7 counsel's conduct at the preliminary examination, he could
8 do that. So Mr. Peck filed this pleading on June 12th.

9 And now the question, I guess, before we get to
10 the question of the change in offices from the public
11 defender to the alternate public defender, is whether
12 Mr. Hall at least arguably failed to provide effective
13 assistance of counsel by failing to advise Mr. Peck of the
14 availability of the spousal privilege at the preliminary
15 examination.

16 Now, Mr. Merkin knows, in the trial we just
17 concluded yesterday, that we've had recent occasion to
18 review the statute on the spousal privilege. But I really
19 know nothing about the circumstances in this case as to
20 whether or not any -- well, first of all, whether or not
21 Mr. Hall failed to advise his client of that privilege
22 and, second, whether it could be appropriately asserted to
23 preliminary examination. I don't know.

24 MR. MERKIN: Your Honor, may I speak?

1 THE COURT: Sure.

2 MR. MALONE: First I question whether the
3 district attorney has any standing to make any argument as
4 to who represents Mr. Peck.

5 Second, Judge, I don't think this Court, with all
6 due respect, has the proper jurisdiction. There is a
7 pending federal case. It's not for you to decide the
8 underlying substantive merit of whether or not there's a
9 conflict or whether there's any merit in his -- his
10 meaning the petitioner's -- federal pending case.

11 THE COURT: He's got a 2254 petition in the
12 United States District .

13 MR. MERKIN: We covered this last time.

14 THE COURT: Right.

15 MR. MERKIN: Third, Judge, I don't think you have
16 jurisdiction because, as you saw in Mr. Malone's moving
17 papers, there's no citation of law.

18 The Washoe County Commission created the public
19 defender's office and then they created, years later, the
20 alternate public defender's office. If they're unhappy
21 with the cases we're sending to them, that's an issue --
22 that's a contractual issue with the Washoe County Public
23 Defender -- or with, excuse me, the Washoe County
24 Commission. There's no jurisdiction for you to interpret

1 the protocol agreements or the felony agreements for the
2 alternative public defender's office on when the case --
3 there's a sufficient basis for a conflict, that it should
4 or should not be sent to the alternate public defender's.

5 Basically, jurisdiction is not right for you to
6 hear this case, Judge. And I would suggest to you that
7 their alternative is to go to the Washoe County Commission
8 and to argue that we are inappropriately sending them
9 cases.

10 THE COURT: No, I don't think I agree with that.
11 Mr. Peck, of course, is correct when he points out in his
12 pleading that if an attorney in a law firm has a conflict,
13 the entire firm is disqualified. That's a fairly standard
14 principle of law concerning actual and potential conflicts
15 of interest by counsel.

16 He's made another argument that is a little bit
17 different. And that is, if I understand the argument
18 correctly, the person he contends with whom he has a
19 dispute -- I'll just put it that way -- because Mr. Hall
20 didn't do something he should have done at the preliminary
21 proceedings, he is not the person who would be
22 representing Mr. Peck in this matter either from the
23 public defender's office or the alternate public
24 defender's office.

1 Let's say Mr. Peck was represented by the public
2 defender's office today, and he was claiming today
3 ineffective assistance of counsel by somebody in the
4 public defender's office. I think it's obvious that that
5 office would be disqualified to represent him.

6 But he's saying a different thing. He's saying
7 there are some particular lawyers, not Mr. Hall, who were
8 in the public defender's office at the time when Mr. Peck
9 was represented by Mr. Hall. And now those same persons
10 happen to be employed by the alternate public defender's
11 office. And he said, therefore, if, under the rule that
12 says a law firm is disqualified if one lawyer is
13 disqualified, and since some people today work for the
14 public defender's office who worked for the public
15 defender's -- alternate public defender's office who
16 worked for the public defender's office then, the
17 alternate public defender's office should be disqualified.

18 I don't agree with that proposition. The public
19 defender's office would be disqualified, but not the
20 alternate public defender's office unless counsel assigned
21 to Mr. Peck actually represented him or participated in
22 some manner in his case when it was handled by the public
23 defender's office.

24 So the Court construes Mr. Peck's notice as a

1 motion for disqualification of counsel, and it is denied.

2 The next matter is CR08-0604, State vs.
3 Christopher Antonio Castillo.

4 MR. MALONE: Your Honor, I'm not sure that
5 anybody knows what the status of the case is at this
6 point, who is --

7 THE COURT: Well, that was the matter that was
8 presented for consideration this morning. I don't know
9 what else you want me to find.

10 MR. MALONE: Your Honor, I believe at the
11 previous hearing, what the Court had expressed was that
12 there was really no conflict with the public defender's
13 office. You then asked Mr. Peck and --

14 THE COURT: Right, I'm sorry. I did miss a step.
15 You're right. At the last hearing, it appeared obvious to
16 me that there was no conflict based upon Mr. Hall's
17 representation of the defendant at his arraignment. And
18 even though the matter is pending before the United States
19 District Court on the petition under Title 18, Section
20 2254 of the United States Code, it did not appear that
21 there was any actual or potential conflict of interest or
22 any failure to provide adequate representation if the
23 lawyer at the defendant's arraignment on that very
24 occasion did not discuss with him the spousal privilege.

1 What I also said was that it would -- really
2 making no comment on what happened at the preliminary
3 examination, that's a different matter. If there was a
4 witness -- theoretically, if there was a witness who
5 testified at the preliminary examination whose testimony
6 could have been precluded under the evidence code, either
7 by indication of the competency privilege or objection
8 under the testimonial privilege, and the defendant,
9 Mr. Peck, contends that Mr. Hall incompetently failed to
10 advise him of that privilege, that's a different matter.

11 Since that last hearing, Mr. Peck has filed this
12 pleading. And he has contended, as I believe he's
13 contended in the Federal Court, that that occurred.

14 I think that does constitute a conflict of
15 interest, and I think the public defender's office,
16 therefore, is disqualified. But for the reasons I just
17 suggested, I don't believe that also disqualifies the
18 alternate public defender's office.

19 So the public defender's office in this case is
20 disqualified, and the alternate public defender's office
21 is not.

22 MR. MALONE: Thank you.

23 THE COURT: I appreciate you bringing that to my
24 attention. I think that was an open issue at the last

1 hearing. Thank you.

2 (Discussion off the record.)

3 MR. MALONE: Your Honor, Mr. Peck has another pro
4 se motion that he wishes to file.

5 THE COURT: All right. He may do so in open
6 court with the clerk of the Court.

7 (Discussion off the record.)

8 THE COURT: And I should note in Mr. Peck's case,
9 the defendant is precluded from filing any pro se motions
10 in this case. Motions shall be filed only by his counsel
11 unless the motions are directed to any matters between
12 Mr. Peck and his counsel.

13 Do you understand that, Mr. Peck?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Your lawyer files the motions in this
16 case, period. It is his obligation to represent you. If
17 you have some dispute with your lawyer, then you may file
18 that in the form of a motion. And I don't want to discuss
19 it now, but is that the subject of this motion, some other
20 problem with your lawyer?

21 THE DEFENDANT: No, sir. This is a notice of
22 appeal.

23 THE COURT: From what?

24 MR. MALONE: From the Court's ruling today.

1 THE COURT: All right. That will not be filed.
2 That will be given to counsel. Thank you.

3 (Proceedings concluded.)
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STATE OF NEVADA)
)
COUNTY OF WASHOE)

I, STEPHANI L. LODER, Certified Shorthand Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

That I was present in Department No. 6 of the above-entitled Court and took stenotype notes of the proceedings entitled herein, and thereafter transcribed the same into typewriting as herein appears;

That the foregoing transcript is a full, true and correct transcription of my stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 27th day of July, 2008.

 /s/ Stephani L. Loder
STEPHANI L. LODER, CCR No. 862

DC-9900003834-093
CR06-2580
STATE VS. FRANK MILFORD PECK 3 Pages
District Court 08/11/2008 12:04 PM
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Washoe County
www.tahoe.com

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK MILFORD PECK,
Defendant,

CASE NO. CR06-2580

VS.

DEPT NO. 6

THE STATE OF NEVADA,
Plaintiff.

FILED
2008 AUG 11 PM 12:04
BY HOWARD W. SCHYERS

MOTION FOR RECUSAL OF JUDGE BRENT ADAMS

COMES NOW, FRANK MILFORD PECK, Defendant In Proper Person moving Judge Brent Adams to recuse or otherwise disqualify himself as Judge on the above-entitled case.

POINTS AND AUTHORITIES

This Motion is based on the following points and authorities:

NRS. 1.230 (1,2) which states;

- 1) "A judge shall not act as such in an action or proceeding when he entertains actual bias or prejudice for or against one of the parties to the action,"
- 2) "A judge shall not act as such in an action or proceeding when implied bias exists..."

NRS. 1.235 (1,5) which states;

- 1) "Any party to an action or proceeding pending in any court other than the Supreme Court, who seeks to disqualify a judge for actual or implied bias or prejudice must file an affidavit specifying the facts upon which the disqualification is sought."
- 5) "The judge against whom an affidavit alleging bias or prejudice is filed shall proceed no further with the matter."

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STATE ex rel Stokes V. Second Judicial District
27 P.2d 534 (1933) which states;

"When affidavit charging bias of district judge is filed, judge to whom it is addressed has no discretion but must make change commanded by statute."

The attached affidavit also supports this motion.

CONCLUSION

In conclusion, the defendant moves Judge Brent Adams to recuse or otherwise disqualify himself based upon the proceeding points and authorities and the attached affidavit and properly reassign the above-entitled case to another Judge forthwith.

Dated this 24th day of July, 2008.



FRANK MILFORD PECK # 57106
P.O. BOX 7000
CARSON CITY, NEVADA 89702

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

Motion for Recusal of Judge Brent Adams

(Title of Document)

filed in case number: CR-06-2580



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 8-4-08

Frank Peck
(Signature)

FRANK PECK
(Print Name)

(Attorney for)

1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR THE COUNTY OF WASHOE

3
4 FRANK MILFORD PECK,
5 Defendant,

CASE NO. CR06-2580

6 VS.

DEPT NO. 6

7 THE STATE OF NEVADA,
8 Plaintiff.

FILED
2008 AUG 11 PM 12:04
BY HOWARD J. CONYER

9
10 AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION FOR RECUSAL

11 I, FRANK MILFORD PECK, under the penalty of perjury state
12 that the following statements are true and correct to my
13 personal knowledge and as to those statements made on fact I
14 also believe them to be true.

15 I the above-named affiant states as follows:

- 16
- 17 1) I am the Defendant and an
18 interested party in the above-
19 entitled action.
 - 20 2) The purpose of this motion is in
21 good faith and not for the
22 purpose of delay.
 - 23 3) No pre-trial matters have been
24 heard or decisions other than
25 matters of conflicted counsel
26 have been made in regards to
27 this case.
 - 28 4) Arraignment in this case was
presided over by Judge Deborah
Agosti in Department 3.
 - 5) This affidavit and motion
are made more then 20 days
before the date set for trial
and more then 3 days before
the hearing of any pretrial
matter.

DC-590003834-094
MILFORD PECK 3 Pages
08/11/2008 12:04 PM
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CR06-2580
STATE VS. FRANK
District Court
Washoe County
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- 6) Judge Adams has previously presided over my brother's capital murder case.
- 7) Judge Adams has previously made rulings which are being contested in the federal courts in regards to a prior postconviction petition on another case. he was not the assigned Judge in that matter.
- 8) Judge Adams has shown implied bias in favor of the state by vouching for the validity of the state's evidence during a hearing held on 9-5-07. No evidence had been presented by either party.
- 9) Judge Adams prejudiced himself by seeking out copies of my Federal Habeas petition and their outcomes in regards to previous criminal convictions that are not part of this particuulor case or proceedings.
- 10) Judge Adams overall comments and innuendos have exhibited a general overall implied bias of my guilt and the need to just hurry up and convict me.
- 11) Judge Adams refusal to follow clearly established case law and allowing a proven conflict to exist with my counsel shows a clear bias on his part.

Further your affiant Sayeth Naught.

Dated this 24th day of July, 2008.



FRANK MILFORD PECK # 57106
P.O. BOX 7000
CARSON CITY, NEVADA 89702

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

Affidavit in support of Defendants
Motion for Recusal

(Title of Document)

filed in case number: *CR-06-2580*

Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

(State specific state or federal law)

-or-

For the administration of a public program

-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: *8-4-08*

Frank Peck

(Signature)

Frank Peck

(Print Name)

(Attorney for)

FILED

AUG 13 2008

HOWARD W. COYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

1 CODE NO. 1075

CR06-2580 DC-9900003857-005
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 08/13/2008 04:45 PM
Washoe County 113B
DC

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3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
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6 IN AND FOR THE COUNTY OF WASHOE

7 * * *

8
9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR06-2580

11 vs.

Dept. No. 6

12 FRANK MILFORD PECK,

13 Defendant.

14
15 ANSWER

16 Pursuant to NRS 1.235(5), the undersigned hereby answers the Defendant's
17 Motion for Recusal of Judge Brent Adams as follows:

18 All allegations of bias or prejudice are denied.

19 Dated this 13th day of August, 2008.

20
21 *[Signature]*
22 BRENT ADAMS, DISTRICT JUDGE
23
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FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

AUG 18 2008

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 51948
HOWARD W. CONYERS, CLERK
DEPUTY CLERK

District Court Case No. CR062580

REMITTITUR

TO: Howard W. Conyers, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: August 12, 2008

Tracie Lindeman, Clerk of Court

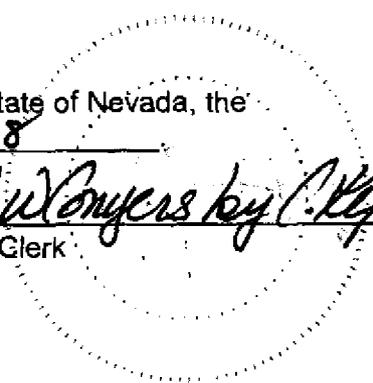
By: *A. Ingersoll*
Deputy Clerk

cc (without enclosures):
Hon. Brent T. Adams, District Judge
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Frank Milford Peck

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on 8-18-08

Howard W. Conyers by C. Kepler
District Court Clerk



V3 285
00-19800

CR06-2580
STATE VS. FRANK MILFORD PECK
District Court
Washoe County
DC-9900003889-030
1 Page
08/18/2008 10:08 AM
4145
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FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

AUG 18 2008

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 51948

District Court Case No. CR062580

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER this appeal DISMISSED."

Judgment, as quoted above, entered this 15th day of July, 2008.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 12th day of August, 2008.

Tracie Lindeman, Supreme Court Clerk

By: *A. Ingrison*
Deputy Clerk

DC-9900023889-031
CR06-2580
STATE VS. FRANK MILFORD PECK 1 Page
District Court 08/18/2008 10:08 AM
Washoe County 4111
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FILED

AUG 18 2008

HOWARD W. CONYERS, CLERK
By: *Chaplin*
DEPUTY CLERK

CR06-2580 DC-9500003889-032
STATE VS. FRANK MILFORD PECK 3 Pages
District Court 08/18/2008 10:09 AM
Washoe County 4127
NAC
CKEPLER

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

CR06-2580
No. 51948

FILED

JUL 15 2008

TRACIE L. LINDEMAN
CLERK OF SUPREME COURT
BY: *Castillo*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying a document labeled "judicial notice of potential conflict with counsel." Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Our review of this appeal reveals a jurisdictional defect. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.¹ No statute or court rule provides for an

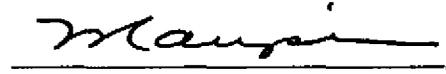
¹Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990).

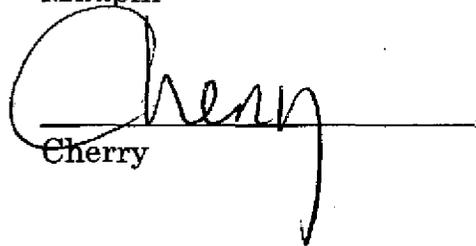
08-18175
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appeal from an order denying the aforementioned document. Accordingly,
we

ORDER this appeal DISMISSED.


Gibbons, C.J.


Maupin, J.


Cherry, J.

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk



CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office

DATE: August 12, 2008
Supreme Court Clerk, State of Nevada

by A. Ingerson Deputy

V3.289

CR06-2580 DC-9900003880-154
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 08/18/2008 05:18 PM
Washoe County 3370
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CODE: 3370

FILED

AUG 18 2008

HOWARD W. COMYERS, CLERK
By: *AKA*
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

Case No. CR06-2580

vs.

Dept. No. 6

FRANK MILFORD PECK,

Defendant.

_____ /

ORDER

On August 11, 2008, the Defendant filed a Motion for Recusal of Judge Brent Adams.

IT IS HEREBY ORDERED that the above-entitled matter is transferred to Department Ten of the Second Judicial District Court for the purpose of deciding the Motion for Recusal of Judge Brent Adams.

Dated this 18 day of August, 2008.

Connie A. Steinberg
CHIEF DISTRICT JUDGE

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CR06-2580
STATE VS. FRANK MILFORD PECK
District Court
Washoe County
08/29/2008 01:44 PM
2580
07/04

CODE 2590
JENNIFER J. LUNT
WASHOE COUNTY ALTERNATE PUBLIC DEFENDER
BAR #3057
PO BOX 30083
RENO, NV 89520-3083
775-328-3969
ATTORNEY FOR DEFENDANT

2008 AUG 29 PM 1:44

HOWARD W. CONYERS
Howe
DEPUTY

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,
Plaintiff,
vs.
FRANK PECK,
Defendant.

Case No. CR06-2580
Dept. No. 6

NOTICE OF WITHDRAWAL AS ATTORNEY OF RECORD

COMES NOW, Washoe County Alternate Public Defender, Jennifer Lunt, Deputy Alternate Public Defender, John, Malone, and hereby provides this court with notice of this offices withdrawal of representation of Mr. Frank Peck.

This office was recently notified by the offices of State Bar Counsel that this office has a conflict in its continued representation of Mr. Peck. The conflict is due to the fact that Deputy Alternate Public Defender, Cindi Heron, previously prosecuted Mr. Peck in Case No. CR96-2687, a case in which Mr. Peck was convicted of two counts of sexual assault.

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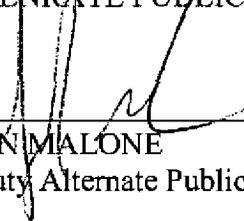
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AFFIRMATION Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 29 of August, 2008.

JENNIFER J. LUNT
ALTERNATE PUBLIC DEFENDER

By 
JOHN MALONE
Deputy Alternate Public Defender

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Alternate Public Defender's Office, Reno, Washoe County, Nevada, and that on this date, I forwarded via inter-office mail a copy of the foregoing to:

DEPUTY DISTRICT ATTORNEY
DAVID CLIFTON

DATED this 29th day of August, 2008.


RANDI JENSEN

In the Second Judicial District Court of the State of Nevada
In and For the County of Washoe

2009 SEP 12 AM 9:21
HOWARD W. COYERS

BY: *[Signature]*

The State of Nevada,
Plaintiff,
vs.

Case No: CRO6-2580
Dept. No: 6

Frank Milford Peck,
Defendant.

NOTICE

Defendant, In Proper Person, herein gives notice that pursuant to NRS. 1.235 (2)(b) The defendant disagrees with the selection of Department Ten as that Department is the Honorable Steven Elliott who is involved in this matter.

Judge Elliott's involvement is that on 12/21/04 he took deposition and issued an order for seizure of evidence in this case.

This seizure order will probably become a point of contention during the course of this case and his presiding over the motion now before the court has the potential of the appearance **V30295**

CR06-2580
STATE VS. FRANK MILFORD PECK 3 Pages
District Court 99/12/2008 09:21 AM
Washoe County
2610
MAY 2009

impropriety.

For these reasons the defendant disagrees with the appointment of Department Ten and respectfully requests the appointment of an alternate Department or Judge.

Respectfully submitted this 21st day of August 2008.

Frank Peck 57106

Frank Milford Peck #57106

Defendant In Proper Person

P.O. Box 7000

Carson City, NV, 89702

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**SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA**

**AFFIRMATION
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, _____

NOTICE

(Title of Document)

filed in case number: CR 06 2580

Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

(State specific state or federal law)

-or-

For the administration of a public program

-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 9 4 08

Frank Peck
(Signature)

FRANK W PECK
(Print Name)

PRO SE
(Attorney for)

ORIGINAL

FILED

2008 SEP 16 PM 2:02

HOWARD W. CONYERS

BY *[Signature]*
DEPUTY

CODE 4075
JENNIFER LUNT
BAR #3057
WASHOE COUNTY ALTERNATE PUBLIC DEFENDER
P.O. BOX 30083
RENO, NV 89520-3083
(775) 328-3955

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,

vs.

Case No. CR06-2580

FRANK MILFORD PECK,
Defendant.

Dept. No. 6

SUBSTITUTION OF COUNSEL

Appearing that a conflict exists and the WASHOE COUNTY ALTERNATE PUBLIC DEFENDER'S OFFICE being unable to continue as Counsel of Record, the WASHOE COUNTY ALTERNATE PUBLIC DEFENDER'S OFFICE hereby transfers the above-said case to BOB BELL, ESQ., effective immediately.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 15 day of Sept, 2008

[Signature]

Alternate Public Defender

[Signature]

Bob Bell, Esq.

CR06-2580
STATE VS. FRANK MILFORD PECK
District Court
Washoe County
09/16/2008 02:02 PM
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CR06-2580 DC-9900004666-007
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 11/10/2008 09:00 AM
Washoe County 3880
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FILED

NOV 10 2008

HOWARD W. CONYERS, CLERK
By: *Howard*
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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THE STATE OF NEVADA

Plaintiff,

CASE NO.: CR06-2580

vs.

DEPT. NO.: 10

FRANK MILFORD PECK,

Defendant.

RESPONSE TO NOTICE

Pursuant to NRS 1.235(5), the undersigned hereby responds to the Defendant's
Notice of September 12, 2008 as follows:

All allegations of bias or prejudice are denied.

DATED this 10 day of November, 2008.

Steven P. Elliott

STEVEN P. ELLIOTT
District Judge

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Second Judicial District Court of the
3 State of Nevada, in and for the County of Washoe, and that on this date I deposited for
4 mailing a copy of the foregoing document addressed to:

5 R. Bruce Lindsay, Esq.
6 596 California Ave.
7 Reno, NV 89509

8 Frank M. Peck, #57106
9 P.O. Box 7000
Carson City, NV 89702

10 David Clifton, Esq.
11 Deputy District Attorney
12 P.O. Box 30083
13 Reno, NV 89520
(Interoffice Mail)

14 DATED this 10 day of November, 2008.

15 
16 HEIDI HOWDEN
17 Judicial Assistant

1 **Code: 2715**

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6 **THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

8 * * *

9 THE STATE OF NEVADA,
10

11 Plaintiff,

Case No.: CR06-2580

12 vs.

Dept. No.: 10

13 FRANK MILDFORD PECK,
14

Defendant.
15 _____/

16 **RECOMMENDATION AND ORDER APPOINTING NEW COUNSEL**
17

18 The Defendant having previously been found indigent, the Washoe County
19 Public Defender's Office and the Washoe County Alternate Public Defender's Office
20 having advised the Administrator that a conflict exists which prevents either office
21 from continuing to represent the Defendant, and the possible penalty for the
22 alleged conduct being life in prison or greater necessitates appointment of Counsel
23 pursuant to NRS 7.115 through NRS 7.165.
24

25 IT IS HEREBY RECOMMENDED that Bruce Lindsey, Esq., be appointed to
26 represent the Defendant in all further proceedings in this case, up to the filing of a
27 Notice of Appeal.
28

1 IT IS HEREBY FURTHER RECOMMENDED that Counsel shall receive fees and
2 costs from Washoe County for time reasonably spent on this matter as mandated
3 by NRS 7.115 through NRS 7.165; said costs must be pre-approved by the
4 Administrator or pre-approved by Order of the Chief Judge of the Second Judicial
5 District Court; and said attorney's fees will be paid as approved by the Administrator
6 or Order of the Chief Judge of the Second Judicial District Court.

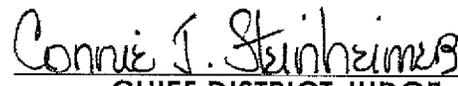
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8 DATED this 17 day of November, 2008.

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11 _____
ADMINISTRATOR

12 Pursuant to the Nevada Supreme Court Order in ADKT 411, and the Second
13 Judicial District Court's Model Plan to address ADKT 411, good cause appearing and
14 in the interest of justice,

15 IT IS HEREBY ORDERED that the recommendations of the Administrator are
16 hereby confirmed, approved and adopted.

17
18 DATED this 20 day of November, 2008.

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20 _____
CHIEF DISTRICT JUDGE

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CERTIFICATE OF SERVICE

Case No. CR06-2580

I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and that on the 24th day of November, 2008, I deposited in the county mailing system a true copy of the RECOMMENDATION AND ORDER APPOINTING COUNSEL, addressed to:

Washoe County District Attorney's Office
Via Inter-Office Mail

Robert C. Bell, Esq.
20 Winter Street
Reno, NV 89503

Bruce Lindsey, Esq.
596 California Avenue
Reno, NV 89509

Frank Mildford Peck
57106
P.O. Box 7000
Carson City, NV 89702



Marci L. Stone

CASE NO. CR06-2480

STATE VS. FRANK MILFORD PECK

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

11/07/08

HEARING RE: MOTION FOR RECUSALHONORABLE
STEVEN P.

Respondent, State of Nevada was being represented by Deputy District Attorney David Clifton. Petitioner, Frank Milford Peck was present with counsel, Bruce Lindsay, Esq.

ELLIOTT

Respective counsel and the Court met in-chambers.

DEPT. NO. 10

Discussion between respective counsel and the Court ensued regarding the petitioner's claims for the recusal of Judge Brent Adams.

C. Lloyd

Defense counsel addressed the Court indicating he was recently appointed to represent the petitioner; further requesting to present argument on the claims, as he does not intend to call Judge Brent Adams to testify. Counsel for the petitioner further indicated that he is ill with the flu; and further indicated he needs more time review the petition.

(Clerk)

Counsel for the State indicated it will not object to a continuance; further objecting to the request to present arguments without testimony from Judge Brent Adams.

J. Schonlau

COURT informed it reviewed a separate a notice submitted from the Petitioner for request for recusal this Court. Court further informed the parties that it is inclined to grant a continuance; and further indicted it would confer with the Chief Judge as to the issue regarding the petitioner's request to recuse Department 10.

(Reporter)

In-chambers conference concluded.

Court re-convened on the record.

COURT stated for the record of the discussion of the in-chambers conference.

Defense counsel addressed the Court requesting a continuance and further stated that he was newly appointed as counsel of record.

Court posed questions to the Defendant.

Petitioner responded and further agreeing to a continuance.

Counsel for the State had no objection to a continuance.

Court further noted for the record that it would confer with the Chief Judge on how it would proceed with the separate request to recuse Department 10.

COURT ORDERED: Petitioner's request for a continuance GRANTED. Court further set the matter to commence on November 25, 2008 at 2:00 p.m.

Court concluded and stood in recess.

CR06-2580
STATE VS. FRANK MILFORD PECK
District Court
Washoe County
DC-9900004937-004
Page 1
12/02/2008 03:20 PM
1250
ASTTACHF

DA # 327992

FILED

ORIGINAL

2008 DEC -2 PM 3:20

CODE 1250
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

BY *[Signature]*
DAVID W. CLIFTON
CLERK

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,
Plaintiff,
v.
FRANK MILFORD PECK,
Defendant.

Case No. CR06-2580
Dept. No. D06

APPLICATION FOR SETTING

TYPE OF ACTION: CRIMINAL
MATTER TO BE HEARD: HEARING TO SET JURY TRIAL
DATE OF APPLICATION: December 2, 2008 MADE BY PLAINTIFF
COUNSEL FOR PLAINTIFF: DAVID W. CLIFTON, D.D.A.
COUNSEL FOR DEFENDANT: BRUCE LINDSEY
CUSTODY STATUS: BAIL O.R. IN CUSTODY

Setting at 9:00 AM on December 12, 2008.

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IN THE SECOND JUDICIAL DISTRICT COURT

5

STATE OF NEVADA, COUNTY OF WASHOE

6

THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

7

8

THE STATE OF NEVADA,)

9

Plaintiff,)

10

vs.)

Case No. CR06-2580

11

FRANK MILFORD PECK,)

Dept. No. 6

12

Defendant.)

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TRANSCRIPT OF PROCEEDINGS

15

MOTION TO SET TRIAL

DECEMBER 12, 2008

16

APPEARANCES:

17

For the Plaintiff: DAVID W. CLIFTON, ESQ.
Deputy District Attorney
One South Sierra St., 4th Floor
Reno, Nevada

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For the Defendant: R. BRUCE LINDSAY, ESQ.
Attorney at Law
596 California Avenue
Reno, Nevada

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Reported by: ROMONA MALNERICH, CCR #269
MOLEZZO REPORTERS
(775) 322-3334

24

1 RENO, NEVADA, FRIDAY, DECEMBER 12, 2008, 9:00 A.M.

2 --oOo--

3

4 THE COURT: Please be seated.

5 The first matter is CR06-2580, State versus
6 Frank Milford Peck. This is the time for the motion to
7 set trial.

8 Mr. Lindsay, you may proceed.

9 MR. LINDSAY: I believe we're here to set it
10 for trial, your Honor.

11 THE COURT: That's true.

12 Have you discussed with Mr. Clifton an
13 appropriate trial date in this case?

14 MR. LINDSAY: I've handed my calendar to Mr.
15 Clifton and I believe he's about to address you so that
16 we can get this thing set.

17 THE COURT: Okay. Mr. Clifton?

18 MR. CLIFTON: Your Honor, your file should
19 indicate that Mr. Peck has previously waived his speedy
20 trial right at least once in this case, and I just want
21 to confirm that. I think we're looking at, according to
22 my calendar and Mr. Lindsay's calendar, either May 4th,
23 June 1st or -- it looks like possibly any time in April
24 would be fine for both of us.

1 STATE OF NEVADA)
) ss.
2 COUNTY OF WASHOE)

3 I, ROMONA MALNERICH, official reporter of the
4 Second Judicial District Court of the State of Nevada,
5 in and for the County of Washoe, do hereby certify:

6 That as such reporter, I was present in
7 Department No. 6 of the above court on Friday, December
8 12, 2008, at the hour of 9:00 a.m. of said day, and I
9 then and there took verbatim stenotype notes of the
10 proceedings had and testimony given therein upon the
11 Motion to Set Trial in the case of THE STATE OF NEVADA,
12 Plaintiff, versus FRANK MILFORD PECK, Defendant, Case No.
13 CR06-2580.

14 That the foregoing transcript, consisting of
15 pages numbered 1 to 3, both inclusive, is a full, true
16 and correct transcript of my said stenotype notes, so
17 taken as aforesaid, and is a full, true and correct
18 statement of the proceedings had and testimony given upon
19 the Motion to Set Trial in the above-entitled action to
20 the best of my knowledge, skill and ability.

21 DATED: At Reno, Nevada, this 15th day of
22 December, 2008.

23 Romona Malnerich

24 ROMONA MALNERICH, CCR #269

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JUDITH ANN SCHONLAU
CCR #18
75 COURT STREET
RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE STEVEN P. ELLIOTT, DISTRICT JUDGE

-o0o-

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.) CASE NO. CR06-2580
) DEPARTMENT NO. 10
FRANK MILFORD PECK,)
)
Defendant.)
_____)

TRANSCRIPT OF PROCEEDINGS
MOTION FOR RECUSAL
FRIDAY, NOVEMBER 7, 2008, 2:00 P.M.
Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
Computer-aided Transcription

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A P P E A R A N C E S

For the Plaintiff: OFFICE OF THE DISTRICT ATTORNEY

 BY: DAVID CLIFTON, ESQ.

 Deputy District Attorney

 Washoe County Courthouse

 Reno, Nevada

For the Defendant: BRUCE LINDSAY, ESQ.

 ATTORNEY AT LAW

 Reno, Nevada

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RENO, NEVADA; FRIDAY, NOVEMBER 7, 2008; 2:00 P.M.

-oOo-

THE COURT: Good afternoon. You may be seated.

This is the time set for a hearing in the case of the State of Nevada versus Frank Peck, and it is the time for the hearing on a Motion for Recusal of Judge Adams. And, Mr. Lindsay, I see that you are here representing Mr. Peck. And would you like to say anything?

MR. LINDSAY: Your Honor, I have been newly appointed. I haven't had a chance to go through the file. I have also not felt well for the last week or two. I would ask this Court to continue this matter with the stipulation of my client until the 25th of this month at 2:00 p.m., and I will be up to speed. I will have seen my client in Carson City privately. I will have gone through the file with him, and I will be prepared to go forward at that time.

Other than that, I am not real certain what I can tell you.

THE COURT: And, Mr. Peck, have you conferred with Mr. Lindsay on this?

THE DEFENDANT: Yes, sir.

THE COURT: Are you in agreement this should be continued out to allow Mr. Lindsay additional time to study this matter?

1 THE DEFENDANT: Yes. Absolutely.

2 THE COURT: Does the State have a position?

3 MR. CLIFTON: No, Your Honor. As long as it is
4 Mr. Peck's desire, we'll concede to that, and we agree with
5 the 25th as a convenient date.

6 THE COURT: Okay. The 25th at 2:00 in the
7 afternoon. And as I discussed with Mr. Lindsay, Mr. Peck did
8 file a notice on September 12th that he felt that I should not
9 be the Judge to hear the matter of whether or not Judge Adams
10 is appropriate to hear the trial. And I believe the first
11 time I saw that was today. So, anyway, I will discuss that
12 with the Chief Judge as well since it is the Chief Judge in
13 fact that determined that I would be the one to hear the
14 matter. But we'll go with the November 25th at 2:00 in the
15 afternoon and, hopefully, that works.

16 MR. LINDSAY: Your Honor, if the Court -- if we are
17 going to be heard in a different court, all you need do is
18 contact counsel and myself, and we will be wherever you tell
19 us to be at 2:00 o'clock on the 25th.

20 THE COURT: One good thing about Thanksgiving week,
21 it should be a light calendar for everybody, I assume. I
22 don't think we are having any jury trials that week. All
23 right. Well, thank you very much, and we'll stand adjourned.

24 (Whereupon, the proceedings were concluded.)

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STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

I, Judith Ann Schonlau, Official Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, DO HEREBY CERTIFY:

That as such reporter I was present in Department No. 10 of the above-entitled court on Friday, November 7, 2008, at the hour of 2:00 of said day and that I then and there took verbatim stenotype notes of the proceedings had in the matter of THE STATE OF NEVADA vs. FRANK MILFORD PECK, Case Number CR06-2580.

That the foregoing transcript, consisting of pages numbered 1-6 inclusive, is a full, true and correct transcription of my said stenotypy notes, so taken as aforesaid, and is a full, true and correct statement of the proceedings had and testimony given upon the trial of the above-entitled action to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada this 17th day of December, 2008.

/s/ Judith Ann Schonlau
JUDITH ANN SCHONLAU CSR #18

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JUDITH ANN SCHONLAU
CCR #18
75 COURT STREET
RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE STEVEN P. ELLIOTT, DISTRICT JUDGE

-o0o-

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.) CASE NO. CR06-2580
) DEPARTMENT NO. 10
FRANK MILFORD PECK,)
)
Defendant.)
_____)

TRANSCRIPT OF PROCEEDINGS

MOTION FOR RECUSAL

TUESDAY, NOVEMBER 25, 2008, 2:00 P.M.

Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
Computer-aided Transcription

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A P P E A R A N C E S

For the Plaintiff: OFFICE OF THE DISTRICT ATTORNEY

 BY: DAVID CLIFTON, ESQ.

 Deputy District Attorney

 Washoe County Courthouse

 Reno, Nevada

For the Defendant: BRUCE LINDSAY, ESQ.

 Attorney at Law

 Reno, Nevada

1 RENO, NEVADA; TUESDAY, NOVEMBER 25, 2008; 2:00 P.M.

2 -oOo-

3 THE COURT: Good afternoon. You may be seated. This
4 afternoon we are here in the case of the State of Nevada
5 versus Frank Milford Peck. And the basis of the hearing
6 really is the defendant's motion for recusal of Judge Adams,
7 and that was filed back in August of 2008.

8 And I think the first thing we have to address,
9 however, is that Mr. Peck also filed a notice and one could
10 say that, you know it is just a fugitive document, but this
11 notice that was filed on September 12th in essence is a
12 challenge to whether I should be allowed to preside over the
13 consideration of whether Judge Adams is to remain as Judge in
14 the case

15 MR. LINDSAY: Could I address that shortly, Your
16 Honor?

17 THE COURT: Yes.

18 MR. LINDSAY: I went over that with my client. I
19 don't believe we have any problem with you deciding regarding
20 Judge Adams, is that a correct statement?

21 THE DEFENDANT: That's correct.

22 MR. LINDSAY: We are not bringing that up as an
23 issue. If you were the trial Judge -- there was something you
24 decided a long time ago, this Court, in this case I'm told.

1 But you are not the trial Judge. You are here just to decide,
2 and we withdraw the objection to you hearing the motion
3 against Judge Adams if that is all right.

4 THE COURT: That is wonderful, thank you very much.
5 That makes that easier.

6 MR. LINDSAY: And we are ready to go forward. And
7 what we are going to do, I am going to have my client sworn
8 and take the stand, and he's going to give you some testimony
9 if that is all right, Your Honor. I believe that is going to
10 be the case in chief.

11 THE COURT: Okay. Mr. Peck, then if you would come
12 right into this area and take the oath.

13 THE COURT: Please have a seat in the witness chair.

14
15 FRANK MILFORD PECK,
16 called as a witness, having been first duly sworn,
17 took the witness stand and testified as follows:

18
19 DIRECT EXAMINATION

20 BY MR. LINDSAY:

21 Q Would you please state your name and spell it for
22 the record?

23 A Frank Milford Peck, P-E-C-K.

24 Q You have told me you are hard of hearing. If you

1 have a problem hearing me, don't hesitate, okay?

2 A Okay.

3 Q Did you ever file a Motion and an Affidavit in
4 Support of Motion to Recuse Judge Adams in this case?

5 A I did.

6 Q Okay. I am going to go through your Affidavit and
7 in fact, I am going to share it.

8 MR. LINDSAY: Your Honor, if I might be able to
9 approach him so we could both look at the document?

10 THE COURT: Yes, you may.

11 BY MR. LINDSAY:

12 Q I would remind you you are under oath. So I want
13 you just to go through this and explain to the Court here the
14 basis of your objection to Judge Adams.

15 A Well, the basis of the objection --

16 Q Speak right in here?

17 A -- to Judge Adams would be was a judge in my
18 brother's case.

19 Q Okay. Let's stop for a second. What is your
20 brother's name?

21 A My brother's name is Larry Peck.

22 Q What was the charge?

23 A Capital murder of a police officer.

24 Q Was that here in Washoe County?

1 A Yes, it was.

2 Q How long did that happen?

3 A That was August 22, 2001.

4 Q Was he in fact tried in front of Judge Adams?

5 A Yes, he was.

6 Q Was a verdict reached?

7 A Yes.

8 Q What was that verdict?

9 A Guilty.

10 Q Okay. So, based upon that prior experience of Judge
11 Adams with your brother, do you have a belief that has
12 prejudiced Judge Adams against you, against giving you a fair
13 trial?

14 A Yes, that's correct.

15 Q What other points do we have to cover?

16 A Well, the judge's demeanor towards me, hostility
17 toward me at a previous proceeding on May 28th.

18 Q Okay. Just for the record, you have had some
19 hearings in front of Judge Adams; is that correct?

20 A Yeah. He presided over a post conviction of mine.

21 Q That is not this proceeding. That is a Post
22 Conviction?

23 A That's correct.

24 Q That was a Post Conviction Petition, and there was

1 evidence taken. Was that an evidentiary hearing?

2 A Yes.

3 Q Okay. What happened with the Judge in regard to
4 that Petition?

5 A He dismissed my-- he granted a Petition or the
6 State's Motion to Dismiss pursuant to Rule 41B, which the
7 Supreme Court sided with me that was, I am sorry, that that
8 was inappropriate.

9 Q Okay. So he dismissed your Habeas Petition; is that
10 correct?

11 A That's correct.

12 Q What year would this be?

13 A That would have been 2003.

14 Q Okay. And did you believe that, during these
15 proceedings, he showed a bias against you?

16 A Yes.

17 Q And that was manifested in what particular way?

18 A His demeanor.

19 Q Okay. Did you feel he was short with you?

20 A Yes, he was.

21 Q Did you feel he was personally angry with you?

22 A It felt like it.

23 Q Okay. You felt that from the bench?

24 A Yes.

1 Q Did you feel like you got a fair hearing from him?

2 A No.

3 Q Okay. And he used a civil procedure, Rule 41B
4 Motion to in fact dismiss the Habeas Petition; is that
5 correct?

6 A That's correct.

7 Q And you know Habeas is a quasi civil or quasi
8 criminal, I don't know what way we call it, Your Honor. I
9 apologize?

10 A That's correct.

11 Q It is kind of a hybrid, correct?

12 A Correct.

13 Q Eventually, the Supreme Court said it was -- the 41B
14 was the improper way to dismiss it, correct?

15 A That's correct.

16 Q Okay. Is there anything else that you feel Judge
17 Adams has done in the past that makes you feel he's prejudiced
18 and unable to try this case?

19 A I believe there was ex-parte communication between
20 Judge Brent Adam and Judge Roger Hunt.

21 Q Judge Roger Hunt is the Judge in Federal court?

22 A That's right.

23 Q Is that out of Las Vegas?

24 A Yes.

1 Q You believe that they spoke?

2 A Yes, I do.

3 Q In regard to your case?

4 A Yes. In regard to my Federal Petition and this new
5 case.

6 Q Can you give me the basis for that belief?

7 A The comment that the Judge made that if I amended my
8 Petition, that he would know about it.

9 Q Judge Adams told you from the bench if you amended
10 your Petition, he would know about it, and the Petition he was
11 talking about was a Federal Petition in Federal court?

12 A Yes, that's correct, and the fact my Petition was
13 swiftly denied along with my COA.

14 Q That is a Certificate of Appealability that must be
15 found in order to find jurisdiction in the Federal courts,
16 correct?

17 A Yes, that's correct.

18 Q Your Petition was denied by Judge Adams in State
19 court?

20 A Correct.

21 Q You took it to Federal court?

22 A Correct.

23 Q And you believe that he had influence that was
24 negative in some way toward the Petition being denied and the

1 Certificate of Appealability being denied in Federal court?

2 A Yes, I do.

3 Q Is there anything else you would like to tell this
4 Court regarding your case regarding the recusal of Judge
5 Adams?

6 A No, not really. That about covers it, I think.

7 Q Okay. Do you want to hold that or take it? You are
8 going to get cross-examined now.

9 A Okay. That is fine.

10 MR. LINDSAY: Thank you, Your Honor.

11 THE COURT: Then, Mr. Clifton, would you like to ask
12 Mr. Peck questions?

13 MR. CLIFTON: Yes, Your Honor. Thank you.

14

15 CROSS-EXAMINATION

16 BY MR. CLIFTON:

17 Q Mr. Peck, do you know what speculation is?

18 A Sure.

19 Q Do you know what that word means?

20 A Sure.

21 Q Isn't it true all of your allegations here are based
22 upon speculation, not hard evidence?

23 A Well, if you are saying that my gut feeling isn't
24 hard evidence, then I guess you would be correct.

1 Q In other words, you don't have a transcript to show
2 Judge Adams has bias against you?

3 A That would have been the August 28th transcript. No,
4 I don't have a copy, but I wish I did.

5 Q Well, this is your Petition. This is your motion.
6 You have the burden of proof here. You understand all that?

7 A Sure.

8 Q Was that a hearing I was at?

9 A I am sorry?

10 Q Was that a hearing I was present at?

11 A Yes, you were.

12 Q Okay. And if Judge Adams said something in that
13 hearing that showed he was biased, certainly that would be
14 something pertinent to today's hearing, correct?

15 A Yes.

16 Q That would be something you could cite or would cite
17 to this Judge who wasn't at that hearing, correct?

18 A Yes.

19 Q To sustain your burden of proof, correct?

20 A Yes.

21 Q But you have not done so, yes or no?

22 A No.

23 Q No. Okay. All right. Now your Affidavit in
24 support of your motion for recusal lists eleven allegations,

1 correct?

2 A That's correct.

3 Q All right. Would it be safe to say, I will hand
4 this to you if you need to refresh your recollection, the
5 first five don't make any allegations against Judge Adams; is
6 that correct?

7 A I would like to take a look at those before I answer
8 that.

9 MR. CLIFTON: Certainly. May I approach, Your
10 Honor?

11 THE COURT: Yes.

12 MR. CLIFTON: Thank you.

13 THE WITNESS: I wouldn't agree with that.

14 BY MR. CLIFTON:

15 Q Would agree?

16 A Wouldn't agree.

17 Q Okay. Go ahead. What allegations there
18 specifically as a matter of fact pertain to Judge Adams?

19 A All right. I will concede to that. I changed my
20 mind after I read them.

21 Q All right. They are just foundational, correct?

22 A Yes, they are.

23 Q I don't need to deal with those right now. I will
24 move on to number six. Number six says Judge Adams has

1 previously presided over my brother's capital murder case,
2 correct?

3 A Correct.

4 Q Now as a matter of fact, that may be true, but that
5 doesn't state bias does it?

6 A Well, the general feeling that I got from the Judge
7 is that --

8 Q Let me stop you there. That is what I talked about
9 speculation. I am talking about the fact Judge Adams presided
10 over your brother's capital murder case does not in and of
11 itself make Judge Adam ineligible to handle your case, are you
12 aware of that? Wouldn't you agree with that as a matter of
13 law?

14 A Sure, as a matter of law.

15 Q You are saying you believe in your heart, your gut
16 and you speculate because of Judge Adams presiding over that
17 case that led to your brother being found guilty in a murder
18 case, he must be biased against you now, correct?

19 A No. That is not correct. The demeanor of the
20 Judge, his hostility toward me.

21 Q What makes you think it is based upon your brother's
22 case?

23 A I have never had any other interaction with the
24 Judge other than my evidentiary hearing.

1 Q Maybe he's like that with every defendant?

2 A Well, it didn't appear to me that he was.

3 Q Or maybe you are just a little sensitive toward the
4 way he was treating you and you inferred it must be because of
5 your brother?

6 A Maybe so.

7 Q You know, a lot of people made the same allegation
8 about me, Mr. Gammick and Egan Walker, are you aware of that?

9 A No, I am not aware of that.

10 Q You, yourself, in fact through Dennis Widdis, maybe
11 you are not aware of a letter Dennis Widdis sent me when I had
12 the Grand Jury hear your case?

13 A Yes, about investigating this case.

14 Q I had nothing to do with your brother's case. I
15 could care less about your brother. Are you aware of that?

16 A I have no idea what your relationship with John
17 Bohatch was.

18 Q Right. And John Bohatch was an officer like many,
19 many hundreds of officers I have met in my life. But you,
20 through Mr. Widdis acting as your attorney, wrote me a letter
21 indicating that this whole investigation, this whole case is
22 based upon my dislike of your brother and my office's
23 predisposition to attack the Peck family. Are you aware of
24 that letter?

1 A I am aware of the letter, but I don't believe it
2 said any of that.

3 Q Okay. Even though I was working in this office many
4 years before your brother was prosecuted, and during the time
5 your brother was prosecuted, do you have anything other than
6 speculation to attribute to that allegation somehow me or my
7 office is predisposed to come after you or convict you based
8 upon anything other than the facts of this case?

9 A I know for a fact that someone is.

10 Q Okay. But are you aware in this case we got a hit
11 on DNA, and that is what led me to go to the Grand Jury with
12 the evidence against you? Are you aware of that?

13 A I am aware of that.

14 Q Do you know what a hit in DNA means?

15 A Yeah.

16 Q Wouldn't you agree that would kind of trump any
17 other speculation that this is a trumped up charge?

18 A Well --

19 MR. LINDSAY: If I might, I understand counsel needs
20 to get into bias, but really we are crossing a line here. I
21 know he's up there and he's waived strictly his Fifth
22 Amendment right, but there is a relevancy here. We are kind
23 of sneaking into the meat of the trial we are going to have
24 some day here I believe.

1 MR. CLIFTON: I will stipulate none of this can be
2 used against Mr. Peck at his trial.

3 MR. LINDSAY: Withdraw. Sorry, Your Honor.

4 MR. CLIFTON: That is not my intent. I will state
5 that also on the record. Hopefully, the pertinence is at
6 least somewhat relevant, Your Honor.

7 BY MR. CLIFTON:

8 Q It is tangential, do you see my point, Mr. Peck? It
9 was alleged through your attorney, if that is what he was,
10 Mr. Widdis, at the time that the Markham letters went out to
11 the Grand Jury notifying you and your attorney we may be
12 seeking an Indictment, that Mr. Widdis wrote me back a letter
13 indicating myself and my office were prejudiced against you
14 because of your brother. Are you aware of all that?

15 A Yes.

16 Q Because of the fact your brother was convicted. In
17 other words, it was not a case we went to trial and lost
18 necessarily, correct?

19 A Correct.

20 Q All right. Although I believe, if memory serves me
21 correctly, he was prosecuted for capital murder as you say in
22 your allegation six, and he was sentenced to life without
23 parole as I recall?

24 A Yes, that's correct.

1 Q He did not get the death penalty?

2 A That is correct.

3 Q Are you alleging there is any vindictiveness or
4 vengeance there from me and my office? And I will get to
5 Judge Adams with the same question in a minute?

6 A Well, someone within law enforcement sent me a death
7 threat, two of them.

8 Q Are you indicating that --

9 A I don't know who sent them.

10 Q You see how that has nothing to do with this case?

11 A No, I don't see how that doesn't have anything to do
12 with this case.

13 Q In other words, you may speculate to think because
14 of that letter somehow this is all connected, correct?

15 A Yeah.

16 Q Even though what spurred me on to go to the Grand
17 Jury to seek an Indictment was simply a hit in DNA, in
18 forensic science. You have already indicated you are aware of
19 that, correct?

20 A I am aware they say there was a hit, yeah.

21 Q But you believe it was all framed?

22 A I believe someone has contaminated or planted
23 evidence in this case, yeah, that is what I believe.

24 Q You are entitled to your beliefs. But, again, my

1 point is there is a difference between speculation and hard
2 evidence. These are just your beliefs, correct?

3 A Yeah.

4 Q Okay. All right. Moving on to number seven, Judge
5 Adams -- let's back up to six again before I leave that. On
6 your brother's case in your direct examination you indicated
7 that he was tried in front of Judge Adams, and he was
8 convicted. You remember that those were the exact words,
9 right?

10 A Yes. Yeah.

11 Q In fact, Judge Adams was the presiding Judge. The
12 jury convicted, wouldn't that be more factual?

13 A Yes.

14 Q And the jury imposed the sentence on your brother,
15 correct?

16 A I don't know for sure who sentenced him.

17 Q But you have nothing showing Judge Adams somehow
18 convicted your brother, do you?

19 A No. He just presided over the Court proceedings,
20 and I was told that some of his rulings weren't fair.

21 Q By whom, your attorney?

22 A By people who attended the trial.

23 Q So as a matter of law, you think they must be right
24 just because they went against you, the rulings?

1 A No. Right or wrong, maybe they were unfair as far
2 as a fair trial.

3 Q If this Judge, Judge Elliott rules against you here
4 today, you might think that ruling is unfair, right?

5 A Probably.

6 Q Okay.

7 A If he rules against me, I have a right to feel that
8 is unfair.

9 Q Sure. Of course. All right. Seven is Judge Adams
10 has previously made rulings which are being contested in
11 Federal court. Well isn't it true every judge's rulings can
12 be appealed?

13 A Sure.

14 Q Okay. That is why we have appellate courts. That
15 is why we have Federal courts, and they hear appeals of this
16 sort, correct?

17 A Of course.

18 Q Okay. Now you say he has showed an implied bias in
19 favor of the State by vouching for the validity of the State's
20 evidence during a hearing in 2007. Now is that your brother's
21 case?

22 A No. That is this case.

23 Q Okay. Where is the transcript of that? Other than
24 speculation what do you have as hard evidence to cross-examine

1 you on?

2 A The May 28th transcript would support that
3 assertion.

4 Q But this says September 5th, 2007?

5 A I believe it is May 28th.

6 Q In either event, that may be a mistake. In either
7 event, September 5, '07 or May 28th of '08, I was the
8 prosecuting attorney in both those cases?

9 A I believe you were.

10 Q Maybe you can refresh my recollection of what Judge
11 Adam did. I don't remember putting on any witnesses other
12 than at the Grand Jury.

13 A It was a comment about the DNA. Mr. McKenna was
14 present. Were you present when Mr. McKenna was there?

15 Q Most likely?

16 A Mr. McKenna stated -- the Judge had made the
17 comment, we were talking about DNA, and McKenna made some sort
18 of comment about there would have to be some testing on it,
19 and the Judge in an accusatory manner said, what's wrong with
20 the DNA? McKenna responded, well, it's an old case, Your
21 Honor.

22 Q Was this a bail hearing?

23 A No.

24 Q All right. So the Judge was questioning

1 Mr. McKenna?

2 A Yeah.

3 Q But, again, in essence, it is not even the judge, it
4 is the jury that has to decide whether that factual evidence
5 is sufficient to convict you. Do you understand that?

6 A Right. That is why I inferred he had implied bias
7 by the way he made that statement, well, what's wrong with the
8 DNA?

9 Q That is a question though not a statement.

10 A Well --

11 Q Do you see the difference?

12 A Well, it was a statement the way he made it.

13 Q Okay. Again, no transcript of that. We don't even
14 know for sure which hearing other than your statement under
15 oath. Your under oath Affidavit, May 28th?

16 A I may have made a mistake on that, yes.

17 Q Then number nine, Judge Adams prejudiced himself by
18 seeking out copies of your Federal Habeas Petition. Well, as
19 I recall, this was you trying to get attorneys recused from
20 the case, that being the Public Defender's Office of Washoe
21 County and/or the Alternative Public Defender's Office or both
22 of Washoe County; isn't that true?

23 A Yes.

24 Q You were basing that on the Federal Petition, and

1 the Judge was questioning you, that you need to bring in a
2 copy of that Petition or he needs to see that Petition to see
3 if there is anything in there that would force him to recuse
4 counsel?

5 A No, that is not correct. What the Judge said was I
6 needed to come up with a motion, which I did, which was a
7 notice of potential conflict and had nothing to do with
8 bringing him my Federal Petition. I built that motion, notice
9 of potential conflict with attorneys, my attorney, Malone.
10 John Malone of the Alternative Public Defender's Office
11 provided the Judge with a copy of my Federal Petition that was
12 pending in Federal court.

13 Q How does that prejudice Judge Adams? Judges read
14 petitions on other matters all the time. That doesn't make
15 them prejudice?

16 A Well, I guess it would prejudice him by the knowing
17 of the previous conviction that that Petition was all about.

18 Q You mean your previous conviction?

19 A Yeah.

20 Q Do you think that prejudices Judge Elliott because
21 you just told him?

22 A It may very well. He knows I am convicted of
23 something sitting here in chains with two prison guards in the
24 courtroom, so --

1 Q Do you understand that judges are able to separate?

2 A There are supposed to.

3 Q Yes. It is presumed?

4 A It is presumed, yes, it is.

5 Q You understand the law?

6 A Of course.

7 Q All right. So that Federal Habeas Petition you are
8 talking about had to do with your previous conviction for
9 sexual assault?

10 A That's correct.

11 Q That you are in prison for?

12 A That's correct.

13 Q You think if Judge Adams knew about that or finds
14 out about that or reads it, that could then influence him in
15 handling and presiding over your new trial?

16 A Possibly.

17 Q Correct?

18 A Yes.

19 Q Do you understand the State can file a motion, your
20 attorney can file a motion that deals with that previous
21 conviction. Your attorney might file a motion to keep us from
22 using any of that evidence from that past case in the '90s
23 even though this one was also in the '90s, don't let the jury
24 hear that in your case. Do you understand that?

1 A Yes.

2 Q I could file a motion there might be something in
3 that case that is relevant to this case. Just filing those
4 motions would have that same effect, wouldn't it? It would
5 tell the judge about your previous case?

6 A I guess it would.

7 Q Judge Adams would have to rule on those motions,
8 wouldn't he?

9 A Yes.

10 Q Whichever way he ruled, he would have to sit on your
11 trial. He's not automatically recused from hearing your case?

12 A Yes, I agree with that.

13 Q Same with the case like your brother, say it got
14 reversed, say your brother's conviction got reversed, it had
15 to be sent back to be retried, do you understand that would
16 still be retried in front of the same judge?

17 A Yeah.

18 Q Even though that judge, you could argue, your
19 brother could argue is prejudiced now his rulings were
20 overturned, or something he doesn't like about the Supreme
21 Court ruling for this case to be retried. In your mind, based
22 upon your speculation, that would cause prejudice of the
23 judge, wouldn't it?

24 A I think it would.

1 Q That is what I am getting at Mr. Peck. It is fine
2 for you to file these motions, nothing wrong with it. It is
3 just there is a difference between legal prejudice and what
4 you believe or speculate to be prejudice. Do you see what I
5 am getting at?

6 A Yes.

7 Q Number ten, Judge Adams' overall comments and
8 innuendos have exhibited a general overall implied bias. The
9 problem with that is that is your belief. That is your
10 speculation. We would need something in writing, a transcript
11 or the judge's attendance here in court to say yes, I have a
12 prejudice or bias for or against one of the parties. We don't
13 have that, do you understand that?

14 A Uh-huh.

15 Q So, again, you don't have a transcript or something
16 you can show me an innuendo, correct?

17 A No.

18 Q All right. But it is how you perceived Judge Adam,
19 what you have called several times in your direct his
20 demeanor?

21 A Yes.

22 Q Okay. Then number eleven, Judge Adams' refusal to
23 follow clearly established case law. Well, you are not a
24 lawyer are you?

1 A No.

2 Q That is all I need to go on that.

3 Because the judge granted the State's motion to dismiss your
4 Post Conviction Habeas, the Supreme Court overturned that and
5 said 41B was not the proper way to do that because that is
6 more of a civil remedy, it came back to Judge Adams to be
7 reheard, correct?

8 A What do you mean?

9 Q If the Supreme Court reversed Judge Adams, didn't it
10 come back to Judge Adams to be reheard?

11 A It would have, but it wasn't reversed. It was
12 affirmed.

13 Q Oh, the judge's ruling affirmed?

14 A Yeah. It was stated in the --

15 Q Oh. So they said he did it improperly under 41B, but
16 it came to the opinion the result would be proper?

17 A But it was harmless.

18 Q So he wasn't even reversed?

19 A Right.

20 Q I misunderstood you. All right. I got it.

21 Now if he was reversed, under your logic here today, I am
22 assuming you would think it would have to go in front of
23 another judge to be reheard, couldn't go back to that same
24 judge because now he's prejudiced against you; wouldn't that

1 be your logic?

2 A I suppose.

3 Q Okay. And this talking to Judge Hunt by Judge
4 Adams, that is an allegation. That I think is clear. You
5 weren't party to that conversation? You didn't hear those two
6 talking, right?

7 A No.

8 Q It is innuendo or implied by something Judge Adams
9 said in court you are assuming he must have talked to Judge
10 Hunt, correct?

11 A Yeah.

12 Q And even if he did talk to Judge Hunt, you don't
13 know whether it was ex-parte or not, would you?

14 A No.

15 MR. CLIFTON: Thank you. No further questions, Your
16 Honor.

17 THE COURT: All right. Any other questions?

18 MR. LINDSAY: Very briefly.

19

20 REDIRECT EXAMINATION

21 BY MR. LINDSAY

22 Q In your heart, do you believe that the Judge is
23 biased?

24 MR. CLIFTON: Objection, Your Honor. In your heart,

1 that calls for speculation. That is not the standard here.

2 MR. LINDSAY: You know the great part of that, this
3 one actually isn't speculation. Speculation is properly
4 applied when he's telling counsel what counsel feels. That is
5 speculation. He can testify as to what is in his heart. That
6 is not speculation, not the legal speculation counsel is
7 objecting to.

8 MR. CLIFTON: Objection, relevance. That is not the
9 legal standard here we are to adopt.

10 THE COURT: I am going to overrule the State on
11 this. I think you are really asking do you believe that Judge
12 Adams is bias.

13 MR. LINDSAY: That is what I am asking, Your Honor.

14 THE COURT: I think it goes to the heart of the
15 issue.

16 MR. LINDSAY: That is all I am asking, Your Honor.
17 I know the answer. And I am just, that is the only question.

18 THE COURT: Mr. Peck, you may answer the question.

19 THE WITNESS: The answer is yes.

20 MR. LINDSAY: I have no further questions, Your
21 Honor.

22 MR. CLIFTON: No further questions.

23 THE COURT: Then, Mr. Peck, you are excused. You
24 may go back to counsel table.

1 Now I take it the defendant has no other witnesses?

2 MR. LINDSAY: There are no other witnesses, Your
3 Honor, we might just argue for a moment.

4 MR. CLIFTON: State has no witnesses either, Your
5 Honor.

6 MR. LINDSAY: I apologize. I assumed that. I am
7 sorry.

8 THE COURT: Do you want to argue right now or take a
9 short recess?

10 MR. LINDSAY: I think we can argue right now, Your
11 Honor, unless there is a problem with counsel.

12 THE COURT: All right.

13 MR. LINDSAY: Your Honor, I have the highest regard
14 for Judge Adams.

15 THE COURT: Mr. Peck may be seated.

16 MR. LINDSAY: Yes, I am sorry. I have the highest
17 regard for Judge Adams, and I think he's just an excellent
18 judge. But in avoiding the appearance of impropriety, in an
19 abundance of caution and all of those things that are found in
20 our rules, I ask the Court to grant the Motion. I understand
21 that we don't have, you know -- I also understand that if the
22 judge felt he was biased, I believe he would remove himself.
23 I understand that, Your Honor. I mean if he felt like he had
24 some axe to grind against my client, he would probably remove

1 himself unhesitantly. I only point out the obvious, my client
2 believes Judge Adams is biased against him. Just in an
3 abundance of caution, and really to avoid the appearance of
4 any possible impropriety and for this not to end up down the
5 road, I simply ask that you grant the Motion. Thank you, Your
6 Honor.

7 THE COURT: Well is the heart of the matter here
8 that Judge Adams presided over Larry Peck's murder trial?

9 MR. LINDSAY: That is certainly one of the
10 allegations, Your Honor. And my client also feels, I thought
11 it was the May 28th, I wasn't there, of this year, I thought
12 that we were talking about some sort of hearing where there
13 were lawyers, alternate lawyers and Public Defender lawyers.
14 I thought that was the hearing that we were talking about or
15 that was referred to. I was not there. But I believe at that
16 time my client felt that the judge was impatient with him and
17 had some sort of bias against him. And all I am communicating
18 to you, Your Honor, that is what my client genuinely believes.
19 These are the things that we come to you with, Your Honor.

20 THE COURT: I did have a chance to read everything
21 in this file, and perhaps everything isn't here, but there was
22 a hearing concerning the Alternate Public Defender and the
23 Public Defender, and I'm showing that it was June '08 there
24 was a hearing, and Judge Adams ruled the Public Defender's

1 Office would be disqualified, but the Alternate Public
2 Defender's Office was not disqualified.

3 MR. LINDSAY: Your Honor, for the record, that would
4 be the hearing that my client has been referring to, June of
5 this year.

6 THE COURT: Let me look at this so that we have
7 that. Because there was a transcript of that. You will just
8 have to excuse me. These things aren't always so easy to find
9 in the file. Well these transcripts don't necessarily appear
10 in chronological order, you know. Okay. Here is a transcript
11 of proceedings. It concerns a Motion to Relieve the Alternate
12 Public Defender's Office as Counsel. It is dated Friday, June
13 27th. So that might --

14 MR. LINDSAY: I understand that is it, Your Honor.

15 THE COURT: That might be the one.

16 MR. LINDSAY: That would be a few months ago. That
17 is the transcript that my client has been referring to. Thank
18 you, Your Honor.

19 THE COURT: Anyway, I would note that after the
20 hearing, the Alternate Public Defender's Office filed a notice
21 to withdraw, and then in September the judge appointed, in
22 essence, Bob Bell's group. And I take it that is you; is that
23 right?

24 MR. LINDSAY: I believe that is correct, Your Honor.

1 I don't think there is my name anywhere, but I have accepted
2 it from Mr. Bell.

3 THE COURT: I understand Mr. Bell would have you,
4 Mr. Lindsay, as well as a few other people in that group. It
5 is more than just Mr. Bell.

6 MR. LINDSAY: Absolutely.

7 THE COURT: All right. Perhaps I need to go over to
8 Mr. Clifton and hear the State's position on this.

9 MR. CLIFTON: Your Honor, although I did not appear
10 at Mr. Larry Peck's trial in any capacity, I don't even know
11 if I walked in and watched any of it, but I was, I believe, at
12 every single hearing on this case since it's inception
13 including all search warrants, the Grand Jury Indictment, the
14 Arraignment, all hearings, all motions, and I am just going to
15 go by memory of what Mr. Peck is trying to allude to. You have
16 nothing in front of you specifically in a transcript form or
17 as hard evidence to substantiate these allegations. It is
18 based upon what Mr. Peck believes and what he feels. And I
19 can't tell you how many defendants could say the same thing
20 about judges and prosecutors and people they don't like or
21 don't want to hear their case. But that is the problem.
22 Mr. Lindsay is trying to get you to avoid any appearance of
23 impropriety, ruling out of an abundance of caution to prevent
24 this from being overturned later. That is not the legal

1 standard we are here to decide. If that were the case, a
2 defendant could decide who is going to hear his case among the
3 11 to 14 judges, however you want to look at it. He could
4 just say that judge is biased, get me a new one. They don't
5 control those types of decisions. They don't control the
6 courtroom. We are here to determine whether there is legal
7 cause here to recuse a judge, and we have to stand by that
8 legal basis, not issue a ruling out of the abundance of
9 caution, because it is the safest or easiest way to do it.

10 Here we have an allegation against a judge. That is
11 pretty serious, that a judge is biased against a defendant in
12 a matter. However it is clearly based on speculation,
13 innuendos, gut feeling, I believe is the words Mr. Peck used.
14 So, yes, Mr. Peck may believe Judge Adams was impatient with
15 him, but that doesn't make Judge Adams biased. Judge Adams
16 has been impatient with me hundreds of times. It doesn't mean
17 I have a ground to recuse him. That is the problem. No
18 prosecutor or defendant or defense attorney can simply make an
19 allegation without hard evidence and get a judge recused.

20 Bottom line, we have gone through one by one
21 Mr. Peck's allegations. None of them held water after
22 cross-examination. I ask you simply to deny his motion.

23 Thank you.

24 THE COURT: I am wondering this, Mr. Clifton: Would

1 you say for instance Judge Adams seems to operate at a faster
2 pace than a judge like me?

3 MR. CLIFTON: In general or in a specific
4 proceeding?

5 THE COURT: In general.

6 MR. CLIFTON: Or in the way he talks? He does his
7 Arraignment calendar faster than most judges. I agree with
8 that. And I don't know if Mr. Peck had him on an Arraignment
9 calendar one day when the judge had a jury in session or jury
10 trial going and he wanted to get done. That happens to every
11 judge. But I have seen Judge Adams move things along and get
12 impatient not with the defendant or defense attorney, but with
13 the prosecutor. He wants people to get to the point, don't
14 waste his time. Yes, generally speaking, I would be honest in
15 saying yeah, I have seen him get like that. But nothing in an
16 unfair or illegal manner.

17 As I recall, Mr. Peck got everything he asked for
18 during all he's hearings. If you look back at the results, he
19 asked an attorney and an attorney's office be taken off the
20 case. Look who he has got? He got it every time he asked for
21 it. Mr. Merkin, Mr. Malone, Mr. McKenna. He made a motion to
22 get him off the case as I recall. Everybody he's asked to get
23 off the case is off. So he's won everything. He's gotten
24 everything he wanted. So he might think Judge Adams was

1 impatient with him, but he got his result, so where is the
2 complaint. But he thinks because Judge Adam was impatient
3 with him, he must have this bias against him, and he wants to
4 attribute it to his brother. I don't know if Judge Adams made
5 the connection between the two brothers. It shocked me when
6 Dennis Widdis wrote me that letter I was alluding to on
7 cross-examination, because that is not me and that had nothing
8 do with me.

9 You know, looking at Larry Peck's case and somehow
10 we didn't get the death penalty or because he's a cop killer,
11 yes I knew John Bohatch. I know a lot of people. Reno is a
12 small town. It doesn't mean we act out of vengeance,
13 especially as a prosecutor. We are here to do justice. I got
14 a DNA hit. That is what guided me in the case, and the
15 victim's description of Mr. Peck. That is why we did the
16 seizure orders, not because of Larry Peck. That is what
17 Dennis wanted to make as an allegation, we are all framing
18 Frank Peck. Well, I don't know if Judge Adams knows the
19 connection, but even if he does, that is why I didn't think I
20 needed to call him to the stand after I heard these
21 allegations. Even if he does know the connection, it doesn't
22 make him biased. And I don't need to stoop down to the level
23 of calling a judge to the stand to say I am not biased.

24 I think it is their burden of proof. The presumption

1 is he's not biased. I haven't seen anything in all the
2 hearings we have been to that indicates a legal bias such that
3 he should we recused off a case. But, yes, I have seen him
4 get impatient probably in this case. I have seen him get
5 impatient at me probably in this case. Again, it doesn't mean
6 he should be recused.

7 Judge, to answer your question, Judge Adams does get
8 to the heart of the matter, wants the point to be made right
9 away, get to it. I know one of our hearings in this case, it
10 could have been in May, could have been in June, one was going
11 on forever and it was during the Arraignment calendar, and
12 Judge Adams told Mr. Peck if you are making an allegation in
13 that Petition for Writ of Habeas Corpus the attorneys that you
14 have here, the Public Defender's Office is biased, then I need
15 to see that Petition, because I can't in my wildest
16 imagination come up with how that Petition against the Public
17 Defender's Office makes them biased such that they can't
18 represent you hear today. That is what the Judge got kind of
19 frustrated at, because he couldn't think of a possible
20 Petition in front of the Federal court that could be an
21 allegation sufficient to take the Washoe County Public
22 Defender's Office off the case.

23 However, lo and behold, when the Petition came in
24 and when everything was filed, the Judge granted it, and we

1 went to the Alternative Public Defender, then he took them off
2 and he went back, and I can't recollect the exact reasoning
3 behind it, I don't think Judge Adams told us, I think he
4 issued an order, as I recall, taking them off the case and
5 didn't give us a reason. But maybe, again, acting out of an
6 abundance of caution like Mr. Lindsay is trying to argue here
7 today. Either way, Mr. Peck got everything. If Judge Adams
8 was clearly biased against him, why did he keep giving him the
9 remedy he's asked at least three times for now?

10 THE COURT: All right. Thank you. Mr. Lindsay, is
11 there anything else you would like to say?

12 MR. LINDSAY: I submit the matter. Thank you, Your
13 Honor.

14 THE COURT: Well, I was thinking about things and,
15 you know, my own feelings with cases. You know, there is the
16 allegation here that the State Supreme Court disagreed with
17 Judge Adams on one of the points found by Judge Adams in a
18 Post Conviction case. That is not this case, but another
19 matter. However, it does sound like ultimately the Supreme
20 Court agreed with his ruling against Mr. Peck on the totality
21 of the case.

22 You know, there are times I think when a trial judge
23 feels that he did the right thing and can't really agree with
24 the Supreme Court when he's reversed, but, ultimately, you

1 know, the Supreme Court is the boss. That is where the buck
2 stops, and you have to go along with it. And even if a case
3 comes back for trial because the State Supreme Court has found
4 that I or some other trial judge has committed some error of
5 law, you know, I'm not really biased against the defendant in
6 that case. I still want to see every defendant get a fair
7 trial, even if I am somewhat hurt that the Supreme Court
8 didn't agree with me on some point of law. But those points
9 of law really are squabbles among intellectuals. They are not
10 really anything to do with the guilt or innocence of the
11 defendant or any desire on the part of the trial judge to see
12 a defendant go to prison.

13 You know, I am looking at the issue, well, the
14 brother, Larry Peck, having his murder trial in front of Judge
15 Adams in 2001. And, you know, I just can't see that there is
16 any proof of bias as a result of that. You know, there is
17 really no proof that Judge Adams in any way would be
18 prejudiced against Larry Peck should Larry Peck come back to
19 trial in front of Judge Adams for any reason. And most
20 likely, Mr. Peck, that is Larry Peck, would come back to Judge
21 Adams because we have that rule here where once you are
22 assigned to a judge, you stay assigned to that judge for life,
23 you know, that sort of thing. So that we find it desirable to
24 have, you know, one criminal defendant stay with a judge.

1 Certainly, that doesn't apply to siblings staying with one
2 judge.

3 I assume that Frank Peck here just got a random draw
4 to Judge Adams and it didn't in any way relate to his brother
5 Larry. But I really can't see that there is any showing of
6 bias here.

7 And while I am not convinced with something
8 Mr. Clifton said which he said there is a presumption that the
9 judge is not biased, I am going to assume that everybody comes
10 in here on an even playing field. But it is the burden of the
11 defendant to establish the bias sufficient to cause the
12 removal of Judge Adams from the case. But I don't assume that
13 Judge Adams is coming in here with a presumption of non-bias.
14 I think that would cause, you know, an unfair higher burden of
15 proof on the part of the defendant. And I think you only need
16 to show bias, not that he has to overcome some other
17 presumption. The demeanor of Judge Adams is called upon with
18 regard to this hearing that occurred in late June for which I
19 have the transcript, and I was able to read it. And as I
20 stated, at the end of the hearing on June 27th, Judge Adams
21 agreed with Mr. Peck that the Public Defender's Office had a
22 conflict and should not represent him, but he disagreed with
23 regard to the Alternate Public Defender's Office. I think it
24 then came to light that one of the members of the Alternate

1 Public Defender's Office had actually prosecuted Mr. Peck some
2 years earlier, you know, in a prior job.

3 MR. CLIFTON: That was Ms. Heron, Cindi Heron.

4 THE COURT: It was a lady?

5 MR. CLIFTON: Yeah, Ms. Heron.

6 THE COURT: Then that came to light, then the
7 Alternate Public Defender filed their notice of withdrawal due
8 to that reason. And Judge Adams, you know, granted that.
9 There was no problem once an issue came to light.

10 So I think, when things are shown to Judge Adams
11 that something really does need to be done, he takes the
12 action. He doesn't show -- You are really showing a bias if
13 there are rulings against Mr. Peck that appear to be
14 unfounded, and I'm just not seeing that when you look at all
15 these different issues.

16 So after giving careful consideration to these
17 issues which are really numbers six through eleven in
18 Mr. Peck's Affidavit, I find that these are largely
19 speculation as the State has claimed and not any real proof of
20 bias, so I am going to rule that Judge Adams should not be,
21 you know, withdrawn as the Judge in the case. And if the
22 State wishes to prepare the Findings of Fact and Conclusions
23 of Law in this regard, it may do so.

24 MR. CLIFTON: That will be fine, Your Honor. Your

1 Honor, would you rather I do it? I am satisfied with the
2 record.

3 THE COURT: That is up to you.

4 MR. CLIFTON: I am satisfied with the record.

5 THE COURT: If you think this transcript is
6 adequate, that is fine.

7 MR. CLIFTON: Absolutely. I don't want to put words
8 in your mouth or proposed order you didn't mean. I am
9 satisfied with your order here today. Thank you.

10 THE COURT: All right. We'll stand in recess.

11 (Whereupon, the proceedings were concluded.)

12 --o0o--

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FILED

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Howard W. Conyers

Clerk of the Court

Transaction # 539022

CASE NO. CR06-2580

STATE OF NEVADA VS. FRANK MILFORD PECK

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

11/25/08

HEARING RE: DEFT'S MOTION FOR RECUSAL OF JUDGE ADAMS

HONORABLE

Chief Deputy District Attorney David Clifton represented the State.

STEVEN P.

Defendant was present with counsel, Bruce Lindsay, Esq.

ELLIOTT

The Court noted that the basis for this hearing is regarding the

DEPT. NO. 10

Defendant's motion for the recusal of Judge Adams, and the

M. Merkouris

Defendant's Notice, filed September 12, 2008, objecting to this Court

(Clerk)

hearing this matter.

J. Schonlau

Defense counsel addressed the Court and withdrew any objection to

(Reporter)

Judge Elliott presiding over this hearing, however they would object

to Judge Elliott being the trial judge.

Defense counsel called the Defendant, who was sworn and direct

examined; cross examined; re-direct examined and excused.

Defense rested; State rested.

Defense counsel gave closing statements and argued in support of

the Motion to recuse Judge Adams.

Counsel for the State gave closing statements and argued in

opposition of the Motion to recuse Judge Adams.

COURT ORDERED: The Court set forth Findings of Fact and

Conclusion of Law; Court further ordered that the Defendant's Motion

to recuse Judge Adams is DENIED.

Counsel for the State shall prepare the order.

Defendant remanded to the custody of the Department of Prisons.

V3.358

FILED

09 MAR 10 AM 8:28

HOWARD W. DUNN

BY *[Signature]*

CASE No. CR-06-2580

Dept No. 6

IN the Second Judicial District Court of the State of Nevada

IN AND FOR the County of Washoe

FRANK M. PECK

Defendant

Motion for

- VS -

NEW COUNSEL

STATE OF NEVADA

Plaintiff

Comes Now, the Defendant, Frank M. Peck, pro se, hereby requests that this Court dismiss Counsel Robert Bruce Lindsay, as he has failed to protect his clients 5th Amendment right to due process by failing to file the requested Notice of Appeal to the Nevada Supreme Court, due to his practice being banned, Counsel cannot protect his clients due process.

Counsel failed to Appeal the denial of defendants motion to recuse Judge Adams, Counsel didnt even write the Notice of Appeal until JAN 9, 08, thirteen days after the defendant's right to appeal had expired.

Counsel has failed to request specific discovery from the Washoe County Crime Lab for independant review.

For these, and other reasons the defendant respectfully requests New Counsel.

Frank Peck pro se

Frank Peck 259

CR06-2580
STATE VS. FRANK MILFORD PECK 3 Pages
District Court 03/10/2009 08:28 AM
Washoe County
DOC
2490
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Code:2280
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596 California Avenue
Reno, Nevada 89509
775-378-9031

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

* * *

FRANK PECK,

Petitioner,

Case No. CR

vs.

Dept. No.

WASHOE COUNTY DISTRICT ATTORNEY

and THE STATE OF NEVADA,

Respondent,

_____ /

NOTICE OF APPEAL

COMES NOW, Petitioner, FRANK PECK, by and through his undersigned counsel
ROBERT BRUCE LINDSAY, ESQ. and GIVES Notice to the above entitled Court, the
Honorable Judge STEVE ELLIOT, of Appeal to the Nevada Supreme Court of the Order
Denying REMOVAL OF JUDGE ADAMS FOR ACTUAL PREJUDICE, filed by said Court
on December 12th, 2008;

DATED this 9th Day of January, 2009

Respectfully Submitted

ROBERT BRUCE LINDSAY
Attorney For Frank Peck

CERTIFICATE OF SERVICE AND AFFIRMATION PURSUANT TO
NRS 239. B. 030 THE ATTACHED MOTION FOR NEW COUNSEL DOES
NOT CONTAIN ANY SOCIAL SECURITY NUMBER OF ANY PERSON AND
HAS BEEN MAILED TO:

Clerk of the Court
Second Jud Dist
75 Court Street
RENO, NV, 89501

District Attorney
75 Court Street
RENO, NV, 89501

Robert Bruce Lindsay
596 California Av
RENO, NV, 89509

Dated this 4th day of March 2009.

Frank Peck pro se

FILED

District Court CASE NO. CR-06-2580

09 MAR 13 AM 8:25

Dept No. 6

HOWARD W. HAYES

BY [Signature]

In the Supreme Court of the State of NEVADA

FRANK M PECK
Petitioner

PETITION FOR
WRIT OF
MANDAMUS

-VS-

State of Nevada
Plaintiff

Comes Now, the Defendant, Frank Milford Peck, prose with his Petition for Writ of Mandamus and hereby requests that this Honorable Court issue an order directing the Lower Court Judge Brent Adams to recuse himself from All proceedings pertaining to the petitioner.

Judge Adams has shown an implied bias and hostility toward Mr. Peck. Accusing him of manipulation to appoint conflict Attorneys, and when Judge Adams did appoint counsel, he knew, or should have known, that counsel Robert Bruce Lindsay could not protect his client's right to due process, due to his being banned from practice in the Nevada Supreme Court.

CR06-2580 DC-9900006709-043 STATE VS. FRANK MILFORD PECK 5 Pages District Court 03/13/2009 08:25 AM Washoe County NV

Petitioner, Frank Peck feels that it is improper and unfair that he is scheduled to stand trial in front of Judge Brent Adams, the same Judge that presided over Frank Peck's Brother's capital murder of a Police Officer case in 2002.

Judge Adams at a hearing on 5-28-08 to appoint counsel made comments on Mr Peck's then pending Federal Petition in front of Federal District Court Judge Roger Hunt, stating, "Why has this Petition been pending for so long, and that Judge Hunt is not an idiot and would never grant relief on my issue". My issue valid or not created a conflict, this upset Judge Adams, and it is Mr Peck's belief and contention, that Judge Adams made Exparte communication with Judge Hunt, because not 45 days later, Mr Peck's Federal Petition, and COA was Denied.

It was clear error to appoint counsel that cannot protect his clients rights, the reluctance to appeal by Mr Lindsay is shown by the Notice he wrote 13 days after Mr Peck's right to appeal had expired.

MANDAMUS is proper means for Court of Appeals to review District Court's refusal to recuse from case.
IN RE ANTAR, 71 F3d 97 (3rd Cir 1995)

Remedy of MANDAMUS is a drastic one, to be invoked only in extraordinary situations.

ALLIED CHEMICAL, CORP V. DAIFLON, INC., 449 US 33, 66 LEd2d 193, 101 Sct 188 (1980)

Defendant Has right to UN-BIASED Judge
LILJERBERG V. HEALTH SERVICE CORP. 486 US 847, 100 LEd2d 855, 108 Sct 2194 (1988)

The Appointment of AN UN-QUALIFIED Attorney is palpably improper AND CLEAR ERROR De GEORGE V. US DIST. COURT FOR C.D. of CAL., 219 F3d 930 (9th Cir 2000).

For these reasons, Petitioner PECK, Respectfully requests that this Court Grant the instant Writ of MANDAMUS, to insure that Petitioner receives A Fair Trial in front of AN UN-BIASED Judge.

Dated this 9th day of March 2009.

Frank Peck
FRANK M. PECK PROSE

Code:2280
ROBERT BRUCE LINDSAY, ESQ.
Nevada State Bar # 2237
596 California Avenue
Reno, Nevada 89509
775-378-9031

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK PECK,

Petitioner,

Case No. CR

vs.

Dept. No.

WASHOE COUNTY DISTRICT ATTORNEY

and THE STATE OF NEVADA,

Respondent,
_____ /

NOTICE OF APPEAL

COMES NOW, Petitioner, FRANK PECK, by and through his undersigned counsel ROBERT BRUCE LINDSAY, ESQ. and GIVES Notice to the above entitled Court, the Honorable Judge STEVE ELLIOT, of Appeal to the Nevada Supreme Court of the Order Denying REMOVAL OF JUDGE ADAMS FOR ACTUAL PREJUDICE, filed by said Court on December 12th, 2008;

DATED this 9th Day of January, 2009

Respectfully Submitted

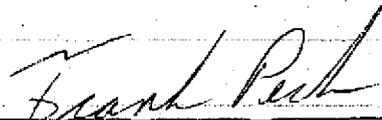
ROBERT BRUCE LINDSAY
Attorney For Frank Peck

Certificate of Service and Affirmation pursuant to
NRS 239 B.030 The Attached Petition for Writ of
MANDAMUS does not contain any Social Security
Number of any person and has been mailed
to:

Clerk of the Court
2nd Jud Dist
75 Court Street
Reno, NV. 89501

District Attorney
75 Court Street
Reno, NV. 89501

Dated this 9th Day of March 2009.



FRANK PECK PRO SE

CR06-2580
DC-9900005654-020
STATE VS FRANK MILFORD PECK 2 Pages
District Court 03/24/2009 03:45 PM
Washoe County
2490
NAC

CASE No. CR-06-2580

FILED

Dept. No. 6

09 MAR 24 P3:45

IN the Second Judicial District Court of ~~Washoe County~~ Washoe County of NEVADA

IN AND for the County of ~~Washoe~~ Washoe

FRANK M. PECK
Defendant,

Motion for
Transcripts

-VS-

STATE OF NEVADA
Plaintiff,

Comes Now, Defendant, FRANK M. PECK, Prose,
hereby requests Transcript and Master list of Grand
Jury proceedings as well as Transcript of the
MAY 28th proceeding.

Defendant Peck has been deemed indigent and should not
be required to pay for said transcripts, Widdis v Second Jud
Dist Court.

Mr PECK has repeatedly requested same of his counsel
but has been ignored.

Respectfully Submitted this 14th day of March 2009.

Frank Peck
FRANK PECK Prose

Certificate of Service AND Affirmation pursuant
to NRS 239 B. 030 the attached motion for
transcripts do not contain social security numbers of
any person and has been mailed to:

District Attorney

Dave Clifton

75 Court Street

Reno, Nevada, 89501

Dated this 22nd day of March 2009.

Frank Peck

FRANK PECK, PROSE

FILED

2009 MAR 24 PM 4:35

HONORABLE JUSTICE

DeSalvador

BY DEPUTY

CASE No. CR-06-2580

Dept No. 6

In the Second Judicial District Court of the State of NEVADA
IN AND FOR the County of WASHOE

FRANK PECK
Defendant,

Motion to Compel
Counsel to Return
Defendant's Documents

-vs-

State of Nevada
Plaintiff

Comes Now, Defendant, Frank M. Peck, Prose,
requesting that this Court issue an Order directing
Counsel, Robert Bruce Lindsay to return all
Documents belonging to the Defendant.

Repeated requests of Counsel have gone ignored.

Respectfully submitted this 14th day of March 2009.

Frank Peck
FRANK PECK, PROSE
HONORABLE JUSTICE

BEFILED

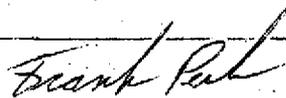
CR06-2580 DC-990006919-068
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 03/24/2009 04:34 PM
Washoe County 2270
mc

Certificate of service AND Affirmation pursuant to
NRS 239. B. D. 30 the attached Motion to Compel Counsel
to return Defendants documents do NOT contain social
security numbers of any person AND has been mailed
To:

District Attorney
Dave Clifton
75 Court Street
Reno, NV. 89501

Bruce Lindsay
596 California Av
Reno, NV. 89509

Dated this 22nd day of March 2009.



Frank Peck Pro se

0216

DC-9900006954-018
CR06-2580
STATE VS. FRANK MILFORD PECK 8 Pages
District Court 03/25/2009 10:35 AM
Washoe County 3885
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

PETITION FOR WRIT OF HABEAS CORPUS

IN THE MATTER OF THE APPLICATION
OF FRANK MILFORD PECK
FOR A WRIT OF HABEAS CORPUS /

CASE: CR-06-2580
DEPT 6

FILED
2009 MAR 25 AM 10:35
HON. J. M. STEVENS
CLERK

To: The Honorable Judge of the Second Judicial District
Court of the State of Nevada, in and for the County of Washoe.

The Petition of Frank Milford Peck, Petitioner In Proper
Person, respectfully shows:

1. That Petitioner is not learned in matters of law and is acting In Proper Person.
2. That Petitioner makes application herein on his own behalf for a writ of Habeas Corpus; that the cause of Petitioners restraint of liberty is charges filed by Sparks Police Dept and the Washoe County Deputy District Attorney David Clifton; Petitioner is presently imprisoned at the Northern Nevada Correctional Center in Carson City, Nevada for unrelated charges.
3. That the restraint of the Petitioner is unlawful due to the constitutional violations of:
 - A. INTENTIONAL PREJUDICIAL PREACCUSATION DELAY
 - 1) The crime in question could have been discovered with reasonable diligence in 1996 or earlier.
 - a) During an unrelated investigation in 1996 a DNA profile of the Petitioner's DNA was ran through all available databases yealding no matches.
 - b) DNA profile collected from the victim in the instant case was entered into the database and available in 1994.(exh A)
 - 2) Prejudice suffered by the Petitioner is loss of witnesses that would have substantiated and supported an alibi defense and loss of physical and documentary evidence in support of such a defense.

- 1 a) Petitioners deceased father, Donald James Peck who would
2 have testified that the Petitioner was not in the State
3 at the time the crime was committed. He would have been
4 found credible and withstood cross-examination.
5 The factors that support this claim are (1) The witness
6 had no criminal history; (2) The witness was an upstanding
7 member of the community; (3) Credit card and phone records
8 would have further supported his exculpatory testimony.
9
- 10 b) Petitioner's deceased Mother, Bessie Pauline Peck who would
11 have testified that the Petitioner was not in the area or
12 in the State at the time the crime was committed, she would
13 have been found credible and withstood cross-examination.
14 The factors that support this claim are (1) The witness had
15 no criminal history; (2) The witness was an upstanding
16 member of the community; and (3) Phone and Credit card
17 records would have supported this exculpatory testimony.
- 18 c) Petitioner's deceased friend, Nicholas Ponce who would have
19 testified to the fact that Petitioner was not in the area
20 or in the state at the time the crime was committed. He
21 would have been found credible and withstood cross-examination.
22 The factors that support this claim are; (1) The witness
23 had no criminal history; and (2) The witness was an upstanding
24 member of the community. His testimony would have supported
25 the other exculpatory testimony.
- 26 d) Larry Peck, the Petitioner's brother, can substantiate and
27 support Alibi, that petitioner was not in the area or in
28 the state at the time this crime occurred. Prior to 2001
this witness would have been found credible and would have
withstood cross-examination.
Factors that support this claim are (1) He would have
provided exculpatory testimony supporting petitioner's
actions and whereabouts at the time the crime occurred
because he was with the petitioner and; (2) He would have
been able to provide Credit card and phone records which
support his testimony, and; (3) Extreme prejudice exists
by virtue of the loss of a valid Alibi Defense caused by
the dilatory actions of Sparks Police Department and D.A.
David Clifton.
3. The loss of these witnesses has caused extreme prejudice
by way of preventing petitioner from presenting a valid
Alibi Defense.
- a) Loss of Documentary evidence, including Telephone records
Credit card records Banking records, Credit card records and
Medical records from these witnesses has created extreme
undue prejudice to the Petitioner and prevented him from
presenting a Valid Defense.

- 1 b) The extreme passage of time in this case has violated
2 Due Process in that the 12 year Pre-Indictment Delay,
3 in and of itself creates extreme undue prejudice to the
4 petitioner in the form of **Laches**.
- 5 c) Petitioner has been deprived of any defenses available
6 to him at the time the crime was committed and the
7 punishment has been made more burdensome due to the changes
8 in statutes between 1994 and present. Thereby creating
9 undue prejudice to the petitioner.
- 10 d) The incessant coaching, prodding and questioning of the
11 Victum by Sparks Police Department and the Washoe County
12 District Attorney has created inaccuracies in the Victim's
13 testimony causing extreme and deliberate prejudice to the
14 petitioner.
- 15 4. The District Attorney gained a tactical advantage over
16 the petitioner by his access and availability to the
17 witnesses and evidence throughout the 12 year period.
- 18 a) The District Attorney and Sparks Police Department had
19 complete control and access to all evidence without any
20 Court supervised controls.
- 21 b) Only 30 days after the crime occurred, Sparks Police Dept
22 and Washoe County crime lab suspended and closed this case
23 for lack of evidence.
- 24 c) The Police and Medical reports of the Victum are contrary
25 to the crime lab findings in 2001.
- 26 d) The late Expost Facto application of NRS 171.083 gave the
27 prosecution a decided advantage in that the original
28 Statute of Limitations would have expired more than 6 years
before an arrest was made in this case giving the
prosecution a decidedly unfair tactical advantage and
causing extreme prejudice to the petitioner.
5. The extreme delay precluded the discovery of and the
petitioner's ability to call witnesses in support of his
defense.
- a) One potential witness is a retired Superior Court Judge
whose testimony would support the fact that the petitioner
was not in the area or in the state at the time of this
crime.
- b) Other potential witnesses are the Doctors and Nurses who
administered an MRI to Donald Peck and would verify the
presence of the petitioner at the clinic located in
Lancaster California on or about the date in question.

1 B. POST-ACCUSATION DELAY

- 2 1) The length of the delay after arrest/formal accusation was
3 over two years.
- 4 a) At no time did the Courts or the prosecution show good
5 cause for the length of the delay.
- 6 b) There was no plausible reason for the delay between the
7 arrest and actual indictment.
- 8 c) The evidence used to make the arrest is the same as was
9 used to support Grand Jury Indictment two years later.
10 No new evidence has been collected between arrest and
11 Indictment.
- 12 d) The petitioner was clearly prejudiced by the additional
13 Post-accusation delay as it only served to compound the
14 previously listed violations of his constitutional rights.
15 The federal Courts generally holds that a delay in excess
16 of 1 year is presumptively prejudicial.
- 17 e) However a showing of prejudice is not a necessary
18 prerequisite to the finding of a deprivation of the right
19 of speedy trial.

20 C. ARRAIGNMENT

- 21 1. The Petitioner did not receive a timely Arraignment as required by the
22 Fourth Amendment of the U.S. Constitution.
- 23 a) State and Federal Law requires that the petitioner be brought before
24 a magistrait within 72 hours after arrest. This was not done. Petitioner
25 was never formally charged aside from the charges he was arrested for.
26 This failure was a clear violation of his due process rights, that
27 extended for a peroid of over Two Years between arrest and indictment.

28 D. SPEEDY TRIAL

1. The Petitioner did not at any time prior to the actual indictment:
- a) Pursuant to federal law the information or indictment must be filed
within 30 days of arrest or the service of a summons on the defendant, in
the instant case there was a Two year peroid between arrest ans indictment.
- b) On or about April 2004, Detective Greta Fye placed the petitioner
under arrest for the charges now before the court. Petitioner was not
notified at any time of his release on the present charges or in any
change of statis regarding this case until the indictment was handed
down in 2006.

1 c) The court did not afford the petitioner his Constitutional right to
2 a Speedy Trial under the Sixth Amendment to the U.S. Constitution, therefore
Dismissal is Mandatory under these provisions.

3 4. That no other Petition for writ of Habeas Corpus has heretofore been
4 filed by this Petitioner or his representatives.

5 5. The defendant waives his 60-day limitation for bringing him to trial
only for the purpose of adjudication of this petition.

6 6. If the Petition is not decided within 15 days before the date set for
7 trial, the petitioner consents that the Court may continue the trial to
an alternate date designated by the court.

8 Wherefore, the petitioner prays that this Honorable court make an Order
9 directing the County Clerk to issue a Writ of Habeas Corpus directed to the
Sparks Police Department and Deputy District Attorney David Clifton and
10 The Nevada Department of Corrections, commanding them to bring the petitioner
before your Honor and return the cause of his continued restraint with
regards to the above-named case number.

11 Dated this 31st day of october, 2008

12
13 Frank Peck
14 Frank M. Peck
15 Petitioner, In Proper Person
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PURSUANT TO N.R.S. 208.165, I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF NEVADA THAT THE FOREGOING IS TRUE AND CORRECT. See N.R.S. 208.165.

Signed at WACC
(Location)

11/4/08
(Date)

B. P. [Signature]
(Signature)

57106
(Inmate number)

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

PETITION FOR WRIT OF HABEAS CORPUS

(Title of Document)

filed in District Court Case No. CR-06-2580

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-OR-

B. For the administration of a public program or
for an application for a federal or state grant.



(Signature)

11-4-08

(Date)

ORIG

DC-990006954-019
CR05-2580
STATE VS. FRANK MILFORD PECK 5 Pages
District Court 03/25/2009 10:35 AM
Washoe County
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of the
Application of
Frank Milford Peck
for a Writ of Habeas Corpus /

DEPUTY
[Signature]
HONORABLE CLERK

2009 MAR 25 AM 10:35

FILED

Memorandum of points and Authorities in support of
Petition for Writ of Habeas Corpus

Comes Now, Frank Milford Peck, In Proper Person
submitting the following statement of facts and points
and Authorities in support of the attached Petition for
a Writ of Habeas Corpus.

POINTS AND AUTHORITIES

The following points and authorities and arguments are
used in support of the preceding petition:

A. PREACCUSATION DELAY

Pursuant to both State and Federal law there are specific
time limits between Arrest, indictment and Trial and permissible
delays within each period. 18 USC § 3161-3174 (2000).

In the instant case there are numerous delays between not
only discovery through reasonable diligencs but also between
discovery, arrest and indictment.

The compounded delays clearly have violated the petitioners
due process and he clearly meets all standards of showing that
actual prejudice has resulted. see, U.S V GOVEA 467 U.S 180 182
(1984).

In addition FRCP 48 (b) authorizes Courts to dismiss
indictments for governments unnessary pre-indictment or post-
indictment delay. NRS. 34.500 (1,3,8) provides in pertinent
part; Grounds for discharge in certian cases; If it appears
on the return of the Writ of Habeas Corpus that the petitioner
is in custody by virtue of process from any court of this
state, or judge or officer thereof, the petitioner may be
discharges in any one of the following cases:

1. When the jurisdiction of the court or officer has been
exceeded.

1 3. When the process is defective in some manner of substance
2 required by law, rendering it void.

3 8. Where the petitioner has been committed or indicted on
4 any criminal charge under a statute or ordinance that is un-
constitutional, or if constitutional on its face is un-
constitutional in its application.

5 In the instant case, based upon the unconstitutional pre-
6 accusation delay and the actual prejudice shown the instant
7 case and indictment should be dismissed. Further, in State
8 v. Autry 746 P2d 637 (1987) the Nevada Supreme Court has
9 stated "some showing must be made that the delay entailed intent
ional or reckless disregard by the State of the appreciable
risks of impairment to the accused's defense." There has been
a more than sufficient showing herein by the petitioner.

Whereby the instant petition should be granted by the Court.

10 **B. POST ACCUSATION DELAY**

11 Both State and Federal law establishes that if arrest
12 precedes Indictment or Arraignment, time must be calculated
from the date of arrest. Dillingham v. U.S. 423 U.S.64,65
(1975).

13 In the instant case there is a more than (2) Two year delay
14 from the petitioner's arrest in April 2004 and his actual
indictment in November 2006. This delay has caused substantial
15 prejudice to the petitioner as clearly established in the
original petition. In keeping with Barker v. Wingo 407, U.S.514,
16 534 (1972). The petitioner has shown and alleged more than
mere speculative harm.

17 The deliberate dilatory actions of the State between Arrest
and indictment are inexcusable especially since they cannot
18 even claim investigation time because they had 10 years to
investigate prior to Arrest.

The prejudice to the petitioner is incontrovertible.

19 The Constitutional right to a Speedy resolution of charges
20 against an accused is contained in the Sixth Amendment of the
U.S. Constitution, made applicable to the States by the due
21 process clause of the Fourteenth Amendment. Barker v. Wingo 407
U.S. 514 (1972). Barker is the seminal case on unreasonable
22 delay in prosecution. In that decision, the Court established
a balancing test to determine whether an accused had been
23 denied his right to a speedy trial. The Court indicated that
four factors should be considered: the length of the delay;
24 the reason for the delay; the defendant's assertion of his right
and prejudice to the defendant. Id 407 U.S. at 530 The Court
25 also noted, however, that "the rule we announce today, which
comports with constitutional principles, places the primary
26 burden on the courts and the prosecutors to assure that cases
are brought to trial. Id at 529. Additionally, as noted
27 previously, "a defendant has no duty to bring himself to trial,
the State has that duty as well as the duty of insuring that
28 the trial is consistent with due process.

1 The decision was refined by the Court's subsequent decision
2 in Doggett v. U.S. 505 U.S. 647 (1992). especially regarding
3 the necessary showing of prejudice to the defendant.
4 Specifically, In Doggett the Court observed that "depending
5 on the nature of the charges, the lower Courts have generally
6 found post-accusation delay 'presumptively prejudicial' at
7 least as it approaches one year".

8 In the instant case, the delay between arrest and indictment
9 is over two years and in keeping with federal standards should
10 warrant immediate dismissal.

11 In addition, NRS 187.556 gives the Court authority to
12 dismiss charges which are not pursued to trial in a timely
13 fashion and State in relevant part that:

14 1. If no indictment is found or information filed against a
15 person within 15 days after he has been held to answer for
16 a public offense which must be prosecuted by indictment or
17 information, the Court may dismiss the complaint.

18 Additionally, the Second Judicial District Court Rules of
19 Practice concerning casflow management State in relevant part
20 that;

21 The Court recognizes that 100% of all cases must be resolved
22 within 60 months from the date of filing. Obviously, the
23 Prosecutors and the Courts have not kept up with these
24 requirements.

25 Therefore, based on all Federal and State standards the
26 instant case should be dismissed forthwith as a result of the
27 inexcusable post-accusation delay.

28 C. ARRAIGNMENT

The State and Federal law requires that the petitioner was
arraigned in a timely manner not to exceed 72 hours after
arrest. This did not occur. No effort was made to comply with
the requirements of NRS 171.186, NRS 171.178 and 171.338 after
the petitioner was arrested in April of 2004.

This failure is violative of the petitioner's right to due-
process of law under the fifth, sixth and fourteenth amendments
of the U.S. Constitution and Article 1, section 8 of the Nevada
Constitution thereby warranting dismissal of the instant case
forthwith.

D. SPEEDY TRIAL

The previously stated points and Authorities are similarly
applied herein as they also deal with Speedy trial issues.

The Petitioners's 6th Amendment speedy trial right attached
after the State served the arrest warrant on the petitioner
in April of 2004. see, U.S. v Woolfork 399 F3d 590 (4th cir
(2005).

Therefore, the Court should dismiss the instant case with
prejudice forthwith.

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CONCLUSION

In conclusion, based upon the foregoing points and Authorities the attached petition for Pre-trial Writ of Habeas Corpus should be granted forthwith.

Respectfully submitted this 31st day of October, 2008.

Frank Peck
Frank M. Peck
Petitioner Pro se

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TABLE OF AUTHORITIES

18 USC § 3161-3174 (2000).
U.S. v. Govea 467 U.S. 180,182 (1984).
Federal Rules of Criminal Procedure 48 (b).
Nevada Revised Statute 34.500 1,3,8.
State v. Autry 746. P2d 637 (1987).
Dillingham v. U.S. 423 U.S. 64,65 (1975).
Barker v. Wingo 407 U.S. 514,534 (1972).
Doggett v. U.S. 505 U.S. 647 (1992).
Nevada Revised Statute 187.556
Nevada revised Statute 171.083
Nevada Revised Statute 171.186
Nevada Revised Statute 171.178
Nevada Revised Statute 171.338
U.S. v. Woolfork 399 F3d 590 (4th cir 2005).
Article 1 section 8 of the Nevada Constitution.

1 CODE 3370

FILED

MAR 27 2009

HOWARD V. LAWYERS, CLERK

By: *[Signature]*
DEPUTY CLERK

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8
9 THE STATE OF NEVADA,

10 Petitioner,

11 vs.

Case No. CR06-02580

Dept. No. 6

12
13 FRANK MILFORD PECK,

14 Respondent.

15 ORDER

16 On March 25, 2009 the Defendant, acting pro per, filed a petition for writ of habeas
17 corpus alleging various reasons why his case should be dismissed.

18 The Court finds the Defendant is currently represented by Robert Bruce Lindsay.
19 The Court further advises the Defendant that he is not permitted to file proper person
20 pleadings, so long as he is represented by counsel and that any further such filings will be
21 stricken. See WDCR 23(1).

22 Accordingly, the Defendant's petition for habeas corpus is denied.

23 DATED: This 27 day of March, 2009.

24
25 *[Signature]*

26 DISTRICT JUDGE

CR06-2580 DC-990007009-018
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 03/27/2009 02:46 PM
Washoe County 3370
HRC

ORIGINAL

FILED

2009 APR -2 AM 10:47

CODE : 2610

~~SEALED~~

HOWARD W. CONYERS

BY *Howard*
DEPUTY

CR06-2580 DC-9900007165-088
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 04/02/2009 10:47 AM
Washoe County 2610
NOC

6 THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 ***

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No.: CR06-2580

11 vs.

Dept. No.: 6

12 FRANK M. PECK,

13 Defendant.

14 NOTICE REGARDING TRANSCRIPTS

15 Pursuant to the *Motion for Transcripts* filed by Defendant, Frank M. Peck, wherein
16 Defendant has requested that Transcript and Master List of Grand Jury Proceedings, as well
17 as Transcript of the May 28th proceeding be prepared and provided at public expense, the
18 Appointed Counsel Administrator, having reviewed the Motion filed herein finds as follows;

19 Defendant filed the Motion For Transcripts in proper person;

20 Defendant is currently represented by appointed counsel, Bruce Lindsey;

21 Accordingly, Defendant's Motion For Transcripts is hereby DENIED. As Defendant is
22 represented by counsel, he shall not file this Motion in proper person.
23

24 **AFFIRMATION PURSUANT TO NRS 239B.030**

25 The undersigned does hereby affirm that the preceding document does not
26 contain the Social Security Number of any person.

27 Dated this 2nd day of April, 2009.

28 *Robert C. Bell*
ROBERT C. BELL, ESQ.
APPOINTED COUNSEL ADMINISTRATOR

V3.386

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Robert C. Bell, Esq., and that on the 24 day of April, 2009, I caused service to be completed by:

- Personal Delivery
- Delivery Via Professional Courier
- Sending Via Federal Express or Other Overnight Delivery Service
- Depositing For Mailing in the U.S. Mail With Sufficient Postage Affixed Thereto
- Delivery Via Facsimile Machine to Fax Number

a true and correct copy of the NOTICE REGARDING TRANSCRIPTS addressed to:

Bruce Lindsey, Esq.
596 California Avenue
Reno, NV 89509
775 786-9131 Fax

By : 
Employee of Robert C. Bell, Esq.

FILED

APR 02 2009

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

FRANK MILFORD PECK,
Petitioner,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53403
CRO6-2580
FILED

MAR 30 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER DENYING PETITION

This is a proper person petition for a writ of mandamus. Petitioner seeks an order directing Judge Brent Adams to recuse himself in all proceedings pertaining to petitioner. We have reviewed the documents submitted in this matter, and without deciding upon the merits of any claims, we decline to exercise our original jurisdiction in this matter. NRS 34.160; NRS 34.170. Petitioner should follow the procedures for disqualifying a judge set forth in NRS 1.235.¹ Accordingly, we

ORDER the petition DENIED.

[Signature] J.
Parraguirre

[Signature] J.
Douglas

[Signature] J.
Pickering

¹We express no opinion as to the success of any motion for disqualification.

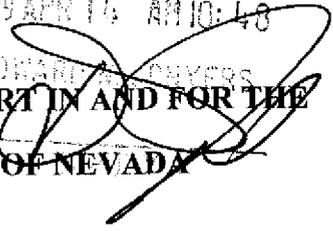
CRO6-2580
DC-9900007176-085
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 04/02/2009 04:28 PM
Washoe County hnc
4128
CKEPLFP

cc: Hon. Brent T. Adams, District Judge
Frank Milford Peck
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk ✓

Code ²⁰⁴⁵
ROBERT BRUCE LINDSAY
Nevada State Bar #2237
595 California Avenue
Reno, Nevada 89509
(775) 378-9031

FILED

2009 APR 14 AM 10:48

HOWARD CHIVERS
BY 

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR THE
COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA

Plaintiff,

v.

Case No: CR- 06- 2580

FRANK PECK

Department 7

Defendant,

**MOTION FOR DISCOVERY AND FOR EXCULPATORY EVIDENCE
BRADY, GIGGLIO AND OTHER BAD ACTS EVIDENCE**

Comes now, Frank Peck, by and through his undersigned counsel, ROBERT BRUCE LINDSAY, and moves this Court for an Order regarding the **Brady Material**, fully recognizing that the district Attorney, David Clifton is going to make his entire file available to me this week and provide a CD of the protocol used by his Experts regarding the DNA and that such materials will be reviewed by Doctor Llewellyn, the Defense Expert, to review all aspects of the gathering of the initial vaginal swab and the original genetic markers from 1994 and the numerous checks which were run by the State over the years against the original 1994 markers. Pursuant to Brady and the case law:

Brady v. Maryland, 373 U.S. 83 (1963): **Brady** (evidence favorable to the defense and material to their guilt or innocence), **Giglio** (any promises, inducements or threats made to witnesses to gain cooperation in the investigation or prosecution), and **Jencks** (any witness statements required to be disclosed); This case has been set for May 5th, 2009, and the State, through David Clifton, has made his files available to this counsel; this Court is asked to simply remind the District Attorney that there is a continuing duty to update all discovery; and anticipates that all discovery will be made available to counsel; a review of the entire District Attorney's file is anticipated this week in Mr. Clifton's office as well as a CD that has

CR06-2580
STATE VS. FRANK MILFORD PECK 5 Pages
District Court 04/14/2009 10:48 AM
Washoe County
DCJ
DC-990007446-054

1 the DNA protocol used by the State's Experts and which will be reviewed by Dr. Llewellyn with defense
2 counsel: This should serve as a formal request to sit with trial counsel and make sure that all discovery
3 has been made available to the Defense, especially the DNA materials which are essential to .

4 To release to the Defense of any and all materials, any follow up statements that have been
5 made over the past year months, made to the police, The Nevada State Prison, the Sparks or Reno Police
6 Department, the District Attorney's Investigator, and any other statements that have been made by the
7 Defendant, Frank Peck, and are known by Law Enforcement; The video tape recordings of DNA testing,
8 to be made available, and a discovery stipulation has previously been entered by Counsel on behalf of
9 FRANK PECK..

10 ***OTHER BAD ACTS EVIDENCE***

11 Any Bad Acts Evidence that the District Attorney possesses or intends to use at Trial should
12 be heard outside the presence of the jury prior to the mention in any way before the jury: I ask the
13 State to please not mentioned in the Opening of the State to the Jury or at any time until the Court
14 has given its exact approval to any evidence the State intends to offer. Other Bad Acts evidence,
15 without prior court approval, at trial, is unnecessary, and can only make appellate issues abound.

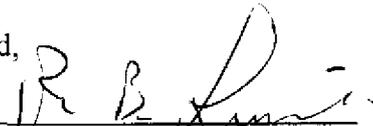
16 WHEREFORE, Defendant respectfully requests this Court to direct the Washoe County
17 District Attorney to immediately disclose to Defendant, any evidence of alleged similar crimes,
18 acts, or wrongs it intends to offer at trial and the identities of those persons and the documentary
19 evidence, if any, through whom the Government will seek to produce such evidence. Similarly,
20 production of investigated and unsubstantiated OTHER BAD ACT allegations should likewise
21 be produced under the dictates of **Brady v. Maryland**, 373 U.S. 83 (1963): That is, any
22 exculpatory evidence possessed by the prosecution, regardless of the Prosecutor's intent to use
23 the same at trial, specifically all materials regarding the defendant and the Repeat Offender
24 Program or records kept by the Department of Prisons by the State of Nevada;

25 All the evidence the State intends to use at trial must be weighed for its probative
26 value versus its prejudicial effect.
27
28

1 The Court and the State is reminded that this counsel is saddled with a difficult
2 situation, my client has recently moved to remove me as counsel, although the last meeting we
3 had in Carson City went well, but my future ability to communicate with my client renders a
4 possible mistrial much greater on appellate review, the Court and the District Attorney are asked
5 to respect the Due Process Rights of Frank Peck and to insure that a fair trial is had for all
6 parties:

7
8 Dated this 14^R of April, 2009;

9
10 Respectfully submitted,

11 
12 _____
13 ROBERT BRUCE LINDSAY
14 ATTORNEY FOR FRANK PECK

CERTIFICATE OF SERVICE

ROBERT BRUCE LINDSAY, April 14th, 2009, **CR-06-2580**; HAND DELIVERED to the Washoe County District Attorney's Office, Motion for Discovery and For Exculpatory Evidence and Other Bad Acts Evidence; Motion For DNA Expert and Notice of Expert Witness for Frank Peck of the above entitle cases to the Nevada Supreme Court;

AT THE FOLLOWING ADDRESS;

RICHARD A. GAMMICK
Washoe County District Attorney
GARY H. HATLESTAD
Chief Appellate Deputy
P.O. Box 11130
Reno, Nevada 89520

04/14/09
DATE

R. B. Lindsay
ROBERT BRUCE LINDSAY

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

Motion For Dismissal

(Title of Document)

filed in case number: _____

Document does not contain the personal information of any person

-OR-

Document contains the personal information of a person as required by:

A specific state or federal law, to wit:

(State specific state or federal law)

-or-

For the administration of a public program

-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 04/14/09

R. B. Lindsey
(Signature)

R. B. Lindsey
(Print Name)

Dependent
(Attorney for)

V3.394

ORIGINAL

CR06-2580
STATE VS. FRANK PECK 4 Pages
District Court 04/14/2009 10:50 AM
Washoe County
2490
ccal Tmp

1 Code **2490**
2 ROBERT BRUCE LINDSAY
3 Nevada State Bar #2237
4 595 California Avenue
5 Reno, Nevada 89509
6 (775) 378-9031

FILED

2009 APR 14 AM 10:50

HOWARD J. JAYERS

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR THE
COUNTY OF WASHOE, STATE OF NEVADA

7 THE STATE OF NEVADA

8 Plaintiff,

9 v.

Case No:CR-06-2580

10 FRANK PECK

Department 7

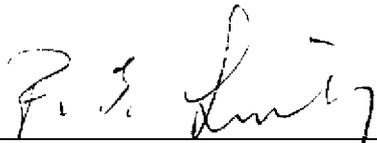
11 Defendant,

12 MOTION TO HAVE DNA EVIDENCE
13 INDEPENDENTLY TESTED BY DEFENSE EXPERT
14

15 Comes now FRANK PECK, by and through his undersigned counsel, ROBERT BRUCE
16 LINDSAY, and moves this Court for an Order to pay for a DNA Expert to review the DNA evidence
17 that the District Attorney plans to offer at trial, and to test the evidence of DNA, if the expert requests
18 that the same tests are necessary to the defense of Frank Peck; The DNA markers and the original
19 vaginal swab is presently held by the Washoe County District Attorney, Doctor Llewellyn, has agreed
20 to review the DNA evidence with defense counsel; the entire case against Frank Peck is based upon
21 DNA evidence, the alleged victim does not recognize the defendant, or did not at the photo line-up,
22 further, the only connection discovered by the defense in reviewing the evidence offered by the District
23 Attorney, has been a series of genetic markers that were regularly submitted to the review of the DNA
24 bank over the years: Dr. Llewellyn is a necessary expert to review the collection of the original vaginal
25 swabs to make sure there was no contamination and further, to examine the method of genetic markers
26 which were applied by the State and the protocol followed by the State to insure Due Process is given
27 the defendant, Frank Peck; Approval of two thousand dollars is hereby requested for the payment of Dr.
28 Lewelley; Two Thousand Dollars is requested for the Expert Review of evidence and possible

1 testimony at trial.

2
3 DATED this 14th day of April, 2009

4 
5 _____
6 ROBERT BRUCE LINDSAY, ESQ
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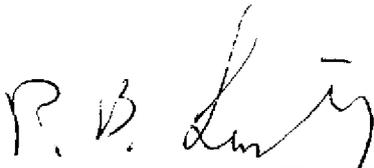
CERTIFICATE OF SERVICE

ROBERT BRUCE LINDSAY, April 14th, 2009, **CR-06-2580**; HAND DELIVERED to the Washoe County District Attorney's Office, Motion for Discovery and For Exculpatory Evidence and Other Bad Acts Evidence; Motion For DNA Expert and Notice of Expert Witness for Frank Peck of the above entitle cases to the Nevada Supreme Court;

AT THE FOLLOWING ADDRESS;

RICHARD A. GAMMICK
Washoe County District Attorney
GARY H. HATLESTAD
Chief Appellate Deputy
P.O. Box 11130
Reno, Nevada 89520

04/14/09
DATE



ROBERT BRUCE LINDSAY

1 SECOND JUDICIAL DISTRICT COURT
2 COUNTY OF WASHOE, STATE OF NEVADA

3 AFFIRMATION
4 Pursuant to NRS 239B.030

5 The undersigned does hereby affirm that the preceding document, _____

6 Motion to Have DNA

7 Evidence Testified

8 (Title of Document)

9 filed in case number: CR-06-2580

10 Document does not contain the personal information of any person

11 -OR-

12 Document contains the personal information of a person as required by:

13 A specific state or federal law, to wit:

14 _____
15 (State specific state or federal law)

16 -or-

17 For the administration of a public program

18 -or-

19 For an application for a federal or state grant

20 -or-

21 Confidential Family Court Information Sheet
22 (NRS 125.130, NRS 125.230 and NRS 125B.055)

23
24 Date: 04/14/09

25 R. B. LINDSAY
(Signature)

26 R. B. LINDSAY
(Print Name)

27 Dependent
(Attorney for)

ORIGINAL

FILED

2009 APR 14 AM 11:00

ROBERT BRUCE LINDSAY
DEPUTY CLERK

Code 2565
ROBERT BRUCE LINDSAY
Nevada State Bar #2237
595 California Avenue
Reno, Nevada 89509
(775) 378-9031

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR THE
COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA

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Plaintiff,

v.

Case No: CR-06-2580

FRANK PECK

Department 7

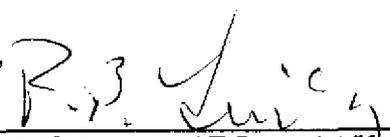
Defendant,

NOTICE OF EXPERT WITNESS

Comes now FRANK PECK, by and through his undersigned counsel,
ROBERT BRUCE LINDSAY, and gives Notice of Expert Witness, Dr. Llewellyn, 334-3400, as a DNA
expert for the Trial scheduled for May 5th, 2009;

Dated this 13th of April, 2009;

Respectfully submitted,


ROBERT BRUCE LINDSAY
ATTORNEY FOR FRANK PECK.

DC-990007446-052
CR06-2580
STATE VS. FRANK MILFORD PECK 3 Pages
District Court 04/14/2009 11:00 AM
Washoe County 2565
Doc.

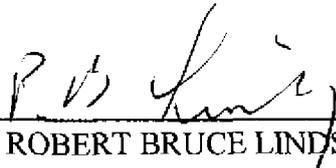
CERTIFICATE OF SERVICE

ROBERT BRUCE LINDSAY, April 14th, 2009, CR-06-2580; HAND DELIVERED to the Washoe County District Attorney's Office, Motion for Discovery and For Exculpatory Evidence and Other Bad Acts Evidence; Motion For DNA Expert and Notice of Expert Witness for Frank Peck of the above entitle cases to the Nevada Supreme Court;

AT THE FOLLOWING ADDRESS;

RICHARD A. GAMMICK
Washoe County District Attorney
GARY H. HATLESTAD
Chief Appellate Deputy
P.O. Box 11130
Reno, Nevada 89520

04/14/09
DATE


ROBERT BRUCE LINDSAY

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

Notice of Expart

(Title of Document)

filed in case number: _____

Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

(State specific state or federal law)

-or-

For the administration of a public program

-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 04/14/09

R. B. Smith
(Signature)

R. B. Smith
(Print Name)

Represent
(Attorney for)

FILED

CASE No. CR-06-2580

2009 APR 14 PM 3:42

Dept No. 6

HOWARD W. BOYERS

In the Second Judicial District ^{BY} Court of the State of Nevada
IN AND FOR the County of Washoe

FRANK M. PECK
DEFENDANT,

Notice of ALIBI
DEFENSE

- VS -

STATE OF NEVADA
PLAINTIFF

Comes Now, Defendant, FRANK M. PECK, prose
gives Notice of Alibi Defense pursuant to
the District Court Rules. the Defense intends
on calling the following witness:

LARRY PECK # 77562
NSP Box 607
C.C., NV. 89702

William CARNAHAN
Box 334
Geysterville, CA. 95441
1-707-894-4939

Sherry Gray
5448 Wallaby St
Yucca Valley, CA 92284
1-760-369-9740

Dated this 10th day of April 2008.

Frank Peck
FRANK PECK PROSE

CR06-2580 0C-990007461-016
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 04/14/2009 03:42 PM
Washoe County 2610
DOC CGAL TINY

Certificate of Service and Affirmation pursuant to
NRS 239B, 030 the attached Notice of Alibi Defense
do not contain social security numbers of any person
and a true and correct copy has been mailed to:

District Attorney
David Clifton
75 Court Street
Reno, NV, 89501

Dated this 10th day of April 2009.

Frank Peck
Frank Peck pro se

CR06-2580
DC-9906007481-019
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 04/14/2009 03:43 PM
Washoe County 2175
DOC
CGAL IMP

CASE No. CR-06-2580

FILED

Dept No. 6

2009 APR 14 PM 3:43

HOWARD W. COYERS

In the Second Judicial District Court of the State of Nevada

In and for the County of Washoe

FRANK M. PECK
Defendant

Motion to Reconsider filing
Defendant's Pre-trial Petition
for Writ of Habeas Corpus

-vs-

State of Nevada
Plaintiff

Comes Now, the Defendant, FRANK M. PECK,
pro se, as his own Attorney, having duly removed
his Attorney of record, Robert Bruce Lindsay pursuant
to Supreme Court rule 46 and NRS 7.055, Sup Ct Rules 166(4),
173, 176, 203 and District Court rules 11 and 20 and
the Letters dated 2-26-09, 3-18-09, as well as the
Motion filed in this Court dated/filed on 3-10-09, hereby
requests that this Court RE-file the Defendant's
Petition for Writ of Habeas Corpus Already on
file in this Court.

Dated this 9th day of April 2009.

cc: file

Frank Peck
FRANK PECK Pro se

Certificate of Service and Affirmation pursuant to
NRS 239 B.030. The attached Motion to Reconsider
filing Defendant's Pre-trial Petition for Writ of Habeas
Corpus does not contain any social security numbers
of any person and a true and correct copy has been
mailed to:

District Attorney

Dave Clifton

75 Court St

Reno NV 89501

Dated this 9th day of April 2009.

cc: file

Frank Peck

Frank Peck Prose

ORIGINAL

FILED

CASE No. CR-06-2580

APR 22 2009

Dept No. 6

HOWARD W. CONVERS, CLERK

By: *[Signature]*
DEPUTY CLERK

CR06-2580 DC-9900007642-002
STATE VS. FRANK MILLFORD PECK 5 Pages
District Court 04/22/2009 09:00 AM
Washoe County 2490
NVC A TOUHEEN

In the Second Judicial District Court of the State of Nevada
IN AND for the County of Washoe

FRANK M. PECK
Defendant,
- VS -

Motion to proceed Pro se
And Request for Basic tools
Integral for Effective Defense

State of Nevada
Plaintiff,

Comes Now, the Defendant, FRANK M. PECK, pro se,
hereinafter Mr PECK, with his Motion to proceed pro se
AND Request for basic tools Integral for Effective
Defense, pursuant to FARETTA V. STATE OF CALIFORNIA,
422 US 806, 45 LEd2d 562, 95 SCT 2525 (1975).
ANDERSON V STATE 98 NEV 539, 654 P2d 1026 (1982).
SUPREME COURT rule 25.3 AND BRIBIESCA V GALAZA,
215 F3d 1015 (9th Cir 2000). AN INCARCERATED CRIMINAL
defendant who chooses to represent himself has a
CONSTITUTIONAL right to Access to Law books or other
tools to assist him in preparing A defense.

Mr PECK has had to dismiss his first Attorney Ken McKenna due to the fact that he admitted to Mr Peck that his Life had been threatened by Law Enforcement in the Hallway of the District Court Building during the trial of Mr Peck's Brother Larry Peck. Mr McKenna was told to BACK off the friendly fire theory or else! Mr Peck could not allow Mr McKenna to represent him after admitting to taking a dive in his Brothers CASE.

Mr PECK has dismissed Attorney Robert Lindsay for failing to file the requested Notice of Appeal from Judge Elliott's Order denying Mr Peck's Motion to Recuse Judge Brent Adams. It is Mr Peck's belief and contention that Robert Lindsay did not Appeal due to the fact that he is BANNED from the Nevada Supreme Court. Robert Lindsay and the State of Nevada, for Appointing an unqualified Attorney, have violated Mr Peck's 5th and 14th Amendment rights to due process. Attorney Robert Bruce Lindsay has Violated Attorney client privilege and has not done a single thing he said that he would do, AS A result, Mr Peck cannot trust Mr Lindsay, to do what he says he will do with the evidence in this case.

Nor does Mr Lindsay have the required scientific competence to try this case.

Therefore, Mr Peck believes that it is in his best interest to represent himself at trial, and if scientific DNA evidence is to be used against him that fundamental fairness requires that Mr Peck be afforded the opportunity to educate himself on the complex science of DNA, as well as the ability to receive the most up to date information/research and investigative information. Mason v Mitchell, 320 F3d 604 (6th cir 2003). Criminal trial is fundamentally unfair if state proceeds against indigent defendant without making certain that he has access to raw materials integral to building an effective defense. Currently Mr. Peck is incarcerated at the Northern Nevada Correctional Center in Carson City Nevada. Mr Peck currently does not have access to the Law Library, even if Mr Peck did have access, the Supreme Court has noted that the current state of the available resources are inadequate IE (2) typewriters and (2) computers with only 30 min access at a time to 1400 inmates.

Mr. PECK, AS AN indigent ward of the State of Nevada, hereby requests preliminary funds be made available to purchase a basic Laptop Computer, printer with software including internet explorer and e-mail address as well as normal telephone access for communications with investigator, research assistant, witness, experts, and consultants. Toolaspeashad v. Bureau of Prisons, 286 F3d 576 (DC Cir 2002). Access to courts for prison inmates entails not only freedom to file pleadings, but also freedom to employ those accessories without which legal claims cannot be effectively asserted.

Mr PECK is ANXIOUS to see this case to its conclusion; this request and the timeline is contingent on Mr Peck having unrestricted access to work day and night.

Mr Peck is confident that he can be ready for trial in as little as 12 months.

Mr Peck feels this is a reasonable request considering the State has had six years to investigate and repair.

Mr PECK KNOWS there is AN ENORMOUS AMOUNT of WORK that must be completed prior to trial, AND apologizes to this COURT AND the parties involved for the LACK of diligence by his PREVIOUS ATTORNEYS.

Mr PECK ASSURES this court that this request is made in good faith AND NOT for ANY improper or dilatory REASON.

CONCLUSION

This Motion should be granted AS Mr PECK is competent to represent himself up to AND including trial. *Facetta v California*.

This request should be granted out of the fundamental NOTION of FAIRNESS AND considering the SERIOUSNESS of the charge if convicted Mr PECK will most likely spend the remainder of his life in prison.

To deny this motion would deny MR PECK of his Constitutional Right to represent himself AND his Right to Due process AND A FAIR trial, according to usages of COMMON LAW OR PROVISIONS of Constitution which would be protection to him under Due process NEV ART. 1 § 8, 5. AND violative of 5th and 14th Amendments to US Constitution.

Dated this 15th day of April 2009

Frank Peck
Frank Peck 1103410

CASE NO. CR06-2580

STATE OF NEVADA VS. FRANK MILFORD PECK

<u>DATE, JUDGE OFFICERS OF COURT PRESENT</u>	<u>APPEARANCES-HEARING</u>	<u>CONTINUED TO</u>
4/22/09 HONORABLE BRENT ADAMS DEPT. NO. 6 B. Johnson (Clerk) J. Kernan (Reporter)	<u>MOTION TO CONFIRM</u> Deputy District Attorney David Clifton represented the State. Defendant present with counsel, Bruce Lindsay. Probation Officer Laurie Flocchini was also present. Defense counsel confirmed the trial date, counsel further informed the Court that Defendant wishes to relieve him as counsel. Defendant addressed the Court and argued in support of new counsel. Counsel for State addressed the Court concerning the trial setting. COURT ORDERED: Trial date 5/4/09 confirmed; Defendant's motion to relieve counsel denied. Defendant's motion to proceed pro se was filed in open court. Court ordered Defendant's motion will be set on calendar. Defendant remanded to the Director of Prisons.	4/29/09 9:00 a.m. Motion to Proceed Pro Se

ORIGINAL

FILED

2009 APR 27 AM 11:17

HOWARD E. CONYERS

BY *[Signature]*
DEPUTY

CODE 2592
Richard A. Gammick
#001510
P.O. 30083
Reno, NV. 89520
(775)328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR06-2580

v.

Dept. No. 6

FRANK PECK,

Defendant.

NOTICE OF WITNESSES PURSUANT TO NRS 174.234

COMES NOW, the State of Nevada, by and through Washoe County District Attorney RICHARD A. GAMMICK, as prepared and submitted by Chief Deputy District Attorney DAVID W. CLIFTON, and hereby gives notice of the names and addresses of witnesses expected to be utilized at the jury trial in this matter commencing May 4, 2009, as follows:

SPARKS POLICE DEPARTMENT

LINDA BROWN

PEGGY STOUT

JOHN CLAYTON

MIKE BROWN

CR06-2580
STATE VS. FRANK MILFORD PECK, 4
District Court 04/27/2009 11:17 AM
Washoe County
2592

1 At this time, Plaintiff does not foresee calling any
2 additional witnesses. If such a possibility should arise, Plaintiff
3 will notify the Court and counsel immediately.

4 AFFIRMATION PURSUANT TO NRS 239B.030

5 The undersigned does hereby affirm that the preceding
6 document does not contain the social security number of any person.

7 Dated this 27th day of April, . . .

8 RICHARD A. GAMMICK
9 District Attorney
Washoe County, Nevada

10
11 By David W. Clifton
12 DAVID W. CLIFTON
13 1653
14 Chief Deputy District Attorney
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FILED

APR 27 2009

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

FRANK MILFORD PECK,
Petitioner,

Supreme Court No. 53403

vs.

District Court Case No. CR062580

THE STATE OF NEVADA,
Respondent.

NOTICE IN LIEU OF REMITTITUR

TO THE ABOVE-NAMED PARTIES:

Since the decision and Order of the court in this matter having been entered on 03/30/09, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: April 24, 2009

Tracie Lindeman, Clerk of Court

By:

A. Ingersoll
Deputy Clerk

- cc: Hon. Brent T. Adams, District Judge
- Howard W. Conyers, Washoe District Court Clerk
- Attorney General Catherine Cortez Masto/Carson City
- Washoe County District Attorney Richard A. Gammick
- Frank Milford Peck

CR06-2580 DC-9900007776-022
 STATE VS. FRANK MILFORD PECK 1 Page
 District Court 04/27/2009 03:22 PM
 Washoe County 4133
 CKFF/FF

V3416
09-08421

Case No. 2610

FILED

MAY - 4 2009

CASE NO. CR-06-2580

Dept No. 6

HOWARD W. CONYERS, CLERK
By: [Signature] DEPUTY CLERK

In the Second Judicial District Court of the State of NEVADA
In and for the County of Washoe

Frank M. Peck
Defendant

Judicial Notice AND
Complaint Against Counsel
Robert Bruce Lindsay

vs

State of Nevada
Plaintiff

Comes Now, the Defendant, Frank M. Peck prose with his "Sworn Complaint" Against Robert Bruce Lindsay for threats of violence and his Antagonistic behavior in the Jury Room this date, in front of Court personell. Judge Adams needent take Mr. Peck's word, all that is needed is to ask his baliff, Numerous defendants or NDOC transportation officers. this behavior should not be tolerated by officers of the Court. Mr Peck felt Very threatened when, Mr Lindsay said, "Your lucky these officers ARE here". while shaking violently pointing his finger! While Mr Peck was totally restrained in chains.

Dated this 22nd day of April 2009.

[Signature of Frank Peck]

Frank Peck Prose

V3.417

cc: file

CR06-2580 DC-9900008081-124
STATE VS. FRANK MILFORD PECK 1 Page
District Court 05/04/2009 02:06 PM
Washoe County 2610
TET APCC
NOC

CR06-2580 DC-9900008081-174
STATE VS. FRANK MILFORD PECK 3 Pages
District Court 05/07/2009 10:03 AM
Washoe County 4065
TFL/DPF
DOC

4065
CODE 4055

FILED

2009 MAY -7 AM 10:03

HOWARD W. CONYERS
BY: *[Signature]*
CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK PECK

Plaintiff,

vs.

STATE OF NEVADA

Defendant.

Case No. CR06-2580

Dept. No. 6

SUBPOENA DUCES TECUM

To: Maria Fasset
(Name)

You are commanded to appear before the Second judicial District Court, State of Nevada, Washoe County, at the courtroom of said court, Department 6 at Reno, Nevada, on the 11TH day of May 2009, at 10:00 AM, to testify on the part of DEFENDANT.

Any person failing to appear may be deemed in contempt of court, and shall be liable to the party injured in the sum of \$100.00, and for such damages as may be sustained by him/her on account of such neglect or refusal.

Dated this 6 day of May 2009
HOWARD W. CONYERS
RONALD A. LONGTIN, JR., CLERK OF THE COURT

STATE OF NEVADA
COUNTY OF WASHOE

by [Signature]
Deputy Clerk

I received the within Subpoena on the 6 day of May 2009 and personally served a copy of the same upon Maria Fasset

Subscribed and sworn to before me
this 7th day of May, 2009.

[Signature]
Notary Public

[Signature]
Signature of Person Making Service

 LISA BARTELS
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 08-7522-2 - Expires August 6, 2012

Subpoena Duces Tecum requirements to be brought to court with this Subpoena:

1. S.D.T. on all of the lab techs and the experts that are being called by the State;
2. Rene Romero, Jeffrey Riolo, Maria Fassett, Richard Burger, Ronald Young, Ed Ship;
3. S.D.T. to bring with them all lab documentation from 1994 original samples, to all testing thereafter, including 2001, 2002, 2003, 2004, 2005, 2006 and any other years they may have tested;
4. S.D.T. all logs, drafted reports, peer review reports, internal review reports, make and model of all equipment used in the gathering, preservation or testing of the DNA samples from 1994 and the subsequent search for matches;
5. S.D.T. all, Storage protocols and any Bar code system used and all chain of custody documentation from 1994 forward;
6. S.D.T. all lab controls and raw data used, genophiler or genostat regarding the storage and possible degradation of the 1994 samples taken; all controls used by the lab mixtures, degradation, stutter peaks, peak heights or imbalances, any blob noise or pull up, bleed through spikes, and data problems encountered in the storage or testing of the 1994 samples and all the matching that was attempted thereafter;
7. All population basis used and data base with dates, codis or offender data base, crime lab and caseload and personal inventory; any all quality control, with any verifying documents;
8. Rape Kit inventory, #R04014, with the chain of custody and index tracking cards and evidence logs; with any polymorphic probes used, and their origin, place of purchase, etcetera.
9. All audio and video recordings made of any of the DNA protocol or testing over the years 1994 to the present regarding the Frank Peck case.

1 SECOND JUDICIAL DISTRICT COURT
2 COUNTY OF WASHOE, STATE OF NEVADA

3 AFFIRMATION
4 Pursuant to NRS 239B.030

5 The undersigned does hereby affirm that the preceding document, _____

6 SUBPOENA

7 _____
8 (Title of Document)

9 filed in case number: _____

10 Document does not contain the personal information of any person

11 -OR-

12 Document contains the personal information of a person as required by:

13 A specific state or federal law, to wit:

14 _____
15 (State specific state or federal law)

16 -or-

17 For the administration of a public program

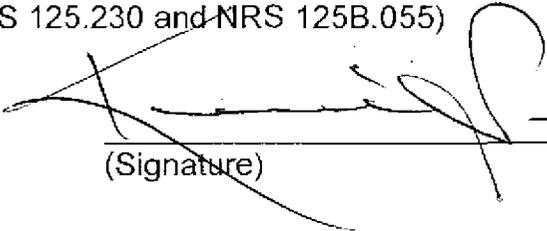
18 -or-

19 For an application for a federal or state grant

20 -or-

21 Confidential Family Court Information Sheet
22 (NRS 125.130, NRS 125.230 and NRS 125B.055)

23
24 Date: 5-7-2009

25 

(Signature)

26 _____
(Print Name)

27 _____
(Attorney for)

28
V3.420

DC-990008081-175
CR06-2580
STATE VS. FRANK MILFORD PECK 3 Pages
District Court 05/07/2009 10:03 AM
Washoe County
DC

4065
CODE 4055

FILED
2009 MAY -7 AM 10:03

HOWARD W. CONYERS
BY [Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK PECK

Plaintiff,

vs.

Case No. CR06-2580

STATE OF NEVADA

Dept. No. 6

Defendant.

SUBPOENA DUCES TECUM

To: RENE ROMERO
(Name)

You are commanded to appear before the Second judicial District Court, State of Nevada, Washoe County, at the courtroom of said court, Department 6 at Reno, Nevada, on the 11TH day of May 2009, at 10:00 AM, to testify on the part of DEFENDANT

Any person failing to appear may be deemed in contempt of court, and shall be liable to the party injured in the sum of \$100.00, and for such damages as may be sustained by him/her on account of such neglect or refusal.

Dated this 6 day of May, 2009
HOWARD W. CONYERS

RONALD A. LONGTIN, JR., CLERK OF THE COURT

STATE OF NEVADA
COUNTY OF WASHOE

by [Signature]
Deputy Clerk

I received the within Subpoena on the 6 day of May, 2009 and personally served a copy of the same upon Rene Romero

Subscribed and sworn to before me
this 7th day of May, 2009.

Lisa Bartels

[Signature]
Signature of Person Making Service

Notary Public
LISA BARTELS
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 08-7522-2 - Expires August 6, 2012

Subpoena Duces Tecum requirements to be brought to court with this Subpoena:

1. S.D.T. on all of the lab techs and the experts that are being called by the State;
2. Rene Romero, Jeffrey Riolo, Maria Fassett, Richard Burger, Ronald Young, Ed Ship;
3. S.D.T. to bring with them all lab documentation from 1994 original samples, to all testing thereafter, including 2001, 2002, 2003, 2004, 2005, 2006 and any other years they may have tested;
4. S.D.T. all logs, drafted reports, peer review reports, internal review reports, make and model of all equipment used in the gathering, preservation or testing of the DNA samples from 1994 and the subsequent search for matches;
5. S.D.T. all, Storage protocols and any Bar code system used and all chain of custody documentation from 1994 forward;
6. S.D.T. all lab controls and raw data used, genophiler or genostat regarding the storage and possible degradation of the 1994 samples taken; all controls used by the lab mixtures, degradation, stutter peaks, peak heights or imbalances, any blob noise or pull up, bleed through spikes, and data problems encountered in the storage or testing of the 1994 samples and all the matching that was attempted thereafter;
7. All population basis used and data base with dates, codis or offender data base, crime lab and caseload and personal inventory; any all quality control, with any verifying documents;
8. Rape Kit inventory, #R04014, with the chain of custody and index tracking cards and evidence logs; with any polymorphic probes used, and their origin, place of purchase, etcetera.
9. All audio and video recordings made of any of the DNA protocol or testing, over the years 1994 to the present regarding the Frank Peck case.

1 SECOND JUDICIAL DISTRICT COURT
2 COUNTY OF WASHOE, STATE OF NEVADA

3 AFFIRMATION
4 Pursuant to NRS 239B.030

5 The undersigned does hereby affirm that the preceding document, _____

6 SUBPOENA

7 _____
8 (Title of Document)

9 filed in case number: _____

10 Document does not contain the personal information of any person

11 -OR-

12 Document contains the personal information of a person as required by:

13 A specific state or federal law, to wit:

14 _____
15 (State specific state or federal law)

16 -or-

17 For the administration of a public program

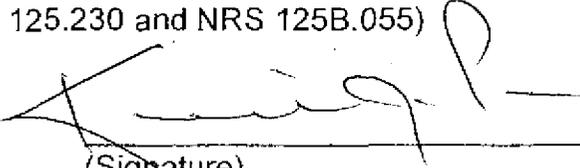
18 -or-

19 For an application for a federal or state grant

20 -or-

21 Confidential Family Court Information Sheet
22 (NRS 125.130, NRS 125.230 and NRS 125B.055)

23
24 Date: 5-7-2009

25 
26 (Signature)

27 _____
28 (Print Name)

(Attorney for)

V3.423

CR06-2580
STATE VS. FRANK MILFORD PECK 3 Pages
District Court 05/07/2009 10:03 AM
Washoe County 4055
TEI 0855

1 CODE 4055

FILED
2009 MAY -7 AM 10:03

HOWARD W. CONYERS
BY: *[Signature]*
DEPUTY

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE

7 FRANK PECK

8 Plaintiff,

9 vs.

Case No. CR06-2580

10 STATE OF NEVADA

Dept. No. 6

11 Defendant.

12
13 **SUBPOENA**

DUCES TECUM

14 To: Jeffrey Ruolo
15 (Name)

16 You are commanded to appear before the Second Judicial District Court, State of Nevada, Washoe
17 County, at the courtroom of said court, Department 6 at Reno, Nevada, on the 11TH day of
May 2009, at 10:00 AM, to testify on the part of DEFENDANT

18 Any person failing to appear may be deemed in contempt of court, and shall be liable to the party
19 injured in the sum of \$100.00, and for such damages as may be sustained by him/her on account of such
neglect or refusal.

20 Dated this 6 day of May, 2009.

21 **HOWARD W. CONYERS**
RONALD A. LONGHIN, JR., CLERK OF THE COURT

22 STATE OF NEVADA
23 COUNTY OF WASHOE

by [Signature]
Deputy Clerk

24 I received the within Subpoena on the 6 day of May, 2009 and
personally served a copy of the same upon Jeffrey Ruolo

25 Subscribed and sworn to before me
26 this 7th day of May, 2009.

27 [Signature]
Notary Public

[Signature]
Signature of Person Making Service

28  LISA BARTELS
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 08-7522-2 - Expires August 6, 2012

Subpoena Duces Tecum requirements to be brought to court with this Subpoena:

1. S.D.T. on all of the lab techs and the experts that are being called by the State;
2. Rene Romero, Jeffrey Riolo, Maria Fassett, Richard Burger, Ronald Young, Ed Ship;
3. S.D.T. to bring with them all lab documentation from 1994 original samples, to all testing thereafter, including 2001, 2002, 2003, 2004, 2005, 2006 and any other years they may have tested;
4. S.D.T. all logs, drafted reports, peer review reports, internal review reports, make and model of all equipment used in the gathering, preservation or testing of the DNA samples from 1994 and the subsequent search for matches;
5. S.D.T. all, Storage protocols and any Bar code system used and all chain of custody documentation from 1994 forward;
6. S.D.T. all lab controls and raw data used, genophiler or genostat regarding the storage and possible degradation of the 1994 samples taken; all controls used by the lab mixtures, degradation, stutter peaks, peak heights or imbalances, any blob noise or pull up, bleed through spikes, and data problems encountered in the storage or testing of the 1994 samples and all the matching that was attempted thereafter;
7. All population basis used and data base with dates, codis or offender data base, crime lab and caseload and personal inventory; any all quality control, with any verifying documents;
8. Rape Kit inventory, #R04014, with the chain of custody and index tracking cards and evidence logs; with any polymorphic probes used, and their origin, place of purchase, etcetera.
9. All audio and video recordings made of any of the DNA protocol or testing over the years 1994 to the present regarding the Frank Peck case.

1 SECOND JUDICIAL DISTRICT COURT
2 COUNTY OF WASHOE, STATE OF NEVADA

3 AFFIRMATION
4 Pursuant to NRS 239B.030

5 The undersigned does hereby affirm that the preceding document, _____

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8 (Title of Document)

9 filed in case number: _____

10 Document does not contain the personal information of any person

11 -OR-

12 Document contains the personal information of a person as required by:

13 A specific state or federal law, to wit:

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15 _____
16 (State specific state or federal law)

17 -or-

18 For the administration of a public program

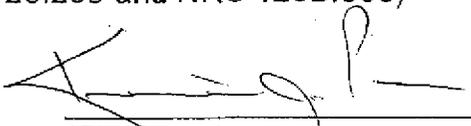
19 -or-

20 For an application for a federal or state grant

21 -or-

22 Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

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24 Date: 5-7-2009

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26 _____
(Signature)

27 _____
(Print Name)

28 _____
(Attorney for)

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Code
ROBERT BRUCE LINDSAY
Nevada State Bar #2237
595 California Avenue
Reno, Nevada 89509
(775) 378-9031

FILED
2009 MAY -8 AM 9:55

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR THE
COUNTY OF WASHOE, STATE OF NEVADA
NOWAR W. CONYERS
DEPUTY

THE STATE OF NEVADA
Plaintiff,

v.
FRANK PECK
Defendant,

Case No:CR-06-2580
Department 7

**MOTION TO PRODUCE WITNESS LARRY PECK FOR TESTIMONY
ON MONDAY MAY 11TH, 2009**

Comes now FRANK PECK, by and through his undersigned counsel, ROBERT BRUCE LINDSAY, and moves this Court for an Order to produce Larry Peck for testimony on Monday, May 11th, 2009; at 1 PM, from the Nevada State Prison on 5th Street, in Carson City, Nevada to testify at the trial which is now before the Honorable Judge Adams.

The undersigned does hereby affirm that the preceding document does not contain the Social Security Number of Any Person.

DATED this 8th day of May, 2009

Robert Bruce Lindsay
ROBERT BRUCE LINDSAY, ESQ

CR06-2580 DC-990008292-016
STATE VS FRANK MILFORD PECK 1 Page
District Court 05/08/2009 09:56 AM
Washoe County 2490
NSFAL TFI 0Rec

1 Code 2490
2 ROBERT BRUCE LINDSAY
3 Nevada State Bar #2237
4 595 California Avenue
5 Reno, Nevada 89509
6 (775) 378-9031

SEALED

FILED
2009 MAY -8 AM 9:56

HOWARD L. COFFERS

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR THE
COUNTY OF WASHOE, STATE OF NEVADA

7 THE STATE OF NEVADA

8 Plaintiff,

9 v.

Case No: CR- 06- 2580

10 FRANK PECK

Defendant,

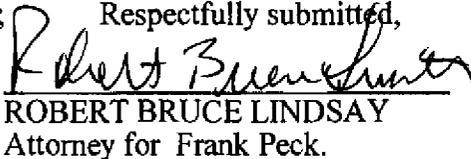
Department 7

11 MOTION FOR INVESTIGATOR

12 Comes now, Frank Peck, by and through his undersigned counsel, ROBERT BRUCE
13 LINDSAY, and moves this Court for an Order regarding the Appointment of Ken Peele to do service
14 of process and related matters for the Frank Peck Trial scheduled on May 6th, 2009. These
15 services are necessary and without Mr. Peele. this counsel cannot defend Mr. Peck effectively. The
16 fees shall not exceed two thousand dollars for said services.

17 The undersigned does hereby affirm that the preceding document does not contain the Social Security
18 Number of Any Person.

19 Dated this 5th of May, 2009; Respectfully submitted,

20 
21 ROBERT BRUCE LINDSAY
22 Attorney for Frank Peck.

DC-990008292-017
CR06-2580
STATE VS FRANK MILFORD PECK 1 Page
District Court 05/08/2009 09:56 AM
Washoe County
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1 Code
ROBERT BRUCE LINDSAY
2 Nevada State Bar #2237
595 California Avenue
3 Reno, Nevada 89509
(775) 378-9031

SEALED

FILED
2009 MAY -8 AM 9:56
HOWARD L. SCYERS

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IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR THE
COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA

Plaintiff,

v.

Case No: CR- 06- 2580

FRANK PECK

Defendant,

Department 7

MOTION FOR TRANSCRIPTION OF DNA EXPERT TESTIMONY

Comes now, Frank Peck, by and through his undersigned counsel, ROBERT BRUCE LINDSAY, and moves this Court for an Order regarding the **TRANSCRIPTION OF THE TESTIMONY OF THE State'S DNA expert, so that this counsel can meet with Dr. Llewellyn, the Defense DNA expert to prepare for testimony and cross examination; This Motion was Orally made by this counsel several weeks ago. These transcripts are necessary and without them this counsel cannot defend Mr. Peck effectively. The rough note transcripts from the Court Reporter would be adequate under these circumstances.**

The undersigned does hereby affirm that the preceding document does not contain the Social Security Number of Any Person.

Dated this 7th of May, 2009:

Respectfully submitted,

Robert Bruce Lindsay
ROBERT BRUCE LINDSAY
Attorney for Frank Peck.

FILED

MAY 08 2009

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

Code
ROBERT BRUCE LINDSAY
Nevada State Bar #2237
595 California Avenue
Reno, Nevada 89509
(775) 378-9031

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR THE
COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA

Plaintiff,

v.

Case No: CR- 06- 2580

FRANK PECK

Defendant,

Department *[Signature]*

ORDER FOR TRANSCRIPTION OF DNA EXPERT TESTIMONY

Pursuant to the Motion of Frank Peck, this Court Orders that the TRANSCRIPTION
OF THE TESTIMONY OF THE State'S DNA experts *Bevin Rose BF* be expedited so that defense counsel can
meet with Dr. Llewellyn, the Defense DNA expert to prepare for testimony and cross
examination;. The rough note transcripts from the Court Reporter are adequate under these
circumstances.

The undersigned does hereby affirm that the preceding document does not contain the Social Security
Number of Any Person.

Dated this 8th of May, 2009;

ORDERED BY

[Signature]
JUDGE ADAMS, DEPARTMENT 6
SECOND JUDICIAL DISTRICT
RENO, WASHOE COUNTY, NEVADA

CR06-2580
DC-9900008066-005
STATE VS. FRANK MILFORD PECK 1 Page
District Court 05/08/2009 12:57 PM
Washoe County 3370
T.C.F.R.V.M.T.

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CR06-2580
STATE VS. FRANK PECK
District Court
Washoe County
DC-9900008066-006
MILFORD PECK
05/08/2009 12:58 PM
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Code
ROBERT BRUCE LINDSAY
Nevada State Bar #2237
595 California Avenue
Reno, Nevada 89509
(775) 378-9031

FILED

MAY 08 2009

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

**IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR THE
COUNTY OF WASHOE, STATE OF NEVADA**

THE STATE OF NEVADA

Plaintiff,

v.

Case No: CR-06-2580

FRANK PECK

Department *to*

Defendant,

**ORDER TO PRODUCE WITNESS LARRY PECK FOR TESTIMONY
ON MONDAY MAY 11TH, 2009**

Pursuant to the request of Counsel for Frank Peck it is hereby ordered by this Court to produce Larry Peck for testimony on Monday, May 11th, 2009; at 1 PM, from the Nevada State Prison on 5th Street, in Carson City, Nevada to testify at the trial which is now before the Honorable Judge Adams.

The undersigned does hereby affirm that the preceding document does not contain the Social Security Number of Any Person.

DATED this 8th day of May, 2009

[Signature]
THE HONORABLE JUDGE ADAMS
2ND JUDICIAL DISTRICT COURT
WASHOE COUNTY, RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA
Plaintiff,

vs.

FRANK PECK,
Defendant.

Sup. Ct. Case No. 65691
Case No. CR06-2580
Dept. 6

RECORD ON APPEAL

VOLUME 2 OF 13

DOCUMENTS

APPELLANT

Frank Peck #57106
H D S P - P O Box 650
Indian Springs, Nevada 89070

RESPONDENT

Washoe County District Attorney's
Office
Terrance McCarthy, Esq.
P O Box 11130
Reno, Nevada 89502-3083

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Case No. CR06-2580
 STATE vs FRANK PECK
 JULY 18, 2014

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APPEAL INDEX

Case No. CR06-2580
 STATE vs FRANK PECK
 JULY 18, 2014

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 JULY 18, 2014

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104-01879 DB

2006 NOV -3 AM 11:29

BY: *[Signature]*
DEPUTY

CR06-2580
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 11/03/2006 04:00 PM
Washoe County 1260

CODE 1260
Richard A. Gammick
#001510
P.O. 30083-3083
Reno, NV. 89520
(775)328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. *CR06-2580*

v.

Dept. No. 6

FRANK MILFORD PECK, (BAC# 57106)
@ 3461
Defendant.

APPLICATION FOR ORDER TO PRODUCE PRISONER

COMES NOW, the State of Nevada, Plaintiff herein, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, by DAVID W. CLIFTON, Chief Deputy District Attorney, and alleges as follows:

1. That the above defendant, FRANK MILFORD PECK, (BAC# 57106) is presently incarcerated at the Nevada State Prison, Carson City, Nevada.
2. That the above FRANK MILFORD PECK (BAC# 57106) is scheduled for a Grand Jury Proceeding before the Grand Jury on Wednesday the 8th of November, 2006 at 1:30 p.m.

WHEREFORE, Applicant prays that an Order be made ordering

1 the appearance of the said FRANK MILFORD PECK (BAC# 57106) before the
2 Grand Jury on Wednesday the 8th of November, 2006 and from time to
3 time thereafter at such times and places as may be ordered and
4 directed by the Court for such proceedings as thereafter may be
5 necessary and proper in the premises, and directing the execution of
6 said Order by the Sheriff of Washoe County, Nevada.

7 DATED this 3rd day of November, 2006.

8
9 RICHARD A. GAMMICK
10 District Attorney
11 Washoe County, Nevada

12 BY David W. Clifton
13 DAVID W. CLIFTON
14 1653
15 Chief Deputy District Attorney

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DA #327992

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2006 NOV -6 PM 2:59

BY *K. Sullivan* DEPUTY CLERK

CR06-2580 DC-990000237-060 STATE VS. FRANK MILFORD PECK 2 Pages District Court 11/06/2006 11:17 AM Washoe County 3340

CODE 3340
Richard A. Gammick
#001510
P.O. 30083-3083
Reno, NV. 89520
(775)328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. *CR06-2580*

v.

Dept No. 6

FRANK MILFORD PECK, (BAC# 57106)

Defendant.

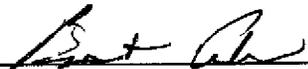
ORDER TO PRODUCE PRISONER

IT APPEARING to the satisfaction of the above-entitled Court that it is necessary that the Defendant above named, FRANK MILFORD PECK, (BAC# 57106) presently incarcerated in the Nevada State Prison, Carson City, Nevada, be brought before the Grand Jury for a Grand Jury Proceeding in the above-entitled action,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Warden of the Nevada State Prison, Carson City, Nevada, bring the said FRANK MILFORD PECK (BAC# 57106) before the Grand Jury on Wednesday the 8th of November, 2006 at the hour of 1:30 p.m., for a Grand Jury Proceeding in the above-entitled action and from time to time thereafter at such times and places as may be ordered and directed by

1 the Court for such proceedings as thereafter may be necessary and
2 proper in the premises.

3 DATED this 3rd day of March, 2006.

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6 DISTRICT JUDGE
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DA # 327992

FILED

NOV - 8 2006

RONALD A. LONGTIN, JR., CLERK

By: *Janet J. Berry*

R. J. Matrasse

DC-990000273-034
STATE VS. FRANK MILLFORD PECK 3 Pages
District Court 11/08/2006 03:36 PM
Washoe County 1795
CR06-2580

CODE 1795
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

FRANK PECK,

Defendant.

Case No. *CR06-2580*

CR06-2580
CR06-2613

Dept. No. 6

INDICTMENT

The defendant, FRANK PECK, is accused by the Grand Jury of Washoe County, State of Nevada, of the following:

SEXUAL ASSAULT, a violation of NRS 200.366, a felony, (F1000) in the manner following, to wit:

That the said defendant on or about the 9th day of August A.D., 1994, or thereabout, within the County of Washoe, State of Nevada, did willfully, and unlawfully subject CANDACE INMAN to sexual penetration against her will, in that the defendant caused the victim

///

///

1 to submit to sexual intercourse at 445 Sullivan Lane, #94, Sparks,
2 Washoe County, Nevada.

3
4 Dated this 8th day of November, 2006.

5 RICHARD A. GAMMICK
6 District Attorney

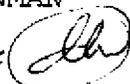
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8 By David W. Clifton
9 DAVID W. CLIFTON
10 1653
11 Chief Deputy District Attorney
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1 The following are the names of witnesses examined before
2 the Grand Jury:

3 RENEE ROMERO

4 CANDACE INMAN

5 ~~GRETA FYE~~ 

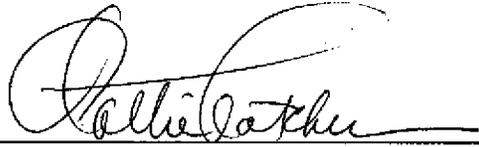
6 DIANE HACKWORTH

7 PEGGY STOUT

8 STEVE FIORE

9 LINDA BROWN

10 "A TRUE BILL"

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14 _____
15 FOREMAN

16
17
18 "NO TRUE BILL"

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22 _____
23 FOREMAN

1 into the custody of the Sheriff of Washoe County, Nevada, that he may
2 be taken before this Court at such time as it be in session.

3 BY ORDER OF THE COURT. GIVEN UNDER MY HAND WITH THE SEAL
4 OF THE COURT AFFIXED this 8th day of November, 2006.

5
6
7
8 Janeit Berry
9 DISTRICT JUDGE

10 The defendant, FRANK PECK, is to be admitted to bail in the
11 amount of \$ 50,000.00, each of bond

12 Endorsed this 8th day of November, 2006.

13
14 RONALD A. LONGTIN, JR., Clerk

15
16 By K. Malerassu
17 Deputy

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24 **CERTIFIED COPY**

25 The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

26 DATE: November 8, 2006

RONALD A. LONGTIN, JR., Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By K. Malerassu Deputy

R E T U R N

I, _____, hereby certify that I have received the attached Bench Warrant on the _____ day of _____, 20____, and served the same on the defendant, FRANK PECK, placing him in the custody of the Sheriff of Washoe County, Nevada, until bail in the sum of \$_____, as set by the Court has been posted.

DATED this _____ day of November, 2006.

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FILED

2006 NOV 20 PM 2:50

RONALD K. LONGTIN, JR.

BY: *[Signature]*
DEPUTY

CR06-2580 DC-9900000291-064
STATE VS. FRANK MILFORD PECK 1 Page
District Court 11/20/2006 02:51 PM
Washoe County 1250

CODE 1250
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR06-2580

v.

Dept. No. 6

FRANK MILFORD PECK,

Defendant.

APPLICATION FOR SETTING

TYPE OF ACTION: CRIMINAL

MATTER TO BE HEARD: ARRAIGNMENT

DATE OF APPLICATION: November 20, 2006 MADE BY PLAINTIFF

COUNSEL FOR PLAINTIFF: DAVID W. CLIFTON, C.D.D.A.

COUNSEL FOR DEFENDANT: PUBLIC DEFENDER

CUSTODY STATUS: BAIL O.R. IN CUSTODY

Setting at 9:00 a.m. on the 15th of December, 2006.

ORIGINAL

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE WASHOE COUNTY GRAND JURY

-o0o-

FILED

NOV 22 2006

RONALD A. WINGTIN, JR., CLERK
By: *[Signature]*
DEPUTY CLERK

CRO6-2580
Dept. 6

IN THE MATTER OF:
FRANK MILFORD PECK

PROCEEDINGS

WEDNESDAY, NOVEMBER 8, 2006

1:30 P.M.

APPEARANCE:

For the State:

DAVID CLIFTON, ESQ.
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

Also Present:

Tammy Riggs, Esq.
Deputy District Attorney

Reported by:

JUDITH ANN SCHONLAU, CSR #18
Computer-Aided Transcription

DC-990027766-032
MILFORD PE 105 Pages
STATE VS FRANK MILFORD PE 105 Pages
District Court 11/22/2006 08:55 AM
Washoe County 4189
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I N D E X

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4	DIANE HACKWORTH	33
5	PEGGY STOUT	42
6	STEVE FIORI	51
7	LINDA BROWN	66
8	RENEE ROMERO	80
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1 RENO, NEVADA; WEDNESDAY, NOVEMBER 8, 2006; 1:30 P.M.

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3 THE FOREMAN: The Grand Jury is now in session.

4 MR. CLIFTON: Thank you. Good afternoon, ladies and
5 gentlemen. My name is Dave Clifton, I am a Chief Deputy
6 District Attorney with the Washoe County District Attorney's
7 Office. With me here for this presentation and co-chairing this
8 particular matter is Tammy Riggs who is a Deputy District
9 Attorney. With the Grand Jury's permission, I would ask that
10 you allow her to stay for these proceedings.

11 THE FOREMAN: Any objection? Okay.

12 MR. CLIFTON: It will be both of us co-chairing the
13 case together. I will be doing all the questions for today's
14 proceeding.

15 What you have in front of you, I have passed out
16 copies, is a proposed Indictment alleging that the defendant,
17 Frank Peck P-E-C-K has committed the crime of sexual assault, a
18 felony, within Washoe County, namely that he did willfully and
19 unlawfully on or about August 9, 1994, subject Candace Inman to
20 sexual penetration against her will in that he did cause her to
21 submit to sexual intercourse at 445 Sulllivan Lane #94 in
22 Sparks, Washoe County, Nevada.

23 Additionally, I have passed out this one, I am making
24 it an exhibit, it is the sexual assault statute verbatim

1 leaving out penalties. Other than that, that is the elements
2 of sexual assault.

3 For today's purpose the relevant statute is
4 NRS 200.366 which you have a copy of. A person who subjects
5 another person to sexual penetration, against the will of or
6 under conditions in which the perpetrator knows or should know
7 that the victim is mentally or physically incapable of
8 resisting or understanding the nature of his conduct is guilty
9 of sexual assault.

10 That is the elements for this particular case.
11 Certainly, within Washoe County, it was done willfully and
12 unlawfully. Those are the elements of the charge for this
13 particular proposed Indictment.

14 In addition, we have sent a certified letter to Frank
15 Milford Peck at his known address on October 31, 2006. At the
16 same time, we sent a copy of it certified mail to his
17 attorney. His attorney has contacted me and notified me he did
18 receive it. You are to make no inference whatsoever from the
19 fact that Mr. Peck or his attorney present or don't present any
20 evidence here today, that Mr. Peck does or does not testify
21 here today. You are to make no inference from that
22 whatsoever.

23 I believe we are ready to proceed with the first
24 witness. How many? Did you get ten exhibits?

1 A GRAND JUROR: Actually I got, 12.

2 MR. CLIFTON: One moment if I may. You are right.
3 We had ten photographs and we are down to 9. If you have 12
4 total, there is three paper documents here. There may be one
5 more photograph or else I took it out. All right. We'll see.
6 Either way right now we have 9 exhibits. There is a potential
7 of two more coming in. They are with my witness who has
8 custody of them. And because of the chain of control, I don't
9 want to lose that, so they will be coming in with that
10 particular witness. I don't know, we may have to have that
11 witness transfer the chain of custody to another witness as
12 that person testifies, or if we get enough foundation out of
13 it, I might be able to do it, have her keep the evidence.
14 Either way, there may be two more items coming in for
15 presentation this morning.

16 Are there any questions before beginning with the
17 first witness? All right, Madam Foreperson. If I may bring in
18 the first witness.

19 THE FOREMAN: Thank you.

20 (Whereupon the witness entered the Grand Jury room.)

21 MR. CLIFTON: You will have a seat right here.
22 Before you sit down, raise your right hand to be sworn.

23 THE FOREMAN: Thank you. Be seated please.

24 (Whereupon the witness was sworn by the Foreman.)

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CANDACE CHRISTINE INMAN

called as a witness having been first duly sworn by the Foreman testified as follows:

EXAMINATION

BY MR. CLIFTON:

Q Please tell us your name.

A Candace Christine Inman.

Q Spell your last name, please, for the record?

A I-N-M-A-N.

Q Are you currently a residence of Washoe County, Nevada?

A Yes, I am.

Q Do you understand you are currently in front of the Washoe County Grand Jury?

A I do.

Q Do you understand they are investigating a particular sexual assault occurring on or about August 9, 1994, here in Washoe County?

A I do.

Q Do you have information to provide to this Grand Jury in that regard?

A I do.

THE FOREMAN: Are you aware that the Grand Jury is

1 inquiring into evidence that you may have relating to charges
2 of sexual assault against Frank Milford Peck?

3 THE WITNESS: I do.

4 THE FOREMAN: Thank you.

5 BY MR. CLIFTON:

6 Q Ms. Inman, were you a resident of Washoe County back
7 in 1994 then?

8 A Yes.

9 Q Tell us your address at that time?

10 A It was Sullivan Lane, Stonegate Apartments.

11 Q 445 Sullllivan Lane?

12 A Yeah.

13 Q Would it have been Apartment #94, if you recall?

14 A Yes.

15 Q I know it is going back a long time.

16 A Yeah, it is.

17 Q At the time, were you living by yourself or with a
18 roommate?

19 A By myself.

20 Q Talking about August 9, 2004, do you remember
21 something that occurred on that particular date?

22 A Yes, I do.

23 Q Okay. That was very memorable to you?

24 A Very much so.

1 Q Were you at home when it occurred?

2 A Yes.

3 Q Can you tell us about what time, if you recall?

4 A I would say it was right after NYPD Blue. It was the
5 first time I ever watched it in my life.

6 Q The TV show?

7 A Yeah.

8 Q It was on at night?

9 A It came on a 10:00 o'clock. When it was over, that
10 is when I went to the bathroom and I was jumped.

11 Q Were you intending to go to bed at that time?

12 A Soon thereafter going to bed.

13 Q Were you making arrangements to go to bed with your
14 clothes, your lights, your bedding?

15 A I had turned off all the lights in the house except
16 for the light in the walk-in closet. There was a little bit of
17 light coming in from the window outside, but I know where the
18 bathroom is, so I didn't really need a light. And I had taken
19 all my clothes off except for my underwear.

20 Q Did you go to the bathroom? You have to answer out
21 loud?

22 A Yes.

23 Q I will give you a minute. Ms. Inman, are you able to
24 proceed?

1 A Yeah.

2 Q Okay. Can you tell us what you recall happening as
3 you went to the bathroom area of the home?

4 A When I sat down on the toilet, I was hit from
5 behind. Somebody grabbed me and forced me down on to the
6 floor.

7 Q You are sitting on the toilet. Do you know where the
8 hit came from, your right or left by any chance?

9 A Well, the shower curtain was here.

10 Q For the record, you are referring to the right?

11 A To the right-hand side. He grabbed me from behind
12 and threw me on to the floor.

13 Q So where did the person grabbing or hitting you come
14 from?

15 A Came from my right.

16 Q Okay. In the area of the shower curtain and/or
17 bathtub?

18 A Yeah.

19 Q Did you have any idea a person was in there when you
20 went to the bathroom?

21 A No.

22 Q At that time, did you let anyone in your house? Had
23 you known there was a second person in your house at all?

24 A No.

1 Q Took you totally by surprise?

2 A Oh.

3 Q Yes?

4 A Uh-huh.

5 Q Did this person hit you, grab you or both?

6 A He grabbed me by the face with both hands, and he
7 pushed me down on to the floor.

8 Q Go ahead?

9 A Then he forced me into the bedroom on the bed, and he
10 started trying to kiss me and lick me. And he smelled like
11 alcohol, but like he had taken a breath mint or something. At
12 first he wasn't erect, but then he did.

13 Q You are getting a little far ahead of me right now.
14 Just a second. You are just wearing your panties?

15 A (Witness nods head.)

16 Q Yes? You have to answer out loud?

17 A Yes, but he took them off.

18 Q Okay. We'll get to that. Did he carry you, drag you
19 or just kind of pull you out of the bedroom?

20 A He basically forced me kind of on the floor. He had
21 an elbow in my back kind of and was pushing me down, and I
22 didn't know. I mean I don't know where this guy came from or
23 what is going on. So he pushed me over to the bed, and I just
24 kept telling him, you know, just don't hurt me.

1 Q Did you have any idea who this person was at the time
2 from anything you could see or hear?

3 A No.

4 Q Now, you just told us what you said. Did he say
5 anything to you during this time?

6 A I don't think so.

7 Q He did get you to the bed, correct?

8 A Yeah.

9 Q Your panties are still on at this time?

10 A I don't really remember. He took them off at some
11 point.

12 Q So you are completely naked?

13 A Right.

14 Q What about him, what do you remember him wearing if
15 you could tell in this lighting?

16 A He had on--You know, I was trying to see who he was
17 because I couldn't figure out who it was, who had been there.
18 He had a T-shirt, but had it pulled back so it was like
19 Egyptian style over his head. He had no shirt on. And he had
20 shorts on. They were kind of like a dark color, kind of silky
21 or something like that. And he had on boots that came up almost
22 to his ankles like Army boots.

23 Q You mean boots above the ankle?

24 A Above the calf. Around the calf area. They came up

1 mid calf. I was trying to see as much as I could through the
2 light coming in the window.

3 Q Was there some type of light in a walk-in closet?

4 A When he was forcing me on the floor to the bedroom,
5 he turned around and hit that out.

6 Q Would you say you got a good look at his face or not?

7 A You know, I didn't get a bad look at his face because
8 there was a light coming in outside the bedroom window. There
9 is a post light out there. So there was some illuminescent
10 light. It wasn't like I was completely blind in the dark.

11 Q Could you tell if he was Caucasian, Asian, Black,
12 Hispanic?

13 A Yeah.

14 Q What?

15 A He was white. I couldn't determine too much until I
16 stood up. He was about my height, about 5'7". He wasn't a lot
17 bigger than I was. I mean he couldn't have been more than 140,
18 150 pounds. Looked like he hadn't really shaved for maybe a
19 day or two. He had a slight mustache, dark eyes. He wasn't a
20 big guy. I was, you know, at a point just trying to feel
21 around and trying to kind of find anything. And I felt on his
22 back a scar right about this area (indicating.) There was a
23 scar or something. So it would have been his left side. It
24 was my right. It wasn't really difficult.

1 He got to the front door. When I finally got him to
2 leave, he opened up the door the first time and the light shown
3 in on him, even though I was supposed to not be looking, so I
4 got a better look.

5 Q When you say you are not supposed to be looking, did
6 he try to be evasive or try to avoid being seen in the
7 lighting?

8 A Oh, yeah. When he finished, all I could think of the
9 whole time was who the heck is this, how did he get in my
10 apartment, and how am I going to get him to leave without
11 killing me. And so when he stopped, he sat down on the bed and
12 he asked me for a cigarette. And so I gave him a cigarette.
13 And I was trying to talk to him, because he was getting really
14 nervous. And I thought he's not going to leave. And so I gave
15 him a cigarette. And, finally, I was able to talk to him to
16 get him a little calmer, and I got him in between me and the
17 living room. There is a door. It is an automatic locking
18 door. If you open the door and close it, it automatically
19 locks. Well, he was standing there, and he made me turn
20 around, said don't look at me, don't look at me, don't look at
21 me. I thought, God, he has got to go. The phone is right
22 there. I have got to get to the phone. And he went toward the
23 door, and I finally convinced him it is okay, if you just
24 leave, I won't tell anybody. Just go. And he reached for the

1 door handle and he opened it up. Well, there is a light right
2 outside. It shown on him and he slammed the door. I thought
3 oh, my God, he's not going to leave. And so I said, look, I
4 will turn my back. I won't look at you, nothing, just go. And
5 he hesitated. He was sweating. He was pacing. And, finally,
6 he just grabbed the door and he went out. And I stood there
7 frozen for a minute. I am thinking I have got to get to the
8 phone. But he left the door open. I thought he is going to
9 come back in, he is going to come back in. Finally, I just
10 lunged and I slammed the door shut and I went to the phone and
11 called the police.

12 Q I let you go for a little bit there. You were doing
13 fine. We do have to go back to the assault, itself. Are you
14 composed?

15 A Yeah. Go ahead.

16 Q When he had you on the bed, you said you didn't
17 remember him saying much right?

18 A (Witness nods head.)

19 Q Did he sexually assault you?

20 A Yes.

21 Q You need to tell us how. What did he do?

22 A He was licking my face and my neck. He seemed like
23 he was trying to be like, I don't know, he was licking my
24 breasts. He went down between my legs. He came back up. And

1 like I said, at first he wasn't hard. In a way that almost
2 worried me, because I thought oh, great. And then he did
3 intercourse and he ejaculated.

4 Q Inside, do you recall?

5 A Yes.

6 Q Or outside?

7 A Inside.

8 Q Was there any conversation between him and you at
9 that time during the sexual assault, itself?

10 A No.

11 Q Do you remember any conversation--Before I get to
12 that, do you remember during the sexual assault, itself, trying
13 to remember features on him or make yourself try to find out
14 who it was?

15 A I was trying to. I would go back and forth between
16 trying to get control of what was going on. There was a phone,
17 you know. There was a vase there. And I kept kind of looking
18 at him, because I couldn't imagine that some strange person
19 would be in my house. And so when he wasn't really looking, I
20 was trying to look at him. And I was trying to feel him, touch
21 him, to see anything to give me some sort of an idea who this
22 person might be.

23 Q Did you see the mustache or feel it?

24 A Both.

1 Q The item you were mentioning on the back, you gave us
2 a description indicating it was your right hand that felt it?

3 A It was my right hand, because he was on top of me, so
4 when I ran my hand down that way (indicating.) Also at the same
5 time, I am trying to not aggravate him. So if I am touching
6 him, I am thinking I know this person somehow and trying to
7 make a connection. I can't explain it to you in a way that
8 makes sense. But just trying to live, so you just--

9 Q Were you afraid for your life?

10 A Well, yeah.

11 Q Did you ever see a weapon?

12 A I'm not certain. But it seemed that at some point he
13 had something in his boot.

14 Q You didn't see a gun or knife?

15 A I didn't see anything specific, and I wouldn't have
16 said gun. I would say if he had anything, it would have been
17 like a knife or sheath or something in his boot. That was just
18 a glance.

19 Q But you didn't see it?

20 A I didn't see anything absolutely positive. It was
21 just my sense and idea in a glance. I did see something.

22 Q My point is, were you afraid for your life because he
23 might have a weapon?

24 A I was afraid for my life anyway. It wouldn't matter.

1 Q Was he violent with you when this all began in the
2 bathroom?

3 A Yeah. He slammed me to the floor. He grabbed my
4 face, slammed me down on the floor, put his elbow in my back.
5 He forced me to crawl to the bed.

6 Q After he had sexual intercourse with you against your
7 will, I take it?

8 A (Witness nods head.) Yes.

9 Q It goes without saying. You have to answer out
10 loud. Yes?

11 A Yes.

12 Q You don't think you knew this person still to this
13 day do you? Are you familiar with this person or acquainted
14 with this person?

15 A I had never seen him before, had no clue who he was,
16 nothing.

17 Q And when you were feeling with your right hand, I
18 take it when he sexually is assaulting you against your will,
19 he's chest to chest?

20 A He was on top of me the whole time.

21 Q Chest to chest?

22 A Uh-huh.

23 Q You have kind of shown for the ladies and gentlemen
24 of the jury, you kind of ran your right hand down his side or

1 back?

2 A His back, his side. I reached up at one point--
3 Things come back to me. You have to remember this was a long
4 time ago. I almost tried to pull the T-shirt off, but I think
5 he stopped me. He got scared.

6 Q T-shirt that was over his head like a bandana?

7 A Yeah, because I couldn't see if he had long hair, if
8 he had short hair, but it was like down to the neck. I was
9 just trying to feel around. And so when I did this, I noticed,
10 wait a minute, there is a scar here on his back. And it was up
11 towards the shoulder blade area. So I know there was something
12 there. I didn't see anything at that time as to nothing that
13 would make me think I had ever seen this guy before.

14 Q Could you tell what color hair he had?

15 A He had darker hair.

16 Q Could you see that somehow around the T-shirt?

17 A Yeah, because the T-shirt, you, know and what he was
18 doing, it had kind of fallen back, and his hair didn't come out
19 the back of it. His hair was kind of short.

20 Q It did come out or didn't?

21 A Well, you could kind of see the edges of it from
22 where the T-shirt, if you pull a T-shirt and pull it back, it
23 kind of went like that. You could see around the edge of it.

24 Q The mustache, could you tell if it was blond, dark

1 what?

2 A Dark. It was dark.

3 Q After the sexual assault against your will and he
4 climaxed, ejaculated inside you, was there any conversation
5 after that?

6 A Yeah. I said to him, I was-- He was starting to
7 panic when he asked me for the cigarette, and I am thinking I
8 have just got to get him out of here. The phone is right
9 there, and I can't do anything. And so I just started talking
10 to him. I'm like I don't understand why you did this. And he
11 said, well, you would have never talked to me anyway. I said
12 well, you could have tried to talk to me. You could have
13 maybe. And he just got agitated. He got upset, and he just
14 kept pacing. There wasn't a lot of conversation except for me
15 telling him just go, I won't ever tell anybody. I won't ever
16 say anything. You know. I will turn my back. Just leave.

17 Q Was there any conversation having seen you around the
18 apartment or you seeing him ever before?

19 A No. I think he mentioned something about having seen
20 me, but I don't--I am not going to say something I am not
21 certain of. I don't know if he said where it was or if I said
22 where it was. There was partial conversation of he had seen
23 me. And that is why I said, well, then, why didn't you ever
24 talk to me? Why did you do this? That's what I said. And he

1 just said, well, you would have never talked to me anyway.

2 Q He's Caucasian, dark hair, dark mustache. Does he
3 speak good English?

4 A He didn't have an accent or anything.

5 Q You could understand him? He spoke normal?

6 A Spoke normal.

7 Q Did he smoke the cigarette?

8 A Yes.

9 Q So we know he's a smoker. He wasn't coughing or
10 anything while he was trying to smoke?

11 A No.

12 Q Smoked it normally?

13 A Yeah.

14 Q We know he has some type of scar or defect on his
15 right side?

16 A Yes.

17 Q Toward the back. You said around the shoulder blade
18 area?

19 A Yes.

20 Q All right. When he did finally leave and you slammed
21 the door, you made the call to 9-1-1?

22 A Yes.

23 Q Right away?

24 A Yes.

1 Q Did the police come out?

2 A Yes.

3 Q I am going to jump ahead a little bit now. Did you
4 have occasion to interview with the police and also go to the
5 hospital and complete a sexual assault exam?

6 A Immediately, yes.

7 Q Let me go through a few of our items of exhibits
8 here. Exhibit 2, do you recognize who that is?

9 A Yes.

10 Q Can you tell us?

11 A That's me.

12 Q Back in 1994?

13 A In 1994, yeah.

14 Q What is your year of birth?

15 A 1966.

16 Q Now, Exhibit 3, do you recognize yourself again?

17 A That's me, yes.

18 Q Do you notice a little ruler?

19 A Yes.

20 Q Do you remember why that was placed there?

21 A Because I told them that is where he had licked me
22 and kissed me. And so I wanted to make sure they would get a
23 DNA swab. They wanted to know everywhere he had touched me,
24 where there was liquid, anything on my body.

1 Q The left cheek area where the ruler is, did they take
2 a swab, gauze swab, some kind of sample?

3 A Yes.

4 Q And the sexual assault exam and kit, would that
5 include a vaginal swabbing?

6 A Yes.

7 Q Do you recall them doing that?

8 A Yes.

9 Q Now I am going to throw a couple names out to you.
10 If you don't recognize them, that is okay. Please only tell us
11 if you do think you recognize them. It is a long time ago.
12 Dr. DeAdolph do you recognize the name?

13 A Huh-uh.

14 Q Nurse Hackworth or nurse Diane?

15 A Nurse Diane, I would recognize the name.

16 Q Was she there at the time?

17 A She was there at the time. She was, yeah, she was
18 there in the room.

19 Q Detective Stout or Peggy.

20 A Peggy Stout, yeah.

21 Q You remember her too?

22 A Oh, yeah.

23 Q You probably had more follow-up with her than just in
24 the hospital, correct?

1 A Yeah.

2 Q Now, Exhibit 4, can you tell us what that is?

3 A That is the shower.

4 Q Your tub?

5 A The tub where he was standing in.

6 Q And do you see anything in there that was not there

7 before?

8 A Yes, footprints.

9 Q Not complete, but partial?

10 A Yeah. You can see the footprints in here. I wasn't

11 that dirty of a person. I did clean my shower. It is not me.

12 Q Exhibit number 5, what does this depict?

13 A That is the window that he came in that I didn't know

14 about until the ambulance was taking me outside.

15 Q How did you discover it?

16 A We were going by, and I looked over. At that time, I

17 had no clue how he had gotten into my apartment. And that is

18 how he got in.

19 Q What is this?

20 A That is my bedroom window.

21 Q What does it show?

22 A It shows a cut screen. This is a dresser. That is a

23 little--just little silk flowers.

24 Q This is the screen up here?

1 A That's the screen.

2 Q At least half of it?

3 A Half of it.

4 Q This other picture, Grand Jury Exhibit 6, another
5 picture of that window area, a little more general further
6 back?

7 A Yes.

8 Q Does it depict something else there that surprised
9 you?

10 A The chair.

11 Q Why?

12 A Because when I walk past my apartment I walk this way
13 to come around to my apartment door which is over here. I
14 walked right by that an hour before that happened, an hour, and
15 that was not there, and that screen was not cut, because if it
16 was, I would have never went in my house.

17 Q Now, going to Exhibit 7, do you recognize this
18 exhibit?

19 A I recognize that. That was the morning I gave them
20 my statement of his description, and they did a composite
21 sketch.

22 Q That would be on August 10th?

23 A August 10th, the next morning.

24 Q This is a computer sketch. Actually, you drew that

1 with an officer?

2 A Right.

3 Q On a computer?

4 A Uh-huh.

5 Q There is a type of bandana hat on this person. Do
6 you remember why that was?

7 A They couldn't come up with anything that matched like
8 a T-shirt, but they wanted to use something that would cover
9 the head the same way and still leave some hair coming out on
10 the edge so you could identify it. That is as close as they
11 could get to a T-shirt.

12 Q Eyebrows look about right?

13 A Right.

14 Q The mustache?

15 A (Witness nods head.)

16 Q The mouth?

17 A Yeah.

18 Q You are seeing this person in the ambient light from
19 this window because all other lights were out, correct?

20 A Yeah.

21 Q When he lit the cigarette, that was your cigarette, I
22 guess?

23 A Yes.

24 Q Did you give him a match or lighter?

1 A I gave him a lighter, and he took it from me. And
2 because he didn't want the light from the lighter to show him--

3 Q Don't say what he thought or was thinking. Tell me
4 what he did?

5 A He took it. He didn't want me to have a lighter.

6 Q How did he light the cigarette?

7 A He turned his back to me to light the cigarette in
8 the bedroom before stepping out into the living room.

9 Q When he did that, could you see his face with the
10 light from the lighter?

11 A No, because he was turned away from me.

12 Q So you didn't get--Did you or did you not get a look
13 directly at him face-to-face in good lighting?

14 A Not directly face-to-face in good light. The light
15 that I got, as you can see in the picture, this remained like
16 that. The light post outside is where I got the ambient light
17 from.

18 Q You are referring to Exhibit 5?

19 A Right. This was left open. Nobody had touched this,
20 so the light outside gave me enough ambient light for me to get
21 a basic visual of what he looked like.

22 Q You are referring to the curtain left like that?

23 A Right, being there was a light post out here.

24 Q Being that is your bedroom, the curtain is like that,

1 do you remember whether you left it like that or would you have
2 noticed?

3 A I would have noticed.

4 Q I am talking about when you were in your bedroom?

5 A I didn't notice.

6 Q Yes?

7 A I didn't.

8 Q Why?

9 A Here is this guy. I don't really know where the
10 light was coming from at the time. I just know he was there.
11 I don't know how he got in. I just know that, you know, I could
12 see the features. I was trying to concentrate on him not
13 killing me. I wasn't looking around the room.

14 Q Were you in your bedroom before you went to the
15 bathroom, do you know, that night?

16 A No. I came out of the living room right into the
17 bathroom. The bathroom was kitty-corner. I didn't go towards
18 the bed, towards the window. I didn't do anything. I went
19 straight into the bathroom.

20 Q Okay. So after the bathroom, he's taking you into
21 the bedroom, correct?

22 A Yeah.

23 Q Sexually assaulting you?

24 A Right.

1 Q Did you have any occasion before that to have seen
2 him?

3 A No.

4 Q The curtains weren't open like this?

5 A No.

6 Q All right. That is fine. Depending, of course when
7 he came in, you know, an hour or so?

8 A I know when he came in. NYPD Blue was on, because I
9 came home at 10:00 o'clock, and I went to bed at 11:00.

10 Q You were watching TV in the living room?

11 A I was watching TV in the living room which is back to
12 that wall, so there is no way for me to see behind me anyway.

13 Q I got you. You told the police he was 5'6", do you
14 remember that?

15 A Uh-huh.

16 Q How tall are you?

17 A 5'7".

18 Q You were saying--

19 A Well, and a quarter. Three quarters.

20 Q Just a minute ago you were saying that he was 5'6" to
21 the police, so approximately your height?

22 A Yeah, but a little bit shorter than me.

23 Q All right. Here today you just mentioned 5'7" a
24 little bit ago. What is your best memory, 5'6", little taller

1 than that, little shorter?

2 A What I was doing was measuring him against me.

3 Q This was after the sexual assault?

4 A After the sexual assault. When he stood up, I was
5 measuring him against me. I was trying to get everything I
6 could. He was not much bigger than I was.

7 Q Bigger height wise or weight?

8 A Bigger weight wise. Height wise he wasn't a lot
9 bigger than I was. He was about my height. When I say 5'7", I
10 would say he's 5'7".

11 Q You told the police 5'6", could it be 5'6"?

12 A Could be 5'6".

13 Q Could it be 5'8"?

14 A No.

15 Q So he was that close to your height?

16 A Yeah. He wasn't you know-- He didn't want me looking
17 directly at him. Anything I had to do I had to do like this
18 (indicating.) He wasn't any taller than that.

19 Q Did he keep his shoes on? I think you called them
20 boots. Did he keep them on?

21 A Yes.

22 Q When you are measuring his height to your height, you
23 are barefoot?

24 A Yes.

1 Q He has these kind of boots on?
2 A Like Army boots or something.
3 Q Okay. He's still no taller than you?
4 A No.
5 Q You said his build was kind of thin?
6 A He was kind of thin. He wasn't more than 140, 150
7 pounds. He wasn't big for a man.
8 Q How about his age?
9 A I would say he was, you know, somewhere between, I
10 would guess around 25, give or take a couple of years. He was
11 younger. I mean he probably wasn't much older than me.
12 Q Now, you were shown some photographic identification
13 to see if you could make, from your description, you could pick
14 any one out, if there was anyone you could recognize, right?
15 A Right.
16 Q That was about the time in August, '94?
17 A Yeah.
18 Q Did you pick anyone out?
19 A No.
20 Q You were shown another photographic lineup many, many
21 years later, correct?
22 A (Witness nods head.)
23 Q Do you remember when that was?
24 A About a year ago.

1 Q A while back, even from today's date, much after '94?

2 A Yeah.

3 Q Do you think you got a good enough look at him in
4 that ambient light to have even been able to pick him out of a
5 lineup? Were you willing to try for the police?

6 A I tried for the police to pick him up out of a lineup
7 with the pictures they presented me a year ago.

8 Q Back in '94 nobody knew who the suspect was, correct?

9 A Right.

10 Q Do you know if the right person was even in any of
11 those lineups?

12 A I wouldn't have known.

13 Q Again, a year or two ago, whenever this lineup was,
14 the police don't tell you he's in this lineup, right?

15 A Right.

16 Q They showed you a number of pictures, probably six?

17 A Right.

18 Q Were you able to see anyone in there that looked like
19 it could be the one that did the sexual assault?

20 A No.

21 Q To this day, you still have not seen this person?

22 A I have not seen a person.

23 Q Not picked him out of a lineup?

24 A No.

1 Q You don't know who he is or how he would have known
2 you that night?

3 A No.

4 Q Correct? All right.

5 MR. CLIFTON: I don't think I have any further
6 questions of Ms. Inman. Do the Grand Jurors have any
7 questions?

8 THE FOREMAN: The proceedings before the Grand Jury
9 are secret.

10 You may not disclose evidence presented to the Grand
11 Jury, any event occurring or statement made in the presence of
12 the Grand Jury, any information obtained by the Grand Jury or
13 the results of the investigation being made by the Grand Jury.

14 However, you may disclose the above information to
15 the District Attorney for use in the performance of his
16 duties.

17 You may also disclose your knowledge concerning the
18 proceedings when directed by a court in connection with
19 judicial proceedings or when otherwise permitted by the court
20 or to your own attorney.

21 The obligation of secrecy applies until the Court
22 allows the matter to become public record.

23 A gross misdemeanor and contempt of court may be
24 pursued if your obligation of secrecy is not followed. Do you

1 understand?

2 THE WITNESS: I do.

3 THE FOREMAN: Thank you.

4 MR. CLIFTON: Thank you.

5 (Witness excused.)

6 MR. CLIFTON: I will have her wait outside in case
7 there is any need of recall.

8 For the record, I am going to be bringing in the
9 evidence envelopes from the custodian of this evidence. It is
10 two envelopes and numerous chain of custody documents. I am
11 going to be bringing them in here. I am setting them on this
12 table to maintain the chain of custody since this custodian
13 cannot be in here during the testimony of this witness, if it
14 is okay with the ladies and gentlemen. We have to preserve
15 this. I would rather we don't leave it in deliberations here,
16 with the custodian and myself not being with the evidence, if
17 that is all right.

18 I would like to bring it in now with my evidence
19 custodian sitting right outside the door so we can have
20 testimony regarding these evidence items. All right?

21 THE FOREMAN: Please.

22 MR. CLIFTON: For the record, Linda Brown from the
23 Sparks Police Department has just handed these to me. She's
24 only about seven feet away. We have to close the door to

1 maintain the integrity of the Grand Jury proceeding. These are
2 going to be sitting right here while we go through this
3 testimony and the testimony of at least two more witnesses.
4 Okay.

5 (Whereupon another witness entered the Grand Jury room.)

6 MR. CLIFTON: Please state your full name.

7 THE WITNESS: Diane Hackworth.

8 THE FOREMAN: Mr. District Attorney, should we swear
9 her?

10 MR. CLIFTON: Yes. Go ahead, raise your right hand
11 and be sworn. Thank you very much.

12 THE FOREMAN: Thank you. Please be seated.

13 (Whereupon the witness was sworn by the Foreman.)

14

15

DIANE HACKWORTH

16

called as a witness having been first duly

17

sworn by the Foreman testified as follows:

18

19

EXAMINATION

20

BY MR. CLIFTON:

21

Q You better tell us your true name once again.

22

A Diane Hackworth?

23

Q Spell your last name.

24

A H-A-C-K-W-O-R-T-H.

1 Q Your present employment?

2 A Presently employed at Renown Rehabilitation Hospital.

3 Q In Washoe County?

4 A In Washoe County.

5 Q Are you currently aware that you are in front of the
6 Washoe County Grand Jury?

7 A Yes, I am.

8 Q Are you aware they are investigating a charge of
9 sexual assault against a Frank Peck?

10 A I was aware of the charge of sexual assault.

11 Q Did you receive a subpoena in this case?

12 A Yes, I did.

13 Q It may have had the notation State of Nevada against
14 Frank Peck at the top. You are aware they are investigating a
15 particular charge of sexual assault?

16 A Yes.

17 Q Do you have information stemming back as far as 1994
18 that may be helpful to this Grand Jury regarding the possible
19 sexual assault?

20 A I do.

21 THE FOREMAN: Are you aware the Grand Jury is
22 inquiring into evidence you may have relating to charges of
23 sexual assault against Frank Peck?

24 THE WITNESS: Yes.

1 BY MR. CLIFTON:

2 Q I want to direct your attention to 1994. Were you
3 employed during that year?

4 A Yes, I was.

5 Q More specifically, this would be August 10th of
6 1994. For the record, I accidentally stated the year as 2004.
7 I apologize. I think all references here are 1994.

8 In 1994, where were you working?

9 A I was working in the St. Mary's Regional Medical
10 Center emergency department.

11 Q What was your title?

12 A I was the manager of the Department.

13 Q What type of job did you do?

14 A I was accountable for the day-to-day operation of the
15 department, also available for on-call if the department got
16 busy and needed me to come in off hours and cover.

17 Q What is the extent of your education?

18 A I have a Bachelor of Nursing degree from the Orvis
19 School of Nursing at UNR and a Masters at Phoenix University.

20 Q Were you trained or specialized in anyway in doing
21 sexual assault kits for the County?

22 A I had been trained as an ER nurse in doing the sexual
23 assault kits, maintaining the chain of evidence.

24 Q Were you doing such in 1994, say in August?

1 A Yes.

2 Q I want to direct your attention now to a particular
3 case, August 10th of 1994. Going back a lot of years. There
4 is a particular individual by the name of Candace Inman who
5 preceded you in testifying here this afternoon. I don't know
6 whether you would recognize her or even her name at this time.
7 Would it be safe to say you could have been doing, in August
8 10, 1994, a sexual assault kit upon someone like her?

9 A Yes, it is possible.

10 Q You weren't doing exclusively children or anything
11 like that?

12 A No.

13 Q I want to show you a document. I guess to be safe
14 we'll go ahead and put a Grand Jury sticker on it, if I may.
15 Again, I have to maintain the integrity of these for further
16 testing by defense or any other lab or expert.

17 A That's my handwriting.

18 MR. CLIFTON: Before we get to that, let's get it
19 marked as the next in order which would be 13?

20 A GRAND JUROR: Yes.

21 BY MR. CLIFTON:

22 Q Grand Jury 13. Thank you very much. I want you to
23 look at that sexual assault evidence kit with a Grand Jury
24 sticker on top.

1 MR. CLIFTON: It was not placed over anything else;
2 is that correct?

3 A GRAND JUROR: Correct.

4 BY MR. CLIFTON:

5 Q Take a look and tell me if you recognize anything
6 contained on that?

7 A I recognize my handwriting, my name.

8 Q What type of things did you write?

9 A I filled out this entire examination requested by the
10 agency, the offense, the agency case number, the person that we
11 got the sample from, the date and time of the samples, the
12 location of the sample collection and who collected the
13 samples.

14 Q That would be you?

15 A That would be myself.

16 Q Does that mean you were actually doing the swabbing
17 or standing there while a doctor swabs, do you know?

18 A I stand there while the doctor swabs. We handle that
19 whole--The policy or the procedure was we handled the vaginal
20 swabs and the evidence and maintained the chain of evidence.

21 Q Okay. Who is the name of the person you were taking
22 the item from, according to your own handwriting?

23 A The samples were collected by myself.

24 Q I mean the victim.

1 A Victim, Candace Inman.

2 Q Candace Inman and the date?

3 A 8-10-94.

4 Q And the time?

5 A 01:00 in the morning.

6 Q Does this kit include a vaginal swab?

7 A Yes, it does.

8 Q If someone reports a sexual encounter including

9 normal sexual intercourse, penial to vagina and ejaculation

10 inside the vagina, would you normally take a swabbing?

11 A Yes, we always do.

12 Q For what purpose?

13 A For evidence later on, testing, being able to match a

14 sample to validate a rape took place.

15 Q Including possible semen samples?

16 A Yes.

17 Q Under the facts I just gave you?

18 A Yes.

19 Q Was it done in this case?

20 A Yes.

21 Q Can you tell from the writing on the outside?

22 A Yes.

23 Q Can you tell us that?

24 A Yes, I can.

1 Q How do we know that from looking at that?

2 A This patient was brought into what we call the pelvic
3 room. It is a room that has a gynecological table. We take
4 great care putting paper underneath the patient and the samples
5 are collected by brushing the pubic hair. The doctor inserts a
6 probe and is able to take swabs from certain areas collecting
7 evidence, you know, evidence of semen if some sort of sexual
8 assault would have taken place. We take saliva samples. We
9 take head hair, all types of body samples from all over,
10 collect it and hand it off to a police officer.

11 Q Specifically relating to the vaginal swab that was
12 done, that is with like a Q-tip, long stick swab?

13 A Yes.

14 Q More than one or two? Do you know how many samples
15 are taken?

16 A Generally, it is more than one. Generally it is
17 two.

18 Q What would you do with those after taking those
19 samples?

20 A They would be sealed in a container and signed off to
21 an officer.

22 Q Can you tell from the exterior of that Grand Jury
23 Exhibit 13 whether you took any gauze or Q-Tip swabbings on her
24 face based upon things she told you had happened to her?

1 A According to the envelope, we took a sample from her
2 skin.

3 Q That was on the face?

4 A Uh-huh. Yes, it was.

5 Q Okay. What is done with that sample?

6 A Same thing, it is collected, it is sealed and signed
7 off to the officer.

8 Q Do you know who that officer was by chance? Do you
9 recall 12 years or can you tell?

10 A I can tell from the envelope. Frankly, I recognized
11 her when I saw her. That would be officer Stout.

12 Q S-T-O-U-T?

13 A S-T-O-U-T.

14 Q And do you see her name there on the envelope?

15 A Yes, I do.

16 Q That is who you gave these exact samples to from the
17 vagina and face area of the victim?

18 A Yes.

19 MR. CLIFTON: Thank you. No further questions.

20 THE FOREMAN: Do the jurors have any questions?

21 The proceedings before the Grand Jury are secret.

22 You may not disclose evidence presented to the Grand Jury, any
23 event occurring or statement made in the presence of the Grand
24 Jury, any information obtained by the Grand Jury or the results

1 PEGGY STOUT

2 called as a witness having been first duly
3 sworn by the Foreman testified as follows:

4
5 EXAMINATION

6 BY MR. CLIFTON:

7 Q Tell us your name, please?

8 A My name is Peggy Stout.

9 Q Spell your last?

10 A S-T-O-U-T.

11 Q Are you aware that you are currently in front of the
12 Washoe County Grand Jury?

13 A Yes, I am.

14 Q Are you aware they are investigating a particular
15 sexual assault allegation from 1994 against a Frank Peck?

16 A I am now, yes.

17 Q Did you receive a subpoena in this regard?

18 A Yes, I did.

19 THE FOREMAN: Are you aware that the Grand Jury is
20 inquiring into evidence you may have relating to charges of
21 sexual assault against Frank Peck?

22 THE WITNESS: Yes, I am.

23 THE FOREMAN: Thank you.

24 ///

1 BY MR. CLIFTON:

2 Q What is your current employment or occupation?

3 A I am retired.

4 Q What was it before you retired?

5 A I was an investigator for the City Attorney's Office.

6 Q Before that?

7 A I was retired again.

8 Q Before your first retirement?

9 A I did miscellaneous jobs with Kelly. In between
10 time, I also worked as a police officer for the City of Sparks.

11 Q Did that include the year 1994?

12 A Yes, it did.

13 Q Directing your attention to August 10, 1994, were you
14 employed as such at that time?

15 A Yes, I was.

16 Q What was your title?

17 A As a police officer.

18 Q Did you get involved in collecting evidence or
19 personally become involved in sexual assault kits back in
20 1994?

21 A Yes, I was.

22 Q In particular case, 94-9292 involving a Candace
23 Inman, I-N-M-A-N? I know it is a long time ago. Can you tell
24 me if you had occasion, based upon your subpoena, to even look

1 up any reports to see if you were involved in that particular
2 matter?

3 A I was. I got a copy of the report with me.

4 Q Is that the case number, 94-9292?

5 A Yes, it is.

6 Q Is that the victim's name, Candace Inman?

7 A Yes, it is.

8 Q Were you working it August 10, 1994?

9 A Yes, I was. August 9th, actually 9th and 10th.

10 Q Were you involved in obtaining evidence pursuant to a
11 sexual assault or rape kit that may have been obtained from
12 Ms. Inman?

13 A Yes, I was.

14 Q Do you know by standard practice what you
15 particularly did in this case, if you can recall, how you
16 obtained the evidence or how it is obtained, that is taken from
17 Ms. Inman?

18 A Was I or did you ask--I am sorry.

19 Q Do you know if you were involved in actually taking
20 evidence in this case that was taken from Candace Inman in a
21 sexual assault exam? I am not talking just her clothing, I am
22 talking about the actual swabs?

23 A Yes.

24 Q Do you remember either in your normal procedures back

1 in 1994 or this particular case particularly how you would be
2 taking that? You don't actually do the swabbing?

3 A No, I don't.

4 Q Who would you normally get the swabs from?

5 A I would take it from the person in the examination
6 room.

7 Q Do you know a person by the name of doctor--nurse
8 Diane Hackworth?

9 A From my report, I know her, and I saw her out there
10 and recognized her.

11 Q She just preceded you in testimony today?

12 A Right.

13 Q Do you know from your report or from your
14 recollection whether or not you took evidence from her on that
15 date?

16 A Yes, I did.

17 Q Let's go ahead and look at Grand Jury Exhibit 13. I
18 want to show this to you. This is a sexual assault evidence
19 kit. Do you recognize that particular type of kit or envelope?

20 A Yes.

21 Q Does it look familiar with things you used in 1994?

22 A Yes, it is.

23 Q Do you recognize your signature or writing on there
24 anywhere?

1 A Yes, I do.

2 Q Can you tell me what it indicates you did?

3 A If I go to the officer's check list, may I use that?

4 Q Sure?

5 A It asked if I collected debris. I said no.

6 Underpants, no. Stains on the skin, yes. Oral swabs and
7 smear, no. Envelope five, vaginal or penal swabs or smears?
8 Yes.

9 Q That is far enough as you need to go. That means you
10 actually obtained these things from somebody like a nurse?

11 A Right.

12 Q Because you don't swab even the face of a victim?

13 A No, I wouldn't.

14 Q You wouldn't have done it in this case?

15 A I don't remember doing it, no.

16 Q Standard protocol?

17 A No, I don't.

18 Q When you sign off on this, does that mean you observe
19 the nurse doing it or you stand off to the side?

20 A I am present in the room while the nurse does it,
21 then she hands it to me. I place them in the envelope then on
22 into evidence.

23 Q That is standard protocol?

24 A That is standard protocol.

1 Q As far as you can tell, was that done in this case?

2 A Yes, it was.

3 Q What do you do with these evidence items?

4 A Then I collect these items, put them in an envelope,
5 take them to Sparks Police Department and log them into
6 evidence.

7 Q In an envelope like this?

8 A Yes.

9 Q And as far as you can tell, is that what happened in
10 this case?

11 A Yes.

12 Q When you log them into evidence, for what purpose?
13 What happens to them there?

14 A It is called the chain of custody. I take them to
15 the Police Department, then I secure them. They have not left
16 my sight. I take them into the evidence locker. I don't do
17 anything with them after that except place them in evidence,
18 then the evidence technician takes them from there.

19 Q What if we wanted to test them or do something with
20 the crime lab? What is the standard procedure?

21 A Standard procedure is the evidence technician would
22 be responsible for transporting and logging them.

23 Q All right. So nothing unusual from what you can see
24 on this sexual assault evidence kit, correct?

1 A No.

2 Q All right. We don't really want to get into them.
3 They are sealed. We are going to leave them that way. As far
4 as you know, you put these items say from the facial swabbing
5 or gauze type rubbing of the victim's face and also the vaginal
6 swabs into this evidence kit for further testing or evidentiary
7 use or comparison?

8 A That's correct.

9 Q They are maintained in a secured area where?

10 A We take them--From our possession, we take them to
11 the evidence at the Police Department.

12 Q It is secured?

13 A Secured environment, right. It is locked and
14 secured.

15 MR. CLIFTON: Thank you. No further questions.

16 THE FOREMAN: Do the jurors have any questions?

17 The proceedings before the Grand Jury are secret.

18 You may not disclose evidence presented to the Grand Jury, any
19 event occurring or statement made in the presence of the Grand
20 Jury, any information obtained by the Grand Jury or the results
21 of the investigation being made by the Grand Jury.

22 However, you may disclose the above information to
23 the District Attorney for use in the performance of his duties.

24 You may also disclose your knowledge concerning the

1 proceedings when directed by a court in connection with
2 judicial proceedings or when otherwise permitted by the court
3 or to your own attorney.

4 The obligation of secrecy applies until the Court
5 allows the matter to become public record.

6 A gross misdemeanor and contempt of court may be
7 pursued if your obligation of secrecy is not followed. Do you
8 understand?

9 THE WITNESS: Yes, I do.

10 THE FOREMAN: Thank you.

11 MR. CLIFTON: If I may, I have one more line of
12 questioning, very short.

13 BY MR. CLIFTON:

14 Q I would remind the witness of the same admonition,
15 please. You are under oath. Do you see the number R04-014?

16 A Yes, I do.

17 Q Is that a number placed on this sexual assault kit?

18 A Yes, it is.

19 Q PS-1 or PS0-1, are those numbers you would use to
20 identify items?

21 A That's correct. As we collect evidence, we put our
22 initials and the number on the evidence that we collect.

23 Q Do you know in this particular case PS-01 what that
24 refers to?

1 A That is--I don't know if it was clothing or the kit.
2 I don't know which one it is.

3 Q Okay. Would you have to open it up to look at that?

4 A I would probably have to do that or refer to the
5 report.

6 Q Go ahead and refer to the report. Let's do it that
7 way before we have to open it. If need be, we will open it and
8 just put it on the record.

9 A All right. Okay. PS-1, if I may--

10 Q Could it also be called 01?

11 A Could be 01. This is a taped report, and we have a
12 clerk that transcribes in the Information. If we put PS-1,
13 they would not put the 0 in front of it, normally.

14 Q Do you have a zero?

15 A I have PS-1 on this one.

16 Q Go ahead.

17 A PS-1 is indicated as sexual assault evidence kit
18 R04-014. PS-2 sexual assault kit again with the envelope with
19 blood sample. Then it has a PS-3 which is a bag containing the
20 victim's clothes, pair of sweat pants and top. They were put
21 on the victim immediately after the assault.

22 Q I want to refer specifically to PS-1 or 01 meaning
23 the same thing, would that be contained in kit R04-014?

24 A Right.

1 MR. CLIFTON: That is good enough. Any questions
2 from that ladies and gentlemen? The same admonition applies.

3 THE FOREMAN: Thank you.

4 THE WITNESS: Thank you

5 (Witness Excused.)

6 (Whereupon another witness entered the Grand Jury room.)

7 MR. CLIFTON: Please stand, raise your right hand and
8 be sworn.

9 THE FOREMAN: Thank you. Please be seated.

10 (Whereupon the witness was sworn by the Foreman.)

11

12 STEVE FIORI

13 called as a witness having been first duly
14 sworn by the Foreman testified as follows:

15

16 EXAMINATION

17 BY MR. CLIFTON:

18 Q Have a seat. Tell us your full name please?

19 A My name is Steve Fiori.

20 Q Spell it?

21 A Last name spelled F-I-O-R-E. I work for the Sparks
22 Police Department. I have been there for 15 years, and I am
23 currently assigned to the Detective Division.

24 Q Are you aware you are in front of the Washoe County

1 Grand Jury?

2 A Yes, I am.

3 Q Are you aware the Grand Jury is involved in
4 investigating the possibility of an Indictment against Frank
5 Peck for sexual assault?

6 A Yes, I am aware.

7 Q Were you involved in that particular investigation?

8 A Yes, I was.

9 THE FOREMAN: Are you aware that the Grand Jury is
10 inquiring into evidence you may have relating to charges of
11 sexual assault against Frank Peck?

12 THE WITNESS: Yes, I am aware of that.

13 BY MR. CLIFTON:

14 Q Thank you. What is your current assignment?

15 A I currently work in the Detective Division in the
16 family crimes unit which covers domestic violence, sexual
17 assault, child abuse, those types of crimes.

18 Q Have you had occasion to inherit a case number
19 94-9292 for further investigative efforts?

20 A Yes, I have.

21 Q Would that be involving Frank Peck for sexual assault
22 allegations?

23 A Yes, it is.

24 Q Candace Inman as the victim?

1 A Yes.

2 Q 1994 case?

3 A Yes, it is.

4 Q Do you understand Detective Sam Neuharth, officer
5 Peggy Stout, detective Greta Fye who is now sergeant have also
6 worked on this case?

7 A That's correct, yes, sir.

8 Q Have you worked in connection with some or all of
9 them?

10 A With all of them, yes.

11 Q Directing your attention now to an exhibit that
12 should be in front of you here somewhere. My fault for moving
13 them. I think I moved these items when the victim was
14 testifying so she wouldn't be viewing these. Exhibit 8, are
15 you familiar with that?

16 A Yes, I am.

17 Q Who does that depict?

18 A That is a photograph of Frank Peck.

19 Q Do you know his date of the birth?

20 A March of 1962. I don't know the exact date.

21 Q Could it be March 2nd?

22 A Yes, probably.

23 Q 1962?

24 A Right.

1 Q That is good enough for me. This photograph, are you
2 aware it was taken in 1996, are you aware of that?

3 A Yes, I am.

4 Q The crime, itself, or alleged crime in this case is
5 1994 August, correct?

6 A That's correct.

7 Q So a couple years later. And then when did you have
8 occasion to see Mr. Peck involved in this particular
9 investigation would you say?

10 A Not till 2004.

11 Q All right. In 2004 when you saw him, would you say
12 he was 140 pounds, 150 pounds heavier?

13 A Heavier.

14 Q In 1996 are you aware of this particular photo and
15 his approximate weight being a little higher than 150 at that
16 time?

17 A I think it was higher if I remember correctly, yes,
18 sir.

19 Q I don't want to get you too involved in his
20 description. At that time, you hadn't seen him in 1996?

21 A No, I never did.

22 Q You are aware in this particular case Candace Inman
23 identified him being slighter, probably 140, 150?

24 A 150, yes, sir.

1 Q This particular picture he is heavier, 1996?

2 A Correct.

3 Q 2004, maybe even in 2005 when you have seen him, in
4 other words, 2004, he's even heavier?

5 A That's correct.

6 Q Showing you Exhibit 9, do you recognize who that is?

7 A Yes, I do.

8 Q Who is that?

9 A That is Frank Peck.

10 Q At a later date than in 1996?

11 A That would be 2005.

12 Q Exhibit 9. So he has gained even more weight?

13 A Yes.

14 Q And when you saw him, was that pursuant to a seizure
15 order?

16 A That's correct.

17 Q From a Judge that issued it to be executed upon
18 Mr. Peck?

19 A That's correct, yes, sir.

20 Q Let's stick with the 2005 date. Do you recall
21 executing that seizure order upon him in December of 2005 or
22 thereabout?

23 A It was December 2005, yes, sir.

24 Q And Exhibit 10, do you remember this?

1 A Yes, I do.

2 Q What does that depict?

3 A We were taking some measurements of him from the
4 seizure order. We were allowed to do that per the order.

5 Q This particular one, Exhibit 10, is trying to
6 identify his height, correct?

7 A That's correct.

8 Q How tall are you?

9 A I am 5'10".

10 Q Your head is off the picture there; is that correct?

11 A That's correct.

12 Q Little bit taller than Mr. Peck?

13 A Yes, I am.

14 Q But the actual tape measure there on the wall, do you
15 see it?

16 A Yes, I do.

17 Q It is hard to read from this one, but does that
18 indicate he's approximately 5'7", maybe a tad taller than
19 5'7"?

20 A Yes, just right at 5'7" or a little above.

21 Q That was your notebook pad, whatever you put on the
22 top of his head?

23 A Like a paper folder pad we use.

24 Q Did you put it flat?

1 A Yes.

2 Q Didn't try to tilt it either way?

3 A No.

4 Q Trying to get an accurate measurement pursuant to the
5 seizure order?

6 A Correct.

7 Q He is at around 5'7", maybe a hair taller?

8 A Right.

9 Q 5'7" and a half even. Was he wearing shoes, do you
10 remember?

11 A Yes, I remember he was.

12 Q Actually in the picture?

13 A He's wearing shoes.

14 Q He has shoes on there?

15 A Yes.

16 Q Were photographs taken of Mr. Peck?

17 A Yes, they were. Again, that was part of the seizure
18 order that we take photographs.

19 Q Were photographs taken of his back or left side
20 area?

21 A Yes, they were.

22 Q Was there anything there of relevance to this
23 particular investigation?

24 A From the very beginning of the investigation, long

1 before I was involved, there was a mention that he had some
2 kind of a mark or something that stood off from his skin that
3 was noticeable, and that the victim felt, and that is what we
4 were trying to see if we could find that mark.

5 Q Was there a mark?

6 A Yes, there was.

7 Q She called it a scar. What kind of mark are you
8 seeing?

9 A I am thinking it is more like a mole is what I
10 pictured it as.

11 Q If it was dark, there was no lighting at all, would
12 that be something that could be felt?

13 A Yes.

14 Q In your opinion?

15 A Yes.

16 Q Is it indented or does it protrude?

17 A Protrudes.

18 Q Where about is it on his person? This is Exhibit
19 11. I will show you this.

20 A It is on his I believe left side below his armpit.
21 Is that the left side?

22 Q More toward the back or more toward the front?

23 A More toward the front. Yeah, I would say I guess
24 more toward the front. His side is the way I would describe

1 it.

2 Q Fine with me. Exhibit 12, is that a close-up picture
3 of the same--

4 A Yes.

5 Q -- item, I believe you described it as a mole?

6 A As a mole.

7 Q That is something you were looking to see if he had
8 on his person because of why?

9 A Like I say, from the original report.

10 Q From the victim?

11 A From the victim describing feeling that particular
12 thing on him.

13 Q I see. Now this type of evidence, who retrieves it
14 or takes custody of it while you are there to take photographs
15 and retrieve any evidence pursuant to a seizure order?

16 A We had an evidence technician from our evidence
17 department that was there to take the photographs and collect
18 the evidence.

19 Q Who is that?

20 A Linda Brown is her name.

21 Q Did she bring the items with her today pursuant to a
22 subpoena request?

23 A Yes, she did.

24 Q Would that include what we refer to as a buccal swab

1 of the interior of his right cheek?

2 A Yes, it would.

3 Q Were you there when she took that sample?

4 A Yes, I was.

5 Q We have her here outside?

6 A That's correct.

7 Q We are going to bring her in. Who else was there
8 with you?

9 A Sergeant Fye was there with us and you were there.

10 Q Fye being Greta Fye?

11 A Greta Fye.

12 Q Was she involved in this case directly before you,
13 she actually passed the case on to you when she became a
14 sergeant?

15 A Exactly. She became a sergeant, no longer working
16 this case, so then I took it over.

17 MR. CLIFTON: I don't believe I have any further
18 questions.

19 THE FOREMAN: Do the jurors have questions?

20 A GRAND JUROR: I have a question of either of you.
21 What is a seizure?

22 BY MR. CLIFTON:

23 Q Seizure order. Go ahead, detective?

24 A When we want to obtain photographs, DNA evidence,

1 certain items from you or anybody here, we have to go before a
2 court and we have to say that we have a reason for doing this.
3 We call it probable cause to believe that this person has
4 something that relates to our case, whether it be, like I say,
5 DNA or a photograph or a mole or something. We can't just go
6 up to you and take it away from you.

7 We have the Court issue us a seizure order which
8 means we can go ahead and take it from you, because there is
9 evidence that relates to a case.

10 Q With my assistance, did you do that in this case?

11 A Yes, we did.

12 Q What Judge did you go to to get this permission?

13 A The Judge was in Carson City, and I can't think of
14 his name. Sorry.

15 Q William Maddox?

16 A Judge Maddox.

17 Q M-A-D-D-O-X?

18 A Correct, yes, sir.

19 Q You went to him for the authorization to collect
20 these items from Mr. Peck?

21 A Yes, I did.

22 Q Which included the swabbing of his cheek?

23 A That's correct.

24 Q The photograph of his person?

1 A Photographs.

2 Q And his height measurement?

3 A Yes, sir.

4 Q Could you see that he had gained weight since
5 previous pictures you had of him?

6 A Most definitely.

7 Q You didn't take a weight?

8 A We didn't weigh him.

9 Q All right.

10 MR. CLIFTON: I will do the rest with Linda Brown.

11 Any other questions?

12 A GRAND JUROR: So you said the seizure order is
13 based on some form of evidence?

14 THE WITNESS: Right.

15 A GRAND JUROR: What was the form of evidence?

16 MR. CLIFTON: I am going to let him answer. We will
17 be careful here, only let him go so far, Rene Romero is going
18 to be here with her testimony, because of possible hearsay

19 BY MR. CLIFTON:

20 Q Are you aware, detective Fiori, there was a hit, in
21 other words, a DNA presumptive match of a sample from our
22 victim, some type of DNA sample from our victim from the sexual
23 assault kit and a particular person?

24 A Yes, I was aware of that.

1 Q Are you aware that hit on that person identified the
2 match to a Frank Peck?

3 A That is correct.

4 Q Are you aware that was in approximately 2003?

5 A Yes.

6 MR. CLIFTON: The rest I will do with Renee Romero.
7 Does that answer your question?

8 A GRAND JUROR: Yes. Is that what you used for the
9 probable cause when you went down and applied for the seizure
10 order to District Court Judge William Maddox?

11 THE WITNESS: Yes, it definitely was a reason for our
12 seizure order, correct.

13 A GRAND JUROR: Just for my recollection, was it in
14 2004 that you requested the seizure order?

15 THE WITNESS: It was December of 2005.

16 MR. CLIFTON: Just to be fair ladies and gentlemen,
17 there were two. There was one in 2004 and one in 2005.

18 BY MR. CLIFTON:

19 Q Are you aware of that, detective?

20 A Yes, I am.

21 Q They were both in December, two separate ones. The
22 first being from Judge Elliott?

23 A Judge Elliott from Washoe County.

24 Q Then we did a second one from Judge Maddox?

1 A From Judge Maddox. They are a year apart.

2 A GRAND JUROR: May I continue to follow-up on the
3 jurors' question? The seizure order from Judge Maddox, was
4 that based on what you call I believe a hit, was that based on
5 the 2003 hit or the seizure from 2004 based on the 2003 hit?

6 BY MR. CLIFTON:

7 Q Both, is that correct, detective. Both based on the
8 same evidence?

9 A GRAND JUROR: There are two seizure orders based on
10 one hit or two hits?

11 MR. CLIFTON: Based on one hit, one presumptive hit.
12 It is not truly evidence we are going to provide to you today,
13 because we are going right to the seizure order, then we
14 compare the evidence from that seizure order to the original
15 sample. The hit was just a presumptive hit, something that let
16 us know, hey, you want to go further, get more evidence. You
17 want to go further and confirm. I don't want that hit to mean
18 to you, ladies and gentlemen, he's guilty of anything. It just
19 means it was a hit, suggested there may be probable cause to go
20 further in this case.

21 BY MR. CLIFTON:

22 Q Is that correct?

23 A That's correct.

24 MR. CLIFTON: Is that understandable to everyone? I

1 don't want you to use that hit against him at this point.
2 We'll go further in the evidence with Renee Romero who is with
3 the Crime Lab.

4 THE FOREMAN: Okay.

5 The proceedings before the Grand Jury are secret.
6 You may not disclose evidence presented to the Grand Jury, any
7 event occurring or statement made in the presence of the Grand
8 Jury, any information obtained by the Grand Jury or the results
9 of the investigation being made by the Grand Jury.

10 However, you may disclose the above information to
11 the District Attorney for use in the performance of his
12 duties.

13 You may also disclose your knowledge concerning the
14 proceedings when directed by a court in connection with
15 judicial proceedings or when otherwise permitted by the court
16 or to your own attorney.

17 The obligation of secrecy applies until the Court
18 allows the matter to become public record.

19 A gross misdemeanor and contempt of court may be
20 pursued if your obligation of secrecy is not followed. Do you
21 understand?

22 THE WITNESS: Yes, I do.

23 THE FOREMAN: Thank you.

24 (Witness Excused.)

1 (Whereupon another witness entered the Grand Jury room.)

2 MR. CLIFTON: You are going to be standing here,
3 raise your right hand.

4 THE FOREMAN: Thank you. Please be seated.

5 (Whereupon the witness was sworn by the Foreman.)

6

7 LINDA BROWN

8 called as a witness having been first duly
9 sworn by the Foreman testified as follows:

10

11

EXAMINATION

12

BY MR. CLIFTON:

13

Q Please state your full name?

14

A Linda brown.

15

Q Are you currently a resident of this county?

16

A Yes.

17

Q Are you aware you are in front of the Washoe County

18

Grand Jury?

19

A Yes, sir.

20

Q Are you aware that they are investigating an

21

allegation of sexual assault against Frank Peck?

22

A Yes, sir.

23

Q Do you have information regarding this particular

24

individual that you feel could be helpful to this

1 investigation?

2 A Yes, sir.

3 THE FOREMAN: Are you aware that the Grand Jury's
4 inquiring into evidence you may have relating to charges of
5 sexual assault against Frank Peck?

6 THE WITNESS: Yes, ma'am.

7 THE FOREMAN: Thank you.

8 BY MR. CLIFTON:

9 Q I don't know if I had you spell your last name?

10 A No. B-R-O-W-N.

11 Q Your occupation?

12 A I am a property and evidence technician for the
13 Sparks Police Department.

14 Q How long have you been so employed?

15 A I have been with Sparks PD, this is my 19th year.
16 Evidence, this is my 12th year.

17 Q Going back to 1994, were you involved in the evidence
18 custody or evidence possibly even that far back?

19 A I was not in evidence at that time, no.

20 Q When did you start in evidence?

21 A In October of 1995.

22 Q Okay. Directing your attention to a particular case,
23 94-9292, do you know if you had any occasion to become involved
24 in that particular investigation of a Frank Peck?

1 A Yes, I have.

2 Q Does that sound like the case number?

3 A It is the correct case number.

4 Q Is it true you were not involved as an officer or
5 evidence custodian or anyone else working for Sparks PD back in
6 '94?

7 A No, I did not do any of this in '94.

8 Q Did you get involved in this case say in 2004, 2005?

9 A Yes.

10 Q Were you working on it then?

11 A Yes, sir, I did.

12 Q Directing your attention to particular seizures
13 orders, do you know if you were involved in obtaining evidence
14 from a Frank Peck pursuant to seizure orders issued by District
15 Court judges here in Washoe County?

16 A Yes, I was.

17 Q In both 2004 and 2005 do you know?

18 A No. In 2005 it was a separate court.

19 Q Out of Carson City?

20 A Carson City.

21 Q Thank you. You are right. That would be Judge
22 Maddox?

23 A Judge Maddox, yes.

24 Q Here in 2004 it was Judge Elliott?

1 A I don't recall the judge.

2 Q Washoe County Judge?

3 A Uh-huh.

4 Q Were you involved in the collection and seizure of
5 that evidence from Frank Peck?

6 A Yes, I was.

7 Q When you executed the seizure orders on Frank Peck,
8 did it include things like photography?

9 A Yes, it did.

10 Q Did it include things like getting swabs from his
11 mouth?

12 A Yes, it did.

13 Q Do you know what the relevance of that was?

14 A I understood that we had had a potential match with
15 his DNA.

16 Q What is the relevance of taking the swab?

17 A The swab was to do the comparison as a reference
18 standard.

19 Q Even more particular, how do you get DNA is what I am
20 getting at?

21 A Basically we use a sterile swab stick with cotton on
22 the end, rub the inside of their mouth with it. The tissue in
23 there is very pliable. It comes in very, I am looking for the
24 word, it is very useful in finding the DNA.

1 Q It doesn't hurt, does it?

2 A No, totally painless.

3 Q You are not scraping off hundreds of layers of skin
4 making him bleed?

5 A Absolutely not.

6 Q It is done with like a Q-Tip?

7 A Like a long Q-Tip, yes.

8 Q Called a buccal swab?

9 A That is the medical term for the inside of the mouth
10 is buccal.

11 Q Did you have occasion to take these samples of Frank
12 Peck?

13 A Yes, I did.

14 Q In both 2004 and 2005?

15 A Yes, sir.

16 Q What do you do with those samples?

17 A We box them in a sterile box, then they are sent to
18 the Washoe County Crime Lab where they extract DNA from the
19 swab.

20 Q So you are the evidence collector, and then you book
21 it in?

22 A I bring it back to my department, book it in, then do
23 the paperwork that is necessary and transport it to the lab.

24 Q Describe the security procedures on that once you

1 book it and take the swabs?

2 A Once, it is booked in, it is given a location for
3 where we can you usually find it when we need to, and then it
4 is logged each time we move it. Whether it is checked out by
5 someone, not necessarily the swabs, any evidence that is
6 checked out we have what is called the chain of custody. It
7 shows where it has been, where it is going, when it has come
8 back, who handled it.

9 Q Starting with taking it from Mr. Peck in say 2004,
10 2005, were they taken in Carson City?

11 A They were taken in Carson City. I took them.

12 Q And other than you, did anybody else bring them back
13 to the evidence locker?

14 A No. In my custody the whole time.

15 Q You filled out documentation to show that?

16 A Absolutely. What we call that an evidence tag.

17 Q Do you give those some type of numbers or identifying
18 features so we know right now if we look it is yours?

19 A My identifier is my initials which are LB, and a
20 number is assigned to the item we collect in the sequence we
21 collect the item in.

22 Q Well, let's go to 2005. Do you have the kit here
23 with you today?

24 A There is a sexual assault kit which I did not

1 collect, and a blood kit.

2 Q Let's put those aside?

3 A This item is the swabs that I collected from Frank
4 Peck.

5 Q The first thing put aside here, were these maintained
6 in evidence? Did you bring them with you?

7 A Yes, I did bring them with me.

8 Q You brought them from where?

9 A I bought them from the evidence vault.

10 Q Under this case number?

11 A Under this case number yes, requested by me.

12 Q By you? Do they show a--maintain a chain of custody
13 on those?

14 A Yes, they do. They show they have been in the
15 evidence, where they have gone, they were collected from the
16 victim in this case, booked into evidence. They have gone to
17 the lab. They have been tested by lab personnel who signed for
18 them, and they have been returned.

19 Q That is fine. You brought them with you here today?

20 A Today.

21 Q I sincerely apologize for taking these out of your
22 possession. I normally would not do that. You are not allowed
23 to be in here when others testify to identify this.

24 A Yes.

1 Q I promise in front of all these people we did not
2 open any of these envelopes, does that help?

3 A I can tell.

4 Q We also did not write on these in any way or disturb
5 them in any way?

6 A Doesn't appear so, no.

7 Q I know your protocol is not to let these out of your
8 sight. I sincerely apologize.

9 MR. CLIFTON: If we could have this marked as the
10 next and put a Grand Jury Exhibit on that. You put it on the
11 envelope. Thank you for doing that. That is number what?

12 A GRAND JUROR: 14.

13 BY MR. CLIFTON:

14 Q Grand Jury Exhibit 14, you can start talking about
15 that one.

16 A It has my identifier of LB-3. This was the third
17 item I had collected in the course of working on this case. So
18 LB-3 was collected, buckle swabs from a Frank M. Peck, and I
19 have listed date of birth, Social Security number, state ID
20 number.

21 Q What is the date of birth?

22 A 3-2 of 1962.

23 Q Okay. Were you also present when his height was
24 measured there?

1 A Yes, I was photographing him.

2 Q Photographing with the camera held about nose-eye
3 level?

4 A Eye level.

5 Q You are how tall?

6 A 5'4".

7 Q All right. So you are looking slightly at a angle at
8 the top of, toward the top of Mr. Peck. He is a little taller
9 than you?

10 A Yeah.

11 Q What was his height?

12 A About 5'7", 5'8".

13 Q Okay. Go ahead then. I am sorry to take you off
14 track. LB-3 is the buckle swabs?

15 A Buckle swabs collected. The date is 12-13 of '05.

16 Q Do you know what LB-1 and LB-2 would have been?

17 A LB-1 I believe is also some buckle swabs. LB-2 I
18 have to cogitate on, but fingerprints I believe I collected.

19 Q LB-3 is the buccal swabs from December '05?

20 A Uh-huh.

21 Q Those are the ones sent up for further testing and
22 comparison?

23 A Yes, sir.

24 Q Can you tell if those have been sent up for further

1 comparison and testing?

2 A Well, I have the chain of custody showing they were
3 transferred to the Crime Lab, signed by the evidence
4 technician, evidence custodians up there and checked out by the
5 lab personnel and then returned to us, and the different dates
6 that happened. Also, there is more information on here where
7 they have indicated that they have done some work here.

8 Q I apologize. Digressing again, were you present
9 taking photographs when a mole was found on his left side
10 area?

11 A Yes, sir.

12 Q How would you describe where that was and what it
13 was?

14 A It was on the left side of his body between the lower
15 left rib and what we call the flank area, in here (indicating.)
16 It was kind on the side.

17 Q You are referring under the underarm, slightly toward
18 the back?

19 A Slightly toward the back, yes.

20 Q From the underarm flank you called it?

21 A Yes.

22 Q It was what type?

23 A Kind of a brownish, I thought it was a mole type
24 feature.

1 Q Would you be able to feel something?

2 A Oh, yes. It stood out.

3 Q As a protrusion?

4 A As a protrusion.

5 Q All right. As far as you can tell, these buccal
6 swabs have been tested or compared to something by the lab?

7 A Yes.

8 Q You are not involved in that?

9 A No.

10 Q Then after they are tested, they are returned to
11 where?

12 A They come back. The lab returns them to the Washoe
13 County evidence custodians, and then we make a run up and pick
14 them up, sign for them, bring them back to our lab, sign them
15 back in.

16 Q Standard protocol?

17 A Standard protocol.

18 Q Anything about looking at Exhibit 14 that tells you
19 the protocol wasn't followed or is there anything strange about
20 that item at all as far as chain of custody? It looks normal?

21 A Everything looks like it should.

22 Q For testing of items of evidence?

23 A For testing it, yes.

24 Q You recognize your handwriting as being the one that

1 booked it in?

2 A Yes, on the tag and my handwriting is also on the
3 envelope with the information as to what this envelope
4 contains.

5 MR. CLIFTON: Thank you. No further questions.

6 THE FOREMAN: Do the jurors have any questions?

7 The proceedings before the Grand Jury are secret. You
8 may not disclose evidence presented to the Grand Jury, any
9 event occurring or statement made in the presence of the Grand
10 Jury, any information obtained by the Grand Jury or the results
11 of the investigation being made by the Grand Jury.

12 However, you may disclose this information to the
13 District Attorney for use in the performance of his duties.

14 You may also disclose your knowledge concerning the
15 proceedings when directed by a court in connection with
16 judicial proceedings or when otherwise permitted by the court
17 or to your own attorney.

18 The obligation of secrecy applies until the Court
19 allows the matter to become public record.

20 A gross misdemeanor and contempt of court may be
21 pursued if your obligation of secrecy is not followed. Do you
22 understand?

23 THE WITNESS: Yes, ma'am.

24 THE FOREMAN: Thank you.

1 RENEER ROMERO

2 called as a witness having been first duly
3 sworn by the Foreman testified as follows:

4
5 EXAMINATION

6 BY MR. CLIFTON:

7 Q Have a seat.

8 MR. CLIFTON: Before we get started with this
9 witness, I was told there may be one Grand Juror that thinks
10 they may have recognized or known one of the witnesses. I
11 think that was, for the record, Peggy Stout. I am not
12 concerned with who it is and how much you are related or
13 affiliated. I think it was just an acquaintance. The only
14 thing, if that person feels it would affect their ability to be
15 impartial and not biased toward that witness, not biased toward
16 the verdict here, that he or she should get off the jury, just
17 excuse themselves from the panel. I think we have enough for a
18 quorum anyway.

19 If they feel they can still be unbiased and
20 impartial, they could stay on and still make a decision on the
21 verdict as to True Bill or not, because Peggy Stout has small
22 involvement in this case, if someone feels they are too closely
23 associated, they should excuse themselves.

24 We might want to put on the record if the person

1 stays on that they say it would not affect their position.

2 THE FOREMAN: Do you want to do that?

3 MR. CLIFTON: We can do it at the end. I want the
4 person to think about it. We will have to put something on the
5 record, because it was told to me in the hallway. We will put
6 something quick on the record. We will go ahead and finish
7 with the testimony.

8 BY MR. CLIFTON:

9 Q Please state your name?

10 A Rene Romero, R-O-M-E-R-O.

11 Q Your employment?

12 A I work for the Washoe County Sheriff's Office in the
13 Forensic Sciences Division.

14 Q Are you aware this is the Washoe County Grand Jury
15 you are now in front of?

16 A Yes, I am.

17 Q Are you aware they are investigating a particular
18 case involving an alleged sexual assault occurring in 1994 by a
19 Frank Peck?

20 A Yes.

21 THE FOREMAN: Are you aware the Grand Jury is
22 inquiring into evidence you may have relating to charges of
23 sexual assault against Frank Peck?

24 THE WITNESS: Yes.

1 THE FOREMAN: Thank you.

2 BY MR. CLIFTON:

3 Q Ms. Romero, let's go back to your educational
4 background. Tell us a little bit about that?

5 A I have a Bachelor degree from Michigan State
6 University in chemistry with at fulfillment of a Bachelor
7 degree in Forensics Science. I have a Masters of Science Degree
8 from the University of Nevada Reno in cell and molecular
9 biology, and I have attended training specific to my job in
10 regards to DNA testing at the Federal Bureau of Investigation
11 as well as companies, private companies that make the equipment
12 and chemical kits that we utilize in our DNA testing.

13 Q With those degrees, did you become employed by the
14 Washoe County Crime Lab?

15 A Pretty much right after college, yes.

16 Q Going back to what year?

17 A I graduated from Michigan State in 1988 and was hired
18 at Washoe County Sheriff's Office in 1989, then completed my
19 Masters degree while working for the Washoe County Sheriff's
20 Office.

21 Q With Washoe County, were you employed as a
22 criminalist?

23 A Yes.

24 Q Before or after the Masters degree?

1 A Both.

2 Q Okay. As a criminalist, do you get involved in
3 testing or comparing evidentiary items?

4 A Yes.

5 Q Particularly with a case with case number Sparks
6 Police Department 94-9292, do you know if you have been
7 involved in that particular investigation?

8 A Yes, I have.

9 Q Involving a victim by the name of Candace Inman and a
10 potential suspect by the name of Frank Peck, are you aware of
11 that?

12 A Yes.

13 Q At the time it first occurred in 1994, samples were
14 taken from the victim in an alleged sexual assault incident.
15 Are you familiar with those type of samples? Have you seen
16 them before either as originally prepared or subsequent
17 preparation are made before they get to you?

18 A Yes, I have.

19 Q Let's start with something like a vaginal swab. Can
20 you describe how that would be prepared in the lab at Washoe
21 County by criminalists such as yourself or by yourself?

22 A How it is prepared from the kit?

23 Q To make a DNA test or sample for comparison later on,
24 what would you do to say a vaginal swab that comes into the lab

1 for preparing it for possible comparison later?

2 A The kit is initially examined for the content of the
3 kit. If there is a vaginal swab, that will be tested to see if
4 there are sperm cells present. Evidentiary items will be
5 removed from the kit, and then maybe booked into evidence later
6 on under a separate control number for the item. That will be
7 sent forward to do DNA for testing.

8 Q So from the vaginal swab, is something extracted from
9 it?

10 A I take the vaginal swab. I would take the fluffy
11 material of the swab, put that into a small tube and extract
12 DNA from it.

13 Q What about something such as saliva off skin, if
14 someone were to lick somebody else, they took a swabbing or
15 gauze and took that sample from that skin, unlike semen, it
16 would be saliva, same question, is there some way to extract
17 that to take it from the gauze and actually do a comparison?

18 A By a similar process, basically extracting the DNA
19 from the material.

20 Q Do you do those kinds of testings or comparisons?

21 A Yes, I do.

22 Q You have been involved in that for about how long?

23 A Fourteen years.

24 Q Why don't you tell the ladies and gentlemen of the

1 Grand Jury a little bit about DNA, how or what that means to
2 get a DNA comparison or match. What are we talking about when
3 we talk about DNA in the body?

4 A Basically forensic science utilizes DNA to create a
5 DNA profile that are different among us. A lot of our DNA is
6 the same, because we have DNA that codes for being human. We
7 have two arms, two legs, ten toes, eyes, et cetera. So over 99
8 percent of our DNA is actually the same. But there is areas of
9 our DNA that are different, barring identical twins. Identical
10 twins have the same DNA profile. What we do in forensic
11 science is we collect reference standards from suspects and
12 victims. A reference standard could be an oral swab, basically
13 a cheek swab or a bloodstain from an individual. Then we can
14 develop a DNA profile from the reference material from
15 suspects, victims, people related to the crime. And then we
16 would use the same process and develop DNA profiles from
17 evidence, and we can develop DNA from sperm cells, skin cells,
18 blood cells, basically any nucleated cell, any cell that has
19 DNA in it, then we compare the DNA from the evidence to the DNA
20 from the reference samples and look for matches, matching DNA
21 profile, assess the value of that match and we can draw
22 conclusions that particular individuals may be sources of the
23 DNA evidence left at the crime scene.

24 Q Now we used to have blood grouping analysis. You are

1 familiar with that term?

2 A Yes.

3 Q The human body, human beings, have blood types of
4 ABO, similar to that. We used to be able to compare evidence
5 and say this is blood Type A and this person has blood type A,
6 therefore, they are a possible match, correct?

7 A Correct.

8 Q DNA is more what we call discriminate?

9 A Much more discriminate than that, yes.

10 Q To where you could get to that point you would be
11 able to say somebody is the source of a particular DNA sample
12 that was left at the scene or somebody could be excluded from
13 that? Can you do those kinds of things?

14 A Yes.

15 Q Let's go back now to the sample that we have in this
16 case 94-9292. You may also note a laboratory number, are you
17 familiar with that, L2145-94?

18 A Yes, I am.

19 Q Have you worked on that case number with that
20 laboratory number with particular samples?

21 A Yes, I have.

22 Q Do they include a sample from a vaginal swab taken
23 from Candace Inman, to your knowledge?

24 A Yes.

1 Q Not that you took it. You are aware of that--

2 A Yes.

3 Q -- from the police reports or the reports of the
4 evidence chain of custody?

5 Did you work with that particular sample?

6 A Yes, I did.

7 Q All right. Say you have a sample from a vaginal swab
8 and you don't have anybody to compare it to. We don't have
9 anybody in custody. We don't have our suspect yet. What kind
10 of things can you do with it as a criminalist?

11 A I can develop a DNA profile from the sperm fraction
12 as well as the fraction from the female victim.

13 Q Was that done in this case?

14 A Yes.

15 Q Go ahead?

16 A And with nobody to compare it to, as you have
17 described, I would then take the sperm DNA profile and enter it
18 into the national DNA data base.

19 Q The data base may or may not have some of the DNA
20 sample in there if we provided it to somebody sometime as a
21 governmental entity; is that possible?

22 A It depends how it is provided.

23 Q This DNA data base you said was national, correct?

24 A Yes.

1 Q So say somebody had--DNA is in that DNA data base,
2 how is it determined it may or may not match that profile? Who
3 does it or what does it?

4 A Basically a computer program does it. A DNA profile
5 is basically a string of numbers. It is a string of different
6 sizes of areas of DNA that we look at. So it is actually
7 pretty simple to put in a string of numbers and compare it
8 within a DNA data base to a series of different numbers.

9 Q From this sample in the case number and laboratory
10 number, are you familiar with the sexual assault kit number
11 R04-014?

12 A Yes, I am.

13 Q Is that the particular kit number used in this case
14 from Candace Inman?

15 A Yes, it is.

16 Q To your knowledge? Did you determine a DNA profile?

17 A Yes.

18 Q Is that a very long number, letters, things like
19 that?

20 A Numbers.

21 Q Okay. You have it in your report, correct?

22 A It is not in my report. It is in my notes.

23 Q I don't need us to put it on the record here right
24 now. That is something we can go back and actually look at and

1 determine what it was, correct?

2 A Sure.

3 Q That profile goes into this computer and the data
4 base. What happens next if the computer finds something?

5 A Then the laboratory is alerted of any potential
6 matches. It basically just comes up on the computer screen
7 that you are to look at these potential matches and see in fact
8 if they are matches.

9 Q Did that happen in this case, to your knowledge?

10 A Yes.

11 Q What year? Do you know who Jeffrey Riolo is?

12 A Yes, he is a criminalist at the Sheriff's Office. It
13 happened in 2003.

14 Q Okay. Let's call that a hit if we will. The Grand
15 Jurors had a question about that a little while ago. Do you
16 use that as strong evidence to get a conviction?

17 A Once a hit is obtained, really, we consider that
18 investigative information. So we would provide the police
19 agency, the investigating agency, with that information and
20 request them to go get an evidentiary sample from the
21 individual and make further comparisons from the evidentiary
22 sample.

23 Q And when Jeffrey Riolo or yourself or any other
24 criminalist gets that information from this computer program,

1 do you request that further confirmatory samples be obtained?

2 A Yes.

3 Q Generally speaking?

4 A Actually what we do first is, if it is a hit to a
5 sample that came from northern Nevada, came from our
6 laboratory, we will pull that sample out and test it again,
7 then write the report saying this is a hit, then ask for
8 another sample from the police agency. And that happened in
9 this case.

10 Q Okay. Then samples were obtained. There has been
11 testimony samples were obtained through seizure orders in this
12 case on a Frank Peck in 2004 and 2005. Do you know if you had
13 any involvement with those samples for comparison purposes?

14 A I can tell you what control numbers I was involved
15 in. I am not involved in the seizure order process.

16 Q True. I understand. Let me ask this: Have you had
17 occasion to do these confirmatory tests on samples from Frank
18 Peck, to your knowledge?

19 A Yes.

20 Q Would that be in 2004, 2005, to your knowledge?

21 A Yes.

22 Q Or thereabout? Let's go ahead to the 2005, the
23 latest sample that was provided to the lab for comparison. Let
24 me get these two samples back in here from record custodian

1 Linda Brown.

2 MR. CLIFTON: Ladies and gentlemen, once again for
3 the record, Linda Brown handed these to me, she is just 7 feet
4 away or so.

5 BY MR. CLIFTON:

6 Q And, again, the same condition, let's go ahead and
7 look at R04-014. Are you familiar with a particular sexual
8 assault kit with that particular number?

9 A Yes, I am. My initials and lab number and date are
10 on the face of this package you are holding. The chain of
11 custody my name is on also.

12 Q Okay.

13 A This one, my name is on the chain of custody
14 associated with this evidence.

15 Q From 2004, the original date?

16 A Yes. This is for a particular sample in 2004.

17 Q You obtained--Can you obtain from the sample such as
18 a vaginal swab and/or a facial type swab from the victim, a DNA
19 profile?

20 A Yes, I can.

21 Q All right. And did you have or do you have a control
22 sample from the victim at the time you do these kinds of
23 comparisons so you know what you are dealing with from her DNA
24 also?

1 A Yes, I do. It was called a DNA reference sample when
2 I was describing it.

3 Q Are you able to distinguish say in a case like this
4 her DNA from somebody else's DNA?

5 A Yes.

6 Q Directing your attention then to the vaginal swab in
7 this particular case which has been testified to as being in
8 this kit, this case number and a PS-1, are you familiar with
9 that particular sample?

10 A The kit, itself, was under control number PS-1.

11 Q R04-014 also?

12 A Yes.

13 Q Did the kit include a vaginal sample from a swab?

14 A Yes, it did.

15 Q Did you have occasion to extract or determine the DNA
16 from that swab from the semen sample, semen fraction?

17 A Yes.

18 Q The semen fraction DNA profile you have now from the
19 victim Candace Inman, if the chain of custody is maintained and
20 all, correct?

21 A From the vaginal swab yes.

22 Q Now with respect to the facial swab, same question,
23 were you able to determine a DNA profile different than Candace
24 Inman's from that sample?

1 A Yes, I was.

2 Q Can you tell me between those two samples, the one
3 from the face and the one from the vaginal swab whether they
4 are the same profile or not?

5 A The profile from Candace Inman from her face swab and
6 the profile from the sperm fraction of the vaginal swab are the
7 same.

8 Q They are not Candace Inman's?

9 A Correct.

10 Q That particular DNA profile from these two items of
11 evidence are placed into a DNA computer or this computer
12 program, correct?

13 A Yes. I am hesitating because it was, initially the
14 profile was developed just from the vaginal swab. Later we went
15 back and did more testing on the face swab. So initially it
16 was the vaginal swab profile that went into the data base.

17 Q Which one received this so-called hit then in 2003,
18 if you know?

19 A The vaginal swab profile.

20 Q In 2004 and 2005 various other samples were sent to
21 your lab you were requested to compare and test against these
22 samples, being the vaginal swab and/or the facial swab,
23 correct?

24 A Yes.

1 Q And these samples have already been testified to as
2 coming from Linda Brown. Do you see her name on the chain of
3 custody for that item which would be Grand Jury Exhibit--

4 A I don't have it.

5 Q Grand Jury Exhibit 14?

6 A Yes. I recognize this. My name is on the chain of
7 custody.

8 Q Beginning from Linda Brown is the one that logged it
9 in or seized it, can you tell? I don't know if you know her
10 signature or not?

11 A I see LB initials. I am not familiar with Linda's
12 signature.

13 Q It is Grand Jury Exhibit 14 you are holding. You see
14 LB on there?

15 A Yes.

16 Q Okay. Go ahead. She has already testified. So go
17 ahead. You see your name on there?

18 A Yes. I see my name and my initials, laboratory
19 number and date. I actually did this at the very beginning of
20 2006. I realize it was collected at the end of '05. I did the
21 testing at the beginning of '06.

22 Q Okay. The testing for what purpose? What were you
23 comparing?

24 A To develop a DNA profile from this reference sample

1 from Frank Peck.

2 Q It has been testified these are buccal swabs. Are
3 you familiar with those?

4 A Yes.

5 Q That is a satisfactory sample for DNA even a
6 preferred type of sampling for DNA purposes?

7 A Yes. That is the cheek swab, yes.

8 Q You have DNA in your saliva, our cheek or skin,
9 samples of our cheek?

10 A Yes.

11 Q Were you able to do that in this case then?

12 A Yes. I developed a DNA profile from that sample.

13 Q What are you, with that DNA profile, then asked to
14 do?

15 A Compare it to the DNA profiles from the sperm
16 fraction of the vaginal swab and the foreign profile from the
17 face stain.

18 Q Foreign to Candace Inman?

19 A Yes, not hers.

20 Q Was there more than one person, could you tell, in
21 what you are calling a foreign sample, more than one person or
22 one person's DNA?

23 A It is a mixture of at least two people's DNA, one of
24 which can be attributed to Candace Inman. That is why I am

1 saying I am comparing the foreign DNA profile. I could see
2 what DNA is foreign to Candace Inman. That is what I compared
3 to the Frank Peck reference sample.

4 Q That DNA profile compared to Frank Peck's profile,
5 can you describe what your result was?

6 A That Frank Peck is the source of the foreign DNA from
7 the skin swab.

8 Q Do you have a degree of certainty? How do you term
9 he's the source, to what degree?

10 A We use a population data basis to determine the
11 frequency of occurrence of a DNA profile. What that means is
12 how often would I expect to see this DNA profile. Once we
13 reach a figure of one in 500 billion, we are over that, then we
14 claim that this individual is the source of that DNA.

15 Q Did that occur in this case?

16 A Yes, it did.

17 Q With respect to the skin sample from her face?

18 A Yes.

19 Q Same question, did you obtain a result in that
20 comparison?

21 A That is the one you just asked me.

22 Q Going to the vaginal swab, you are right, my fault,
23 did you obtain a result in that comparison?

24 A Yes. From the sperm fraction of the vaginal swab, I

1 determined that Frank Peck is the source of the DNA from the
2 sperm fraction of the vaginal swab.

3 Q With the same standard?

4 A Yes.

5 Q You had the hit in 2003, samples tested in 2004 for
6 comparison, correct? You might have done it in early 2005?

7 A You are right, February 14th of 2005.

8 Q Then you had the 2006 which was based upon the 2005
9 sample, correct?

10 A Correct.

11 Q Are all of those consistent?

12 A Yes.

13 Q Your testing results, there is nothing inconsistent
14 about them, you got different results each time or anything
15 like that?

16 A No.

17 Q You are satisfied in saying these samples, the source
18 of these samples in her vagina from that vaginal swab and on
19 her face from the facial swab belong to Frank Peck?

20 A Yes.

21 MR. CLIFTON: Thank you. I have no further questions
22 of this witness.

23 THE FOREMAN: Do the jurors have any questions?

24 A GRAND JUROR: Give me that number, one in what?

1 THE WITNESS: 500 billion. When it is over 500
2 billion, when it is higher than that.

3 A GRAND JUROR: Does it ever come close but not
4 below?

5 THE WITNESS: It will in certain circumstances where
6 we have a partial DNA profile. So if we have a situation where
7 we didn't get DNA results at every area of DNA we are looking
8 at, maybe because there isn't very much DNA there such as, you
9 know, I could swab this bottle that maybe you have been
10 drinking out of and get some DNA. I might not get a full DNA
11 profile. Then at that level, not it wouldn't reach that.

12 A GRAND JUROR: Would that be close to 500 billion?

13 THE WITNESS: If I did that partial profile, no. I
14 could get results of one in tens of thousands. Sometimes we
15 get mixtures, and it is one in ten, you know. So it is quite
16 variable.

17 A GRAND JUROR: I have a question. What degree of
18 certainty did you have, I believe you said February of '05
19 versus the one in '06? Did you have the same degree of
20 certainty in '05 that you did in '06.

21 THE WITNESS: Yes.

22 A GRAND JUROR: I can't ask the questions.

23 A GRAND JUROR: Are there any other questions?

24 MR. CLIFTON: Were you going ask why we--

1 A GRAND JUROR: What was the delay?

2 MR. CLIFTON: That is not for her to answer that. I
3 would have to put on another detective here about all the
4 investigative efforts in this case.

5 BY MR. CLIFTON:

6 Q But did that delay in any way cause any problems as
7 far as the comparison result being reliable?

8 A No.

9 MR. CLIFTON: I really think it would be other
10 witnesses on what the investigation entailed and what we did.

11 THE FOREMAN: Was there another question from a
12 juror?

13 The proceedings before the Grand Jury are secret.
14 You may not disclose evidence presented to the Grand Jury, any
15 event occurring or statement made in the presence of the Grand
16 Jury, any information obtained by the Grand Jury or the results
17 of the investigation being made by the Grand Jury.

18 However, you may disclose the above information to
19 the District Attorney for use in the performance of her
20 duties.

21 You may also disclose your knowledge concerning the
22 proceedings when directed by a court in connection with
23 judicial proceedings or when otherwise permitted by the court
24 or to your own attorney.

1 The obligation of secrecy applies until the Court
2 allows the matter to become public record.

3 A gross misdemeanor and contempt of court may be
4 pursued if your obligation of secrecy is not followed. Do you
5 understand?

6 THE WITNESS: Yes, I do.

7 THE FOREMAN: Thank you.

8 (Witness excused.)

9 MR. CLIFTON: Thank you. Ladies and gentlemen, I am
10 going to be returning the evidence to Linda Brown again right
11 outside the door. Again, for the record, it has not changed.
12 We have not written on any of the documentation. I would ask
13 the Grand jurors latitude to bring in Candace Inman for a very
14 brief series of questions I have for her just because I may
15 have misspoke. I have been told by my co-counsel I may have
16 gotten the years mixed up earlier between 2004 and 1994. If I
17 could bring her in to clear up on the record, it will take two
18 minutes.

19 THE FOREMAN: Thank you.

20 MR. CLIFTON: Thank you.

21 (Whereupon another witness entered the Grand Jury room.)

22 MR. CLIFTON: Stand right here. Actually, have a
23 seat. Madam Foreperson, I can remind this witness she is still
24 under oath. Will that suffice?

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THE FOREMAN: Thank you.

CANDACE CHIRSTINE INMAN

called as a witness having previously been sworn by the Foreman testified as follows:

EXAMINATION

BY MR. CLIFTON:

Q Ms. Inman, it has been brought to my attention I may have gotten confused between the dates of the years 1994 and 2004. Just to clarify for the record, the rape incident, itself, was what year?

A 1994.

Q In August?

A August.

Q Okay. Then 2000, into the 2000 years, you may have been shown another lineup?

A Yes.

Q Correct? So it is clear, this sexual assault upon you was at your home on Sullllivan Lane in August of 1994?

A Uh-huh. Yes.

Q The only other thing, I know we covered this, but just to be clear, you mentioned it was sexual intercourse?

A Yes.

1 Q For the record, so that is clear, was that his penis
2 inside your vagina?

3 A Yes.

4 Q When you said he ejaculated, was that inside your
5 vagina?

6 A Yes.

7 Q That is where the swabs were taken for the rape kit,
8 correct?

9 A Yes.

10 Q Also the swabbing of your cheek?

11 A Yes.

12 MR. CLIFTON: I think that would do it. I apologize
13 to have to do it. It was my fault. Any other questions of the
14 witness? Okay.

15 THE FOREMAN: Thank you.

16 (Witness excused.)

17 MR. CLIFTON: Thank you, ladies and gentlemen. I am
18 going to leave you with Exhibits 1 through 14, the proposed
19 Indictment and sexual assault elements and leave you to your
20 deliberations.

21 THE FOREMAN: Did you want to question the juror who
22 knows Ms. Stout?

23 MR. CLIFTON: Ms. Stout, thank you for reminding me.
24 Let me let Ms. Inman go. It is up to them how much they want

1 to bridge. I don't want to go get into any personal
2 knowledge. It would be nice to know on the record,
3 acquaintance, relative, if they feel they still can go into
4 deliberation or want to excuse themselves. They don't have to
5 identify themselves by name either.

6 THE FOREMAN: Are you asking the juror to respond to
7 these questions?

8 MR. CLIFTON: If you are okay, her or him, I am
9 requesting it, yes.

10 THE FOREMAN: The juror should address those
11 questions?

12 MR. CLIFTON: Please. We'll call you juror number
13 whatever, if they feel okay with it. Juror One.

14 A GRAND JUROR: It was a work related relationship.

15 MR. CLIFTON: Is there anything about that
16 relationship you feel would affect you in judging this case?

17 THE WITNESS: No.

18 MR. CLIFTON: Are you comfortable going forward to
19 deliberation?

20 THE WITNESS: Sure.

21 MR. CLIFTON: That is all I really need for the
22 record. We will leave you to your deliberations. Thank you
23 very much. You guys might want to identify Juror One. That is
24 up to you. I don't need her or his name. Thank you very

1 much.

2 (Whereupon the Deputy District Attorney and the Court
3 Reporter left the Grand Jury room.)

4 (Whereupon the Grand Jury deliberated.)

5 (Whereupon the Deputy District Attorney and the Court
6 Reporter re-entered the Grand Jury room.)

7 THE FOREMAN: Mr. District Attorney, we did bring
8 back a True Bill against Frank Peck.

9 MR. CLIFTON: For sexual assault?

10 THE FOREMAN: For sexual assault. Thank you.

11 MR. CLIFTON: Thank you. Exhibits 1 through 14 we
12 will collect. I see Bruce Hahn is out in the hallway. He was
13 the District Attorney involved in this morning's proceeding. I
14 think we are probably ready to go to a District Court judge. I
15 will collect all the evidence, 1 through 14. Linda Brown has
16 the items of evidence from the Sparks Police Department
17 evidence control or custody, and we thank you very much. See
18 you up in District Court. I will also collect the original
19 True Bill and then we'll go ahead and collect all copies and go
20 ahead and throw them away. I will sign November 8th to the
21 Indictment. Thank you very much.

22 (Whereupon, the proceedings were concluded.)

23

24

1 STATE OF NEVADA,)
2 COUNTY OF WASHOE.) ss.
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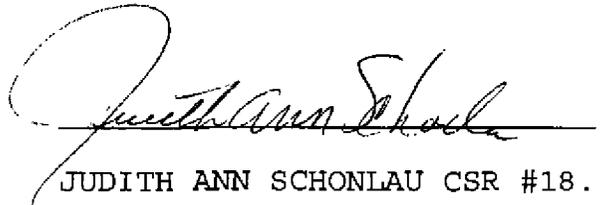
4 I, Judith Ann Schonlau, one of the Court Reporters of
5 the Second Judicial District Court of the State of Nevada, in
6 and for the County of Washoe, do hereby certify:

7 That I reported in stenotype the testimony of the
8 witnesses before the Washoe County Grand Jury in the matter of
9 FRANK PECK at Reno, Nevada on Wednesday, November 8, 2006;

10 That the foregoing transcript, consisting of pages
11 numbered 1 through 103, inclusive, is a full, true and correct
12 transcription of the stenotype notes taken in the
13 above-entitled matter, to the best of my knowledge, skill and
14 ability.

15 I further certify that I am in no way interested in
16 the outcome of said action.

17 Dated at Reno, Nevada, this 18th day of November,
18 2006.

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22 JUDITH ANN SCHONLAU CSR #18.
23
24

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2006 NOV 27 AM 10:01

RONALD A. LONGTON, JR.

BY [Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

CASE NO: CR06-2580

VS.

DEPT. NO.: 6

FRANK MILFORD PECK,

Defendant.

RECEIPT OF GRAND JURY TRANSCRIPT

TRANSCRIPT OF GRAND JURY PROCEEDINGS RECEIVED FROM RONALD A. LONGTON, JR., CLERK OF THE COURT.

Dated this 27th day of NOV 2006.

[Signature]
Signature of Receiving Party

Office of the District Attorney
Recipient's Name/Agency

RONALD A. LONGTON, JR.

Clerk of the Court

By [Signature]

Deputy Clerk

CR06-2580 DC-950000305-208
STATE VS. FRANK MILFORD PECK Page
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STATE VS. FRANK MILFORD PECK
District Court
Washoe County
2 Pages
12/15/2006 12:53 PM

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

THE STATE OF NEVADA,

Plaintiff,

Case No. CR06-2580

vs.

Dept. No.

FRANK MILFORD PECK

Defendant.

MINUTES

CRIMINAL PROGRESS SHEET

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INF. _____
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CASE NO. CR06-2580

DEFT: FRANK MILFORD PECK @3461

LANGUAGE:

CUSTODY STATUS: CUSTODY NIC BAIL \$ _____ OR OR W/COURT SERVICES

ARR. DATE: 12/15/06 DEPT. NO. 6 REPORTER: DOTSON CLERK: Corvantes

TRUE NAME: Same

- HANDED COPY
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- ACCEPTED TO DRUG COURT
- WAIVED PSI

WAIVED 60 DAY RULE: YES NO DATE: 12/15/06

P & P Ref: _____

NOT GUILTY By: _____ GUILTY ALFORD NC TO: Verdictment

MOTION FOR PSYCH. EVAL: DATE: _____ DEPT. NO. _____ APPTD. DRS.: _____ & _____

REPORT ON PSYCH. EVAL: DATE: _____ DEPT. NO. _____ REPORTER: _____ CLERK: _____

COURT FOUND DEFT: COMPETENT INCOMPETENT; DEFT REMANDED

ENTRY OF PLEA: DATE: _____ DEPT. NO. _____ REPORTER: _____ CLERK: _____

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WAIVED PSI P & P Ref: _____

CHANGE OF PLEA: DATE: _____ DEPT. NO. _____ REPORTER: _____ CLERK: _____

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WAIVED PSI P & P Ref: _____ TRIAL DATE OF: _____ VACATED

CONTINUED TO: 9-5-07 9:00 FOR: MTO

CONTINUED TO: 9-17-07 9:00 FOR: Jury- 4 days

CONTINUED TO: _____ FOR: _____

CASE NO. CR06-2580

STATE OF NEVADA VS. FRANK MILFORD PECK

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

12/15/06
HON. DEBORAH
AGOSTI
DEPT. NO. 6
T. Cervantes
(Clerk)
J. Dotson
(Reporter)

ARRAIGNMENT

Deputy D.A. Dave Clifton represented the State.
Defendant present with counsel, Ken McKenna, Esq.
TRUE NAME: FRANK MILFORD PECK. Defendant handed copy
of the Indictment; waived formal reading; waived time in which to
enter a plea and plead Not Guilty to the Indictment.
Defendant waived 60 day rule.
COURT ORDERED: Matter continued for trial by jury.
Defendant remanded to the custody of the Sheriff.

09/05/07
09:00 a.m.
Motion
Confirm

09/17/07
09:00 a.m.
Jury Trial
(4 Days)

CR06-2580 DC-9900000392-133
STATE VS. FRANK MILFORD PECK 1 Page
District Court 12/15/2006 02:19 PM
Washoe County MIN

DC-990000441-064
CR06-2580 STATE VS. FRANK MILFORD PECK 7 Pages
District Court 12/27/2006 03:55 PM
Washoe County 4185

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JOAN MARIE DOTSON
CCR #102
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RENO, NEVADA

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2006 DEC 27 PM 3:55
RONALD A. AGOSTI, JR.
BY 
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE DEBORAH AGOSTI, SENIOR DISTRICT JUDGE

THE STATE OF NEVADA,
Plaintiff,
vs.
FRANK MILFORD PECK,
Defendant.

Case No. CR06-2580
Department No. 3

TRANSCRIPT OF PROCEEDINGS
ARRAIGNMENT
Friday, December 15th, 2006
9:00 A.M.
Reno, Nevada

Reported by: JOAN MARIE DOTSON
NV, CA AND UT CERTIFIED, NATIONALLY REGISTERED MERIT REPORTER

1 Computer-aided Transcription

2 A P P E A R A N C E S

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4
5 For the Plaintiff: OFFICE OF THE DISTRICT ATTORNEY
6 BY: DAVID CLIFTON
7 Deputy District Attorney
8 P.O. Box 11130
9 Reno, Nevada 89520

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13 For the Defendant: KENNETH MCKENNA
14 Attorney at Law
15 Reno, Nevada
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1 FRIDAY, DECEMBER 15TH, 2006; RENO, NEVADA

2 --oOo--

3 THE COURT: State verses Frank Peck. And Mr. Peck is
4 present in court. He is in custody with his counsel
5 Mr. McKenna.

6 Mr. Clifton is here for the State.

7 This is an arraignment on an Indictment
8 which has issued on November 8th, 2006 charging this
9 defendant with one count of sexual assault, a felony.

10 Mr. McKenna, let me provide you and your
11 client with a copy of that document.

12 MR. MCKENNA: Thank you, your Honor.

13 THE COURT: And, Mr. Peck, please look at that
14 document at line twelve -- I'm sorry, it is actually line
15 thirteen. And tell me if that is your true and correct name
16 and if it's correctly spelled.

17 THE DEFENDANT: Yes, it is.

18 THE COURT: Thank you. I will advise you that, if it
19 is not your true and correct name and if no further
20 corrections or additions are made at this time, all further
21 proceedings will be against you in that name.

22 Mr. McKenna?

23 MR. MCKENNA: Thank you. We have had a chance to look
24 over the Indictment.

1 We are familiar with the charge, waive a
2 reading.

3 My client will be entering a not guilty
4 plea. I have advised him of his speedy trial rights, and he
5 will waive that.

6 And we ask to set this out at a convenient
7 time for both counsel and the court.

8 THE COURT: Mr. Peck, did you understand everything
9 your attorney just told me?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: Do you understand the charge against you
12 as set forth in the Indictment?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Do you give up your right to have me read
15 it to you in open court?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And to the charges you plead --

18 THE DEFENDANT: Not guilty.

19 THE COURT: I'll set this matter for trial.

20 Your attorney has explained to you that you
21 can demand a trial within sixty days of today's date?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you wish to give up that right?

24 THE DEFENDANT: Yes.

1 THE COURT: In addition to that, your attorney has
2 explained to you that you have a separate constitutional
3 right to a speedy trial?

4 THE DEFENDANT: Yes.

5 THE COURT: And, to the extent that trial is set
6 reasonably, do you give up your right to complain about the
7 speedy trial violation?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Thank you.

10 I'll accept your plea of not guilty. And
11 we'll set the matter for trial on --

12 THE CLERK: Your Honor, when was counsel seeking?

13 MR. MCKENNA: I was hoping we could look at about
14 September of next year.

15 MR. CLIFTON: Three to four day trial.

16 That's fine. If that's Mr. McKenna's
17 pleasure.

18 MR. MCKENNA: Thank you.

19 THE COURT: Mr. Peck, September is quite a ways away.
20 Is that acceptable to you?

21 THE DEFENDANT: Yes, ma'am.

22 THE CLERK: Your Honor, I can set a Motion to Confirm
23 on September 5th at 9:00 a.m. in Department Six with a jury
24 trial to commence September 17th in Department Six for three

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to four days.

MR. MCKENNA: Thank you.

THE COURT: That will be the order.

(At this time the foregoing proceedings were concluded.)

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STATE OF NEVADA)

)ss.

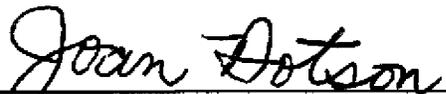
COUNTY OF WASHOE)

I, JOAN MARIE DOTSON, a Certified Shorthand Reporter for the Second Judicial District Court of the State of Nevada in and for the County of Washoe DO HEREBY CERTIFY;

That I was present in Department No. 3 of the court on Friday, December 15th, 2006 and took verbatim stenotype notes of the proceedings and thereafter transcribed them into typewriting as herein appears;

That the foregoing transcript is a full, true and correct transcription of my said stenotype notes and is a full, true and correct record of the proceedings had and the testimony given in the above-entitled action to the best of my knowledge, skill and ability.

DATED: This 21st day of December, 2006.



JOAN MARIE DOTSON, CSR #102

DA#

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FILED

2007 AUG 14 AM 10:49

RONALD A. LONGTIN, JR.

BY *[Signature]*
DEPUTY

CR06-2580
DC-9900021442-237
STATE VS. FRANK MILLFORD PECK 4 Pages
Dist. Ct. Court 08/14/2007 10:49 AM 3980
Washoe County
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Frank Peck

Defendant.

Case No. *CR06-2580*

Dept. No. *4*

REQUEST, STIPULATION AND ORDER RE PRE-PRELIMINARY HEARING AND PRE-TRIAL RECIPROCAL DISCOVERY (FELONY AND GROSS MISDEMEANOR CASES)

I. DEFENDANT'S REQUEST FOR PRE-PRELIMINARY HEARING DISCOVERY

Pursuant to NRS 171.1965, the Defendant requests copies of any and all of the following items which come into the possession or custody of the prosecuting attorney not less than two (2) judicial days before the scheduled preliminary hearing: written or recorded statements or confessions made by the Defendant; written or recorded statements made by a witness or witnesses; reports of statements or confessions; results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the case; and books, papers, documents or tangible objects that the

1 prosecuting attorney intends to introduce into evidence during the
2 State's case in chief at the preliminary hearing.

3 II. DEFENDANT'S REQUEST FOR PRE-TRIAL DISCOVERY

4 Pursuant to NRS 174.235 through 174.295 the Defendant
5 requests copies of any and all of the following items within the
6 custody of the State, the existence of which is known, or by the
7 exercise of due diligence may become known, to the prosecuting
8 attorney: written or recorded statements or confessions made of the
9 Defendant; written or recorded statements made by a witness the
10 prosecuting attorney intends to call during the case in chief of the
11 State; results or reports of physical or mental examinations,
12 scientific tests or scientific experiments made in connection with
13 the particular case; and books, papers, documents or tangible objects
14 that the prosecuting attorney intends to introduce during the case in
15 chief of the State.

16 III. STATE'S REQUEST FOR PRE-TRIAL DISCOVERY

17 Pursuant to NRS 174.235 through 174.295 the State requests
18 copies of any and all of the following items within the possession,
19 custody or control of the Defendant, the existence of which is known,
20 or by the exercise of due diligence may become known, to the
21 Defendant: written or recorded statements made by a witness the
22 Defendant intends to call during the case in chief of the Defendant;
23 results or reports of physical or mental examinations, scientific
24 tests or scientific experiments that the Defendant intends to
25 introduce into evidence during the case in chief of the Defendant;
26 and books, papers, documents or tangible objects that the Defendant

1 intends to introduce into evidence during the case in chief of the
2 Defendant.

3 IV. WAIVER OF TIME REQUIREMENTS

4 By the execution of the instant request and stipulation,
5 both the State and the Defendant expressly waive the requirement that
6 the parties requests for pre-trial discovery must be made within
7 thirty (30) days of the District Court arraignment, pursuant to NRS
8 174.285. The parties stipulate and agree that said requests are
9 timely and satisfactorily made by the execution of the instant
10 request and stipulation.

11 V. ADDITIONAL STIPULATIONS

12 The parties agree to comply with the witness notification
13 provisions, including the expert witness notification provisions, of
14 Chapters 173 and 174 of the Nevada Revised Statutes.

15 The State agrees to provide the Defendant with all
16 exculpatory materials pursuant to Brady v. Maryland, 373 U.S. 83
17 (1963), and the provisions of this Request, Stipulation, and Order
18 are not intended to affect any obligation placed on the prosecuting
19 attorney by the Constitution of this state or the Constitution of the
20 United States to disclose exculpatory evidence, or other materials
21 required by law, to the defendant.

22 ///

23 ///

24 ///

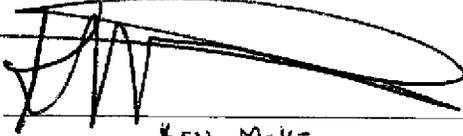
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1 The State and the Defendant shall have a continuing duty to
2 disclose copies of all discovery items noted supra.

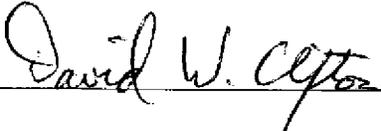
3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the preceding
5 document does not contain the social security number of any person.

6 
7 _____
8 KEN MCKENNA

8/2/07

DATE

9 
10 _____

8/9/07

DATE

11 Good cause appearing, the above stipulations are hereby
12 ratified and approved. The parties shall comply with the terms of
13 this document.

14 IT IS SO ORDERED.

15 
16 _____
DISTRICT JUDGE

17 August 13, 2007.
18 _____
DATE

ORIGINAL

FILED

2007 AUG 24 PM 3:17

RONALD A. LONGTIN, JR.

BY *[Signature]*
DEPUTY

CODE 2565
Richard A. Gammick
#001510
P.O. 30083
Reno, NV. 89520
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR06-2580

v.

Dept. No. 6

FRANK PECK,

Defendant.

NOTICE OF EXPERT WITNESSES PURSUANT TO NRS 174.234

COMES NOW, Plaintiff, State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and DAVID W. CLIFTON, Chief Deputy District Attorney, and hereby gives notice of the names of expert witnesses to be utilized at the jury trial in this matter commencing September 17, 2007, as follows: Rene Romero, Maria Fassett and Jeffrey Riolo are Criminalists with the Washoe County Crime Lab and are expected to testify consistently with their numerous lab reports in this case and their previous testimony before the Washoe County Grand Jury, if applicable. Their testimony will involve serological evidence, DNA preparation and comparison testing thereof.

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CR06-2580
STATE VS. FRANK MILFORD PECK 15 Pages
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1 The Curriculum Vitae of the foregoing witnesses are
2 attached hereto.

3 At this time, Plaintiff does not foresee calling any
4 additional expert witnesses. If such possibility should arise,
5 Plaintiff will notify the Court and counsel immediately.

6
7 AFFIRMATION PURSUANT TO NRS 239B.030

8 The undersigned does hereby affirm that the preceding
9 document does not contain the social security number of any person.

10
11 Dated this 23rd day of August, 2007.

12
13 RICHARD A. GAMMICK
14 District Attorney
15 Washoe County, Nevada

16
17 BY David W. Clifton
18 DAVID W. CLIFTON
19 1653
20 Chief Deputy District Attorney

21
22
23
24
25
26 08095808

RENEE ROMERO

EMPLOYMENT:

3/03-present
and 4/01-9/02 Washoe County Sheriff's Office
Forensic Science Division
Reno, Nevada
SUPERVISING CRIMINALIST

Responsible for direct supervision of DNA, Primary Examination, and Document (Breath Alcohol 10/01-9/02) sections of the laboratory. Division Quality Assurance Manager (8/03-4/04)

9/02-3/03 The Bode Technology Group
Springfield, Virginia
FORENSIC TECHNICAL SPECIALIST

Responsible for training and supporting attorneys on the use of DNA services offered by The Bode Technology Group. Plan and implement training seminars.

3/03-present
and 4/96-9/02 Washoe County Sheriff's Office
Forensic Science Division
Reno, Nevada
DNA TECHNICAL LEADER

Meet the DNA Advisory Board Quality Assurance Standards for Forensic DNA Testing Laboratories, Section 5.5 technical leader/manager requirements through the following:

Master of Science Degree in Cell and Molecular Biology
Forensic DNA laboratory experience September 1990- present

BIOCHEMISTRY: Biochemistry BCH 600 (4 credits)
GENETICS: Molecular Genetics BCH 705 (4 credits)
MOLECULAR BIOLOGY: Molecular Cell Biology CMB 710 (4 credits),
Forensic Application of DNA CJ 534 (3 credits)
STATISTICS AND/OR POPULATION GENETICS: Statistical Methods STT 201 (4 credits), Statistics and Population Genetics for Forensic DNA Analysis ST610 (3 credits)

8/99-5/00 Washoe County Sheriff's Office
Forensic Science Division
Reno, Nevada
ACTING SUPERVISING CRIMINALIST

Responsible for direct supervision of DNA, Trace Evidence, Firearms, Serology and Document sections of the laboratory.

3/89 - 4/96 Washoe County Sheriff's Office
Forensic Science Division
Reno, Nevada
CRIMINALIST

Training and case work in controlled substance identification, several aspects of trace evidence and DNA analysis.

EDUCATION:

1/90 - 12/94

Masters of Science, Cell and Molecular Biology
December 1994
University of Nevada, Reno, Nevada
Emphasis: DNA Technology

9/84 - 6/88

Bachelor of Arts in Chemistry with the fulfillment of Bachelor of Science in Criminalistics
June 1988
Michigan State University, East Lansing, MI
Emphasis: Forensic Laboratory Work, Chemistry and Criminal Justice

9/97-2/99

Certificate of Professional Development
March 1999
University of Nevada, Reno Nevada
Emphasis: Supervisory Management

ORGANIZATIONS:

2001-present Inspector, American Society of Crime Laboratory Directors, Laboratory Accreditation Board
2001-present Member, Forensic Biology Proficiency Review Committee (Co-chair 2005-)
1999-present Fellow, American Academy of Forensic Science
1993-present Member, Scientific Working Group DNA Analysis Methods (formerly TWGDAM):
Member QA/QC subcommittee (July 2003-present)
Executive Board Member (July 2002-Sept. 2002)
Member-Y-STR subcommittee (July 2002- Sept. 2002)
Chairperson-STR Validation (2001-2002)
Chairperson-STR Interpretation Guidelines (1998-2000)
Member-RFLP subcommittee (1993-1998)
(Note: not a member of SWGDAM while working for The Bode Technology Group)
2002-present Member, American Society of Crime Laboratory Directors
1993-2002 Laboratory Representative for COmbined DNA Index System
1995-1999 Member, American Academy of Forensic Science
1992-1994 Provisional Member, American Academy of Forensic Science
1988-1991 Trainee Affiliate, American Academy of Forensic Science

DNA EXPERT WITNESS TESTIMONY:

Second, Third, Fourth, Sixth, Ninth Judicial Districts- Nevada
US District Court - Reno Nevada
First Judicial District - Idaho
Second Judicial District - Idaho
First Judicial District - Alaska

PUBLICATIONS:

Romero, R., Juston, A., Ballantyne, J., and Henry, B. The Applicability of Formalin Fixed Paraffin Embedded Tissue in Forensic DNA Analysis. The Journal of Forensic Science (July, 1997).

Shipp, E., Roelofs, R., Togneri, E., Wright, R., Atkinson, D. and Henry, B. Effects of Argon Laser Light, Alternate Light Source and Cyanoacrylate Fuming on DNA Typing of Human Bloodstains. The Journal of Forensic Science (Jan, 1993).

ABSTRACTS:

Romero, R. (2/00) Multidisciplinary Symposium on the uses of Forensic Science, DNA Typing Methods. American Academy of Forensic Sciences 52nd Annual Meeting Reno, Nevada.

Romero, R. (2/00) DNA in the Courtroom: Scientific Technical and Legal Aspects. American Academy of Forensic Sciences 52nd Annual Meeting Reno, Nevada.

Romero, R. and Riolo, J. (10/1998) DNA Identification after an Explosion at Sierra Chemical. Ninth International Symposium on Human Identification, Orlando, Florida.

Riolo, J. and Romero, R. (9/1997). Increase Sensitivity of the HLA DQ α PCR System. Eighth International Symposium on Human Identification, Scottsdale, Arizona.

Stacks, B., Romero, R., Henry, B. (2/1996). Potential Sample Sources for DNA Typing Methods - A Discussion for the Non-DNA Forensic Scientist. American Academy of Forensic Sciences 48th Annual Meeting Nashville, Tennessee.

Romero, R., Fassett, M., (2/1994). Effects of Various Laundering Conditions and Substrate Materials on the Results of Presumptive, Species Identification and HLA DQ α Typing of Bloodstains (part II). The American Academy of Forensic Sciences 46th Annual Meeting, San Antonio, Texas.

Roelofs-Romero, R., Shipp, E., Togneri, E., Wright, R., Atkinson, D., and Henry, B. (3/1993). Effects of Fingerprint Enhancement Techniques on DNA Analysis by Restriction Fragment Length Polymorphism (RFLP) and Polymerase Chain Reaction (PCR) Methods. The Second International Symposium on The Forensic Aspects of DNA Analysis, FBI Academy, Quantico, Virginia.

Roelofs, R., Shipp, E., Togneri, E., Wright, R. Atkinson, D. and Henry, B. (5/1992). Effects of Argon Laser Light, Alternate Light Source and Cyanoacrylate Fuming on DNA Typing of Human Bloodstains. Northwest Association of Forensic Scientists, Reno Nevada.

CRIMINALISTICS TRAINING:

1/13/05-1/14/05 Basic ABI Prism 3130 Genetic Analyzer Training, Reno, NV, Instructor: Jaime Handelsman

12/21/04 DNA Auditor Refresher Training, FBI, Quantico VA, Instructor: Rich Guerrieri

10/07/04 Y-STR's: Practical Considerations and interpretation Issues Workshop, Promega, Phoenix AZ

7/26/04 Introductory Training Session on Genemapper ID3.1 Reno, NV Instructor: Michelle Shepard

4/1/04 ABI Prism 7000 Sequence Detection System Quantifiler Kit and Standard Operator Training, Reno, NV, Instructor: Jaime Handelsman

10/24/01-10/25/01 DNA Quality Assurance Audit Training, Salt Lake City, Utah, Instructor: Rich Guerrieri

10/21/01-10/24/01 ASCLD/LAB Inspector Training, Salt Lake City, Utah, American Society of Crime Laboratory Directors/ Laboratory Accreditation Board

10/9/00 Casework Guidelines and Complex Mixture Interpretation, International Symposium on Human Identification, Biloxi, Mississippi

10/10/00 Fluorescent Validation Workshop, International Symposium on Human Identification, Biloxi, Mississippi

8/31/99-12/15/99 Statistics and Population Genetics for Forensic DNA Analysis (ST610), North Carolina State University, Instructor: Dr. Bruce Weir

9/28/99 Statistics Workshop, International Symposium on Human Identification, Orlando, Florida

11/17/98 - 11/20/98 Advanced AmpFISTR ABI Prism and 310 Genetic Analyzer Training, Acadiana Criminalistic Laboratory, New Iberia, Louisiana

2/10/98 The Science of Forensic STR analysis, American Academy of Forensic Science, San Francisco, California

9/15/97 - 9/19/97 Laboratory Quality Assurance, Forensic Science Research and Training Center, FBI Academy, Quantico, Virginia

5/22/97 - 5/23/97 Statistics in DNA Analysis, California Criminalistics Institute, Sacramento, California

2/18/97 Advanced DNA Technologies Workshop, American Academy of Forensic Science, New York, New York

9/11/95 - 9/15/95 CODIS Local and State Training, Synetics Corporation, Vienna, Virginia

5/25/95 - 5/26/95 DNA Typing with STR'S, Promega Corporation, Madison, Wisconsin

3/29/93 - 4/2/93 The Second International Symposium on The Forensic Aspects of DNA Analysis, Forensic Science Research and Training Center, FBI Academy, Quantico, Virginia

1/16/92-11/20/92 Advanced Aspects of Forensic DNA Analysis School, Forensic Science Research and Training Center, FBI Academy, Quantico, Virginia

11/30/92-12/9/92 Amplitype HLA-DQ alpha Forensic DNA Amplification and Typing Workshop, The Perkin-Elmer Corporation, Forensic Training Program, Alameda, California

7/29/1992 Courtroom Presentation of Evidence, California Association of Criminalistics, Sacramento California

1/13/92 - 2/8/92 Forensic Applications of DNA & Lab Applications of DNA, Forensic Science Research and Training Center, FBI Academy (University of Virginia 6 Grad. Credits), Quantico, Virginia

6/24/91 - 6/28/91 An International Symposium on the Forensic Aspects of Trace Evidence, Forensic Science Research and Training Center, FBI Academy, Quantico, Virginia

9/90 - 12/90 DNA Laboratory Rotation, Emphasis: RFLP analysis, Washoe County Sheriff's Office/University of Nevada, Reno, Reno, Nevada

10/24/90 Serial Numbers Restoration, Southwest Association of Forensic Science, Tucson, Arizona

10/2/89 - 10/6/89 Arson Accelerant Detection and Identification, Bureau of Alcohol, Tobacco, and Firearms, Rockville, Maryland

7/31/89 - 8/4/89 Hairs and Fibers Identification, California Criminalistics Institute, Sacramento, California

6/88 - 9/88 Criminalist Intern, Emphasis: Controlled Substances and Crime Scene Investigation, Washoe County Sheriff's Office, Reno, Nevada

SUPERVISORY TRAINING:

7/19/05 Performance Management Workshop, Regional Training Center, Reno Nevada

5/6/05 Sexual Harassment, Harassment and Discrimination and Workplace Violence for Supervisors, Regional Training Center, Reno Nevada

7/22/04 Drug and Alcohol Awareness Training, Supervisory Session, Regional Training Center, Reno Nevada

6/15/04 Weapons of Mass Destruction Executive Level Training, Regional Training Center, Reno Nevada

12/2/03 Legal Updates concerning Use of Force and Civil Liability, Regional Training Center, Reno Nevada

7/26/02 Effective Briefing and Basic Computers, Washoe County Sheriff's Office Supervisory Training Program, Regional Training Center, Reno Nevada

7/23/02 Basic Investigations and Various Reports, Washoe County Sheriff's Office Supervisory Training Program, Regional Training Center, Reno Nevada

6/20/02 Staffing, Contracts and Time Management, Washoe County Sheriff's Office Supervisory Training Program, Regional Training Center, Reno Nevada

6/4/02 Payroll and Budget, Washoe County Sheriff's Office Supervisory Training Program, Regional Training Center, Reno Nevada

5/23/02 Office of Professional Integrity, Washoe County Sheriff's Office Supervisory Training Program, Regional Training Center, Reno Nevada

5/20/02 Job Expectations, Disciplinary Process and Annual Evaluations, Washoe County Sheriff's Office Supervisory Training Program, Regional Training Center, Reno Nevada

10/30/01 Performance Standards and Objectives, University of Nevada, Reno

10/27/01 Effective Discipline and Documentation, University of Nevada, Reno

9/11/01 Environment of Public Management, University of Nevada, Reno

6/11/01 Attitude Problems in the Workplace, National Seminars, Reno Nevada

3/10/00 How to Handle Difficult People, National Seminars, Reno Nevada

2/25/99 Coaching Skills for Supervisors, University of Nevada, Reno

2/12/99 Managing and Supervising People, University of Nevada, Reno

12/8/98 Supervisor's Roundtable, University of Nevada, Reno

12/2/98 Effective Meetings and Group Facilitation, University of Nevada, Reno

5/19/98 Management Fitness and the Stress Factor, University of Nevada, Reno

4/7/98 Management by rewards, University of Nevada, Reno

3/24/98 Legal Aspects and Liability, University of Nevada, Reno

3/10/98 Supervisory and Performance Management, University of Nevada, Reno

12/10/97 Interpersonal Communication Skills, University of Nevada, Reno

10/2/97 Fundamentals of Finance and Accounting, University of Nevada, Reno

11/14/97 Employee Appraisal, State of Nevada Training Program, Reno, Nevada

9/22/1997 Elements of Supervision, State of Nevada Training Program, Reno, Nevada

6/27/97 Work Performance standards, State of Nevada Training Program, Reno, Nevada

12/13/96 Effective Supervision and Management, Ashby Seminars, Reno Nevada

12/2/96 How to Supervise People, National Seminars, Reno Nevada

MARIA FASSETT

911 Parr Blvd.
Reno, NV 89512
775.328.2845

EDUCATION:

June 1977 B.S., Biochemistry
University of California, Davis

November 1985 Basic Serology (Graduate Level course)
FBI Academy; Quantico, VA

December 1987 Molecular Genetics (Graduate Level course)
University of Nevada, Reno

EMPLOYMENT:

April 1984 to Present
Criminalist
Washoe County Sheriff's Office
Forensic Science Division; Reno, NV

- Breath Alcohol Program (April 1984-November 1985; October 1994 – September 2000; and March 2003 – present)
- Forensic Serology (November 1985 – June 2001)
- Controlled Substances (April 2001 – present)

December 1980 to April 1983
Chemist (GS 7, 9, 11)
U.S. Environmental Protection Agency
Environmental Systems Monitoring Laboratory
Las Vegas, NV

July 1977 to June 1980
Staff Research Associate I/II
University of California, Davis
Enzymology Research Laboratory
Veteran's Administration Hospital; Martinez, CA

**PROFESSIONAL
ORGANIZATIONS:**

February 1987 to
Present

American Academy of Forensic Sciences
(Criminalistics Section)

October 1992 to Present

Northwest Association of Forensic Scientists

PRESENTATIONS:

June 1994 and
May 1996

"Examination of Sexual Assault Victims: Recognition,
Collection and Preservation of Evidence"

Sexual Assault Response Team Conference;
Reno, NV

October 1995

"CASE REPORT: Sexual Assault by Foreign
Penetration" (co-authored with Jennifer Mihalovich)
NWAFFS Meeting; Ashland, OR
(This paper was also presented by the co-author at the
AAFS 1196 Annual Meeting; Nashville, TN)

February 1994

"Effects of Various Laundering Conditions and Substrate
Materials on the Results of Presumptive Testing, Species
Identification and HLA-DQ alpha Typing of
Bloodstains" (co-authored with Renee Romero)
AAFS Annual Meeting; San Antonio, TX
(This paper was also presented at the NWAFFS Fall 1993
Meeting in Boise, ID)

April 1990

"Examination of Sexual Assault Victims: Recognition,
Collection and Preservation of Evidence"
Nevada Area Health Education Sexual Assault
Conference; Winnemucca, NV

May 1987

"Effects of Long-term Frozen Storage on the Typability
of Enzymes in Bloodstains" (co-authored with Richard
Berger) Presented at the joint CAC/NWAFFS Meeting;
Reno, NV

PUBLICATIONS:

Brodrick, J.W., M.C. Geokas, C. Largman, M. Fassett and J.H. Johnson "Molecular forms of immunoreactive pancreatic cationic trypsin in pancreatitis patient sera." Am. J. Physiol. 237 (1979) Abstract form appeared in Clinical Research 27(1): A26 (1979)

Brodrick, J.W., C.B. Glaser, C. Largman, M.C. Geokas, M. Graceffo, M. Fassett, and H. Maeda "Interaction of Chymotrypsinogens with Alpha-1-Protease Inhibitor." Biochemistry 19: 4865-4870 (1980)

Del Mar, Eric G., Corey Largman, James W. Brodrick, Michael C. Geokas, and Maria Fassett "Substrate Specificity of Human Pancreatic Elastase 2". Biochemistry 19: 468-472 (1980)

Geokas, Michael C., Corey Largman, James W. Brodrick, Janice H. Johnson, and Maria Fassett "Immunoreactive Forms of Human Pancreatic Chymotrypsin in Normal Plasma." J. Biol. Chem. 254: 2775-2781 (1979)

Geokas, M.C., C. Largman, J.W. Brodrick, and M. Fassett "Molecular forms of immunoreactive pancreatic elastase in canine pancreatic and peripheral blood." Am. J. Physiol. 238 (Gastrointest. Liver Physiol. 1): G238-G246 (1980) Abstract form appeared in Gastroenterology 76(5): 1137

Largman, C., J.W. Brodrick, M.C. Geokas, J.H. Johnson and M. Fassett "Demonstration of a pancreatic proelastase 2-Alpha-1-protease inhibitor complex in normal human plasma." Am. J. Physiol. 238 (Gastrointest. Liver Physiol. 1): G177-G182 (1980)

Largman, C., E.G. Del Mar, J.W. Brodrick, M. Fassett, and M.C. Geokas "Inhibition of human pancreatic elastase 2 by peptide chloromethyl ketones." (Accepted for publication in Biochem. Biophys. Acta. February, 1980)

CURRICULUM VITAE

Jeffrey Riolo

EDUCATION

8/83-8/87 B.S. in Microbiology with a minor in Chemistry
Northern Arizona University, Flagstaff, AZ

TRAINING

11/5 - 11/7/2001 CODIS and Mixture Interpretation Workshops, 8th CODIS Users Conference, Crystal City, Virginia

10/31 - 11/2/2001 DNA Audit Workshop; 7th CODIS Users Conference, Crystal City, Virginia

10/10/2000 Fluorescent Validation Workshop; 11th International Symposium on Human Identificaiton, Biloxi, MS

2/22/2000 DNA in the Courtroom; American Academy Meeting, Reno, NV

9/28/99 Statistics Workshop; 10th International Symposium on Human Identificaiton, Orlando, FL

5/10 - 14/99 CODIS State Training; SAIC, Vienna, VA

11/17 - 11/20/98 Advanced AmpFLSTR and ABI Prism 310 Genetic Analyzer Class; Acadiana Criminalistics Laboratory, New Iberia, LA

10/21 - 10/24/97 STR Analysis on the ABI 310 DNA Genetic Analyzer; Applied Biosystems, Foster City, CA

6/8 - 10/97 Forensic and Paternity Data Analysis; North Carolina State University, Raleigh-Durham, NC

9/16 - 9/18/96 Statistics Workshop; Promega Corporation, La Posada Hotel, Scottsdale, AZ

5/25 - 5/26/96 DNA Typing with STR's; Promega Corporation, Madison, Wisconsin

7/10 - 7/13/94 Research in Virology; American Society of Virology, University of Wisconsin, Milwaukee, Wisconsin

3/27- 3/28/91 The Application of DNA Technology to Forensics Conference; University of California, Riverside, Riverside, CA

PROFESSIONAL BACKGROUND

8/02 - Present Senior **Criminalist** - DNA Analyst
Washoe County Sheriff's Office
Forensic Division, Reno, Nevada

Meet the DNA Advisory Board Quality Assurance Standards For Forensic DNA Testing Laboratories, Section 5.3 Examiner/analyst requirements through the following:

Bachelors of Science Degree in Microbiology

Five years forensic DNA laboratory experience

BIOCHEMISTRY: Biological Chemistry CHM 304 (3 credits)

MOLECULAR BIOLOGY: Molecular Genetics BCH 705 (4 credits), Molecular Genetics MBI 350 (3 credits)

GENETICS: Genetics BIO 250 (3 credits)

STATISTICS AND/OR POPULATION GENETICS: Statistics and Population

Genetics for Forensic DNA Analysis ST610 (3 credits), Applied Statistics MBI 288 (3 credits).

3/96 – 8/02 **Criminalist - DNA Analyst**
Washoe County Sheriff's Office
Forensic Division, Reno, Nevada

11/92 - 2/96 **Research Associate III**
Department of Microbiology
University of Nevada, Reno, Reno, Nevada

1/93 - 2/96 **General Supervisor, Biotechnologist**
DNA Analysis Laboratory
University of Nevada, Reno, Reno, Nevada

8/89 - 11/92 **Research Associate I**
Department of Microbiology
University of Nevada, Reno, Reno, Nevada

5/88 - 10/88
(Part Time) **Criminalist**
Washoe County Sheriff's Office
Forensic Division, Reno, NV

9/87 - 8/89 **Laboratory Technician II**
Department of Microbiology
University of Nevada, Reno, Reno, Nevada

DNA EXPERT WITNESS TESTIMONY

Have qualified as a DNA expert in the following jurisdiction:
Second Judicial District – Nevada
Fourth Judicial District – Nevada
United States District Court - Nevada

ORGANIZATIONS

1997 - Present Member (Trainee Affiliate), American Academy of Forensic Sciences
1996 - Present Member, **Sceintific Working Group DNA Analysis Methods**
1993 - 1996 Member, American Society of Human Genetics

PUBLICATIONS

Abstracts

R. Romero, J. Riolo. DNA Identification after an explosion at Sierra Chemical. The Ninth International Symposium on Human Identification. Orlando, FL, October 1998.

J. Riolo, R. Romero. Increase Sensitivity of the HLA DQ α PCR System. The Eight International Symposium on Human Identification. Scottsdale, AZ, September 1997.

J. Rowe, J. Riolo, E. Otteson, A. DiSalvo, S. Nichol, P. Rollin, T. Ksiazek, S. Morzunov, H. Feldmann, M. Monroe and S.C. St.Jeor. Muerto Canyon Virus Genetic Variability and distribution in Nevada. American Society of Virology. Madison, Wisconsin, July 1994.

S.C. St. Jeor, J. Admirand, E. Bruening, and J. Riolo. Induction of Cytokines by Human Cytomegalovirus. International Cytomegalovirus Workshop. Paris, France, 1993.

S.C. St. Jeor, J. Maciejewski, E. Bruening, J. Riolo, and N. Young. The Effect of Cell Differentiation on Cytomegalovirus Gene Expression. The Eighth International Symposium on Molecular Biology of

Hematopoiesis. Basil, Switzerland, July 1993.

J. Riolo, S.C. St. Jeor. Detection of Latent HCMV DNA Using the PCR Reaction. Keystone, Colorado, March 1989.

Manuscripts

E.W. Otteson, J. Riolo, J. E. Rowe, S. T. Nichol, T. G. Ksiazek, P. E. Rollin, and S.C. St. Jeor. Occurrence of Hantavirus Within the Rodent Population of Northeastern California and Nevada. Am. J. of Tropical Medicine and Hygiene, pp. 127-133, 54(2), 1996.

J. E. Rowe, S. C. St. Jeor, J. Riolo, E. W. Otteson, M. C. Monroe, T. G. Ksiazek, P. E. Rollin, and S. T. Nichol. Coexistence of several novel hantaviruses in rodents indigenous to North America. J. of General Virology, pp. 122-130, 213, 1995.

S. St. Jeor, J. Admirand, E. Bruening, J. Riolo. Induction of cytokines by human cytomegalovirus. Multidisciplinary Approach to Understanding Cytomegalovirus Disease. Elsevier Sci. Pub. 1993. pp. 123-126.

CASE NO. CR06-2580

STATE OF NEVADA VS. FRANK MILFORD PECK

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

09/05/07
HON. BRENT
ADAMS
DEPT. NO. 6
T. Cervantes
(Clerk)
J. Kernan
(Reporter)

MOTION TO CONFIRM TRIAL

Deputy D.A. David Clifton represented the State.
Defendant present with counsel, Kenneth McKenna, Esq.
Probation Officer, Kim Strong, also present.
Counsel for Defendant moved to continue the trial and presented
argument; State responded and objection to the trial being
continued.
COURT ORDERED: Motion granted and noted there would be no
further continuances in this matter. The trial set for Monday,
September 17, 2007 is hereby vacated.
Defendant remanded to the custody of the Sheriff.

02/20/08
09:00 a.m.
Motion
Confirm

03/03/07
09:00 a.m.
Jury Trial
4 Days

CR06-2580 DC-9900001657-167
STATE VS. FRANK MILFORD PECK 1 Page
District Court 09/05/2007 09:12 PM
Washoe County MTN
TCFRVQNT

DC-9900001587-130
STATE VS. FRANK MILFORD PECK 3 Pages
District Court 09/06/2007 02:16 PM
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Washoe County
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NOV - 8 2006

RONALD A. LONGTIN, JR.

RONALD A. LONGTIN, JR., CLERK
BY BK Materasso
DEPUTY

[Signature]
DEPUTY

CODE 1300
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No 0206-2580

Dept. No. 6

FRANK PECK,

Defendant.

BENCH WARRANT

STATE OF NEVADA)
) :ss.
COUNTY OF WASHOE)

TO ANY SHERIFF, CONSTABLE, MARSHAL, POLICEMAN, OR PEACE
OFFICER IN THIS STATE:

An INDICTMENT having been returned by the Grand Jury of
Washoe County, Nevada, on the 8th day of November, 2006, charging
FRANK PECK with the crime of SEXUAL ASSAULT, a violation of NRS
200.366, a felony,

YOU ARE THEREFORE COMMANDED forthwith to arrest the above-
named defendant and bring him before the Court to answer the
Indictment; or, if this Court is not in session, that you deliver him

1 into the custody of the Sheriff of Washoe County, Nevada, that he may
2 be taken before this Court at such time as it be in session.

3 BY ORDER OF THE COURT, GIVEN UNDER MY HAND WITH THE SEAL
4 OF THE COURT AFFIXED this 8th day of November, 2006.

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Janet J. Berry
DISTRICT JUDGE

The defendant, FRANK PECK, is to be admitted to bail in the
amount of \$ 50,000⁰⁰ cash or bond

Endorsed this 8th day of November, 2006.

RONALD A. LONGTIN, JR., Clerk

By **K. Materasso**
Deputy

CERTIFIED COPY
The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.
DATE: NOV 9 2006
RONALD A. LONGTIN, JR., Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.
By [Signature] Deputy

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RONALD A. LONGTIN, JR.

BY *[Signature]*
DEPUTY

CR06-2580 DC-990001807-081
STATE VS. FRANK MILFORD PECK & Pages
District Court 10/10/2007 10:35 AM
Washoe County 4185
JWA/MS
DCC

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

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STATE OF NEVADA,) Case No. CR0⁰⁶⁻7-2580
)
)
) Dept. No. 6
)
Plaintiff,)
)
vs.)
)
) TRANSCRIPT OF PROCEEDINGS
)
FRANK MILFORD PECK,)
)
)
)
Defendant.)
_____)

MOTION TO CONTINUE JURY TRIAL
SEPTEMBER 5, 2007, RENO, NEVADA

APPEARANCES:

For the Plaintiff: DAVID CLIFTON, ESQ.
Deputy District Attorney
One S. Sierra Street, 4th Floor
Reno, Nevada 89501

For the Defendant: KENNETH J. MCKENNA ESQ.
544 West First Street
Reno, Nevada 89503

The Defendant: FRANK MILFORD PECK

Reported by: JULIE ANN KERNAN, CCR #427, CP, RPR
Computer-Aided Transcription

1 RENO, NEVADA; WEDNESDAY, SEPTEMBER 5, 2007; 9:15 A.M.

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3
4 THE COURT: The next matter is CR06-2580,
5 State versus Frank Milford Peck, P-e-c-k.

6 MR. CLIFTON: Dave Clifton on behalf of the
7 State, your Honor. I've been told by the bailiff that
8 they may not have transported Mr. Peck from prison.
9 Apparently, he's been transported to the jail and I
10 guess was held there overnight, your Honor.

11 THE COURT: This is the time set for the
12 motion to confirm trial.

13 MR. CLIFTON: The State will be confirming the
14 trial Monday, September 17, your Honor.

15 MR. MCKENNA: Your Honor, yes. I've talked to
16 the District Attorney. We're going to be asking for a
17 continuance at this time. We have some matters in
18 discovery that we need to do scientific research with an
19 expert and we have not been able to -- at this point to
20 get that done yet. I don't know. I think the District
21 Attorney would like to see the matter go forward, but at
22 the same time, this is quite an old matter in terms of
23 the original charge.

24 Mr. Peck is in custody on other matters so

1 he's not going to be in the community while we're
2 awaiting the new trial date. We'd ask for a
3 continuance.

4 THE COURT: Is this testing related to the DNA
5 evidence?

6 MR. MCKENNA: It is, your Honor.

7 THE COURT: What's the State's position?

8 MR. CLIFTON: Your Honor, when Mr. McKenna
9 mentioned, what he means, he and his client, not he and
10 I. I have not stipulated to a continuance.

11 MR. MCKENNA: No.

12 MR. CLIFTON: But he did fairly state that the
13 case is old, it's a 1994 case. We did the DNA some
14 years ago, your Honor, I got that evidence to Mr.
15 McKenna back in December of last year. When we set this
16 case in December we set it for September to give us all
17 plenty of time. However, the new material he may be
18 referring to involves a possible report that we tried to
19 get over the years and were never able to obtain it. We
20 thought it had been lost or that the hospital didn't
21 have it. I just got that in July and I got that to Mr.
22 McKenna. I don't know, realistically, what that has to
23 do with the DNA evidence, it's just the hospital report
24 on the victim.

1 The DNA evidence was gathered and has been in
2 our evidence and tested, so Mr. McKenna certainly had
3 access to that for the last year. But I do agree with
4 him, your Honor, it's an old case. We're not going to
5 lose our witnesses or anything, but the victim is ready
6 to go forward and we are ready to go forward to trial in
7 September.

8 THE COURT: How much time do you think you
9 need, Mr. McKenna?

10 MR. MCKENNA: Well, depending on the Court's
11 calendaring, your Honor, I'd like to suggest we set it
12 in the spring.

13 THE COURT: What is the work that needs to be
14 done now?

15 MR. MCKENNA: There are some questions
16 regarding the DNA and the other matters. Also, there is
17 the potential of some new witnesses that have been
18 discovered that we have to do follow-up on, so we have a
19 private investigator and also an expert that we're going
20 to have to get involved.

21 THE COURT: How about Monday, March 3rd, 2008?

22 MR. MCKENNA: That would be fine, your Honor.

23 THE COURT: This matter is continued until
24 Monday, March 3rd, 2008, at 9:00 for a four-day jury

1 trial. There will be no further continuances of trial
2 in this case and the matter is set for a motion to
3 confirm trial, Ms. Clerk?

4 COURT CLERK: February 20th.

5 THE COURT: At 9:00. Thank you.

6 MR. MCKENNA: Thank you.

7 MR. CLIFTON: Thank you.

8 (Proceedings continued until February 20,
9 2008, at 9:00 a.m.)

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1 STATE OF NEVADA)
2 COUNTY OF WASHOE)

3 I, JULIE ANN KERNAN, official reporter of
4 the Second Judicial District Court of the State of
5 NEVADA, in and for the County of Washoe, do hereby
6 certify:

7 That as such reporter I was present in
8 Department No. 6 of the above court on Wednesday,
9 September 5, 2007, at the hour of 9:02 a.m. of said day,
10 and I then and there took verbatim stenotype notes of
11 the proceedings had and testimony given therein upon the
12 Motion to Continue Jury Trial of the case of STATE OF
13 NEVADA, Plaintiff, vs. FRANK MILFORD PECK, Defendant,
14 Case No. CR07-2580.

15 That the foregoing transcript, consisting of
16 pages numbered 1 through 5, both inclusive, is a full,
17 true and correct transcript of my said stenotype notes,
18 so taken as aforesaid, and is a full, true and correct
19 statement of the proceedings had and testimony given
20 upon the Motion to Continue Jury Trial .of the
21 above-entitled action to the best of my knowledge, skill
22 and ability.

23 DATED: At Reno, NEVADA, this 5th day of October, 2007.

24


JULIE ANN KERNAN, CCR #427

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DC-9900002585-042
CR06-2580
STATE VS. FRANK MILFORD PECK 16 Pages
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CODE: 2490
Ken McKenna, Esq.
State Bar No. 1676
544 West First Street
Reno, NV 89503
(775) 329-6373
Attorney for Defendant

FILED
2008 FEB 13 PM 4:38
HOWARD D. WYERS
BY
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA

Plaintiff,

v.

CASE NO: CR06-2580

DEPT. NO: 6

FRANK PECK,

Defendant.

MOTION TO WITHDRAW AS ATTORNEY OF RECORD

COMES NOW, KENNETH J. McKENNIA, ESQ., and hereby requests to be removed as attorney of record for Frank Peck in the above-entitled matter.

This Motion is based on all authorities contained within the attached Points and Authorities, all papers and documents on file herein, as well as any oral argument which the Court deems appropriate.

POINTS AND AUTHORITIES

Arguments

Plaintiff respectfully requests the Court allow Defendant's attorney, Kenneth McKenna, to withdraw from the instant case. The applicable portion of the Rules of Prof. Conduct, Rule 1.16(b) states:

Except as stated in paragraph (c) , a lawyer may withdraw from representing a client if:

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(4) A client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(7) Other good cause for withdrawal exists.

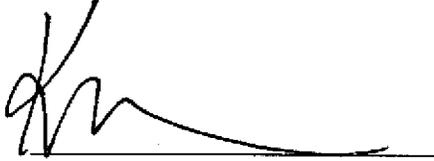
In the instant case, Mr. McKenna's attorney-client relationship has suffered a complete and total breakdown. The Defendant filed a motion with this Court (Exhibit A) stating that he does not wish to be represented by this counsel, and further makes untrue and defamatory statements about Mr. McKenna. Clearly, Defendant refuses to cooperate, and shows a complete disregard for the legal advisement by Mr. McKenna. Under Rule 1.16, Mr. McKenna should be allowed to withdraw.

Based on Mr. McKenna's difficulty in communicating with Mr. Peck, and Mr. McKenna's fundamental disagreement with the Defendant's behavior in this case, a withdrawal is warranted. Said breakdown in the attorney-client relationship has rendered Mr. McKenna's representation ineffective.

CONCLUSION

For the aforementioned reasons, Mr. McKenna respectfully requests that this Honorable Court grant the Motion to Withdraw as Attorney of Record.

DATED this 13th day of February, 2008.

By: 
Kenneth J. McKenna, Esq.
Nevada State Bar No. 1676
544 West First Street
Reno, Nevada 89503
(775) 329-6373

1 AFFIDAVIT OF KENNETH J. McKENNA

2
3 STATE OF NEVADA)
4 COUNTY OF WASHOE) SS.

5
6 I, Kenneth J. McKenna, do hereby swear under penalty of perjury that the assertions
7 of this Affidavit are true and correct to the best of my knowledge. As for those assertions
8 based on belief, I believe them to be true.

- 9 1. That I represent Frank Peck with regard to Case No. CR06-2580, in the Second
10 Judicial District Court, Washoe County.
11 2. That the Defendant filed a motion to requesting my withdrawal on this matter.
12 3. That I am therefore motioning the Court to grant a withdrawal of my
13 representation.
14 4. That I have fundamental disagreements with the actions of the Defendant, which
15 have exhibited a complete disregard of my legal advice.
16 5. That a total communication breakdown between attorney and client on the instant
17 case occurred, making effective representation impossible.

18
19 DATED this 13th day of February, 2008.

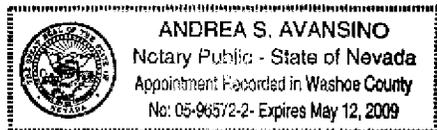
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21
22 ATTORNEY OF RECORD

23
24 SUBSCRIBED and SWORN to before me
25 this 13 day of February, 2008.

26 Andrea Avansino

27 NOTARY PUBLIC



Ken McKenna, Esq.,
544 West First Street
Reno, NV 89509
Tel: (775) 329-6373

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Kenneth J. McKenna, 544 West First Street, Reno Nevada 89503, and that on this date I caused the foregoing attached document(s) to be served on all parties in this action by:

Placing an original or true copy thereof in a sealed, stamped envelope placed for mailing in the United States Postal box at Reno, Nevada

Personal delivery

Facsimile _____

Federal Express or other overnight delivery

Reno Carson Messenger Courier

Addressed as follows

Frank Peck #57106
Northern NV Correctional Center
PO Box 7000
Carson City, NV 89702

David Clifton
DDA
PO Box 30083
Reno, NV 89520

DATED this 13 Day of February, 2008.

Andrea Avansino
Employee of Ken McKenna, Esq.

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document:

 X Does not contain the social security number of any person.

 Does contain the social security number(s) of any person(s) as required by a

Confidential Family Court Information Sheet, (NRS 125.230 & NRS 125B.055).

DATED this 13th Day of February, 2008.

Andrea Awansino
Employee of Ken McKenna, Esq.

Exhibit A

V2.162

COPY

Frank Peck #57106
Northern Nevada Corr. Center
P.O. BOX 7000
Carson City, Nevada 89702

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA.

Plaintiff,

CASE NO: CR-06-2580

Vs.

DEPT NO: 6

FRANK PECK,

Defendant

MOTION TO WITHDRAW COUNSEL AND APPOINT
SUBSTITUTION COUNSEL BASED UPON A CONFLICT OF INTEREST

COMES NOW, Frank Peck, Defendant, in Proper Person and in accordance with the dictates of Hains V. Kerner, 92 S.ct. 594 at 596, wherein, (Pro Se pleading are to be held to a less stringent standard than those pleadings drafted by attorneys) and respectfully submits the instant Motion To Withdraw Counsel and Appoint Substitution Counsel Based Upon a Conflict of Interest.

The instant Motion is made pursuant to the local rules and procedures governing this action and supported by the enclosed Points and Authorities, as well as all papers, pleadings and information on file with the Clerk of the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

On August 9, 1994, in the City of Sparks, Nevada, Candace Inman was a victim of a sexual assault. On August 10, 1994, Ms. Inman was subjected to an examination and a Sexual Assault Evidence Kit #R04014 containing items obtained from Ms. Inman was sent to the Washoe County Sheriff's Office Forensic Division for testing. On September 15, 1994, Maria Fassett of the Forensic Division issued the results. The presence of semen was identified on the vaginal smear. No hairs or fibers were observed in the pubic hair brushing packet. The vaginal swabs were sufficient in quantity for limited blood grouping analysis. Ms. Fassett also listed a DAVIS MCNAUGHT as the suspect.

On April 23, 2003, approximately nine (9) years later, a report was issued by the Washoe County Forensic Division indicating a search of the State DNA Database showed a match between the dominant DNA profile of Ms. Inman and Defendant Peck.

On December 17, 2004, a report was issued regarding the Sexual assault kit #R04014 and the comparison of the saliva sample from Defendant Frank Peck indicating the DNA profile showed Defendant Peck to be the same as the foreign deduced DNA profile from the "stain on skin" sample and the DNA profile from the sperm fraction of the vaginal swab of Ms. Inman. Based on the results, it is alleged that Defendant Peck is the source of the DNA profile. Defendant Peck does not have an identical twin.

PROCEDURAL BACKGROUND

On November 8, 2006, an Indictment was returned by the Grand Jury charging Defendant Frank Peck to Count 1, Sexual Assault. Subsequently, Defendant Peck was arraigned in the Washoe County District Court on said charge.

Defendant Peck was not interviewed or appointed counsel from the Washoe County Public Defender's Office and the court did not appoint a conflict lawyer outside of the Public Defender's Office to represent Defendant Peck. However, attorney Kenneth McKenna, unsolicited and unappointed, voluntarily elected to represent Defendant Peck at no cost to the State of Nevada.

Since Mr. McKenna's decision to voluntarily represent Defendant Peck, a severe conflict of interest has arisen to the extent of creating an irreconcilable indifference and prejudicial division of loyalty based upon previous threats made to Mr. McKenna by law enforcement and government officials regarding representing Defendant Peck's brother, Larry Peck, who was convicted of killing a veteran Reno Police Officer.

Mr. McKenna has elected not to properly communicate with Defendant Peck; conduct an adequate and meaningful pretrial investigation and personally contact alibi witnesses.

LEGAL ARGUMENT

DEFENDANT PECK MUST BE PERMITTED TO DISCHARGE COUNSEL AND BE APPOINTED NEW COUNSEL BASED ON THE IRRECONCILABLE INDIFFERENCE AND PREJUDICIAL CONFLICT OF INTEREST, IN ACCORDANCE WITH THE SIXTH AND FOURTEENTH AMENDMENT OF THE CONST.

Defendant Peck asserts the irreconcilable indifference and prejudicial conflict of interest warrant the discharge of counsel or record and the appointment of new counsel.

COUNSEL OF CHOICE

As far back as 1932, the U.S. Supreme Court has long maintained that an accused has a fundamental right to be represented by counsel of his own choice. Powell V. Alabama, 53 S.ct. 55 (1932).

In the instant case, Mr. McKenna was not officially appointed by the court to represent Defendant Peck and Mr. Peck did not personally and privately retain Mr. McKenna's services. As a matter of fact, at Defendant Peck's initial arraignment, he was the only defendant not appointed a public defender or conflict attorney outside of the public defender office. However, attorney McKenna unsolicited and unappointed, volunteered his services at no cost to Defendant Peck or the State. Therefore, as Mr. McKenna is not appointed or retained, Defendant Peck maintains his fundamental right to be represented by counsel of his choice or for the court to officially appoint counsel without a standing conflict of interest with Defendant Peck. Powell, 53 S.ct. 55 (1932); Kabase V. Eighth Judicial District, 611 P.2d 194 (Nev. 1980).

Defendant Peck respectfully request of this Honorable Court to discharge attorney Kenneth McKenna and appoint new counsel.

CONFLICT OF INTEREST

The Sixth Amendment right to counsel includes a correlative right to representation free from conflict of interest. Coleman V. State, 846 P.2d 276 (Nev. 1993); Lewis V. Mayle, 391 F.3d 989, 995 (9th Cir. 2004); Alberni V. McDaniel, ___ F.3d ___ (9th Cir. 2006). Where a defendant voices a seemingly substantial complaint about counsel, the court must inquire into the reason for dissatisfaction. U.S. V. Simeonov, 252 F.3d 238 (2nd Cir. 2001); Lockhart V. Terhune, 250 F.3d 1223 (9th Cir. 2001); Glasser V. U.S., 62 S.Ct. 457 (1942).

In the instant case, Defendant Peck asserts a conflict of interest exists based upon possible threats; severe lack of communication; failure to conduct adequate and meaningful investigation and failure to personally contact potential alibi witnesses.

FAILURE TO COMMUNICATE

In U.S. V. Nguyen, 262 F.3d 998 (9th Cir. 2001), the court concluded that even if present counsel is competent, a serious breakdown in communication can result in an inadequate defense and create a prejudicial conflict of interest.

Defendant Peck was arraigned in the district court shortly after the Grand Jury returned the Indictment on November 8, 2006. Between November 8, 2006 and the visit of February 1, 2008, Defendant Peck and Mr. McKenna had no true form of communication regarding the preparations and defense for trial. See: Ramseyer V. Blodgett, 853 F.Supp 1239, 1258 (W.D. Wash 1994)(

court ruled that counsel had the duty to keep in contact and consult with his client regarding important issues and decisions of his defense. At a minimum, the consultation should be sufficient to determine all legal and relevant information known to the defendant); U.S. V. Tucker, 716 F.2d at 882.

The overall lack of communication has created a prejudicial conflict of interest. Without question, the conflict of interest has affected McKenna's performance as such lack of communication prevented counsel from pursuing a plausible strategy that would have challenged the prosecutions evidence. See, U.S. V. Schwarz, 283 F.3d 76, 94 (2nd Cir. 2002); Lockhart V. Terhune, 250 F.3d 1223 (9th Cir. 2001); U.S. V. Nguyen, 262 F.3d 998 (9th Cir. 2001).

FAILURE TO INVESTIGATE

In Reynolds V. Chapman, 253 F.3d 1337, 1347 (11th Cir. 2001), the court concluded that counsel's conflict affected his performance because it prevented counsel from raising a reasonable defense in defendant's favor.

In the instant case, the irreconcilable indifference between Defendant Peck and Mr. McKenna has caused Mr. McKenna from conducting a thorough investigation and raising a reasonable defense in Defendant Peck's favor. From the onset of the case, Mr. McKenna has not displayed loyalty and an allegiance to Defendant Peck and his case. As previously mentioned, DAVIS MCNAUGHT was initially listed as a suspect in the report issued on September 15, 1994 by Maria Fassett, approximately 30

days after the alleged incident. Mr. McKenna, fully aware that MCNAUGHT was the initial and prime suspect in 1994, has yet to conduct a proper investigation into why MCNAUGHT was considered a prime suspect and how he was eliminated from being a suspect.

As the alleged victim has indicated that the suspect had a scar on his back and was able to provide a detailed description of the suspect to the extent of assisting authorities in making a compusketch, Mr. McKenna has failed to secure photographs of Defendant Peck's entire body to demonstrate the absence of a scar, tattoo's or any other identifying markers. Furthermore, Mr. McKenna has failed to secure a photograph of the intitial suspect DAVIS MCNAUGHT to make a comparison to the compusketch to possibly demonstrate that the authorities had the correct suspect in DAVIS MCNAUGHT since 1994.

In an attorney-client visit held on February 1, 2008, Defendant Peck attempted to provide Mr. McKenna with a list of alibi witnesses he wished to have contacted and called to trial to demonstrate his presence in Las Vegas, Nevada at the time of the alleged incident. Mr. McKenna refused to accept the list of alibi witnesses by stating: "To much time has past and there's no way that they can be certain about you being in Las Vegas. There just no good to us." Defendant Peck, frustrated with Mr. McKenna stated: "How can you know if these witnesses are no good to us when you have not even contacted them to see what information they can give you. Also, if too much time has past to where my witnesses are no good, then why can't we file a motion to have the charges dismissed for prejudicial delays".

Defendant Peck requested of Mr. McKenna to conduct an independent DNA analysis and secure an expert witness on the DNA profiling and chain of custody procedures to challenge the four (4) DNA samples collected from him while he was in the Nevada Department of Corrections. Mr. McKenna responded by stating: "Look, they'll put there experts up on the stand adn we'll put ours on the stand and their experts will say the samples are reliable, so why bother". Furthermore, Mr. McKenna, in the presence of his legal assistant "M^Ergan", specifically stated that while he was representing Larry Peck's murder case of the killing of Officer Bohach, law enforcement officials approached him in the hallway of the courthouse and in a threatening manner, told Mr. McKenna that he should back off the "friendly fire" theory in the shooting death of Officer Bohach.

Defendant Peck responded by stating: "This whole case is being fabricated against me because I would not testify against my brother".

When considering the high profile nature of the "Peck" name; the prior intimidation and threats against Mr. McKenna by law enforcement officers in the Larry Peck case; the fact of Mr. McKenna not being appointed by the court or privately retained; and failing to conduct any form of an investigation for the defense, ultimately leaves Defendant Peck with the belief that Mr. McKenna's representation and his voluntary acceptance of the case was strategically designed to assist the State in securing a conviction. Therefore, Mr. McKenna's actions

or lack thereof, has created a prejudicial irreconcilable indifference and extreme form of conflict of interest which must be explored by this court. See, Coleman V. State, 846 P.2d 267, 277 (Nev. 1993) citing United States V. Marshank, 777 F.Supp 1507 (N.D.Cal 1991)(defendant's right to effective assistance of counsel violated when defense counsel actively assisted prosecutor in making case against client).

In Clark V. State, 831 P.2d 1374 (Nev. 1992), relying upon People V. Grigsby, 47 Ill.App.3d 812 (1977), went on to state:

"[A]n attorney owes his client undivided allegiance, and this is particularly true of an attorney representing a person accused of a crime. Where an attorney's loyalty to a defendant in a criminal case is diluted by that attorney's obligation to others, the defendant's sixth amendment right to effective assistance of counsel is not satisfied."

In the instant case, there is no doubt that an actual conflict exists based upon Mr. McKenna's irreconcilable indifference in failing to properly communicate with Defendant Peck; failure to thoroughly and adequately conduct pretrial investigations; consult with expert witnesses on the DNA evidence and properly contact alibi witnesses for a viable defense.

The United State Supreme Court has held that a defendant need not show prejudice once an actual conflict of interest has been shown. Holloway V. Arkansas, 98 S.ct. 1173 (1978); Coleman, 846 P.2d at 277-78 (Nev. 1993).

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CONCLUSION

When considering the totality of the circumstances and the fact that Defendant Peck is not required to demonstrate prejudice in connection with his actual conflict of interest, Defendant Peck respectfully request of this Honorable Court to inquire into the actual conflict of interest and irreconcilable indifference complained of and discharge counsel of record, Mr. McKenna and appoint new counsel to properly communicate, investigate and represent Defendant Peck in accordance with the Sixth and Fourteenth Amendment to the U.S. Constitution.

Dated this 5th day of February, 2008.

Frank Peck
Frank Peck #57106

CERTIFICATE OF MAILING

I hereby certify that on this 5th day of February, 2008, I mailed a true and correct copy of the foregoing motion to the following persons:

Richard Gammick
District Attorney
P.O. BOX 30083
Reno, Nevada 89501

Kenneth McKenna, Esq.
544 West 1st
Reno, Nevada 89501

Frank Peck
Frank Peck #57106

CR06-2580 DC-9500002595-108
STATE VS. FRANK MILFORD PECK 1 Page
District Court 02/20/2008 02:12 PM
Washoe County 3370
NCC TCERVANT

1 CODE NO. 3370

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4 FEB 20 2008

5 HOWARD W. CONYERS, CLERK
6 By: *[Signature]*
7 DEPUTY CLERK

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF WASHOE

10 * * *

11 THE STATE OF NEVADA,

12 Plaintiff,

13 Case No. CR06-2580

14 vs.

15 Dept. No. 6

16 FRANK PECK,

17 Defendant.

18 ORDER APPOINTING COUNSEL

19 The Court having found the above-named defendant indigent;

20 IT IS HEREBY ORDRED that the Washoe County Public Defender's Office be appointed
21 as counsel. The Court further set the matter for a Motion to Set Trial on Wednesday, March
22 19, 2008 at 9:00 a.m.

23 DATED this 20th day of February, 2008.

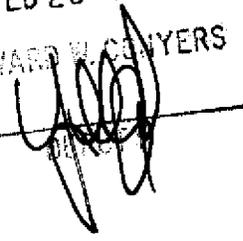
24 *[Signature]*
25 _____
26 DISTRICT JUDGE
27
28

FILED ORIGINAL

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HOWARD W. CANNERS

BY



Frank Peck #57106
Northern Nevada Corr. Center
P.O. BOX 7000
Carson City, Nevada 89702

CR06-2580 DC-9900002629-025
STATE VS. FRANK MILFORD PEC 11 Pages
District Court 02/25/2008 09:21 AM
Washoe County 2490
hnc

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA.

Plaintiff,

CASE NO: CR-06-2580

Vs.

DEPT NO: 6

FRANK PECK,

Defendant

MOTION TO WITHDRAW COUNSEL AND APPOINT
SUBSTITUTION COUNSEL BASED UPON A CONFLICT OF INTEREST

COMES NOW, Frank Peck, Defendant, in Proper Person and in accordance with the dictates of Hains V. Kerner, 92 S.ct. 594 at 596, wherein, (Pro Se pleadings are to be held to a less stringent standard than those pleadings drafted by attorneys) and respectfully submits the instant Motion To Withdraw Counsel and Appoint Substitution Counsel Based Upon a Conflict of Interest.

The instant Motion is made pursuant to the local rules and procedures governing this action and supported by the enclosed Points and Authorities, as well as all papers, pleadings and information on file with the Clerk of the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

On August 9, 1994, in the City of Sparks, Nevada, Candace Inman was a victim of a sexual assault. On August 10, 1994, Ms. Inman was subjected to an examination and a Sexual Assault Evidence Kit #R04014 containing items obtained from Ms. Inman was sent to the Washoe County Sheriff's Office Forensic Division for testing. On September 15, 1994, Maria Fassett of the Forensic Division issued the results. The presence of semen was identified on the vaginal smear. No hairs or fibers were observed in the pubic hair brushing packet. The vaginal swabs were sufficient in quantity for limited blood grouping analysis. Ms. Fassett also listed a DAVIS MCNAUGHT as the suspect.

On April 23, 2003, approximately nine (9) years later, a report was issued by the Washoe County Forensic Division indicating a search of the State DNA Database showed a match between the dominant DNA profile of Ms. Inman and Defendant Peck.

On December 17, 2004, a report was issued regarding the Sexual assault kit #R04014 and the comparison of the saliva sample from Defendant Frank Peck indicating the DNA profile showed Defendant Peck to be the same as the foreign deduced DNA profile from the "stain on skin" sample and the DNA profile from the sperm fraction of the vaginal swab of Ms. Inman. Based on the results, it is alleged that Defendant Peck is the source of the DNA profile. Defendant Peck does not have an identical twin.

PROCEDURAL BACKGROUND

On November 8, 2006, an Indictment was returned by the Grand Jury charging Defendant Frank Peck to Count 1, Sexual Assault. Subsequently, Defendant Peck was arraigned in the Washoe County District Court on said charge.

Defendant Peck was not interviewed or appointed counsel from the Washoe County Public Defender's Office and the court did not appoint a conflict lawyer outside of the Public Defender's Office to represent Defendant Peck. However, attorney Kenneth McKenna, unsolicited and unappointed, voluntarily elected to represent Defendant Peck at no cost to the State of Nevada.

Since Mr. McKenna's decision to voluntarily represent Defendant Peck, a severe conflict of interest has arisen to the extent of creating an irreconcilable indifference and prejudicial division of loyalty based upon previous threats made to Mr. McKenna by law enforcement and government officials regarding representing Defendant Peck's brother, Larry Peck, who was convicted of killing a veteran Reno Police Officer.

Mr. McKenna has elected not to properly communicate with Defendant Peck; conduct an adequate and meaningful pretrial investigation and personally contact alibi witnesses.

LEGAL ARGUMENT

DEFENDANT PECK MUST BE PERMITTED TO DISCHARGE COUNSEL AND BE APPOINTED NEW COUNSEL BASED ON THE IRRECONCILABLE INDIFFERENCE AND PREJUDICIAL CONFLICT OF INTEREST, IN ACCORDANCE WITH THE SIXTH AND FOURTEENTH AMENDMENT OF THE CONST.

Defendant Peck asserts the irreconcilable indifference and prejudicial conflict of interest warrant the discharge of counsel or record and the appointment of new counsel.

COUNSEL OF CHOICE

As far back as 1932, the U.S. Supreme Court has long maintained that an accused has a fundamental right to be represented by counsel of his own choice. Powell V. Alabama, 53 S.ct. 55 (1932).

In the instant case, Mr. McKenna was not officially appointed by the court to represent Defendant Peck and Mr. Peck did not personally and privately retain Mr. McKenna's services. As a matter of fact, at Defendant Peck's initial arraignment, he was the only defendant not appointed a public defender or conflict attorney outside of the public defender office. However, attorney McKenna unsolicited and unappointed, volunteered his services at no cost to Defendant Peck or the State. Therefore, as Mr. McKenna is not appointed or retained, Defendant Peck maintains his fundamental right to be represented by counsel of his choice or for the court to officially appoint counsel without a standing conflict of interest with Defendant Peck. Powell, 53 S.ct. 55 (1932); Kabase V. Eighth Judicial District, 611 P.2d 194 (Nev. 1980).

Defendant Peck respectfully request of this Honorable Court to discharge attorney Kenneth McKenna and appoint new counsel.

CONFLICT OF INTEREST

The Sixth Amendment right to counsel includes a correlative right to representation free from conflict of interest. Coleman V. State, 846 P.2d 276 (Nev. 1993); Lewis V. Mayle, 391 F.3d 989, 995 (9th Cir. 2004); Alberni V. McDaniel, ___ F.3d ___ (9th Cir. 2006). Where a defendant voices a seemingly substantial complaint about counsel, the court must inquire into the reason for dissatisfaction. U.S. V. Simeonov, 252 F.3d 238 (2nd Cir. 2001); Lockhart V. Terhune, 250 F.3d 1223 (9th Cir. 2001); Glasser V. U.S., 62 S.ct. 457 (1942).

In the instant case, Defendant Peck asserts a conflict of interest exists based upon possible threats; severe lack of communication; failure to conduct adequate and meaningful investigation and failure to personally contact potential alibi witnesses.

FAILURE TO COMMUNICATE

In U.S. V. Nguyen, 262 F.3d 998 (9th Cir. 2001), the court concluded that even if present counsel is competent, a serious breakdown in communication can result in an inadequate defense and create a prejudicial conflict of interest.

Defendant Peck was arraigned in the district court shortly after the Grand Jury returned the Indictment on November 8, 2006. Between November 8, 2006 and the visit of February 1, 2008, Defendant Peck and Mr. McKenna had no true form of communication regarding the preparations and defense for trial. See: Ramseyer V. Blodgett, 853 F.Supp 1239, 1258 (W.D. Wash 1994)(

court ruled that counsel had the duty to keep in contact and consult with his client regarding important issues and decisions of his defense. At a minimum, the consultation should be sufficient to determine all legal and relevant information known to the defendant); U.S. V. Tucker, 716 F.2d at 882.

The overall lack of communication has created a prejudicial conflict of interest. Without question, the conflict of interest has affected McKenna's performance as such lack of communication prevented counsel from pursuing a plausible strategy that would have challenged the prosecutions evidence. See, U.S. V. Schwarz, 283 F.3d 76, 94 (2nd Cir. 2002); Lockhart V. Terhune, 250 F.3d 1223 (9th Cir. 2001); U.S. V. Nguyen, 262 F.3d 998 (9th Cir. 2001).

FAILURE TO INVESTIGATE

In Reynolds V. Chapman, 253 F.3d 1337, 1347 (11th Cir. 2001), the court concluded that counsel's conflict affected his performance because it prevented counsel from raising a reasonable defense in defendant's favor.

In the instant case, the irreconcilable indifference between Defendant Peck and Mr. McKenna has caused Mr. McKenna from conducting a thorough investigation and raising a reasonable defense in Defendant Peck's favor. From the onset of the case, Mr. McKenna has not displayed loyalty and an allegiance to Defendant Peck and his case. As previously mentioned, DAVIS MCNAUGHT was initially listed as a suspect in the report issued on September 15, 1994 by Maria Fassett, approximately 30

days after the alleged incident. Mr. McKenna, fully aware that MCNAUGHT was the initial and prime suspect in 1994, has yet to conduct a proper investigation into why MCNAUGHT was considered a prime suspect and how he was eliminated from being a suspect.

As the alleged victim has indicated that the suspect had a scar on his back and was able to provide a detailed description of the suspect to the extent of assisting authorities in making a compusketch, Mr. McKenna has failed to secure photographs of Defendant Peck's entire body to demonstrate the absence of a scar, tattoo's or any other identifying markers. Furthermore, Mr. McKenna has failed to secure a photograph of the intitial suspect DAVIS MCNAUGHT to make a comparison to the compusketch to possibly demonstrate that the authorities had the correct suspect in DAVIS MCNAUGHT since 1994.

In an attorney-client visit held on February 1, 2008, Defendant Peck attempted to provide Mr. McKenna with a list of alibi witnesses he wished to have contacted and called to trial to demonstrate his presence in Las Vegas, Nevada at the time of the alleged incident. Mr. McKenna refused to accept the list of alibi witnesses by stating: "To much time has past and there's no way that they can be certain about you being in Las Vegas. There just no good to us." Defendant Peck, frustrated with Mr. McKenna stated: "How can you know if these witnesses are no good to us when you have not even contacted them to see what information they can give you. Also, if too much time has past to where my witnesses are no good, then why can't we file a motion to have the charges dismissed for prejudicial delays".

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Defendant Peck responded by stating: "This whole case is being fabricated against me because I would not testify against my brother".

When considering the high profile nature of the "Peck" name; the prior intimidation and threats against Mr. McKenna by law enforcement officers in the Larry Peck case; the fact of Mr. McKenna not being appointed by the court or privately retained; and failing to conduct any form of an investigation for the defense, ultimately leaves Defendant Peck with the belief that Mr. McKenna's representation and his voluntary acceptance of the case was strategically designed to assist the State in securing a conviction. Therefore, Mr. McKenna's actions

or lack thereof, has created a prejudicial irreconcilable indifference and extreme form of conflict of interest which must be explored by this court. See, Coleman V. State, 846 P.2d 267, 277 (Nev. 1993) citing United States V. Marshank, 777 F.Supp 1507 (N.D.Cal 1991)(defendant's right to effective assistance of counsel violated when defense counsel actively assisted prosecutor in making case against client).

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"[A]n attorney owes his client undivided allegiance, and this is particularly true of an attorney representing a person accused of a crime. Where an attorney's loyalty to a defendant in a criminal case is diluted by that attorney's obligation to others, the defendant's sixth amendment right to effective assistance of counsel is not satisfied."

In the instant case, there is no doubt that an actual conflict exists based upon Mr. McKenna's irreconcilable indifference in failing to properly communicate with Defendant Peck; failure to thoroughly and adequately conduct pretrial investigations; consult with expert witnesses on the DNA evidence and properly contact alibi witnesses for a viable defense.

The United State Supreme Court has held that a defendant need not show prejudice once an actual conflict of interest has been shown. Holloway V. Arkansas, 98 S.ct. 1173 (1978); Coleman, 846 P.2d at 277-78 (Nev. 1993).

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CONCLUSION

When considering the totality of the circumstances and the fact that Defendant Peck is not required to demonstrate prejudice in connection with his actual conflict of interest; Defendant Peck respectfully request of this Honorable Court to inquire into the actual conflict of interest and irreconcilable indifference complained of and discharge counsel of record, Mr. McKenna and appoint new counsel to properly communicate, investigate and represent Defendant Peck in accordance with the Sixth and Fourteenth Amendment to the U.S. Constitution.

Dated this 5th day of February, 2008.

Frank Peck
Frank Peck #57106

CERTIFICATE OF MAILING

I hereby certify that on this 5th day of February, 2008, I mailed a true and correct copy of the foregoing motion to the following persons:

Richard Gammick
District Attorney
P.O. BOX 30083
Reno, Nevada 89501

Kenneth McKenna, Esq.
544 West 1st
Reno, Nevada 89501

Frank Peck
Frank Peck #57106

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, Motion
To Withdraw Counsel And Appoint Sub-
stitution Counsel Based on Conflict of Interest
(Title of Document)

filed in case number: CR-06-2580

Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

(State specific state or federal law)

-or-

For the administration of a public program

-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 2/14/08

Frank Peck
(Signature)

FRANK PECK
(Print Name)

(Attorney for)

CR06-2580 DC-9900002793-008
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 03/19/2008 09:10 AM
Washoe County 3370
T.CERVANT
noc

CODE NO. 3370

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FILED

MAR 19 2008

HOWARD W. CONVERS, CLERK
By: *[Signature]*
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR06-2580

vs.

Dept. No. 6

FRANK PECK,

Defendant.

AMENDED ORDER APPOINTING COUNSEL

The Washoe County Public Defender's Office having been previously appointed as counsel on February 20, 2008 and having a conflict of interest;

IT IS HEREBY ORDERED that the Alternate Public Defender's Office be appointed as counsel. The Court further set the matter for a Motion to Set Trial on Friday, March 28, 2008 at 9:00 a.m.

DATED this 19th day of March, 2008.

[Signature]
DISTRICT JUDGE

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HOWARD M. SCHYERS

BY *[Signature]*
DEPUTY

CR06-2580 DC-990002814-001
STATE VS. FRANK MILFORD PECK 6 Pages
District Court 03/26/2008 10:18 AM
Washoe County 4185
JAMES
r0c

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

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STATE OF NEVADA,) Case No. CR06-2580
)
)
) Dept. No. 6
)
Plaintiff,)
)
vs.)
) TRANSCRIPT OF PROCEEDINGS
)
FRANK MILFORD PECK,)
)
)
)
Defendant.)
_____)

MOTION TO WITHDRAW AS COUNSEL
FEBRUARY 20, 2008, RENO, NEVADA

APPEARANCES:

For the Plaintiff: DAVID W. CLIFTON, ESQ.
Deputy District Attorney
One S. Sierra Street, 4th Floor
Reno, Nevada 89501

For the Defendant: KENNETH J. MCKENNA, ESQ.
544 West First Street
Reno, Nevada 89503

The Defendant: FRANK MILFORD PECK
Reported by: JULIE ANN KERNAN, CCR #427, CP, RPR
Computer-Aided Transcription

1 RENO, NEVADA; WEDNESDAY, FEBRUARY 20, 2007; 10:15 A.M.

2 ---o0o---

3
4 THE COURT: The next matter is CR06-2580,
5 State versus Frank Milford Peck.

6 MR. CLIFTON: Dave Clifton on behalf of the
7 State, your Honor.

8 MR. MCKENNA: Ken McKenna on behalf of Mr.
9 Peck, your Honor. He's in custody.

10 THE COURT: Thank you for your patience. Does
11 the State oppose the motion to withdraw, Mr. Clifton?

12 MR. CLIFTON: Your Honor, the State has no
13 position on the matter, no. However, with regard to Mr.
14 Peck's affidavit, your Honor, I have spoken to Mr.
15 McKenna that I don't want the bare record to suggest in
16 any way or infer from his affidavit that Mr. McKenna was
17 thrust upon him as counsel by the Court against his
18 wishes, and I think that the prior transcripts of
19 previous hearings in this case do bely that fact, and I
20 think it's clear that Mr. McKenna was his representative
21 and Mr. Peck recommended that and the transcripts show
22 that that attorney was accepted by him.

23 THE COURT: Was Mr. McKenna appointed or
24 retained?

1 MR. MCKENNA: No, your Honor, I volunteered to
2 take the case.

3 THE COURT: All right. Thank you. And the
4 defendant is indigent.

5 MR. MCKENNA: Yes. He is in custody on
6 another matter.

7 THE COURT: Mr. McKenna's motion to withdraw
8 as counsel of record is granted, and this matter is set
9 for trial to commence before a jury March 3rd, 2008, at
10 9:00. That trial date is vacated.

11 And is there any reason the Washoe County
12 Public Defender can not be appointed in this case?

13 MR. CLIFTON: Not that I'm aware of.

14 THE COURT: All right.

15 MR. MCKENNA: Not that I'm aware of.

16 THE COURT: Mr. Peck, please face the clerk,
17 raise your right hand and be sworn as a witness.

18 (Defendant sworn.)

19 THE COURT: Sir, I assume you're not employed;
20 is that correct?

21 THE DEFENDANT: No, I'm not.

22 THE COURT: Do you have any cash on hand or
23 any money in a savings or checking account?

24 THE DEFENDANT: No, sir.

1 THE COURT: Do you own any automobiles or real
2 property of any kind?

3 THE DEFENDANT: No.

4 THE COURT: Do you have any debts?

5 THE DEFENDANT: No.

6 THE COURT: The Court finds the defendant does
7 qualify for appointment of the Washoe County Public
8 Defender and I hereby appoint the Washoe County Public
9 Defender in all further proceedings. And we'll set this
10 matter for a motion to set for trial on Wednesday, March
11 19th, 2008, at 9:00.

12 MR. MCKENNA: Thank you, your Honor.

13 MR. CLIFTON: Thank you.

14 THE COURT: And Mr. Peck, I am ordering you,
15 it may not be necessary, just so you know, you have an
16 obligation to fully cooperate with your counsel. You
17 understand that? Mr. Peck.

18 THE DEFENDANT: I'm sorry?

19 MR. MCKENNA: I'm sorry, your Honor, I was
20 speaking to him, excuse me.

21 THE COURT: It may go without saying, but I
22 just want to make mention to Mr. Peck, of course, you
23 have an obligation to cooperate with your counsel in
24 this case. Do you understand that?

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THE DEFENDANT: Of course, sir.

THE COURT: All right. Thank you.

(Proceedings continued until March 19, 2008,
at 9:00 a.m.)

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STATE OF NEVADA)
COUNTY OF WASHOE)

I, JULIE ANN KERNAN, official reporter of
the Second Judicial District Court of the State of
Nevada, in and for the County of Washoe, do hereby
certify:

That as such reporter I was present in
Department No. 6 of the above court on Wednesday,
February 20, 2008, at the hour of 10:20 a.m. of said
day, and I then and there took verbatim stenotype notes
of the proceedings had and testimony given therein upon
the Motion to Withdraw as Counsel of the case of State
of Nevada, Plaintiff, vs. FRANK MILFORD PECK, Defendant,
Case No. CR06-2580.

That the foregoing transcript, consisting of
pages numbered 1 through 5, both inclusive, is a full,
true and correct transcript of my said stenotype notes,
so taken as aforesaid, and is a full, true and correct
statement of the proceedings had and testimony given
upon the Motion to Withdraw as Counsel of the
above-entitled action to the best of my knowledge, skill
and ability.

DATED: At Reno, Nevada, this 24th day of March, 2008.


JULIE ANN KERNAN, CCR #427

FILED

'08 ABR -2 P2:55

BY HOWARD A. CONYERS
DEPUTY

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CR06-2580
STATE VS. FRANK MILFORD PECK 4 pages
District Court Washoe County
04/02/2008 02:53 PM
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KHAGON

IN THE SECOND JUDICIAL DISTRICT COURT

STATE OF NEVADA, COUNTY OF WASHOE

THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

THE STATE OF NEVADA,
Plaintiff,

vs.

FRANK MILFORD PECK,
Defendant.

Case No. CR06-2580

Dept. No. 6

TRANSCRIPT OF PROCEEDINGS
MOTION TO SET TRIAL
MARCH 28, 2008

APPEARANCES:

For the Plaintiff: DAVID W. CLIFTON, ESQ.
Deputy District Attorney
One South Sierra St., 4th Floor
Reno, Nevada

For the Defendant: PATRICK MCGINNIS, ESQ.
Alternate Public Defender
350 S. Center Street, 6th Floor
Reno, Nevada

Reported by: ROMONA MALNERICH, CCR #269
MOLEZZO REPORTERS
(775) 322-3334

1 RENO, NEVADA, FRIDAY, MARCH 28, 2008, 9:00 A.M.

2 --oOo--

3
4 THE COURT: Please be seated.

5 The first matter is CR06-2580, State versus
6 Frank Milford Peck. This is the time for the motion to
7 set trial. Mr. McGinnis?

8 MR. MCGINNIS: Good morning, your Honor. I
9 apologize for not being here. I was in Department 9.

10 Yes, we are here to set trial for Mr. Peck. I
11 spoke with Mr. Clifton. We have both agreed to a trial
12 set in early November, and it will be a week.

13 THE COURT: All right. Do you agree with that,
14 Mr. Clifton?

15 MR. CLIFTON: Yes, your Honor. My calendar
16 shows November 3rd or 10th.

17 THE COURT: The 3rd is not a very good day for
18 me.

19 MR. CLIFTON: Okay. How about November 10th?

20 THE COURT: I'm hoping it's a good day. I
21 think November 10th is fine. November 10th at
22 9 o'clock. And how long do you believe the trial will
23 be?

24 MR. CLIFTON: One week, no more.

1 THE COURT: For one week, thank you. And the
2 matter is set for a motion to confirm trial -- Ms.
3 Clerk?

4 THE CLERK: October 29th.

5 THE COURT: At nine o'clock.

6 MR. MCGINNIS: Thank you, your Honor.

7 (End of proceedings.)

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1 STATE OF NEVADA)
2 COUNTY OF WASHOE) ss.

3 I, ROMONA MALNERICH, official reporter of the
4 Second Judicial District Court of the State of Nevada,
5 in and for the County of Washoe, do hereby certify:

6 That as such reporter, I was present in
7 Department No. 6 of the above court on Friday, March 28,
8 2008, at the hour of 9:00 a.m. of said day, and I then
9 and there took verbatim stenotype notes of the
10 proceedings had and testimony given therein upon the
11 Motion to Set Trial in the case of THE STATE OF NEVADA,
12 Plaintiff, versus FRANK MILFORD PECK, Defendant, Case No.
13 CR06-2580.

14 That the foregoing transcript, consisting of
15 pages numbered 1 to 3, both inclusive, is a full, true
16 and correct transcript of my said stenotype notes, so
17 taken as aforesaid, and is a full, true and correct
18 statement of the proceedings had and testimony given upon
19 the Motion to Set Trial in the above-entitled action to
20 the best of my knowledge, skill and ability.

21 DATED: At Reno, Nevada, this 31st day of
22 March, 2008.

23 *Romona Malnerich*

24 ROMONA MALNERICH, CCR #269

CR06-2580 DC-9900002923-262
STATE VS. FRANK MILFORD PECK 1 Page
District Court 04/18/2008 10:45 AM
Washoe County 1775
KUTILLI, T.C.

CODE: 1775

FILED

2008 APR 10 AM 10:45

HOWARD W. CONYERS

BY  DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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STATE OF NEVADA,
Plaintiff,
VS.
FRANK MILFORD PECK,
Defendant.

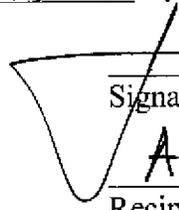
CASE NO: CR06-2580
DEPT. NO.: 6

RECEIPT OF GRAND JURY TRANSCRIPT

TRANSCRIPT OF GRAND JURY PROCEEDINGS RECEIVED FROM RONALD A. LONGTON, JR., CLERK OF THE COURT.

Dated this 10th day of April, 2006.

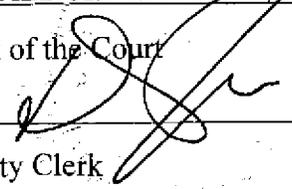
Signature of Receiving Party

 APD/WC

Recipient's Name/Agency
HOWARD W. CONYERS

RONALD A. LONGTON, JR.

Clerk of the Court

By 

Deputy Clerk

ORIGINAL

FILED

4185

2008 APR 23 AM 11:50

HOWARD W. CONYERS

BY *[Signature]*
DEPUTY

CR06-2580 DC-9500003007-050
STATE VS. FRANK MILFORD PECK 5 Pages
District Court 04/23/2008 11:50 AM 4185
Washoe County JSHEETS
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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

---o0o---

STATE OF NEVADA,	)	Case No. CR06-2580
)	
	)	Dept. No. 6
Plaintiff,)	
vs.)	
	)	TRANSCRIPT OF PROCEEDINGS
FRANK MILFORD PECK,)	
)	
Defendant.)	

MOTION TO APPOINT ALTERNATE PUBLIC DEFENDER
MARCH 19, 2008, RENO, NEVADA

APPEARANCES:

For the Plaintiff: DAVID W. CLIFTON, ESQ.
Deputy District Attorney
One S. Sierra Street, 4th Floor
Reno, Nevada 89501

The Defendant: FRANK MILFORD PECK

Reported by: JULIE ANN KERNAN, CCR #427, CP, RPR
Computer-Aided Transcription

1 RENO, NEVADA; WEDNESDAY, MARCH 19, 2008; 9:52 A.M.

2 ---o0o---

3
4 THE COURT: The next matter is CR06-2580,
5 State versus Frank Milford Peck.

6 MR. MERKIN: Joe Merkin not appearing on his
7 behalf, your Honor, but could I explain once Mr. Peck is
8 present?

9 MR. CLIFTON: Dave Clifton on behalf of the
10 State. Good morning, your Honor.

11 MR. MERKIN: Mr. Peck is present. Mr. Peck,
12 sir, you could just sit right here. Your Honor, I
13 believe that your administrative assistant sent me an
14 e-mail stating that you had appointed Mr. -- the public
15 defender's office Mr. Peck's case. Mr. Peck has an
16 ongoing present federal case against the Washoe County
17 Public Defender's Office for a post conviction hearing.
18 We can not represent Mr. Peck on that basis.

19 THE COURT: Is the alternate public defender's
20 office available to represent him?

21 MR. MERKIN: Your Honor, you have the ability
22 to appoint as an original jurisdiction, Judge, I
23 believe, the alternate public defender.

24 THE COURT: The Court did enter on February

1 20th appointing the Washoe County Public Defender's
2 Office as counsel. The Court will amend the order at
3 this time to appoint the Alternate Public Defender's
4 Office.

5 And Mr. Clifton, did you wish to set the case
6 for trial today? Or I guess it's premature, isn't it?

7 MR. CLIFTON: Yeah, we better do it with the
8 attorney's calendar, your Honor.

9 THE COURT: All right. So we'll set this
10 matter -- I want to do this as soon as possible. We'll
11 set this for trial setting Wednesday, April 9th, 2008,
12 at 9:00.

13 Ms. Clerk, would you advise the Alternate
14 Public Defender's Office this morning of the
15 appointment, prepare the order? And this will be
16 entered this morning, Mr. Peck.

17 MR. CLIFTON: Your Honor, I'm going to be in a
18 conference that week in April.

19 THE COURT: You are.

20 MR. CLIFTON: Is it possible to do it earlier?
21 I don't know.

22 THE COURT: Well, I would like to do it
23 earlier, if I can. Let's see. Let's do this Friday,
24 March 28th? I don't know if that's going to give the

1 Alternate Public Defender's Office enough time, but
2 let's try and we'll set it for a trial setting or a
3 status conference.

4 MR. CLIFTON: All right. Thank you.

5 THE COURT: Thank you.

6 (Proceedings continued until March 28, 2008,
7 at 9:00 a.m.)

8 ---oOo---

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1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

3 I, JULIE ANN KERNAN, official reporter of
4 the Second Judicial District Court of the State of
5 Nevada, in and for the County of Washoe, do hereby
6 certify:

7 That as such reporter I was present in
8 Department No. 6 of the above court on Wednesday,
9 March 19, 2008, at the hour of 9:52 a.m. of said day,
10 and I then and there took verbatim stenotype notes of
11 the proceedings had and testimony given therein upon the
12 Motion to Appoint Alternate Public Defender's office of
13 the case of STATE OF NEVADA, Plaintiff, vs. FRANK
14 MILFORD PECK, Defendant, Case No. CR06-2580.

15 That the foregoing transcript, consisting of
16 pages numbered 1 through 5, both inclusive, is a full,
17 true and correct transcript of my said stenotype notes,
18 so taken as aforesaid, and is a full, true and correct
19 statement of the proceedings had and testimony given
20 upon the Motion to Appoint Alternate Public Defender's
21 office of the above-entitled action to the best of my
22 knowledge, skill and ability.

23 DATED: At Reno, Nevada, this 22nd day of April, 2008.

24


JULIE ANN KERNAN, CCR #427

327992
DA # [REDACTED]
DV. DI
Code 3870

ORIGINAL

FILED

2008 APR 29 AM 10:44

HOWARD W. CONYERS

BY [Signature] DEPUTY

CR06-2580
DC-9900003035-167
STATE VS. FRANK MILFORD PECK 4 Pages
District Court 04/29/2008 10:44 AM
Washoe County 3870
KMTLLIPK
DOC

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

12 Defendant.

Case No. CR06-2580

Dept. No. 6

13
14 FRANK PECK

15 REQUEST, STIPULATION AND ORDER RE PRE-PRELIMINARY HEARING AND PRE-
16 TRIAL RECIPROCAL DISCOVERY (FELONY AND GROSS MISDEMEANOR CASES)

17 I. DEFENDANT'S REQUEST FOR PRE-PRELIMINARY HEARING DISCOVERY

18 Pursuant to NRS 171.1965, the Defendant requests copies of
19 any and all of the following items which come into the possession or
20 custody of the prosecuting attorney not less than two (2) judicial
21 days before the scheduled preliminary hearing: written or recorded
22 statements or confessions made by the Defendant; written or recorded
23 statements made by a witness or witnesses; reports of statements or
24 confessions; results or reports of physical or mental examinations,
25 scientific tests or scientific experiments made in connection with
26 the case; and books, papers, documents or tangible objects that the

1 prosecuting attorney intends to introduce into evidence during the
2 State's case in chief at the preliminary hearing.

3 II. DEFENDANT'S REQUEST FOR PRE-TRIAL DISCOVERY

4 Pursuant to NRS 174.235 through 174.295 the Defendant
5 requests copies of any and all of the following items within the
6 custody of the State, the existence of which is known, or by the
7 exercise of due diligence may become known, to the prosecuting
8 attorney: written or recorded statements or confessions made of the
9 Defendant; written or recorded statements made by a witness the
10 prosecuting attorney intends to call during the case in chief of the
11 State; results or reports of physical or mental examinations,
12 scientific tests or scientific experiments made in connection with
13 the particular case; and books, papers, documents or tangible objects
14 that the prosecuting attorney intends to introduce during the case in
15 chief of the State.

16 III. STATE'S REQUEST FOR PRE-TRIAL DISCOVERY

17 Pursuant to NRS 174.235 through 174.295 the State requests
18 copies of any and all of the following items within the possession,
19 custody or control of the Defendant, the existence of which is known,
20 or by the exercise of due diligence may become known, to the
21 Defendant: written or recorded statements made by a witness the
22 Defendant intends to call during the case in chief of the Defendant;
23 results or reports of physical or mental examinations, scientific
24 tests or scientific experiments that the Defendant intends to
25 introduce into evidence during the case in chief of the Defendant;
26 and books, papers, documents or tangible objects that the Defendant

1 intends to introduce into evidence during the case in chief of the
2 Defendant.

3 IV. WAIVER OF TIME REQUIREMENTS

4 By the execution of the instant request and stipulation,
5 both the State and the Defendant expressly waive the requirement that
6 the parties requests for pre-trial discovery must be made within
7 thirty (30) days of the District Court arraignment, pursuant to NRS
8 174.285. The parties stipulate and agree that said requests are
9 timely and satisfactorily made by the execution of the instant
10 request and stipulation.

11 V. ADDITIONAL STIPULATIONS

12 The parties agree to comply with the witness notification
13 provisions, including the expert witness notification provisions, of
14 Chapters 173 and 174 of the Nevada Revised Statutes.

15 The State agrees to provide the Defendant with all
16 exculpatory materials pursuant to Brady v. Maryland, 373 U.S. 83
17 (1963), and the provisions of this Request, Stipulation, and Order
18 are not intended to affect any obligation placed on the prosecuting
19 attorney by the Constitution of this state or the Constitution of the
20 United States to disclose exculpatory evidence, or other materials
21 required by law, to the defendant.

22 ///

23 ///

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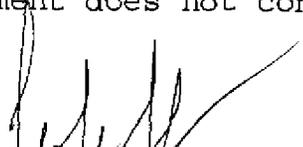
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1 The State and the Defendant shall have a continuing duty to
2 disclose copies of all discovery items noted supra.

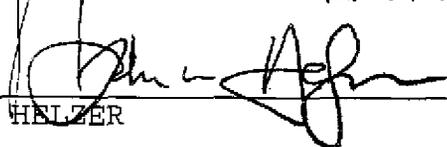
3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the preceding
5 document does not contain the social security number of any person.

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8 _____
9 JENNIFER LUNT for: PATRICK MCGINNIS

DATE

3/25/08

10 
11 _____
12 JOHN HELZER

DATE

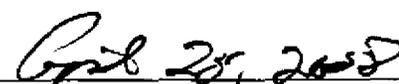
3/25/08

13 Good cause appearing, the above stipulations are hereby
14 ratified and approved. The parties shall comply with the terms of
15 this document.

16 IT IS SO ORDERED.

17 
18 _____
19 DISTRICT JUDGE

20 DATE

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CR06-2580 DC-990003045-189
STATE VS FRANK MILFORD PECK 3 Pages
District Court 04/30/2008 05:32 PM
Washoe County 2490
KMTI LLP
DCC

CODE 2490
JENNIFER J. LUNT
BAR# 3057
WASHOE COUNTY ALTERNATE PUBLIC DEFENDER
P.O. BOX 30083
RENO NV 89520-3083
(775) 328-3955
ATTORNEY FOR: DEFENDANT

FILED

2008 APR 30 PM 2:13

HOWARD W. CONYERS
BY *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR06-2580

FRANK PECK,

Dept. No. 6

Defendant.

**MOTION RELIEVING WASHOE COUNTY ALTERNATE PUBLIC DEFENDER'S
OFFICE OF REPRESENTATION**

This case was assigned to the Washoe County Alternate Public Defender upon the representation by counsel from the Washoe County Public Defender that the Public Defender's Office was being sued in Federal Court by the Defendant, Mr. Peck.

Investigation by this office has failed to reveal any litigation by Mr. Peck adverse to the Washoe County Public Defender. Based upon this information, the Washoe County Alternate Public Defender makes this motion to be relieved of representation in this matter.

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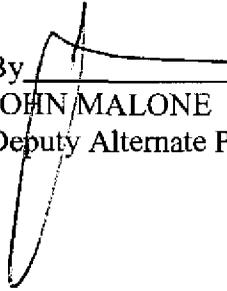
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AFFIRMATION Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 30th day of April, 2008.

JENNIFER J. LUNT
Washoe County Alternate Public Defender

By  _____
JOHN MALONE
Deputy Alternate Public Defender

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Alternate Public Defender's Office, Reno, Washoe County, Nevada, and that on this date, I forwarded via inter-office mail a copy of the foregoing to:

CHIEF DEPUTY DISTRICT ATTORNEY
DAVID CLIFTON

DATED this 30th day of April, 2008.


RANDI JENSEN

FILED

2008 MAY -8 PM 2: 16

HOWARD W. CONYERS
BY: *[Signature]*
DEPUTY

CODE 1075
JENNIFER J. LUNT
BAR #3057
WASHOE COUNTY PUBLIC DEFENDER
P. O. BOX 30083
RENO, NV 89520-3083
(775) 328-3955
ATTORNEY FOR DEFENDANT

CR06-2580
DC-9900003124-466
STATE VS. FRANK MILFORD PECK 4 Pages
District Court 05/08/2008 02:16 PM
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,

CASE NO.: CR06-2580

vs.

FRANK MILFORD PECK,
Defendant.

DEPT NO.: 6

AFFIDAVIT

STATE OF NEVADA)
):
):
COUNTY OF WASHOE)

I, JOHN MALONE, hereby affirm under penalty of perjury that the assertions of this affidavit are true:

1. On or about March 19, 2008, this Court appointed the Alternate Public Defender to represent Defendant, Frank Milford Peck, in CR06-2580, due to a claim of a conflict with his previously appointed counsel, the Washoe County Public Defender.

2. The reason given for the conflict was that the Defendant had filed a lawsuit in U.S. District Court against the Washoe County Public Defender's Office.

///
///

1 3. In reviewing the discovery provided to the Alternate Public Defender in this
2 case, I found a document entitled REPLY TO ANSWER TO PETITION FOR A WRIT OF
3 HABEAS CORPUS, filed by Frank M. Peck, pro se, (CV115A-RLH) (PAL). This document
4 alleged various claims of ineffective assistance of counsel against attorney Dennis Widdis
5 regarding a previous case against Mr. Peck, CR96-2687.
6

7 4. In reviewing this paperwork, it became apparent that Mr. Widdis, although
8 previously employed as a Washoe County Public Defender, had represented Mr. Peck as a
9 privately retained attorney in case number CR96-2687. In the paperwork provided to counsel
10 initially (REPLY TO ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS) there is
11 no mention of, nor any allegation relating to the Washoe County Public Defender.
12

13 5. Subsequently, counsel had several unfruitful conversations with the Washoe
14 County Public Defender and his representatives, in an attempt to clarify whether the Federal
15 Habeas Corpus petition was the action that led to their conflicting off CR06-2580.
16

17 6. Counsel then had an investigator assigned to search the Federal Court Docket
18 for lawsuits filed by Mr. Peck. That investigation showed that Mr. Peck has filed only the
19 aforementioned petition for Writ of Habeas Corpus (and a duplicative filing of the same
20 petition, which the court found had been filed in error and subsequently dismissed). Counsel
21 also obtained a copy of the original form, PETITION FOR WRIT OF HABEAS CORPUS in
22 CV115A-RLH. This petition shows that Mr. Peck was represented by Vaun Hall, a Deputy
23 Public Defender, at the Arraignment and then had been represented by attorney Dennis Widdis
24 at trial and sentencing. A review of the grounds for the petition shows that Mr. Peck alleges
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DC-990003181-150
CR06-2580 FRANK MILFORD PECK 2 Pages
STATE VS. FRANK MILFORD PECK 2 Pages
District Court 05/20/2008 02:23 PM
Washoe County 4025
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CODE 4025
JENNIFER J. LUNT
BAR #3057
P.O. BOX 30083
RENO, NV 89520-3083
(775) 328-3955
ATTORNEY FOR: DEFENDANT

FILED
2008 MAY 20 PM 2:23
HOWARD W. CONYERS
BY *Howe*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,

vs.

Case No.: CR06-2580

FRANK PECK,
Defendant.

Dept. No.: 6

STIPULATION AND ORDER FOR CONTINUANCE

It is hereby stipulated by and between John Malone, with the Washoe County Alternate Public Defender's Office, and David Clifton, with the Washoe County District Attorney's Office, that the Motion hearing set for set for May 14, 2008, at 9:00 a.m., be vacated and be reset for May 28, 2008, at 9:00 a.m.

DATED this 12th day of May, 2008.

RICHARD A. GAMMICK
Washoe County District Attorney

JENNIFER J. LUNT
Washoe County Public Defender

By: *David W. Clifton*
DAVID CLIFTON
Chief Deputy District Attorney

By: *John Malone*
JOHN MALONE
Deputy Alternate Public Defender

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ORDER

IT IS SO ORDERED.

DATED this 16th day of May, 2008.



DISTRICT JUDGE

ORIGINAL FILED

2008 JUN 12 AM 11:22

HOWARD W. CONYERSA

DEPT. 1

CASE NO: CR06-2580

EPT. NO: 6

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK MILFORD PECK,
DEFENDANT,

VS.

JUDICIAL NOTICE OF POTENTIAL
CONFLICT WITH COUNSEL.

THE STATE OF NEVADA,
PLAINTIFF. /

Comes Now, Frank Milford Peck, Defendant, In Proper Person hereby giving Judge Brent Adams Judicial Notice of a potential conflict with counsel.

STATEMENT OF CASE

Pursuant to issues already raised in open court there currently exists an ineffective assistance of counsel claim against the Washoe County Public Defender's Office pending in a federal petition for Writ of habeas corpus on an unrelated matter. The adjudication of this claim is not complete therefore creating a conflict of interest with not only the Public Defender's office but also the recently formed Alternative Public Defender's office as this office is nothing more than a branch off created in 2007. This office employs several lawyers that are and were employed by the Public Defender at the time of their original representation.

In COLLIER V. LEGAKES 646 P.2D 1219(1982) the court clearly stated that "a problem with one lawyer in a firm equals a conflict with the entire firm."

CR06-2580
STATE VS. FRANK MILFORD PECK
District Court
Washoe County
DC-8900003346-060
06/12/2008 11:22 AM
CGALINDP

Therefore, as the public defenders in the alternative office were employed by the Washoe County Public Defender and the separation of the two offices did not occur until 2007 the potential conflict exists with all employees of that office.

The Honorable Judge should appoint counsel outside of the Washoe county Public Defender's office.

The potential conflict is the ineffective assistance of counsel claim wherein specifically Public Defender Vaughn Hall was assigned by his office to represent the Defendant during critical stages of pre-trial hearings including preliminary examination where the state made notice to Mr. Hall that the Defendant's spouse would give testimony. It is the defendant's contention that Public defender Hall was ineffective for not notifying him of his right to invoke his spousal privilege and by his actions prevented the Defendant from receiving a Fair trial.

It has been clearly established that while numerous courts have refused to state what defense counsel may do thereby limiting their options instead a specific "two prong" test was first established by the federal courts in STRICKLAND V. WASHINGTON 466 U.S. 668(1984) then restated and adopted by the Nevada Supreme Court in KIRKSEY V. STATE 923 P.2D 1102,1107 (1996). The first prong is that counsel's performance must be deficient.

In the instant case, the defendant claims that counsel's failure to notify him of his right to invoke spousal privilege was ineffective and prevented him from receiving a fair trial.

This failure was clearly ineffective because prior to preliminary examination counsel was made aware that his clients spouse was on the witness list.

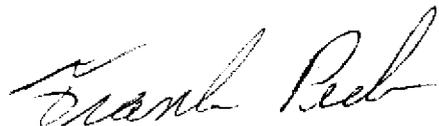
At this point, had Public defender Hall been acting as a "zealous and loyal advocate" as required by EVITTS V. LUCEY 105 S.CT. 830,835 (1985) AND SUPREME COURT RULES OF PROFESSIONAL CONDUCT RULE NUMBER 151&153 he would have investigated and notified his client of his right to invoke spousal privelege and prevent the extremely prejudicial testimony of his spouse.

The second prong is the defenanadt must show prejudice caused by the ineffective actions of counsel.

In the instant cliam the prejudice is that defendant was prejudiced by his spouses testimony which was damaging in its own right. In light of her testimony the prejudice cannot be considered harmless.

While it is not this court's jurisdiction to decide the validity of this claim the defendant has shown that in fact a conflict does exist and due to the appearance of impropriety would give this court Judicial Notice of a conflict with both branches of the public Defenders office.

Wherefore, the Defendant respectfully requests Judge Brent Adams to declare a conflict and appoint counsel that is not associated with the Washoe County Public Defender's Office and with trial experience in cases of this nature as well as investigatory experience due to the necessity of intense Scientific testimony required in my defense. Respectfully submitted this 5th day of June 2008.


Frank Peck #57106
Defendant In Proper Person
V2.219

CERTIFICATE OF SERVICE

I, THE UNDERSIGNED CERTIFY THAT PURSUANT TO NRCP 5(B) I CAUSED A TRUE AND CORRCET COPY OF THE FOREGOING TO THE FOLLOWING BY PLACING IT IN THE INMATE MIL SYSTEM POSTAGE PRE-PAID AND ADDRESSED TO THE FOLLOWING:

JUDGE BRENT ADAMS
DEPARTMENT 6
75 COURT STREET
RENO, NEVADA 89501

CLERK OF THE COURT
SECOND JUDICIAL DISTRICT
P.O. 30083
RENO, NEVADA 89520

WASHOE COUNTY PUBLIC DEFENDER
P.O. BOX 30083
RENO, NEVADA 89520

ALTERNATIVE PUBLIC DEFENDR
P.O.BOX 30083
RENO, NEVADA 89520

WASHOE COUNTY DISTRICT ATTORNEY
P.O.BOX 30083
RENO, NEVADA 89520

DATED THIS 6TH DAY OF JUNE 2008.

FRANK PECK #57106
DEFENADNT IN PROPER PERSON

ORIGINAL

FILED

2008 JUN 12 AM 11:23

HOWARD W. CANEVA

[Handwritten signature]

CASE NO: CR06-2580

DEPT. NO: 6

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FRANK MILFORD PECK,
DEFENDANT,

VS.

JUDICIAL NOTICE OF POTENTIAL
CONFLICT WITH COUNSEL.

THE STATE OF NEVADA,
PLAINTIFF. /

Comes Now, Frank Milford Peck, Defendant, In Proper Person hereby giving Judge Brent Adams Judicial Notice of a potential conflict with counsel.

STATEMENT OF CASE

Pursuant to issues already raised in open court there currently exists an ineffective assistance of counsel claim against the Washoe County Public Defender's Office pending in a federal petition for Writ of habeas corpus on an unrelated matter. The adjudication of this claim is not complete therefore creating a conflict of interest with not only the Public Defender's office but also the recently formed Alternative Public Defender's office as this office is nothing more than a branch off created in 2007. This office employs several lawyers that are and were employed by the Public Defender at the time of their original representation.

In COLLIER V. LEGAKES 646 P.2D 1219(1982) the court clearly stated that "a problem with one lawyer in a firm equals a conflict with the entire firm."

CR06-2580
STATE VS. FRANK MILFORD PECK
District Court
Washoe County
DC
DC-9906003346-061
MILFORD PECK 5 Pages
06/12/2008 11:23 AM
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Therefore, as the public defenders in the alternative office were employed by the Washoe County Public Defender and the separation of the two offices did not occur until 2007 the potential conflict exists with all employees of that office.

The Honorable Judge should appoint counsel outside of the Washoe county Public Defender's office.

The potential conflict is the ineffective assistance of counsel claim wherein specifically Public Defender Vaughn Hall was assigned by his office to represent the Defendant during critical stages of pre-trial hearings including preliminary examination where the state made notice to Mr. Hall that the Defendant's spouse would give testimony. It is the defendant's contention that Public Defender Hall was ineffective for not notifying him of his right to invoke his spousal privilege and by his actions prevented the Defendant from receiving a Fair trial.

It has been clearly established that while numerous courts have refused to state what defense counsel may do thereby limiting their options instead a specific "two prong" test was first established by the federal courts in STRICKLAND V. WASHINGTON 466 U.S. 668(1984) then restated and adopted by the Nevada Supreme Court in KIRKSEY V. STATE 923 P.2D 1102,1107 (1996). The first prong is that counsel's performance must be deficient.

In the instant case, the defendant claims that counsel's failure to notify him of his right to invoke spousal privilege was ineffective and prevented him from receiving a fair trial.

This failure was clearly ineffective because prior to preliminary examination counsel was made aware that his clients spouse was on the witness list.

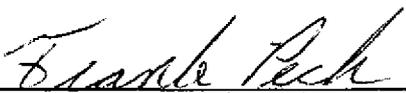
At this point, had Public defender Hall been acting as a "zealous and loyal advocate" as required by EVITTS V. LUCEY 105 S.CT. 830,835 (1985) AND SUPREME COURT RULES OF PROFESSIONAL CONDUCT RULE NUMBER 151&153 he would have investigated and notified his client of his right to invoke spousal privelege and prevent the extremely prejudicial testimony of his spouse.

The second prong is the defenanadt must show prejudice caused by the ineffective actions of counsel.

In the instant cliam the prejudice is that defendant was prejudiced by his spouses testimony which was damaging in its own right. In light of her testimony the prejudice cannot be considered harmless.

While it is not this court's jurisdiction to decide the validity of this claim the defendant has shown that in fact a conflict does exist and due to the appearance of impropriety would give this court Judicial Notice of a conflict with both branches of the public Defenders office.

Wherefore, the Defendant respectfully requests Judge Brent Adams to declare a conflict and appoint counsel that is not associated with the Washoe County Public Defender's Office and with trial experience in cases of this nature as well as investigatory experience due to the necessity of intense Scientific testimony required in my defense. Respectfully submitted this 5th day of June 2008.


Frank Peck #57106
Defendant In Proper Person
V2.223

CERTIFICATE OF SERVICE

I, THE UNDERSIGNED CERTIFY THAT PURSUANT TO NRCP 5(B) I CAUSED A TRUE AND CORRCET COPY OF THE FOREGOING TO THE FOLLOWING BY PLACING IT IN THE INMATE MIL SYSTEM POSTAGE PRE-PAID AND ADDRESSED TO THE FOLLOWING:

JUDGE BRENT ADAMS
DEPARTMENT 6
75 COURT STREET
RENO, NEVADA 89501

CLERK OF THE COURT
SECOND JUDICIAL DISTRICT
P.O. 30083
RENO, NEVADA 89520

WASHOE COUNTY PUBLIC DEFENDER
P.O. BOX 30083
RENO, NEVADA 89520

ALTERNATIVE PUBLIC DEFENDR
P.O.BOX 30083
RENO, NEVADA 89520

WASHOE COUNTY DISTRICT ATTORNEY
P.O.BOX 30083
RENO, NEVADA 89520

DATED THIS 6TH DAY OF JUNE 2008.



FRANK PECK #57106
DEFENADNT IN PROPER PERSON

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**SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA**

**AFFIRMATION
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, _____

Notice of potential Conflict

(Title of Document)

filed in case number: CR-06-2580

Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

(State specific state or federal law)

-or-

For the administration of a public program

-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 6-6-08

Frank Peck
(Signature)

Frank Peck
(Print Name)

Pro Se
(Attorney for)

V2.225

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Electronically Filed
July 24 2014 1:40 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

STATE OF NEVADA
Plaintiff,

vs.

FRANK PECK,
Defendant.

Sup. Ct. Case No. 65691
Case No. CR06-2580
Dept. 6

RECORD ON APPEAL

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CERTIFICATE OF CLERK AND TRANSMITTAL

APPELLANT

Frank Peck #57106
H D S P - P O Box 650
Indian Springs, Nevada 89070

RESPONDENT

Washoe County District Attorney's
Office
Terrance McCarthy, Esq.
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**SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE**

Case History - CR06-2580

DEPT. D6

HON. BRENT ADAMS

Report Date & Time
7/21/2014
10:32:44AM

Case Description: STATE VS. FRANK MILFORD PECK (D6)

Case ID: CR06-2580 Case Type: CRIMINAL Initial Filing Date: 11/3/2006

Parties

PLTF	STATE OF NEVADA - STATE
DA	David Wayne Clifton, Esq. - 1653
DA	Terrence P. McCarthy, Esq. - 2745
DA	Bruce C. Hahn, Esq. - 5011
DEFT	FRANK MILFORD PECK - @3461
CAA	Karla Butko, Esq. - 3307
CAA	Mary Lou A. Wilson, Esq. - 3329
PNP	Div. of Parole & Probation - DPNP

Charges

<i>Charge No.</i>	<i>Charge Code</i>	<i>Charge Date</i>	<i>Charge Description</i>
1	F1000	11/8/2006	IND SEXUAL ASSAULT

Plea Information

<i>Charge No.</i>	<i>Plea Code</i>	<i>Plea Date</i>	<i>Plea Description</i>
1	F1000	12/15/2006	PLED NOT GUILTY

Sentences

<i>Date</i>	<i>Charge No.</i>	<i>Charge Desc</i>	<i>Time Served</i>	<i>Sentence Text</i>
7/10/2009	1	Life With Poss of Parole		NSP LIFE WITH POSSIBILITY OF PAROLE AFTER 5 YEARS HAS BEEN SERVED; TO RUN CONSEC TO CR96-2687. FEES IMPOSED.

Release Information

Custody Status

Hearings

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>	<i>Disposed Date</i>
1 D3	ARRAIGNMENT	12/15/2006 09:00:00	12/15/2006
Event Extra Text:		Disposition: D725 12/15/2006 INDICTMENT	

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>	<i>Disposed Date</i>
2 D6	MOTION TO CONFIRM TRIAL	9/5/2007 09:00:00	9/5/2007
Event Extra Text:		Disposition: D355 9/5/2007 MOTION TO CONTINUE GRANTED	

Case Description: STATE VS. FRANK MILFORD PECK (D6)

Case ID: CR06-2580 Case Type: CRIMINAL Initial Filing Date: 11/3/2006

Department	Event Description	Sched. Date & Time	Disposed Date
3 D6	TRIAL - JURY	9/17/2007 09:00:00	9/5/2007

Event Extra Text: TRIAL SET FOR 4 DAYS

Disposition:
D845 9/5/2007

Department	Event Description	Sched. Date & Time	Disposed Date
4 D6	MOTION TO CONFIRM TRIAL	2/20/2008 09:00:00	2/20/2008

Event Extra Text:

Disposition:
D435 2/20/2008
MOTION TO W/DRAW AS COUNSEL - GRANTED
COURT APPOINTED PUBLIC DEFENDER'S OFFICE

Department	Event Description	Sched. Date & Time	Disposed Date
5 D6	TRIAL - JURY	3/3/2008 09:00:00	2/20/2008

Event Extra Text: TRIAL SET 4 DAYS

Disposition:
D845 2/20/2008

Department	Event Description	Sched. Date & Time	Disposed Date
6 D6	MOTION TO SET TRIAL	3/19/2008 09:00:00	3/19/2008

Event Extra Text:

Disposition:
D435 3/19/2008
COURT AMENDED ORDER APPOINTING COUNSEL AND
APPOINTED THE ALTERNATE PUBLIC DEFENDERS
OFFICE

Department	Event Description	Sched. Date & Time	Disposed Date
7 D6	MOTION TO SET TRIAL	3/28/2008 09:00:00	3/28/2008

Event Extra Text:

Disposition:
D435 3/28/2008
TRIAL SET

Department	Event Description	Sched. Date & Time	Disposed Date
8 D6	MOTION ...	5/14/2008 09:00:00	5/13/2008

Event Extra Text: TO RELIEVE APD AS COUNSEL

Disposition:
D844 5/13/2008
reset to 5/28/08 per stipulation of counsel. APD to prepare
stipulation.

Department	Event Description	Sched. Date & Time	Disposed Date
9 D6	MOTION ...	5/28/2008 09:00:00	5/28/2008

Event Extra Text: 15 MINS - TO BE HEARD AT THE END OF CALENDAR

Disposition:
D450 5/28/2008

Department	Event Description	Sched. Date & Time	Disposed Date
10 D6	MOTION ...	6/27/2008 09:00:00	6/27/2008

Event Extra Text: MOTION TO RELIEVE APD'D OFFICE AS COUNSEL

Disposition:
D355 6/27/2008

Case Description: STATE VS. FRANK MILFORD PECK (D6)**Case ID: CR06-2580 Case Type: CRIMINAL Initial Filing Date: 11/3/2006**

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>		<i>Disposed Date</i>
11	D6 MOTION TO CONFIRM TRIAL	10/29/2008	09:00:00	10/29/2008
Event Extra Text:		Disposition: D845 10/29/2008 PRIOR TO COURT, VACATED BY B. LINDSEY AND D. CLIFTON. MTN TO RECUSE JUDGE ADAMS TO BE HEARD IN D10. COUNSEL WILL CONTACT D6 AFTER RECUSAL HRG RE: SETTING NEW COURT DATE IF NEEDED.		
12	D10 HEARING...	11/7/2008	14:00:00	11/7/2008
Event Extra Text: D10 WAS MADE AWARE OF 8/18/08 ORDER TRANSFERING TO CONSIDER MOTION FOR RECUSAL ON 10/28/08. D6 ADVISED MOTION TO CONFIRM TRIAL SCHEDULED FOR 10/29/08 AND TRIAL SCHEDULED FOR 11/10/08 VACATED AND TO BE RESET AFTER DECISION ON MOTION FOR RECUSAL.		Disposition: D455 11/7/2008		
13	D6 TRIAL - JURY	11/10/2008	09:00:00	10/29/2008
Event Extra Text: TRIAL SET FOR 5 DAYS		Disposition: D845 10/29/2008 PRIOR TO COURT, VACATED BY B. LINDSEY & DAVE CLIFTON. MOTION TO RECUSE JUDGE ADAMS TO BE HEARD IN D10 ON 11/7. COUNSEL WILL CONTACT D6 AFTER RECUSAL HEARING RE: SETTING NEW COURT DATE IF NEEDED.		
14	D10 HEARING...	11/25/2008	14:00:00	11/25/2008
Event Extra Text: RE: DEFT'S MOTION FOR RECUSAL OF JUDGE ADAMS		Disposition: D355 11/25/2008 DEFT'S MOTION FOR RECUSAL OF JUDGE ADAMS DENIED.		
15	D6 MOTION TO SET TRIAL	12/12/2008	09:00:00	12/12/2008
Event Extra Text:		Disposition: D425 12/12/2008 TRIAL SET		
16	D6 MOTION TO CONFIRM TRIAL	4/22/2009	09:00:00	4/22/2009
Event Extra Text:		Disposition: D425 4/22/2009 MOTION TO RELIEVE COUNSEL DENIED, COURT WILL REVIEW DEFT'S MOTION TO PROCEED PRO SE		
17	D6 MOTION ...	4/29/2009	09:00:00	4/29/2009
Event Extra Text: TO PROCEED PRO SE		Disposition: D844 4/29/2009 prior to court, reset to 5/1. d6 in trial.		

Case Description: STATE VS. FRANK MILFORD PECK (D6)**Case ID: CR06-2580 Case Type: CRIMINAL Initial Filing Date: 11/3/2006**

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>		<i>Disposed Date</i>
18 D6	MOTION ...	5/1/2009	09:00:00	5/1/2009

Event Extra Text: TO PROCEED PRO SE

Disposition:

D425 5/1/2009

MOTION TO PROCEED PRO SE - GRANTED. COURT APPOINTED BRUCE LINDSAY TO SIT AS ADVISORY COUNSEL. COURT FURTHER GRANTED DEFT'S REQUEST TO BE KEPT AT WASHOE COUNTY DETENTION FACILITY THROUGH THE END OF TRIAL

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>		<i>Disposed Date</i>
19 D6	TRIAL - JURY	5/4/2009	09:00:00	5/1/2009

Event Extra Text: TRIAL SET 4 DAYS

Disposition:

D845 5/1/2009

RESET TO WEDNESDAY MAY 6, 2009 @ 10:30 A.M.

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>		<i>Disposed Date</i>
20 D6	CONFERENCE CALL	5/5/2009	13:30:00	5/5/2009

Event Extra Text:

Disposition:

D435 5/5/2009

MOTION TO VACATE TRIAL DENIED; PRE-TRIAL PETITION FOR WRIT OF HABEAS CORPUS WILL BE CONSIDERED DURING TRIAL.

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>		<i>Disposed Date</i>
21 D6	TRIAL - JURY	5/6/2009	10:30:00	5/6/2009

Event Extra Text:

Disposition:

D832 5/6/2009

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>		<i>Disposed Date</i>
22 D6	TRIAL ONGOING	5/7/2009	09:00:00	5/7/2009

Event Extra Text:

Disposition:

D832 5/7/2009

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>		<i>Disposed Date</i>
23 D6	TRIAL ONGOING	5/8/2009	10:30:00	5/8/2009

Event Extra Text:

Disposition:

D832 5/8/2009

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>		<i>Disposed Date</i>
24 D6	TRIAL ONGOING	5/11/2009	13:00:00	5/11/2009

Event Extra Text:

Disposition:

D832 5/11/2009

Case Description: STATE VS. FRANK MILFORD PECK (D6)**Case ID: CR06-2580 Case Type: CRIMINAL Initial Filing Date: 11/3/2006**

Department	Event Description	Sched. Date & Time	Disposed Date
25 D6	TRIAL ONGOING	5/12/2009 09:00:00	5/12/2009

Event Extra Text:

Disposition:
D895 5/12/2009

Department	Event Description	Sched. Date & Time	Disposed Date
26 D6	SENTENCING	7/10/2009 09:00:00	7/10/2009

Event Extra Text:

Disposition:
D765 7/10/2009

Department	Event Description	Sched. Date & Time	Disposed Date
27 D6	Tickle Start Code	3/17/2014 07:00:00	3/17/2014

Event Extra Text: HAS STATE FILED OPPOSITION?

Disposition:
T200 3/17/2014

Department	Event Description	Sched. Date & Time	Disposed Date
28 D6	Request for Submission	3/21/2014 13:20:00	4/30/2014

Event Extra Text: MOTION TO DISMISS PETITION AND
SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION) (NO PAPER ORDER PROVIDED)

Disposition:
S200 4/30/2014
order

Agency Cross Reference

Code	Agency Description	Case Reference I.D.
DA	District Attorney's Office	DA327992
SC	Supreme Court	SCN 51948
SC	Supreme Court	SCN 53403
SC	Supreme Court	SCN 53826
SC	Supreme Court	SCN 53947
SC	Supreme Court	SCN 54168
SC	Supreme Court	SCN 54875
SC	Supreme Court	SCN 65521
SC	Supreme Court	SCN 65691
SP	Sparks Police Department	SPD949292

Actions

Action Entry Date	Code	Code Description	Text
11/3/2006	1260	Application Produce Prisoner	
11/6/2006	3340	Ord to Produce Prisoner	
11/8/2006	1300	Bench Warrant Filed-Case Clsd	BAIL SET AT \$50,000.00 CASH OR BOND
11/8/2006	1795	Indictment	
11/20/2006	1250	Application for Setting	ARRAIGNMENT
11/20/2006	1325	** Case Reopened	
11/22/2006	4189	Grand Jury Transcript	
11/27/2006	1775	General Receipt	
12/15/2006	MIN	***Minutes	

Case Description: STATE VS. FRANK MILFORD PECK (D6)

Case ID:	CR06-2580	Case Type:	CRIMINAL	Initial Filing Date:	11/3/2006
12/15/2006	MIN	***Minutes			
12/15/2006	1280	** 60 Day Rule - Waived			
12/27/2006	4185	Transcript			
8/14/2007	3980	Stip and Order...	REQUEST, STIPULATION AND ORDER RE PRE-PRELIMINARY HEARING AND PRE-TRIAL DISCOVERY (F		
8/24/2007	2565	Notice Intent Use Expt Witness			
9/5/2007	MIN	***Minutes			
9/6/2007	3892	Return of Service B/W	FILED 11/8/06, SERVED 11/14/06, \$50,000 CASH OR BOND		
10/10/2007	4185	Transcript	MOTION TO CONTINUE JURY TRIAL		
2/13/2008	2490	Motion ...	MOTION TO WITHDRAW AS ATTORNEY OF RECORD		
2/20/2008	3370	Order ...			
2/25/2008	2490	Motion ...	MOTION TO WITHDRAW COUNSEL AND APPOINT SUBSTITUTION COUNSEL BASED UPON A CONFLICT		
3/19/2008	3370	Order ...	AMENDED ORDER APPOINTING COUNSEL		
3/26/2008	4185	Transcript	MOTION TO WITHDRAW AS COUNSEL 2/20/08		
4/2/2008	4185	Transcript	3/28/2008 MOTION TO SET TRIAL		
4/10/2008	1775	General Receipt	RECEIPT OF GRAND JURY TRANSCRIPT		
4/23/2008	4185	Transcript	03/19/08 MOTION TO APPOINT ALTERNATE PUBLIC DEFENDER		
4/29/2008	3870	Request	REQUEST, STIPULATION AND ORDER RE PRE-PRELIMINARY HEARING AND PRE-TRIAL RECIPRDOCAL		
4/30/2008	2490	Motion ...	MOTION RELIEVING WASHOE COUNTY ALTERNATE PUBLIC DEFENDER'S OFFICE OF REPRESENTATIC		
5/1/2008	1250	Application for Setting	SET FOR MOTION HEARING ON 5/14/08 AT 9AM		
5/8/2008	1075	Affidavit ...			
5/20/2008	4025	Stip & Ord to Continue	5/28/2008 @ 9:00AM		
5/28/2008	1695	** Exhibit(s) ...			
6/12/2008	2610	Notice ...	JUDICIAL NOTICE OF POTENTIAL CONFLICT WITH COUNSEL		
6/12/2008	2610	Notice ...	JUDICIAL NOTICE OF POTENTIAL CONFLICT WITH COUNSEL		
6/20/2008	4185	Transcript	MOTION IN RELIEF - 05/28/08 - Transaction 252915 - Approved By: MPURDY : 06-20-2008:08:49:02		
6/27/2008	2515	Notice of Appeal Supreme Court			
6/30/2008	1310	Case Appeal Statement			
6/30/2008	1365	Certificate of Transmittal			
6/30/2008	1350	Certificate of Clerk			
7/3/2008	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 51948		
7/3/2008	1187	**Supreme Court Case No. ...	SUPREME COURT CASE NO. 51948		
7/18/2008	4127	Supreme Ct Ord Dismis Appeal	SUPREME COURT CASE NO. 51948		
8/1/2008	4185	Transcript	MOTION TO RELIEVE ALTERNATE PUBLIC DEFENDER'S OFFICE AS COUNSEL - JUNE 27, 2008 - Transac		
8/11/2008	2490	Motion ...	MOTION FOR RECUSAL OF JUDGE BRENT ADAMS		
8/11/2008	1030	Affidavit in Support...	AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION FOR RECUSAL		
8/13/2008	1130	Answer ...	OF JUDGE ADAMS		
8/18/2008	3370	Order ...	TRANSFERRING MATTER TO DEPARTMENT 10 FOR PURPOSE OF DECIDING MOTION FOR RECUSAL O		
8/18/2008	4145	Supreme Court Remittitur	SUPREME COURT CASE NO. 51948		
8/18/2008	4111	Supreme Ct Clk's Cert & Judg	SUPREME COURT CASE NO. 51948		

Case Description: STATE VS. FRANK MILFORD PECK (D6)

Case ID:	CR06-2580	Case Type:	CRIMINAL	Initial Filing Date:	11/3/2006
8/18/2008	4127	Supreme Ct Ord Dismiss Appeal	SUPREME COURT CASE NO. 51948		
8/29/2008	2590	Notice Withdrawal of Attorney	NOTICE OF WITHDRAWAL AS ATTORNEY OF RECORD: JENNIFER LUNT & JOHN MALONE WITHDRAW A		
9/12/2008	2610	Notice ...			
9/16/2008	4075	Substitution of Counsel	SUBSTITUTION OF WASHOE COUNTY APD IN PLACE OF WASHOE COUNTY PD		
11/10/2008	3880	Response...	TO NOTICE (JUDGE ELLIOTT DENIES ALL ALLEGATIONS OF BIAS OR PREJUDICE)		
11/24/2008	2777	Order Approving ...	RECOMMENDATION AND ORDER APPOINTING COUNSEL (BRUCE LINDSAY, ESQ.) - Transaction 469249		
12/1/2008	MIN	***Minutes	NOVEMBER 7, 2008 - HEARING - Transaction 477225 - Approved By: NOREVIEW : 12-01-2008:15:55:56		
12/2/2008	1325	** Case Reopened			
12/2/2008	1250	Application for Setting	HRG TO SET JURY TRIAL: 12-12-08 AT 9:00		
12/15/2008	4185	Transcript	12-12-08 MOTION TO SET TRIAL - Transaction 500557 - Approved By: SSTINCHF : 12-15-2008:16:05:54		
12/17/2008	4185	Transcript	MOTION FOR RECUSAL - 11/07/08 - Transaction 505017 - Approved By: MPURDY : 12-17-2008:12:45:09		
12/22/2008	4185	Transcript	MOTION FOR RECUSAL - NOVEMBER 25, 2008 - Transaction 512261 - Approved By: TPRINCE : 12-22-2008		
1/12/2009	MIN	***Minutes	11/25/08-HEARING RE: RECUSAL OF JUDGE ADAMS - Transaction 539022 - Approved By: NOREVIEW : 01-		
3/10/2009	2490	Motion ...	MOTION FOR NEW COUNSEL		
3/13/2009	3645	Petition ...	PETITION FOR WRIT OF MANDAMUS		
3/24/2009	2490	Motion ...	MOTION FOR TRANSCRIPTS		
3/24/2009	2270	Mtn to Compel...	MOTION TO COMPEL COUNSEL TO RETURN DEFENDANT'S DOCUMENTS		
3/25/2009	3862	**Criminal Submit	DOCUMENT TITLE: PETITION FOR WRIT OF HABEAS CORPUS		
3/25/2009	3585	Pet Writ Habeas Corpus	PETITION FOR WRIT OF HABEAS CORPUS		
3/25/2009	1955	Memorandum Points&Authorities	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORP		
3/27/2009	3370	Order ...	DENYING PETITION FOR WRIT OF HABEAS CORPUS		
4/2/2009	2610	Notice ...	NOTICE REGARDING TRANSCRIPTS		
4/2/2009	1187	**Supreme Court Case No. ...	SUPREME COURT CASE NO. 53403		
4/2/2009	4128	Supreme Court Order Denying	SUPREME COURT CASE NO. 53403		
4/14/2009	2490	Motion ...	MOTION TO HAVE DNA EVIDENCE INDEPENDENTLY TESTED BY DEFENSE EXPERT		
4/14/2009	2610	Notice ...	NOTICE OF ALIBI DEFENSE		
4/14/2009	2045	Mtn for Discovery	MOTION FOR DISCOVERY AND FOR EXCULPATORY EVIDENCE BRADY, GIGGLIO AND OTHER BAD ACT		
4/14/2009	2175	Mtn for Reconsideration	MOTION TO RECONSIDER FILING DEFENDANT'S PRE-TRIAL PETITION FOR WRIT OF HABEAS CORPUS		
4/14/2009	2565	Notice Intent Use Expt Witness	NOTICE OF EXPERT WITNESS		
4/22/2009	MIN	***Minutes	Motion to Confirm - Transaction 726145 - Approved By: NOREVIEW : 04-22-2009:14:49:32		
4/22/2009	2490	Motion ...	TO PROCEED PRO SE AND REQUEST FOR BASIC TOOLS INTEGRAL FOR EFFECTIVE DEFENSE		
4/27/2009	2592	Notice of Witnesses			
4/27/2009	4133	Supreme Court Notice	SUPREME COURT CASE NO. 53403		
5/4/2009	2610	Notice ...	JUDICIAL NOTICE AND COMPLAINT AGAINST COUNSEL ROBERT BRUCE LINDSAY		
5/7/2009	4065	Subpoena Duces Tecum	JEFFREY RIOLO		
5/7/2009	4065	Subpoena Duces Tecum	MARIA FASSETTI		
5/7/2009	4065	Subpoena Duces Tecum	RENE ROMERO		
5/8/2009	2490	Motion ...	MOTION TO PRODUCE WITNESS LARRY PECK FOR TESTIMONY ON MONDAY MAY 11, 2009		
5/8/2009	2490	Motion ...	MOTION FOR INVESTIGATOR		

Case Description: STATE VS. FRANK MILFORD PECK (D6)

Case ID:	CR06-2580	Case Type:	CRIMINAL	Initial Filing Date:	11/3/2006
5/8/2009	2490	Motion ...	MOTION FOR TRANSCRIPTION OF DNA EXPERT TERTIMONY		
5/8/2009	3370	Order ...	ORDER FOR TRANCRPTION OF DNA EXPERT TESTIMONY		
5/8/2009	3370	Order ...	ORDER TO PRODUCE WITNESS LARRY PECK FOR TESTIMONY OF MONDAY MAY 11, 2009		
5/9/2009	4190	Transcript - Partial	PARTIAL TRANSCRIPT OF PROCEEDINGS EXAMINATION OF RENEE ROMERO - 05/08/09 - Transaction 76		
5/12/2009	1885	Jury Instructions	Transaction 767928 - Approved By: MPURDY : 05-12-2009:16:22:05		
5/12/2009	1695	** Exhibit(s) ...	TRIAL EXHIBITS		
5/12/2009	1885	Jury Instructions	1-24		
5/12/2009	1890	Jury Question, Court Response			
5/12/2009	4235	Unused Verdict Form(s)...			
5/12/2009	4245	Verdict(s)...	Transaction 767937 - Approved By: MPURDY : 05-12-2009:16:22:57		
5/12/2009	4245	Verdict(s)...			
5/12/2009	1890	Jury Question, Court Response	QUESTION 1 - Transaction 767924 - Approved By: MPURDY : 05-12-2009:16:20:58		
5/12/2009	1890	Jury Question, Court Response			
5/12/2009	1890	Jury Question, Court Response	Transaction 767925 - Approved By: MPURDY : 05-12-2009:16:21:35		
5/12/2009	4235	Unused Verdict Form(s)...	Transaction 767930 - Approved By: MPURDY : 05-12-2009:16:22:33		
5/18/2009	2515	Notice of Appeal Supreme Court			
5/18/2009	1310	Case Appeal Statement			
5/18/2009	1350	Certificate of Clerk			
5/18/2009	1365	Certificate of Transmittal			
5/19/2009	MIN	***Minutes	Jury Trial - 5/6/09 - Transaction 779912 - Approved By: NOREVIEW : 05-19-2009:10:23:10		
5/19/2009	MIN	***Minutes	5/11/09 JURY TRIAL - Transaction 779810 - Approved By: NOREVIEW : 05-19-2009:10:04:57		
5/20/2009	4185	Transcript	MOTION TO PROCEED PRO SE - 05/01/09 - Transaction 781759 - Approved By: MPURDY : 05-20-2009:08:02		
5/21/2009	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 53826		
5/22/2009	2490	Motion ...	MOTION TO CORRECT CONST MANIFEST INJUSTICE WEIGHT OF THE EVIDENCE		
5/28/2009	2610	Notice ...	(SEALED) NOTICE REGARDING PAYMENT OF INVESTIGATIVE FEES		
5/29/2009	4185	Transcript	04-22-2009 - MOTION TO CONFIRM TRIAL - Transaction 801875 - Approved By: ASMITH : 05-29-2009:15:06:		
6/2/2009	2490	Motion ...	MOTION FOR SUBSTITUTION OF COUNSEL FOR SENTENCING		
6/2/2009	1020	Addendum	ADDENDUM TO MOTION TO CORRECT MANIFEST INJUSTICE		
6/2/2009	2490	Motion ...	MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND REQUEST FOR RECORDS/COURT CASE		
6/8/2009	2490	Motion ...	MOTION TO SHOW CAUSE FOR FAILURE TO OBJECT TO DNA EVIDENCE		
6/9/2009	4127	Supreme Ct Ord Dismis Appeal	SUPREME COURT CASE NO. 53826		
6/9/2009	3645	Petition ...	PETITION FOR WRIT OF PROHIBITION AND MANDATE		
6/12/2009	3880	Response...	RESPONSE TO DEFENDANT'S POST-TRIAL MOTIONS		
6/18/2009	2490	Motion ...	MOTION FOR ADMISSIBILLITY HEARING REGARDING DNA EVIDENCE AND DISCOVERY OF UNDERLYIN		
6/18/2009	2490	Motion ...	MOTION TO SUPPRESS ILLEGALLY OBTAINED EVIDENCE NRS 174.085 179.335		
6/18/2009	4055	Subpoena	SUBPOENA AND NOTICE TO PRODUCE NRS 174.305 TO 174.385		
6/18/2009	3790	Reply to/in Opposition	REPLY TO RESPONSE TO DEFENDANTS POST TRIAL MOTIONS		
6/18/2009	2490	Motion ...	MOTION TO PRODUCE WITNESS LARRY PECK FOR TESTIMONY ON FRIDAY JULY 10TH, 2009		
6/19/2009	1260	Application Produce Prisoner	APPLICATION FOR ORDER TO PRODUCE PRISONER		

Case Description: STATE VS. FRANK MILFORD PECK (D6)

Case ID:	CR06-2580	Case Type:	CRIMINAL	Initial Filing Date:	11/3/2006
6/24/2009	3340	Ord to Produce Prisoner	WARDEN OF NSP SHALL BRING LARRY PECK TO DC ON JULY 10, 2009 @9:00AM		
7/1/2009	4145	Supreme Court Remittitur	SUPREME COURT CASE NO. 53826		
7/1/2009	4111	Supreme Ct Clk's Cert & Judg	SUPREME COURT CASE NO. 53826		
7/1/2009	4127	Supreme Ct Ord Dismis Appeal	SUPREME COURT CASE NO. 52826		
7/2/2009	2490	Motion ...	MOTION FOR ORDER DIRECTING CLERK TO PROVIDE AFFIDAVIT		
7/2/2009	2490	Motion ...	MOTION TO COMPEL ATTORNEY BRUCE LINDSEY TO RETURN SPECIFIC DOCUMENT TO DEFENDANT		
7/2/2009	2490	Motion ...	MOTION FOR NEW COUNSEL FOR MOTION FOR NEW TRIAL		
7/2/2009	2475	Mtn to Strike...			
7/7/2009	2490	Motion ...	MOTION FOR HARDCOPY OF CD OF DNA TUTORIAL PRESENTATION PRESENTED AT TRIAL: FRANK MI		
7/7/2009	3870	Request	REQUEST FOR THE STATES WITNESS' NAMES TO BE USED AT SENTENCING		
7/7/2009	3880	Response...	SECOND RESPONSE TO DEFENDANT'S POST-TRIAL MOTIONS		
7/9/2009	4500	PSI - Confidential	(SEALED) Transaction 885466 - Approved By: NOREVIEW : 07-09-2009:10:04:30		
7/10/2009	1850	Judgment of Conviction	Transaction 889345 - Approved By: NOREVIEW : 07-10-2009:12:40:43		
7/10/2009	4128	Supreme Court Order Denying	SUPREME COURT CASE NO. 53947		
7/13/2009	MIN	***Minutes	Sentencing - 7/10/09 - Transaction 892150 - Approved By: NOREVIEW : 07-13-2009:13:01:16		
7/14/2009	1350	Certificate of Clerk			
7/14/2009	1310	Case Appeal Statement			
7/14/2009	1365	Certificate of Transmittal			
7/14/2009	2515	Notice of Appeal Supreme Court			
7/15/2009	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 54168		
7/17/2009	3795	Reply...	REPLY TO SECOND RESPONSE TO DEFENDANTS POST-TRIAL MOTIONS		
7/22/2009	FIE	**Document Filed in Error	07/29/2009 - tprince		
7/30/2009	2490	Motion ...	(SEALED) MOTION TO HAVE DNA EXPERT FEE PAID A PREVIOUS MOTION FOR APPROVAL HAVING BE		
7/31/2009	3870	Request	(SEALED) REQUEST FOR ORDER PURSUANT TO AFFIDAVIT FOR PAYMENT OF FEES FOR COUNSEL TI		
7/31/2009	2490	Motion ...	MOTION TO COMPEL THE RELEASE OF INFORMATION TO THE DEFENDANT		
8/3/2009	4135	Supreme Court Ord Remanding	SUPREME COURT CASE NO. 54168		
8/7/2009	4133	Supreme Court Notice	SUPREME COURT CASE NO. 53947 NOTICE IN LIEU OF REMITTITRUR - Transaction 953029 - Approved By		
8/14/2009	2715	Ord Appointing Counsel	(KARLA BUTKO, ESQ.) - Transaction 971147 - Approved By: NOREVIEW : 08-14-2009:15:48:37		
8/20/2009	2610	Notice ...	(SEALED) NOTICE REGARDING PAYMENT OF ATTORNEY'S FEES		
8/21/2009	S3370	Sealed Order	(SEALED) RECOMMENDATION AND ORDER GRANTING MOTION FOR EXPERT WITNESS - Transaction 96		
8/24/2009	2183	Mtn for Rough Draft Transcript	EX PARTE MOTION FOR TRANSCRIPTS AT TAXPAYER'S EXPENSE		
8/25/2009	4185	Transcript	SENTENCING - JULY 10, 2009 - Transaction 993274 - Approved By: TPRINCE : 08-25-2009:09:32:41		
9/1/2009	2610	Notice ...	NOTICE REGARDING TRANSCRIPT AT PUBLIC EXPENSE		
9/10/2009	2490	Motion ...	MOTION FOR COURT ORDER		
9/18/2009	PAYRC	**Payment Received	A Payment of -\$62.75 was made on receipt DCDC248748.		
10/6/2009	4185	Transcript	JURY TRIAL - MAY 7, 2009 - Transaction 1084093 - Approved By: TPRINCE : 10-07-2009:07:05:30		
10/7/2009	NEF	Proof of Electronic Service	Transaction 1084108 - Approved By: NOREVIEW : 10-07-2009:07:07:11		
10/14/2009	NEF	Proof of Electronic Service	Transaction 1099254 - Approved By: NOREVIEW : 10-14-2009:11:04:13		
10/14/2009	4185	Transcript	JURY TRIAL - 05/12/09 - Transaction 1099006 - Approved By: MPURDY : 10-14-2009:10:54:23		

Case Description: STATE VS. FRANK MILFORD PECK (D6)

Case ID:	CR06-2580	Case Type:	CRIMINAL	Initial Filing Date:	11/3/2006
10/14/2009	4185	Transcript	JURY TRIAL - 05/06/09 - Transaction 1098999 - Approved By: MPURDY : 10-14-2009:10:55:07		
10/14/2009	NEF	Proof of Electronic Service	Transaction 1099256 - Approved By: NOREVIEW : 10-14-2009:11:04:14		
10/26/2009	2525	Notice of Change of Address			
10/26/2009	4185	Transcript	05-08-2009 - TRIAL - Transaction 1119866 - Approved By: ASMITH : 10-26-2009:10:26:37		
10/26/2009	NEF	Proof of Electronic Service	Transaction 1119884 - Approved By: NOREVIEW : 10-26-2009:10:29:18		
12/4/2009	1187	**Supreme Court Case No. ...	SUPREME COURT CASE NO. 54875		
12/4/2009	NEF	Proof of Electronic Service	Transaction 1189867 - Approved By: NOREVIEW : 12-04-2009:15:21:33		
12/4/2009	4128	Supreme Court Order Denying	ORDER DENYING PETITION: SUPREME COURT CASE NO. 54875 - Transaction 1189862 - Approved By: NC		
1/28/2010	NEF	Proof of Electronic Service	Transaction 1286778 - Approved By: NOREVIEW : 01-28-2010:10:14:01		
1/28/2010	4128	Supreme Court Order Denying	ORDER DENYING REHEARING; SUPREME COURT CASE NO. 54875 - Transaction 1286772 - Approved By:		
2/3/2010	2645	Opposition to Mtn ...	OPPOSITION TO DEFENDANT'S "DEMAND FOR INVESTIGATION (SPECIAL PROSECUTOR) AND INDICTM		
2/3/2010	2610	Notice ...	NOTICE OF INTENT TO FILE CIVIL ACTION		
2/17/2010	3790	Reply to/in Opposition	REPLY TO OPPOSITION TO DEFENDANT'S "DEMAND FOR INVESTIGATION SPECIAL PROSECUTOR ANI		
2/25/2010	4131	Supreme Ct Not/Lieu/Remittitur	SUPREME COURT CASE NO. 54875 / NOTICE IN LIEU OF REMITTITUR - Transaction 1341874 - Approved B		
2/25/2010	NEF	Proof of Electronic Service	Transaction 1341879 - Approved By: NOREVIEW : 02-25-2010:08:27:37		
3/2/2010	2010	Mtn for Attorney's Fee	EX PARTE MOTION FOR ORDER ALLOWING PAYMENT OF ATTORNEY'S FEES AND COSTS TO APPOINT		
3/10/2010	2610	Notice ...	(SEALED) NOTICE REGARDING PAYMENT OF FEES		
5/11/2010	4134	Supreme Court Order Affirming	SUPREME COURT CASE NO. 54168 / ORDER OF AFFIRMANCE - Transaction 1478650 - Approved By: NOR		
5/11/2010	NEF	Proof of Electronic Service	Transaction 1478665 - Approved By: NOREVIEW : 05-11-2010:11:01:21		
6/9/2010	4134	Supreme Court Order Affirming	SUPREME COURT CASE NO. 54168 / ORDER OF AFFIRMANCE - Transaction 1533120 - Approved By: NOR		
6/9/2010	4145	Supreme Court Remittitur	SUPREME COURT CASE NO. 54168 / REMITTITUR - Transaction 1533120 - Approved By: NOREVIEW : 06-0		
6/9/2010	NEF	Proof of Electronic Service	Transaction 1533148 - Approved By: NOREVIEW : 06-09-2010:14:08:26		
6/9/2010	4111	Supreme Ct Clk's Cert & Judg	SUPREME COURT CASE NO. 54168 / CLERK'S CERTIFICATE - Transaction 1533120 - Approved By: NOREVI		
1/25/2012	1670	Ex-Parte Mtn...	SEALED - AMENDED: EXPARTE MOTION FOR ATTORNEY FEES IN THE CONTINUED SUPPORT OF THE		
1/25/2012	NEF	Proof of Electronic Service	Transaction 2718326 - Approved By: NOREVIEW : 01-25-2012:08:23:59		
5/11/2012	2490	Motion ...	MOTION FOR SUBSTITUTION OF COUNSEL		
6/5/2012	2490	Motion ...	MOTION FOR TLEPHONIC HEARING IN REGARDS TO MOTION FO SUBSTITUTE COUNSEL		
9/18/2012	4128	Supreme Court Order Denying	SUPREME COURT CASE NO. 61406/ORDER DENYING PETITION - Transaction 3224372 - Approved By: NO		
9/18/2012	NEF	Proof of Electronic Service	Transaction 3224469 - Approved By: NOREVIEW : 09-18-2012:13:50:42		
10/2/2012	NEF	Proof of Electronic Service	Transaction 3256466 - Approved By: NOREVIEW : 10-02-2012:16:10:35		
10/2/2012	1188	Supreme Court Receipt for Doc	SUPREME COURT NO. 61738 / RECEIPT FOR DOCUMENTS - Transaction 3256400 - Approved By: NOREVI		
10/15/2012	4131	Supreme Ct Not/Lieu/Remittitur	SUPREME COURT CASE NO. 61406 - Transaction 3283727 - Approved By: NOREVIEW : 10-15-2012:16:23:0		
10/15/2012	NEF	Proof of Electronic Service	Transaction 3283765 - Approved By: NOREVIEW : 10-15-2012:16:28:39		
11/15/2012	NEF	Proof of Electronic Service	Transaction 3349368 - Approved By: NOREVIEW : 11-15-2012:16:55:05		
11/15/2012	NEF	Proof of Electronic Service	Transaction 3349367 - Approved By: NOREVIEW : 11-15-2012:16:55:05		
11/15/2012	4128	Supreme Court Order Denying	SUPREME COURT CASE NO. 61406/ORDER DENYING REHEARING - Transaction 3349286 - Approved By: I		
11/15/2012	4128	Supreme Court Order Denying	SUPREME COURT CASE NO. 61738/ORDER DENYING PETITION - Transaction 3349278 - Approved By: NO		
2/27/2013	1188	Supreme Court Receipt for Doc	Transaction 3557526 - Approved By: NOREVIEW : 02-27-2013:08:49:21		
2/27/2013	NEF	Proof of Electronic Service	Transaction 3557554 - Approved By: NOREVIEW : 02-27-2013:08:56:16		

Case Description: STATE VS. FRANK MILFORD PECK (D6)

Case ID:	CR06-2580	Case Type:	CRIMINAL	Initial Filing Date:	11/3/2006
4/29/2013	NEF	Proof of Electronic Service	Transaction 3690193 - Approved By: NOREVIEW : 04-29-2013:09:25:53		
4/29/2013	4128	Supreme Court Order Denying	ORDER DENYING PETITION - Transaction 3690164 - Approved By: NOREVIEW : 04-29-2013:09:21:31		
9/3/2013	FIE	**Document Filed in Error	FIE 09-04-13 - JYOST		
9/3/2013	1325	** Case Reopened			
9/24/2013	F230	Other Manner of Disposition	case should not have been reopened on 9/3/13		
10/11/2013	1477	**Consolidated With...	COLSOLIDATED WITH CR06P2580. PLEASE FILE ALL FUTURE PLEADINGS IN THIS CASE.		
10/21/2013	4127	Supreme Ct Ord Dismis Appeal	SUPREME COURT NO. 63974/ORDER DISMISSING APPEAL - Transaction 4080272 - Approved By: NOREVIEW		
10/21/2013	NEF	Proof of Electronic Service	Transaction 4080288 - Approved By: NOREVIEW : 10-21-2013:13:23:19		
11/1/2013	2610	Notice ...	JUDICIAL NOTICE OF ADJUDICATIVE FACTS (POST-CONVICTION)		
11/14/2013	NEF	Proof of Electronic Service	Transaction 4134194 - Approved By: NOREVIEW : 11-14-2013:14:28:50		
11/14/2013	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO 64293/RECEIPT FOR DOCUMENTS - POST CONVICTION - Transaction 41341		
12/5/2013	4100	Supplemental Petition	SUPPLEMENTAL PETITION FOR WRIT OF HABEAS (POST-CONVICTION) RELIEF		
12/18/2013	NEF	Proof of Electronic Service	Transaction 4207316 - Approved By: NOREVIEW : 12-18-2013:14:15:32		
12/18/2013	4128	Supreme Court Order Denying	SUPREME COURT NO. 64293/ORDER OF AFFIRMANCE - Transaction 4207226 - Approved By: NOREVIEW :		
1/8/2014	NEF	Proof of Electronic Service	Transaction 4241936 - Approved By: NOREVIEW : 01-08-2014:10:34:53		
1/8/2014	1188	Supreme Court Receipt for Doc	SUPREME COURT NO. 64293/RECEIPT FOR DOCUMENTS - Transaction 4241920 - Approved By: NOREVIEW		
1/14/2014	NEF	Proof of Electronic Service	Transaction 4255651 - Approved By: NOREVIEW : 01-14-2014:10:51:06		
1/14/2014	3370	Order ...	Transaction 4255637 - Approved By: NOREVIEW : 01-14-2014:10:48:11		
2/12/2014	2490	Motion ...	MOTION FOR ORDER INCORPORATING ALL EVIDENCE AND EXHIBITS FROM ALL OF PETITIONERS SUF		
2/27/2014	2300	Mtn to Dismiss Pet	MOTION TO DISMISS PETITION AND/OR SUPPLEMENTAL PETITION(S) FOR WRIT OF HABEAS CORPUS		
2/27/2014	NEF	Proof of Electronic Service	Transaction 4322892 - Approved By: NOREVIEW : 02-27-2014:15:10:25		
2/27/2014	1130	Answer ...	ANSWER TO SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) - Transac		
3/17/2014	2650	Opposition to ...	OPPOSITION TO RESPONDENT'S MOTION TO DISMISS PETITION AND /OR SUPPLEMENTAL PETITION(S)		
3/17/2014	T200	Tickle End Code			
3/21/2014	NEF	Proof of Electronic Service	Transaction 4354363 - Approved By: NOREVIEW : 03-21-2014:12:52:23		
3/21/2014	3860	Request for Submission	MOTION TO DISMISS PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST		
4/30/2014	S200	Request for Submission Complet	order		
4/30/2014	3060	Ord Granting Mtn ...	TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS - Transaction 4410631 - Approved By: NOREVIEW		
4/30/2014	NEF	Proof of Electronic Service	Transaction 4410634 - Approved By: NOREVIEW : 04-30-2014:14:48:08		
5/12/2014	2515	Notice of Appeal Supreme Court			
5/15/2014	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 4433406 - Approved By: I		
5/15/2014	NEF	Proof of Electronic Service	Transaction 4433408 - Approved By: NOREVIEW : 05-15-2014:09:53:33		
5/15/2014	1310E	Case Appeal Statement	Transaction 4433406 - Approved By: NOREVIEW : 05-15-2014:09:52:44		
5/20/2014	NEF	Proof of Electronic Service	Transaction 4440519 - Approved By: NOREVIEW : 05-20-2014:14:29:03		
5/20/2014	1188	Supreme Court Receipt for Doc	SUPREME COURT NO. 65691 / RECEIPTS FOR DOCUMENTS - Transaction 4440508 - Approved By: NOREVIEW		
5/21/2014	NEF	Proof of Electronic Service	Transaction 4442508 - Approved By: NOREVIEW : 05-21-2014:14:09:14		
5/21/2014	2540	Notice of Entry of Ord	Transaction 4442504 - Approved By: NOREVIEW : 05-21-2014:14:08:13		
6/11/2014	4126	Supreme Ct Order Directing...	SUPREME COURT NO. 65691/ORDER DIRECTING TRANSMISSION OF RECORD - Transaction 4471425 - A		
6/11/2014	NEF	Proof of Electronic Service	Transaction 4471428 - Approved By: NOREVIEW : 06-11-2014:09:14:21		

Case Description: STATE VS. FRANK MILFORD PECK (D6)

Case ID:	CR06-2580	Case Type:	CRIMINAL	Initial Filing Date:	11/3/2006
6/20/2014	COC	Evidence Chain of Custody Form			
7/18/2014	NEF	Proof of Electronic Service	Transaction 4524467 - Approved By: NOREVIEW : 07-18-2014:15:18:47		
7/18/2014	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - RECORD ON APPEAL - Transaction 4524462 - Approved By		
7/21/2014	NEF	Proof of Electronic Service	Transaction 4525438 - Approved By: NOREVIEW : 07-21-2014:10:21:25		
7/21/2014	1350	Certificate of Clerk	AMENDED CERTIFICATE OF CLERK AND TRANSMITTAL - RECORD ON APPEAL - Transaction 4525437 - A		

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE**

Case History - CR06P2580

DEPT. D6

HON. BRENT ADAMS

Report Date & Time

7/18/2014

3:26:41PM

Case ID:	CR06P2580	Case Type:	Case Description: Consolidated into CR06-2580 POST CONVICTION	Initial Filing Date:	6/18/2009
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Parties

RESP	STATE OF NEVADA - STATE
PETR	FRANK MILFORD PECK - @3461
DA	Terrence P. McCarthy, Esq. - 2745

Charges

<i>Charge No.</i>	<i>Charge Code</i>	<i>Charge Date</i>	<i>Charge Description</i>
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Plea Information

<i>Charge No.</i>	<i>Plea Code</i>	<i>Plea Date</i>	<i>Plea Description</i>
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Release Information

Custody Status

Hearings

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>		<i>Disposed Date</i>
1 D4	Tickle Start Code	8/7/2009	07:00:00	8/7/2009

Event Extra Text: CHIEF JUDGE ISSUE-HAS COUNSEL BEEN APPOINTED?

Disposition:
T200 8/7/2009

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>		<i>Disposed Date</i>
2 D6	Request for Submission	6/17/2010	08:06:00	6/21/2010

Event Extra Text: MOTION TO WITHDRAW AS COUNSEL OF RECORD

Disposition:
S200 6/21/2010
order

<i>Department</i>	<i>Event Description</i>	<i>Sched. Date & Time</i>		<i>Disposed Date</i>
3 D6	Request for Submission	3/25/2011	08:20:00	4/26/2011

Event Extra Text: EXPARTE MOTION FOR PRE-APPROVAL OF DNA EXPERT FOR CASE REVIEW, EVALUATION AND REPORT IN SUPPORT OF THE PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS -

Disposition:
S200 4/26/2011
ORDER

Case Description: Consolidated into CR06-2580

Case ID: CR06P2580 Case Type: POST CONVICTION Initial Filing Date: 6/18/2009

Department	Event Description	Sched. Date & Time	Disposed Date
4 D6	Request for Submission	6/6/2011 15:35:00	7/8/2011
Event Extra Text: MOTION FOR DISCOVERY		Disposition: S200 7/8/2011 ORDER	

Department	Event Description	Sched. Date & Time	Disposed Date
5 D6	Tickle Start Code	1/30/2012 07:00:00	1/30/2012
Event Extra Text: SUPP PETITION FILED?		Disposition: T200 1/30/2012	

Department	Event Description	Sched. Date & Time	Disposed Date
6 D6	Request for Submission	2/5/2013 15:55:00	2/8/2013
Event Extra Text: MOTION TO RELIEVE COUNSEL		Disposition: S200 2/8/2013 order	

Department	Event Description	Sched. Date & Time	Disposed Date
7 D6	Request for Submission	3/5/2013 15:10:00	3/21/2013
Event Extra Text: MOTION TO RENEW ALL PREVIOUSLY FILED MOTIONS AND PLEADINGS FILED BY THE PETITIONER (NO PAPER ORDER PROVIDED)		Disposition: S200 3/21/2013 order	

Department	Event Description	Sched. Date & Time	Disposed Date
8 D6	Request for Submission	5/20/2013 08:45:00	6/3/2013
Event Extra Text: MOTION FILED ON 05-03-13		Disposition: S200 6/3/2013 ORDER	

Department	Event Description	Sched. Date & Time	Disposed Date
9 D6	Request for Submission	7/10/2013 13:00:00	8/1/2013
Event Extra Text: MOTION FOR ADDENDA FOR REOCNSIDERATION		Disposition: S200 8/1/2013 ORDER	

Agency Cross Reference

Code	Agency Description	Case Reference I.D.
SC	Supreme Court	SCN 63974

Actions

Action Entry Date	Code	Code Description	Text
6/18/2009	2490	Motion ...	MOTION TO FILE AND SHOW CAUSE WHY DOCUMENTS WERE NOT TIMELY FILED
6/18/2009	3585	Pet Writ Habeas Corpus	
6/18/2009	1955	Memorandum Points&Authorities	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORP
6/24/2009	3862	**Criminal Submit	DOCUMENT TITLE: IFP REFERRAL/PETITION FOR WRIT OF HABEAS CORPUS/MEMORANDUM/MOTION
7/7/2009	3035	Ord Grant in Forma Pauperis	Transaction 881724 - Approved By: NOREVIEW : 07-07-2009:16:40:26
7/23/2009	2230	Mtn Trial Trans. Public Exp	MOTION FOR TRANSCRIPTS AND ALL PRE-TRIAL MOTIONS

Case ID:	CR06P2580	Case Type:	Case Description: Consolidated into CR06-2580 POST CONVICTION	Initial Filing Date:	6/18/2009
7/24/2009	2715	Ord Appointing Counsel	(AZIZ MERCHANT, ESQ.) AND SETTING FORTH BRIEFING SCHEDULE - Transaction 923750 - Approved By		
8/7/2009	T200	Tickle End Code			
8/21/2009	3980	Stip and Order...	TO STAY PROCEEDINGS PENDING RESOLUTION OF DIRECT APPEAL - Transaction 988177 - Approved By		
8/25/2009	1315	** Case Closed			
8/25/2009	2192	** Case Stayed			
10/26/2009	2525	Notice of Change of Address			
6/10/2010	NEF	Proof of Electronic Service	Transaction 1535211 - Approved By: NOREVIEW : 06-10-2010:09:56:35		
6/10/2010	2260	Mtn to Relieve Counsel	MOTION TO WITHDRAW AS COUNSEL OF RECORD - Transaction 1534815 - Approved By: IXFLORES : 06-		
6/16/2010	NEF	Proof of Electronic Service	Transaction 1547588 - Approved By: NOREVIEW : 06-16-2010:16:59:03		
6/16/2010	2526	Notice of Change of Attorney	NOTICE OF CHANGE OF RESPONSIBLE ATTORNEY (TERRENCE MCCARTHY, ESQ. IN PLACE OF GARY		
6/16/2010	1325	** Case Reopened			
6/16/2010	2645	Opposition to Mtn ...	OPPOSITION TO MOTION TO WITHDRAW AS COUNSEL OF RECORD - Transaction 1547061 - Approved By		
6/16/2010	3860	Request for Submission	Transaction 1547613 - Approved By: IXFLORES : 06-17-2010:08:04:41		
6/16/2010	3790	Reply to/in Opposition	REPLY TO THE STATE'S OPPOSITION TO AZIZ MERCHANT'S MOTION TO WITHDRAW AS COUNSEL OF		
6/17/2010	3862	**Criminal Submit	DOCUMENT TITLE: ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL OF RECORDS		
6/17/2010	NEF	Proof of Electronic Service	Transaction 1547649 - Approved By: NOREVIEW : 06-17-2010:08:05:53		
6/21/2010	3105	Ord Granting ...	MOTION TO WITHDRAW AS COUNSEL - AZIZ MERCHANT - Transaction 1554341 - Approved By: NOREVIEW		
6/21/2010	NEF	Proof of Electronic Service	Transaction 1554344 - Approved By: NOREVIEW : 06-21-2010:14:44:35		
6/21/2010	S200	Request for Submission Complet	order		
7/1/2010	3373	Other ...	JUDICIAL NOTICE		
7/21/2010	NEF	Proof of Electronic Service	Transaction 1613365 - Approved By: NOREVIEW : 07-21-2010:15:51:27		
7/21/2010	2715	Ord Appointing Counsel	(MARY LOU WILSON, ESQ.) ON PETITION FOR POST CONVICTION - Transaction 1613310 - Approved By: N		
8/11/2010	2490	Motion ...	MOTION FOR DISTRICT COURT ORDER PERMITTING TELEPHONIC CONFERENCE BETWEEN APPOINTI		
8/11/2010	NEF	Proof of Electronic Service	Transaction 1653195 - Approved By: NOREVIEW : 08-11-2010:16:30:53		
8/20/2010	2645	Opposition to Mtn ...	OPPOSITION TO MOTION FOR DISTRICT COURT ORDER PERMITTING TELEPHONIC CONFERENCE BET		
8/20/2010	NEF	Proof of Electronic Service	Transaction 1670969 - Approved By: NOREVIEW : 08-20-2010:14:24:06		
9/4/2010	1670	Ex-Parte Mtn...	(SEALED) EXPARTE MOTION FOR ATTORNEY FEES IN THE CONTINUED SUPPORT OF THE SUPPLEMEI		
9/7/2010	NEF	Proof of Electronic Service	Transaction 1701488 - Approved By: NOREVIEW : 09-07-2010:08:41:54		
9/24/2010	2777	Order Approving ...	(SEALED) RECOMMENDATION AND ORDER FOR PAYMENT OF ATTORNEY'S FEES - SEALED		
9/24/2010	2610	Notice ...	NOTICE OF PETITIONER'S MOVE TO ANOTHER CORRECTIONAL FACILITY AND WITHDRAWAL OF MOTI		
9/24/2010	NEF	Proof of Electronic Service	Transaction 1741566 - Approved By: NOREVIEW : 09-24-2010:16:13:17		
1/14/2011	1670	Ex-Parte Mtn...	SEALED - EXPARTE MOTION FOR APPROVAL OF INVESTIGATION FEES IN SUPPORT OF SUPPLEMENT		
1/14/2011	NEF	Proof of Electronic Service	Transaction 1969444 - Approved By: NOREVIEW : 01-14-2011:16:14:51		
2/22/2011	1670	Ex-Parte Mtn...	(SEALED) EXPARTE MOTION FOR PRE-APPROVAL OF KNA EXPERT FOR CASE REVIEW, EVALUATION ,		
2/22/2011	NEF	Proof of Electronic Service	Transaction 2046611 - Approved By: NOREVIEW : 02-22-2011:14:37:42		
2/22/2011	3860	Request for Submission	* SEALED * EXPARTE REQUEST FOR SUBMISSION FOR MOTION FOR APPROVAL OF INVESTIGATION IF		
2/23/2011	NEF	Proof of Electronic Service	Transaction 2047869 - Approved By: NOREVIEW : 02-23-2011:08:33:39		
3/8/2011	2777	Order Approving ...	SEALED - RECOMMENDATION AND ORDER GRANTING INVESTIGATIVE FEES		
3/24/2011	3860	Request for Submission	(SEALED) EXPARTE MOTION FOR PRE-APPROVAL OF DNA EXPERT FOR CASE REVIEW, EVALUATION ,		

Case Description: Consolidated into CR06-2580

Case ID:	CR06P2580	Case Type:	POST CONVICTION	Initial Filing Date:	6/18/2009
3/25/2011	NEF	Proof of Electronic Service	Transaction 2115045 - Approved By: NOREVIEW : 03-25-2011:08:16:39		
4/7/2011	NEF	Proof of Electronic Service	Transaction 2144954 - Approved By: NOREVIEW : 04-07-2011:14:54:33		
4/7/2011	1670	Ex-Parte Mtn...	*SEALED* EXPARTE MOTION FOR APPROVAL OF PAYMENT OF INVESTIGATION FEES IN SUPPORT OF		
4/26/2011	S200	Request for Submission Complet	ORDER		
4/26/2011	3060	Ord Granting Mtn ...	(SEALED) FOR PRE-APPROVAL OF DNA EXPERT - Transaction 2184337 - Approved By: NOREVIEW : 04-26		
4/26/2011	NEF	Proof of Electronic Service	Transaction 2184341 - Approved By: NOREVIEW : 04-26-2011:13:32:32		
4/28/2011	2777	Order Approving ...	(SEALED) RECOMMENDATION AND ORDER GRANTING INVESTIGATIVE FEES		
4/28/2011	2777	Order Approving ...	(SEALED) RECOMMENDATION AND ORDER GRANTING MOTION FOR EXPERT WITNESS FEES		
5/23/2011	NEF	Proof of Electronic Service	Transaction 2242553 - Approved By: NOREVIEW : 05-23-2011:14:15:01		
5/23/2011	2045	Mtn for Discovery	Transaction 2242012 - Approved By: JYOST : 05-23-2011:14:11:46		
6/1/2011	2645	Opposition to Mtn ...	OPPOSITION TO *MOTION FOR DISCOVERY IN SUPPORT OF THE EVIDENTIARY HEARING IN THE PETI		
6/1/2011	NEF	Proof of Electronic Service	Transaction 2258800 - Approved By: NOREVIEW : 06-01-2011:10:40:15		
6/6/2011	NEF	Proof of Electronic Service	Transaction 2270004 - Approved By: NOREVIEW : 06-06-2011:16:11:29		
6/6/2011	3795	Reply...	REPLY TO STATE'S OPPOSITION TO MOTION FOR DISCOVERY IN SUPPORT OF THE EVIDENTIARY HE		
6/6/2011	3860	Request for Submission	Transaction 2269669 - Approved By: JYOST : 06-06-2011:16:02:47		
6/6/2011	NEF	Proof of Electronic Service	Transaction 2269832 - Approved By: NOREVIEW : 06-06-2011:15:56:58		
6/22/2011	NEF	Proof of Electronic Service	Transaction 2302260 - Approved By: NOREVIEW : 06-22-2011:09:55:22		
6/22/2011	1670	Ex-Parte Mtn...	(SEALED) EXPARTE MOTION FOR APPROVAL OF PAYMENT OF INVESTIGATION FEES (POST CONVICTI		
6/23/2011	NEF	Proof of Electronic Service	Transaction 2306079 - Approved By: NOREVIEW : 06-23-2011:12:55:11		
6/23/2011	1670	Ex-Parte Mtn...	(SEALED) EXPARTE MOTION FOR ATTORNEY FEES IN THE CONTINUED SUPPORT OF THE SUPPLEMEI		
6/23/2011	NEF	Proof of Electronic Service	Transaction 2304929 - Approved By: NOREVIEW : 06-23-2011:08:21:17		
6/23/2011	1670	Ex-Parte Mtn...	SEALED - EX PARTE MOTION TO WITHDRAW EX PARTE MOTION FOR INVESTIGATIVE FEES - Transacti		
7/8/2011	NEF	Proof of Electronic Service	Transaction 2334128 - Approved By: NOREVIEW : 07-08-2011:13:45:26		
7/8/2011	3370	Order ...	RE: MOTION FOR DISCOVERY - Transaction 2334099 - Approved By: NOREVIEW : 07-08-2011:13:41:53		
7/8/2011	S200	Request for Submission Complet	ORDER		
8/4/2011	1670	Ex-Parte Mtn...	SEALED - EXPARTE MOTION FOR ATTORNEY FEES IN THE CONTINUED SUPPORT OF THE SUPPLEMEI		
8/4/2011	NEF	Proof of Electronic Service	Transaction 2388197 - Approved By: NOREVIEW : 08-04-2011:11:39:20		
8/4/2011	2777	Order Approving ...	SEALED - RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES		
10/19/2011	1670	Ex-Parte Mtn...	(SEALED) EXPARTE MOTION FOR ATTORNEY FEES IN THE CONTINUED SUPPORT OF THE SUPPLEMEI		
10/20/2011	NEF	Proof of Electronic Service	Transaction 2542786 - Approved By: NOREVIEW : 10-20-2011:08:35:13		
12/7/2011	2777	Order Approving ...	SEALED - RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES		
1/17/2012	NEF	Proof of Electronic Service	Transaction 2702648 - Approved By: NOREVIEW : 01-17-2012:14:44:48		
1/17/2012	1670	Ex-Parte Mtn...	(SEALED) EX PARTE MOTION FOR PARTIAL PAYMENT OF DNA EXPERT FOR CASE REVIEW, EVALUATI		
1/30/2012	T200	Tickle End Code			
3/5/2012	S3370	Sealed Order	(SEALED) RECOMMENDATION AND ORDER GRANTING MOTION FOR EXPERT WITNESS FEES - Transac		
3/5/2012	NEF	Proof of Electronic Service	Transaction 2801658 - Approved By: NOREVIEW : 03-05-2012:08:12:49		
3/6/2012	S3370	Sealed Order	(SEALED) RECOMMENDATION AND ORDER FOR PAYMENT OF INTER - Transaction 2808101 - Approved E		
3/6/2012	NEF	Proof of Electronic Service	Transaction 2808116 - Approved By: NOREVIEW : 03-06-2012:16:52:31		
5/9/2012	NEF	Proof of Electronic Service	Transaction 2943214 - Approved By: NOREVIEW : 05-09-2012:16:01:11		

Case ID:	CR06P2580	Case Type:	Case Description: Consolidated into CR06-2580 POST CONVICTION	Initial Filing Date:	6/18/2009
5/9/2012	1670	Ex-Parte Mtn...	*SEALED* EXPARTE MOTION FOR PAYMENT OF INTERIM ATTY FEES IN SUPPORT OF THE PETITION F		
5/11/2012	2490	Motion ...	MOTION FOR SUBSTITUTE COUNSEL		
5/21/2012	3860	Request for Submission	DOCUMENT TITLE: MOTION FOR SUBSTITUE COUNSEL		
5/22/2012	3880	Response...	RESPONSE TO LETTER - Transaction 2972583 - Approved By: AZION : 05-22-2012:16:46:46		
5/22/2012	NEF	Proof of Electronic Service	Transaction 2972638 - Approved By: NOREVIEW : 05-22-2012:16:51:01		
5/23/2012	S3370	Sealed Order	(SEALED) RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES - Transactio		
5/23/2012	2490	Motion ...			
5/23/2012	NEF	Proof of Electronic Service	Transaction 2973638 - Approved By: NOREVIEW : 05-23-2012:10:30:06		
6/5/2012	3795	Reply...	REPLY TO RESPONSE TO LETTER		
6/11/2012	NEF	Proof of Electronic Service	Transaction 3010305 - Approved By: NOREVIEW : 06-11-2012:16:42:25		
6/11/2012	1670	Ex-Parte Mtn...	(SEALED) EX PARTE MOTION FOR PAYMENT OF INTERIM ATTORNEY FEES IN SUPPORT OF THE PETIT		
6/22/2012	NEF	Proof of Electronic Service	Transaction 3037545 - Approved By: NOREVIEW : 06-22-2012:15:19:29		
6/22/2012	S3370	Sealed Order	(SEALED) RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES - Transactio		
7/9/2012	2610	Notice ...	NOTICE OF LAWSUIT AND REQUEST FOR ALTERNATE COUNSEL		
8/2/2012	2610	Notice ...			
8/13/2012	2490	Motion ...	MOTION FOR COURT ORDERED CONFERENCE CALL		
8/21/2012	NEF	Proof of Electronic Service	Transaction 3165863 - Approved By: NOREVIEW : 08-21-2012:14:51:25		
8/21/2012	2610	Notice ...	NOTICE OF CONTACT FROM DNA EXPERT IN SUPPORT OF THE SUPPLEMENTAL PETITION FOR WRIT		
8/24/2012	NEF	Proof of Electronic Service	Transaction 3174543 - Approved By: NOREVIEW : 08-24-2012:14:49:51		
8/24/2012	2610	Notice ...	NOTICE OF EXPERT WITNESS MEJUL B. ANJARIA'S REPORT IN SUPPORT OF PETITION AND SUPPLEM		
9/18/2012	NEF	Proof of Electronic Service	Transaction 3224906 - Approved By: NOREVIEW : 09-18-2012:14:53:48		
9/18/2012	2610	Notice ...	NOTICE OF NO SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POSTCONVICTION) - Trans		
9/21/2012	1670	Ex-Parte Mtn...	*SEALED* EXPARTE MOTION FOR PAYMENT OF INTERIM ATTY FEES IN SUPPORT OF THE PETITION F		
9/21/2012	NEF	Proof of Electronic Service	Transaction 3233866 - Approved By: NOREVIEW : 09-21-2012:15:58:20		
9/24/2012	2610	Notice ...	NOTICE OF CONFLICT		
10/4/2012	NEF	Proof of Electronic Service	Transaction 3262995 - Approved By: NOREVIEW : 10-04-2012:16:06:21		
10/4/2012	S3370	Sealed Order	(SEALED) RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES - Transactio		
10/9/2012	NEF	Proof of Electronic Service	Transaction 3271461 - Approved By: NOREVIEW : 10-09-2012:15:13:29		
10/9/2012	4105	Supplemental ...	SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS		
10/9/2012	3880	Response...	RESPONSE TO NOTICE OF CONFLICT - Transaction 3271425 - Approved By: AZION : 10-09-2012:15:09:51		
10/11/2012	2650	Opposition to ...	OPPOSITION TO NOTICE OF NO SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS POST-CON		
10/15/2012	NEF	Proof of Electronic Service	Transaction 3282490 - Approved By: NOREVIEW : 10-15-2012:11:35:12		
10/15/2012	2260	Mtn to Relieve Counsel	MARY LOU WILSON - Transaction 3282142 - Approved By: SHAMBRIG : 10-15-2012:11:26:13		
10/18/2012	2610	Notice ...	NOTICE OF NON-OPPOSITION TO REQUEST TO DISCHARGE COUNSEL - Transaction 3291336 - Approvec		
10/18/2012	NEF	Proof of Electronic Service	Transaction 3291364 - Approved By: NOREVIEW : 10-18-2012:13:34:56		
10/19/2012	3862	**Criminal Submit	DOCUMENT TITLE: NO S1 BUILT - MOTION TO PROCEED IN PRO SE		
10/19/2012	2385	Mtn Proceed Forma Pauperis	MOTION TO PROCEED IN PRO SE		
10/22/2012	3795	Reply...	REPLY TO RESPONSE TO NOTICE OF CONFLICT		
10/30/2012	4105	Supplemental ...	SUPPLEMENTAL EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS		

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11/2/2012	NEF	Proof of Electronic Service	Transaction 3322321 - Approved By: NOREVIEW : 11-02-2012:14:55:21		
11/2/2012	2075	Mtn for Extension of Time	Transaction 3322089 - Approved By: SHAMBRIG : 11-02-2012:14:39:09		
11/6/2012	4105	Supplemental ...	SUPPLEMENTAL EXHIBITS		
12/10/2012	NEF	Proof of Electronic Service	Transaction 3397863 - Approved By: NOREVIEW : 12-10-2012:16:58:42		
12/10/2012	1670	Ex-Parte Mtn...	(SEALED) EX PARTE MOTION FOR FINAL PAYMENT OF DNA EXPERT FOR CASE REVIEW, EVALUATION		
1/9/2013	2490	Motion ...	MOTION FOR EVIDENTIARY HEARING		
1/11/2013	NEF	Proof of Electronic Service	Transaction 3460004 - Approved By: NOREVIEW : 01-11-2013:15:20:14		
1/11/2013	S3370	Sealed Order	(SEALED) RECOMMENDATION AND ORDER GRANTING MOTION FOR EXPERT WITNESS FEES - Transac		
1/23/2013	4105	Supplemental ...	SUPPLEMENTAL EXHIBITS		
1/29/2013	NEF	Proof of Electronic Service	Transaction 3495377 - Approved By: NOREVIEW : 01-29-2013:11:54:55		
1/29/2013	2528	Not/Doc/Rc'd/Not/Cons/by Crt	Transaction 3495364 - Approved By: NOREVIEW : 01-29-2013:11:52:59		
2/5/2013	NEF	Proof of Electronic Service	Transaction 3512314 - Approved By: NOREVIEW : 02-05-2013:15:50:08		
2/5/2013	2645	Opposition to Mtn ...	OPPOSITION TO MOTION FOR SANCTIONS - Transaction 3512368 - Approved By: JYOST : 02-05-2013:16:0		
2/5/2013	3860	Request for Submission	MOTION TO RELIEVE COUNSEL - Transaction 3512231 - Approved By: JYOST : 02-05-2013:15:47:26		
2/5/2013	2185	Mtn for Sanctions			
2/5/2013	NEF	Proof of Electronic Service	Transaction 3512396 - Approved By: NOREVIEW : 02-05-2013:16:09:05		
2/8/2013	3060	Ord Granting Mtn ...	TO WITHDRAW - MARY LOU WILSON - Transaction 3519201 - Approved By: NOREVIEW : 02-08-2013:08:27:		
2/8/2013	S200	Request for Submission Complet	order		
2/8/2013	NEF	Proof of Electronic Service	Transaction 3519206 - Approved By: NOREVIEW : 02-08-2013:08:28:42		
2/15/2013	1670	Ex-Parte Mtn...	(SEALED) EX PARTE MOTION FOR FINAL PAYMENT AFTER WITHDRAWAL OF ATTORNEY IN THE PETIT		
2/19/2013	3790	Reply to/in Opposition	REPLY TO OPPOSITION TO MOTION FOR SANCTIONS		
2/19/2013	NEF	Proof of Electronic Service	Transaction 3537929 - Approved By: NOREVIEW : 02-19-2013:08:33:48		
2/20/2013	2610	Notice ...	EXPARTE JUDICIAL NOTICE		
2/20/2013	2490	Motion ...	MOTION TO RENEW ALL MOTIONS AND PLEADINGS		
3/5/2013	3860	Request for Submission	DOCUMENT TITLE: MOTION TO RENEW ALL PREVIOUSLY FILED MOTIONS AND PLEADINGS FILED BY		
3/5/2013	4105	Supplemental ...	SECOND SUPPLEMENTAL TO PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) RELIEF		
3/13/2013	1670	Ex-Parte Mtn...	(SEALED) EX PARTE MOTION FOR PAYMENT OF REIMBURSEMENT FOR SENDING PETITIONER PECK F		
3/13/2013	NEF	Proof of Electronic Service	Transaction 3588619 - Approved By: NOREVIEW : 03-13-2013:13:52:40		
3/18/2013	4105	Supplemental ...	THIRD SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) RELIEF NRS 3		
3/21/2013	NEF	Proof of Electronic Service	Transaction 3606419 - Approved By: NOREVIEW : 03-21-2013:09:06:21		
3/21/2013	2842	Ord Denying Motion	TO RENEW ALL MOTIONS AND PLEADINGS - Transaction 3606404 - Approved By: NOREVIEW : 03-21-2013		
3/21/2013	S200	Request for Submission Complet	order		
3/28/2013	NEF	Proof of Electronic Service	Transaction 3622209 - Approved By: NOREVIEW : 03-28-2013:10:27:05		
3/28/2013	S3370	Sealed Order	(SEALED) RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES - Transactio		
4/1/2013	S3370	Sealed Order	(SEALED) RECOMMENDATION AND ORDER FOR PAYMENT OF ATTORNEY'S COSTS - Transaction 36290		
4/1/2013	NEF	Proof of Electronic Service	Transaction 3629045 - Approved By: NOREVIEW : 04-01-2013:14:18:35		
4/3/2013	NEF	Proof of Electronic Service	Transaction 3636747 - Approved By: NOREVIEW : 04-03-2013:16:46:31		
4/3/2013	3645	Petition ...	PETITION FOR WRIT OF PROHIBITION - Transaction 3636724 - Approved By: MFERNAND : 04-03-2013:16:4		
4/3/2013	1188	Supreme Court Receipt for Doc	SUPREME COURT CASE NO. 62908/RECEIPT FOR DOCUMENTS - Transaction 3636724 - Approved By: MF		

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5/3/2013	1670	Ex-Parte Mtn...	EX PARTE JUDICIAL NOTICE AND MOTION		
5/15/2013	NEF	Proof of Electronic Service	Transaction 3726420 - Approved By: NOREVIEW : 05-15-2013:09:18:52		
5/15/2013	4128	Supreme Court Order Denying	SUPREME COURT NO. 62908/ORDER DENYING PETITION - Transaction 3726398 - Approved By: NOREVIEW		
5/20/2013	3860	Request for Submission	DOCUMENT TITLE: MOTION FILED ON 05-03-13		
5/28/2013	4100	Supplemental Petition	SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) RELIEF #4		
6/3/2013	2842	Ord Denying Motion	Transaction 3760636 - Approved By: NOREVIEW : 06-03-2013:09:10:05		
6/3/2013	NEF	Proof of Electronic Service	Transaction 3760661 - Approved By: NOREVIEW : 06-03-2013:09:13:48		
6/3/2013	S200	Request for Submission Complet	ORDER		
6/3/2013	1050	Affidavit of Prejudice-Crim	AFFIDAVIT OF PREJUDICE		
6/6/2013	4105	Supplemental ...	SUPPLEMENTAL EXHIBIT IN SUPPORT OF MOTION FILED ON MAY 3, 2013		
6/13/2013	NEF	Proof of Electronic Service	Transaction 3786330 - Approved By: NOREVIEW : 06-13-2013:11:37:19		
6/13/2013	4131	Supreme Ct Not/Lieu/Remittitur	SUPREME COURT NO. 62908/NOTICE IN LIEU OF REMITTITUR - Transaction 3786286 - Approved By: NORI		
6/14/2013	4105	Supplemental ...	SUPPLEMENTAL EXHIBIT INESCAPABLE FACTS		
6/14/2013	2490	Motion ...	MOTION AND ADDENDA FOR RECONSIDERATION		
6/19/2013	4105	Supplemental ...	SUPPLEMENTAL EXHIBIT AND JUDICIAL NOTICE		
6/27/2013	2610	Notice ...	JUDICIAL NOTICE OF ADJUDICATIVE FACTS		
7/10/2013	3860	Request for Submission	DOCUMENT TITLE: MOTION AND ADDENDA FOR RECONSIDERATION		
7/12/2013	3373	Other ...	CLARIFICATION OF SCIENTIFIC TERM (CDNA)		
7/30/2013	4100	Supplemental Petition	SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) RELIEF # 5 NRS 34 ET		
8/1/2013	2842	Ord Denying Motion	Transaction 3895044 - Approved By: NOREVIEW : 08-01-2013:11:39:25		
8/1/2013	S200	Request for Submission Complet	ORDER		
8/1/2013	NEF	Proof of Electronic Service	Transaction 3895076 - Approved By: NOREVIEW : 08-01-2013:11:43:55		
8/8/2013	4105	Supplemental ...	SUPPLEMENTAL EXHIBIT AND REPROT OF OBSERVATIONS OF DNA EXPERT MEHUL B. ANJARIA		
8/8/2013	2490	Motion ...	(SEALED) MOTION FOR FINAL PAYMENT OF DNA EXPERTS REPORT OF OBSERVATIONS		
8/12/2013	4105	Supplemental ...	SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) RELEIF #6 NRS 34 et s		
8/22/2013	4105	Supplemental ...	NEWLY DISCOVERED FACTS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVI		
8/30/2013	2515	Notice of Appeal Supreme Court			
9/3/2013	3860	Request for Submission	DOCUMENT TITLE: NO S1 BUILT - (REFERRED TO BOB BELL) MOTION FOR FINAL PAYMENT OF DNA E		
9/6/2013	3860	Request for Submission	DOCUMENT TITLE: MOTION FOR A NEW TRIAL		
9/6/2013	1350	Certificate of Clerk	CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 3977721 - Approved By: I		
9/6/2013	NEF	Proof of Electronic Service	Transaction 3977771 - Approved By: NOREVIEW : 09-06-2013:11:34:25		
9/6/2013	1310E	Case Appeal Statement	Transaction 3977721 - Approved By: NOREVIEW : 09-06-2013:11:27:05		
9/9/2013	2650	Opposition to ...	OPPOSITION TO REQUEST FOR SUBMISSION OF MOTION - Transaction 3981945 - Approved By: SHAMBR		
9/9/2013	NEF	Proof of Electronic Service	Transaction 3981969 - Approved By: NOREVIEW : 09-09-2013:15:51:35		
9/13/2013	S3370	Sealed Order	(SEALED) RECOMMENDATION AND ORDER DENYING MOTION OFR EXPERT WITNESS FEES - Transacti		
9/13/2013	NEF	Proof of Electronic Service	Transaction 3996093 - Approved By: NOREVIEW : 09-13-2013:15:34:34		
9/16/2013	NEF	Proof of Electronic Service	Transaction 3997340 - Approved By: NOREVIEW : 09-16-2013:08:54:14		
9/16/2013	1188	Supreme Court Receipt for Doc	SUPREME COURT NO. 63974/RECEIPT FOR DOCUMENTS - Transaction 3997309 - Approved By: NOREVIEW		
9/18/2013	3790	Reply to/in Opposition	REPLY TO/IN OPPOSITION TO RESPONDENTS OPPOSITION TO PETITIONERS REQUEST FOR SUBMISS		

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10/1/2013	4105	Supplemental ...	SUPPLEMENTAL EXHIBIT IN SUPPORT OF EVIDENTIARY HEARING		
10/4/2013	3373	Other ...	(SEALED) SWORN COMPLAINT AND DEMAND FOR PAYMENT OF DNA EXPERT MEHUL B. ANJARIA		
10/10/2013	4105	Supplemental ...	SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) RELIEF #7 NRS 34 ET		
10/11/2013	1478	**Consolidated To...	CONSOLIDATED INTO CR06-2580. PLEASE FILE ALL FUTURE PLEADINGS INTO CR06-2580.		

1 **Code 1350**

2
3
4
5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6 **IN AND FOR THE COUNTY OF WASHOE**

7 **STATE OF NEVADA,**

8 **Plaintiff,**

9 **vs.**

Case No. CR06-2580

10 **FRANK MILFORD PECK,**

Dept. No. 6

11 **Defendant.**

12 _____ /
13 **CERTIFICATE OF CLERK AND TRANSMITTAL – RECORD ON APPEAL**

14 I certify that I am an employee of the Second Judicial District Court of the State of
15 Nevada, County of Washoe; that on the 18th day of July, 2014, I electronically filed
16 Volumes 1 through 11 of the Record on Appeal in the above entitled matter to the Nevada
17 Supreme Court through the file transfer process (FTP) and deposited Volume 12
18 containing sealed documents in the Washoe County mailing system for postage and
19 mailing in the United States Postal Service in Reno, Nevada addressed to the Nevada
20 Supreme Court 201 S. Carson Street, Suite 201, Carson City, Nevada 89701

21 I further certify that the transmitted record is a certified copy of the original pleadings
22 on file with the Second Judicial District Court in accordance NRAP 11(2)(b).

23 Dated this 18th day of July, 2014.

24 **JOEY ORDUNA HASTINGS**
25 **CLERK OF THE COURT**

26 By /s/Annie Smith
27 Annie Smith
28 Deputy Clerk