

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

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Elizabeth A. Brown
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BRENDAN DUNCKLEY,

Petitioner,

vs.

THE STATE OF NEVADA,
ROBERT LEGRAND,

Respondent.

Sup. Ct. Case No. 73095

Case No. CR07-1728

Dept. 4

RECORD ON APPEAL

VOLUME 7 OF 11

POST DOCUMENTS

APPELLANT

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RESPONDENT

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 Date: AUGUST 31, 2017

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District Court 07/21/2009 02:23 PM
Washoe County 2385
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1 CODE 2385
2 Brendan Dunckley #1023236
3 Lovelock Correctional Center
4 1200 Prison Road
5 Lovelock Nevada 89419

FILED
2009 JUL 21 PM 2:28
HOWARD W. CONYERS
BY [Signature]
DEPUTY

6 Brendan Dunckley In Pro Se

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

9 * * * * *

10 Brendan Dunckley,) Case No. CR07-1728
11 Petitioner,) Dept. No. 4
12 -vs-)
13 JACK Palmer, Warden,)
14 Respondent.)

15 APPLICATION TO PROCEED IN FORMA PAUPERIS

16 COMES NOW Dunckley, BRENDAN, in pro se,
17 and moves this Court for an order granting him leave to proceed in the above-
18 entitled action without paying the costs and/or security of proceeding herein.

19 This motion is made and based upon NRS 12.015 and the attached affidavit
20 and certificate of inmate's institutional account.

21 Dated this 15 day of July, 2009.

22 Respectfully submitted,
23 Brendan Dunckley
24 BRENDAN DUNCKLEY #1023236
25 Lovelock Correctional Center
26 1200 Prison Road
27 Lovelock Nevada 89419
28 Brendan Dunckley In Pro Se

CR07P1728 DC-950000979B-032 POST BRENDAN DUNCKLEY (D4) 2 Pages District Court 07/21/2009 02:23 PM Washoe County 1030 TFI ABEC

1 CODE 1030
2 Brendan Dunckley #1023231
3 Lovelock Correctional Center
4 1200 Prison Road
5 Lovelock Nevada 89419

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HOWARD W. CONYERS

BY [Signature]
DEPUTY

6 Brendan Dunckley In Pro Se

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 * * * * *

10 Brendan Dunckley,) Case No. CR07-1728
11 Petitioner,) Dept. No. 4
12 -vs-)
13 Jack Palmer, Warden,)
14 Respondent.)

15 AFFIDAVIT IN SUPPORT OF
16 APPLICATION TO PROCEED IN FORMA PAUPERIS

17 STATE OF NEVADA)
18) ss:
19 COUNTY OF PERSHING)

20 COMES NOW Brendan Dunckley, who being first duly sworn and
21 on my own oath, do hereby depose and state the following under the penalty of
22 perjury in support of my foregoing motion:

23 (1) Because of my poverty I am unable to pay the costs of the proceedings
24 in the foregoing judicial action or to give security therefor; I am entitled to
25 relief. This application is made in good faith.

26 (2) I X do ___ do not request an attorney to be appointed to me.

27 (3) I further swear that the responses which I make to the questions and
28 instructions below are true and correct to the best of my knowledge:

(a) I ___ am X am not presently employed. I currently earn salary or
wages per month in the following amount and the name and address of my employer

1 is as follows, OR if I am not presently employed, the date of my last
2 employment and the amount of salary or wages I earned per month were as
3 follows: Spanish Springs Sushi, 10575 Palm Desert Drive, Sparks,

4 NEVADA 89441-0566 (Amount earned unknown and forgotten there 2 weeks).

5 (b) I have NOT received any money from any of the following sources
6 within the past 12 months: business, profession, form of self-employment, rent
7 payments, interest or dividends, pensions, annuities, life insurance payments,
8 gifts or inheritances. Money, if any, placed on my prison accounts from
9 outside sources such as family or friends, is in the amount as indicated on the
10 attached Certificate of Inmate's Institutional Account, which likewise
11 reflects the amount of money on my prison account.

12 (c) I do NOT own any real estate, stocks, bonds, notes, automobiles, or
13 other valuable property, and nor do I have money in a checking account.

14 (d) I X do do NOT have persons dependent upon me for support. The
15 persons I support, if any, are as follows, with my relationship to those
16 persons and the amount of my contribution towards their support being as
17 follows: Jacob & Adam Dunchley (sons) \$399.68 /month (OH) Jose and Marism Dunchley \$375 (no)

18 (4) I do swear under the penalty of perjury that the above facts are true
19 and correct to the best of my personal knowledge, and are rendered without
20 notary pursuant to the provisions of NRS 208.165, as I am incarcerated.

21 Dated this 15th day of July, 2009.

22 Brendan Dunchley
23 BRENDAN DUNCHLEY # 1023236
24 Lovelock Correctional Center
25 1200 Prison Road
26 Lovelock Nevada 89419

25 / / /

26 / / /

27 / / /

28

CR07P1728 DC-9900009798-033
POST: BRENDAN DUNCKLEY (DA) 3 Pages
District Court 07/21/2009 02:23 PM
Washoe County 1670
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2009 JUL 21 PM 2:28

HOWARD W. CONYERS

BY [Signature]
DEPUTY

BRENDAN DUNCKLEY
Inmate No. 1023236
L.C.C.
1200 PRISON ROAD
LOVELL, NEVADA 89419

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

BRENDAN DUNCKLEY,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

Case No. CR07-1728

EX PARTE MOTION FOR
APPOINTMENT OF COUNSEL
AND REQUEST FOR EVIDENTIARY
HEARING

COMES NOW Petitioner BRENDAN DUNCKLEY, in Proper Person, and moves this Court
for its order allowing the appointment of counsel for Petitioner and for evidentiary hearing. This
motion is made and based in the interest of justice.

Pursuant to NRS 34.750(1),

A petition may allege that the petitioner is unable to pay the costs of
the proceedings or to employ counsel. If the court is satisfied that the
allegation of indigency is true and the petitioner is not dismissed
summarily, the court may appoint counsel to represent the petitioner.
In making its determination, the court may consider, among other
things, the severity of the consequences facing the petitioner and
whether:

- (a) The issues presented are difficult;
- (b) The petitioner is unable to comprehend the proceedings, or
- (c) Counsel is necessary to proceed with discovery.

Petitioner is presently incarcerated at LOVELL CORRECTIONAL CN, LOVELL, Nevada, where he is unemployed, indigent and unable to retain private counsel to represent him.

Petitioner is unlearned and unfamiliar with the complexities of Nevada state law, particularly state post-conviction proceedings. Further Petitioner alleges that the issues in this case are complex and require an evidentiary hearing. Petitioner is unable to factually develop and adequately present the claims without the assistance of counsel. Counsel is unable to adequately present the claims without an evidentiary hearing.

Petitioner hereby respectfully requests that the Court appoint counsel and set a date for evidentiary hearing for the reasons stated above.

DATED this 15th day of JULY, 2009.

Respectfully submitted,

Brendan Dinchley
Petitioner

CERTIFICATE OF SERVICE BY MAIL

I, BRENDAN DUNGLLEY, hereby certify pursuant to N.R.C.P. 5(b), that on this 15 day of JULY, 2009, I handed to a prison official for mailing a true and correct copy of the foregoing REQUEST FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING addressed to:

WASHOE COUNTY DISTRICT ATT.
P.O. BOX 30083
RENO, NEVADA, 89520-
3083

WASHOE COUNTY DISTRICT ATTORNEY

CATHERINE CORTAZ MASTO
NEVADA ATTORNEY GENERAL
100 N. CARSON STREET
CARSON CITY, NV. 89701
 NEVADA ATTORNEY GENERAL

CLERK OF THE COURTS
P.O. BOX 30083
RENO, NEVADA 89520-3083

SECOND JUDICIAL DISTRICT
 COURTS

WARDEN, J. PALMER
LOVELOCK CORRECTIONAL CNT.
1200 PRISON ROAD
LOVELOCK, NEVADA 89419
 WARDEN, PALMER, L.C.C.

CR07P1728 DC-9900009798-034
POST BRENDAN DUNCKLEY (D4 77 Pages
District Court 07/21/2009 02:23 PM
Washoe County 3585
NOC TFI/NRF/c

CASE NO CR07-1728
DEPT. NO 4

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2009 JUL 21 PM 2:28

HOWARD W. CONYERS

BY H. Sloan
DEPUTY

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

Brendan Dunckley,
PETITIONER

v.

JACK PALMER,
Respondant

PETITION FOR WRIT OF
HABEAS CORPUS
(Post-Conviction)

PETITION

- 1) NAME OF INSTITUTION AND COUNTY IN WHICH YOU ARE PRESENTLY IMPRISONED OR WHERE AND HOW YOU ARE PRESENTLY RESTRAINED OF YOUR LIBERTY: LOVELOCK CORRECTIONAL CENTER, PERSHING COUNTY.
- 2) NAME AND LOCATION OF COURT WHICH ENTERED THE JUDGEMENT OF CONVICTION UNDER ATTACK: SECOND JUDICIAL DISTRICT COURT - RENO, NEVADA.
- 3) DATE OF JUDGMENT OF CONVICTION: AUGUST 17, 2008.
- 4) CASE NUMBER: CR07-1728.
- 5) LENGTH OF SENTENCE: COUNT ONE (1) IS LIFE IMPRISONMENT WITH THE ELIGIBILITY OF PAROLE BEGINNING WHEN A MINIMUM OF TEN (10) YEARS HAS BEEN SERVED, AND; COUNT TWO (2) IMPRISONMENT IN THE STATE PRISON FOR A MAXIMUM OF 120 MONTHS WITH ELIGIBILITY OF PAROLE BEGINNING WHEN A MINIMUM OF 24 MONTHS HAS BEEN SERVED.
BOTH COUNTS TO RUN CONCURRENTLY.
- 6) ARE YOU PRESENTLY SERVING A SENTENCE FOR A CONVICTION OTHER THAN THE CONVICTION UNDER ATTACK IN THIS MOTION: NO
- 7) NATURE OF OFFENSES INVOLVED IN CONVICTION BEING CHALLENGED: COUNT ONE (1) - LEWDNESS WITH CHILD UNDER 14 YEARS OF AGE, (NRS. 201.230); COUNT TWO (2) - ATTEMPTED SEXUAL ASSAULT, (NRS. 193.330).

- 8) WHAT WAS YOUR PLEA? GUILTY BY MEANS OF A DEAL.
- 9) IF YOU ENTERED A GUILTY PLEA TO ONE COUNT OF AN INDICTMENT, AND NOT GUILTY PLEA TO ANOTHER COUNT OF AN INDICTMENT, OR A GUILTY PLEA WAS NEGOTIATED, GIVE DETAILS: PETITIONER PLEAD TO LEWDNESS CHARGE AS LEGAL FICTION IN A LESSER CHARGE OF ORIGINAL CHARGE OF SEXUAL ASSAULT ON A CHILD, AND ALSO ATTEMPTED SEXUAL ASSAULT IN COUNT TWO (2). TO ALLOW THE AVAILABILITY OF PROBATION.
- 10) DID YOU APPEAL FROM THE JUDGEMENT OF CONVICTION? YES
- 11) IF YOU DID APPEAL, ANSWER THE FOLLOWING:
- NAME OF COURT: NEVADA SUPREME COURT
 - CASE NUMBER: 52383
 - RESULT: ORDER OF AFFIRMANCE FILED WITH THE CLERK OF THE COURT ON MAY 8, 2009 (COPY ATTACHED)
- 12) OTHER THAN A DIRECT APPEAL FROM THE JUDGMENT OF CONVICTION AND SENTENCE, HAVE YOU PREVIOUSLY FILED ANY PETITIONS, APPLICATIONS, OR MOTIONS WITH RESPECT TO THIS JUDGMENT IN ANY COURT, STATE OR FEDERAL? NO
- 13) IF ANY OF THE GROUNDS LISTED IN NOS. 1B (a), (b), (c), (d), (e), (f) AND (g), OR LISTED ON ADDITIONAL PAGES YOU HAVE ATTACHED, WERE NOT PREVIOUSLY PRESENTED IN ANY COURT, STATE OR FEDERAL, LIST BRIEFLY WHAT GROUNDS WERE NOT SO PRESENTED, AND GIVE YOUR REASON FOR PRESENTING THEM.

- A) INEFFECTIVE ASSISTANCE OF COUNSEL (Const. AMEND. V, VI, XIV)
- B) PROSECUTORIAL MISCONDUCT (Const. AMEND. V, VI, XIV)
- C) VIOLATION OF MIRANDA RIGHTS (Const. AMEND. IV, V, VI, XIV)
- D) DIRECT SUBJECT MATTER JURISDICTION (Const. AMEND. IV, V, VI, XIV)
- E) STATES FAILURE TO INVESTIGATE ALLEGATION (Const. AMEND. V, VI, XIV)
- F) FAILURE TO HAVE SUFFICIENT EVIDENCE (Const. AMEND. V, XIV)
- G) BRADY VIOLATION (WITHOLDING FAVORABLE EVIDENCE) (Const. AMEND. V, VI, XIV)
- H) BREACH OF CONTRACT BY MEANS OF FRAUD AND COERSION (Const. AMEND. V, VI, XIV)
- I) ACTUAL INNOCENCE AND MANIFEST INJUSTICE (Const. AMEND. V, XIV)

A FEW OF THESE GROUNDS WERE MENTIONED TO COUNSEL, BUT PETITIONER WAS INFORMED ONLY VALIDITY OF CONVICTION COULD BE CHALLENGED ON DIRECT APPEAL. IN ADDITION TRIAL AND APPELLATE COUNSEL WERE THE SAME APPOINTED COUNSEL.

- 14) GIVE THE NAMES OF EACH ATTORNEY WHO REPRESENTED YOU IN THE PROCEEDING RESULTING IN YOUR CONVICTION AND ON DIRECT APPEAL : DAVID C. O'MARA (NEV. BAR NO. 8599) OF 311 EAST LIBERTY STREET, P. O. BOX 2270, RENO, NEVADA 89505. WAS BOTH TRIAL AND APPELLATE COUNSEL.
- 15) DO YOU HAVE ANY FUTURE SENTENCE TO SERVE AFTER YOU COMPLETE THE SENTENCE IMPOSED BY THE JUDGEMENT UNDER ATTACK? NO
- 16) STATE CONCISELY EVERY GROUND ON WHICH YOU CLAIM THAT YOU ARE BEING HELD UNLAWFULLY. SUMMARIZE BRIEFLY THE FACTS SUPPORTING EACH GROUND. IF NECESSARY, YOU MAY ATTACH PAGES STATING ADDITIONAL GROUNDS AND FACTS SUPPORTING SAME.

A) GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL

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THE PETITIONER WAS DENIED HIS SIXTH AND FOURTEENTH AMENDMENT RIGHTS OF THE UNITED STATES CONSTITUTION FOR THE EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL/HEARINGS BECAUSE THE ERRORS OF PETITIONER'S COUNSEL FELL AND CONTINUED TO FALL BELOW THE CONSTITUTIONALLY REQUIRED LEVEL OF REPRESENTATION. AS WELL AS VIOLATED PETITIONER'S RIGHT TO DUE PROCESS AS SET FORTH IN THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION. PETITIONER SUFFERED PRESUDICE AND WAS DEPRIVED HIS OPPORTUNITY TO PRESENT A DEFENSE

SUPPORTING FACTS:

1) PETITIONER'S ENTRANCE OF A GUILTY PLEA MEMORANDUM WAS /IS BASED ON UNINFORMED LEGAL ADVISE, THE DEFENSE COUNSEL FAILED TO CONDUCT ANY PRE-TRIAL /PRE-DEAL INVESTIGATION, TO EVEN PURSUE WITNESSES OR EVIDENCE IN SUPPORT OF PETITIONER'S CLAIM OF INNOCENCE. ALL THE WHILE COUNSEL REQUESTED PETITIONER TO OBTAIN AND TO COLLECT 'CHARICTER LETTERS' TO HELP WHEN PETITIONER WENT TO SENTENCING. AT NO POINT WAS ANY LEGAL STRATAGY DISCUSSED, EXCEPT NUMEROUS TIMES COUNSEL INFORMED THE PETITIONER THAT HE COULD BUY PETITIONER ENOUGH TIME TO GET HIS FAMILY EMOTIONALLY AND FINANCIALLY SET AND READY FOR PETITIONER GOING TO PRISON, AND WAIT AND HOPE THAT THE STATE CAME WITH A DEAL. THE ONLY STRATAGY PETITIONER SAW/SEES IS TO SIMPLY SETTLE WITH STATE AND TO CONVICT HIS CLIENT.

1 COUNSEL NEGLECTED TO REMEMBER THAT IT HAS
2 A DUTY TO "CONDUCT A PROMPT INVESTIGATION OF
3 THE FACTS AND CIRCUMSTANCES OF THE CASE AND
4 EXPLORE ALL AVENUES LEADING TO THE FACTS THAT
5 ARE RELEVANT TO THE MERITS OF THE CASE AND
6 THE PENALTY IN THE EVENT OF CONVICTION. THE INVE-
7 STIGATION SHOULD INCLUDE EFFORTS TO SECURE ANY
8 AND ALL INFORMATION IN THE POSSESSION OF BOTH
9 THE PROSECUTION AS WELL AS LAW ENFORCEMENT. AGENTS
10 THE DUTY TO INVESTIGATE EXISTS REGARDLESS OF THE
11 ACCUSED ADMISSIONS OR STATEMENTS TO DEFENSE
12 COUNSEL OF FACTS CONSTITUTING GUILT, OR THE
13 ACCUSED STATEMENTS DESIRING TO PLEAD GUILTY " AS
14 NOTED BY THE AMERICAN BAR ASSOCIATION STANDARDS;
15 DUTY TO INVESTIGATE (STANDARD 4-4.1(a)).

16 THE INVESTIGATION OF THE CASE, ALLEGATIONS, AND
17 TESTIMONY OF THE 'VICTIMS' IN PETITIONERS CASE IS OF
18 THE UTMOST IMPORTANCE. DUE TO THE SENSITIVE NAT-
19 URE OF THE CHARGES, AS WELL AS THE ONLY EVID-
20 ENCE THE STATE HAD WAS THE TESTIMONY OF ASHLEY
21 V. IN COUNT ONE OF THE ORDER OF CONVICTION. THAT
22 BEING IMPORTANT BECAUSE CREDIBILITY IS THE MAIN
23 BACKING OF THE STATES CASE / CHARGE. SO INTERVIEWING
24 THE 'VICTIMS' INDEPENDENTLY IS CRUCIAL TO BE ABLE
25 TO, IN PETITIONERS CASE AID HIM IN DECIDING TO
26 ACCEPT THE GUILTY PLEA MEMORANDUM. FAILURE TO
-6- 27 DO EVEN A BASIC INTERVIEW CAN SERIOUSLY ALTER,
28 IF PETITIONERS SHOULD ACCEPT DEAL OR CHALLENGE V7HA2

1 2) DEFENSE COUNSEL DAVID C. O'MARA WAS PRES-
2 ENTED WITH EXCULPATORY EVIDENCE TO ESTABLISH
3 BOTH AN ALIBI FOR PETITIONER IN REGARDS TO
4 COUNTS I, II, III AND IV OF THE AMENDED CRIMINAL
5 COMPLAINT DATED APRIL 16, 2007 IN CASE RJC
6 2007-033884, AS WELL AS TO PROVE ACTUAL AND
7 FACTUAL INNOCENCE. BUT COUNSEL PREJUDICED THE
8 PETITIONER, BY NOT ACTING AS A REASONABLY COMPETENT
9 ATTORNEY, BECAUSE HE DID NOT REQUEST A CONTINUANCE
10 ON THE GROUNDS THAT TIME WAS NEEDED TO ADEQUATLY
11 INVESTIGATE THE NEWLY PRESENTED EVIDENCE. (pg. 3/10 PART II)

12 SUCH A CONTINUANCE SHOULD IN THE LEAST HAVE
13 BEEN REQUESTED BY COUNSEL, WHETHER IT WAS GRANTED
14 IS NOT RELEVANT, IT WAS NEEDED. TO BE ABLE TO
15 PROPERLY, AND INDEPENDENTLY INVESTIGATE ALL THE
16 CIRCUMSTANCES SURROUNDING THE ALLEGATIONS BY THE
17 STATE AS COMPARED TO THE NEW EVIDENCE. HAD THE
18 EVIDENCE BEEN IN THE SMALLEST ASPECT BEEN VERIFIED
19 D INDEPENDENTLY TO VALIDATE THEIR AUTHENTICITY, IT
20 WOULD HAVE SHOWN SERIOUS FLAWS AND HOLES IN THE
21 STATES CASE. ESPECIALLY SINCE A LARGE PART OF
22 THE STATES CASE / CHARGES WERE BASED ON NOTHING
23 MORE THAN THE WORDS OF ASHLEY V., MICHELLE A,
24 AND JESSICA H. AS WELL AS THE TESTIMONY OF THE
25 LEAD DETECTIVE TOM BROOME (RPD).

26 THE EVIDENCE, HAD A CONTINUANCE WOULD
-7- 27 HAVE BEEN REQUESTED TO VALIDATE EVIDENCE, WOULD
28 HAVE SHOWN: IN REGARDS TO ASHLEY V. SHE-STATE V7. 13

1 WITH ABSOLUTE CERTAINTY THAT THE INCIDENT IN
2 THE INDICTMENT UNDER COUNTS I, II AND III HAD IN
3 FACT HAPPENED WHEN SHE WAS TWELVE (12) YEARS OLD.
4 (SEE Pgs 71/12 ~~AND~~). SO THAT WOULD MEAN THAT WITH THE
5 DATE OF BIRTH OF AUGUST 14, 1986, SHE WOULD BE
6 TWELVE (12) MAKING THE PROPER TIME FRAME OF THE
7 INCIDENT BEING AUGUST 14, 1998 UNTIL AUGUST 13, 1999. IF
8 A CONTINUANCE HAD BEEN IN FACT BEEN REQUESTED,
9 THE VERIFIED EXCUPATORY EVIDENCE WOULD SHOW, IT
10 TO BE IMPOSSIBLE TO HAVE BEEN COMMITTED BY THE
11 PETITIONER AS ASHLEY V CLAIMS. DEFENSE COUNSEL WAS
12 PRESENTED WITH THE FOLLOWING DOCUMENTATION PRIOR
13 TO ENTERING THE COURTROOM TO COMMENSE THE PREL-
14 IMINARY HEARING ON JULY 2, 2007: COLLEGE TRANSCRIPTS
15 SHOWING PETITIONER WAS ATTENDING THE CULINARY INSTITUTE
16 OF AMERICA IN HYDE PARK, NEW YORK FROM NOV. 11, 1996
17 UNTIL FEBRUARY 23, 2000; DMV REGISTRATION FOR VEHICLE
18 IN ALLEGATION (Pgs 86/90) BEING PURCHASED AND REGISTERED
19 ON JUNE 5, 2000; A SUMMONS OF FAMILY LAW DATED
20 AUGUST 18, 1999; AS WELL AS A PROOF OF SERVICE, SERVED
21 ON PETITIONER AT HIS HOME 255 EAST NESS #257, FRESNO,
22 CALIFORNIA ON AUGUST 16, 1999 AT 2:45 pm. (Pgs 102-104 (V))
23 ALL THESE DOCUMENTS WOULD HAVE PROVEN ACTUAL
24 AND FACTUAL INNOCENCE OF COUNTS I, II, III. OF WHICH
25 PETITIONER CURRENTLY FINDS HIMSELF WITH A CONVIC-
26 TION TO COUNT II WHICH TRANSFERED INTO COUNT ONE
-8- 27 OF THE ORDER OF CONVICTION, PETITIONER IS SERVING
28 LIFE IN PRISON WITH THE ELIGIBILITY FOR PAROLE ~~1/7/14~~

1 A MINIMUM OF TEN (10) YEARS HAS BEEN SERVED.

2 OTHER EVIDENCE WOULD HAVE GONE TO PROVE

3 THE CREDIBILITY OF DETECTIVE TOM BROOME TO BE IN

4 SERIOUS QUESTION. PETITIONER HANDED OVER EVIDENCE

5 THAT DETECTIVE TOM BROOME HAD RELEASED CRIMINAL

6 COMPLAINTS TO PETITIONER'S EX-WIFE'S (SENNY DUNCLEY)

7 ATTORNEY MR KENNETH BALLARD ON MAY 25, 2007.

8 THE INVESTIGATING OF THIS EVIDENCE WOULD HAVE SHOWN

9 THAT DETECTIVE IN FACT DID RELEASE CONFIDENTIAL CRIMINAL

10 COMPLAINTS TO A THIRD PARTY SIX WEEKS PRIOR TO THE

11 PETITIONER'S PRELIMINARY HEARING. (SEE PGS. III-12B IV) AND THE

12 SUBSEQUENT ENTRANCE OF SAID POLICE REPORTS INTO

13 THE CIVIL CUSTODY 'BATTLE' BETWEEN PETITIONER AND HIS

14 EX-WIFE (SEE PGS. 12/13 IV). IN ADDITION HAD A CONTINUANCE

15 BEEN REQUESTED AS ANY COMPETANT ATTORNEY WHO

16 IS ACTING AS A DILIGENT CONSCIENTIOUS ADVOCATE FOR

17 HIS CLIENT WOULD HAVE INSISTED ON OBTAINING. IT WOULD

18 HAVE GIVEN COUNSEL ENOUGH TIME TO PROVE THAT IN

19 THE POLICE REPORTS THAT WERE RELEASED BY DETECTIVE

20 TOM BROOME WAS THE 'PROVERBIAL' SMOKING GUN' TO

21 PUT A STOP TO THE STATES CASE ON COUNTS I, II, III AND IV

22 RIGHT THERE AT THE PRELIMINARY HEARING. AS ENTERED

23 IN AS EXHIBIT 'D' ON JUNE 22, 2007 (PG. III ~~IV~~ IS BPD

24 DRAFT DATED APRIL 19, 2007. THREE DAYS AFTER THE STATE

25 AMENDED THE INDICTMENT TO ADDING THE ADDITIONAL CHARGES

26 THAT REPORT COULD HAVE BEEN USED TO BOTH QUESTION

-9- 27 DETECTIVE TOM BROOME'S MOTIVES FOR THE RELEASE AS

28 WELL AS TO QUESTION OR PROPERLY CROSS-EXAMINE A V7.15

1 STATE WITNESS, WHO PERSONALLY SPOKE TO PETITIONERS
2 EX-WIFE JENNY DUNKLEY ON APRIL 18, 2007. (SEE pg. 128J
3 IN THAT REPORT COUNSEL WOULD HAVE BEEN ABLE TO ALSO
4 IMPEACH THE TESTIMONY OF ASHLEY V. BECAUSE THE
5 REPORT PROVED THAT THE STATE WAS IN POSSESSION OF
6 EVIDENCE THAT WAS /IS FAVORABLE TO THE DEFENDANT.
7 IN THE INTERVIEW DETECTIVE TOM BROOME CONFIRMED
8 THE LOCATION OF PETITIONER UP UNTIL THE BREAK UP OF
9 THE MARRAGE BETWEEN PETITIONER AND JENNY DUNKLEY IN
10 JULY OF 1999. SHOWING DEFENDANT RESIDING IN NEW YORK
11 AND FINALLY IN OAKHURST CALIFORNIA LOCATED IN MADERA
12 COUNTY.

13 IT WOULD HAVE WARRANTED DEFENSE COUNSEL TO
14 MOVE TO DISMISS COUNTS I, III, AND IV ON GROUNDS THAT THE
15 STATE HAD FILED A CRIMINAL COMPLAINT IT KNEW TO
16 BE FALSE BY STATING "ON OR BETWEEN THE 14TH DAY
17 OF AUGUST A.D., 1998 AND THE 13TH DAY OF AUGUST A.D.,
18 2000" (SEE ~~pg. 6~~ 6/22-24). OR IN ANOTHER GROUND OF ACTUAL
19 AND FACTUAL INNOCENCE AND PERJURED TESTIMONY. BUT
20 DAVID O'MARA FAILED TO REQUEST THE CONTINUANCE SO
21 WAS NOT ADEQUATELY PREPARED TO ACT AS A ADVASARY
22 TO THE STATE. ULTIMATELY THAT FAULTY AND INEXPERIENCED
23 DECISION ALLOWED A MANIFEST INJUSTICE TO NOT ONLY
24 BE BORN BUT TO THRIVE AND CONTINUE TO LIVE UN-
25 CORRECTED BY EITHER DEFENSE COUNSEL OR BY THE
26 STATE. CONTINUING TO ALLOW A MAN WHO IS INNOCENT
-10- 27 BY THE STATES OWN 'REPORT' TO SIT IN PRISON WITH
28 A LIFE SENTENCE, THAT THEY HAVE A DUTY TO CORRECT.

1 3) COUNSEL ALLOWED PETITIONER TO BE PREJUDICED AT
 2 THE SENTENCING HEARING BY THE COMMENTS AND THE
 3 INAPPROPRIATE INTERJECTIONS OF MISREPRESENTED FACTS ON THE
 4 PART OF ADA VILORIA. COUNSEL ALLOWED THEM TO GO UN-
 5 CHALLENGED. TRUE DEFENSE COUNSEL DID OBJECT TO THE ALL-
 6 EGATIONS OF DEFENDANT BEING THE REASON ASHLEY V. IS
 7 INCARCERATED (pg 50 /12-17); AND ADA VILORIA'S REFERRAL TO THE
 8 INCIDENT AND SURROUNDING CIRCUMSTANCES PERTAINING TO
 9 COUNT TWO WITH REGARDS TO JESSICA H.'S TESTIMONY AT THE
 10 PRELIMINARY HEARING (pg 50 /19-24); ALSO COUNSELING ATTENDANCE
 11 WITH STEVEN ING (pg 51 /5-7); AND FINAL OBJECTION WAS TO THE
 12 CONTRADICTING THE REASON COUNT V OF RJC 2007-033884
 13 WAS DISMISSED (pg 51 /8-18) (ALL PART III)

14 BUT AT NO POINT DID COUNSEL CORRECT ADA
 15 VILORIA'S MISREPRESENTATION OF CRUCIAL FACTS. FOR EXAMPLE
 16 ON pg 51 /19-24 ADA VILORIA STATES "MR DUNKLEY REFERS
 17 TO HER THROUGHOUT DR. STUYVESANT'S REPORT SHE IS THE
 18 ONE HE ATTACKED ON THE HOOD OF A CAR. WHO HE CLAIMS
 19 HAD CONSENSUAL SEX, BUT HE PUT HIS PENIS IN HER MOUTH"
 20 BUT THE REPORT OF DR. STUYVESANT PETITIONER ONLY REFERS
 21 TO LURA ONLY ONCE (pg 81) A FAR CRY FROM 'THROUGHOUT';
 22 PLUS IN THE POLICE REPORT FOR THAT INCIDENT RPD 05-34027
 23 (SEE pg 1-11) NO WHERE IS THERE THE ALLEGATION TO ORAL
 24 SEX, OR PETITIONER PUTTING 'HIS PENIS IN HER MOUTH'. COUNSEL
 25 FAILED TO OBJECT TO THAT OR TO; ALL THE REFERENCES
 26 MADE TO A NON-EXISTANT CRIMINAL HISTORY, EXCEPT
 -11- 27 IN THE MIND OF ADA VILORIA. (pg 43/24; 44/5) 46/4-6; pg 49/19-36
 28 pg 50/23). STATING PETITIONER HAD BEEN ACTIVELY PERSUED V7 17

1 BY THE STATE FOR TEN YEARS BUT "AVOIDED PROSECUTION
2 BECAUSE OF THE VICTIMS HE HAS CHOSEN" (pg 46 (7-8) STILL
3 NO OBJECTION BY DEFENSE COUNSEL. (PART III)

4 ADA VILORIA SHOULD HAVE REMEMBERED, BUT SO
5 SHOULD DEFENSE COUNSEL THAT NO RULE GOVERNING ORAL
6 ARGUMENTS IS MORE FUNDAMENTAL THAN THAT REQUIRING
7 COUNSEL TO CONFINE REMARKS TO MATTERS IN EVIDENCE,
8 STATING FACTS THAT ARE NOT IN EVIDENCE IS CLEARLY
9 IMPROPER. THE CONDUCT AND COMMENTS BY THE PROSECUTOR
10 ADA VILORIA WERE INDEED IMPROPER AND WOULD SERVE
11 NO PURPOSE OTHER THAN TO AROUSE THE EMOTIONS OF THE
12 JUDGE AND TO PREJUDICE THE PETITIONER IN HER EYES
13 AND MIND.

14 DAVID C. UMARA AS DEFENSE COUNSEL HAD AN OB-
15 LIGATION TO OBJECT TO COMMENTS OR ACTIONS BY OPPOSING
16 COUNSEL WHENEVER THEIR EFFECT MAY BE CONSIDERED TO
17 BE PREJUDICIAL OR OTHERWISE DESERVING OF AN OBJECTION
18 OR PERHAPS A REQUEST FOR ADMONITION BY THE JUDGE.
19 FAILURE TO DO SO IN ITSELF COULD BE DEEMED A FAILURE TO
20 UPHOLD THE SPIRIT OF THE SIXTH AMENDMENT OF THE UNITED STATES
21 CONSTITUTION REQUIRING EFFECTIVE ASSISTANCE OF COUNSEL AT THE
22 SENTENCING AS IN EVERY PHASE TO BE ZEALOUS NOT MERELY
23 PREFUNCTORY OR PRO FORMA REPRESENTATION.

24 BY COUNSEL ALLOWING THE INAPPROPRIATE AND
25 PERSONAL INTERJECTED COMMENTS AND ALLEGATIONS NOT SUPP-
26 ORTED BY RECORD OR EVIDENCE AND BY NOT OBJECTING,
-12- 27 COUNSEL DISPLAYED EXAMPLES AND BEST EVIDENCE OF HIS
28 INEXPERIENCE, OR, INCOMPETANCY, OR INEFFECTUENESS, V7. 18

1 THREE. NO MATTER WHICH TERM IS SUPPORTED OR USED, HIS
2 STANDING BY SILENTLY, SATISFIES ONE CRITERIA OF INEFFECTIVE
3 ASSISTANCE OF COUNSEL. NO OTHER COMPETENT ATTORNEY
4 WOULD HAVE STOOD BY AND FAILED TO OBJECT, ALLOWING
5 SUCH OBVIOUS PREJUDICE TO OCCUR TOWARDS THEIR CLIENT.
6 THAT WOULD ALSO SATISFY THE SECOND 'PRONG' OF THE
7 STRICKLAND TEST. THAT BEING WAS THE PETITIONER PREJUDICED?
8 WERE THE INAPPROPRIATE COMMENTS AND LACK OF PROTECTION
9 FROM COUNSEL CERTAINLY DID NOT HELP AND/OR BENEFIT
10 PETITIONER. SO AS SET FORTH IN STRICKLAND V. WASHINGTON
11 BOTH 'PRONGS' ARE MET BY THIS ACTION OR LACK THEREOF
12 WARRANTING RELIEF IN THE REVERSAL OF PETITIONER'S GUILTY PLEA
13 MEMORANDUM.

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4) PETITIONER WAS DENIED ADEQUATE REPRESENTATION
IN REGARDS TO THE IMPORTANCE OF ATTORNEY-CLIENT CONSULTATION. SINCE DAVID C. O'MARA WAS ASSIGNED BY THE COURTS TO REPRESENT PETITIONER ON MAY 7, 2007, COUNSEL FAILED TO CONTACT PETITIONER PRIOR TO THE PRELIMINARY HEARING, THE FIRST MEETING OCCURED TEN MINUTES PRIOR TO THE HEARING ON JULY 2, 2007. WITH THE EXCEPTION OF A FEW BRIEF PHONE CALLS, THE TEN MINUTES IS FAR FROM ADEQUATELY ENOUGH TIME TO ESTABLISH A SOLID "GAME PLAN" LEGALLY SPEAKING. CONSIDERING THE IMPORTANCE DUE TO THE FACT THAT OUT OF THE SEVEN CHARGES IN RJC 2007-033884 FIVE OF THEM CARRY THE POSSIBILITY OF LIFE IN PRISON. YET NO CONSULTATION WAS MADE BEFORE THE PRELIMINARY HEARING. WE LITERALLY WALKED IN BLIND DUE TO THE INADEQUATE PREPARATION OF COUNSEL, V7. 19

1 5) TRIAL COUNSEL FAILED TO ACT ON BEHALF OF HIS CLIENTS
2 BEST INTEREST BY NOT ENTERING A MOTION TO BIFURCATE THE
3 CHARGES OF COUNT ONE AND OF COUNT TWO OF THE ORDER OF
4 CONVICTION. DUE TO THE FACT TO ALLOW THE CHARGES TO
5 BE TRIED TOGETHER WOULD BE PREJUDICIAL TO THE PETITIONER.
6 IN ADDITION THE VAST TIME FRAME BETWEEN THE ALLEGATIONS
7 AND CHARGES WOULD WARRANT A SEVERANCE OF THE CHARGES.
8 ANY COMPETANT KNOWLEDGEABLE ATTORNEY WOULD HAVE SEEN
9 THE NEED TO DO SUCH. ALSO FOR THE FACT THAT THE STATE
10 WOULD ATTEMPT TO BOOTSTRAP THE CASES TO ALLOW THE EVIDENCE
11 IN ONE COUNT TO CLOUD THE LACK OF ANY EVIDENCE IN THE
12 OTHER, AND VISA VERSA.

13
14 6) THE PETITIONER WAS PREJUDICED BY THE ACTIONS OF
15 COUNSEL IN REGARDS TO BOTH HIS FAILURE TO INTERVIEW EITHER
16 ASHLEY V. OR JESSICA H. FOR WITHOUT A INDEPENDENT INTERVIEW
17 HOW COULD COUNSEL HAVE MADE BEST USE OF SUCH MECHANISMS
18 AS EFFECTIVE CROSS-EXAMINATION". BUT COUNSEL BY FAILING TO
19 INTERVIEW OR REQUIRE THE 'VICTIMS' TO UNDERGO PSYCHOLOGICAL
20 EXAMINATIONS AGAIN SHOWED HIS PERSONAL LEGAL STRATEGY TO
21 HAVE NO NEED TO CROSS EXAMINE THE WITNESSES/VICTIMS BECAUSE
22 HE HAD NO INTENTION ON GOING TO TRIAL. ALL HIS CONDUCT AND
23 ACTIONS PROVE HE WAS SIMPLY WAITING FOR A DEAL, TO CONVICT
24 HIS CLIENT. FAR CRY FROM THE EFFECTIVE ASSISTANCE OF
25 COUNSEL ACTING AS A SUPPORTING AND GUIDING HAND THROUGH THE
26 ADVERSARIAL 'MINE FIELD' CALLED THE JUDICIAL SYSTEM, THAT
-14- 27 ALL CITIZENS OF THE UNITED STATES ARE GUARENTEED BY THE
28 SIXTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION. V7.20

1 7) DEFENSE COUNSEL FAILED TO ACT AS A ADVOCATE
2 FOR HIS CLIENT BY NOT EFFECTIVELY CROSS-EXAMINING
3 DETECTIVE TOM BROOM IN REFERENCE TO HIS RELEASING
4 ALL THE CRIMINAL COMPLAINTS IN CONNECTION TO RJC
5 CASE NUMBER 2007-033884, TO KENNETH BALLARD'S
6 LAW OFFICE ON MAY 25, 2007. AT NO POINT DID
7 COUNSEL USE THE EVIDENCE OF THE RELEASE OF
8 THE REPORTS TO SHOW ISSUES OF CREDIBILITY AND
9 POSSIBLE EXISTING ANIMOSITY OR UNDERLYING HOSTILITY
10 TOWARDS THE PETITIONER. BECAUSE THERE IS NO VALID
11 OR JUSTIFIABLE REASON TO HAVE RELEASED CON-
12 FIDENTIAL CRIMINAL COMPLAINTS IN REFERENCE TO
13 CHARGES, THAT HAVE YET TO BE FOUND TO ESTA-
14 BLISH, OR POSSESS PROBABLE CAUSE TO WARRANT THEM
15 BEING BOUND OVER FOR TRIAL. THE PETITIONER AT
16 THE POINT OF RELEASE WAS STILL ENTITLED TO THE
17 OPINION OF INNOCENT UNTIL PROVEN GUILTY. (PART II pg 10-11)

18 SO AN EFFECTIVE ADVISARY TO THE STATE WHO
19 IS DILIGENTLY FIGHTING TO CLEAR THE RECORD IN
20 BEHALF OF HIS CLIENT WOULD HAVE SEEN NOTHING
21 MORE THAN A MALICIOUS ATTEMPT ON THE PART OF
22 DETECTIVE BROOME TO HARM AND SUDICIALY INSURE THE
23 PETITIONER IN A CIVIL MATTER IN A COMPLETELY DIFFERENT
24 STATE. NAMELY A CIVIL CUSTODY HEARING AT WHICH KEN-
25 NETH BALLARD REPRESENTED PETITIONERS EX-WIFE. THERE
26 WAS NO SUPPENA FOR THE REPORTS, AS PETITIONER
-15- 27 WOULD HAVE BEEN ISSUED A COPY BEING THAT HE
28 IS PRO PER IN THE REFERENCED CASE. SO THERE V7.21

1 NO OTHER REASON THAN TO INTENTIONALLY HARM
2 AND PREJUDICE THE PETITIONER. THAT VERY ACTION ALONG
3 WITH HIS FAILURE TO ISSUE THE PETITIONERS MIRANDA
4 RIGHTS AT THE INTERROGATION ON MARCH 20, 2007 AT
5 R.P.D. SEX CRIMES UNIT, OR HIS BLATENT DISREGARD
6 FOR PETITIONERS RIGHT TO HAVE A LEVEL OF PRESUMPTION
7 OF PRIVACY IN HIS OWN HOME. BY DETECTIVE TOM BROOME
8 SECRETLY RECORDING A CONVERSATION WITH PETITIONER
9 IN HIS OWN HOME. VIOLATING BOTH HIS FIFTH AMENDMENT
10 AND FOURTH AMENDMENTS RIGHTS. ALL THESE ISSUES
11 AND VIOLATIONS OF PETITIONERS DUE PROCESS RIGHTS
12 WERE BROUGHT TO THE ATTENTION OF DEFENSE COUNSEL
13 DAVID C. O'MARA. BUT AT NO POINT DID HE BRING ANY
14 OF THESE SERIOUSLY RELEVANT VIOLATIONS UP AT THE
15 CROSS-EXAMINATION ON JULY 2, 2007 PRELIMINARY HEARING
16 (SEE Pgs 110-116 II). NOR AFTERWARDS. HE FAILED TO ENTER
17 A MOTION TO SUPPRESS PETITIONERS STATEMENTS AND
18 INTERVIEW / INTERROGATION ON GROUNDS OF FOURTH AND
19 FIFTH AMENDMENT VIOLATIONS, ANY ATTORNEY PRACTICING
20 ABOVE THE STANDARD LEVEL OF CONDUCT WOULD HAVE
21 SEEN GROSS ISSUES IN THE ADMITANCE OF DETECTIVE TOM
22 BROOMES TESTIMONY AS WELL AS HIS HANDLING OF ALL
23 INTERVIEWS WITH THE ALLEGED VICTIMS AND ALL RELEVANT
24 EVIDENCE. BY HIS SHOWING MALICE, AND DISPLAYING A
25 OBVIOUS DISTAIN FOR THE PETITIONER IT CASTS A LARGE
26 SPOTLIGHT OF DOUBT AS TO HIS CREDIBILITY IN REGARDS
-16- 27 THE CASE, AND HIS HANDLING OF IT. YET COUNSEL FEEL
28 EXTREMELY SHORT IN PURSUING AN ADEQUATE CROSS-EXAMINATION

1 8) Counsel for defense, DAVID C. O'MARA, SHOWED A
2 LARGE LACK OF LEGAL KNOWLEDGE BY INITIALING AND
3 INCOURAGING / RECOMMENDING CLIENT TO INITIAL, AND
4 ALSO TO ALLOW THE ADDITION OF THE LINE " INCLUDIN
5 ALL COUNTS FILED AND DISMISSED IN RSC CASE NUMBER
6 2007-033884" (pg III 13/ pag 7) TO THE GUILTY PLEA MEMOR-
7 ANDUM. WHEN ADEQUATE KNOWLEDGEABLE LEGAL COUNSEL
8 WOULD HAVE AND SHOULD HAVE KNOWN THAT DUE PROCESS
9 PROHIBITS THE REFLING OF CHARGES THAT HAVE BEEN
10 DISMISSED BY THE COURTS ON THE GROUNDS OF INSUFFICIENT
11 EVIDENCE. UNLESS THE PROSECUTION CAN PROVE THAT NEW
12 EVIDENCE PREVIOUSLY UNAVAILABLE HAS SURFACED, OR IF
13 THEY (THE STATE) CAN SHOW THAT GOOD CAUSE EXISTS TO
14 JUSTIFY THE REFLING OF THE CHARGES.

15 DAVID C. O'MARA WAS PRESENT AT THE PRELIMINARY
16 HEARING ON JULY 2, 2007, SO HE WAS AWARE THAT ALL THE
17 COUNTS AND CHARGES DISMISSED IN THAT CASE WERE DONE
18 SO FOR LACK OF THE STATE TO PROVE PROBABLE CAUSE
19 WITH INSUFFICIENT EVIDENCE. THE STATE FAILED TO
20 SHOW OR PROVE THE MOST BASIC REQUIREMENT OF A
21 CRIMINAL CHARGE, NOW WITH BEING PRESENT, AND TO
22 ASSUME HE HAS THE ADEQUATE LEGAL EXPERTISE NEEDED
23 TO DEFEND A CRIMINAL DEFENDANT, WHY DID HE ALLOW
24 BOTH THE ADDITION OF THE LINE AND HIS SIGNATURE AND
25 HIS CLIENT TO BE ADDED TO THAT DEAL. EXCEPT AN
26 EXPERIENCED ATTORNEY WOULD HAVE KNOWN THE ADDITION
-17- 27 TO BE A MISREPRESENTATION OF LAW AND A OBVIOUS
28 ATTEMPT TO GIVE THE PETITIONER A FALSE SENSE OF ~~AV7. 23~~ V7. 23.

1 9) COUNSEL FAILED TO EVER PRESENT PETITIONER
2 WITH ANY TYPE OF DEFENSE STRATEGY. ALL THE
3 WHILE SIMPLY WAITING FOR A DEAL, AS IS OBVIOUS
4 BY HIS FEELING NO NEED, RELEVANCE, OR DESIRE
5 TO PERFORM THE MOST BASIC TRIAL PREPERATION, THAT
6 OF INTERVIEWING OR INVESTIGATING THE STATES CASE
7 AND WITNESSES. BY APPLYING THAT STYLE OF 'STRATEGY'
8 IT DID NOTHING BUT WORK IN FAVOR OF THE STATE
9 AND THE DETRIMENT OF PETITIONER. BY THE DEFENSE
10 COUNSEL ACTING IN SUCH A MANNER TO LACK ANY
11 STRATEGY IT ACTED MORE ADVESARIAL TO THE PETITIONER
12 THAN TO THE STATE HIS PROPER 'TARGET' THE ACT OF
13 NOT EVEN ATTEMPTING TO FIGHT THE CASE HE FAILED AND
14 DEPRIVED THE PETITIONER OF HIS RIGHT TO ADEQUATELY
15 FIGHT HIS CASE.

16 ADEQUATE AND EFFECTIVE COUNSEL AS GUARANT-
17 EED BY THE SIXTH AND FOURTEENTH. AMENDMENTS IMPLY
18 THAT COUNSEL CAN NOT SIMPLY STAND BY AND DO
19 NOTHING. BY JUST GUING THROUGH THE MOTIONS CAN
20 AMOUNT TO A CLEAR VIOLATION OF PETITIONERS CONSTITUTION
21 AL RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL AND ALSO
22 THAT OF DUE PROCESS, AS WAS THE CASE HERE.

23
24 10) COUNSEL DAVID C. O'MARA'S ACTIONS PREJUDICED
25 PETITIONER BY HAVING THE STATES 'OFFER' OR GUILTY PLEA
26 MEMORANDUM SINCE FEBRUARY 28, 2008 BUT FAILED TO
-18-27 INFORM PETITIONER UNTIL THE MORNING OF MARCH 6, 2008
28 THE MORNING OF THE HEARING TO CONFIRM TRIAL, BY V7E24

1 DELAY ON THE PART OF COUNSEL, EITHER BY NEGLIGENCE,
2 OR INTENT IT DENIED THE PETITIONER THE ABILITY TO
3 MAKE A FULLY INFORMED AND EDUCATED DECISION. TO
4 ALLOW THE PETITIONER THE ADEQUATE TIME NEEDED
5 TO MAKE SUCH A SERIOUS AND WEIGHTED DECISION.
6 PREVENTING THE PETITIONER THE NECESSARY OPTION
7 TO TAKE IT HOME AND FULLY DISCUSS AND WEIGH
8 THE PROS AND CONS OF THE ACCEPTANCE OR REJECTION
9 OF THE 'DEAL' WITH PETITIONER'S WIFE, WHO HAD A
10 SUBSTANTIAL STAKE IN THE ULTIMATE OUTCOME OF THE
11 CASE. YET A MERE THIRTY (30) MINUTES IS FAR FROM
12 ENOUGH TIME, WHEN LIFE IMPRISON HANGS IN THE BALANCE
13 BUT COUNSEL CLAIMED OR ATTEMPTED TO COVER-
14 UP THIS INADEQUATE REPRESENTATION ON HIS PART BY
15 ADDING THE COMMENT "WE DISCUSSED NUMEROUS TIME
16 BEFORE YOU SIGNED THE GUILTY PLEA MEMORANDUM WHAT
17 THE RAMIFICATIONS WOULD BE IF YOU PLEAD GUILTY PUR-
18 SUANT TO THE DISTRICT ATTORNEY'S OFFER" (Letter 3/9/09 see
19 pgs 36-38 ~~IV~~). BUT THAT FEEBLE ATTEMPT TO COVER UP HIS
20 INCOMPETENCE BY NOT EVEN PRESENTING PETITIONER WITH
21 THE DEAL UNTIL THE LAST POSSIBLE MOMENTS PRIOR TO
22 COURT. SO WHEN WAS THERE ADEQUATE TIME TO
23 "DISCUSS NUMEROUS TIME"?

24 COUNSEL'S FAILURE IN THIS ACTION BY
25 LITERALLY WAITING TILL THE LAST MOMENTS COUPLED WITH
26 THE AS OF YET NON-EXISTANT LEGAL STRATEGY ALL
-19- 27 CUMULATED INTO THE PETITIONER BEING DENIED THE
28 ABILITY TO MAKE AN ADEQUATE INFORMED DECISION. V7.25

1 11) STILL ANOTHER EXAMPLE OF COUNSELS DEFICIENT,
2 PROFUNCTORY, PRO FORMA REPRESENTATION OF SIMPLY
3 GOING THROUGH THE MOTIONS, IS SHOWN BY HIS OBVIOUS
4 FEELING THAT THE PETITIONERS CASE DOES NOT DESERVE
5 HIS COMPLETE FOCUS AND ATTENTION. ANY OTHER ZEALOUS
6 ADVOCATE WOULD NEVER FILE AN AFFIRMATION WITH THE
7 WRONG CASE NUMBER REFERENCED ON IT. LET ALONE THREE
8 (3). BUT THAT IS EXACTLY WHAT DEFENSE COUNSEL O'MARA
9 DID. ON SEPTEMBER 8, 2008 IN THE 'NOTICE TO APPEAL' FOR
10 CASE NUMBER CRO7-1728, HIS FILED AFFIRMATION HAD THE
11 CASE NUMBER CRO7-1096. (pg 1-6 V) AGAIN ON OCTOBER 13,
12 2008 WHEN FILING THE 'REQUEST FOR ROUGH DRAFT TRANSCR-
13 IPTS' THE ATTACHED AFFIRMATION DID NOT HAVE CRO7-1728
14 WHICH WAS PETITIONERS CASE NUMBER BUT REFERENCED CRO3-
15 PO380 YET ANOTHER COMPLETELY DIFFERENT CASE. THAT ONE
16 WAS FOUR YEARS OLD. A FINAL EXAMPLE OF HIS CLEAR
17 LACK OF ATTENTIVE BEHAVIOR IS FROM THE VERY NEXT
18 DAY WITH THE FILING OF THE 'NOTICE OF ROUGH DRAFT TRANSCRIPT
19 REQUEST' FILED WITH THE NEVADA SUPREME COURT IN CASE NUMBER
20 52383, BUT THE AFFIRMATION ATTACHED TO THE NOTICE WAS
21 REFERENCED TO CASE NUMBER 52330.

22 ONE SUCH MISTAKE CAN BE UNDERSTOOD, BUT THREE
23 SEPERATE ERRORS SHOWS CARELESSNESS AND GROSS NEGLIGENCE
24 TO SEE THAT THE CASE IS IN FACT HANDLED IN
25 A PROFESSIONAL STANDARD ABOVE THE BAR AND FREE
26 FROM REPROACH USED TO JUDGE THE COMPETANT LEVEL
-20-27 OF BASIC PERFORMANCE NEEDED AND EXPECTED TO BE
28 SHOWN DOWN TO THE MINUTE DETAILS REQUIRED OF ATTORNEYS.

1 DEFENDANT IN A CRIMINAL CASE IS ENTITLED TO THE
 2 EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL. BECAUSE
 3 OF APPELLATE COUNSEL'S ERRORS, WHICH FELL BELOW THE
 4 STANDARDS FOR THE EFFECTIVE ASSISTANCE OF COUNSEL,
 5 PETITIONER IS IMPRISONED IN VIOLATION OF HIS FIFTH,
 6 SIXTH AND FOURTEENTH AMENDMENT RIGHTS OF THE
 7 EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.

8

9

10 12) APPELLATE COUNSEL WAS INEFFECTIVE FOR
 11 ONLY SUBMITTING A ONE TOPIC - TWO AND A HALF PAGE
 12 BRIEF, NOT COVERING THE OBVIOUS MISCONDUCT ON
 13 THE PART OF ADA VILORIA AT THE SENTENCING
 14 HEARING - BY HER INTERJECTING HARMFUL PREJUDICIAL
 15 COMMENTS IN REGARDS TO PETITIONERS CRIMINAL
 16 HISTORY THAT DID / DOES NOT EXIST. (pg 43/44-44/1-5) ps. 46 / 47g6)
 17 49/13, 50/23), WHERE THE STATE CLAIMED THE
 18 PETITIONER IN FACT HAD AN EXTENSIVE AND EXCESSIVE
 19 HISTORY OF ATTACKS AND INAPPROPRIATE BEHAVIOR. AV -
 20 OIDING PROSECUTION BECAUSE 'OF THE VICTIMS HE HAS
 21 CHOSEN' (ps. 46 / 7-8) (PART III)

21

22 COUNSEL O'MARA FAILED TO BRING UP ANY
 23 OF THE ILLEGAL INTENTIONAL PROSECUTORIAL INTERFERING
 24 PREJUDICING THE PETITIONER AND THE SUBSEQUENT SENTENCING,
 25 EVEN WENT AS FAR AS TO SAY 'I DONT BELIEVE YOU
 26 HAVE ANY APPELABLE ISSUES IN THIS CASE.' (SEE pg 25 V)
 27 IT IS RELEVANT TO NOTE THE DATE OF THAT LETTER,
 28 BEING AUGUST 6, 2008 JUST ONE DAY AFTER THE
 PETITIONER WAS SENTENCED. WARRENTING THE QUESTION V7.27

1 JUST HOW HARD DID PETITIONERS COUNSEL LOOK TO
2 SEE AND REVIEW THE CASE FOR ACTUAL APPEALABLE
3 ISSUES? THAT IS SIMPLY ANOTHER EXAMPLE. IT IS
4 CONDUCT AND ACTIONS FELL BELOW THE BAR OF
5 STANDARDS, TO OVERTLY IGNORE SUCH AN OBVIOUS
6 VIOLATION THAT IS PRACTICALLY SLAPPING ANY COMPETAN
7 ATTORNEY IN THE FACE, SHOWS DAVID C. O'MARA'S INCOMP-
8 ETANCE, AND FAILING TO REACH THE BAR OF STANDARD
9 CONDUCT. NOT EVEN CONSIDERING IT AS A GROUND IS
10 A OBVIOUS LACK OF KNOWLEDGE AND EXPERIENCE, EVEN
11 IF IT WAS REJECTED AS A GROUND AFTER FILING IT IN
12 AN APPEAL, AT LEAST THE ATTEMPT WOULD HAVE BEEN
13 MADE. BUT THAT CAN NOT BE SAID FOR THIS CASE, WE
14 WILL NEVER KNOW. ALL THE WHILE COUNSEL CONTINUED
15 TO IGNORE HIS DUTY TO ADEQUATELY FIGHT AS AN
16 ADVOCATE FOR THE PETITIONER, HIS CLIENT.

17
18 13) APPELLATE COUNSEL DAVID C. O'MARA'S ACTIONS
19 FELL BELOW THE STANDARD LEVEL OF COMPETANCE AND
20 KNOWLEDGE THAT ATTORNEYS PRIDE THEMSELVES IN MAINTAINING
21 IN REGARDS TO AN INCOMPETANT ERROR NO REASONABLY
22 COMPETANT ATTORNEY ACTING AS A DILIGENT CONSCIENTIOUS
23 ADVOCATE WOULD HAVE MADE. THE AGRREGIOUS ERROR TO TAKE
24 NOTE OF IS THE FACT THAT COUNSEL RUSHED TO FILE AN
25 APPEAL HE KNEW LACKED ANY MERIT AS PREVIOUSLY COMMENTED
26 ON, A PERFECT EXAMPLE OF HIS OBLIVIOUS KNOWLEDGE THAT
-22- 27 IS NEEDED TO REPRESENT PETITIONER PROPERLY IN AN APPEAL
28 WAS DISPLAYED ON NOVEMBER 19, 2008, WITH COUNSEL V7. 28

1 FILING OF THE FAST TRACK APPEAL WITH THE NEVADA
2 SUPREME COURT. (SEE PG 28, 29 IV)

3 THE FILING SHOWS INADQUATE KNOWLEDGE OF LAW
4 IN REGARDS TO SENTENCES, CRIME, SEVERITY, AND APPEALS.
5 AS NOTED³ IN NEVADA RULES OF APPELLATE PROCEDURE (NRAP)
6 RULE 3C (a)(1) IT STATES:

7 " (a) ... UNLESS A COURT OTHERWISE ORDERS, AN APPEAL
8 IS NOT SUBJECT TO THIS RULE IF:

9 (1) THE APPEAL CHALLENGES AN ORDER OR JUDGE-
10 MENT IN A CASE INVOLVING A CATEGORY 'A' FELONY, AS
11 DEFINED IN NRS 193.130 (2)(a), IN WHICH A SENTANCE
12 OF DEATH OR IMPRISONMENT IN THE STATE PRISON FOR
13 LIFE WITH OR WITHOUT THE POSSIBILITY OF PAROLE IS
14 ACTUALLY IMPOSED "

15 ANY REASONABLY COMPETANT, EDUCATED AND KNOWLEDGABLE
16 ATTORNEY WOULD HAVE KNOWN THAT A FAST TRACK APPEAL
17 IS NOT THE PROPER AVENUE FOR THE CASE AT BAR. BUT
18 THAT COSTLY MISTAKE COST THE PETITIONER VALUABLE TIME,

19 THAT WAS TOLLING FOR AN APPEAL. IT TOOK THE NEVADA
20 SUPREME COURT TO CORRECT AND TO EDUCATE THE COUNSEL

21 AS NOTED IN THE LETTER TO PETITIONER DATED JANUARY 23,
22 2009 WHERE COUNSEL SAYS " BECAUSE YOUR SENTENCE WAS
23 FOR A LIFETIME SENTENCE, THE COURT RETURNED YOUR
24 FAST TRACK APPEAL AND REQUIRED ME TO FILE A
25 FULL BLOWN APPEAL BRIEF." (SEE PG 35 IV) WHEN APPEALING

26 A SENTENCE CARRING LIFE 'TO LEARN AS YOU GO' IS

-23- 27 NOT WHAT THE CONSTITUTION MEANT BY EFFECTIVE ASSISTANCE
28 OF COUNSEL.

1 14) IT SHOULD BE NOTED THAT APPELLATE COUNSEL AND
2 'TRIAL' COUNSEL WERE ONE AND THE SAME, COURT APPOINTED
3 CONFLICT ATTORNEY DAVID C. O'MARA. THAT IS RELEVANT
4 TO BRING UP FOR PETITIONER WAS CONSIDERED TO BE
5 INDIGENT BY THE COURTS WHEN HE WAS NOT IN CUSTODY.
6 SO WHY WOULD COUNSEL FEEL THAT THE SUBSEQUENT
7 INCARCERATION HAD CHANGED OR IMPROVED PETITIONER'S
8 FINANCIAL STATUS.

9 WHEN PETITIONER ASKED COUNSEL FOR COPIES
10 OF HIS FILE TO AID AND ASSIST IN THE APPEAL, THE
11 COUNSEL RESPONDED NUMEROUS TIMES NOT WITH THE
12 REQUESTED DOCUMENTATION BUT A LETTER REQUESTING / DE-
13 MANDING THAT PETITIONER PROVIDE HIS OFFICE WITH ONE
14 HUNDRED DOLLARS (\$100.00) IN ORDER TO SUPPLY PETITIONER
15 WITH THE REQUESTED DOCUMENTATION. (SEE Pgs 2429, 30). ALSO
16 COMMENTING THAT COUNSEL HAD PREVIOUSLY PROVIDED
17 THE DOCUMENTS FOR PRELIMINARY HEARING AND DISCOVERY. WHEN
18 PETITIONER WAS NOT IN CUSTODY. IN CUSTODY THE ONLY WAY
19 THAT THE PETITIONER CAN OBTAIN THE NEEDED DOCUMENTS
20 WAS FROM COUNSEL.

21 BY THE COUNSELOR REFUSING TO PROVIDE ANY
22 REQUESTED DOCUMENTS, HE PREJUDICED THE PETITIONER FROM
23 HAVING AN ADEQUATE SAY AND PARTICIPATION IN HIS
24 APPEAL. NAMELY LEAVING IT TO THE FULL DISCRETION OF
25 COUNSEL WHO HAS ALREADY PROVED HIS GROSS INCOMPETANCE.

26
-24- 27 15) COUNSEL FAILED TO RAISE ANY ISSUES ON APPEAL
28 THAT PETITIONER HAD VOICED A CONCERN FOR IN V7.30

1 LETTER TO COUNSEL DATED FEBRUARY 5, 2008. (SEE PG 9, 10 V).
2 PETITIONER RAISED CONCERNS AS TO THE MATTER OF
3 THE STATE TO SUCCESSFULLY TOLL THE STATUTES OF LIMITATION
4 AS SET FORTH IN NRS 171.095 UP UNTIL ASHLEY V.'S
5 TWENTY-FIRST (21) BIRTHDAY, NOTING THAT TO ALLEGE THE
6 CRIME BEING COMMITTED IN A 'SECRET MANNER' THE
7 STATE HAS A DUTY TO PROVE THAT FACT BY A PREPONDERANCE
8 OF EVIDENCE. OR IN OTHER WORDS THAT A CRIME TO GO UN-
9 DISCOVERED AND BE CONSIDERED. DONE IN A 'SECRET MANNER'
10 SO LONG AS SILENCE IS INDUCED BY THE WRONGDOERS THREATS
11 OR COERSION.

12 AT THE ORIGINAL AMENDED CHARGES FILED ON APRIL
13 16, 2007 IN RTC CASE NUMBER 2007-033884 COUNT VII (7)
14 WAS SEXUALLY MOTIVATED COERSION. BY MR. CLIFTON'S OWN
15 COMMENTS THE STATE HAD NO EVIDENCE TO PROVE THE CHA-
16 RGE OF SEXUALLY MOTIVATED COERSION, SO IT WAS SUMARIALLY
17 DISMISSED. (SEE PG 117-18/WTD). SO PETITIONER ALLEGED TO COUNSEL
18 THAT ONCE THE STATE DISMISSED THE CHARGE OF COERSION THE
19 STATUTE OF LIMITATIONS IN NRS 171.095 CEASED TO BE THE
20 STATUTE OF LIMITATION AT BAR AND SUBSEQUENTLY NRS 171.085
21 BECAME THE STATUTE OF LIMITATIONS OF PRECIDENT. SO WITH
22 THAT BEING THE CASE THE STATE HAD THREE - FOUR YEARS
23 TO BRING A COMPLAINT (INDICTMENT FOWARD WITH COUNTS I, II,
24 III AND IV. BECAUSE THEY FAILED TO DO SO BY 2001-2003
25 IT PROVED THAT THOSE COUNTS WERE PROSECUTORIALLY BARED BY
26 THE STATUTES SET FORTH BY LEGISLATURE. BUT COUNSEL FAILED
-25- 27 TO ADD THIS REQUEST. IN HANDSIGHT COMPARED TO THE INADAQUATE
28 APPELLATE GROUND COUNSEL DID FILE THIS SUGGESTION IN THE 31

1 LEAST CARRIED MORE MERIT.

2

3 16) PETITIONER CONTINUED TO BE PREJUDICED BY
 4 APPELLATE COUNSEL'S DISREGARD FOR THE PETITIONER AND
 5 SHOWING HOW IMPORTANT HE FELT THE PETITIONER'S CASE TRULY
 6 MEANS TO HIM AS A SINGLE ACT OF LAZINESS OR IN THE
 7 OBVIOUS ACT OF JUST PLAIN NOT CARING, BY THE LETTER
 8 INFORMING PETITIONER OF THE ORDER OF AFFIRMATION BY THE
 9 NEVADA SUPREME COURT DATED MAY 12, 2009 (SEE P. 39 ~~IV~~
 10 WAS NOT MAILED UNTIL TEN(TEN) DAYS LATER ON MAY 21,
 11 2009 (SEE P. 40 ~~IV~~). COSTING THE PETITIONER VALUABLE TIME
 12 OF THE ONE YEAR WINDOW PETITIONER HAS FOR HIS WRIT OF
 13 HABEAS CORPUS.

14 AN INTERESTING CONTRAST WAS WHEN COUNSEL WAS
 15 TERMINATED BY LETTER SENT JUNE 8, 2009 (SEE 53-~~ST~~) HE WASTED
 16 NO TIME IMMEDIATELY SUBMITTING A WITHDRAWAL OF ATTORNEY OF
 17 RECORD THE SAME DAY HE RECEIVED THE LETTER, HAVING ABSOL-
 18 UTELY NO TROUBLE FINDING THE MAIL BOX THE VERY NEXT DAY, PETIT-
 19 IONER FINDS IT HUMOROUS THAT WHEN IT BENEFITS COUNSEL THE
 20 MAIL BOX IS NOT HARD TO FIND, TO BAD THAT SAME ZEALOUS BEHAVIOR
 21 WAS NOT SHOWN TOWARDS THE ENTIRE HANDLING OF PETITIONER'S CASE;

22

23 THE SIXTH AMENDMENT IMPOSES ON COUNSEL THE IMPORTANCE
 24 OF THE DUTY TO INVESTIGATE, BECAUSE REASONABLY EFFECTIVE
 25 ASSISTANCE OF COUNSEL MUST BE BASED ON PROFESSIONAL DECISIONS
 26 AND INFORMED LEGAL CHOICES AND ADVICE CAN ONLY BE MADE
 -26- 27 AFTER AN INVESTIGATION OF ALL THE OPTIONS, FACTS, CIRCUMSTAN-
 28 CES AND LAW PERTAINING TO A CHARGE. ONLY AFTER SUNV7.32

1 INVESTIGATION CAN IT BE SAID THAT INFORMED, EDUCATED
2 ADVISE WAS GIVEN IN WHETHER TO ACCEPT A DEAL AND TO
3 PLEAD ACCORDINGLY. WITHOUT SUCH INVESTIGATION, ADVISE OF
4 COUNSEL CAN NOT BE CONSIDERED EFFECTIVE AS GUARANTEED
5 BY THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED
6 STATES CONSTITUTION.

7 ALL ALLEGATIONS OF INEFFECTIVE ASSISTANCE
8 OF COUNSEL, VIOLATING THE FIFTH, SIXTH AND FOURTEENTH
9 AMENDMENTS OF THE UNITED STATES CONSTITUTION, CAN NOT
10 REASONABLY BE PRESUMED TO BE THE RESULT OF ANY TAC-
11 TICAL, OR STRATEGICAL CHOICE WITHIN THE RANGE OF REASONABLE
12 ATTORNEY COMPETANCE. RATHER, THE DEFECTS WERE THE
13 DIRECT RESULT OF COUNSEL, DAVID C. OIMARA'S LACK OF
14 PREPERATION, INVESTIGATION, EXPERIENCE, KNOWLEDGE AND OF
15 SKILL. CUMULATIVE AND SINGULARLY COUNSEL'S FALLING BELOW
16 THE BAR OF WHICH COMPETANT ATTORNEY STANDARDS ARE
17 JUDGED, RESULTED IN BOTH PREJUDICE OF THE PETITIONER AND
18 A MANIFEST INJUSTICE. SPECIFICALLY THE ERRORS ALLEGED
19 IN THIS GROUND DEPRIVED THE PETITIONER OF A FAIR AND JUST
20 TRIAL OR OPTION FOR A TRIAL WITH A CONSTITUTIONALLY
21 RELIABLE OUTCOME AND RELIABLE RESULT.

B) Ground Two: PROSECUTORIAL MISCONDUCT

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19 SUPPORTING FACTS:

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THE PETITIONER IS IMPRISONED IN VIOLATION OF HIS DUE PROCESS RIGHTS UNDER BOTH THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION, AND THE RIGHT TO A FAIR AND JUST TRIAL. BY THE COUNTLESS MISSTATEMENTS OF FACTS BY THE PROSECUTOR. IN ADDITION TO VINDICTIVE PROSECUTION, BECAUSE OF THE MISCONDUCT BY INVESTIGATIVE LAW ENFORCEMENT AGENT DETECTIVE TOM BROOME (RPD), RELEASING THE CRIMINAL COMPLAINTS ILLEGALLY TO A THIRD-PARTY ATTORNEY NOT A PARTY TO THE CASE INVOLVED. AS WELL AS THE STATE HAD IN ITS POSSESSION A REPORT SHOWING ACTUAL AND FACTUAL INNOCENCE IN REGARDS TO COUNT ONE OF THE ORDER OF CONVICTION UNDER ATTACK, YET NOT ONLY FAILED TO BOTH PRESENT IT OR USE IT TO CORRECT KNOWN PREJUDICIAL TESTIMONY IT ALSO KNEW TO BE FALSE. BUT ACTIVELY PURSUED THE CHARGE UP TO A DEAL OFFER AND STRONG ARGUMENT FOR CONVICTION AT SENTENCING TO A CHARGE THEY KNEW PETITIONER WAS IN FACT INNOCENT OF.

1) NUMEROUS COMMENTS BY ASSISTANT DISTRICT ATTORNEY (ADA) VILORIA IN THE RECORD ATTESTING TO THE AGE OF THE VICTIM IN REGARDS TO COUNT ONE OF THE ORDER OF CONVICTION, TO BEING TWELVE YEARS OF AGE (12). MAKING THE STATES CONTENTION THAT WITH THE VICTIM'S DATE OF BIRTH BEING AUGUST 14, 1986 THE STATE CLAIMS THAT THE CRIME OF LEWDNESS WITH A CHILD UNDER FOURTEEN (14) YEARS OF AGE IN FACT OCCURED BETWEEN THE DATES OF AUGUST 14, 1998 UP UNTIL AUGUST 13, 1999, WHEN SHE

1 TURNED THIRTEEN YEARS OLD. (See Sentencing Hearings III pg. 44/line
2 1; pg 45/line 21; pg 48/line 17; and pg 49/line 17). AT NO POINT
3 DID THE STATE EVER CLAIM THAT THERE WAS ANY OTHER INCIDENTS
4 INVOLVED IN THE CHARGE EXCEPT WHEN VICTIM CLAIMED AND STATE
5 COMMENTED ON, THAT BEING TWELVE (12) YEARS OLD. THE PROBLEM
6 WITH THAT IS THAT AS OF JULY 2, 2007 AT THE PRELIMINARY
7 HEARING WHEN ASHLEY V. MADE THE ACCUSATION OF THE CRIME
8 OCCURRING WHEN SHE WAS TWELVE (12), THE STATE HAD IN ITS
9 POSSESSION A RENO POLICE DEPARTMENT (RPD) REPORT DATED 4/19/07
10 CREATED BY LEAD DETECTIVE TOM BROOME. (SEE RPD 'DRAFT' 4/19/07 ON
11 PG. 128-129 ~~IV~~). IN THAT REPORT WHICH WAS CREATED SEVENTY-FIVE (75) DAYS
12 PRIOR TO PETITIONER'S PRELIMINARY HEARING, IT HAS AN INTERVIEW WITH
13 DETECTIVE TOM BROOME AND JENNY DUNCKLEY, (PETITIONER'S EX-WIFE).
14 DURING THE INTERVIEW ON APRIL 18, 2007, JENNY DUNCKLEY INFORMED
15 DETECTIVE BROOME THAT SHE AND PETITIONER MET IN NEW YORK
16 AND LATER MOVED TO MADERA COUNTY CALIFORNIA, THEY LIVED IN
17 OAKHURST, CALIFORNIA UNTIL THE MARRIAGE BROKE UP IN 'JULY
18 OF 1999'. CONFIRMED ALSO BY DETECTIVE BROOME OBTAINING A
19 POLICE REPORT FROM MADERA COUNTY SHERIFF DEPARTMENT. BOTH
20 CONFIRMED THAT PETITIONER DID NOT RESIDE IN THE STATE OF
21 NEVADA DURING AUGUST 14, 1998 TO AUGUST 13, 1999. THE STATE
22 KNEW AND WAS IN POSSESSION OF EVIDENCE TO PROVE, BOTH
23 THE ACCUSATION WAS ACTUALLY AND FACTUALLY IMPOSSIBLE TO HAVE
24 OCCURED AS ALLEGED, AND IT PROVED PERJURY ON PART
25 OF ASHLEY V. IN REGARDS TO HER TESTIMONY AT THE
26 PRELIMINARY HEARING (SEE II 71/21-72/4). YET THE STATE FAILED
-29- 27 TO BOTH CORRECT THE RECORD AND DISMISS THE ORIGINAL
28 CHARGES IN CONNECTION TO THE ALLEGATION BY ASHLEY V. ^{V7.35}AS

1 WELL AS THE STATE FAILED TO PRESENT THE POLICE
2 DRAFT TO DEFENSE COUNSEL, BY SUPPRESSING EVIDENCE THAT
3 IS FAVORABLE TO THE PETITIONER IS GROUNDS TO PROVE IN
4 THE LEAST PROSECUTORIAL MISCONDUCT ON THE PART OF THE
5 STATE, INTENTIONALLY AND KNOWINGLY PREJUDICING PETITIONER
6 AND VIOLATING HIS RIGHT TO DUE PROCESS.

7
8 2) BY THE DETECTIVE RELEASING RENO POLICE REPORTS IN THE
9 DIRECT CONNECTION TO ORIGINAL CASE FILED APRIL 16, 2007 IN
10 THE RENO JUSTICE COURT (RJC) IN CASE NUMBER RJC 2007-
11 033884 TO PETITIONERS EX-WIFE'S ATTORNEY KENNETH BALLARD
12 ON 5/25/07 HE VIOLATED PETITIONERS RIGHT TO BEING CON-
13 SIDERED INNOCENT UNTIL PROVEN GUILTY, AS WELL AS PETITIONERS
14 RIGHT TO A FAIR AND JUST TRIAL. THERE IS ABSOLUTELY NO
15 REASON TO RELEASE THE REPORTS TO A THIRD-PARTY ATTORNEY
16 WHO IS NOT A IMMEDIATE PARTY TO THE MATTER AT HAND,
17 EXCEPT THAT OF INTENTIONAL MOTIVE ON THE PART OF DETECTIVE
18 TOM BROOME TO CAUSE HARM TO PETITIONER IN REGARDS TO
19 THE ONGOING CUSTODY DISPUTE BETWEEN PETITIONER AND HIS
20 EX-WIFE IN MADERA SUPERIOR COURTS. THE ACTIONS OF DETECTIVE
21 BROOME IS BY THE DIRECT DEFINITION OF MALICIOUS INTENT
22 AND INJURY, BY HIM DOING IT WITH WANTON DISREGARD TO
23 THE HARM IT MAY OCCUR OR CAUSE TOWARDS THE PETITIONER.
24 THE ACTIONS OF THE DETECTIVE IS RECORDED BY THE REPORTS
25 BEING STAMPED INTO EVIDENCE ON JUNE 22, 2007 AS EXHIBIT
26 A', B', C' AND 'D', IN CASE NUMBER CV03749. (SEE PAGE 111-128 PT V)
-30- 27 THE REASON THE ACTIONS BY DETECTIVE TOM BROOME IS BEING
28 INCLUDED UNDER PROSECUTORIAL MISCONDUCT BECAUSE V7.36

1 AS NOTED BY THE COURTS REPEATEDLY IS THAT THE MISCON-
 2 DUCT ON PART OF THE INVESTIGATING LAW ENFORCEMENT AGENTS
 3 IS INDISTINGUISHABLE FROM MISCONDUCT BY PROSECUTING ATTORNEYS
 4 WITH DETECTIVE TOM BROOME'S GRATUITOUS ACTIONS TO CAUSE A
 5 HARMFUL OUTCOME IN A UNRELATED CIVIL MATTER VIOLATED THE
 6 PETITIONERS RIGHTS TO A FAIR AND JUST TRIAL. BOTH IN THIS
 7 MATTER, AS WELL AS THE MATTER BEFORE THE HONORABLE JAMES
 8 GAKLEY OF MADARA SUPERIOR COURT, MADERA CALIFORNIA. RESULTING
 9 IN PETITIONER LOSING CUSTODY OF HIS CHILDREN FOR ACCUSATIONS
 10 THAT WERE NOT EVEN FOUND TO HAVE SHOWN PROBABLE CAUSE
 11 TO EVEN PROCEED WITH TRIAL.

12
 13 3) ON PAGE 47 OF THE SENTENCING HEARING TRANSCRIPTS (III)
 14 AND PAGE 90 (IV) THE DATES OF ATTENDANCE IN CONSELLING WITH DR.
 15 STEVEN ING, THE DATE OF COMMENCEMENT WAS MARCH 3, 2008.
 16 THREE (3) DAYS PRIOR TO THE ACCEPTANCE OF THE GUILTY PLEA
 17 MEMORANDUM DATED MARCH 6, 2008. YET AS NOTED ON THE ABOVE
 18 REFERENCED PAGE TO THE SENTENCING HEARING, ADA VILORIA STATED
 19 ON LINE 3-6: "I DO RECOGNIZE THAT FOLLOWING THE DAY OF THIS
 20 PLEA BARGAIN, AND I WOULD NOTE FOR THE COURT NOT A DAY SOONER,
 21 THAT THE DAY AFTER HE ENTERED HIS PLEAD OF GUILTY HE BEGAN
 22 HIS SEX OFFENDER TREATMENT." THIS IS YET ANOTHER EXAMPLE OF
 23 ADA VILORIA'S INTENTIONAL ATTEMPT TO PREJUDICE THE PETITIONER IN
 24 THE EYES OF THE JUDGE IN REGARDS TO SENTENCING. AGAIN WITH
 25 THE COMMENTS THAT ARE NOT ONLY UNSUPPORTED BY THE RECORD
 26 OR OF EVIDENCE BUT IN DIRERT CONTRADICTION OF THE EVIDENCE.
 -31- 27 FOR NO OTHER REASON BUT TO ACQUIRE HER DESIRED OUTCOME,
 28 THAT OF IMPRISONMENT OF THE PETITIONER

1 4) OTHER EXAMPLES OF MAKING COMMENTS AT THE SENTENCING
 2 HEARING TO PREJUDICE PETITIONER IN THE EYES OF THE JUDGE THAT
 3 WERE BOTH UNSUPPORTED BY RECORD AND BLAINTANTLY INAPPROPRIATE
 4 ARE ON PAGE III 43 / LINES 24, PG 44/1; PG 45/12; AND PAGE 46/6.
 5 ALL DIRECTING THE COURTS TO THE ASSERTION THAT PETITIONER
 6 HAS IN FACT BEEN A KNOWN CRIMINAL ON THE 'RADAR' OF THE
 7 RENO POLICE DETECTIVES FOR TEN YEARS, EXCEPT THE ONLY CRIMINAL
 8 RECORD PETITIONER IN FACT DID POSSESS WAS AN ARREST ON
 9 7/25/05 FOR A GROSS MISDEMEANOR OF PETTY LARCANY AS NOTED ON
 10 PAGE III 69 IN THE PRESENTING REPORT GENERATED BY PAROLE AND
 11 PROBATION. ALSO IN THAT SAME REPORT IT NOTED UNDER EDUCATION
 12 ON PAGE 66 (III) "THE DEFENDANT GRADUATED FROM THE CULINARY INSTITUTE
 13 OF AMERICA IN NEW YORK IN 1999" SO NOWHERE DOES THE STATE
 14 HAVE ANY EVIDENCE TO SUPPORT THE CONTENTION OF A TEN YEAR
 15 CRIMINAL HISTORY, BUT THE ABSOLUTE OPPOSITE, UNLESS PETTY LARCANY
 16 IS NOW CONSIDERED A MAJOR CRIMINAL HISTORY IN THE EYES OF ADA
 17 VITORIA. (SEE PART IV Pg. 60)

18 THE STATE EVEN WENT AS FAR AS TO BLAME THE PETITIONER
 19 FOR THE INCARCERATION OF ASHLEY V. ON PAGE 46 LINES 9-11 (PT III)
 20 "ASHLEY V. IS IN PRISON RIGHT NOW. A GOOD PART OF IT IS
 21 BECAUSE SHE TURNED TO DRUGS AND ALCOHOL AS BEING MOLESTED
 22 BY THIS DEFENDANT WHEN SHE WAS A LITTLE GIRL". THERE IS
 23 ABSOLUTELY NO JUSTIFIABLE REASON FOR THE STATE TO MAKE
 24 THAT ASSUMPTION AND ALIGATION. ESPECIALLY SINCE IT STILL HAS
 25 EXCULPATORY EVIDENCE PROVING ACTUAL AND FACTUAL INNO-
 26 CENCE OF PETITIONER. YET ADA VITORIA'S COMMENTS AGAIN INT-
 -32- 27 ENDING TO PREJUDICE AND ADVERSELY INFLUENCE THE SENTENCE
 28 OF PETITIONER BEFORE THE JUDGE.

1 EVEN IN ADA VILORIA'S RESERTATION OF THE
 2 INCIDENT IN REGARDS TO COUNT TWO OF THE ORDER OF
 3 CONVICTION AS COMPARED TO THE TESTIMONY OF JESSICA
 4 H. AT THE PRELIMINARY HEARING. BOTH ARE THE EXACT
 5 OPPOSITE (SEE PG 46 / 16-17 III; Prelim. TRAN. PG 5140 II) ANOTHER
 6 EXAMPLE OF HER NOT BEING ABLE TO KEEP TO THE FACTS OF
 7 RECORD.

8
 9 5) WHEN ADA VILORIA STATED "WHAT'S HAPPENED OVER
 10 THE YEARS, JUDGE, EVERY TIME HE HAS RAPED SOMEBODY OR
 11 INAPPROPRIATELY TOUCHED SOMEONE AND GOTTEN AWAY WITH IT, HE
 12 HAS GONE UP TO THE NEXT LEVEL." (PG 49 / LINE 13-16 III) THE STATE
 13 MADE THE CONTENTION THAT THERE ARE OTHER, POSSIBLY NUMEROUS
 14 INCIDENTS AND ATTACKS PERFORMED BY THE PETITIONER THAT THE
 15 STATE WAS/IS INTERESTED IN BUT COULD NOT PROCEED WITH IN
 16 A CRIMINAL PROSECUTION. ERGO "GOTTEN AWAY WITH" AS WELL AS BY
 17 THE ADDITION OF THE STATEMENT "JUDGE AS A PARENT -- FROM
 18 THE RECITATION OF ALL THE FACTS YOU SEE ON EVERYTHING, AND,
 19 BASICALLY, HOW WE ENDED UP SOLVING THE ULTIMATE CASE
 20 IS BECAUSE THE DETECTIVES AND LAW ENFORCEMENT HAVE BEEN
 21 ON THIS DEFENDANT'S TAIL FOR YEARS." (PG III PG 46 / 3-6), THE
 22 STATE AGAIN MAKES INDIRECT REFERENCE TO THE PETITIONER'S
 23 EXTENSIVE CRIMINAL HISTORY. (SEE PART III)

24
 25 6) ON PAGE 45 LINE 8-11 (III) THE STATE REFERS TO THE
 26 FULL INVESTIGATION DISPROVING PETITIONER'S ALIBI OF BEING ON
 -33- 27 THE PHONE WITH WIFE, EXCEPT AGAIN EVIDENCE AND RECORD
 28 IN THE POSSESSION OF THE STATE IN RPD REPORT DATED 8/7/39

1 IT SHOWED ON PAGE 52 (IV) PETITIONER IN FACT DID GET
 2 OFF THE PHONE WITH WIFE, TO CALL RENO POLICE DEPARTMENT
 3 NON-EMERGENCY DISPATCH NUMBER - 775-334-2677 (COPS). SO
 4 IF INCIDENT OR 'RAPE' OCCURED DURING THE FIVE MINUTES IT
 5 WOULD BE EITHER RECORDED BY POLICE DISPATCH OR AS NOTED
 6 IN REPORT, PETITIONER THEN CALLED HIS WIFE BACK SO SHE
 7 WOULD HAVE HEARD IT. (SEE RPD REPORT 07-9446 PG 52) (PART III)

8 IT IS IMPORTANT TO NOTICE THAT ADA VILORIA MAKES
 9 IT A POINT TO HIDE THE TRUTH OF THE RECORD AND EVIDENCE.
 10 ALL THE WHILE MAKING COMMENTS TO ATTEST AND SOLIDIFY HER
 11 OWN CREDIBILITY BEFORE THE COURTS. "I ABSOLUTELY MADE
 12 A REPRESENTATION AS AN OFFICER OF THE COURT," (PG 51 / LINE 19-20) (III)
 13 AND MADE A POINT TO CORRECT THE PSI "THE FACTUAL CORRECTION
 14 THAT I NEEDED TO MAKE..." (PAGE 44/13) AS WELL AS THE STATE
 15 CORRECTING THE RECORD IN THE AREA OF ASHLEY V'S AGE "BUT
 16 HE CALLS ASHLEY 14 YEARS OLD AT THE TIME WHEN WE ALL
 17 KNOW SHE WAS 12. (PG 45/19(b)-2) (III) THIS IS IMPORTANT
 18 BECAUSE NOT ONLY IS THE RECORD RIDDLED WITH INAPPROPRIATE
 19 UNSUPPORTED COMMENTS, ACCUSATIONS AND ALLEGATIONS NOT DOING
 20 ANYTHING BUT INTENTIONALLY PREJUDICING PETITIONER, BUT NOWHERE
 21 IS THE ADA CORRECTING THE RECORD IN REGARDS TO THE ACTUAL
 22 INNOCENCE OF PETITIONER IN REGARDS TO COUNT ONE. AGAIN BY
 23 THE WITHHOLDING OF FAVORABLE EVIDENCE PROSECUTION
 24 HINDERED PETITIONER TO RENDER AN ADOQUATE DEFENSE. ALSO
 25 WITH THE COMMENTS OF ADA VILORIA'S INTENT TO PREJUDICE
 26 AND INFWENCE THE SENTENCE IT SHOULD WARRANT GROUNDS
 -34- 27 FOR PROSECUTORIAL MISCONDUCT.
 28

1 With REGARDS TO ALL THE EVIDENCE SHOWING PROSECUTORIAL
 2 MISCONDUCT, THE PETITIONER PROVES THAT THE STATE NOT ONLY
 3 ILLEGALLY INFLUENCED SENTANCING, BUT MALICIOUSLY AND VINDICTIVELY
 4 PROSECUTED PETITIONER. FOR SEVENTEEN (17) MONTHS, FROM APRIL
 5 18, 2007 TO SENTENCING ON AUGUST 2, 2008 THE STATE HAD INF-
 6 ORMATION TO PROVE THE ALLEGATIONS MADE BY ASHLEY V.
 7 WERE IN FACT IMPOSSIBLE TO HAVE OCCURED BY THE BASIC
 8 RULES OF GILES' IN ITSELF IT WOULD BE PHYSICALLY IMPOSSIBLE
 9 TO HAVE COMMITTED A CRIME IN A STATE PETITIONER DID NOT
 10 RESIDE IN. DURING THE ALLEGATION OF ASHLEY V. SHE STATES
 11 THAT INCIDENT OCCURED AFTER SPENDING THE NIGHT AT THE
 12 PETITIONERS HOME, IN RENO NEVADA, BUT THE STATE KNEW
 13 PETITIONER IN FACT RESIDED IN NEW YORK AND IN MADISON
 14 COUNTY CALIFORNIA. EXCEPT NOT ONLY DID THE STATE CONTINUALLY
 15 FAIL TO CORRECT AND SET THE RECORD STRAIGHT, BUT THE
 16 EXACT OPPOSITE. IT EAGARLY AND ZEALOUSLY PERSUED THE CHARGE
 17 EVEN UP TO PRESENTING A 'DEAL' TO PETITIONER.

18 THAT 'DEAL' IN AND OF ITSELF SHOULD BE WITHDRAWN
 19 AND DEEMED FRAUDULANT ON THE PART OF THE STATE, ALLOWING
 20 PETITIONER TO WITHDRAW HIS GUILTY PLEAS. IN ADDITION THE
 21 FACT THAT THE STATE INTENTIONALLY CONTINUED TO WITHHOLD
 22 THE INFORMATION BUT MALICIOUSLY VIOLATED PETITIONERS RIGHTS,
 23 WOULD IN THE LEAST WARRENT A DISMISSAL OF COUNT ONE
 24 LEWDNESS WITH A CHILD (NRS 201.230) DUE TO BRADY VIOLATION,
 25 INSUFFICIENT EVIDENCE, MANIFEST INJUSTICE AS WELL AS ACTUAL
 26 INNOCENCE.

C) GROUND THREE: VIOLATION OF PETITIONER'S MIRANDA RIGHTS

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PETITIONER'S CONVICTION IS INVALID UNDER FEDERAL CONSTITUTIONAL GUARANTEES OF RIGHTS TO BE PROTECTED FROM THE UNREASONABLE SEARCH AND SEIZURE BY LAW ENFORCEMENT AGENTS, DUE PROCESS, RIGHTS TO COUNSEL AND THE FREEDOM AGAINST SELF-INCRIMINATION, BECAUSE LAW ENFORCEMENT OFFICIALS OBTAINED VARIOUS STATEMENTS FROM PETITIONER IN THE ABSENSE OF A VOLUNTARY, KNOWING AND INTELLIGENT WAIVER OF HIS CONSTITUTIONAL RIGHTS. (US CONST. AMENDS. IV, V, VI, XIV.)

SUPPORTING FACTS:

1) IN ADMITTANCE BY STATEMENT OF DETECTIVE TOM BROOME AT THE PRELIMINARY HEARING, THAT PRIOR TO ENTERING THE HOME OF THE PETITIONER ON THE DAY PRIOR TO PETITIONER'S ARREST ON MARCH 22, 2009, SECRETLY AND UNKNOWN TO PETITIONER RECORDED THE 'INTERROGATION/INTERVIEW' CONDUCTED INSIDE PETITIONER'S HOME. CONVERSATION AND QUESTIONING COMMENCED IMMEDIATELY IN REGARDS TO THE INCIDENT ON MARCH 10, 2009. BY DETECTIVE TOM BROOME SECRETLY RECORDING A CONVERSATION IN THE PETITIONER'S PRIVATE HOME, HE VIOLATED THE PETITIONER'S FOURTH AMENDMENT RIGHT, OF UNLAWFUL SEARCH AND SEIZURE. BECAUSE PETITIONER AS WELL AS EVERY UNITED STATES CITIZEN HAS A RIGHT TO HAVE A PRESUMPTION AND AN EXPECTATION OF PRIVACY IN ONE'S OWN HOME. WITH DETECTIVE BROOME RECORDING WITHOUT PERMISSION HE DID NOT RECEIVE A CONSENTUAL AND VOLUNTARY WAIVER OF

1 THE PETITIONERS RIGHT.

2

3 2) MIRANDA RIGHTS HAVE BEEN A TOPIC OF DISPUTE AND

4 CHALLENGE IN THE COURTS FOR YEARS. IT IS A COMMON TRAIN

5 OF THOUGHT THAT TO REQUIRE THE NEED TO ADMINISTER THESE

6 RIGHTS TO AN ACCUSED/SUSPECT, TWO CRITERIA MUST BE MET.

7 FIRST BEING THE 'SUSPECT' OR INTENDED INDIVIDUAL WHO IS

8 BEING QUESTIONED MUST BE CONSIDERED IN CUSTODY. THE GEN-

9 ERAL RULE OF CUSTODY OCCURS WHEN A SUSPECT IS PLACED

10 IN A 'UNFAMILIAR AND HOSTILE SURROUNDINGS'. FOR EXAMPLE WOULD

11 BE A POLICE INTERROGATION ROOM BEING CONSIDERED A HOSTILE

12 SURROUNDINGS. THE SECOND IS INTERROGATION WHICH NEEDS TO BE

13 SPECIFIC QUESTIONS ABOUT A SPECIFIC INCIDENT THAT THE ACCUSED

14 IS INTERESTED IN BY LAW ENFORCEMENT. (PART IV PG 120-140, NO MINDS)

15 ON MARCH 22, 2009. PETITIONER ARRIVED AT

16 RPD'S SEX CRIMES UNIT, WHERE HE WAS TAKEN TO AN INTERROGATION

17 ROOM, AND QUESTIONING IMMEDIATELY COMMENCED ABOUT RPD CASE

18 07-9446. DURING THE QUESTIONING DETECTIVE TOM BROOME INFORMED

19 PETITIONER THAT HE WAS FREE TO GO AT ANY TIME. EXCEPT IT

20 SHOULD BE NOTED THAT DETECTIVE BROOME ENTERED THE ROOM

21 WITH A MANILLA FOLDER. THE TOP SHEET WAS A 'BOOKING SHEET'

22 FOR THE ARREST OF PETITIONER. AT NO POINT WAS THE PETITIONER

23 INFORMED OF HIS MIRANDA RIGHTS. WHEN THE RULE IS THAT

24 THE RIGHTS MUST BE READ PRIOR TO ANY QUESTIONING BEING

25 DONE. ALSO THAT THERE IS RECORD ON THE TRANSCRIPT THAT NO

26 SUCH WARNING IS GIVEN. AS WELL AS THE FACT THAT NOWHERE

-37-27 IN THE 'FILE' FOR PETITIONER IS A WAIVER /NOTIFICATION SHEET

28 SIGNED BY PETITIONER. THE COMMON CONTENTION IN LEGAL MINDS

1 IS THAT THE PRODUCT OF AN INTERROGATION THAT DOES NOT
 2 COMPORT WITH MIRANDA AND ITS PERMUTATIONS, IS PRESUMED TO
 3 BE INVOLUNTARY WITHOUT REGARDS TO WHETHER IT WAS IN
 4 FACT INVOLUNTARY. SO BY DETECTIVE TOM BROOME SAYING
 5 "YOU KNOW YOU'RE NOT UNDER ARREST. YOU'RE FREE TO LEAVE ANY
 6 TIME YOU WANT." DOES NOT ALLEVATE OR LESSEN THE REQUIRE-
 7 MENT TO INFORM / ISSUE THE PETITIONER HIS RIGHTS PROTECTED
 8 BY THE FIFTH AMENDMENT. THE SITUATION MET BOTH OF THE
 9 REQUIREMENTS DEMANDING THE READING OF THE PETITIONER'S 'M-
 10 IRANDA RIGHTS'. (SEE PAGE 18 IN PT IV WAIVER FOR 05' NONE FOR 07)

11 WITH THIS VIOLATION OF THE PETITIONER'S FIFTH AME-
 12 NDMENT RIGHTS AS WELL AS THE PREVIOUS DAY (MARCH 21, 2009),
 13 OF DETECTIVE BROOME SECRETLY RECORDING PETITIONER, AND BY
 14 THAT ACT VIOLATING HIS RIGHT TO PRESUMPTION OF PRIVACY,
 15 PROTECTED BY THE FOURTH AMENDMENT. DUE TO THE ACTIONS OF
 16 DETECTIVE TOM BROOME HE VIOLATED THE RIGHTS AND BECAUSE
 17 OF THAT THE INTERVIEWS / INTERROGATION SHOULD BE DEEMED TO
 18 BE INADMISSABLE. PLUS BECAUSE THOSE STATEMENTS ARE IN
 19 FACT TAINTED, ALL EVIDENCE PRODUCED / UNCOVERED BECAUSE OF
 20 THESE STATEMENTS SHOULD BE DEEMED AS FRUITS OF A POISONOUS
 21 TREE AND THEREFORE INADMISSABLE.

22 PETITIONER HUMBLY REQUESTS THE COURT TO GRANT RELIEF FROM
 23 THIS VIOLATION AND ALL THE PREJUDICIAL 'FALLOUT' FROM THESE
 24 ACTIONS. CONFIRMED VIOLATION WITH RPD TRANSCRIPTS FOR 3/22/07
 25 PAGES 1 to 10 WHEN PETITIONER IS PLACED UNDER ARREST DETECTIVE BROOME
 26 NEVER LEFT THE ROOM, SO HE CAME IN WITH THE BOOKING SHEET
 -38- 27 WITH THE INTENT TO ARREST PETITIONER, REQUIRING HIS RIGHTS BE READ.
 28 ALL INFORMATION AND EVIDENCE DERIVED SHOULD BE DEEMED TAINTED. V7. 44

D) GROUND FOUR: DIRECT SUBJECT MATTER JURISDICTION

2

3 PETITIONER'S CONVICTION AND SUBSEQUENT IMPRISON-
 4 MENT IS ILLEGAL DUE TO VIOLATIONS OF PETITIONER'S RIGHT
 5 TO DUE PROCESS AND EQUAL PROTECTION UNDER THE GUARAN-
 6 TEED RIGHTS PROTECTED IN THE FIFTH AND FOURTEENTH
 7 AMENDMENTS OF THE UNITED STATES CONSTITUTION. BECAUSE THE
 8 STATE OF NEVADA IN FACT LACKED SUBJECT MATTER JURISDICTION
 9 FOR COUNT ONE IN THE AMENDED CRIMINAL COMPLAINT DATED
 10 FEBRUARY 28, 2008. (LEWDNESS WITH A CHILD UNDER 14 YEARS OF
 11 AGE. NRS. 201.230)

12

13 SUPPORTING FACTS:

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15 1) THE CHARGE OF LEWDNESS WITH A CHILD UNDER 14 YEARS
 16 OF AGE A VIOLATION OF NRS 201.230, FALLS UNDER THE SUBSECTION
 17 OF (2) IN NRS 171.085, IN WHICH THE NEVADA LEGISLATURE
 18 DEFINES THE DIFFERENT OFFENSES AND SUBSEQUENT STATUTE
 19 OF LIMITATIONS IN WHICH A CHARGE MUST BE FILED. SINCE
 20 THIS CRIME IS NOT ONE OF THE SPECIFICLY NAMED OFFENSES IN
 21 SUBSECTION (1) IE: THEFT, ROBBERY, BURGLARY, FORGERY, ARSON,
 22 SEXUAL ASSAULT; IT FALLS INTO SUBSECTION (2): MAKING THE
 23 STATUTE OF LIMITATION TO FILE, MUST BE FOUND, OR AN INFORMATION
 24 OR COMPLAINT FILED, WITHIN 3 YEARS AFTER THE COMMISSION
 25 OF THE OFFENSE. NRS 171.085 STARTS BY SAYING "EXCEPT AS
 26 OTHERWISE PROVIDED IN ... NRS. 171.095.

-39- 27

28 NRS 171.095 IS A STATUTE THAT ALLOWS THE TOLLING
 OF THE STATUTE OF LIMITATION FOR A LONGER TIME IF THE V7.45

1 CRIME IS IN FACT DONE OR COMMITTED IN A SECRETIVE /
2 SECRET MANNER. IN THE STATUTE IT STATES: "UNLESS A LOWER
3 PERIOD IS ALLOWED BY PARAGRAPH (B)... AN INDICTMENT MUST
4 BE FOUND, OR AN INFORMATION OR COMPLAINT FILED FOR
5 ANY OFFENSE CONSTITUTING SEXUAL ASSAULT OF A CHILD, AS
6 DEFINED IN NRS. 432B.100, BEFORE THE VICTIM OF THE SEXUAL
7 ABUSE IS: (1) TWENTY-ONE YEARS OLD IF HE DISCOVERS OR
8 REASONABLY SHOULD HAVE DISCOVERED THAT HE WAS A VICTIM
9 OF THE SEXUAL ABUSE BY THE DATE ON WHICH HE REACHES THAT
10 AGE". IN ADDITION TO NRS 171.095(b)(1) IS NRS. 171.083 IN IT
11 IT SAYS THAT "A VICTIM OF SEXUAL ASSAULT AT ANY TIME DUR-
12 ING THE PERIOD OF LIMITATIONS IN NRS 171.085 AND NRS 171.
13 095, FILES WITH A LAW ENFORCEMENT OFFICER A WRITTEN REPORT
14 CONCERNING THE SEXUAL ASSAULT, THE PERIOD OF LIMITATION
15 PRESCRIBED IN NRS 171.085 AND NRS. 171.095 IS REMOVED AND
16 THERE IS NO LIMITATION." IT CLEARLY REQUIRES A WRITTEN REPORT.
17 NO SUCH REPORT WAS EVER FILED SO NRS. 171.085 AND 171.095
18 STAY AT BAR.

19 NRS 171.095 TO BE UTILIZED BY THE STATE MUST
20 BE ABLE TO PROVE THAT THE CRIME WAS IN FACT COMMITTED
21 IN A SECRET MANNER. BECAUSE UNDER THE STATUTE PROVIDING
22 TOLLING OF STATUTE OF LIMITATIONS IF A CRIME IS DONE
23 IN A SECRET MANNER, THE STATE HAS THE BURDEN OF
24 PROVING BY PREPONDERANCE OF THE EVIDENCE THAT THE
25 CRIME WAS SECRET. THAT IS DEFINED BY THE COURTS AS
26 A CRIME IS UNDISCOVERED AND BE CONSIDERED BEING DONE
-40-27 IN A "SECRET MANNER" SO LONG AS SILENCE IS INDUCED
28 BY THE WRONGDOER'S THREATS TO REMAIN SILENT. V7.46

1 COERCION AND THREATS MUST BE MADE TO INDUCE THE
2 CRIME BEING HIDDEN AND THEREFORE FALL UNDER THE STATUTE
3 OF LIMITATIONS PRESCRIBED IN NRS. 171.095.

4 THERE ARE QUITE A FEW ISSUES WRONG WITH THE STATE
5 FILING CRIMINAL CHARGES OF: SEXUAL ASSAULT ON A CHILD, LEWD-
6 NESS WITH A CHILD UNDER THE AGE OF FOURTEEN YEARS, STATUTORY SEXU-
7 AL SEDUCTION, AND LEWDNESS WITH A CHILD UNDER THE AGE OF FOUR-
8 TEEN YEARS, COUNTS I, II, III, IV RESPECTFULLY IN AMENDED
9 CRIMINAL COMPLAINT FILED APRIL 16, 2007 IN RJC CASE
10 NUMBER 2007-033884. ALL THE ALLEGATIONS WERE STATING
11 A TIME WINDOW OF 'ON OR BETWEEN AUGUST 14, 1998 AND
12 AUGUST 13, 2000. HERE IS WHY THE STATE LAUNCHED THE JURISDICTION
13 TO BRING ANY OF THESE CHARGES FORWARD.

14 TRUE ALL THE 'VICTIMS' (ASHLEY V. AND MICHELLE ANTHONY)
15 WERE STILL UNDER 21 YEARS OF AGE, AS REQUIRED IN NRS 171.095
16 (b)(1) BUT IT ALSO READS "HE DISCOVERS OR REASONABLY SHOULD
17 HAVE DISCOVERED THAT HE WAS A VICTIM OF SEXUAL ASSAULT."
18 BESIDES THE OBVIOUS FACT THAT PETITIONER WAS NOT EVEN IN
19 THE RENO AREA DURING THIS TIME, ASHLEY V IN HER
20 INTERVIEW WITH DETECTIVE TOM BLOOME ON 3-29-2007 STATES
21 THAT AT THE TIME SHE WAS SEXUALLY ACTIVE, AND SHE WAS
22 NOT FORCED. ALSO NOT NOTED IS THAT ONE YEAR LATER SHE
23 HAD A SON BY A MUCH OLDER 'BOYFRIEND'. SO THE AREA
24 OF 'SHOULD HAVE DISCOVERED' IS MET. AS WELL AS STATING
25 NOT FORCED. COUNT VII OF THAT SAME COMPLAINT WAS
26 SEXUALLY MOTIVATED COERCION; NRS 207.190 DEFINES COERCION
41-27 "IT IS UNLAWFUL FOR A PERSON, WITH THE INTENT TO COMPEL
28 ANOTHER TO DO OR ABSTAIN FROM DOING AN ACT WHICH V7.47

1 THE OTHER PERSON HAS A RIGHT TO DO OR ABSTAIN FROM
 2 DOING, TO: (A) USE VIOLENCE OR INFLECT INJURY UPON THE
 3 OTHER PERSON OR ANY OF HIS FAMILY ... OR THREATEN SUCH
 4 VIOLENCE OR INJURY. (C) ATTEMPT TO INTIMIDATE THE PERSON
 5 BY THREATS OR FORCE!" SO WITH THAT CHARGE THE STATE WAS
 6 ABLE TO SLIDE THE FIRST FOUR IN UNDER THE PRETENSE OF
 7 THE CRIMES BEING COMMITTED IN A SECRET MANNER. EXTENDING
 8 THE LIMITATION TO THE TWENTY-FIRST BIRTHDAY.

9 BUT, MR. CLIFTON BY HIS OWN ADMITION STATED THAT
 10 THERE IS NO RECORD OF ANY THREATS, VIOLENCE OR COERSION IN
 11 ANY OF THE CHARGES / COMPLAINTS. SO MOVED TO DISMISS COUNT
 12 VII SEXUALLY MOTIVATED COERSION. BECAUSE THE FACT THAT
 13 THE REMOVAL OF THAT CHARGE SHOWED THE STATE DID NOT
 14 AND COULD NOT PROVE THE CRIMES WERE DONE IN A SECRET
 15 MANNER, THAT ASHLEY WAS ADMITABLY SEXUALLY ACTIVE AND
 16 KNEW OR HAD AN ACCURATE KNOWLEDGE OF SEX, BOTH
 17 RIGHT AND WRONG, NEVER CLAIMED PETITIONER THREATENED
 18 HER TO KEEP QUIET, SHE KEPT QUIET ABOUT A SEXUAL
 19 EXPERIENCE ON HER OWN. NRS. 171.095 CAN NOT BE THE
 20 STATUTE OF LIMITATIONS OF BOR. SO ONCE COUNT VII WAS
 21 DISMISSED, THE STATE LOST SUBJECT MATTER JURISDICTION, BECAUSE
 22 THE STATE FAILED TO BRING CHARGES FORWARD WITHIN THE
 23 STATUTORY PERIOD MANDATED BY LEGISLATURE, 3 YEARS. I.E.
 24 12 YEARS OLD = AUG. 14, 1998 TO AUG. 13, 1999 WITHIN THREE (3)
 25 YEARS WOULD REQUIRE THE CHARGES BE BROUGHT BEFORE
 26 AUGUST 13, 2002. (SEE PRELIMINARY HEARING TRANSCRIPT P. 117/118) (PART II) 2/16/21/217
 -42-27 THEREFORE PETITIONER'S PROSECUTION UNDER NRS 201.230
 28 IS THEREFORE PRECLUDED BY THE STATUTE OF LIMITATION NRS 171.095

E) GROUND FIVE: STATES FAILURE TO INVESTIGATE ALLEGATIONS

2
3 PETITIONER IS IN CUSTODY IN VIOLATION OF HIS RIGHTS
4 TO DUE PROCESS AND A FAIR TRIAL AS GUARANTEED BY THE
5 FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED
6 STATES CONSTITUTION AND AS A RESULT OF NEVADA LAW THAT
7 PERMITS PETITIONER TO BE CONVICTED OF LEWDNESS WITH A CHILD
8 UNDER FOURTEEN YEARS (NRS 201.230) AND ATTEMPTED SEXUAL ASS-
9 AULT (NRS 193.330) BASED SOLELY ON THE UNCORRABERATED
10 TESTIMONY AND ALLEGATIONS OF THE VICTIMS. AS WELL AS BY THE
11 RENO POLICE DEPARTMENT'S FAILURE TO ADEQUATLY INVESTIGATE
12 THE ACCUSATIONS OF THE VICTIMS AGAINST PETITIONER.

13

14 SUPPORTING FACTS:

15

16

17 1) HAD AN ADEQUATE AND EVEN BASIC INVESTIGATION BEEN
18 DONE BY THE 'INVESTIGATORS' IN THE AREA OF A SIMPLE RESID-
19 ENCE HISTORY AND DMV RECORD SEARCH THE STATE WOULD HAVE
20 SEEN THAT THE PETITIONER DID NOT EVEN RESIDE IN RENO NEVADA
21 UNTIL 2000 (SEE PS 91-99 IRS PAP.WK; PS 86-88 DMV. PART V). THE
22 LEAD INVESTIGATOR DETECTIVE TOM BROOME DID INVESTIGATE AND HAD
23 DISCOVERED THAT PETITIONER WAS NOT IN RENO DURING AUGUST 14,
24 1998 TO AUGUST 13, 1999 BY MEANS OF A INTERVIEW WITH PETITIONER
25 EX-WIFE JENNY DUNCKLEY (SEE PS 128 PART V) AND A MADERA
26 COUNTY POLICE REPORT DATED 7-19-99 (pg 129,30 PART V) BOTH SHOWS
27 PETITIONER RESIDING IN MADERA, COUNTY CALIFORNIA AND NEW YORK.
28 BUT INVESTIGATORS CHOSE TO IGNORE THIS EXTREMELY MATERIAL AND
RELEVANT INFORMATION GOING DIRECTLY TO PETITIONER'S INNOCENCE.

1 2) ON MARCH 29, 2007 DETECTIVE TOM BROOME CALLED
 2 SILVER SPRINGS WOMAN'S CAMP AND INTERVIEWED ASHLEY V. AND IN
 3 THAT INTERVIEW ASHLEY V. TELLS DETECTIVE BROOME ABOUT TWO
 4 DIFFERENT INCIDENTS THAT OCCURRED WHEN SHE WAS TWELVE YEARS OLD
 5 NAMELY BETWEEN 1998 AND 1999. A SPAN OF NINE TO TEN YEARS
 6 BETWEEN THE INTERVIEW AND THE ALLEGED INCIDENTS. YET THERE
 7 WAS ABSOLUTELY NO INVESTIGATION DONE. AS NOTED IN RPD 053402706
 8 PG (4) DETECTIVE BROOME STATES: "GIVEN THE NEW INFORMATION LEARNED
 9 IN 079446 INVESTIGATION AND ADDITIONAL WITNESSES I DROVE TO
 10 SUSPECT DUNKLEY'S RESIDENCE ON HIGH PLAINS DRIVE TO PLACE
 11 DUNKLEY UNDER ARREST FOR THIS SEXUAL ASSAULT." (SEE PG 47 PART IV

12 HAD DETECTIVE BROOME ACTUALLY LOOKED IN THE RECORD
 13 AND HIS NOTES HE WOULD SEE THAT THERE IS ABSOLUTELY NO
 14 MODUS OPERANDI CONNECTING THE TWO CASES. LURA IN 2005 WAS
 15 SOBER AS CONFIRMED BY RPD TRANSCRIPT OF INTERVIEW (SEE PG 25 PART
 16 PART IV) AND THE ONLY MENTION OF ALCOHOL WAS IN RPD 0534027
 17 PG 4. "SERTON DID NOT ANSWER HERE AND Poured A SHOT OF VODKA
 18 AND INGESTED IT" (PG 9 PART IV). IN 2007 JESSICA WAS
 19 CLEARLY INTOXICATED WITH A BLOOD ALCOHOL LEVEL (BAL) OF .226
 20 (SEE PG III/24 PART IV). EXCEPT DETECTIVE BROOME USED THAT AS A
 21 AREA OF CREATING PROBABLE CAUSE WHERE IT IN FACT DID NOT
 22 EXIST. ALSO CONFIRMED AT THE PRELIMINARY HEARINGS ON (PG 103/
 23 3-13 II) INTOXICATED VICTIMS WAS THE CONNECTION. BUT ALSO
 24 STATING THAT PETITIONER WAS ON THE PHONE WITH HIS WIFE
 25 DURING INCIDENTS TO ESTABLISH AN ALIBI. (PG 127/1/2 PART IV) EXCEPT
 26 AT NO POINT DURING THE 0534027 INTERVIEWS WAS WIFE MENTIONED AS
 -44- 27 AN ALIBI. FAILURE TO INVESTIGATE EVEN HIS OWN NOTES BUT IGNORING
 28 IT TO CREATE PROBABLE CAUSE IN AREAS HE FELT WAS NEEDED TO ^{V7.50}ACHIEVE-

1 HIS GOAL 'TO GET BRENDAN BEHIND BARS' (pg. 59/22 PART II).
 2 OBVIOUSLY BY ANY MEANS NECESSARY, LIKE IGNORING OBVIOUS EVIDENCE,
 3 FAILING TO PROPERLY INVESTIGATE ALLEGATIONS, TO TAKE BUT A FEW HOURS
 4 TO MAKE SURE THAT JUSTICE IS DONE. IN REGARDS TO COUNT ONE THAT
 5 IS CURRENTLY UNDER ATTACK 'LEWDNESS WITH A CHILD.' THE STATE HAS
 6 IN FACT ABSOLUTELY NO EVIDENCE TO SUPPORT THIS ALLEGATION,
 7 EXCEPT THE TESTIMONY OF ASHLEY V. DETECTIVES DID NOT EVEN FEEL
 8 IT NEEDED TO GENERATE A REPORT/COMPLAINT OR STATEMENT FOR
 9 ASHLEY V. TO SIGN CONFIRMING AND FORMALLY FILING A COMPLAINT
 10 AGAINST PETITIONER. WITH DIRECT RESPONSE TO COUNT ONE. EVEN
 11 AT THE PRELIMINARY HEARING WHERE THE STATES ENTIRE CASE
 12 RESTS ASHLEY COULD NOT GIVE ANY DATE OF THE INCIDENT AND
 13 COULD NOT GIVE A SPECIFIC TIME WHEN SHE MET THE PETITIONER,
 14 NOR HOW SHE MET HIM. THERE IS ABSOLUTELY NO EVIDENCE GATH-
 15 ERED TO ESTABLISH WITH CERTAINTY THE AGE WHEN THE INCIDENT
 16 OCCURED. AGE BEING AN IMPORTANT ASPECT IN A CHARGE OF LEW-
 17 DESS WITH A CHILD UNDER 14. HAD THE STATE INVESTIGATED THIS
 18 SPECIFIC ALLEGATION IN STEAD OF RUSHING FOR AN ARREST IT
 19 WOULD HAVE SEEN THE IMPOSSIBILITY OF THIS OCCURRING, ALSO IT
 20 NOT BEING ABLE TO CONNECT 2007 to 2005 to 1998/99.

21
 22 3) ON MARCH 22, 2007 DURING THE INTERVIEW BETWEEN
 23 PETITIONER AND DETECTIVE TOM BROOME ON LINE 19/20 PETITIONER
 24 SAYS: "... DOES IT MEAN ANYTHING FOR THE FACT THAT WHILE SHE
 25 WAS DOING IT SHE PULLED UP HER SHIRT AND WAS TRYING TO
 26 SHOW ME HER BREASTS? AND ON HER LEFT NIPPLE IS - IS A
 -45- 27 BAND AID?" (SEE PART IV pg. 130/19,20) DETECTIVE BROOME RESPONDED
 28 "NOT REALLY." EXCEPT HE ALSO DISMISSED THAT 'LEAD' / INFORMATION

1 IN RPD 07944601 THERE IS ANOTHER MENTION OF THE BAND-
2 AID AND AGAIN ANOTHER DISMISSAL BY DETECTIVE BROOME.
3 EVIDENCE OR INFORMATION THAT COULD CREATE REASONABLE
4 DOUBT IN REGARDS TO A CHARGE THE POLICE SHOULD INV-
5 ESTIGATE NO MATTER WHERE IT MAY LEAD. (SEE PT. VI p. 58)

6 BY DETECTIVE BROOME MAKING A ROUTINE 'FOLLOW-UP'
7 PHONE CALL TO THE VICTIM JESSICA'S BOYFRIEND TO EITHER
8 CONFIRM THE BAND-AID OR NOT. IT WOULD HAVE CAST A
9 DOUBT ON EITHER THE VICTIMS STATEMENT AND ACCOUNT OF
10 THE INCIDENT OR THAT OF THE PETITIONERS rendition of
11 THE INCIDENT. ALAS BECAUSE THE STATE SPECIFICALLY DETECTIVE
12 TOM BROOME IGNORED YET ANOTHER CRUCIAL PIECE OF INFORMATION
13 THE WORLD OR THIS COURT WILL NEVER KNOW WHERE THAT
14 INFORMATION WOULD HAVE LED. PROVING YET AGAIN THAT
15 MINOR THINGS LIKE MATERIAL EXCULPATORY EVIDENCE WILL NOT
16 GET IN DETECTIVE BROOMES WAY OF REACHING HIS ULTIMATE
17 GOAL SEEING THE PETITIONER 'BEHIND BARS.'

18 ALSO DURING THE SAME INTERVIEW WHILE BEING SEARCHED
19 DETECTIVE BROOME FOUND A COMPUTER DISK WITH TEMPLATES
20 OF LETTERS FOR THE 'PTO' PARENTS TEACHER ORGANIZATION. NOW
21 THE FACT THAT DETECTIVE BROOME CONNECTED TWO RANDOM
22 CASES OVER TWO YEARS APART WITHOUT NOTES OR REFERENCE TO
23 THE RECORD SHOWS AN AMAZING MEMORY. SO HOW DID
24 HE FORGET THAT THE PETITIONER WAS A PART OF THE P.T.O.
25 AN ORGANIZATION CENTERED AROUND CHILDREN WHEN THE
26 MAIN CHARGES IN RJC 2007-033884 WERE AGAINST
-46- 27 CHILDREN. BUT FAILED TO INTERVIEW ANYONE ASSOCIATED
28 WITH THE PTO TO SEE IF THERE MAY OR MAY NOT V7352

1 OTHER VICTIMS. NO INVESTIGATION TO THE SCHOOL, INTERVIEW
2 OF THE PRINCIPAL, TEACHERS, OTHER PARENTS, NOTHING THAT
3 BRINGS SERIOUS DOUBT AND CONCERN TO HIS UNDERLYING
4 MOTIVES. A FLAG GOES UP WHEN A 'SEX OFFENDER' HAS
5 INFORMATION DIRECTLY CONNECTING HIM TO A ORGANIZATION THAT
6 CENTERS AROUND CHILDREN. (SEE PART III P.137/1-9)

7 4) ALL THE INFORMATION / EVIDENCE THAT DETECTIVE TOM
8 BROOME FAILED TO INVESTIGATE OR FOLLOW UP WAS ALL
9 MATERIAL EVIDENCE, THAT HAD IT BEEN INVESTIGATED PROPERLY
10 AND BECOME A PART OF THE RECORD, THERE IS A REASONABLE
11 PROBABILITY THAT THE RESULTS OF THIS CASE WOULD HAVE
12 BEEN DIFFERENT. IGNORING OR OVERLOOKING ONE INCIDENT IS
13 ONE THING POSSIBLY NEGLIGENCE, BUT TO INTENTIONALLY IGNORE
14 AND FAIL TO PURSUE / GATHER POTENTIALLY EXCULPATORY
15 EVIDENCE IN OBVIOUS BAD FAITH, A DISMISSAL OF ALL
16 RELATED CHARGES MAY BE AN ADEQUATE REMEDY BASED ON
17 THE EXAMINATION OF THE CASE AS A WHOLE. BECAUSE THIS
18 EVIDENCE AND LACK THERE OF FROM DETECTIVE BROOME PROVES
19 BAD FAITH ON THE PART OF THE GOVERNMENT AND THAT
20 PETITIONER IS ENTITLED TO A PRESUMPTION THAT THE EVIDENCE
21 WOULD HAVE BEEN UNFAVORABLE TO THE STATE, RESULTING IN
22 THE GROSS PREJUDICING OF PETITIONER IN REGARDS TO THE LACK
23 OF EVIDENCE AND MALICIOUS CONDUCT OF DETECTIVE TOM BROOME.
24 PETITIONER THEREFORE HUMBLY REQUEST THE COURTS
25 TO DISMISS AND VACATE THE ORDER OF CONVICTION AND THE
26 GUILTY PEEA MEMORANDUM ON THE ILLEGAL AND INAPPROPRIATE
- 47- 27 ACTIONS OF THE STATE TO EVEN HAVE EVIDENCE TO SUPPORT
28 OR ESTABLISH PROBABLE CAUSE LET ALONE A CONVICTION. V7.53

1 THE STATE HAD AND STILL HAS A DUTY TO BE DILIGENT AND
 2 TO ADEQUATELY INVESTIGATE A CASE, TO LEAVE NO STONE
 3 UNTURNED. BY DOING A FULL AND ADEQUATE INVESTIGATION IN
 4 REGARDS TO A CASE IS THE ONLY WAY THAT THE STATE
 5 CAN FULLY ACCOMPLISH ITS GOAL AS REPRESENTATIVES OF
 6 THE STATE AND ULTIMATELY THE PEOPLE. THAT OF HAVING
 7 THE DUTY TO NOT MERELY CONVICT BUT TO SEE THAT
 8 JUSTICE IS DONE BY SEEKING TRUTH OF THE MATTER AND
 9 TO ENSURE THAT A JURY OR TRIER, TRIES THE CASE SOLEY
 10 ON THE BASIS OF ACTUAL FACTS PRESENTED TO THEM. ALL THE
 11 NEEDED FACTS TO MAKE AN EDUCATED DECISION AS TO GUILT
 12 OR INNOCENCE BEYOND A REASONABLE DOUBT.

13
 14 F) GROUND SIX: FAILURE TO HAVE SUFFICIENT EVIDENCE

15
 16 PETITIONER IS IN CUSTODY IN VIOLATION OF HIS
 17 RIGHT TO DUE PROCESS AND A FAIR TRIAL GUARANTEED BY
 18 THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED
 19 STATES CONSTITUTION, BECAUSE THE STATE HAD/HAS INSUFFICIENT
 20 EVIDENCE TO PROVE AND SUPPORT A CRIME OCCURRING LET ALONE
 21 ANY EVIDENCE TO SUBSTANTIATE AND JUSTIFY A CONVICTION.

22
 23 SUPPORTING FACTS:

24
 25 1) PETITIONER IS INCARCERATED DUE TO A GUILTY PLEA
 26 MEMORANDUM OFFERED TO HIM BY THE STATE, IN WHICH HE
 27 WAS LED TO BELIEVE THAT THE STATE WAS IN POSSESSION OF
 28 ENOUGH EVIDENCE TO PRODUCE A VERDICT OF GUILTY IF V7.54

1 CHARGES IN FACT PROCEEDED TO A TRIAL BY JURY. BY
 2 THAT CLAIMING IT COULD PROVE GUILT BEYOND A
 3 REASONABLE DOUBT TO THE JURY. COUNT ONE THAT IS
 4 UNDER ATTACK IN THE ORDER OF CONVICTION IS A CHARGE
 5 OF LEWDNESS WITH A CHILD UNDER 14 YEARS (NRS 201.230)
 6 AND COUNT TWO IS ATTEMPTED SEXUAL ASSAULT A VIOLATION OF
 7 (NRS 193.330) IN THE ALTERNATIVE TO SEXUAL ASSAULT (NRS
 8 200.366. LETS EXAMINE BOTH OF THESE CHARGES AND THE
 9 EVIDENCE THAT THE STATE FELT JUSTIFIED THE CLAIM OF
 10 ENOUGH EVIDENCE TO OBTAIN A GUILTY VERDICT (BEYOND A
 11 REASONABLE DOUBT.).

12 2) WHEN A SUSPECT, DEFENDANT, PETITIONER IS CHARGED
 13 WITH THE ACCUSATION AND CRIME OF LEWDNESS WITH A CHILD
 14 UNDER 14 YEARS, THE STATE HAS AN OBLIGATION TO PROVE
 15 TWO FACTORS IN THE CASE. FIRST THEY MUST PROVE THAT
 16 A LEWD OR LASCIVIOUS ACT DID IN FACT OCCUR AND THE
 17 SECOND IS TO PROVE THAT SAID ACT WAS IN FACT COM-
 18 MITTED ON A CHILD UNDER 14 YEARS. SO AGE IS A KEY FACTOR.

19 SINCE THE ONLY EVIDENCE THAT A CRIME EVEN DID
 20 OCCUR WAS BASED SOLEY ON ASHLEY V.'S TESTIMONY AT THE
 21 PRELIMINARY HEARING (SEE PART II PGS 61-90) WE WILL EXAMINE
 22 THAT 'EVIDENCE'. ASHLEY COULD NOT GIVE A DATE, ANY DATE
 23 FOR THAT MATTER IN WHICH SHE MET THE PETITIONER, NOR
 24 COULD SHE GIVE ANY INFORMATION AS TO HOW SHE MET HIM.
 25 EXCEPT THAT SHE WOULD CONCEDE THAT SHE COULD HAVE MET
 26 PETITIONER THE SAME TIME MICHELLE MET HIM, WHICH WOULD
 -49- 27 PUT IT INTO LATE SUMMER EARLY FALL OF 2000. (SEE PART II
 28 PG 46/14-24) MICHELLE STATES HOW SHE MET PETITIONER DURING
 V7.55

1 PREGNANCY OF HER DAUGHTER, MAKING THE DATE THAT SHE
 2 (ASHLEY) AND THE PETITIONER FIRST MET IN 2000. SINCE
 3 SHE IS OLDER THAN MICHELLE WHO CLAIMED TO HAVE
 4 MET PETITIONER WHEN SHE WAS PREGNANT AT THE AGE OF
 5 13 THAN IT WOULD PROBABLY MAKE HER OLDER THAN 14.
 6 THERE IS ABSOLUTELY NO EVIDENCE TO SHOW WHAT HER AGE
 7 WAS. AND THUS THE STATE AT PRELIMINARY BY THE ONLY
 8 EVIDENCE IT HAD FAILED TO SHOW THAT THIS CRIME WAS
 9 IN FACT DONE UPON A CHILD. YET ALL THE EVIDENCE
 10 PETITIONER BRINGS FORWARD PROVES IT CAN NOT HAPPEN
 11 WHEN SHE WAS 12. SO THE STATE HAS NO SUCH EVIDENCE
 12 IN COUNT ONE TO ALLOW LEGALLY OR AT LEAST ETHICALLY
 13 THE STATEMENT IT HAD/HAS SUFFICIENT EVIDENCE TO SUPPORT
 14 AND OBTAIN A GUILTY VERDICT.

15 3) COUNT TWO IS ATTEMPTED SEXUAL ASSAULT BUT
 16 FOR ALL INTENSIVE PURPOSES TO PROVE INSUFFICIENT EVIDENCE
 17 WE WILL EXAMINE THE COUNT IN THE ORIGINAL FORM, THAT
 18 OF A VIOLATION OF NRS 200.366 SEXUAL ASSAULT. THE STATE
 19 LEGISLATURE DEFINES SEXUAL ASSAULT IN PART AS: "A PERSON
 20 WHO SUBJECTS ANOTHER PERSON TO SEXUAL PENETRATION, OR WHO
 21 FORCES ANOTHER PERSON TO MAKE A SEXUAL PENETRATION ON
 22 HIMSELF OR ANOTHER ... AGAINST THE WILL OF THE VICTIM ...
 23 IS GUILTY OF SEXUAL ASSAULT." (PART V PG 136)

24 ON MARCH 10, 2007 JESSICA MADE THE
 25 ALLEGATION THAT THE PETITIONER FORCED HIS PENIS INTO
 26 HER MOUTH WHICH SHE CLAIMED SHE SUBSEQUENTLY BIT
 27 REPEATEDLY. (SEE PART IV PG 49-53 RPD 079446), AND THEN SHE
 28 EXPLAINS TO MR. CLIFTON AT THE PRELIMINARY HEARING. 7.56

1 THAT THE PENIS WAS PLACED / FORCED INTO HER MOUTH WITH
2 HER MOUTH OVER THE HEAD AND SHE BIT THE SHAFT. HARD
3 ENOUGH AS SHE CLAIMS TO LEAVE TEETH MARKS. (SEE PART II
4 PAGES 32/16 to 30/2). SO BY DEFINITION OF SEXUAL ASSAULT
5 THE FORCIBLE INSERTION OF THE PENIS INTO JESSICA'S MOUTH
6 WOULD WARRANT A CHARGE OF SEXUAL ASSAULT. BUT THE
7 ACTUAL EVIDENCE DOES NOT SUPPORT THIS CLAIM AT ALL.
8 IN THE RPD REPORT 0709446 IT STATES "NO VISIBILE INJURY
9 TO BRENDAN'S PENIS SHAFT, HEAD OR BASE" (SEE PART IV PG 52)
10 BUT SURELY THE DNA SAMPLES OBTAINED THAT NIGHT OF
11 PETITIONER'S PENIS SHOWS DNA TRANSFER WHICH IS TO
12 BE IMPOSSIBLE FOR A SEXUAL PENETRATION TO HAVE OCCURED
13 AND NO DNA TRANSFER. YET DNA RESULTS DATED "MAY 21, 2007
14 STATES "NO DNA FOREIGN TO THE SOURCE, BRENDAN DUNCKLEY, WAS
15 OBTAINED FROM THE GENITAL SWABS." SO NO MARKS AND NO
16 DNA THE ONLY LOGICAL EXPLANATION TO THIS QUANDRY IS
17 THE MOST OBVIOUS.. NO SEXUAL PENETRATION OCCURED. SO
18 THEREFORE NO CRIME. (SEE PART II PG 58, 59)

19 ADD TO THAT THE FACT THAT JESSICA COULD NOT
20 EVEN GIVE A DESCRIPTION OF THE 'ATTACKER'. YET CLAIMS SHE
21 PICKED THE PETITIONER OUT OF A PHOTO LINE UP. (SEE PART II
22 PG 36/5-24) AND IN THE COURT ROOM STATED SHE COULD NOT GIVE A
23 DESCRIPTION OF THE 'ATTACKER'. (SEE PART II PG. 22/11/13) THE 'LINE-
24 UP' WAS CONFIRMED BY DETECTIVE BROOME AT THE PRELIMINARY HEARING
25 (SEE PART II PG 108/21-24 to 109/1-8) YET NOWHERE IN THE ENTIRE
26 TRANSCRIPT OF THE INTERVIEW BETWEEN JESSICA AND DETECTIVE
-51- 27 BROOME DID THEY EVER DO A PHOTO LINE-UP. GIVING SERIOUS
28 DOUBT AS TO JESSICA'S ACTUAL ABILITY TO IDENTIFY THE 'ATTACKER'

1 (SEE PART IV PGS 111-119), AGAIN SHOWING THE GROSS
 2 WEAKNESS OF THE CASE. JESSICA SIMPLY IDENTIFIED THE
 3 PETITIONER BECAUSE HE WAS IN THE RIGHT SEAT. EVEN
 4 DURING HER INTERVIEW SHE TOLD DETECTIVE BROOME SHE
 5 COULD NOT IDENTIFY THE "ATTACKER". (SEE PART IV PG 113/18)

6 SO, IN OVERALL REVIEW OF THE STATES OBVIOUS
 7 LACK OF ANY SUFFICIENT EVIDENCE TO JUSTIFY THE APPROACHING
 8 THE PETITIONER WITH A 'DEAL' IT KNEW IT COULD NOT PASS
 9 AS SUBSTANTIAL TO A JURY IS IN ITSELF DETRIMENTAL AND
 10 INTENTIONALLY PREJUDICIAL TO PETITIONER, BECAUSE IN COURT
 11 ONE IN THE ABSENCE OF COMPETENT PROOF OF AHE THE
 12 PETITIONER COULD NOT BE PROPERLY CONVICTED OF LEWDNESS
 13 WITH A CHILD UNDER 14 YEARS. ADD THE FACT THAT DEFENSE
 14 COUNSEL FAILED TO PERFORM ANY PRE TRIAL INVESTIGATION IT
 15 SHOWS THAT IN THE PRESENT CASE UNDER ATTACK, SINCE THERE
 16 IS ABSOLUTELY NO PHYSICAL EVIDENCE OF THE ALLEGED LEWDNESS
 17 CHARGE AND NONE IN THE SEXUAL ASSAULT (ATTEMPTED) CHARGE
 18 THE OUTCOME DEPENDED PRIMARILY IF A JURY WOULD BELIEVE
 19 THE 'VICTIMS' OR THE PETITIONER. BY COUNSEL FAILING TO IN FACT
 20 INVESTIGATE AND THE LACK OF PREPARATION FOR TRIAL IN THE
 21 ADDITION TO THE STATE HAVING NO EVIDENCE WHATSOEVER, IT
 22 LEFT THE PETITIONER WITH NO DEFENSE AT ALL.

23 BECAUSE THE STATE HAS NO EVIDENCE FOR
 24 COURT ONE AND THE EVIDENCE IT HAS FOR COURT TWO PROVES
 25 NO ATTACK OR PENETRATION HAPPENED THE ONLY JUSTIFIABLE
 26 REMEDY TO CORRECT THIS MANIFEST INJUSTICE IS TO VACATE
 27 DISMISS AND REVERSE ALL COUNTS IN THE ORDER OF CONVICTION
 28 ON GROUNDS OF THE STATES FAILURE TO PROVIDE SUFFICIENT ~~V7.58~~ EVIDENCE

9) GROUND SEVEN: BRADY VIOLATION (WITHHOLDING FAVORABLE EVIDENCE

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SUPPORTING FACTS:

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28

1) IN GENERAL, BRADY VIOLATIONS PERTAIN DIRECTLY TO THE PROSECUTION'S LACK OF BRINGING FORTH EVIDENCE THAT IS FAVORABLE TO THE ACCUSED, BOTH TO THE DEFENSE COUNSEL, WHETHER OR NOT A FORMAL REQUEST WAS GIVEN, AND ALSO TO BRING IT FORWARD TO THE COURTS OR THE RECORD. BUT IN THE BASIC FOUNDATION OF BRADY THE PREMISE IS THAT: 1) FAVORABLE EVIDENCE TOWARDS THE ACCUSED EXISTS; 2) COUNSEL (ON EITHER SIDE OF THE AISLE) FAILED TO INTRODUCE IT AND TO BRING IT FORWARD. ALLOWING THE TRIER OF THE CASE TO MAKE AN INFORMED DECISION AS TO THE GUILT OR INNOCENCE OF AN ACCUSED BASED ON ALL FACTS AND EVIDENCE RELEVANT TO THE CASE BEFORE THEM; AND 3) THAT DUE TO THE FAILURE OF COUNSEL (AGAIN ON EITHER SIDE OF THE AISLE) TO INTRODUCE SUCH EVIDENCE THAT WOULD CREATE REASONABLE DOUBT, AS TO THE ACCUSED GUILT OR INNOCENCE WHERE IT PREVIOUSLY DID NOT EXIST, EITHER BY GROSS NEGLIGENCE/7B59

1 INCOMPETANCE, OR BY OBVIOUSLY INTENTIONAL WITHHOLDING
2 BY THE STATE DUE TO IT BEING DAMAGING TO ITS CASE, THE
3 ACCUSED WAS IN FACT PREJUDICED BY THESE ACTIONS.

4 THE ONLY DIFFERENCE BETWEEN THE STATES ACTIONS
5 AND THE DEFENSE COUNSEL IS HOW THE PREJUDICE IS REFERED
6 TO. THE GROSS NEGLIGENCE OF DEFENSE COUNSEL TO HAVE
7 EVIDENCE THAT IS FAVORABLE TO HIS CLIENT AND TO NOT BRING
8 IT FOWARD IS SO OBSENE IT ACTUALCY SHOCKS THE CONSCIE-
9 NCE, AND WHAT SOCIETY BELIEVES TO BE THE BASIC DUTY OF
10 A DEFENSE ATTORNEY, TO FIGHT AS AN ADVOCATE FOR THEIR
11 CLIENT. TO DO ANY LESS WOULD SHOW GROSS NEGLIGENCE, AS
12 WELL AS INCOMPETANCE TO BE THE 'GUIDING HAND' TO HIS
13 CLIENT HELPING HIM THROUGH THE ADVEJARIAL MINE FIELD
14 CALLED THE CRIMINAL JUSTICE SYSTEM. FAILING TO PROVIDE THE
15 BASIC STANDARDS SET OUT BY THE SIXTH AMENDMENT FOR
16 EFFECTIVE ASSISTANCE OF COUNSEL.

17 WHEN THE STATE HAS EVIDENCE AND FAILS TO BRING IT
18 FOWARD, THEN THEY INTENTIONALLY DECIDE TO VIOLATE THE
19 ACCUSED RIGHTS OF BUE PROCESS. BUT DEEPER THAN THAT IT
20 CAN ALSO CAST SERIOUS DOUBT ON THE PROSECUTIONS CREDABILITY
21 BOTH THE CASE AND THE PROSECUTOR HIS/HERSELF. KNOWING
22 THAT THE EVIDENCE WAS FAVORABLE TO THE ACCUSED AND AT
23 THE SAME TIME IT MUST BE ASSUMED THAT IT WOULD
24 BE EQUALLY DAMAGING TO THE STATES CASE. SO BY THE
25 STATE DECIDING NOT TO INTRODUCE/PRODUCE THE EVIDENCE
26 IT DECIDED THAT WINING THE CASE WAS MORE IMPORTANT
-54- 27 THAN THE ACCUSED RIGHT TO ADAQUATLY DEFEND HIMSELF.
28 NEGLECTING THE FACT THAT A PROSECUTOR'S DUTY IS NEVER

1 MERELY TO OBTAIN A CONVICTION BUT TO SEE THAT JUSTICE
2 IS DONE.

3 ALL OF THESE SERIOUS CONCERNS, VIOLATIONS AND
4 NEGLIGENT ACTS HAVE HAPPENED IN THIS CURRENT CASE
5 BEFORE THIS COURT. ALL ARE SUPPORTED BY RECORD AND
6 ALSO BY THE LACK OF RECORD, BY COUNSEL NOT INTRODUCING
7 THE FOLLOWING EVIDENCE, THAT WHEN LOOKED AT IN
8 THE REFERANCE TO THE ENTIRE RECORD IT CREATES REASON-
9 ABLE DOUBT WHERE IT PREVIOUSLY DID NOT EXIST. PUTTING
10 THE ENTIRE CASE INTO AN ENTIRELY DIFFERENT LIGHT
11 CASTING DOUBT ON THE CONFIDENCE OF THE CONVICTION,
12 ITSELF. BECAUSE HAD THE EVIDENCE BEEN INTRODUCED BY
13 EITHER SIDE OF THE AISLE, PROSECUTION OR DEFENSE, THERE
14 IS SERIOUS DOUBT THAT PETITIONER WOULD HAVE ENTERED
15 INTO A GUILTY PLEA AND NOT HAVE INSISTED ON GOING
16 TO A TRIAL WITH A JURY.

17
18 2) IN COUNT TWO OF THE ORDER OF CONVICTION
19 THAT IS UNDER ATTACK AS WELL AS THE GUILTY PLEA
20 MEMORANDUM, THE CHARGE IS AN AMENDED CHARGE OF
21 ATTEMPTED SEXUAL ASSAULT A VIOLATION OF NRS. 193.330
22 FROM THE ORIGINAL CHARGE OF SEXUAL ASSAULT A VIOLATION
23 OF NRS. 200.366. THIS IS RELEVANT TO THE CURRENT
24 GROUND OF THE STATE WITHHOLDING FAVORABLE EVIDENCE
25 FROM THE ACCUSED / PETITIONER, AS WELL AS THE STATE
26 KEEPING THE COURTS UNINFORMED. THE STATE LEGISLATURE
-55- 27 DEFINES THE CHARGE OF SEXUAL ASSAULT IN PART AS:
28 "A PERSON WHO SUBJECTS ANOTHER PERSON TO SEXUAL V7.61

1 PENETRATION OR WHO FORCES ANOTHER PERSON TO MAKE A
 2 SEXUAL PENETRATION ON HIMSELF OR ANOTHER ... AGAINST THE
 3 WILL OF THE VICTIM ... IS GUILTY OF SEXUAL ASSAULT"

4 IN THE VICTIMS TESTIMONY AT THE PRELIMINARY HEAR-
 5 ING (PART II PG 38/16-40/2) AS WELL AS THE NIGHT IN QUESTION TO
 6 RENO POLICE (PART IV PGS. 52, PG. 87/37 TO 88/10) AND LATER WITH
 7 DETECTIVE BROOMS AT THE INTERVIEW ON 3/19/07 (PART IV PG. 112/49 TO
 8 113/20 & 113/29-40) SHE CLAIMED TO HAVE HAD THE PETITIONER
 9 SHOVE HIS PENIS INTO HER MOUTH LENGTH WISE 'MOUTH
 10 OVER HEAD' AND SUBSEQUENTLY BIT AS HARD AS SHE
 11 COULD REPEATEDLY. ASSURING DETECTIVE BROOMS THAT THERE
 12 WOULD BE POSITIVE DNA TRANSFER. EXCEPT THE STATE
 13 FAILED TO PRODUCE A REPORT FROM THE WASHOE COUNTY
 14 SHERIFF'S OFFICE FORENSIC SCIENCE DIVISION DATED
 15 MAY 21, 2007 (PART IV PG. 58-59) A FULL FORTY-FOUR
 16 DAYS PRIOR TO THE PRELIMINARY HEARING. THAT REPORT
 17 STATES "NO DNA FOREIGN TO THE SOURCE, BRENDAN DUNKLEY,
 18 WAS OBTAINED FROM THE GENITAL SWABS." NO DNA, THAT
 19 IS EXTREMELY RELIANT, ADD TO THAT THE FACT THAT ON
 20 THE NIGHT IN QUESTION WHICH JESSICA CLAIMED TO HAVE
 21 BIT THE PETITIONER RPD OFFICER HEGLAR STATED "BREN-
 22 DAN HAD NO VISIBLE INJURY TO PENIS SHAFT, HEAD OR
 23 BASE" (PART IV PG 52). THE STATE KNEW PRIOR TO THE
 24 PRELIMINARY HEARING THAT THE EVIDENCE IN FACT POINTED
 25 TO THE EXACT OPPOSITE OF THE NRS DESCRIPTION TO
 26 SUPPORT A CHARGE OF SEXUAL ASSAULT. NO DNA PLUS
 56- 27 NO MARKS EQUALS NO PENETRATION WHICH EQUALS NO CRIME.
 28 HAD DEFENSE KOTEN THAT PRIOR TO THE PRELIMINARY HEARING, V7.62

1 AND NOT AS (PART V pg 58) SHOWS FEBRUARY 7, 2008, IT
2 WOULD HAVE BEEN ABLE TO CREATE REASONABLE DOUBT
3 AT THE PRELIMINARY HEARING, AND USE IT AS POSSIBLE
4 IMPEACHMENT EVIDENCE TO JESSICA. BUT BECAUSE THE
5 STATE DECIDED TO WITHHOLD THIS FAVORABLE EVIDENCE
6 WE MAY NEVER KNOW WHAT JUDGE ALBRIGHT WOULD
7 HAVE DECIDED IN REHARDS TO CASE NO. 2007-03384 AND
8 COUNT VI OF SEXUAL ASSAULT AGAINST JESSICA H.

9

10 3) ON APRIL 18, 2007 DETECTIVE TOM BROOME (RPO)
11 HAD A CONVERSATION WITH JENNY DUNCKLEY, PETITIONERS EX-WIFE.
12 IN THAT CONVERSATION DETECTIVE BROOME WAS INFORMED THAT
13 SHE AND THE PETITIONER WERE MARRIED AND RESIDED TOGE-
14 THER UNTIL OUR MARRIAGE BROKE UP IN JULY OF 1999. SHE
15 STATED THAT WE RESIDED IN OAKHURST CALIFORNIA IN MADERA
16 COUNTY UNTIL THEN AFTER COLLEGE. HE ALSO LEARNED
17 THAT WE MET IN NEW YORK AND HAD BEEN DIVORCED FOR
18 ABOUT 5 TO 6 YEARS. (PART V pg 128). HE ALSO OBTAINED A
19 MADERA COUNTY SHERIFF REPORT ON APRIL 19, 2007 (PART
20 V pg 129, 130) IN IT IT SHOWS PETITIONER RESIDED IN OAKHU-
21 RST, CALIFORNIA AT LEAST UNTIL JULY 19, 1999. THAT
22 INFORMATION IS RELEVANT BECAUSE COUNT ONE IN THE
23 ORDER OF CONVICTION IS LEWDNESS WITH A CHILD UNDER
24 14 YEARS, IN WHICH ASHLEY CLAIMED THAT BETWEEN
25 AUGUST 14, 1998 AND AUGUST 13, 1999 SHE AND THE
26 PETITIONER HAD CONSENSUAL SEX. (PART II ps 71/21 to 72/4; PART
-57- 27 III pg 45/19-21; PART III pg 47) BUT NOWHERE DURING HIS TEST-
27 IMONY ON JULY 2, 2007 DOES DETECTIVE BROOME MENTION V7.63

1 CONVERSATION, REPORT HE GENERATED ON APRIL 19, 2007 OR THE
 2 MADERA COUNTY SHERIFF DEPARTMENT REPORT HE RECEIVED THE SAME
 3 DAY. (PART II PGS 90 to 116). AGAIN THAT INFORMATION AND EVID-
 4 ENCE WOULD HAVE BEEN EXTREMELY RELEVANT AND FAVORABLE TO
 5 THE PETITIONER.

6

7 4) PETITIONER'S COUNSEL DAVID C. O'MARA WAS IN
 8 POSSESSION OF THIS REPORT BECAUSE DETECTIVE BROOME HAD
 9 RELEASED IT TO PETITIONER'S EX-WIFE'S ATTORNEY KENNETH
 10 BALLARD ON MAY 25, 2007 (PART II PG 115, 121) AND ENTERED
 11 INTO CASE NO: CVO3749 AS EVIDENCE EXHIBIT D (SEE PART II
 12 PG 111), PETITIONER PROVIDED COUNSEL DAVID C. O'MARA WITH
 13 THIS REPORT AS WELL AS ORIGINAL DMV REGISTRATION FOR
 14 FORD TAURUS, CULINARY INSTITUTE TRANSCRIPTS, (PART II PGS 86 to
 15 90) AS WELL AS INTERNAL REVENUE RECORDS (PART II PG 91-99)
 16 ALL CONFIRMING RESIDENCY DURING THE ALLEGED TIME FRAME
 17 OF AUGUST 1998 to AUGUST 2000. CONFIRMATION OF HIS HAVING
 18 THESE RECORDS IS HIS LETTER RETURNING THEM. (PART II PG 56-
 19 57). YET AT NO POINT DID HE EVER USE THIS DOCUMENTATION
 20 TO PROVE HIS CLIENT'S INNOCENCE.

21

22 5) ON APRIL 21, 2009 AND ON JUNE 15, 2009 TWO
 23 LETTERS WERE SENT TO THE WASHOE COUNTY DISTRICT ATTORNEY OFFICE
 24 (PART II PG. 65 to 82) INCLUDING EXCULPATORY EVIDENCE TO PROVE ACTUAL
 25 AND FURTHER INNOCENCE TO COUNT ONE IN THE ORDER OF CONVICTION.
 26 ALL THE EVIDENCE WAS EVIDENCE THAT EITHER THE STATE HAD
 -58- 27 OR DEFENSE COUNSEL HAD BOTH FAILING TO PRODUCE OR INTRODUCE.
 28 INCLUDING (PART II PAGES 87-90; 102-104; 127-128). YET THE VST 2004

1 HAS STILL FAILED TO CORRECT THE 'MANIFEST INJUSTICE' OF THE
2 COURTS.

3 PETITIONER HAS ATTEMPTED REPEATEDLY TO ALLOW THE
4 STATE TO TAKE IT UPON ITSELF TO CORRECT THE RECORD
5 AND WITHDRAW A CHARGE THEY KNOW TO BE SUPPORTED BY
6 PREJUDICIAL AND PERJURED TESTIMONY. AS WELL AS EVIDENCE
7 IT KNOWS CONTRADICTS A CONVICTION IN ATTEMPTED SEXUAL
8 ASSAULT KNOWING NO PENETRATION COULD HAVE OCCURRED.
9 BUT ALAS THE STATE STILL FEELS THAT THE CONVICTION
10 IS MORE IMPORTANT THAN SEEKING 'TRUTH' AND 'JUSTICE'
11 LIKE ITS SEAL STATES. SO THE PETITIONER NOW HUMBLY
12 REQUESTS THIS COURT TO GRANT HIM RELIEF THAT HE
13 DESERVES. FOR HAD ALL THIS EVIDENCE AND INFORMATION
14 COME FORWARD IT WOULD AND DOES CAST DOUBT ON THE
15 CONFIDENCE OF THE CONVICTION AND THE MOTIVES OF THE
16 STATE AND DEFENSE COUNSEL BY OFFERING AND ALLOWING
17 A DEAL BASED ON FICTION, LIES AND UNSUPPORTED CHARGES.
18 PREJUDICING THE PETITIONER, WHO HAD HE BEEN AWARE OF
19 THIS HE WOULD HAVE INSISTED ON A TRIAL. BY THE SUPPORT-
20 ING FACTS IN THIS MATTER IT WOULD JUSTIFY VALATING ON THE
21) GROUNDS OF OBVIOUS VIOLATION OF PETITIONERS RIGHT TO
22 DUE PROCESS BY GROSS NEGLIGENCE AND INCOMPETENCE ON
23 THE PART OF BOTH THE PROSECUTION AND THAT OF THE
24 DEFENSE COUNSEL DAVID C. O'MARA.

25 THE PRIMARY PURPOSE OF BRADY REQUIRING DISCLOSURE OF EVI-
26 DENCE FAVORABLE TO THE ACCUSED IS NOT TO DISPLACE THE ADVISORY SYST-
27) EM AS THE PRIMARY MEANS BY WHICH TRUTH IS UNCOVERED BUT TO
28) ENSURE THAT A MISCARRIAGE OF JUSTICE DOES NOT OCCUR. V7.65

H) GROUND EIGHT: BREACH OF CONTRACT - BY MEANS OF FRAUD AND COERSION

2

3 PETITIONER WAS CONVICTED UPON ACCEPTANCE OF A GUILTY
4 PLEA MEMORANDUM THAT IN ITSELF VIOLATED PETITIONERS DUE PROCESS
5 RIGHTS, AND THE RIGHTS GUARANTEED IN THE FIFTH, SIXTH AND THE
6 FOURTEENTH AMENDMENTS SET FORTH IN THE UNITED STATES CONSTITUTION.

7

8 SUPPORTING FACTS:

9

10 1) A CONTRACT BY DEFINITION IS SIMPLY A PROMISE SUPPORTED
11 BY CONSIDERATION, WHICH ARISES, IN THE NORMAL COURSE OF EVENTS.
12 CONTRACTS IN ITSELF MUST BE SUPPORTED BY VALID AND SUFFICIENT
13 CONSIDERATION IN ORDER TO BE BOTH VALID AND LEGALLY ENFORCEABLE
14 GENERALLY SPEAKING, CONSIDERATION MUST FLOW FROM BOTH PARTIES INVOLVED.
15 AT NO POINT DID PETITIONER BENEFIT FROM THIS CONTRACT, IF ANYTHING,
16 IT PREJUDICED AND PUNISHED HIM.

17

18 A CONTRACT MAY BE RESCINDED ON THE GROUNDS OF FRAUD,
19 FAILURE TO DISCLOSE FACTS, MISREPRESENTATION OF FACTS, COERSION, AND
20 BREACH OF CONTRACT. IT MUST BE NOTED THAT IN THE CASE OF THE
21 MISREPRESENTATION OF FACTS INVALIDATING A CONTRACT. IT MAY CONSIST
22 IN DECEPTIVE CONDUCT AS WELL AS WORDS.

22

23 BECAUSE THE GUILTY PLEA MEMORANDUM AS WAS USED IN
24 PETITIONERS CASE IS COVERED BY THE STANDARD PRACTICE OF
25 CONTRACT LAW ANALYSIS, TEMPERED WITH THE AWARENESS OF DUE
26 PROCESS CONCERNS FOR BOTH FAIRNESS AND ADEQUACY. AS WITH
27 ANY CONTRACT. IN WHICH THE DRAFTING PARTY HAS OVERWHELMINGLY
28 SUPERIOR BARGAINING POSITION, PLEA AGREEMENTS ARE TO BE CONSTRUED
STRICTLY AGAINST THE GOVERNMENT.

1 2) UPON THE CREATION OF THE GUILTY PLEA MEMORANDUM THE STATE
2 PRESENTED A LEGALLY BINDING AGREEMENT THAT IN ITSELF MUST BE
3 ACCURATE AND BASED ON FACTUAL BASIS. TO DO ANY LESS WOULD BE
4 CONSTRUED AS KNOWINGLY ENTERING INTO A CONTRACT UNDER FALSE
5 PRETENSE. RENDERING THE CONTRACT AS A WHOLE NULL AND VOID.
6 BY THE STATE ADDING THE LINE FOR PETITIONER TO AGREE TO IN PAR-
7 AGRAPH FIVE (5) (P. 2) OF THE GUILTY PLEA MEMORANDUM OF: "I ADMIT
8 THAT THE STATE POSSESSES SUFFICIENT EVIDENCE WHICH WOULD RESULT
9 IN MY CONVICTION." THE STATE CLAIMED AND ALLEGED OR LED PETITIONER
10 TO BELIEVE THAT IT (THE STATE) WAS IN FACT IN POSSESSION OF SUCH
11 EVIDENCE TO SUPPORT A VERDICT OF GUILTY BEYOND A REASONABLE DOUBT.
12 WHEN IN FACT IN REGARDS TO COUNT ONE OF THE 'PLEA DEAL' THE CHARGE
13 OF LEWDNESS A VIOLATION OF NRS. 201.230, THE STATE IN FACT WAS IN
14 POSSESSION OF ABSOLUTLY NO SUCH EVIDENCE WHAT SO EVER. IT WOULD
15 BE HARD TO COMPREHEND THAT ADA VILORIA ACTUALLY BELIEVED
16 THAT THE MERE TESTIMONY OF ASHLEY V. WOULD CONSTITUTE SUFFICIENT
17 EVIDENCE NEEDED TO OBTAIN A GUILTY VERDICT BY A JURY, ESPECIALLY
18 SINCE AT THAT POINT WAS IN FACT IN POSSESSION OF INFORMATION
19 THAT COULD BE DEEMED EXCULPATORY EVIDENCE FAVORABLE TO THE
20 PETITIONER. BECAUSE DETECTIVE TOM BROOME HAD GENERATED A REPORT
21 ON APRIL 19, 2007 AFTER SPEAKING TO PETITIONERS EX-WIFE JENNY
22 DUNKLEY THE PRIOR DAY. IN THAT REPORT JENNY STATED THAT THE
23 PETITIONER AND HERSELF MET IN NEW YORK AND WERE MARRIED. IT
24 ALSO STATES THEY LATER MOVED TO MADERA CALIFORNIA AND
25 RESIDED IN OAKHURST, CALIFORNIA TOGETHER UNTIL THEIR MARRIAGE
26 BROKE UP IN JULY OF 1999. (SEE RPD RPTA p. 127-128). THAT REPORT
-61- 27 IS RELEVANT TO ACTUAL INNOCENCE BECAUSE, ASHLEY TESTIFIED
28 AT THE PRELIMINARY HEARING, ON JULY 2, 2007 SHE WAS V7267

1 WHEN THE CRIME OCCURRED, BEING AUG. 14, 1992. 611 AUG. 13, 1999. (p. 71,
2 21-24-72/4) (PART II)

3 IN REGARDS THAT INFORMATION IT SHOULD BE ASSUMED THAT
4 AS A COMPETANT REPRESENTATIVE OF THE STATE ADA VILORIA KNEW
5 THAT AS THE PROSECUTING ATTORNEY SHE HAD AND STILL HAS A DUTY
6 TO LEARN OF ANY FAVORABLE EVIDENCE KNOWN TO OTHERS ACTING
7 ON BEHALF OF THE GOVERNMENT IN THE CASE, INCLUDING THE POLICE.
8 SO WITH THAT BEING SAID AND THAT WOULD MEAN EITHER ONE OF TWO
9 THINGS HAVE IN FACT OCCURED IN THIS CASE. EITHER ONE, ADA VILORIA
10 IN FACT FAILED TO OBTAIN THE EXCULPATORY EVIDENCE PROVING ACTUAL
11 AND FACTUAL INNOCENCE TO THE SPECIFIC ALLEGATIONS IN COUNT ONE,
12 DEEMING THE 'CONTRACT' NULL AND VOID ON THE BASIS THAT IT WAS
13 NOT CREATED WITH FULL KNOWLEDGE OF THE FACTS IN QUESTION. OR,
14 SECOND, THE FACT THAT ADA VILORIA DID IN FACT KNOW OF THE RPD
15 REPORT AND STILL PROCEEDED FOWARD ON A CHARGE SHE KNEW WAS
16 IN THE LEAST SUPPORTED BY PERJURED TESTIMONY, THAT SHE CONTINUALLY
17 FAILED TO CORRECT, AND EAGERLY PERSUED A DEAL STILL INCLUDING
18 COUNT ONE, THAT BEING THE CASE RENDERS THE DEAL VOID AND
19 SUBJECT TO RELIEF, BECAUSE ADA VILORIA KNOWINGLY AND INTENTIONALLY
20 ENTERED AND CREATED A CONTRACT DENING PETITIONERS OF SUBSTANTIAL
21 CONSTITUTIONAL RIGHTS, WITH THE EXPLICIT INTENT TO DECEIVE AND TO
22 DEFRAUD PETITIONER. IN ADDITION EITHER BY INTENTIONALLY OR BY MEANS
23 OF NEGLIGENCE. BY MISREPRESENTING OF THE FACTS IT LED TO THE
24 DETREMENT OF THE PETITIONER, AS WELL AS PREJUDICE.

25
26 3) AS NOTED EARLIER A VALID CONTRACT MUST BE SUPPORTED
-62- 27 BY SUFFICIENT CONSIDERATION TO BOTH PARTIES. THAT WAS FAR
28 FROM THE CASE IN THIS CONTRACT AND SUBSEQUENT EXECUTION V7.68

1 OF SAID CONTRACT AT THE SENTENCING HEARING. PETITIONER
2 SIGNED THE CONTRACT IN GOOD FAITH, GIVING UP NUMEROUS
3 CONSTITUTIONAL RIGHTS, SO THE QUESTION IS TO REVIEW THE
4 MUTUAL CONSIDERATIONS EQUALLY BENEFITING BOTH PARTIES. THE
5 STATE BENEFITED BY OBTAINING A GUILTY PLEA, AND A RESULTING
6 CONVICTION, BUT THE PETITIONER HAD HE GONE TO TRIAL WOULD
7 FACE THE POSSIBILITY OF TEN YEARS TO LIFE IN COURT ONE AND
8 TWO TO TWENTY YEARS IN COURT TWO. AT THE TIME OF SIGNING
9 AND ENTERING PLEA, PETITIONER HAD THE BELIEF, BY BOTH
10 THE WRITTEN ADDITIONS TO THE DEAL (ps 14/2000) AS WELL
11 AS THE COMMENTS OF ADA VILORIA AT THE HEARING ON MARCH
12 6, 2008 "MY AGREEMENT IS JUST TO SEE IF THIS DEFENDANT IS
13 WORTHY OF ANY TYPE OF GRANT OF PROBATION. WHETHER HE CAN
14 EARN IT OR NOT. I WANT TO SEE WHAT HE DOES BETWEEN NOW
15 AND THEN" (ps 29/8-11) PETITIONER ABIDED BY ALL ASPECTS OF
16 THE DEAL, BUT AT SENTENCING THAT ABIDING BY THE DEAL
17 WAS CALLED POSTURING BY THE STATE TO THE COURTS. (ps 47/8)
18 PETITIONER KEPT AND FULLY HONORED HIS SIDE OF THE DEAL.
19 ALL THE WHILE THE ADA KNEW THAT SHE HAD NO INTENTION
20 ON HONORING THE OPTION OF PROBATION. IN FACT SHE WENT AS
21 FAR AS ARGUING AGAINST THE PSI RECOMMENDATION OF TWO
22 TO FIVE YEARS FOR COURT TWO, (ps III 49/2-5) BY ARGUING AND
23 ADIMATLY CAMPAIGNING FOR TWENTY YEARS. SHE FOUGHT FOR,
24 SUGGESTED AND RECOMMENDED FOR EXACTLY WHAT PETITIONER WOULD
25 HAVE BEEN FACING HAD HE GONE TO TRIAL WITH A JURY. EXCEPT
26 THE STATE (ADA VILORIA) KNOWINGLY MANIPULATED THE "CARROT"
27 OF PROBATION KNOWING IT TO BE FALSE, DECEIVING PETITIONER AND
28 DENING HIM HIS RIGHT TO DEFEND HIMSELF PROPERLY. V7.69

1 TO BRING WITNESSES ON HIS BEHALF, CONFRONT HIS ACCUSERS,
2 REMAIN FREE OF SELF INCRIMINATION, BE TRIED BY A JURY OF HIS
3 PEERS. (ps 23/2-5 & 7-10) ALL THESE THE STATE KNEW THE
4 PETITIONER WAS GIVING UP ON A FALSE DREAM OF PROBATION
5 CREATED BY AN OVERZEALOUS ASSISTANT DISTRICT ATTORNEY MORE
6 FOCUSED ON OBTAINING A CONVICTION THAN SEEING THAT JUSTICE
7 IS DONE. BY CONVICTING A PERSON KNOWING THAT THEY ARE
8 INNOCENT IS THE FARTHEST THING FROM JUSTICE (SEE PART III)

9
10 4) IN PARAGRAPH SEVEN (7) (ps 13~~11~~) OF THE GUILTY PLEA MEMOR-
11 ANDUM THE STATE ADDED A LINE TO THE DEAL THAT WAS NOT
12 PART OF THE ORIGINAL CONSTRUCTION. IT STATED "INCLUDING ALL
13 COUNTS FILED AND DISMISSED IN RJC CASE NUMBER 2007-033884," BY ADDING
14 THAT THE STATE, AGAIN BEING CONSIDERED FULLY COMPETENT AND
15 HELD TO A HIGHER STANDARD, KNEW OR SHOULD HAVE KNOWN THAT
16 DUE PROCESS PROHIBITS A PROSECUTOR FROM RE FILING CHARGES ONCE
17 DISMISSED FOR INSUFFICIENT EVIDENCE UNLESS THE PROSECUTOR CAN
18 PROVE EITHER, THAT NEW EVIDENCE PREVIOUSLY UNAVAILABLE HAS
19 SURFACED OR, THAT IT CAN SHOW GOOD CAUSE OTHERWISE EXISTS TO
20 JUSTIFY THE RE FILING OF THE CHARGES. THE DISMISSED CHARGES/COUNTS
21 IN RJC 2007-033884 WERE ALL DISMISSED ON GROUNDS OF
22 INSUFFICIENT EVIDENCE TO ESTABLISH PROBABLE CAUSE, THE BASIC LEVEL
23 OF A CRIMINAL CHARGE. BY THE PETITIONER NOT BEING EDUCATED IN
24 THE AREA OF LAW AND CONSIDERED A LAYMEN, WOULD ONLY LOOK
25 AT THIS AS A NOTICE THAT IF DEAL IS NOT ACCEPTED IT WOULD
26 MEAN THE OTHER CHARGES WOULD BE FILED AND RE FILED. REND-
54- 27 ERING A MISREPRESENTATION OF FACTS, FALSE PRETENSE, AND SLIGHT
28 COERSION FOR IF IT CAN, AND WAS TAKEN AS A THREAT OF FURTHER V7.70

1 CRIMINAL PROSECUTION IF DEAL WAS NOT ACCEPTED. IN THE
 2 ADDITION TO FALSE PRETENSE IT SHOWED INEFFECTIVE ASSISTANCE
 3 OF COUNSEL FOR DEFENSE NOT CATCHING THE INTENTIONAL MISREP-
 4 RESENTATION OF FACTS BUT AGREEING TO IT AND ADVISING PETITIONER
 5 IN FAVOR OF IT. THE ADDITIONAL STATEMENT ADDED TO THE 'DEAL'
 6 ON pg 14/2 STATING "AND ALLOW ME THE OPPORTUNITY TO QUALIFY FOR
 7 PROBATION, WHICH WOULD OTHERWISE BE UNAVAILABLE", COULD AND
 8 IS CONSIDERED DECEPTIVE CONDUCT BY BOTH THE WORDS AND
 9 ACTS OF ADA VILORIA AT SENTENCING HEARING ANAMANTLY
 10 FIGHTING AGAINST THE SLIGHT POSSIBILITY OF PROBATION. (pg 44/10-
 11 pg 48/7-8 & 14/19-20). (SEE PT. III)

12
 13 5) DURING THE SENTENCING HEARING ADA VILORIA ATTESTED
 14 REPEATEDLY TO PETITIONERS HAVING AN EXTENSIVE AND SUBSTANTIAL
 15 HISTORY OF INAPPROPRIATE AND CRIMINAL BEHAVIOR SPANNING TEN
 16 (10) YEARS OF CRIMES. (SEE 43/24 to 44/1; 45/12; 46/4-6). YET
 17 THE STATE ADDED IN PARAGRAPH TEN (10) (pg 14) OF THE 'DEAL' THE
 18 FOLLOWING: "I REPRESENT I DO NOT HAVE A CRIMINAL RECORD." SO IN
 19 THIS MATTER THE QUESTION IS WHICH CONTENTION AND CLAIM IS THE
 20 STATE SIDING WITH. EITHER PETITIONER IS A HABITUAL MASTER
 21 CRIMINAL WITH TEN YEARS OF ALLEGATIONS AND ATTACKS THAT
 22 THE POLICE HAVE BEEN INVESTIGATING HIM FOR, DEMANDING HIS
 23 INCARCERATION. AND YET, BY THAT ARGUMENT, AT SENTENCING, IT
 24 MAKES THE ADDITION OF THAT STATEMENT TO BE FRAUDULANT AND
 25 A GROSS MISREPRESENTATION OF FACTS AND A BLAINTANT FAILURE TO
 26 DISCLOSE FACTS, NAMELY PETITIONERS CRIMINAL HISTORY. OR, THE STATE
 27 NAMELY ADA VILORIA IN FACT MADE STATEMENTS SHE KNEW TO
 28 BE BOTH FRAUDULANT AND NOT SUPPORTED BY FACTS, RECORD, OR V7.71

1 EVIDENCE. SO TO ANSWER THE QUESTION OF THE LEGALITY OF
 2 ADDING BOTH 'I REPRESENT I DO NOT HAVE A CRIMINAL HISTORY'
 3 AND EXTENSIVE COMMENTS TO PETITIONER'S CRIMINAL HISTORY BY
 4 ADA VILORIA TO THE RECORD IT IS BETWEEN TWO CHOICES.
 5 FIRST, ONE BEING INTENTIONAL FRAUDULANT MISREPRESENTATION
 6 OF FACTS, A FAILURE TO DISCLOSE RELEVANT FACTS, AND IN
 7 GENERAL FRAUD. OR, SECOND, THE COMMENTS OF ADA VILORIA
 8 AT SENTENCING KNOWN TO BE FALSE RENDERING IT PERJURY
 9 AND INTENTIONAL PREJUDICING PETITIONER IN THE EYES OF THE
 10 TRIER IN AN ATTEMPT TO ILLEGALLY AND INAPPROPRIATELY INFLUENCE THE
 11 SENTENCING OF PETITIONER. BOTH OF WHICH WOULD WARRANT THE
 12 PETITIONER RELIEF BY REVERSAL OF THE GUILTY PLEA MEMORANDUM
 13 ON THE GROUNDS OF BREACH OF CONTRACT BY MEANS OF FRAUD, ALLOWING
 14 OWING THE PETITIONER TO RETURN TO THE PLACE HE HELD PRIOR
 15 TO ENTERING THE PLEAS OF GUILTY.

16
 17 D) GROUND NINE: ACTUAL INNOCENCE AND MANIFEST INJUSTICE

18
 19 PETITIONER CONVICTION AND SUBSEQUENT INCARCERATION
 20 ARE IN DIRECT VIOLATION OF PETITIONER'S DUE PROCESS RIGHTS
 21 AS GUARANTEED HIM BY THE FIFTH, SIXTH AND FOURTEENTH
 22 AMENDMENTS OF THE UNITED STATES CONSTITUTION.

23
 24 SUPPORTING FACTS:

25
 26 1) THE FUNDAMENTAL RULES SURROUNDING A CLAIM ON
 - 66 - 27 GROUND BY A PETITIONER OF ACTUAL INNOCENCE IS THAT THEY
 28 MUST DEMONSTRATE THAT IN LIGHT OF ALL THE EVIDENCE PROVIDED V7.72

1 IT IS MORE LIKELY THAN NOT THAT NO REASONABLE JUROR WOULD
2 HAVE CONVICTED HIM. ALSO THAT IN CASES THAT THE STATE
3 HAS FORGONE MORE SERIOUS CHARGES IN THE COURSE OF PLEA
4 BARGAINING, THE PETITIONER'S CLAIM IN PROVING ACTUAL INNOCENCE
5 MUST EXTEND TO THOSE CHARGES AS WELL. SO IN THIS REGARD
6 THE COUNTS UNDER ATTACK OF NRS 201.230 AND NRS 193.330 WILL
7 BE CHALLENGED AS THE ORIGINAL CHARGES. TWO COUNTS OF NRS
8 200.366 SEXUAL ASSAULT. STARTING WITH COUNT ONE THE INCIDENT
9 INVOLVING ASHLEY V. IT HAS BEEN STATED THROUGHOUT THIS
10 PETITION THE ALLEGATIONS OF ASHLEY TO THE STATE THAT
11 WHILE SHE WAS TWELVE (12) TWO INCIDENTS OCCURRED BETW-
12 EEN HERSELF AND THE PETITIONER. (PART II PS 71/21 TO 72/4;
13 PART III PS 45/19-21; AND PART IV PG 47) THE TIME FRAME THAT
14 ASHLEY IS CERTAIN OF IS THAT BETWEEN AUGUST 14, 1998 AND
15 AUGUST 13, 1999 SHE AND I HAD CONSENSUAL SEX (PART II PS
16 71/21 TO 72/4). BUT IN THIS CASE /CHARGE/COUNT WHERE 1) THERE
17 WAS NO EVIDENCE PRESENTED BY THE STATE THAT A CRIME HAD EVEN
18 OCCURRED EXCEPT FOR THE STATEMENT /TESTIMONY OF THE ALLEGED VICTIM
19 ASHLEY. 2) THE STATE FAILED TO PRODUCE ANY PHYSICAL EVIDENCE
20 OF THIS ALLEGED ASSAULT, AND 3) NO OTHER PERSON ACTUALLY
21 WITNESSED THIS ATTACK OCCUR. (IT SHOULD BE NOTED THAT THE
22 PROCEEDING POINTS 1-3 APPLY TO COUNT TWO AS WELL). THE ONLY
23 EVIDENCE THAT THE STATE HAD TO PRODUCE WAS THE TESTIMONY
24 OF ASHLEY V. BUT SHE COULD NOT DURING HER TESTIMONY AT
25 THE PRELIMINARY HEARING (PART II PG 61-86) GIVE ANY DATES
26 WHEN OR HOW SHE MET THE PETITIONER, NOR COULD SHE
67- 27 GIVE ANY DETAILS, OR INFORMATION AS TO ANY OF THE
28 ELEMENTS TO VERIFY A CRIME OCCURRED. NOR VERIFY THE

1 CERTAINTY OF HER AGE, EXCEPT TO SAY 'I WAS 12'.

2 THE EVIDENCE THAT PETITIONER HAS REFERRED TO
 3 NUMEROUS TIMES PROVING THAT BETWEEN AUGUST 14, 1998 AND
 4 AUGUST 13, 1999, HE DID NOT RESIDE IN RENO, NEVADA. SO
 5 IT WOULD BE IMPOSSIBLE FOR ASHLEY TO HAVE SPENT
 6 THE NIGHT AT MY HOME AND I DRIVE HER HOME THE
 7 NEXT MORNING ON LONKLEY LANE, WHERE THE ALLEGED
 8 INCIDENT OCCURED. (PART II PG 73/5 to 74/2). FROM 11/11/1996
 9 UNTIL 2/23/99 PETITIONER WAS IN HYDE PARK, NEW YORK ATTEN-
 10 DING THE CULINARY INSTITUTE OF AMERICA. (PART II PG 89-90)
 11 AS WELL AS IN 1998 PETITIONER WAS EMPLOYED AT THE
 12 CULINARY INSTITUTE AND ALSO AT MARINERS HARBOR IN RED
 13 HOOK, NEW YORK (PART II PG 94) IRS PAPERWORK GOING FROM
 14 2000 WHEN PETITIONER FIRST CAME TO RENO ESTABLISHED
 15 EMPLOYMENT AND RESIDENCE VERIFICATION (PART II PAGES 91-99)
 16 OVER THE YEARS OF 2000 UNTIL 1997 THE ENTIRE TIME THAT
 17 PETITIONER WAS MARRIED TO JENNY DUNKLEY, DMV RECORD
 18 OF THE FORD TAURUS REFERED TO BY ASHLEY (PART II PG. 66/22)
 19 BUT THAT VEHICLE WAS NOT PURCHASED UNTIL 6/5/2000 (PART II
 20 PGS 86-88). THEN ALSO THAT ON AUGUST 16, 1999 PETITIONER
 21 WAS SERVED WITH DIVORCE PAPERS AT HIS RESIDENCE IN
 22 FRESNO, CALIFORNIA AT 255 EAST NEEB # 257 AT 2:45 PM
 23 (SEE PART II PG. 102-104) ALSO IRS VERIFICATION (PART II PG 93)

24 ALL THIS DOCUMENTED VERIFIABLE DOCUMENTATION BY
 25 BOTH STATE COURTS, FEDERAL AND STATE AGENCIES AND A RESPECTED
 26 ACCREDITED COLLEGE PROVE IT IS IMPOSSIBLE FOR PETITIONER TO
 68- 27 HAVE COMMITTED ANY CRIME IN RENO BETWEEN AUGUST 14
 28 1998 AND AUGUST 13, 1999. (SEE PART II PGS 70/21 to 72/4).
 V7.74

1 2) "A PERSON WHO SUBJECTS ANOTHER PERSON TO SEXUAL PENET
2 RATION OR FORCES ANOTHER PERSON TO MAKE A SEXUAL PENETRATION ON
3 HIMSELF OR ANOTHER ... AGAINST THE WILL OF THE VICTIM ... IS GUILTY
4 OF SEXUAL ASSAULT" (NRS 200.366) PENETRATION IS A NECESSARY
5 ELEMENT AS SET FORTH BY THE STATE LEGISLATURE.
6 BY THE ALLEGATIONS OF JESSICA (PART II PG 38/16 TO 40/2; PART
7 IV PGS. 52; 87/33 TO 88/10; PART IV PAGE 112/49 TO 113/20;
8 113/29-40) PETITIONER FORCED HIS PENIS INTO HER MOUTH AFTER
9 SHE WAS TOLD TO "SUCK MY DICK" (PART II PG. 15/17, 18 PART IV PG
10 115/44-48) AFTER WHICH SHE CLAIMS SHE BIT HIS PENIS, ASSUMED THAT
11 SHE LEFT MARKS. SO THERE IS AN ALLEGATION THAT A PENIS WAS
12 SHOVED INTO (PENETRATION) HER MOUTH 'FORCED' (AGAINST THE WILL OF THE
13 VICTIM). WE HAVE SEXUAL ASSAULT, BUT AN UNFORTUNATE
14 FACT OF NATURE COMES TO MIND. DNA. AS WAS STAT-
15 ED BEFORE EARLIER ANY HUMAN CONTACT LEAVES A
16 TRACE, OILS, SKIN CELLS ALL CONTAINING DNA. IT IS VIRT-
17 UALLY IMPOSSIBLE TO READ THIS WRIT AND NOT BE LEAVING
18 DNA. SO THEREFORE WITH JESSICA SO CERTAIN THAT A
19 PENIS THE PETITIONER'S TO BE PRECISE WAS IN FACT SHOVEN
20 INTO HER MOUTH, DNA FROM HER MUST BE PRESENT ON HIS
21 PENIS. EXCEPT THE FORENSIC REPORT DATED MAY 21, 2007
22 STATES " NO DNA FOREIGN TO THE SOURCE, BRENDAN DUNNIEY, WAS
23 OBTAINED FROM THE GENITAL SWABS" (PART IV PG 59). NO DNA
24 AN ASTRONOMICAL IMPOSSIBILITY, UNLESS THERE WAS IN FACT
25 NO CONTACT WITH JESSICA AND THE PETITIONER'S PENIS. THE
26 ONLY OTHER EXPLANATION WOULD HAVE TO BE: THAT WHILE
69- 27 PETITIONER WAS WAITING IN HIS VEHICLE IN PLAIN SIGHT HE
28 BATHED AND CHANGED UNDERWEAR ALL WITHOUT ATTRACTING ANY

1 ATTENTION FROM THE PEOPLE WATCHING HIM OR THE POLICE WHO
 2 ARRIVED QUICKLY ON SCENE. NO, THE OBVIOUS TRUTH IS THAT
 3 WITH NO DNA AND THE COMMENT BY RPD OFFICER HEGLAN
 4 "NO VISIBLE INJURY TO BRENDAN'S PENIS SHAFT, HEAD OR BASE"
 5 (PART II pg. 52) IT PROVES NO SEXUAL (GENITAL) CONTACT HAD
 6 OCCURED LET ALONE THE NECESSARY ELEMENT OF PENETRATION
 7 EVEN TO STATE ATTEMPTED WOULD STILL REQUIRE SOME
 8 CONTACT IN A SEXUAL NATURE AS JESSICA CLAIMS.

9 3) AS SHOWN THROUGHOUT THIS ENTIRE PETITION WITH
 10 THE OBVIOUS INEFFECTIVENESS OF APPOINTED COUNSEL DAVID C O'M-
 11 ARA, THE MISREPRESENTATION OF FACTS AND INAPPROPRIATE BEHAV-
 12 IOR OF ADA VILORIA AND DETECTIVE TOM BRUOME. BY THE
 13 BLATANT VIOLATION OF THE PETITIONERS FOURTH AND FIFTH AMEND-
 14 MENTS BY DETECTIVE BRUOME ILLEGALLY OBTAINING TESTIMONY/STATE-
 15 MENTS FROM PETITIONER, LEADING TO EVIDENCE AND INFORMATION THAT
 16 SHOULD BE DEEMED INADMISSIBLE FRUITS OF A POISONOUS TREE, TO
 17 THE STATES LACK OF SUBJECT MATTER JURISDICTION IN COURT ONE, LACK OF
 18 ANY INVESTIGATING ON THE PART OF BOTH THE STATE AND ALSO BY
 19 DEFENSE COUNSEL DAVID C. O'MARA, THE INSUFFICIENT EVIDENCE TO
 20 SUPPORT ANY OF THE CURRENT CHARGES UNDER ATTACK, BUT KNOW-
 21 ING THAT IT HAD EVIDENCE DAMAGING TO THE STATES CASE FAILING
 22 TO EVER BRING IT FORWARD. A OBSENE VIOLATION OF CONTRACT
 23 LAW WITH A HUGE BREACH OF CONTRACT. ALL OF THIS ADDS
 24 UP TO SERIOUS PRESUDICE TO THE EXTREME DETRIMENT OF
 25 THE PETITIONER. WARRANTING IN THE LEAST RELIEF TO
 26 SET ASIDE THE GUILTY PLEA MEMORANDUM, DISMISS GROUND
 -70- 27 ONE FOR ACTUAL INNOCENCE, AND COURT TWO FOR WITH
 28 NO DNA & NO MARKS = NO PENETRATION / CONTACT = NO CRIME. Can V7.76

1 DISMISSED ON GROUNDS OF INSUFFICIENT EVIDENCE TO SUPPORT
2 A CHARGE IN A SEXUAL NATURE.

3 THIS ALL SHOWS, PROVES BEYOND A REASONABLE
4 DOUBT (WHICH THE STATE LACKED) A HUGE MANIFEST
5 INJUSTICE HAS OCCURED. BECAUSE A CLAIM OF ACTUAL
6 INNOCENCE ALSO REQUIRES FACTUAL INNOCENCE. PETITIONER
7 HAS MET THAT AND ALL REQUIREMENTS TO JUSTIFY THE
8 RELIEF REQUESTED. A LAYMEN SUCH AS MYSELF WHO JUSTIFIABLY
9 RELIED ON INCORRECT ADVICE FROM COUNSEL OR INACCURATE
10 DOCUMENTS FROM THE STATE IN DECIDING TO PLEAD GUILTY TO
11 A CRIME THAT HE KNOWS HE DID NOT COMMIT WILL
12 ORDINARILY CONTINUE TO ASSUME THAT SUCH ADVICE WAS
13 ACCURATE DURING THE TIME OF THE APPEAL. THE INJUSTICE
14 OF HIS CONVICTION IS NOT MITIGATED BY THE PASSAGE OF
15 TIME. HIS PLEA AND SUBSEQUENT GUILTY PLEA MEMORANDUM SHOULD
16 BE TREATED AS A NULLITY AND THE CONVICTIONS BASED ON
17 SUCH PLEAS SHOULD BE VOID. BECAUSE OF THE RECORD IN
18 THIS CASE ALREADY UNAMBIGUOUSLY DEMONSTRATES THAT
19 THE PETITIONERS PLEA OF GUILTY TO THE CHARGES IS
20 INVALID AS A MATTER OF CONSTITUTIONAL LAW. PETITIONER
21 AGAIN HUMBLY REQUESTS RELIEF FROM THIS CONVICTION AND
22 TO HELP CORRECT A MANIFEST INJUSTICE.

23 24 CONCLUSION

25
26 ON MARCH 6, 2008 PETITIONER WAS GIVEN
71- 27 AT THAT TIME THE MOST IMPORTANT DOCUMENT HE WOULD
28 EVER RECEIVE OR SIGN. UNDER THE ADVICE OF WHAT HE V7.77

1 FELT TO BE INFORMED AND EDUCATED, STATING THAT IF HE WENT
 2 TO TRIAL HE WOULD MOST ASSURABLY LOSE. PROBATION WAS AN
 3 OPTION IF HE QUALIFIED. EXCEPT PROBATION IS NEVER AN
 4 OPTION WHEN THE NRS SAYS SO. RELUCTANTLY SIGNING IT
 5 AND BEING TOLD TO SAY YES TO EVERYTHING THE JUDGE ASKS.
 6 DOING SO AND FOLLOWING SUCH ADVICE BRINGS US HERE
 7 TODAY WITH THIS PETITION FOR POST CONVICTION RELIEF. THERE
 8 ARE FOUR CRITERIA THAT EXIST TO DETERMINE IF MANIFEST
 9 INJUSTICE HAS OCCURED TO JUSTIFY A REVERSAL OF A GUILTY
 10 PLEA: 1) DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL; 2) PLEA AGREEMENT
 11 NOT RATIFIED BY THE DEFENDANT, 3) PLEA WAS INVOLUNTARY;
 12 OR; 4) PLEA AGREEMENT WAS NOT KEPT BY THE PROSECUTION.

13 TO ASSERT AND SHOW/PROVE INEFFECTIVE ASSISTANCE OF
 14 COUNSEL TWO FACTORS MUST BE SHOWN. FIRST, IS THAT THE CON-
 15 DUCT AND ACTIONS OF COUNSEL FELL BELOW THE STANDARD OF
 16 CONDUCT THAT REASONABLY COMPETANT ATTORNEYS JUDGE THEMSELVES,
 17 AND THE SECOND, IS THAT SUCH CONDUCT PREJUDGED THE DEFEN-
 18 DANT AND A REASONABLE PROBABILITY EXISTS THAT BUT FOR
 19 COUNSEL'S UNPROFESSIONAL ERRORS THE RESULTS OF THE PROCEEDINGS
 20 WOULD HAVE BEEN DIFFERENT. A REASONABLE PROBABILITY IS A
 21 PROBABILITY SUFFICIENT TO UNDERMINE THE CONFIDENCE IN THE
 22 OUTCOME. IN PAGES 5 TO 27 OF THIS PETITION THERE ARE
 23 SIXTEEN DIFFERENT AREAS WHERE COUNSEL FELL BELOW THE
 24 'BAR' SUPPORTED BY (PART II PGS 1 TO 60) HIS PERFORMANCE AT
 25 SENTENCING (PART III PG 33-61) AND HIS OBVIOUS UNPREPAREDNESS AT
 26 THE PRELIMINARY HEARING (PART II PGS 1-123). ALL HIS ACTIONS AND
 27 LACK OF ANY INVESTIGATION, REQUEST FOR MONEY TO COPY FILES
 28 (PART II PGS 26, 29, 30) PROVING HIS INEXPERIENCE BY FILING ~~THE~~ 78

1 WRONG APPEAL (PART II PAGE 28, 29), HIS OBVIOUS LACK OF PREPARAT-
 2 ION FOR THE PRELIMINARY HEARING TO KNOW THE CHARGES AND TO
 3 PREPARE AN ADEQUATE DEFENSE (PART II Pgs. 131-136) (SEE DATES). ALL
 4 THIS EVIDENCE, DOCUMENTATION AND INFORMATION CAN NOT SIMPLY
 5 BE THE RESULT OF ANY TACTICAL DECISION ON HIS PART, OR A
 6 STRATEGIC CHOICE, BUT NUMEROUS EXAMPLES OF HIS INEXPERIENCE,
 7 AND INCOMPETANCE TO ACT AS A ADVESARY TO THE STATE AND AS
 8 EFFECTIVE COUNSEL TO PETITIONER. BY HIS ACTIONS HE FAILED GROSSLY
 9 TO BE THE REASONABLY COMPETANT ATTORNEY GUARANTEED BY THE SIXTH
 10 AMENDMENT.

11 THE ASSISTANCE OF COUNSEL AS CONTEMPLATED BY THE UNITED
 12 STATES AND NEVADA CONSTITUTION CONTMPLATES THAT COUNSEL DO MORE
 13 THAN JUST ACOMPANY THE ACCUSED TO COURT, BUT ACT AS AN ADVOCATE
 14 WHICH IS CRITICAL TO OBTAIN JUST RESULTS IN OUR ADVISARIAL SYSTEM
 15 OF JUSTICE. DAVID C. O'MARA'S ERRORS AND OMISSIONS WERE SUFFICIENTLY
 16 SERIOUS ENOUGH THAT HE WAS NOT FUNCTIONING AS MY COUNSEL AS
 17 GUARANTEED BY THE SIXTH AMENDMENT, PREJUDICING PETITIONER AND
 18 AFFECTING THE OUTCOME OF THE CASE. BOTH FACTORS OF AN INEFFE-
 19 TIVE ASSISTANCE OF COUNSEL CLAIM HAVE BEEN MET.

20 BY THE STATE'S INAPPROPRIATE BEHAVIOR AND INTERJECTION
 21 OF COMMENTS NOT SUPPORTED BY RECORD SHOWS AND ALSO
 22 JUSTIFIES THE CLAIM AND FINDING OF PROSECUTORIAL MISCONDUCT
 23 INCLUDING ALL THE ACTIONS OF DETECTIVE TOM BROOME. ADA
 24 VILORA'S FAILURE TO REMEMBER NO RULE GOVERNING ORAL ARGUMENT
 25 IS MORE FUNDIMENTAL THAN THAT REQUIRING COUNSEL TO CONFINE
 26 REMARKS TO MATTERS IN EVIDENCE STATING MATTERS NOT IN EVI-
 -73- 27 DENCE IS CLEARLY IMPROPER AND SHOWS PROSECUTORIAL MISCONDUCT.
 28 ALL THE COMMENTS (PART III Pgs 43/24-44/5; 46/4-6; 49/13-16, 20/23)

1 IN ADDITION TO THE BREACH OF CONTRACT, BRADY VIOLATION, LACK
 2 OF ANY INVESTIGATION OR DUE DILIGENCE BECAUSE OF BAD FAITH,
 3 ANY SUFFICIENT EVIDENCE TO SUPPORT ANY OF THE CHARGES
 4 BROUGHT AGAINST THE PETITIONER. IT ALL ADDS UP TO A
 5 GROSS MISCARRIAGE OF JUSTICE, A MANIFEST INJUSTICE. THE
 6 STATE HAS BEEN OFFERED TIME AND REQUESTS TO TAKE IT
 7 UPON THEMSELVES TO CORRECT THIS SERIOUS PROBLEM OF
 8 A MAN OBVIOUSLY INNOCENT BEING IN PRISON. THEY WERE
 9 PRESENTED WITH ALL THE NEEDED EVIDENCE BUT STILL
 10 FAILED TO CORRECT IT. SO.

11 THE PETITIONER HUMBLY PRESENTS THE PROCEED-
 12 ING PETITION FOR POST-CONVICTION WRIT OF HABEAS CORPUS AND ALL
 13 SUPPORTING DOCUMENTATION (PARTS II, III, IV, AND V) TO THIS COURT.
 14 REQUESTING RELIEF FROM THE ORDER OF CONVICTION (PART III
 15 PG 62-63). THE SETTING ASIDE OF THE GUILTY PLEA MEMORANDUM DATED
 16 MARCH 6, 2007, INCLUDING THE COUNT OF LEWDNESS WITH A
 17 CHILD UNDER 14 ON THE GROUNDS OF ACTUAL AND FICTITIAL INNOCENCE.
 18 THE GUILTY PLEA MEMORANDUM BEING SET ASIDE ON GROUNDS OF THOSE
 19 STATED EARLIER, INEFFECTIVE ASSISTANCE OF COUNSEL, PROSECUTORIAL MISCON-
 20 DUCT, AND BREACH OF CONTRACT. PLUS GROUNDS C, D, E, F, G, AND I. PETITIONER
 21 HAS ALSO PROVEN COUNT TWO TO BE AN IMPOSSIBILITY AND HUMBLY
 22 REQUEST THE REVERSAL OF THAT CONVICTION AND SENTENCE AS WELL.
 23 IN THE LAST 74 PAGES PETITIONER HAS PROVEN THAT HE IS
 24 INNOCENT OF ANY SEXUALLY BASED CRIME AND THEREFORE WISHES
 25 ALL ORDERS OF SUPERVISION, REGISTRATION, PAROLE, PROBATION BE
 26 ALSO LIFTED. ALLOWING PETITIONER TO RETURN TO THE STATE HE
 -74- 27 FOUND HIMSELF PRIOR TO THE GUILTY PLEA. AND ANY AND ALL
 28 OTHER RELIEF THAT THIS COURT DEEMS APPROPRIATE TO PROVIDE V7.80

1 IT HAS BEEN STATED BY THE COURTS THAT IN THE AREA OF
 2 REVERSAL OF A CONVICTION EVEN IN CASES OF GUILTY PLEAS,
 3 IF COUNSEL (EITHER SIDE OF THE AISLE) FAIL TO PRODUCE EXCUL-
 4 PATORY EVIDENCE A REVERSAL OF CONVICTION IS REQUIRED, IF
 5 THE OMITTED EVIDENCE, WHEN EVALUATED IN CONTEXT OF THE
 6 ENTIRE RECORD, CREATES REASONABLE DOUBT AS TO THE DEFENDANT
 7 PETITIONER'S GUILT THAT DID NOT OTHERWISE EXIST. THIS ALSO
 8 PERTAINS TO EVIDENCE NOT INTRODUCED BY THE LACK OF ANY
 9 INVESTIGATION ON THE PART OF EITHER THE STATE OR DEFENSE
 10 COUNSEL.

11 ALSO IN REGARDS TO THE GUILTY PLEA MEMORANDUM AND
 12 GROUNDS B, E, F, G, AND H, THE FEDERAL RULES OF CRIMINAL PROC-
 13 EDURE 11(F) REQUIRE THAT A GUILTY PLEA OFFERED BY THE STATE TO
 14 AN ACCUSED BE SUPPORTED BY A FACTUAL BASIS. THAT GOES HAND
 15 IN HAND WITH THE FACT THAT PROSECUTORS MAY NOT BRING CHARGES
 16 FORWARD THAT ARE NOT SUPPORTED BY PROBABLE CAUSE AND ARE REQU-
 17 IRED TO REVEAL TO THE COURT ANY INFORMATION WHICH NEGATES THE
 18 EXISTANCE OF PROBABLE CAUSE.

19 THESE PLUS THE 'GOOD CAUSE' REQUIREMENT TO ALLOW A
 20 REVERSAL OF A GUILTY PLEA, THAT BEING BOTH PRONGS OF STRICK-
 21 LAND V. WASHINGTON HAVE BEEN MET, WOULD WARRANT AND ALSO
 22 JUSTIFY THE SOUGHT AFTER RELIEF BY PETITIONER. IN THE
 23 ADDITION TO ANY AND ALL RELIEF THIS COURT DEEMS TO BE
 24 APPROPRIATE, PETITIONER PRAYS THE COURT GRANT HIM THE
 25 REQUESTED RELIEF, ALLOWING THE CORRECTION OF THIS OBVIOUS
 26 MANIFEST INJUSTICE, FULFILLING THE GOAL TO FREE NEVADA'S
 -75- 27 CRIMINAL TRIBLS FROM THE TRAIT OF MISCONDUCT, ABUSE, & I
 28 INJUSTICE IRRESPECTIVE OF THE SOURCE.

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WHEREFORE, PETITIONER PRAYS THAT THE COURT GRANT
PETITIONER RELIEF TO WHICH HE MAY BE ENTITLED IN THIS
PROCEEDING . ALSO WHAT RELIEF THE COURT DEEMS APPROPRIATE.

EXECUTED AT LOVELOCK CORRECTIONAL CENTER, LOVELOCK,
NEVADA ON THE 15TH DAY OF JULY, 2009

Brendan Thomas Dunckley

BRENDAN THOMAS DUNCKLEY, PETITIONER
BAC. NO. 1023236
Address: L. C. C.
1200 PRISON ROAD
LOVELOCK, NEVADA 89419

AFFIRMATION

(PURSUANT TO NRS. 239B.030)

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PROCEEDINGS DOCUMENT FILED IN CASE NO. CR07-1728 POST-CONVICTION WRIT OF HABEAS CORPUS PETITION.

PART NO: I

X DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBERS OF ANY PERSON.

-OR-

 DOCUMENT DOES CONTAIN THE SOCIAL SECURITY NUMBER OF A PERSON AS REQUIRED BY A SPECIFIC STATE OR FEDERAL LAW, TO WIT:

-OR-

 FOR THE ADMINISTRATION OF A PUBLIC PROGRAM

-OR-

 FOR THE APPLICATION OF A FEDERAL OR STATE GRANT

-OR-

 CONFIDENTIAL FAMILY COURT INFORMATION SHEET (NRS 125.130, NRS 125.230, NRS 125B.055)

DATED: 7/15/09



BRENDAN DUCKLEY (#1023236)
L.C.C.
1200 PRISON ROAD
LOVELOCK, NEVADA. 89419

ATTORNEY: PRO PER V7.83

H105

CRO7P1728 DC-9900009758-035
POST: BRENDAN DUNCLELEY (D 126 Pages
District Court 07/21/2009 02:23 PM
Washoe County 4105
DOC TFI CRPC

FILED

2009 JUL 21 PM 2:20

HOWARD W. CONYERS

BY El Slova
DEPUTY

1 CASE NO: CRO7-1728

2 DEPT. NO: 4

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4

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

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8

BRENDAN DUNCLELEY,
PETITIONER

CASE NO: CRO7-1728

9

10

v.

11

JACK PALMER,

12

RESPONDANT

13

14

SUPPORTING DOCUMENTATION FOR PETITIONER'S

15

POST-CONVICTION WRIT OF HABEAS CORPUS PETITION

16

17

PART NO: II

18

19

Brendan Duncleley

20

BRENDAN DUNCLELEY 1023256

21

L.C.C.

22

1200 PRISON ROAD

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LOVELock, NEVADA 89419

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ATTORNEY IN PRO SE.

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IN THE JUSTICES COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
HONORABLE HAROLD ALBRIGHT, JUSTICE OF THE PEACE

--o0o--

THE STATE OF NEVADA,)	Case No. RCR2007-033884
)	
Plaintiff,)	Dept. No. 4
)	
vs.)	
)	
BRENDAN DUNCKLEY,)	
)	
Defendant.)	

COPY

TRANSCRIPT OF PROCEEDINGS
PRELIMINARY EXAMINATION
Monday, July 2, 2007

APPEARANCES:

For the Plaintiff:	DAVID W. CLIFTON, ESQ., Deputy District Attorney One South Sierra Street Reno, Nevada 89520
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For the Defendant:	DAVID C. O'MARA, ESQ., Attorney at Law P.O. Box 2270 Reno, Nevada 89505
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Reported by:	EVELYN J. STUBBS, CCR #356
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I N D E X

WITNESSES:

<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
5	25	38	40
43	54	56	58
61	76	85	
90	110		

JESSICA H.
MICHELLE A.
ASHLEY V.
TOM KEITH BROOME

EXHIBITS:

Marked for IDENTIFICATION

Admitted into EVIDENCE

None Marked

1 RENO, NEVADA; MONDAY, JULY 2, 2007; 2:47 P.M.

2 --o0o--

3

4 THE COURT: This is the time set for Case Number
5 RCR 2007-033884, State versus Brendan Dunckley, who is
6 present in court with his attorney, David O'Mara.

7 Mr. Clifton is here on behalf of the State.

8 Are we ready to proceed to preliminary hearing?

9 MR. CLIFTON: State's ready, Your Honor.

10 MR. O'MARA: Ready, Your Honor.

11 THE COURT: Thank you.

12 MR. CLIFTON: We will have up to four witnesses.
13 I'm not sure if we will call them all or if all of them
14 are here. I have three victims in this case I have not
15 met, so I'm not sure on the exact dates, so I may have to
16 juggle some dates on motions to amend or depending on how
17 the testimony goes.

18 Right now you can see the counts are charged
19 fairly broadly as far as the dates as far as cases more
20 than two-years old.

21 We're prepared to go forward with our first
22 witness who is here and ready to be sworn.

23 Will there be a Rule of Exclusion being invoked?

24 MR. O'MARA: Yes, there will be, Your Honor.

1 THE COURT: All right. The Rule of Exclusion
2 has been invoked, and that's a rule to preserve the
3 purity of the testimony on the stand.

4 So you're ordered to step out of the courtroom.
5 You cannot discuss the case with any other person, except
6 the two attorneys, until you're released from the rule
7 later today.

8 MR. O'MARA: Your Honor, if you could please
9 advise all of the witnesses as they come in and out of
10 the courtroom. I only see that there's one witness at
11 this time, but if there's subsequent witnesses, if they
12 could also be given the exclusionary rule as they leave.

13 THE COURT: Is there only one witness in the
14 courtroom?

15 MR. CLIFTON: No, there's two right now.

16 THE COURT: Okay. What's your name, ma'am?

17 AUDIENCE MEMBER: Jessica.

18 THE COURT: Jessica. Okay. What's your name?

19 AUDIENCE MEMBER: Jolene.

20 THE COURT: Is she going to be a witness?

21 MR. CLIFTON: No.

22 THE COURT: Is Jessica going to be a witness?

23 MR. CLIFTON: Yes, and Detective Broome.

24 THE COURT: All right. Detective, thank you.

1 Who is going to be your first witness?

2 MR. CLIFTON: Jessica.

3 THE COURT: If you'll come forward, Jessica. If
4 you'll step out, please, Detective, and I'll try and
5 watch for witnesses.

6 MR. O'MARA: Thank you very much, Your Honor.

7 THE COURT: If you'll come around here. There's
8 a little door handle that will let you into the witness
9 stand. When you step in you may feel some movement, but
10 it's kind of a leveling device.

11 Let me swear you in, please.

12

13 JESSICA H.,
14 called as a witness by the plaintiff herein,
15 being first duly sworn, was examined
16 and testified as follows:

17

18 DIRECT EXAMINATION

19 BY MR. CLIFTON:

20 Q Please tell us your first name.

21 A Jessica.

22 Q Is that standard spelling?

23 A Yes.

24 Q And your last name begins with what letter?

1 A H.

2 Q What's your date of birth?

3 A 8-5-83.

4 Q Are you currently a resident of Washoe County,
5 Nevada?

6 A Yes, I am.

7 Q How long have you resided here?

8 A Five years.

9 Q I want to direct your attention to March 10th of
10 this year, 2007. Do you recall your whereabouts, say, in
11 the evening of that particular date?

12 A Yes.

13 Q Did you have a boyfriend at that time of the
14 year?

15 A Yes.

16 Q On March 10th, did you become involved in a
17 fight that day or any type of breakup?

18 A Yes, I did.

19 Q Do you recall having occasion to go for a walk
20 because of that breakup?

21 A Yes.

22 Q Was he living with you at the time?

23 A Yes.

24 Q What was that address?

1 A 1675 Sky Mountain Drive, Apartment 827.

2 MR. CLIFTON: Your Honor, that's my first
3 amendment. I notice on Count VI, which is Page 4 of the
4 amended criminal complaint, it has the apartment listed
5 as 287. It has the first two numbers transposed. I
6 would ask it be amended by interlineation to "Apartment
7 827," please, on line 12.

8 THE COURT: All right. 827 has been substituted
9 for 287.

10 MR. CLIFTON: Thank you.

11 BY MR. CLIFTON:

12 Q Jessica, was that in Reno, Washoe County,
13 Nevada?

14 A Yes.

15 Q Were you upset over this fight or breakup with
16 your boyfriend?

17 A Yeah.

18 Q Which was it? Was it both --

19 A It was just an argument.

20 Q Let's call it that, an argument. What's his
21 first name?

22 A Emialiano.

23 Q Okay. E-M --

24 A E-M-I-A-L-I-A-N-O.

1 Q Had you had anything to drink that evening or
2 afternoon?

3 A Yes.

4 Q Was it because of the argument or even before
5 that?

6 A No, it was just before that.

7 Q Okay. So you weren't drinking because of the
8 argument or fight?

9 A No.

10 Q Did you have occasion then to go for a walk from
11 that particular apartment?

12 A Yes.

13 Q Do you remember where you went?

14 A I was going to walk to my brother's house and I
15 decided not to.

16 Q Did you stop anywhere before coming back to the
17 apartment?

18 A I walked down the street and turned around and
19 came back.

20 Q So you didn't stop anywhere else; at a store or
21 anything like that?

22 A No.

23 Q So you only went a block and started coming
24 back?

1 A Yeah.

2 Q As you were coming back do you recall anybody
3 that you thought was a little out of place or unusual as
4 far as behind you or following you?

5 A Yes.

6 Q Can you describe?

7 A I was just walking down the street and someone
8 was in the car and asked me if I needed a ride.

9 Q And that was on your way back to the apartment?

10 A Yeah.

11 Q So you were going back toward your apartment?

12 A Yes.

13 Q Was it a male or female?

14 A Male.

15 Q Was he in a vehicle?

16 A Yes.

17 Q What type?

18 A It was a minivan.

19 Q And he pulled up alongside of you?

20 A Um-hum.

21 Q Did he have his window down?

22 A Yes.

23 Q Was it the passenger window or the driver's
24 window?

1 A The passenger.

2 Q He said what to you?

3 A "Do you need a ride?"

4 Q What did you respond, if anything?

5 A I just kept walking.

6 Q You didn't say anything?

7 A No.

8 Q What happened next?

9 A Then he asked me again, and I just kept walking.

10 Q You didn't say anything again?

11 A (Shakes head.)

12 Q Answer out loud for the reporter.

13 A No.

14 Q What happened after that, the second time?

15 A I just walked to my apartment.

16 Q Okay. Was he still following you or along side
17 of you or what?

18 A Not that I knew of.

19 Q So you thought when you were going to your
20 apartment he wasn't behind you anymore?

21 A Yes, sir.

22 Q Did anything happen as you approached your
23 apartment?

24 A No.

1 Q Okay. Are you on the first floor, second, what?

2 A Second.

3 Q Stairs or elevator?

4 A Stairs.

5 Q Is there a name for these apartments or
6 anything?

7 A Vista Ridge.

8 Q And you're still alone, correct?

9 A Yes.

10 Q You're not carrying anything?

11 A No.

12 Q Do you even have a purse, do you know?

13 A No.

14 Q Was your boyfriend at the apartment when you
15 left for this walk?

16 A Yes.

17 Q How long were you gone?

18 A 20 minutes, 15 minutes.

19 Q Did you know whether he would be there or not
20 when you got back?

21 A Yes.

22 Q All right. Did you think he would be or
23 wouldn't be?

24 A Yeah, I suspected he would be there. He

1 wouldn't have gone anywhere.

2 Q When you got home you went up the stairs, I take
3 it?

4 A Yes.

5 Q And you approached your door?

6 A Um-hum.

7 Q Was your door locked or open?

8 A It was unlocked.

9 Q Did you go inside?

10 A Yes, I did.

11 Q Can you tell us what happened next?

12 A I walked into my apartment and said, "Josh,"
13 walked straight back --

14 Q Who is Josh?

15 A That's what I call my ex-boyfriend.

16 Q Did you yell it out like you were looking for
17 him?

18 A Yeah, and I walked straight back --

19 Q Into the apartment?

20 A And to the right is the bedroom. And I said his
21 name one more time. He wasn't there. I turned to the
22 left, and I looked into the bathroom, and I heard the
23 front door. And there he was standing right there.

24 Q When you say "he," are you referring to Josh?

1 A No.

2 Q Somebody else?

3 A Somebody else.

4 Q Let's stick with Josh for a minute. Did you
5 find Josh?

6 A No.

7 Q So you expected him to be there, but after this
8 20 minutes he had left?

9 A Yeah.

10 Q Sometime during that 20 minutes that you were
11 gone?

12 A Yes.

13 Q So you call out to him, walk around the
14 apartment, and don't find him?

15 A Yeah.

16 Q Something drew your attention to your front
17 door?

18 A Um-hum.

19 Q What was it?

20 A I heard someone come into my apartment.

21 Q Did you close the door behind when you went in?

22 A I closed the door behind me, but my door, if you
23 just let it swing closed, it will bounce right back open,
24 it will stay cracked.

1 Q So you didn't latch it or lock it, deadbolt it
2 or anything like that?

3 A No.

4 Q Even when you came back from this walk it was in
5 that condition also?

6 A No.

7 Q It was shut?

8 A Yeah.

9 Q Was it locked?

10 A No.

11 Q Were you able to just turn the handle and walk
12 in, that's what you mean by open?

13 A Yes.

14 Q The door itself was closed, though?

15 A Um-hum.

16 Q So when you looked back and you see this person,
17 he wouldn't have needed a key to get in?

18 A No.

19 Q Was the door part way open or all the way open?

20 A It doesn't latch all the way closed. You can
21 just push.

22 Q When you see him, was the door all the way open
23 or part way open?

24 A It was closed, like behind him was the door.

1 Q So he had come into the apartment?

2 A Um-hum.

3 Q And the door closed behind him?

4 A Yes.

5 Q Or he closed the door?

6 A (Nods head.)

7 Q And you didn't agree to this?

8 A No.

9 Q You didn't even know he was behind you?

10 A No.

11 Q You didn't even know he'd come into the
12 apartment?

13 A No.

14 Q How did you react?

15 A I was startled, I was scared.

16 Q What did you do?

17 A He told me -- he stood right there and he told
18 me to suck his dick.

19 Q Did you recognize this person from any earlier
20 occasion that night before you saw him in the apartment?

21 A No.

22 Q Was it the same man that was in the van outside
23 that had approached you on the street?

24 A I didn't really look at him that good when I was

1 walking down the street.

2 Q So you don't know one way or the other?

3 A No.

4 Q And that's the person you never answered anyway,
5 correct?

6 A Um-hum.

7 Q So this person that comes in the door, you don't
8 know if you're seeing him for the first time or if he
9 could have been the person in that van; is that what
10 you're saying?

11 A Yes.

12 Q Did you recognize this person from anytime,
13 anywhere that you'd seen him before?

14 A No.

15 Q Didn't think you knew him?

16 A No.

17 Q So after he says that and you're shocked or
18 startled, what did you do or say?

19 A I had no choice but to. He was in the front
20 door and the other way to get out is off the balcony.

21 So I went and -- to do it, but I bit him.

22 Q Okay. Where were you when this happened?

23 A I was in the back part of my apartment.

24 Q Did you try to lock yourself in a bathroom or

1 bedroom or anything?

2 A No.

3 Q Did he come to you or did you go to him?

4 A I went to him.

5 Q This person you never met before?

6 A Yes.

7 Q All right. Did you take any of your clothes
8 off?

9 A No.

10 Q Did he take any of his clothes off?

11 A No.

12 Q Was it a zipper, buttoned?

13 A Buttoned, it was his pants.

14 Q Okay. And who undid his pants?

15 A He did.

16 Q When he said that to you, did he already have
17 his penis exposed?

18 A He was exposing it.

19 Q As he was saying it?

20 A Yes.

21 Q Were you scared, frightened?

22 A Yes, I was very scared, very frightened.

23 Q Did he threaten you?

24 A No.

1 Q Did you argue with him, say anything to him?

2 A No, I didn't know what to do. He told me to do
3 it and --

4 Q What were you afraid of?

5 A Of him.

6 Q Did he have any weapon?

7 A No.

8 Q Did he threaten to hit you, strike you, anything
9 like that?

10 A No.

11 Q All right. And you didn't try to avoid him or
12 get away or say, "I'm going to call the cops," or
13 anything like that?

14 A I didn't have any way to.

15 Q I mean, you didn't say that though, either?

16 A No.

17 Q You had no way to call anybody or --

18 A No.

19 Q Was it close proximity, him to you?

20 A Um-hum. It's a very small apartment.

21 Q Do you have a phone in the apartment?

22 A No, I don't.

23 Q Okay. So when you went toward him --

24 A Um-hum.

1 Q -- were you both standing? Were you kneeling or
2 was somebody on a chair?

3 A He was standing, I was standing.

4 Q Okay. And you just bent down?

5 A Um-hum.

6 Q And you said you bit him?

7 A Yes.

8 Q Did he have an erection?

9 A Yes.

10 Q Was this consensual in any way?

11 A No.

12 Q You're certain you hadn't seen him in a bar or
13 anything before this happened at all?

14 A No, I've never seen him before.

15 Q When you went down on him, you bit him?

16 A Um-hum.

17 Q He had an erection?

18 A (Nods head.)

19 Q After you bit him did he still maintain the
20 erection?

21 A No, no.

22 Q Did he say anything?

23 A He said "stop" or -- you know, that was it. He
24 tried to run out of the apartment and I chased him.

1 Q Don't go that far yet.

2 He said stop or said something?

3 A He said "ow."

4 Q Ow or stop?

5 A Um-hum.

6 Q Did he strike you, hit you?

7 A He slightly hit me upside my head so that I
8 would stop.

9 Q Okay. He was blocking your only realistic exit
10 to the apartment; is that what you said before?

11 A Yes.

12 Q And your boyfriend was not there?

13 A No.

14 Q So you had nowhere else you could go. And
15 you're afraid of him, but he didn't have a weapon. What
16 were you afraid of?

17 A I didn't know what would happen.

18 Q That he might strike you?

19 A Yes.

20 Q Okay. After you bit him, his penis went
21 flaccid?

22 A Yes.

23 Q It was no longer erect, correct?

24 A No.

1 Q Did you still try to keep biting him or do you
2 remember?

3 A No, he ran.

4 Q That chair --

5 THE COURT: That was the movement I was trying
6 to warn you about.

7 BY MR. CLIFTON:

8 Q That chair just does it on its own. I never
9 noticed that before. I'm sorry, Jessica.

10 A He pulled up his pants and ran out.

11 Q Were you glad to see that, that he left?

12 A Yeah, but I was angry. I chased him.

13 Q Okay. Chased him. Were you yelling?

14 A Yes.

15 Q What were you yelling?

16 A "Stop him. Stop him."

17 Q Were you yelling that to other people?

18 A Yeah.

19 Q Do you know if they were men or women?

20 A As we were going down the hallway and I looked
21 down at the parking lot, I saw two guys walking, and I
22 told them, "Help me. Stop him."

23 Q And did they?

24 A Yes.

1 Q And were the police called?

2 A Yes.

3 Q And they came and interviewed you?

4 A Yes.

5 Q Did you tell them about the stranger that came
6 into your apartment and told you to, quote, suck his
7 dick?

8 A Yes.

9 Q Is that the way you explained it to them?

10 A Yes.

11 Q Do you recall this person well enough to give us
12 a description of him?

13 (A) No.

14 Q Okay. Was he black or white?

15 A He was white.

16 Q Did he have hair?

17 A Yeah.

18 (Q) Was he wearing a hat?

19 (A) No.

20 Q Do you remember the color of the hair?

21 A Brown.

22 Q Okay. Do you know how old he was, by any
23 chance?

24 A In his 30s.

1 Q Okay. That's a description. Do you remember
2 anything about what he was wearing?

3 (A) He had on jeans and a black leather jacket that
4 I kept trying to grab.

5 Q To grab when?

6 A When I was chasing him.

7 Q So you actually were like right behind him?

8 A Yes.

9 Q When these men caught him or tackled him, did
10 you tell them what he had done to you also?

11 A I tried hitting him in his face and that's the
12 time when my boyfriend at the time came running up and
13 asked me what happened, because he was in the parking
14 lot.

15 Q But he didn't hear or see any of this happen --

16 A No.

17 Q -- to your knowledge?

18 A No.

19 Q He didn't come in and interrupt while it was
20 happening or anything like that?

21 A No.

22 Q If you saw this person again do you think you
23 would recognize him or remember him?

24 A (Nods head.)

1 Q You need to answer out loud.

2 A Yes.

3 Q Okay. Do you see him here in the courtroom
4 today?

5 A Yes.

6 Q Is he in front of this bar toward me or is he
7 behind the bar?

8 A In front.

9 Q Can you tell me what he's wearing today?

10 A A black suit.

11 Q Where is he seated in relation to me?

12 A To the side of you.

13 Q Right side or left side.

14 A Left.

15 Q How many people over, one or two?

16 A One.

17 Q The person right next to me?

18 A No, next to the person, so two people over.

19 Q Second person over?

20 A Yeah.

21 MR. CLIFTON: Your Honor, if the record could
22 reflect identification of Defendant Dunckley.

23 THE COURT: Record will so reflect.

24 ///

1 BY MR. CLIFTON:

2 Q Do you remember being interviewed by Detective
3 Broome of the Reno Police Department; do you remember
4 him?

5 A Yes.

6 Q And you told him what had happened to you that
7 night?

8 A Um-hum.

9 Q Were you still angry?

10 A Yeah.

11 Q Were you more angry at the argument you had with
12 your boyfriend or what this stranger made you do with
13 him?

14 A What the stranger made me do with him.

15 Q And you didn't know this person's name, correct?

16 A No.

17 MR. CLIFTON: Thank you. No further.

18 THE COURT: Mr. O'Mara.

19

20 CROSS-EXAMINATION

21 BY MR. O'MARA:

22 Q Jessica, good afternoon. My name is David
23 O'Mara. I'm an attorney representing Mr. Dunckley. If
24 you cannot hear me or you don't understood a question I

1 ask you, please just ask me to restate it or speak up
2 louder --

3 A Okay.

4 Q -- so that you have a better understanding of
5 what I'm asking and we can get a good record for the
6 court reporter.

7 Do you need a break or anything?

8 A No.

9 Q Okay. In the beginning of your testimony you
10 talked about leaving your apartment because of a breakup
11 with your boyfriend --

12 MR. CLIFTON: Your Honor, I think the word was
13 argument. I accidentally used the word breakup, she
14 corrected me to argument.

15 BY MR. O'MARA:

16 Q So it was just a mere argument?

17 A Yes.

18 Q Prior to your breakup -- excuse me, the argument
19 with your boyfriend, what did you do during that day?

20 A That day I went to the mall, and after that I
21 went to my brother's house.

22 Q What time of the day were you at the mall?

23 A Around, 11:00, 12:00.

24 Q Then you went to your brother's house?

1 I'm sorry. Let's back up. Is the mall the
2 Meadowood Mall or --

3 A Yes.

4 Q And after the mall you went to your brother's
5 house?

6 A Yeah, my brother's house.

7 Q What is your brother's name?

8 A Justin.

9 Q And does he have the last of "H" as well?

10 A Yes.

11 Q And what did you do at your brother's house?

12 A Hang out.

13 Q Did you drink?

14 A Yes.

15 Q What did you drink?

16 A Beer.

17 Q And how many beers did you drink?

18 A I don't know. I wasn't counting.

19 Q Were you not counting because you lost track or
20 because you just don't normally count how many beers?

21 A Just because I don't normally count how many
22 beers.

23 Q How long were you at your brother's house?

24 A Probably for -- I mean, all day and all

1 afternoon, up until the evening.

2 Q Up until what time?

3 A Around 9:00, 8:30.

4 Q So would it be fair to say that you were at your
5 brother's house between 12:00 and 8:30, for eight-
6 and-a-half hours?

7 A Yeah.

8 Q During those eight-and-a-half hours did you
9 continually drink?

10 A Yeah.

11 Q And if you went back, would you say that you had
12 two, three beers an hour?

13 A Maybe, like, two.

14 Q Two beers. So by 8:00 o'clock you had
15 approximately 16 beers in the eight-hour period?

16 A Yes.

17 Q And what type of beers were they?

18 A Budweiser and Corona.

19 Q Did you have any shots of hard liquor?

20 A (Shakes head.)

21 Q Did you do any other recreational drugs?

22 A No.

23 Q How did you get back to your apartment?

24 A My brother.

1 Q Why did your brother take you back?

2 A Because I don't -- I didn't have a car to drive.
3 I couldn't drive.

4 Q After you left your apartment, you said you were
5 gone 20 minutes, how far did you think you traveled?

6 A Just like maybe two blocks.

7 Q Do you remember exactly the route that you took?

8 A Yeah, I just got out of the gate of my
9 apartments and took a left and went down the street,
10 turned around and came back.

11 Q Do you remember falling down during any period
12 of time?

13 A No.

14 Q As you entered your apartment, you talked about
15 going into your apartment and going to the back of your
16 apartment, correct?

17 A Yes.

18 Q I'd like you to try and draw a diagram of your
19 apartment and explain to the Court how you went about
20 going from your apartment.

21 I guess we will have to use the board.

22 If you can come over here. Just start with the
23 entrance of the door.

24 A (Witness complies.)

1 Q If you could explain as you're going.

2 Is that the entrance?

3 A This is the front door (indicating). This here
4 is the living (indicating).

5 Q And what are you drawing now?

6 A That's the balcony door (indicating.)

7 This is the room (indicating). This is the
8 bathroom (indicating). This is the kitchen (indicating).

9 Q Okay. So just stand there, if you can, just
10 stand there for a few minutes.

11 You testified earlier that you walked all the
12 way back to the right bedroom, correct?

13 A Um-hum.

14 Q And you turned left, correct?

15 A Um-hum.

16 THE COURT: You have to answer with a word,
17 please.

18 THE WITNESS: Yes.

19 BY MR. O'Mara:

20 Q How loud were you screaming your boyfriend's
21 name?

22 A Josh (indicating).

23 Q So you weren't really screaming it?

24 A No.

1 Q Where were you standing when you heard the front
2 door open?

3 A I was standing right here (indicating).

4 Q So you were in the middle of the two doorways,
5 one between the bathroom and the bedroom?

6 A Yes.

7 Q If you could describe the distance from the
8 front door to where you're standing in regards to where
9 you were standing at the board to somewhere in this
10 courtroom and the distance, please.

11 A From me to the -- to that (indicating).

12 Q To the bar?

13 A Yes, to the bar is where my front door would be.

14 Q Okay. You can go ahead and sit down now. Thank
15 you very much.

16 At the time that you claim that an individual
17 walked in the door why didn't you scream?

18 A I was scared, I didn't know what to do.

19 Q There was no weapon, correct?

20 A No.

21 Q You testified that he merely said -- the
22 individual merely said suck his dick, correct?

23 A Yes.

24 Q Did he say, "Suck my dick or something is going

1 to happen to you"?

2 A No.

3 Q So after that period of time that he said, "Suck
4 my dick," you walked from what appears to be at least 10
5 to 15 feet to him, correct?

6 A (Nods head.)

7 Q Did you try to avoid him?

8 THE COURT: Hold on, please. Is that a word?
9 You have to answer with a word, please.

10 THE WITNESS: Yes.

11 THE COURT: All right. Thank you.

12 MR. O'MARA: Thank you, Judge.

13 BY MR. O'MARA:

14 Q How long did that take?

15 A Couple of seconds.

16 Q Did you ever think about just running as fast as
17 you can to try to get through him?

18 A Yeah, I thought of a lot of things.

19 Q Why didn't you go as fast as you can to try to
20 get to the door?

21 A I didn't think I could. He was standing right
22 there.

23 Q When you come into your apartment complex from
24 the parking lot can you see your apartment complex?

1 A Yeah.

2 Q Can you see the front door?

3 A No.

4 Q Can you describe for the Court, from the parking
5 garage where someone would park, what they would have to
6 do to get to your door.

7 A You park, you walk up the stairs, and you walk
8 to the back of the hallway.

9 Q So you're apartment complex is on the other side
10 of --

11 A Yes.

12 Q -- of the parking lot. Okay. So there's no
13 zigzagging or going in between other apartment complexes?

14 A No.

15 Q At no time did you go into the bathroom and lock
16 the door?

17 A No.

18 Q Do you have locks on your bathroom door?

19 A Yeah, but it doesn't work.

20 Q Did you ever go into your bedroom?

21 A No.

22 Q Are there locks on that door?

23 A No.

24 Q You testified that Mr. Dunckley, after you

1 identified him, had a button for pants. Is that correct?

2 A Yeah, like all jeans, you know, button and then
3 a zipper.

4 Q So there was one button at the top and then a
5 zipper?

6 A Yes.

7 Q Okay. You also talked about this was not
8 consensual, correct?

9 A Correct.

10 Q But isn't it true that you actually bent down?

11 A Yes.

12 Q Did he force you down?

13 A No, but he demanded it.

14 Q How did he demand it?

15 A He told me to. He was in my apartment and told
16 me to.

17 Q Did he say, "Bend down"?

18 A No.

19 Q Did he say, "Get down on your knees"?

20 A No.

21 Q You testified that after you went down on him
22 you bit him, correct?

23 A Yes.

24 Q How many times did you bite him?

1 A Once.

2 Q Okay. Do you know if you broke the skin?

3 A No.

4 Q And after that how long did it take before his
5 erection actually subsided?

6 A A couple of seconds.

7 Q You testified today that you could not give a
8 description of the individual that night, correct?

9 A What was that?

10 Q I'm sorry. You testified this afternoon that
11 you could not give a description of the individual,
12 correct?

13 A I know what his face looks like, but I can't
14 really -- I just know he has brown hair and, you know --

15 Q Do you recall getting a report back from the
16 police about your blood alcohol?

17 A No.

18 Q Could you imagine that your blood alcohol was
19 .22 percent?

20 A Um-hum.

21 Q Do you think that could have skewed your
22 identification of an individual that night?

23 A No.

24 Q You testified that if you saw this person you

1 would recognize him, correct?

2 A That I would recognize him?

3 Q Yes.

4 A Yes.

5 Q But you can't give a description. And my
6 question to you: Are you just giving a description of
7 the individual that is sitting to my left or are you
8 actually 100 percent sure that this individual is the
9 person?

10 A Yes, I'm 100 percent sure. I picked him out in
11 a lineup.

12 Q What?

13 A I'm sorry.

14 Q Keep going?

15 (A) When Detective Broome called me to his office.

16 (Q) When did Detective Broome call you to his
17 office?

18 A It was about two weeks after it had happened.

19 Q How many individuals did the lineup include?

20 A It was -- it was, I think, six.

21 Q Were they all white males?

22 A Yeah.

23 Q Did they all have brown hair?

24 A Yeah.

1 Q When the police interviewed you that night did
2 they take any pictures of you?

3 A No.

4 Q Did they ask you about any bumps or bruises on
5 your head?

6 A They asked me if I was hit or anything.

7 Q And what did you tell them?

8 A No.

9 Q So now is it your testimony today that you were
10 actually hit?

11 A Yeah, I was, you know, smacked a little bit,
12 but --

13 Q You're giving a gesture of smacking right above
14 your eyes. Is that the gesture you're talking about?

15 A Yes.

16 Q Do you consider a smack and a hit different?

17 A Kind of, yeah.

18 MR. O'MARA: I have no further questions, Your
19 Honor.

20 THE COURT: Okay. Mr. Clifton, do you have any
21 redirect?

22 MR. CLIFTON: Just very little.

23 ///

24 ///

REDIRECT EXAMINATION

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BY MR. CLIFTON:

Q Jessica, we're just about done.

When he demanded that you suck his dick, and that's his words and that's a quote, and you put your head down toward his penis, did you insert his penis into your mouth?

A No, he did.

Q How did he do it?

A I just went down and he was holding it. And that's when I bit it.

Q Did he grab your head?

A No.

Q So he had a hold of his penis?

A Um-hum.

Q When you said you bit it, was your mouth around the head of the penis or on the side or on the shaft?

A The shaft.

Q Did your mouth go onto the penis?

A Yes.

Q When you bit, you said the erection went down, correct?

A Yes.

Q All right. Did you still try to keep biting or

1 did you just bite once and get out of there?

2 A I just bit once, but it shriveled up.

3 Q He lost his erection?

4 A Yes.

5 Q Was your intent to keep biting?

6 A I tried to, but he pulled away.

7 Q Okay. So as I understand it, correct me if I'm
8 wrong, he's demanding that you suck his penis and he was
9 placing his penis into your mouth or trying to?

10 A Yes.

11 Q By the way he was manipulating himself with you
12 there?

13 A Yes.

14 Q And rather than put your mouth over the head of
15 his penis onto the entire penis, you bit the side of it?

16 A No, I put my mouth over the head and bit the
17 shaft.

18 Q So the head of the penis was inside your mouth?

19 A Yes.

20 Q And your teeth were down far enough to bite the
21 shaft of the penis?

22 A Yes.

23 Q So your teeth marks or your teeth would have
24 made contact with the entirety of the penis, top and

1 bottom, correct?

2 A Yes.

3 MR. CLIFTON: Okay. Thank you. No further.

4 MR. O'MARA: Just a follow-up question, Your
5 Honor.

6

7

RECROSS-EXAMINATION

8 BY MR. O'MARA:

9 Q You previously have testified that when you were
10 slapped on your head above your eye it was because you
11 believed he said -- let me rephrase.

12 You said that he hit you on your head so that
13 you would stop, correct?

14 A He said, "Stop, get off," like that, yeah, as I
15 was biting him.

16 Q So he actually said "stop"?

17 A Yes.

18 Q Okay. Do you recall on the night how many times
19 you told the officer you bit him?

20 A No, I don't.

21 Q Would you be surprised if you told him --

22 MR. CLIFTON: Your Honor, this is beyond the
23 scope of the redirect.

24 MR. O'MARA: It's going to the bite of the

1 redirect.

2 THE COURT: Overruled. I'll allow it.

3 BY MR. O'MARA:

4 Q In your testimony or in your statement to the
5 police officers do you recall telling the police officers
6 that you bit him four times?

7 A No.

8 Q Do you recall that when you went in to talk to
9 Officer Broome do you recall him saying there were no
10 teeth marks on this individual?

11 A Yes.

12 Q Do you recall telling him that you know for sure
13 there would be teeth marks on that?

14 A I figured there should have been.

15 Q And why do you say that?

16 A Because I know I bit pretty hard.

17 MR. O'MARA: No more questions, Your Honor.

18 THE COURT: Well, thank you very much. You can
19 step down. I appreciate your testimony.

20 MR. CLIFTON: Your Honor, I know we have one
21 witness coming in from Yerington and two coming in from
22 the Nevada State Prison.

23 Would it be possible to check to see who is
24 presently here?

1 THE COURT: I was going to advise that
2 Mr. Molina was going to bring the in-custody person in.

3 MR. CLIFTON: I guess it doesn't matter which
4 order I put them on.

5 THE COURT: I'm not trying to compel you to do
6 anything in any particular order. Do you want to check
7 and see if there's a witness outside from Yerington?

8 MR. CLIFTON: No, I don't want to waste the
9 Court's time. I'll go ahead and call Michelle. She is
10 one of the witnesses in the holding cell. How do we go
11 about getting her in here?

12 THE BAILIFF: Mr. Clifton, do you care which one
13 is first?

14 MR. CLIFTON: Michelle.

15 THE COURT: Please raise your hand the best you
16 can. Other hand.

17 (Witness Sworn)

18 THE COURT: Thank you. Please be seated.

19

20 MICHELLE A.,
21 called as a witness by the plaintiff herein,
22 being first duly sworn, was examined
23 and testified as follows:

24

1 DIRECT EXAMINATION

2 BY MR. CLIFTON:

3 Q Good afternoon, ma'am. Can you tell us your
4 first name.

5 A Michelle.

6 Q Spelled M-I-C-H-E-L-E?

7 A E-L-L-E.

8 Q And your first initial of your last name?

9 A A.

10 Q Can you give us your date of birth, please.

11 A 10-13-87 -- or '86 sorry.

12 Q '86?

13 A Um-hum.

14 Q So that would make you almost 21?

15 A Yeah.

16 Q I want to direct your attention back to 1999,
17 going back quite a ways, so you would have been 12 and
18 turn 13 in that year. Is that correct?

19 A Yeah.

20 Q 12 up to October and then turning 13, correct?

21 A I didn't know them when I was 12.

22 Q Okay. Do you know a person named, Lura,
23 L-U-R-A?

24 A That's my best friend.

1 Q And her last name starts with an "S"?

2 A Yes.

3 Q When you knew her, and you say you didn't even
4 know them, when you say, "them," are you referring to
5 someone in the courtroom?

6 A Yeah.

7 Q Is it a he or a she?

8 A He.

9 Q Do you know his name?

10 A Yes.

11 Q What is it?

12 A Brendan.

13 Q Do you know his last name?

14 A Yes.

15 Q What is that?

16 A Dunckley.

17 Q When you say you didn't know them when you were
18 12 or 13, when you said "them," who are you referring to?
19 He and who else?

20 A Morgan.

21 Q Who is Morgan?

22 A His wife.

23 Q Still to this day?

24 A I'm not sure.

1 Q All right. Fair answer. When did you first
2 meet him?

3 A Probably when I was like 13, maybe 14.

4 Q So going into the year from 1999, October, into
5 the year 2000, and the year 2001, then?

6 A Correct.

7 Q Did you meet them through Lura?

8 A Well, me and Lura met them together the same
9 night.

10 Q How old was Lura at the time?

11 A We are only a couple months different. She
12 could have been the same age, maybe a couple months
13 younger than me.

14 Q That's good enough. And Morgan and the
15 defendant, which is Brendan Dunckley, were married at the
16 time you met them?

17 A No, I don't think so.

18 Q Girlfriend/boyfriend?

19 A Yes.

20 Q But they were together?

21 A Yes.

22 Q How did it come about that you met them; do you
23 remember?

24 A Not exactly. I think that more or less we

1 started talking on the phone, and then Morgan and Brendan
2 said that they would come get us. And they came and
3 picked us up over at Lura's mom's house at the time.

4 Q Were you the same age as Brendan or Morgan?

5 A No.

6 Q Were they older than you?

7 A Yes.

8 Q Why were you talking to them on the phone?

9 What's the relationship here? Is there any?

10 A No.

11 Q Were you or Lura related by blood, marriage,
12 anything to either one of these two?

13 A No.

14 Q How did you call them? How did you become
15 friends? Do you remember?

16 A I think that when I called, I think that I got
17 the wrong number at first. I don't exactly remember, but
18 this is what I'm thinking.

19 I think that I called and I was calling for
20 somebody else, and I happened to get Morgan on the phone.
21 I was talking to Morgan, and I thought it was somebody
22 else. And her and I just started talking. And we were
23 both pregnant at the time with their son Jacob, and I was
24 pregnant with my daughter.

1 Q How old is your son now?

2 A My son? I have a daughter. She's six.

3 Q Do you have a son?

4 A No, they have a son.

5 Q I see. They're son, your daughter. You were
6 both pregnant at the same time?

7 A Yes.

8 Q And your daughter is six?

9 A Six.

10 Q Six now. All right. So we're going back to
11 2001, so you would have been 13 or 14, like you said a
12 little bit ago --

13 A Yeah.

14 Q -- if you were pregnant with her. What's her
15 birthday?

16 A September 23, 2000. Mine's October 13th.

17 Q I'm just trying to figure out the dates here.

18 So the two of you were both pregnant, and you
19 were talking to basically a complete stranger when you
20 were talking to her on the phone at first, but you struck
21 up a conversation. You guys started talking, you had
22 some things in common?

23 A Right.

24 Q But she's older than you?

1 A Yeah.

2 Q So at some point she said that she'd come over
3 and pick you guys up, and you were going to go somewhere?

4 A Yeah, just to hang out.

5 Q She was with her boyfriend/husband whatever he
6 was at the time, and that was the defendant, correct?

7 A Right.

8 Q That's yes on both of those questions?

9 A Yes.

10 Q So the four of you kind of hung out together?

11 A Yes.

12 Q Lura was your best friend, but she wasn't
13 pregnant at the time, was she?

14 A No.

15 Q She was within a couple months of your age?

16 A Right.

17 Q So you wouldn't have turned 14 until October of
18 2000, correct?

19 A Yes.

20 Q All right.

21 A Because I had my daughter when I was 13, yeah.

22 Q Okay. So this all happened before you were 14,
23 because you had your daughter?

24 A When I met them, yes, it happened when I was 13.

1 Q And you had your daughter when you were 13?

2 A Yeah.

3 Q So you were pregnant with your daughter at the
4 time, so you couldn't have been any older than 13?

5 A Right.

6 Q And the four of you guys would hang out for
7 what, couple weeks, months, years? How long would you
8 say you were friends?

9 A For the longest time. Probably about two years
10 ago I started getting into my own thing, I guess.

11 Q How much older than you was Morgan and Brendan,
12 do you know?

13 A Maybe -- I don't remember, but it was quite a
14 bit, maybe like seven to ten, maybe, years.

15 Q Years older?

16 A Um-hum.

17 Q Each of them?

18 A Yes.

19 Q Was Brendan older than Morgan?

20 A To be honest with you, I think so, yes.

21 Q Okay. So they were adults, you were kind of --
22 you and Lura were kind of kids?

23 A Yes.

24 Q But the fact that you and Morgan were both

1 pregnant was something you had in common?

2 A Right.

3 Q I need to kind of cut to the chase here and ask
4 some pointed questions. Did there ever come a time you
5 were in the same bed as Morgan and Brendan?

6 A Yes.

7 Q Why or how was that coming about?

8 A Me and Morgan were best friends for, like, the
9 longest time, and it wasn't anything out of the ordinary
10 or anything like that for me, Morgan, and Brendan to be
11 in, like, the same bedroom or even in the same bed. It
12 was okay.

13 Q Did you have your own boyfriend or the father of
14 your child as a boyfriend or anything like that?

15 A No.

16 Q All right. So while you guys were together do
17 you remember any time where there was anything sexual
18 happening between you and Brendan?

19 A Yes.

20 Q Okay. Was Lura involved in that too or was she
21 in bed with you at the same time?

22 A No, Lura wasn't there.

23 Q And can you tell us what it is you remember?

24 A Me, Morgan and Brendan, we were laying down and

1 we just got done watching a movie, and Morgan fell asleep
2 before me and Brendan did. And me and Brendan, I guess,
3 kind of started fooling around or whatever.

4 When I asked him to stop he stopped, like,
5 touching me, and that was the end of it. We never really
6 had anything after that like that.

7 Q Was this before or after your daughter was born?

8 A After.

9 Q Do you remember how much after?

10 A Probably about six months, maybe.

11 Q Okay. And the date of your daughter's birth
12 again, I'm sorry?

13 A September 23rd, 2000.

14 Q Do you know if it ever happened before you
15 turned 14 that you were with Brendan?

16 A Do I know -- can you repeat that?

17 Q Do you know if anything sexual ever happened
18 when you were with Brendan before you turned 14?

19 A Nope, never.

20 Q It didn't or you don't remember?

21 A Never anything.

22 Q Was there any other instances other than the one
23 you just described?

24 A No.

1 Q Okay. Lura may think it happened earlier than
2 you turning 14. Why are you so sure it was after you
3 were 14?

4 A Because of my daughter's birthday and my birth
5 date. I just turned 14 on October 13th. And the dates,
6 I had my daughter when I was 13, and my birthday was when
7 I was 14.

8 Q Right, but you said your daughter was six months
9 old.

10 A I don't know the exact timing. That's my
11 guesstimation.

12 Q Okay. Your daughter's six months old, you're
13 still 13 --

14 A No, I was 14.

15 Q You had your daughter when you were 13?

16 A Yeah.

17 Q Then you turned 14 right after that?

18 A Yeah.

19 Q I see. So you were 14-and-a-half from your best
20 recollection of when this happened?

21 A I'm going to say yeah.

22 Q Okay. How about Lura, do you know if she had
23 any sexual relations at all with Brendan?

24 A As far as I knew, no.

1 Q Consensually or not or otherwise?

2 A None.

3 Q You don't know of any time he forced himself on
4 her?

5 A I remember coming home, probably maybe back in
6 2005, to my mom and dad's house, and there was a cop car
7 there asking me if I knew Brendan. And as far as I knew
8 I forgot, like kind of somewhat about them, because I
9 haven't been talking to them for a little while. I was
10 under a lot of drugs back then.

11 Q So this was in 2005, you were aware of some
12 situation or incident involving the police?

13 A Yes.

14 Q And that was involving Lura and Brendan?

15 A Yeah.

16 Q Going back to 1999, 2000, 2001, you're not aware
17 of any circumstances then?

18 A None.

19 Q Okay.

20 A They didn't really hang out that much as far as
21 I was concerned, because me and Morgan were, like,
22 inseparable for, like, the longest time. And it was just
23 her and I for, like forever, and Brendan would always be
24 at work. And I know that Lura wasn't coming around and

1 she was doing her own thing at that point in time.

2 Q Lura is about two or three months --

3 A Her birthday is in May and mine is in October.

4 Q So a few months, five months, older than you or
5 younger than you?

6 A Younger.

7 Q So she was born in 1987?

8 A Yeah.

9 Q And you first said you were born in 1987, and
10 then changed it to 1986. I'm wondering how you did that.

11 A I don't know why I mixed it up.

12 Q But which one is correct?

13 A '86.

14 Q Okay. All right.

15 MR. CLIFTON: I have no further questions, Your
16 Honor.

17 THE COURT: Okay. Mr. O'Mara.

18 MR. O'MARA: Yes, Your Honor.

19

20 CROSS-EXAMINATION

21 BY MR. O'MARA:

22 Q Michelle, my name is David O'Mara. I represent
23 Mr. Dunckley in this matter. If you can't hear me or you
24 can't understand me or any of my questions, please speak

1 up and I'll rephrase them as best as I can to help you
2 out.

3 You testified today that you first met Morgan,
4 Mr. Dunckley's wife or girlfriend at the time, and
5 Mr. Dunckley when you were pregnant, correct?

6 A Yeah.

7 Q How many months pregnant were you?

8 A It had to have been maybe seven, eight months,
9 maybe more, maybe a little bit less.

10 Q So if you gave birth to your child on September
11 23rd, 2000, then would it be correct to think that it
12 would be sometime in July or August of 2000 that you met
13 them?

14 A Yes, it would be.

15 Q So you didn't know Mr. Dunckley in 1999, at all?

16 A No.

17 Q And you're testifying today that he never
18 touched you inappropriately before you were of the age of
19 14?

20 A Right.

21 MR. O'MARA: I have no more questions, Your
22 Honor.

23 THE COURT: Okay. Mr. Clifton.

24 MR. CLIFTON: If I may have just a moment, Your

1 Honor.

2

3

REDIRECT EXAMINATION

4 BY MR. CLIFTON:

5 Q Do you remember being interviewed by Detective
6 Broome?

7 A Yeah.

8 Q Do you remember telling him that you were 12
9 when this happened with Brendan? Do you remember that?

10 A No.

11 Q Okay. When you were 12, he fondled your vagina
12 at night; do you remember saying that?

13 A No.

14 Q And he told you not to tell?

15 A I didn't say that. I know that I didn't say
16 that.

17 Q When you said you guys were fooling around and
18 went a little too far and told him to stop, what was it
19 he was touching?

20 A My vaginal area.

21 Q Inside or outside of the clothing?

22 A To tell you the truth, I don't really remember.
23 It could have been the inside and it could have been on
24 the outside of the clothing.

1 Q Was it with his hand, I take it?

2 A Yes.

3 Q Was there any kind of penetration?

4 A I don't think so. I don't believe so.

5 Q Was it fondling, rubbing?

6 A Yeah.

7 Q And you told him to stop and he did?

8 A Yes.

9 Q So the only issue left, I guess, is how old you
10 were at the time. And you don't recall saying you were
11 12, and you think now it was --

12 A I could have said that I was 12, but I wasn't
13 12. I could have said the years, and he could have
14 estimated it to me being 12 or something like that.

15 But I didn't meet him until I was pregnant. And
16 I got pregnant in '99, into 2000, on New Year's night. I
17 know that for a fact. So there's no way possible.

18 Q Did you tell him that you were born in 1987?
19 You think maybe the math was screwed up because of that?

20 A Maybe.

21 Q Why would you tell him you were born in 1987?

22 A To be honest with you, I've done a lot of drugs
23 in the past and --

24 Q And forgot your birthday?

1 A No, I didn't forget my birth date. But you guys
2 are making me nervous, to be honest with you guys.

3 Q I'm just kind of curious why the first thing I
4 asked you here today after your name was your date of
5 birth and you got it wrong. I'm just kind curious. I'm
6 just trying to find out.

7 A I don't have a good answer for that.

8 Q Well, thank you for being candid with us,
9 Michelle.

10 MR. CLIFTON: No further questions, Your Honor.

11 THE COURT: Mr. O'Mara.

12 MR. O'MARA: Just a few questions, Your Honor.

13

14 RE-CROSS-EXAMINATION

15 BY MR. O'MARA:

16 Q You just mentioned that you did a lot of drugs.
17 When did you begin your drug use?

18 A After I hung out with them.

19 Q Can you give me a date?

20 A No. Probably around maybe my 18th birthday. I
21 didn't even know them. I didn't hang around with them
22 around then.

23 Q And the District Attorney mentioned that you got
24 your date of birth wrong. When you first met

1 Mr. Dunckley, isn't it true that you told him you were 16
2 years old?

3 A Yes, I did.

4 Q Did he have any reason to believe that you
5 weren't 16 years old?

6 A No.

7 Q The District Attorney also brought up your
8 interview with Detective Broome. When did this occur?

9 A When I talked to the detective?

10 Q Correct.

11 A I don't know, like, April maybe.

12 Q April of this last year, 2007?

13 A Yeah.

14 Q So you've never reported any type of
15 inappropriate behavior?

16 A Never.

17 Q The police officer came to you?

18 A He called me. I was in prison, and he called my
19 case worker in prison.

20 Q Did he offer you a deal to come in here today
21 and testify?

22 A No, he just said to help Brendan get behind
23 bars.

24 Q Do you have some type of anger issue against

1 Mr. Dunckley?

2 A No, I don't.

3 MR. O'MARA: No other questions, Your Honor.

4 THE COURT: All right.

5 Thank you very much. You can step down. I
6 appreciate your testimony very much.

7 MR. CLIFTON: Your Honor, I know that on that
8 count, specifically Count IV, we have it alleged as the
9 entire year of 1999, but before I make any motions to
10 amend I want to wait to hear from Lura and put her on the
11 stand, just so Your Honor can kind of keep it in mind.

12 Next we might as well call Ashley.

13 MR. O'MARA: We will obviously object to any
14 motions, Your Honor.

15 MR. CLIFTON: That's fine. When I make the
16 motion, Your Honor, we'll cover that.

17 But Ashley, since we have her in the holding
18 cell, and then we can let the prisoners go back to the
19 Nevada State Prison.

20 THE COURT: Go ahead and raise your right hand
21 the best you can.

22 (Witness sworn.)

23 THE COURT: Thank you.

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ASHLEY V.,
called as a witness by the plaintiff herein,
being first duly sworn, was examined
and testified as follows:

DIRECT EXAMINATION

BY MR. CLIFTON:

Q Please tell us your first name.

A Ashley.

Q Spell it.

A A-S-H-L-E-Y.

Q And your first initial of your last name?

A V.

Q "V" as in Victor?

A Yes, sir.

Q Ashley, my name is Dave Clifton. I'm with the
District Attorney's office. We've never met, correct?

A Correct.

Q We've called you in here to testify on a case,
and you should have been subpoenaed and brought here from
the Nevada State Prison regarding a case involving a
Brendan Dunckley. Do you know that name?

A Yes, sir.

Q How would you know this person?

1 A I knew him when I was a younger girl.

2 Q What is your date of birth?

3 A 8-14-86.

4 Q So you're going to be 21?

5 A In August.

6 Q How did you know Mr. Dunckley; was there any
7 relationship blood-wise?

8 A No.

9 Q Was it just friendship?

10 A Yes.

11 Q Is he older or younger than you?

12 A Older.

13 Q How long would you say you've known him? Going
14 back to what age?

15 A 12.

16 Q What is it about being 12 or what is it about
17 that year, which would have been 1998, when you turned 12
18 that makes you think that's when you knew him?

19 A Me and my friend Michelle used to hang out all
20 the time at him and his wife's house.

21 Q Is Michelle the girl that just preceded you here
22 and testified?

23 A I think so.

24 Q I don't know if you two crossed in the hall

1 there or anything, but is she also a Nevada State Prison
2 inmate, to your knowledge?

3 A Yes.

4 Q Are you housed together?

5 A We're at the same camp.

6 Q She was friends with you since you were 12 or
7 even before that?

8 A Since, like, the beginning of middle school.

9 Q All right. Did you start middle school at 11 or
10 12 years old?

11 A Yeah, like 11.

12 Q Okay. How did you come to know Brendan
13 Dunckley?

14 A I don't remember how we met. I don't recall.

15 Q Do you remember Michelle having a child?

16 A Yes.

17 Q Did you also know a Lura, L-U-R-A, or still do?

18 A Yes.

19 Q Were all three of you friends?

20 A We all went to the same middle school.

21 Q When did Michelle get pregnant; do you remember
22 how old she was?

23 A I believe she was 13.

24 Q When she was 13, would that be middle school or

1 high school?

2 A Middle school.

3 Q Toward the end of the middle school years?

4 A Yeah.

5 Q You knew Mr. Dunckley before she was pregnant?

6 A Yes.

7 Q Before Michelle was pregnant?

8 A Yes.

9 Q You're sure of that?

10 A Yes.

11 Q Okay. Do you know Morgan?

12 A Yes.

13 Q What was her relationship to any of you or to
14 him?

15 A She was also our friend and his wife or his
16 fiancée, I believe.

17 Q All right. When you first met him?

18 A I think so.

19 Q And they eventually got married?

20 A Yes.

21 Q To your knowledge, did you ever stay at their
22 house?

23 A Yes.

24 Q Do you know when that first occurred, what year

1 you were in school or anything?

2 A No.

3 Q Do you remember any time that Brendan Dunckley
4 touched you in a sexual manner?

5 A Yes.

6 Q And this is while he had a girlfriend Morgan,
7 fiancée Morgan or a wife named Morgan?

8 A Yes. I don't recall if they were married yet.

9 Q Right, but what I'm saying is the whole time you
10 knew him, he either had a girlfriend, fiancée or a wife?

11 A Yes.

12 Q Same girl?

13 A Yes.

14 Q And during this time he touched you in some way?

15 A Yes.

16 Q Was it ever or did it start out consensually?

17 A Yes. I never told him no.

18 Q Okay: So it was always consensual?

19 I need a yes or no out loud.

20 A Yes.

21 THE COURT: We might explain it. She's
22 transcribing what we say, so she can only take down
23 words. It's hard to do gestures or nods.

24 In normal conversations you can use those

1 expressions, but she really needs a word.

2 I guess I was a little negligent. Maybe I
3 should have explained this better to the prior witnesses.

4 If you could answer with a word, I would really
5 appreciate it.

6 THE WITNESS: Yes, sir.

7 MR. CLIFTON: Thank you, Your Honor.

8 BY MR. CLIFTON:

9 Q Tell us where you were and to the best of your
10 recollection the date or the time period that it
11 happened.

12 A I can't give a date. I don't really remember.
13 I remember one time we were in the back of a car. He was
14 getting ready to drop me off at my mom and dad's house.

15 Q Was there anyone else in the car?

16 A No.

17 Q Just you and him?

18 A Yes.

19 Q He was driving. You were in which seat?

20 A Passenger.

21 Q What kind of car?

22 A Taurus, Ford Taurus.

23 Q Why was he dropping you off there?

24 A Because I had spent the night at his house.

1 Q With his girlfriend, fiancée or wife?

2 A Yes.

3 Q Were there any other people at the house?

4 A I don't remember.

5 Q Were there times when you Michelle and/or Lura
6 would stay over at the same time?

7 A Yes.

8 Q Were there times you would stay over there
9 without them?

10 A I don't remember.

11 Q And he is younger or older than you?

12 A He is older.

13 Q How much?

14 A I don't know.

15 Q Could it be ten years?

16 A Could be.

17 Q Was this the first time in the car that the two
18 of you had any romantic involvement, sexual involvement
19 at all?

20 A That was the first and only time we had
21 intercourse.

22 Q Intercourse. Were there times where it might
23 have started before the car situation, like at the
24 Atlantis?

1 A Yeah.

2 Q Let's start with the first one. When's the
3 first time you kissed him, if you can recall?

4 A I don't recall the first time.

5 Q Okay. How old were you, would you say, when any
6 of these happened?

7 A Probably 12.

8 Q In middle school?

9 A Yes.

10 Q And is that a guess or a pretty good
11 recollection of some of the things that were going on in
12 school that you --

13 A Pretty good recollection.

14 Q Can you attribute it to things; either your
15 birthday or things that happened in school or things you
16 were doing that gives you an idea of the date?

17 A Hum-um.

18 Q Which was the first one, the Atlantis or the car
19 or what?

20 A At the Atlantis.

21 Q Was there anything before that?

22 A No.

23 Q At the Atlantis in the elevator?

24 A Yes.

1 Q Who else was in the elevator?

2 A Just him and I.

3 Q Tell us what happened.

4 A I had mentioned that I had never been in the
5 elevator, and we went up in the elevator together. And
6 as we were coming back down he put his hands in my pants,
7 and -- you know. I never said no, though.

8 Q Okay. I'm not worried so much about that right
9 now. I'm just trying to get a feeling about what
10 happened, and then we'll talk about how it happened.

11 A Okay.

12 Q Was this the Atlantis here in Reno, Washoe
13 County, Nevada?

14 A Yes.

15 Q So you're going down the elevator, to the best
16 of your recollection?

17 A We had gone up, and then we were on our way back
18 down.

19 Q The elevator is going down, and just the two of
20 you were in there, and he puts his hand down the front of
21 your pants?

22 A Yes.

23 Q The front of your pants or the back?

24 A The front.

1 Q Vaginal area?

2 A Yes.

3 Q Under your panties or over or were you wearing
4 any?

5 A Under.

6 Q So under everything. Skin to skin?

7 A Yes.

8 Q When he did that were you kissing?

9 A No.

10 Q Did he just do it like right when the door shut
11 or did he just do it as you were going down?

12 A As we were going down.

13 Q You didn't see it coming? You didn't know he
14 was going to do it?

15 A No.

16 Q I know you're saying you didn't voice an
17 objection and you're maintaining it was consensual, but
18 he just reached over and put his hand down your pants?

19 A Yes.

20 Q Didn't say he was going to do it, didn't ask if
21 he could do it; anything like that?

22 A No.

23 Q When he does that does he make any penetration
24 to your vagina?

1 A No.

2 Q Does he rub?

3 A Yes.

4 Q With his hand?

5 A Yes.

6 Q And you don't tell him to stop?

7 A No.

8 Q And you believe you were in 7th grade at the
9 time?

10 A 8th grade.

11 Q And you were 12 or 13 now?

12 A I was 12.

13 Q But definitely less than 14?

14 A Yes.

15 Q You turned 12 on August 14, 1998, so it would
16 have been within how much time of that, would you say?

17 A I don't know.

18 Q Within a year?

19 A I'm sorry, I don't understand what you're asking
20 me.

21 Q If we start at August 14, 1986, when you were
22 born, and you turn 12 on August 14, 1998, would it have
23 been within that next year that this happened, while you
24 were 12?

1 A Yeah.

2 Q So before August 14th of 1999, it happened in
3 that year, correct?

4 A Yes.

5 Q Why were you in the Atlantis elevator without
6 Morgan or the two of you together?

7 A I had just made a statement that I've never been
8 in there. It was him, I, Michelle, and Morgan, and we
9 were all at the Atlantis. I don't remember why we were
10 there and what we were doing.

11 Q What happened to Lura and Michelle?

12 A I don't think Lura was there.

13 Q Michelle, what happened to her?

14 A Her and Morgan stayed downstairs while we went
15 in the elevator.

16 Q So Morgan wouldn't have known, you didn't tell
17 her?

18 A No.

19 Q Brendan didn't tell her?

20 A No.

21 Q Did anything else happen in the elevator?

22 A No.

23 Q Just put his hands down your pants and fondled
24 or rubbed, and you get down and the elevator opens, and

1 that was the end of it?

2 A Yes.

3 Q And nobody tells anybody what happened?

4 A No.

5 Q Going now to this next time where he drops you
6 off at your parents. That's off Longley Lane, south
7 Reno?

8 A Yes, by Mira Loma.

9 Q In the apartments there or in a house?

10 A It's apartments.

11 Q He drops you off, just the two of you in the
12 car. What happens there?

13 A We parked at the cul-de-sac before we went into
14 the apartments.

15 Q I see.

16 A And we both got into the back.

17 Q Was it at night?

18 A No, it was in the morning.

19 Q Was it dark or light out?

20 A Light.

21 Q How old were you now?

22 A I think about the same age.

23 Q So between August 14, 1998, and August 14, 1999?

24 A Yes..

1 Q So your 12 years old, to the best of your
2 knowledge?

3 A Yes.

4 Q Michelle hasn't had her baby yet?

5 A Are you asking me?

6 Q Yes.

7 A No.

8 Q She has not had her baby yet; is that a correct
9 statement?

10 (A) I don't believe so. I can't really remember too
11 well.

12 Q Okay. Are you older than Michelle or younger?

13 A I'm older.

14 Q All right. And what happened in the back of the
15 car?

16 A We had intercourse.

17 Q But this was not against your will is your
18 testimony, correct?

19 A Correct.

20 Q Okay. And that's the only time you two had
21 intercourse, correct?

22 A Correct.

23 Q And nobody told Morgan, I take it?

24 A No.

1 Q Was there any other times that the two of you
2 had had any type of sexual relations at all?

3 A No.

4 Q Would you recognize him if you saw him?

5 A Yes.

6 Q Is he here in the courtroom?

7 A Yes.

8 Q Where in relation to me?

9 A Over there (indicating.) Where is he?

10 Q Yes, in relation to me. My right, my left,
11 front --

12 A To your left.

13 Q Left. Person next to me or the one over from
14 that?

15 A One over from that.

16 MR. CLIFTON: Your Honor, if the record could
17 reflect identification of defendant Dunckley again.

18 THE COURT: The record will so reflect.

19 MR. CLIFTON: Thank you.

20 No further questions.

21 THE COURT: Mr. O'Mara.

22 MR. O'MARA: Thank you.

23 ///

24 ///

CROSS-EXAMINATION

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BY MR. O'MARA:

Q Good afternoon, Ashley. My name is David O'Mara. I'm Mr. Dunckley's attorney. I'm going to ask you a bunch of questions today. If you can't hear me or don't understand the question, please let me know. I'll try to speak up or at least rephrase my questions so we can get a proper record.

A Okay.

Q You testified today that you were housed at the same camp as Michelle; is that correct?

A Correct.

Q How long have you been housed at the same camp?

A Only for about two weeks.

Q Have you discussed this case with Michelle in that two-week period?

A No.

Q Have you been detained with Michelle recently?

A I don't understand what you're asking me.

Q How long have you been in prison?

A Since November.

Q November 2000?

A No.

Q November 2007, I'm sorry.

1 A 2006.

2 Q Any time between November 2006, to today's date
3 besides the two weeks, were you housed with Michelle?

4 A No.

5 Q You testified that you don't remember how you
6 met Mr. Dunckley; is that correct?

7 A Correct.

8 Q Would it be fair to say that you and Michelle
9 met Mr. Dunckley at the same time?

10 A I don't remember.

11 Q Would it be plausible --

12 A Yeah.

13 Q -- in that you both met them at the same time?

14 A Yes.

15 Q You testified that you, Lura, and Michelle all
16 went to the same school; is that correct?

17 A Correct.

18 Q What school did you go to?

19 A Dilworth Middle School.

20 Q Have you kept in contact with this Lura?

21 A I haven't, no.

22 Q When was the last time you had contact with
23 Lura?

24 A I think I was maybe about 14.

1 Q Did you have contact with Lura at the time you
2 claim these incidents happened?

3 A I don't understand. I'm sorry.

4 Q Did you have contact with Lura during the time
5 when these incidents happened?

6 A Like were we all together?

7 Q Correct.

8 A Not at the time, but those are the days we were
9 still hanging out. I don't understand.

10 Q So you were still hanging out with Lura at the
11 time you claim these incidents happened?

12 A Yes.

13 Q Going back to the time period in which you claim
14 that these events happened; you cannot give us a specific
15 date, correct?

16 A Correct.

17 Q Can you give us a specific month?

18 A No.

19 Q During your elevator ride, how far up did you go
20 on the elevator?

21 A I don't know specifically how far up we had
22 gone.

23 Q Do you remember which elevator you went to?

24 A The only thing I remember is that it was the one

1 that was all glass that you can see through.

2 Q So if I asked you to go to the board and
3 diagram --

4 A I couldn't.

5 Q You couldn't do it. How long did the elevator
6 ride last?

7 A Not more than a couple minutes.

8 Q Okay. And in these dates you claim that these
9 incidents happened between 1998 and 1999, correct?

10 A Correct.

11 Q How sure are you of those dates?

12 A Pretty sure.

13 Q Can you give me a percentage; 100 percent sure,
14 would it be 75?

15 A Like, maybe 80 percent.

16 Q And at this time that these claimed incidents
17 occurred was Michelle pregnant?

18 A Not that I recall.

19 Q Could she have already had the baby?

20 A No.

21 Q If you were told Michelle earlier today claimed
22 that the first time she met Mr. Dunckley was when she was
23 pregnant, would that be a true statement?

24 A I don't know. I don't recall.

1 Q Michelle testified earlier that she would have
2 met Mr. Dunckley for the first time seven or eight months
3 while she was pregnant. Do you recall that as being
4 correct?

5 A No.

6 Q Do you know the date of birth of her child?

7 A No.

8 Q Do you know the year of the birth of her child?

9 A I think it's '99 -- I'm not exactly sure -- or
10 2000.

11 Q What were you wearing on the day which you took
12 the elevator ride?

13 A I don't recall.

14 Q Were you wearing a skirt?

15 A No.

16 Q Were you wearing a blouse?

17 A I don't know exactly what I was wearing.

18 Q Do you recall if you had buttons?

19 A No.

20 Q A zipper?

21 A (Shakes head.)

22 Q Were they baggie pants?

23 A I really don't remember.

24 Q So you don't know if they were tight?

1 A No.

2 Q You testified that you were driven home in a
3 Ford Taurus the first time that an incident occurred.

4 A Yes.

5 Q Was that Mr. Dunckley's Ford Taurus?

6 A I don't know exactly whose it was.

7 Q Could you describe what the Ford Taurus looked
8 like?

9 (A) I think it was blue, but I can't recall.

10 Q You testified today that Michelle was at the
11 Atlantis, correct?

12 A Yes.

13 Q So if Michelle testified that she had not met
14 Brendan before 2000, do you think you may be incorrect on
15 the dates?

16 A No.

17 Q So it's either you're right and she's wrong or
18 she's right and your wrong?

19 MR. CLIFTON: Objection, Your Honor. That's
20 something I think goes beyond the scope of what you're
21 allowed to ask one witness about what another witness is
22 correct or wrong on or lying about.

23 That's new Nevada Supreme Court case law.

24 MR. O'MARA: I'm unaware of the case law.

1 MR. CLIFTON: You can't ask one witness if
2 another witness is lying, and I think that's what he's
3 getting at.

4 THE COURT: Well, I think there's a discrepancy
5 in the testimony. To the extent he's trying to say
6 someone is lying, I don't know if that is where he's
7 headed.

8 I'll ask you to rephrase the question.

9 BY MR. O'MARA:

10 Q I'm trying to figure out the dates in which this
11 occurred.

12 If an individual told you they had met this
13 person in 2000, would they be correct?

14 A Yeah. I don't know. All I know is that when I
15 met him I was, like, 12 years old.

16 Q But you're not sure?

17 A Of what?

18 Q When you met him?

19 A I'm not sure of how I met him.

20 Q But you're sure of how you met him?

21 A I'm not sure how I met him. I'm sure of how old
22 I was when I met him.

23 Q So if someone says you met him for the first
24 time in 2000, they would be incorrect?

1 A Yes.

2 Q When did you first notify the police department
3 in regard to this incident?

4 A I never did.

5 Q How did this incident come about?

6 A What incident? Why I'm here today?

7 Q Correct.

8 A I got a call while I was in camp incarcerated, I
9 guess, pertaining to another case that's going on or
10 whatever.

11 Q And who contacted you?

12 A A Detective Tom Broome, I believe.

13 Q And what did he tell you?

14 A He just asked me some questions about what I
15 could remember or if I could remember anything. Kind of
16 like the same questions you guys are asking me now.

17 Q Was this at the camp?

18 A Yes, it was a telephone call.

19 Q So he was not at the camp?

20 A No.

21 Q Do you know if this conversation was recorded?

22 A It was recorded.

23 Q When you first met Mr. Dunckley did you tell him
24 that you were 16 years old?

1 A I don't think so.

2 Q When you talked about getting in a car when
3 going to Longley Lane and Mira Loma apartments where
4 another incident occurred, do you know what type of car
5 that was?

6 A That I got into?

7 Q Yes.

8 A I'm almost positive it was a Ford Taurus.

9 Q It was the same blue Taurus?

10 A It was either silver or blue. I can't remember.

11 Q You testified that you had intercourse with
12 Mr. Dunckley. Can you explain what occurred in the back
13 of this vehicle?

14 A We got into the back seat and he set in the
15 back. He pulled down his pants and he put me on top of
16 him and helped me pretty much, helped me have sex with
17 him.

18 Q Was this your first time having sex?

19 A No.

20 Q Did you ever tell him that this wasn't your
21 first time?

22 A Did I ever tell him that it was?

23 Q That it wasn't your first time?

24 A No.

1 Q Did you notify the police department that you
2 had sexual intercourse with Mr. Dunckley?

3 A No.

4 Q Did this incident come up only when Detective
5 Broome called you?

6 A Yes.

7 MR. O'MARA: I have no other questions, Your
8 Honor.

9 THE COURT: Mr. Clifton, any redirect?

10 MR. CLIFTON: I think just one question.

11

12

REDIRECT EXAMINATION

13 BY MR. CLIFTON:

14 Q Ashley, I'm sorry, but we have to make this very
15 specific.

16 In the back seat of the car when you were on top
17 of him, you said he helped you -- and you called it --
18 have sex, have intercourse. Are we talking his penis in
19 your vagina?

20 A Yes.

21 Q When you say he helped you, does that mean he
22 was able to insert his penis in your vagina?

23 A He was holding my hips and guiding me.

24 Q Through the act of sexual intercourse?

1 A Yes.

2 MR. CLIFTON: Thank you. No further.

3 MR. O'MARA: I don't have any other questions,
4 Your Honor.

5 THE COURT: All right. Thank you very much.
6 You can step down. I appreciate your testimony.

7 MR. CLIFTON: Your Honor, if I may, a couple
8 amendments now to make, so we don't get them confused
9 with later possible amendments.

10 On Count I, II, and III, you can see that the
11 charges are charged alternately. And to be consistent
12 with her date of birth, which is what I tried to
13 concentrate on, focus on with her testimony, I would move
14 to change the dates on all three of these counts to the
15 14th day of August 1998, which is when she turned 12, and
16 I'd like to go to the 14th day of August 2000, rather
17 than 1999, which is when she turned 14.

18 And, Your Honor, I'd like to make it the 13th
19 day rather than the 14th day on the second one.

20 THE COURT: You're at line 16?

21 MR. CLIFTON: Yeah. So it would be the 14th day
22 of August 1998.

23 THE COURT: 13th or 14?

24 MR. CLIFTON: This one is the 14th.

1 THE COURT: The 14th day of August.

2 MR. CLIFTON: August 1998.

3 THE COURT: So January to August on line 17?

4 MR. CLIFTON: Yes. And then it should read,

5 "And the 13th day of August 2000." So between those two
6 dates, 14th day of August 1998, to the 13th day of August
7 2000, which would be the day before she turned 14.

8 And that would be consistent with the lewdness
9 charge, which is the alternative Count II.

10 MR. O'MARA: Your Honor, is the District
11 Attorney moving to amend this?

12 MR. CLIFTON: Yes, but I'm not quite done. I'm
13 moving to amend all three.

14 THE COURT: He's moving to amend the complaint.

15 MR. CLIFTON: 173.095 --

16 THE COURT: Mr. Clifton, just a minute. He's
17 moving to amend the complaint at line 16 on Page 1,
18 striking the word first or the letters, "1st through the
19 14th." And then it says, "day of," and then on line 17
20 he's changing January to August. And then he's changing
21 the word 31st to 13th. And then December he's changing
22 to August, and he's changing the year from 1998 to 2000.

23 MR. CLIFTON: Correct.

24 MR. O'MARA: We obviously object to this, Your

1 Honor. This complaint is completely vague and doesn't
2 give any notice to Mr. Dunckley as to what the charges
3 are he's being charged with. They can't come back out
4 and say that within a 10-year period of time this
5 incident happened. There has to be a standard of notice
6 in the complaint that allows Mr. Dunckley to defend
7 himself.

8 This is so far out, he doesn't have the proper
9 notice to defend himself.

10 MR. CLIFTON: And NRS 173.095 allows, with leave
11 of Court, for the State to amend a complaint, information
12 or indictment -- a complaint or information I should
13 say -- up until the time of verdict.

14 We have had many cases where an amendment is
15 made to a date, even at trial, based upon the evidence.
16 To conform to the evidence, Your Honor --

17 THE COURT: Okay. Okay. I'm going to overrule
18 the objection.

19 MR. CLIFTON: Thank you.

20 Lastly, just for the record, I wanted to mention
21 that we are dealing with a child here when this happened.
22 So the courts are much more lenient with that.

23 With respect to Count II, the dates would be the
24 same on lines 4 and 5, the same changes that we just

1 made. That would be the State's motion.

2 In addition, line 8 --

3 THE COURT: Just a minute. Give me just a
4 minute. I have to write very carefully.

5 All right. Line 14, I've changed the word 1st
6 to 14th. Line 5, I've changed January to August, 31st to
7 13th, and December to August, and the year 1998 to 2000.

8 MR. CLIFTON: And additionally, Your Honor, on
9 line 8, it has Ashley's birth date incorrect. It should
10 be August 14th, not March 14th of 1986.

11 So I'd make the amendment to change March to
12 August.

13 THE COURT: Do you want to do that also on Count
14 I at line 20?

15 MR. CLIFTON: Oh, I didn't even realize we had
16 it on Count I. Yes. Thank you.

17 THE COURT: Then on Page 2 at line 21, same
18 amendments?

19 MR. CLIFTON: Yes. And line 26 for her birth
20 date.

21 THE COURT: Okay. I have made those amendments.

22 MR. CLIFTON: On Page 3, Your Honor, at the very
23 top on line 2, the fifth word is "at." If we could just
24 strike that word so that it reads, "Ashley V., in a

1 parking lot."

2 THE COURT: All right. I've stricken the word
3 "at."

4 MR. CLIFTON: And that's all I have based upon
5 her testimony, Your Honor. And if there's no objection
6 is that "at" being deleted, I take it?

7 MR. O'MARA: I don't have an objection to the
8 "at," but I still maintain my objection to the others.

9 THE COURT: So noted. Thank you.

10 MR. CLIFTON: I would like to call Tom Broome to
11 the stand, please.

12 THE COURT: Good afternoon. There's a door
13 handle that will let you into the witness stand there.
14 When you step in you may feel a little movement, but it's
15 a leveling device that works by itself.

16 (Witness Sworn)

17 TOM KEITH BROOME,
18 called as a witness by the plaintiff herein,
19 being first duly sworn, was examined
20 and testified as follows:

21
22 DIRECT EXAMINATION

23 BY MR. CLIFTON:

24 Q Please state your name.

1 A Tom Keith Broome.

2 Q Spell your last.

3 A B-R-O-O-M-E.

4 Q Your occupation, please.

5 A I'm a detective with the sex crimes unit for the
6 Reno Police Department.

7 Q How long have you been with Reno Police?

8 A Just short of 27 years.

9 Q How long as a detective?

10 A In this particular unit about seven-and-a-half
11 years.

12 Q How about total years?

13 A About half my career.

14 Q Okay. And in this particular unit did you have
15 occasion to become involved in the investigation of a
16 Brendan Dunckley, D-U-N-C-K-L-E-Y?

17 A Yes, sir, I did.

18 Q I want to direct your attention -- let's start
19 with the most recent incident of March 10th, 2007,
20 involving a Jessica H. Are you familiar with this
21 investigation?

22 A Yes, sir.

23 Q Did you know Mr. Dunckley even before this
24 investigation based upon other prior possible

1 investigations?

2 A Yes, sir, I did.

3 Q All right. In this one, with Jessica H., when
4 were you first called into it?

5 On March 10th, in other words what was happening
6 when you got involved?

7 A The patrol sergeant called me. We have two
8 on-call sex crimes detectives every week. And I was the
9 primary on-call detective. So we usually get calls
10 either giving us a heads up or asking advice or for
11 whatever reason, we decide whether or not we come out and
12 start an investigation right then or take a look at it at
13 a later time.

14 Q Well, this happened in the evening hours of
15 March 10th. Would it be safe to say you got involved on
16 that date; do you remember?

17 A Sure.

18 Q Did you have occasion to see Jessica at the
19 scene of her apartment?

20 A No, sir.

21 Q Did you have occasion to see the defendant any
22 time that night?

23 A No, sir.

24 Q Did you get briefed by the police officers,

1 patrol officers, on what she claimed had occurred?

2 A I did.

3 Q Let me just jump right ahead to -- well, let's
4 start with her, even before we get to his interviews.

5 You did have occasion at some point to interview
6 her, correct?

7 A I did.

8 Q Did she explain what happened at her apartment
9 that night?

10 A Yes, she did.

11 Q Did she indicate in any way, shape or form that
12 it was consensual or there was any consensual sexual
13 activity between her and the defendant?

14 A No, sir.

15 Q Is that "no"?

16 A No.

17 Q And the defendant I'm referring to is
18 Mr. Dunckley, you're aware of that?

19 A Yes, sir.

20 Q Did she indicate she knew him from any past
21 occasions?

22 A No, she said she didn't.

23 Q Did she indicate that she believed she had
24 bitten his penis?

1 A She said that, yes, sir.

2 Q Okay. When was it, would you say, that you had
3 occasion to interview him in relation to the time of the
4 event?

5 A About 10 days later.

6 Q Do you know his date of birth?

7 A I believe it's July 4th of 1976.

8 Q So he'll be 31 in two days?

9 A If I'm correct, yes, sir.

10 Q Okay. Are you familiar with Michelle, Lura,
11 Ashley, the names of some of these people in
12 Mr. Dunckley's life?

13 A I am.

14 Q And they're all significantly younger than him,
15 approximately ten years?

16 A Yes.

17 Q Okay. On this case, let's say approximately
18 March 20th, that's based on your recollection when you
19 interviewed him, was it at his home, at the station, at
20 his work or what?

21 A My first interview with him was at his home on
22 the 20th.

23 Q Was it there or was it over the phone?

24 A It was there in person.

1 Q Was he consensual to being interviewed?

2 A Yes.

3 Q Did you indicate to him what this interview was
4 about?

5 A I did.

6 Q And the allegation that was being made by
7 Jessica?

8 A Yes, sir.

9 Q Go ahead and, I guess, just jump to it and tell
10 us what his first explanation was as far as what occurred
11 that night with her.

12 A His first explanation was, as he originally
13 reported, that it was -- that there was no sex act of any
14 kind.

15 Q When you say when he first reported, you're
16 talking about the patrol officers on scene that night?

17 A That's correct.

18 Q And that was because she had chased him or given
19 chase to him outside of her apartment, two people had
20 tackled him or jumped him?

21 A He was detained, yes, sir.

22 Q The police came and he was still there?

23 A Yes.

24 Q But no arrest was made?

1 A Yes.

2 Q She had been drinking, that was clear?

3 A Yes.

4 Q You know what he has told the police, you'd been
5 briefed on that, correct?

6 A Yes.

7 Q And he gives a similar statement now to you?

8 A Yes.

9 Q In this first statement he claims there was no
10 sex act at all?

11 A That's correct.

12 Q Did he indicate why he happened to be at her
13 apartment?

14 A That he was just trying to help her. He'd seen
15 her staggering down the road. He was just trying to make
16 sure she got home okay.

17 Q He was not in custody with you even on this
18 interview, correct?

19 A That's correct.

20 Q At this time you made this clear to him?

21 A Sure. I was in his home and he invited me in.

22 Q And he was not arrested after the interview on
23 that date?

24 A That's correct.

1 Q So he was free to stop the interview at any
2 time?

3 A Sure.

4 Q He indicated no sexual act whatsoever. Did he
5 indicate he had to help her in any way, shape or form?

6 A Yes.

7 Q To do what or why?

8 A Help her up the stairs into her apartment, and
9 that she had passed out and had fallen down, and he was
10 rendering medical assistance to her.

11 Q Did that include rubbing her chest? He called
12 it sternum, I should be fair.

13 A That's correct.

14 Q Rubbing her sternum?

15 A Yes, sir.

16 Q Did he indicate that she came to?

17 A He did.

18 Q And then she passed out again or went
19 unconscious seemingly again?

20 A That's correct.

21 Q Then he had to rub her chest back to
22 consciousness again?

23 A I'm not sure. There was two chest rubs, but she
24 did wake up.

1 Q Woke up a second time, and then what happened?

2 A She just went crazy -- according to him -- that
3 she just went crazy and started screaming at him and
4 started chasing him down the stairs. Said that "you
5 raped me."

6 Q Anything about that interview that's noteworthy
7 or that we need to cover?

8 A We had started in his living room. And I told
9 him that -- I asked him if he remembered that we took
10 swabs of his penis that night, and he said he did. He
11 indicated that he was very uncomfortable talking there,
12 because his wife was just in the other room. I asked him
13 if he wanted to go out on the front steps. He said yeah,
14 so we did.

15 Walked out on the front steps, at that point is
16 when he told me that everything was kind of the same,
17 except that when she woke up she unzipped his pants, took
18 his penis out, put it in her mouth before he knew what
19 was happening.

20 Q And this was after you told him about some type
21 of DNA evidence?

22 A I reminded him that we had swabbed his penis and
23 he was fully aware of that. That happened -- the initial
24 patrol guys did that.

1 Q Did he say anything about why he didn't say
2 anything of this to the police, because his wife wasn't
3 there at that time, right, on March 10th?

4 A She might have been in the area.

5 Q Did he indicate why he didn't tell the police
6 the correct version, the truth, what he's saying now is
7 the truth?

8 A He said several times it was a bad judgment
9 call. I don't believe he wanted his wife to know.

10 Q But he admitted he lied to the patrol officers?

11 A Yes.

12 Q And he admitted he lied to you the first time in
13 giving you the events?

14 A It was clear he lied to me, because I was the
15 one there that he had lied to.

16 Q So now he's saying that in her state of
17 intoxication and semiconsciousness she unzips his pants,
18 pulls his penis out, and puts it in her mouth?

19 A Yes, sir.

20 Q You didn't arrest him though, correct?

21 A I did not.

22 Q You went back to the station?

23 A I asked him if he would meet me the following
24 day for an interview in our office, again. And I

1 happened to be on call that week and was on my way to
2 another sexual assault.

3 Q And did there come a point in time when he met
4 with you?

5 A I met with him at about 10:00 o'clock the
6 following day at the sex crimes office.

7 Q Did he drive himself there?

8 A He did.

9 Q Did you make it clear he was not in custody?

10 A I did.

11 Q Did you make it clear he was free to leave at
12 any time?

13 A Yes, sir.

14 Q Were any of these interviews taped?

15 A All of them were.

16 Q Audio? Visual?

17 (A) The ones in the office are audio and video, the
18 one at his house was just audio.

19 Q On this audio and videotape in your office did
20 he give another version of events?

21 A It was pretty similar to what we had talked
22 about the day before.

23 Q Do you remember at any time during these two
24 interviews him saying that she -- the reason that the DNA

1 or the penile swab might show positive had something to
2 do with her hand down his pants? Not oral copulation,
3 but her hand down his pants?

4 A He did say that at some point, yes, sir. I'm
5 not sure if that was in the initial interview or the
6 other one. I reminded him we were talking about saliva,
7 we were not talking about any other sort of transfer of
8 DNA but saliva.

9 Q That's what I'm referring to. You told him
10 about a saliva test that either did or could come out
11 positive regarding the victim's saliva on his penis; is
12 that correct?

13 A Yes, sir.

14 Q And his answer was, "Well that could be because
15 she put her hand down my pants," correct?

16 A Correct.

17 Q Then you reminded him what?

18 A That we were talking specifically about her
19 saliva on his penis.

20 Q So that couldn't be explained by her hand, then,
21 correct?

22 A Yes, sir.

23 Q Is that what you were getting at?

24 A Yes.

1 Q So we have no sex, her hand she forcibly put
2 down his pants, and thirdly she pulled out his penis and
3 put it in her mouth. Those three different scenarios?

4 A And kind of an addition to that one: When he
5 came to the office he said that when she woke up she
6 wanted to thank him for helping her up the stairs.

7 So that was in addition to the interview from
8 the day before that that's why she did that.

9 Q Why she did --

10 A Why she put his penis in her mouth was to thank
11 him.

12 Q The oral copulation?

13 A Correct.

14 Q Was the arrest of him made at that time?

15 A He was arrested at the end of that interview,
16 yes, sir.

17 Q For?

18 A Sexual assault.

19 Q On?

20 A On Jessica H.

21 Q And this was at Sky Mountain, I believe the
22 apartments off --

23 A 1670 Sky Mountain, I believe.

24 Q Good enough. So that was the March 10th, 2007,

1 incident. Can you explain to the judge how you connected
2 some of these previous cases to Mr. Dunckley?

3 A Well, as we talked about before, I was aware of
4 Mr. Dunckley from a previous investigation in 2005. Now,
5 when I got called the night of March 10th, when this
6 occurred I was not told it was Brendan Dunckley involved.
7 I didn't learn that until I came to work on the 12th
8 after days off. So I initially didn't know it was him.

9 When I saw that case, and of course I was the
10 investigator on the '05 case, I saw some similarities in
11 the two cases.

12 Q Including drunken or intoxicated victim?

13 A Intoxicated victim, the age of the victim, the
14 bizarreness in the stories, the fact that he made the
15 victims somewhat the aggressors and him somewhat of a
16 victim in both cases.

17 Q The 2005 case, what's the victim's name in that
18 case?

19 A Lura.

20 Q L-U-R-A?

21 A Correct.

22 Q And she's friends with Michelle?

23 A She is friends with Michelle.

24 Q Now Michelle has already testified here today

1 and Lura has not yet. Lura then, in 2005, would have
2 been approximately the same age you're saying Jessica was
3 in 2007. Is that what you were saying, they're similar
4 ages?

5 A That's correct.

6 Q But Lura actually goes back, with respect to
7 Mr. Dunckley, to way before 2005, correct?

8 A That's correct, as does Michelle, I believe.

9 Q But in 2005, the case you were investigating was
10 an actual sexual assault, correct?

11 A It was a reported sexual assault, yes, sir.

12 Q By Lura?

13 A Correct.

14 Q In other words, sex against her will?

15 A Yes, sir.

16 Q Similar to Jessica?

17 A Right.

18 Q Because Jessica was reported?

19 A Correct.

20 Q In further investigation or in your previous
21 knowledge of Mr. Dunckley in these cases, did you know of
22 an instance with Lura even before 2005?

23 A Yes.

24 Q Okay. And did that include Mr. Dunckley and

1 some type of sexual acts or relations with Lura while she
2 was under 14?

3 A Yes, sir.

4 Q And did it also include Michelle?

5 A It did.

6 Q Did you interview Michelle?

7 A On the phone.

8 Q Okay. Would this be in 2007, now?

9 A Yes, sir.

10 Q So when you took over that investigation from
11 the earlier cases in 2007, you called Michelle where?

12 A At -- I don't recall which facility, but the
13 Nevada Department of Corrections. I believe it was in
14 Las Vegas.

15 Q When you talked to her by the phone was any of
16 that recorded, do you know?

17 A I don't recall right now.

18 Q Okay. That's fine. But when you spoke to
19 Michelle did you find out that something happened when
20 she was 12 or 13 with Brendan Dunckley?

21 A I did.

22 Q Now she came in here today and said she's pretty
23 sure she was older than that. Did you attempt to tie
24 down the dates or age in any way? Did she mention she

1 was 12 or 13 or how did this go?

2 She said she had a baby when she was 13, a
3 daughter. Did she indicate to you whether it was before
4 she had the child or after, anything like that?

5 A I just don't remember exactly what she --

6 Q All right. You did a five-page report. You
7 have done several, but one being a five-page report
8 dealing with Michelle. Are you aware of this report?

9 A Yes, sir.

10 Q And it's just a short portion that's on
11 Michelle. Page 3 of 5 of your report. I want to give
12 you a date on this report, but I don't know if you've
13 done more than one on this date, and I don't want to get
14 it confused.

15 But it's the report that you have, "Phone
16 interview with Lura." You talked to Ashley and you
17 talked to Michelle. Are you familiar with this
18 supplemental report?

19 A Yes, sir.

20 Q Go ahead and review a little bit of Michelle, on
21 Page 3, and also onto Page 4. It's only about two
22 paragraphs.

23 A (Witness complies.)

24 MR. CLIFTON: Your Honor, I apologize. I should

1 have asked to approach him with his report to refresh his
2 recollection. That's my intent in doing this when he
3 said he couldn't remember, if that's all right with the
4 Court.

5 THE COURT: All right.

6 THE WITNESS: Yes, sir.

7 BY MR. CLIFTON:

8 Q Does that help refresh your recollection a
9 little bit about the interview with Michelle? You said a
10 minute ago you couldn't quite remember some of the
11 details.

12 A Yes.

13 Q All right. Let me ask you a few questions on
14 that. Does she indicate how old she was when this sexual
15 conduct happened with Mr. Dunckley?

16 A She talks about two different times, actually.
17 One time when she thought that she was older, 16 or 17,
18 and then an incident when she was 12.

19 Q And the time that she was 12, did that involve
20 sleeping with him and his girlfriend or wife named
21 Morgan?

22 A Yes, sir.

23 Q What did she say he did to her while she was
24 sleeping over at their house?

1 A He reached over Morgan and fondled her vagina in
2 the bed.

3 Q Reached over Morgan an fondled whose vagina?

4 A I'm sorry, fondled Michelle's vagina.

5 Q While she was 12?

6 A Yes, sir.

7 Q Did she, Michelle, indicate she was aware of
8 Ashley also being sexually assaulted -- that's the words
9 used in your report -- by Dunckley?

10 A Yes.

11 Q And she was the one that told you about Ashley?

12 A She was.

13 Q And then you went and interviewed Ashley?

14 A Same way, via telephone.

15 Q And you found out Ashley was how old when she
16 had some type of sexual contact with the defendant?

17 A She was 12 or 13 also.

18 Q And Mr. Dunckley is the defendant here in the
19 courtroom today?

20 A He is.

21 Q Did you use photographic arrays or photo lineups
22 or anything like that with any of these witnesses in
23 dealing with the defendant identity? Would that include
24 Jessica?

1 A Yes, sir.

2 Q Was she able to pick out Mr. Dunckley in that
3 photo array/lineup?

4 A She was.

5 Q How many people were in that array?

6 A I vary them. I don't always use six. Sometimes
7 I use eight. I don't recall how many was in this, but I
8 usually don't stick to a specific number.

9 Q But either way, you talked to Mr. Dunckley and
10 he admitted he had contact with this person at that
11 location that appeared to be Jessica that he was talking
12 about, correct?

13 A Oh, sure.

14 Q So there's no question now that we're talking
15 about the right person that Jessica was with that night
16 at her apartment?

17 A That's correct.

18 Q Okay. Thank you.

19 MR. CLIFTON: No further questions.

20 THE COURT: Mr. O'Mara.

21 MR. O'MARA: Thank you.

22 ///

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24 ///

CROSS-EXAMINATION

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BY MR. O'MARA:

Q Detective Broome, my name is David O'Mara, and I represent Mr. Dunckley. If you can't hear me or you don't understand a question, please speak up so we can get a proper recording of the court record.

A Sure.

Q You talked about Mr. Dunckley stating that the saliva could have been on his penis from a hand; is that correct?

A Yes.

Q Could it have been a misinterpretation between Jessica's hand and Mr. Dunckley's hand?

A No.

Q Did Mr. Dunckley ever inform you that he had to do a finger sweep of Jessica in order to stop her from choking?

A No. I have heard that story, though.

Q When did you hear that?

A Last time I was here I heard that story.

Q So at no time during your investigation or your interviews with Mr. Dunckley he never mentioned that he did a finger sweep of Jessica?

A He told another Reno police officer that. He

1 never told me that, no, sir.

2 Q All right. Great. If we can go to Michelle and
3 the questions we just went through and how you just
4 reviewed your incident report, number 0534027706; do you
5 have it in front of you?

6 A I don't.

7 Q Do you recall why Michelle was over at Brendan
8 and Morgan's house?

9 A Not specifically. I got the impression they
10 were all --

11 Q Let me rephrase my question, because there's two
12 sections in here.

13 In your statement it talks about Michelle
14 sleeping over when she was 12, and then it later goes on
15 and says the reason why she was over there. Do you
16 recall why?

17 A Specifically that time, no, sir.

18 Q If it said she said that Brendan and Morgan were
19 babysitting her at the time, would that fresh your
20 memory?

21 A That's what I was going to say when you stopped
22 me is that all these girls were friends, more with Morgan
23 at the time. So they spent a lot of time together at
24 that time of their life. So, yeah.

1 Q So Michelle could have had her baby being at
2 Brendan and Morgan's to be babysat?

3 A She could have, yes, sir.

4 Q Do you know when Michelle had her baby?

5 A I don't.

6 Q Did she ever talk about her baby in the
7 interview?

8 A No. My interview was very short, and they were
9 trying to pull her away while I was talking to her, the
10 correction people.

11 Q Did you ever go into Michelle's past?

12 A Not in specifics, no.

13 Q Did you ever go into her drug habits?

14 A I knew why she was incarcerated, if that helps.
15 I knew she had a rough childhood, if that helps.

16 Q If you were told that she had a baby in 2000,
17 would your numbers be correct now about the age of 12?

18 A Without having the dates of birth in front of
19 me, I --

20 Q Let's see. Michelle was born on October of
21 1986. Do you recall that birth date?

22 A I don't, but I certainly believe you.

23 Q And her baby was born on September 23rd of 2000.
24 So if she had a baby in 2000, and she was born in 1986,

1 she couldn't have been 12 years old, correct?

2 A That's correct.

3 Q Did you look into when her baby was born?

4 A No, I didn't.

5 Q Are you aware that -- obviously you're not
6 aware. Would it surprise you if Michelle testified today
7 that she never said that Mr. Dunckley told her never to
8 tell anyone?

9 A Would it surprise, me?

10 Q Yeah.

11 A Somewhat, I guess, yes, sir.

12 Q In regards to -- let's go back to Jessica. In
13 regards to the incident in which she claimed happened,
14 did she ever acknowledge how long the incident occurred?

15 A I'm not sure specifically what part of the
16 incident.

17 Q Did she ever talk about the incident in the
18 apartment between the alleged -- her and the defendant
19 here?

20 A Yes, sir. Are you talking about the part about
21 the fellatio?

22 Q In between the period of time when she entered
23 the apartment to the end of this alleged incident where
24 she ran out of the apartment.

1 A Just that it was a short time, yes, sir.

2 Q But she didn't give you any 5, 10 minutes?

3 A I don't believe so, and I don't know that she
4 could have.

5 Q Did she describe what happened when she entered
6 the apartment originally?

7 A Yes.

8 Q What did she say?

9 A That she opened the door, walked to the back
10 part of the apartment, called for her boyfriend, was
11 looking for him, and when she turned around Brendan was
12 standing between her and the door.

13 Q And then what happened?

14 A And he told her to "suck his dick," and she said
15 that she had no way out. She said he was between her and
16 the door and she was scared.

17 Q What did she do after he allegedly said, "Suck
18 my dick"?

19 A She did what she was told to do.

20 Q Did you measure the distance between the back
21 room and the door?

22 A No.

23 Q Do you have any recollection of how far the back
24 room and the front door is?

1 A No, I don't.

2 Q Do you know of any report that measured the back
3 door?

4 A No, sir.

5 Q Do you know of any police officer that has been
6 inside of the apartment?

7 A Sure.

8 Q Is there any report that sets forth the distance
9 between the back room and the front door?

10 A Could be an FIS report that I don't have.

11 Q If you mean FIS report, what is that?

12 A The lab people, the county crime lab people. If
13 they were called they would have prepared something like
14 that.

15 Q And when Jessica informed you of the alleged
16 incident did she mention how many times she bit the
17 defendant?

18 A If she did, I don't recall how many times.

19 MR. O'MARA: May I have a few minutes, Your
20 Honor?

21 THE COURT: Certainly.

22 MR. O'MARA: Thank you.

23 BY MR. O'MARA:

24 Q In your review of other detectives' or officers'

1 reports, did any of the other officers in their reports
2 mention how many times she allegedly bit the defendant?

3 A If they did, I don't recall that.

4 MR. O'MARA: I have no other questions, Your
5 Honor.

6 THE COURT: Okay. Mr. Clifton.

7 MR. CLIFTON: No additional.

8 THE COURT: Okay. Thank you very much.

9 MR. CLIFTON: Your Honor, the State's last
10 witness is Lura. She lives in Yerington. And apparently
11 she had car trouble getting out of Yerington or is having
12 trouble finding a car ride out of Yerington, I don't know
13 which. So she has not been able to make it here.

14 I guess my first motion or option would be to
15 ask, since it's this late of an hour anyway, to continue
16 the rest of the prelim to a date that would allow us time
17 to drive her here, get her a ride here, whatever it
18 takes.

19 I know this is the second time she's been
20 subpoenaed for court. She is cooperative. She's
21 available. We know where she lives. She answers the
22 phone. We've talked to her two or three times today.

23 (Deputy District Attorney Sworn)

24 THE COURT: Is Lura subpoenaed?

1 MR. CLIFTON: Yes, she was, Your Honor. She was
2 subpoenaed for the May preliminary hearing and she was
3 subpoenaed again for today. I have not checked to see if
4 they were oral-service subpoenas or if they were
5 physically served upon her. But in either event, under
6 the oral service law she has been cooperative. She was
7 notified of today's date. She has always told us she
8 would be here. We expected her to be here.

9 And at the time of the prelim at 1:30 today, we
10 tried starting to call her from 1:30 to 2:30, and were
11 told she's having car trouble, she's trying to find a
12 ride, things like that. I've only been able to talk to
13 my witness advocate during breaks just now trying to find
14 out if she's here. She couldn't make it. So I don't
15 know the exact reason there.

16 But I do know she's a necessary witness on
17 several counts, I think it's two counts dealing with her
18 and Michelle on Count IV, and then her alone on Count V.
19 So it's just those two counts. But we certainly would
20 like to have her here.

21 THE COURT: Also on Count VII.

22 MR. CLIFTON: Yes, Count VII.

23 At this point, Your Honor, I haven't heard
24 anything yet about violence or injury or threats, even

1 from Jessica, so I don't know if we're going to be able
2 to mandate Count VII. And I'm not going to be asking
3 Your Honor to bind over on Count VII, even if Lura
4 testifies it was forced and threatened. And I'm sure she
5 will testify the sexual assault on her was forced.

6 This sexual coercion charge was based on all the
7 witnesses, and we have put three of the four on, so I am
8 satisfied, Your Honor, that we will not be going forward
9 on Count VII. But before I let Your Honor dispose of
10 that or make any kind of motion, I should wait and listen
11 to her testimony, because I can already see there's a
12 disparity between Michelle and Lura from what I see in
13 the police reports.

14 But that count was supposed to be for all of the
15 witnesses together mutually. And so far it's not looking
16 like there were threats involved, not to say there wasn't
17 sexual assaults, lewdness or other charges that are
18 charged here.

19 So I would ask that you allow us to go to a
20 separate date, maybe more than tomorrow, like after the
21 July 4th date to find out what it's going to take to get
22 her here.

23 I think Yerington is about a 90-mile drive, an
24 hour, hour-and-a-half.

1 THE COURT: About an hour-and-a-half, I think.

2 MR. CLIFTON: We could certainly provide a ride
3 and get her here, but doing it tomorrow might be a little
4 tight. So my motion, I guess, for continuance based upon
5 Hill/Bustos is that she is a necessary witness; it's not
6 for purposes of delay, of course; and we've done
7 everything we could, including subpoena her to get her
8 here today, and now it looks like we have to physically
9 transport her, so that will take a little more doing.

10 MR. O'MARA: Your Honor, we object to allowing a
11 continuance at this time. This was set out 45 days in
12 order to get discovery on this case. Whether or not they
13 subpoenaed her multiple times, she was required to be
14 here today, she has chosen not to be here today. This
15 hearing started at 1:30. It's almost four hours later.
16 She should have been in her car way before the 1:30
17 hearing before this time.

18 It isn't a good faith response by the DA to say
19 we can do this next week. This is the time set for the
20 preliminary hearing. This is the time that they're
21 supposed to put on their evidence for probable cause.
22 They have not done so, and they should not be entitled to
23 a continuance.

24 THE COURT: Mr. Clifton, additional comments you

1 want to make?

2 MR. CLIFTON: No, Your Honor.

3 THE COURT: Well, looking at the file, it has
4 been quite a period of time. May 2nd was the first time.
5 Stipulate to continue. Conflict group hadn't received
6 the case yet. Then there was another May 16 hearing.
7 Stipulate to continue 30 days at least.

8 Now we're here today. So I don't know.

9 I'm going to deny the motion to continue.

10 MR. CLIFTON: All right. Your Honor, we have no
11 further witnesses. As far as argument, we'd ask Your
12 Honor to bind over based upon the amended changes to
13 Count I, II, and III, and Count VI. With everything I
14 said with regard to Count VII, I'll leave it up to Your
15 Honor as to whether you heard any evidence to bind over
16 on that.

17 Michelle, Your Honor, it would be possible to
18 bind over on Count IV, since it's charged as "and/or"
19 with Michelle. That's the other thing I'll leave up to
20 Your Honor. Of course, we did not hear any testimony
21 with regard to Count V.

22 Thank you.

23 THE COURT: All right. Mr. O'Mara.

24 MR. O'MARA: Thank you, Your Honor.

1 In regards to Count IV with Michelle, it is
2 apparent that there is no -- they have failed to prove
3 any of the elements in this case. Michelle has testified
4 today that she was not forced. She was over the age of
5 14 when any type of actions occurred. She was never
6 touched inappropriately by Mr. Dunckley.

7 Her testimony also shows it was after she was
8 pregnant, which is clearly not within the date of which
9 the complaint of 1999 is. She has testified she did not
10 meet Mr. Dunckley until at least 2000, July or August of
11 2000. Thus they have not satisfied in showing that there
12 is a reasonable probable cause to bind over on Count IV.

13 In regards to Count I, II, and III, in regards
14 to Ashley. Again, Ashley could not give any date, she
15 could not give any time in which she met Mr. Dunckley.
16 She could not give any information in regards to how she
17 met Mr. Dunckley. She could not give any information as
18 to any of the elements in this crime in regards to a
19 sexual assault on a child in Count I. She is unsure of
20 when she met Mr. Dunckley, but would concede that it is
21 possible that she met Michelle on the same date, which
22 would then put it back to 2000, as well.

23 She is now older than her, which would have made
24 her probably older than 14. There's no evidence to show

1 what her age was. Thus they have not shown that this was
2 upon a child in this manner.

3 Lewdness with a child under the age of 14 in
4 Count II, same problems in regards to any type of date
5 that is given on when this alleged incident occurs.
6 Therefore Count II should also be dismissed.

7 Count III, statutory sexual seduction, we have
8 no information in regards to when this occurred as well.
9 Thus we cannot determine when the age that she was during
10 this period of time.

11 In regards to Count VI, the sexual assault in
12 regards to Jessica. Jessica testified today that she
13 could not give a description of the individual. She
14 could only do it today or when given pictures. And thus
15 they have failed to show that the defendant on my left is
16 the actual person to alleged to have done these
17 incidents.

18 And as to Count VII, as the DA has already
19 stated, there was no threats, there was no coercion,
20 there was no violence or injury in regards to these
21 cases, and he has already submitted that he probably
22 doesn't have a case in that respect. And Count VII
23 should also be dismissed.

24 THE COURT: All right. Thank you. I find that

1 there's probable cause to believe that the defendant
2 committed the crime of sexual assault on a child as
3 alleged in Count I; lewdness with a child as alleged in
4 Count II; statutory sexual seduction as alleged in Count
5 III; and sexual assault as alleged in Count VI were
6 committed and the defendant committed them.

7 I did not find and I dismiss Counts IV, V, and
8 VII.

9 Thank you very much.

10 MR. O'MARA: Thank you very much, Your Honor.

11 MR. CLIFTON: Thank you.

12 MR. O'MARA: Have a great evening.

13 THE COURT: You too. Thank you.

14 (Proceedings Concluded)

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1 STATE OF NEVADA)
) ss.
2 COUNTY OF WASHOE)
3

4 I, EVELYN J. STUBBS, a Certified Court
5 Reporter, do hereby certify that I reported the
6 proceedings in the within entitled cause, and that I was
7 present on Monday, July 2, 2007, at the hour of 2:47 P.M.
8 of said day, and reported the proceedings had and
9 testimony given therein in the Preliminary Hearing of the
10 case of THE STATE OF NEVADA, Plaintiff, vs. BRENDAN
11 DUNCKLEY, Defendant, Case No. RCR2007-033884.

12 That the foregoing transcript, consisting of
13 pages numbered 1 to 123, inclusive, is a full, true and
14 correct transcript of my said stenotype notes, so taken
15 in the said Preliminary Hearing, and is a full, true and
16 correct record of the proceedings had at said time and
17 place to the best of my knowledge, skill and ability.

18 DATED: At Reno, Nevada, this 18th day of
19 July, 2007.

20 
21 _____
EVELYN J. STUBBS, CCR #356

AFFIRMATION

(PURSUANT TO NRS. 239B.030)

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PROCEEDING DOCUMENT FILED IN CASE NO. CR07-1728 POST-CONVICTION WRIT OF HABEAS CORPUS PETITION.

PART NO: II

X DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBERS OF ANY PERSON.

-OR-

 DOCUMENT DOES CONTAIN THE SOCIAL SECURITY NUMBER OF A PERSON AS REQUIRED BY A SPECIFIC STATE OR FEDERAL LAW, TO WIT:

-OR-

 FOR THE ADMINISTRATION OF A PUBLIC PROGRAM

-OR-

 FOR THE APPLICATION OF A FEDERAL OR STATE GRANT

-OR-

 CONFIDENTIAL FAMILY COURT INFORMATION SHEET (NRS 125.130, NRS 125.230, NRS 125B.055)

DATED: 7/15/09



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