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THE DEFENDANT: YES, I DO.

THE COURT: DO YOU UNDERSTAND THAT YOU
MAY REFUSE TO TESTIFY OR MAKE ANY STATEMENT ON YOUR OWN
BEHALF AND THE PROSECUTION CANNOT COMMENT ON YOUR FAILURE
TO TESTIFY AT THE TRIAL?

THE DEFENDANT: YES, SIR.

THE COURT: DO YOU UNDERSTAND THAT YOU
ARE ENTITLED TO THE SERVICES OF AN ATTORNEY AT ALL STAGES
OF THE PROCEEDINGS?

THE DEFENDANT: YES, I DO.

THE COURT: DO YOU UNDERSTAND THAT IF
A JURY RENDERED A GUILTY VERDICT AGAINST YOU, YOU WOULD
HAVE A RIGHT TO APPEAL THAT VERDICT AND ALSO THE SENTENCE
OF THE COURT TO THE NEVADA SUPREME COURT?

THE DEFENDANT: YES, I DO.

THE COURT: DO YOU UNDERSTAND AND GIVE
UP ALL OF THOSE CONSTITUTIONAL RIGHTS?

THE DEFENDANT: YES, I DO.

THE COURT: KNOWING THOSE RIGHTS ARE
AVAILABLE TO YOU, DO YOU ASK THIS COURT TO ACCEPT YOUR PLEAS
OF GUILTY?

THE DEFENDANT: YES.

THE COURT: YOU'RE PLEADING GUILTY BECAUSE
IN TRUTH AND IN FACT YOU ARE GUILTY AND FOR NO OTHER REASON?

THE DEFENDANT: YES, I DO.

THE COURT: ARE ALL THE STATEMENTS
CONTAINED IN COUNTS 11 OF BOTH OF THESE INFORMATIONS TRUE?

THE DEFENDANT: YES.

THE COURT: AND DO YOU UNDERSTAND THAT
THE STATE, IF YOU WENT TO TRIAL, WOULD HAVE TO PROVE ALL
OF THE ELEMENTS CONTAINED IN THOSE COUNTS AGAINST YOU BEYOND
A REASONABLE DOUBT? DO YOU UNDERSTAND THAT?

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THE DEFENDANT: YES, I DO.

THE COURT: LET'S TAKE THEM ONE AT A
TIME. AS TO CASE C64603, COUNT II, SEXUAL ASSAULT WITH USE
OF DEADLY WEAPON, WHAT DID YOU DO ON OR ABOUT OCTOBER 15,
1983, THAT'S CAUSING YOU TO PLEAD GUILTY TO THAT COUNT?

THE DEFENDANT: I WILFULLY, UNLAWFULLY,
AND FELONIOUSLY SEXUALLY ASSAULTED ONE TONI LOPEZ.

THE COURT: WHAT DID YOU DO?

THE DEFENDANT: SEXUAL INTERCOURSE.

THE COURT: HOW?

THE DEFENDANT: ENTERED MY PENIS INTO
HER VAGINA.

THE COURT: THAT WAS AGAINST HER WILL?

THE DEFENDANT: YES.

THE COURT: AND WAS ANY WEAPON USED?

THE DEFENDANT: YES, A KNIFE.

THE COURT: A KNIFE WAS USED DURING THE
COMMISSION OF THE CRIME BY YOU?

THE DEFENDANT: YES.

THE COURT: ARE OF THE STATEMENTS
CONTAINED IN COUNT II OF THE INFORMATION IN C64604 TRUE?

THE DEFENDANT: YES, YOUR HONOR.

THE COURT: WHAT DID YOU DO ON OR ABOUT
OCTOBER 31, 1983, THAT'S CAUSING YOU PLEAD GUILTY?

THE DEFENDANT: I WILFULLY, UNLAWFULLY,
AND FELONIOUSLY SEXUALLY ASSAULTED ONE LISA SLEPAXOFF.

THE COURT: HOW DID YOU DO THAT?

THE DEFENDANT: ANAL INTERCOURSE.

THE COURT: BY WHO?

THE DEFENDANT: BY MYSELF.

THE COURT: WITH WHAT?

THE DEFENDANT: MY PENIS.

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THE COURT: WAS THIS AGAINST HER WILL?

2

THE DEFENDANT: YES, IT WAS.

3

THE COURT: DID YOU USE A WEAPON TO
ACCOMPLISH THAT CRIME?

5

THE DEFENDANT: A KNIFE WAS USED IN THE
COMMISSION.

7

THE COURT: BY YOU?

8

THE DEFENDANT: YES.

9

THE COURT: ANYTHING FURTHER THAT YOU
WANT TO GO IN THE RECORD, COUNSEL?

11

MR. SEATON: YES, YOUR HONOR. AS TO
THAT LAST COURT, ALL THAT WAS MENTIONED WITH REGARD TO THE
HUMAN BODY WAS HIS PENIS.

14

THE COURT: ALL RIGHT.

15

AND WHAT OPENING OF LISA SLEPAKOFF
DID YOU INSERT YOUR PENIS INTO?

17

THE DEFENDANT: ANAL.

18

MR. SEATON: THAT SHOULD BE SATISFACTORY,
YOUR HONOR.

20

MR. LIEBERMAN: I TAKE IT THE COURT IS
ACCEPTING ALL OF THE STIPULATIONS BY COUNSEL?

22

THE COURT: IT'S AGREEABLE WITH THE COURT
IF IT'S AGREEABLE WITH COUNSEL. I WOULD AGREE TO IT.

24

DO YOU UNDERSTAND ALSO, MR. MORELLI,
THAT YOUR MATTER IN DEPARTMENT TEN OF ATTEMPTED GRAND LARCENY
WHERE THERE IS A MOTION FOR REVOCATION OF YOUR PROBATION IS
NOT, AS FAR AS THIS COURT IS CONCERNED, PART OF THESE
NEGOTIATIONS?

29

THE DEFENDANT: I UNDERSTAND THAT, YOUR
HONOR.

31

THE COURT: ALL RIGHT. ANYTHING ELSE
THAT YOU WANT?

32

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1 MR. SEATON: NO. JUST ALONG THOSE LINES,
2 THOUGH, SO THAT THE STATE IS HEARD FROM IN THAT REGARD,
3 BECAUSE IT MAY BE THE ONLY CONFUSING PART, THE STATE IS GOING
4 TO PUT OFF THOSE PROCEEDINGS IN DEPARTMENT TEN FOR ABOUT A
5 MONTH, AND THERE ARE CERTAIN THINGS THAT ARE TO HAPPEN.

6 IF THEY DO, THEN THERE WILL BE A
7 FAVORABLE DISPOSITION TOWARDS THE DEFENDANT AND WE WILL NOT
8 GO FORWARD WITH THOSE PROCEEDINGS.

9 IF THERE IS NOT A FAVORABLE -- IF
10 THE RIGHT THINGS DO NOT OCCUR, THEN WE WILL GO AHEAD WITH
11 THE PROBATION REVOCATION.

12 THERE HAVE BEEN MANY DISCUSSIONS
13 BETWEEN MR. LIEBERMAN AND MYSELF ABOUT THIS AND I TAKE IT
14 THAT HE HAS DISCUSSED THIS WITH THE DEFENDANT AND HE UNDERSTANDS
15 AND EVEN UNDERSTANDS THE REASON FOR US NOT PUTTING THESE
16 THINGS ON THE RECORD.

17 PERHAPS WE CAN HAVE AN ACKNOWLEDGEMENT
18 OF THAT AT THIS TIME.

19 MR. LIEBERMAN: THAT'S AGREED. HE --
20 EVEN FOR THE SAKE OF ARGUMENT, IF THE STATE DOES GO AHEAD
21 WITH THE REVOCATION PROCEEDING, WE DON'T STIPULATE TO HIS
22 PROBATION BEING REVOKED. WE'RE STILL ABLE TO FIGHT IT.

23 THE COURT: IS THAT YOUR UNDERSTANDING,
24 ALSO, MR. MORELLI, AS STATED BY THE ATTORNEYS AND ALSO THAT --
25 ARE YOU STATING TO THE COURT THAT YOU HAVE NO UNDERSTANDING
26 THAT, IN THE EVENT YOUR PROBATION IS REVOKED, THAT IF IT'S
27 NOT RUN CONCURRENT WITH THESE PENALTIES, YOU'RE STATING TO
28 THE COURT THAT YOU REALIZE YOU CANNOT COME BACK HERE AND
29 SET ASIDE THESE PLEAS?

30 THE DEFENDANT: I UNDERSTAND THAT, YOUR
31 HONOR.

32 MR. LIEBERMAN: YOUR HONOR, I THINK ONE

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1 THING SHOULD BE CLEAR. IF HIS PROBATION DOES, FOR SOME REASON,
2 GET REVOKED, WHICH I HOPE IT DOESN'T, HE UNDERSTANDS THAT
3 WHATEVER HE GETS ON THIS CASE MUST, BY LAW, RUN CONSECUTIVELY
4 TO THE TIME HE HAS TO SERVE WHILE HE'S ON THE REVOCATION CASE.

5 THE COURT: DO YOU UNDERSTAND THAT,
6 MR. MORELLI?

7 THE DEFENDANT: YOU'RE GOING TO HAVE
8 TO CLARIFY.

9 MR. LIEBERMAN: COURT'S INDULGENCE.

10 (DISCUSSION OFF THE RECORD.)

11 MR. LIEBERMAN: HE UNDERSTANDS THAT,
12 YOUR HONOR.

13 THE COURT: YOU UNDERSTAND THAT EVERYTHING
14 YOU GET IN THESE TWO SEX CASES WOULD RUN CONSECUTIVE WITH
15 ANYTHING YOU GET IN THAT ATTEMPTED GRAND LARCENY CASE, IN
16 THE EVENT THEY DO REVOKE YOUR PROBATION?

17 THE DEFENDANT: I GET CONFUSED WITH
18 CONSECUTIVELY AND CONCURRENT. I GOT IT STRAIGHT NOW.

19 THE COURT: VERY GOOD. THE MATTER IS
20 REFERRED TO THE DEPARTMENT OF PAROLE AND PROBATION FOR A
21 PRESENTENCE INVESTIGATION AND REPORT, AND CONTINUED FOR
22 ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE TO FEBRUARY
23 13TH.

24 MR. LIEBERMAN: ONE FINAL POINT. IT'S
25 NOT PART OF THE DEAL, BUT I ASKED ON BEHALF OF MY CLIENT THAT
26 HE BE ALLOWED A CONTACT VISIT WITH A LADY NAMED GAIL,
27 G-A-I-L, ELLIS, E-L-L-I-S, APPROXIMATELY 24 YEARS OF AGE,
28 WHITE FEMALE.

29 I ASK THE COURT TO ORDER THAT AT
30 THE CONVENIENCE OF THE GAIL.

31 THE COURT: WHAT IS THE POSITION OF THE
32 STATE?

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1 STATE?

2 MR. SEATON: WE TAKE NO POSITION.

3 I DON'T KNOW ANYTHING ABOUT THE YOUNG LADY NOR THE PURPOSE
4 OF HER VISIT..

5 I DO KNOW THIS, THOUGH. MAYBE I
6 SHOULD SAY SOMETHING, BECAUSE I'VE TALKED TO SOME OF THE
7 COURT SERVICES PEOPLE AND EVIDENTLY THERE IS A GREAT
8 DIFFICULTY WITH THESE VISITS. MY UNDERSTANDING IS -- AND
9 MAYBE COURT SERVICES CAN HELP US OUT A LITTLE BIT, YOUR HONOR,
10 IS THAT IF SUCH VISITS ARE ORDERED, THEY NEED TO BE AT THE
11 TIMING AND THE DURATION OF THEM NEED TO BE AT THE DISCRETION
12 OF THE JAIL.

13 THE COURT: ON THAT CONDITION, WE'LL GRANT
14 THE MOTION.

15 MR. LIEBERMAN: DO YOU NEED A WRITTEN
16 ORDER?

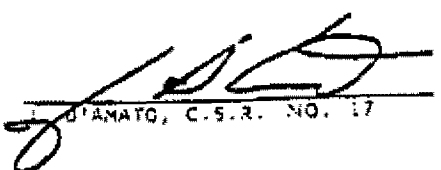
17 THE COURT: YES, PLEASE.

18 MR. LIEBERMAN: I'LL PREPARE AN ORDER.

19 THE COURT: THE TRIAL IS VACATED.

20 * * * *

21 ATTEST: FULL, TRUE AND ACCURATE RECORD OF THE PROCEEDINGS.

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25 J. AMATO, C.S.R. NO. 17
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EXHIBIT 83

EXHIBIT 83

COPY

1 CASE NO. C61676
2 DEPARTMENT FOURTEEN
3
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5

6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CLARK
8

9 THE STATE OF NEVADA,
10 Plaintiff,
11 vs.
12 JOHN OLIVER SNOW,
13 Defendant.
14

15
16 REPORTER'S TRANSCRIPT

17 OF

18 PROCEEDINGS

19 Tuesday, April 17, 1984.

20 BEFORE THE HONORABLE DONALD MOSLEY, DISTRICT JUDGE
21

22 APPEARANCES:

23 For the State: MELVIN T. HARMON, ESQ. and
24 ROBERT W. TEUTON, ESQ.,
Deputies District Attorney

25
26 For the Defendant: JOSEPH W. HOUSTON II, ESQ.
27
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1 THE COURT: The continuation of Case C51676,
2 the State of Nevada versus John Oliver Snow. The record will
3 reflect the presence of the defendant, his attorney, Mr. Houston;
4 Mr. Harmon and Mr. Teuton representing the State.

5 The record should reflect that this is the
6 penalty phase of the proceedings.

7 THE COURT: Miss Clerk, will you call the roll
8 of the jurors, please.

9 THE COURT CLERK: Yes, Your Honor.

10 (Roll call was taken.)

11 THE COURT CLERK: All present, Your Honor.

12 THE COURT: The record will so reflect.

13 Good morning, ladies and gentlemen. Mr. Teuton
14 or Mr. Harmon, you may begin.

15 MR. TEUTON: Your Honor, at this time the State
16 would call Richard Morelli to the stand.

17 THE COURT: Are you waiving any opening
18 statements?

19 MR. TEUTON: We are waiving any opening
20 statements.
21 Thereupon--

22 RICHARD MORELLI,
23 called as a witness by the State, and having been first duly
24 sworn, was examined and testified as follows:

25 DIRECT EXAMINATION

26 BY MR. TEUTON:

27 Q Could you please state your name and spell your
28 name?

29 A Richard Morelli, M-o-r-e-l-l-i.

30 Q Mr. Morelli, do you know a person by the name
31 of John Snow?

32 A Yes, I do.

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1 THE COURT: The continuation of Case C61676,
2 the State of Nevada versus John Oliver Snow. The record will
3 reflect the presence of the defendant, his attorney, Mr. Houston;
4 Mr. Harmon and Mr. Teuton representing the State.

5 The record should reflect that this is the
6 penalty phase of the proceedings.

7 THE COURT: Miss Clerk, will you call the roll
8 of the jurors, please.

9 THE COURT CLERK: Yes, Your Honor.

10 (Roll call was taken.)

11 THE COURT CLERK: All present, Your Honor.

12 THE COURT: The record will so reflect.

13 Good morning, ladies and gentlemen. Mr. Teuton
14 or Mr. Harmon, you may begin.

15 MR. TEUTON: Your Honor, at this time the State
16 would call Richard Morelli to the stand.

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28 name?

29 A Richard Morelli, M-o-r-e-l-l-i.

30 Q Mr. Morelli, do you know a person by the name
31 of John Snow?

32 A Yes, I do.

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1 Q Is that person present in the courtroom at this
2 time?

3 A Yes, he is.

4 Q For the record, would you indicate where the
5 person is located, describe what the person is wearing at this
6 time?

7 A He is sitting right next to counsel in the
8 black shirt.

9 MR. TEUTON: Would the record reflect identifi-
10 cation of the defendant?

11 THE COURT: Mr. Morelli, you are referring to
12 the black man, are you not, at the table in front of you?

13 THE WITNESS: Yes.

14 THE COURT: Very well. The record will so
15 reflect.

16 Q (By Mr. Teuton) Mr. Morelli, do you recall
17 when you first met the defendant, John Snow?

18 A Yes, I do.

19 Q When was that?

20 A I was incarcerated in Clark County Jail at the
21 time.

22 Q Do you know the approximate time that you met
23 him?

24 A I would say some time end of January, February.

25 Q Of this year 1964?

26 A Yes, sir.

27 Q Where were you incarcerated in the Clark County
28 Jail?

29 A I was in Cell Block 4-A-2.

30 Q 4-A-2?

31 A Yes.

32 Q Where was the defendant incarcerated, if you

1 know?

2 A 4-A-1.

3 Q Are those, in fact, adjoining cell blocks?

4 A Well, there is a wall that breaks it off.

5 Q And they are right next to each other?

6 A Yes, sir.

7 Q During the time that you and the defendant

8 were housed in Clark County Jail, did you have any conversation

9 with the defendant, John Snow?

10 A Several.

11 Q Several conversations?

12 A Yes, sir.

13 Q Do you know approximately how many you had?

14 A I have to say at least three or four conver-

15 sations.

16 Q Where did these conversations take place?

17 A In the hallway. I was in my cell and he was

18 walking by.

19 Q Were you behind bars in your cell when he

20 walked by?

21 A Yes, sir.

22 Q Do you recall what the first conversation you

23 had with John Snow was about?

24 A Yes, I do. It was pertaining to one man,

25 name--can't pronounce his name, Lamata (phonetic), if I knew

26 this gentleman at all or if I could find any information out

27 about him.

28 Q Where, if you recall, where did this conver-

29 sation take place?

30 A Right in the hallway.

31 Q Was there anyone else present at the time?

32 A No.

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1 Q Would you continue with that conversation?
2 A He wanted me to find out who this gentleman was.
3 Q That was Joe Lamonto?
4 A Yes, sir.
5 Q Did he indicate why he wanted to know who
6 Joe Lamonto was?
7 A It was in the transcript or something. He had
8 no idea who this gentleman was.
9 Q A transcript of what?
10 A I guess, one of the court transcripts.
11 Q Was the conversation, from what was said during
12 it, in reference to the pending trial against him?
13 A Yes, sir.
14 Q Did you do anything or say anything to him in
15 response to the question about--
16 A I made one phone call to see if I knew the
17 man and I got no response on it.
18 Q Where did you call?
19 A I called the bar.
20 Q The bar?
21 A I called--I can't even think of the name of the
22 place.
23 Q Are you referring to the Keyboard Lounge?
24 A Keyboard Lounge, right.
25 Q Had you, in fact, frequented the Keyboard
26 Lounge before your incarceration?
27 A Yes, I did.
28 Q Did you, as well, in addition to the Keyboard
29 Lounge, did you spend any time at the Cherry Creek Saloon on
30 Desert Inn?
31 A Yes, I did.
32 Q As what you just testified to regarding the

1 conversation reference to Joe Lamonto, the extent of that first
2 conversation you had with John Snow?

3 A Yes.

4 Q Do you recall when the next conversation took
5 place?

6 A It was about a day or two later. He came to
7 me and asked if I could call down to Creek to see if I could
8 get anybody to discredit one Sally Cook.

9 Q You say he called down to the Creek?

10 A Because she hangs out at the bar. Because
11 she hangs out down there.

12 Q That's Sally Cook?

13 A Yes, sir.

14 Q Had you, in fact, seen Sally Cook on prior
15 occasions at the Cherry Creek?

16 A Yes.

17 Q Did you know Sally Cook?

18 THE COURT: Counsel, I don't know that we are
19 all clear as to what the Creek is. I know what we are talking
20 about. Would you be more specific?

21 THE WITNESS: It is a lounge on Desert Inn
22 Road.

23 THE COURT: That is the Cherry Creek Bar;
24 is that correct?

25 THE WITNESS: Yes.

26 Q (By Mr. Tauron) Did you know Sally Cook from
27 the Cherry Creek Bar?

28 A Yes, I did.

29 Q The second time he asked you to call and see
30 if you could find witnesses to discredit her?

31 A Yes, sir.

32 Q Could you detail exactly what was said in that

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1 second conversation?

2 A He wanted me to see if I could get some people
3 to testify in his behalf to discredit Sally, saying she was a
4 drunk and a whore and if they would come forward for him and,
5 more or less, just discredit her as a witness.

6 Q Was this in reference solely to his own case
7 or--

8 A Yes, sir.

9 Q Did he express a desire to have Sally Cook
10 discredited for any other reason?

11 A Well, there was another. He mentioned Kathy.
12 I didn't know her last name. She was already, also, on trial
13 for this same case, if I can get somebody to help her, too,
14 to discredit Sally Cook in this case.

15 Q So at the time of this conversation, Kathy
16 Falcinowski hadn't gone to trial?

17 A No.

18 Q Did you take any action in reference to the
19 second request?

20 A No. I took no action at all.

21 Q Were there any further conversations following
22 that conversation involving the defendant, John Snow, in reference
23 to Sally Cook?

24 A Yes, there was. He came to me and told me
25 that he can get that--he had \$5,000 in town. That if I knew
26 somebody to give this money to have Sally Cook taken out as a
27 witness.

28 Q Said he had \$5,000?

29 A Yes, sir.

30 Q Were you aware or did you become aware of a
31 time when Kathy Falcinowski, in fact, plead guilty to charges
32 and avoided the trial?

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1 A Yes, I was.
2 Q This conversation in reference to the \$5,000
3 to have Sally Cook taken out, do you know if that conversation
4 took place before or after the time that Kathy Faltinowski, in
5 fact, entered a plea of guilty?
6 A One conversation took place before and then I
7 was approached again afterwards.
8 Q And both times the sum of \$5,000 was mentioned?
9 A Yes, sir.
10 Q Did John Snow indicate how he came into
11 possession or control of \$5,000 to spend to have Sally Cook
12 taken out?
13 A Said it was money from back East.
14 Q Did John Snow during these conversations ever
15 indicate to you his knowledge of the evidence of the case
16 against him?
17 A Only mentioned to me that they had a fingerprint
18 That was it. That was the extent of it.
19 Q Did he indicate to you if he had, in fact,
20 been in Nevada?
21 A No. He told me he was never in Nevada.
22 Q When did he tell you that, that he wasn't in
23 Nevada?
24 A During one of our conversations.
25 Q Did John Snow during the conversations that you
26 had with him indicate why it was that he wanted Sally Cook taken
27 out?
28 A He said she could really hurt his case.
29 Q Did he elaborate at all on how Sally could
30 hurt his case?
31 A No.
32 Q Mr. Morelli, are you, in fact, currently

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1 incarcerated in the State Prison at Indian Springs?
2 A Yes, I am.
3 Q Do you recall what date you were sentenced?
4 A February 13th.
5 Q February the 13th?
6 A Yes, sir.
7 Q Of 1984?
8 A Yes, sir.
9 Q Do you recall two days after that, on February
10 the 15th, 1984, after you were sentenced providing an eight-page
11 statement to Detective Dillard of the Metropolitan Police
12 Department?
13 A Yes, I do.
14 Q Was that the first contact, after you had been
15 sentenced, with agents of the police department regarding the
16 information and the communications that you had had with John
17 Snow?
18 A Yes, it is.
19 Q Were there any promises made to you in exchange
20 for your providing the statement?
21 A There is no promises.
22 Q Did you, in fact, request that you be held at
23 Indian Springs?
24 A Yes, I did.
25 Q Do you recall if there was any statements made
26 to you regarding assuring that you would not be held in the
27 same facility with the defendant, John Snow?
28 A No, not really. I was classified for Indian
29 Springs and that is where I am staying.
30 Q Mr. Morelli, how did you learn that Kathy
31 Falcinowski had, in fact, plead guilty?
32 A On television.

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1 Q Did you learn as well that she had agreed to
2 become a State's witness?
3 A I also learned that on television.
4 Q Do you know if the defendant, John Snow, had
5 any reaction to the news?
6 A Yeah. That seemed to bother him quite a bit.
7 Q It bothered him quite a bit?
8 A Yeah. I guess he was looking for her to help
9 him in some way.
10 Q When you state that it bothered him or he said
11 it bothered him quite a bit, can you describe his reaction?
12 A I guess it was more of a shock to him than
13 anything else.
14 Q Can you describe how he appeared?
15 A Nervous.
16 Q Now, you have testified that John Snow said
17 he had \$5,000 to have Sally Cook taken out. What exactly does
18 the term taken out mean?
19 A Well, on street talk it's have her killed.
20 MR. TEUTON: No further questions, Your Honor.
21 THE COURT: Mr. Houston?
22 MR. HOUSTON: Yes, Your Honor.
23 CROSS-EXAMINATION
24 BY MR. HOUSTON:
25 Q Mr. Morelli, what were you convicted of in
26 February?
27 A Two counts of sexual assault.
28 Q Was that with or without a deadly weapon?
29 A With.
30 Q What kind of sexual assault was that?
31 A What do you mean what kind?
32 MR. TEUTON: Objection as to the question.

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1 Impeachment is the fact of the felony and not the details of the
2 offense. There is no relevance.

3 MR. HOUSTON: Well, it is going to have relevance
4 because it is my position that because of the details and the way
5 the crime possibly occurred and the consideration that he went to
6 Indian Springs, he would not have gone to Indian Springs had this
7 negotiation not gone through.

8 And these details are important in that he
9 would have been sent to Carson, maximum security, and would be
10 in a much harsher environment than he is presently in now.
11 So I think it is very relevant.

12 Normally, it wouldn't be relevant but we are
13 talking about what leniency he has received here. Not about
14 impeachment. This impeaches him on another ground.

15 THE COURT: To a limited extent, it might be
16 relevant. We will go into it in some extent.

17 Q (By Mr. Houston) Was that a sexual assault
18 of two different girls?

19 A Yes, it was.

20 Q On two separate dates?

21 A Yes, it was.

22 Q What was the deadly weapon which was involved?

23 A A knife.

24 Q Did you plead guilty to those offenses or were
25 you found guilty?

26 A I plead guilty.

27 Q In pleading guilty to those offenses, were
28 there other offenses that were dismissed?

29 A Yes, there was.

30 Q What offense were dismissed?

31 A Robbery.

32 Q Robbery of what?

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1 A Jewelry.
2 Q From a person?
3 A Yes.
4 Q Was a deadly weapon used in that?
5 A Yes, it was.
6 Q What kind of a weapon?
7 A Knife, also.
8 Q What other offenses were dismissed?
9 A I had sexual assaults.
10 Q Other sexual assaults?
11 A Yes.
12 Q How many?
13 A I don't recall.
14 Q There were so many you don't remember?
15 A No, just don't recall how many there were.
16 Q And those were also with deadly weapons?
17 A Yes.
18 Q Had you been convicted of any prior felonies
19 in the ten years prior to that?
20 A Attempted grand larceny.
21 Q What sentence were you given on the two sexual
22 assaults with deadly weapons?
23 A Life.
24 Q The deadly weapon makes them run consecutive,
25 correct?
26 A That's right.
27 Q Did the one sexual assault run consecutive to
28 the second sexual assault?
29 A I got life. I got life with the charge, life
30 for the weapon. Then it stopped and I got another life and
31 weapon.
32 Q Are those consecutive or concurrent?

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JA010873

1 A Consecutive.
2 Q Meaning they run one after another?
3 A No, meaning two run together because of the
4 weapon and then it stops and the other two run together.
5 Q Now, after you got the sentences, what was
6 February 13th you were sentenced?
7 A Yes, sir.
8 Q And on February 13th, were you still in the
9 Clark County Jail?
10 A Yes, I was.
11 Q So they hadn't transported you to the prison
12 yet?
13 A No.
14 Q At that time is when you came forward for the
15 first time ever to the police with this information?
16 A That's right.
17 Q And you didn't want anything out of it. You
18 just wanted to be a good citizen?
19 A I didn't get anything out of it.
20 Q You didn't get anything out of it. Didn't you
21 feel that you hadn't come forward with this information, you
22 would be sent to Carson City in maximum?
23 A No, I don't, because there is other lifers
24 on the yard. There is plenty on the yard.
25 Q Wasn't it promised to you by the District
26 Attorney's Office that they would do everything they could to
27 see you went to Indian Springs?
28 A There was no promise.
29 Q They didn't tell you they would try to get you
30 to Indian Springs?
31 A There was no promises.
32 Q That wasn't my question. Did they tell you that

1 they would try to get you into Indian Springs, not that they
2 assured it 100 percent?

3 A No, sir. I was classified Indian Springs with
4 the classification board at the penitentiary.

5 Q So they didn't tell you they would try to keep
6 you in Southern Nevada either, at Indian Springs or Gene?

7 A No, sir.

8 Q And you already testified that there wasn't
9 even any assurances that you wouldn't be kept in the same
10 prison as John Snow, correct?

11 A Correct.

12 Q So they made no concessions or offered you
13 essentially nothing for this testimony?

14 A No deals.

15 Q Have you reviewed that statement that you gave
16 to the police before you testified today?

17 A No.

18 Q Pardon?

19 A No.

20 Q Did you review it ever since giving it?

21 A When I signed it. That was a while back.

22 Q You reviewed it when you signed it, correct?

23 A Uh-huh.

24 Q Was it tape recorded?

25 A I believe it was, yes.

26 Q And then it was typed up and given to you and
27 you reviewed it and initialed it, I believe, and signed it?

28 A Right.

29 Q Let me show you this document. Is that the
30 statement which you gave? This is your signature down here at
31 the bottom?

32 A Yes, it is.

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JA010875

1 Q Back here on the next to last page, page seven,
2 the question was asked: "Okay. We are going to try to get this
3 typed and transcribed before you leave."

4 And then you said, "Well, you can postpone
5 until Monday, it would be all right."

6 And then there is two questions and answers
7 which the words unintelligible are contained and then it starts
8 up.

9 "Question: Okay. We'll give that a shot."

10 "Answer: I'd give me time to see my family."

11 Can you tell me why out of all this statement
12 there is only two questions and answers that came out
13 unintelligible?

14 MR. TEUTON: Your Honor, I object. First of
15 all, it is a misstatement. Second of all, counsel is testifying.

16 THE COURT: Well, is it a misstatement?

17 MR. HOUSTON: I said there is one above.

18 MR. HARMON: There is several above on the
19 same page.

20 Q (By Mr. Houston) Can you tell me why those
21 two questions and answers came out unintelligible? Do you
22 remember what was said then?

23 A This is what was sentence on the Tuesday, okay,
24 and usually the chain leaves a day or two later. I didn't
25 leave until the following Friday.

26 Q Can you tell me what was being talked about
27 up in here? Was there something about what kind of deal you
28 were supposed to get?

29 A There was no deal.

30 Q What was supposed to be done and those are the
31 questions that are missing?

32 A No. There was no deal up in here.

-1171-

01595

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JA010876

1 Q No deal, okay. If there was no deal, and this
2 is your statement, can you tell me why on the top of page eight
3 it says: "Okay. If it became necessary, would you have any
4 problem in testifying to this in court?"

5 A And you answered, "No, as long as you keep your
6 end of the bargain."

7 A End of the bargain was not to have me and John
8 Snow in the same housing.

9 Q That was the bargain?

10 A It wasn't a bargain. It was just an agreement.

11 Q Just the last couple minutes you testified for
12 Mr. Teuton and I wrote it down right here, that there was no
13 assurance that you would not be housed with John Snow.

14 I asked you, was there any promises or any
15 consideration that you wouldn't be in the same place and you
16 said no.

17 A It wasn't a promise. It was just to see--

18 Q I didn't ask it as a promise. Now, you have
19 testified under oath there wasn't, yet, there is in this at the
20 same time--

21 MR. TEUTON: Your Honor, Mr. Houston is becoming
22 argumentative. He is not posing questions to the witness.

23 THE COURT: Sustained.

24 Q (By Mr. Houston) Why did you just lie under
25 oath?

26 A I didn't lie under oath.

27 Q You just didn't tell the truth?

28 A There was no deal made, okay? All they were
29 going to do is not have us in the same unit.

30 Q And there was nothing mentioned about keeping
31 you down here and trying to keep you down here at Jean or
32 Indian Springs, at least in Southern Nevada?

1 A I was classified by the board. That was it.
2 It had nothing to do with it.
3 Q Were you classified by the board before you
4 gave this statement?
5 A I was classified after.
6 Q That's correct. And so it wasn't before you
7 gave this statement, correct?
8 A Um-huh.
9 Q So at that time, you didn't know where you
10 were going?
11 A Nobody knows where they are going until they
12 go to classification.
13 Q Now, Mr. Snow, you said the reason that he
14 wanted, in your words, Sally taken out was because he told you
15 that she could really hurt his case?
16 A That's right.
17 Q Now, you said you knew Sally Cook, right?
18 A I met her on occasions, yes.
19 Q You have access to television in the jail?
20 A Yes, we do.
21 Q And do you have access to newspapers?
22 A No, we don't, no newspapers out there.
23 Q Were you aware of the fact that Harry Wham was
24 killed?
25 A Yes, I was.
26 Q And you knew who was charged in those offenses?
27 A Yes, I do.
28 Q And you knew some of the facts surrounding the
29 case?
30 A Very few facts.
31 Q So there you were in the hallway. Where was it
32 when you had this conversation that Mr. Snow asked you to take

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JA010878

1 out Sally Cook?

2 A Right in the hallway. I was behind the bars.
3 He was either going down to the legal library or downstairs or
4 something.

5 Q Do you have a reputation as a hitman?

6 A No, I don't.

7 Q Why would he come to you and ask you to take
8 out Sally Cook, do you know that?

9 A The only thing I could figure out is that I
10 frequent the bars around town. I frequent the Keyboard Lounge
11 and I know a lot of people.

12 Q I mean, he would just come up to you because
13 you frequent a bar and ask you--

14 A He came up totally blind to me. I didn't know
15 him from Adam.

16 Q So he came up to you totally blind, you didn't
17 know him and he asked you to take out Sally Cook?

18 A That's right.

19 Q And he said something about--and he has got
20 \$5,000, right?

21 A Yes, sir.

22 Q Who told you to say he had \$5,000 to take
23 out Sally Cook?

24 MR. TEUTON: Assumes facts not in evidence.

25 THE WITNESS: Nobody told me.

26 THE COURT: Sustained.

27 Q (By Mr. Houston) Did you say anything about
28 the 5,000 in your testimony which you gave to the police when
29 you went to them back on February 15th?

30 A I believe I did mention it one time.

31 MR. HOUSTON: Your Honor, at this time I would
32 offer Defendant's Proposed Exhibit A.

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JA010879

1 MR. TEUTON: No objection.
2 THE COURT: It will be received.
3 MR. HOUSTON: I don't have any further
4 questions.
5 THE COURT: Redirect?
6 REDIRECT EXAMINATION
7 BY MR. TEUTON:
8 Q Mr. Morelli, the robbery charge that was
9 dismissed against you, is that part of the same incident
10 involving the sexual assault?
11 A Yes, it was.
12 Q Same victims?
13 A Yes.
14 Q The sexual assault charges that were dismissed,
15 was that the same victims as well?
16 A Yes.
17 Q So it was basically one case pending against
18 you?
19 A Well, it was two victims, two different cases.
20 Q With multiple counts?
21 A Right.
22 Q Involving the same two individuals?
23 A Right.
24 Q And the charges that were dismissed all
25 involved those same two individuals?
26 A Yes.
27 Q And this was two occurrences total?
28 A Yes.
29 Q Were you sentenced to life plus life on what
30 you plead guilty to?
31 A Yes.
32 Q Why did you on February the 15th come forward

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JA010880

1 with the information that you provided to the police department?

2 A I felt the way the case was building up, I
3 didn't want to be involved in it in any way or charged with any
4 kind of conspiracy to commit, if this was brought out during the
5 trial.

6 Q You felt that based on what the defendant had
7 contacted you and proposed to you, that charges could be brought
8 against you?

9 A That's right. I have enough time as it is.

10 Q That was the sole purpose in coming forward
11 with this information?

12 A Yes, it was.

13 Q How was it if these conversations were between--
14 you and the defendant, how was it that you felt threatened or
15 felt threatened that you could become a defendant yourself?

16 A It was just too many people heard about it at
17 the County Jail.

18 MR. TEUTON: No further questions.

19 THE COURT: Recross, Mr. Houston?

20 RECROSS-EXAMINATION

21 BY MR. HOUSTON:

22 Q You said too many people heard about it at
23 the Clark County Jail. What are you talking about?

24 A That they knew that Snow approached me with
25 different conversations.

26 Q Well, did they know that John Snow approached
27 you to ask to have Sally Cook killed?

28 MR. TEUTON: Objection as speculation, Your
29 Honor, as to what other people knew.

30 MR. HOUSTON: This is what he testified to
31 for them. I am just trying--

32 MR. TEUTON: If he can lay a foundation for it,

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(11600)

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JA010881

1 I don't have any objection, but now he is asking this witness
2 to delve into the minds of other people.

3 THE COURT: Well, I think the question might
4 be rephrased. Does the defendant believe that these people
5 thought that was the fact?

6 THE WITNESS: It was bits and pieces.

7 Q (By Mr. Houston) Well, if only you and him
8 were present, so we don't have anyone to come in and say, is
9 that true, only you and him were present when these conversations
10 occurred?

11 A That's right.

12 Q So no one could come in to corroborate what
13 you are telling us now; is that correct?

14 A No.

15 Q Did you go out and tell anyone in jail?

16 A I said nothing to no one.

17 Q And did you ever hear Mr. Snow out around the
18 jail running around telling--

19 A Well, somebody had to say something because it
20 was starting to get back to me.

21 Q Who came up and told you that they had heard
22 that John Snow wanted you to have Sally Cook killed?

23 A Nobody said that precisely.

24 Q Well, name one of the persons that came to you
25 and which you felt threatened by what they told you?

26 A Rick Acobian (phonetic).

27 Q What did Rick Acobian tell you?

28 A That he heard that I had some conversations with
29 Snow and that he wanted me to do some work for him. Specifically,
30 he did not state what it was.

31 Q And that was a real threatening conversation,
32 right there in your mind?

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JA010882

1 A Yes, it was.
2 Q Rick didn't say nothing further or what kind
3 of work?
4 A No, he didn't elaborate any more on that.
5 Q And you have testified that the defendant asked
6 you to look into Joe Lamonte and look into Sally Cook's back-
7 ground to see if there is anything in their backgrounds to
8 impeach them, correct?
9 A That's right.
10 Q Couldn't that have been what he was referring
11 to?
12 A I have no idea.
13 Q You have no idea but you felt threatened
14 anyway?
15 A Yes, I did.
16 MR. HOUSTON: I don't have anything else, Your
17 Honor.
18 THE COURT: All right. Anything further?
19 MR. TEUTON: Yes, Your Honor.
20 FURTHER REDIRECT EXAMINATION
21 BY MR. TEUTON:
22 Q In fact, Mr. Morelli, did you trust the
23 defendant?
24 A Did I trust him?
25 Q Yes.
26 A No, I didn't.
27 Q Were you leary about what he might do?
28 A Yeah. It worried me on any repercussion that
29 would come back on me.
30 MR. TEUTON: Nothing further, Your Honor.
31 THE COURT: Mr. Houston.
32 MR. HOUSTON: Yes, Your Honor.

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JA010883

FURTHER RECROSS-EXAMINATION

BY MR. HOUSTON:

Q So you were real worried that the man that the State of Nevada says is the hitman and the man that they say killed Harry Wham, attempted to kill him, and conspired to kill him, you were worried that the State of Nevada might make a deal with this one man to get you on some kind of conspiracy charge?

A No. I wasn't worried to make a deal with him.

Q That would have been the only way. How else would anyone know? How else would they prove that he came to you with this if they didn't use him and no one else knew about it?

A Just his statement alone.

Q So you were worried that they were going to use him against you?

A Yes, I was.

MR. HOUSTON: Thank you. I don't have anything else.

THE COURT: All right. Mr. Morelli, you may step down and go with the Bailiff.

Ladies and gentlemen, we are going to take an early recess for lunch.

(The admonition was read.)

THE COURT: We have some matters, or I have some matters to attend to. We will reconvene at one o'clock.

Court's in recess.

(Lunch recess taken.)

THE COURT: The continuation of Case C61676, State of Nevada versus John Oliver Snow.

The record will reflect the presence of the defendant, his attorney, Mr. Houston; Mr. Harmon and Mr. Tauton representing the State.

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• •

EXHIBIT 84

EXHIBIT 84



Office of the District Attorney

CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA 89101
(702) 388-4711

ROBERT J. MILLER
DISTRICT ATTORNEY

MELVYN T. HARMON
CHIEF DEPUTY

July 20, 1984

TO WHOM IT MAY CONCERN:

Reference: RICHARD JOSEPH MORELLI

I am a Chief Deputy District Attorney employed by the Clark County District Attorney's Office. I was one of the prosecutors assigned to the capital murder case wherein JOHN OLIVER SNOW was convicted of Conspiracy to Murder and First Degree Murder with Use of a Deadly Weapon of HARRY PAUL WHAM. The trial jury imposed a sentence of death.

RICHARD JOSEPH MORELLI can forward with information that defendant SNOW had offered him \$5,000 to eliminate a key prosecution witness while the two were incarcerated in the Clark County Jail. Mr. MORELLI voluntarily provided the information he possessed and did testify as a prosecution witness at the penalty hearing of JOHN OLIVER SNOW. Witness MORELLI did not insist on any favors in return for his cooperation and it is the desire of this deputy to make prison officials and representatives of the Boards of Pardon and Parole aware of the full cooperation of RICHARD JOSEPH MORELLI in the JOHN OLIVER SNOW case.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Melvyn T. Harmon", is written over the typed name.

MELVYN T. HARMON
Chief Deputy

MTH/lb

● ●

EXHIBIT 85

EXHIBIT 85

JEV00036-PICKER00035

COPY

IN THE SEVENTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR WHITE PINE COUNTY

JOHN OLIVER SNOW,)
)
 Petitioner,)
)
 vs.)
)
 RON ANGELONE, Director,)
 NEVADA DEPARTMENT OF)
 PRISONS,)
)
 Respondent.)

Case No. 6-12-89 WPHC

DEPOSITION OF MELVYN T. HARMON, ESQ.

Taken on Friday, September 25, 1992

At 9:00 A.M.

At 411 East Bonneville

Fourth Floor

Las Vegas, Nevada 89101

Reported by: Stacy L. Briggs, C.S.R. No. 335

1 Thereupon--

2 MELVYN T. HARMON, ESQ.

3 was called as a witness by the Petitioner, and
4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. PICKER:

7 Q. This is the time and place set for the
8 deposition of Melvyn Harmon in the case that we had the
9 deposition in yesterday, John Oliver Snow versus Ron
10 Angelone. This is set pursuant to a Court Order and
11 Stipulation of counsel.

12 Could you please state your name.

13 A. Melvyn T. Harmon, H-a-r-m-o-n. My first name
14 is M-e-l-v-y-n.

15 Q. Mr. Harmon, have you ever been deposed?

16 A. Yes.

17 Q. You are familiar with the process?

18 A. Somewhat.

19 Q. Where are you currently employed?

20 A. With the Clark County District Attorney's
21 Office.

22 Q. And what is your job there?

23 A. I'm a chief Deputy District Attorney.

24 Q. How long have you been with the Clark County
25 District Attorney's Office?

1 A. Twenty-four and a half years.

2 Q. How long in your current position?

3 A. About 16 years assigned to the major
4 violator's unit.

5 Q. Would it be safe to say you have done a number
6 of death penalty trials?

7 | A. Yes.

8 Q. Can you estimate for me how many?

9 A. Are you referring to cases where the
10 punishment was death --

11 Q. I guess I'm --

12 A. -- or where we alleged aggravating
13 circumstances?

14 Q. I guess where you alleged aggravating
15 circumstances.

16 A. Perhaps as many as 50 where we made that
17 allegation. Perhaps 20 or 21 where the death penalty was
18 the punishment.

19 Q. You are familiar with the case that we are
20 here to discuss today?

21 A. Yes.

22 Q. And you remember the case against John Oliver
23 Snow?

24 A. I remember some things about the case.

25 Q. That's fair. It has been a little while.

1 How many trials would you have done between
2 Mr. Snow's conviction and now?

3 A. That's about eight years ago. I handle seven
4 or eight cases a year, so about 50 plus.

5 Q. When did you first become involved in the case
6 against John Oliver Snow?

7 A. Practically from the inception of the formal
8 approval of the criminal complaint.

9 Q. Can you give me a time frame on that as to
10 when it was after the shooting?

11 A. Not really. I don't actually remember at what
12 point we approved the charges.

13 I work with Bob Teuton, T-e-u-t-o-n. And
14 Teuton was, perhaps, more active regarding the case in the
15 early phases. I really cannot give you a definite time
16 frame.

17 Q. That's fine. What do you remember about your
18 first involvement in the case?

19 A. I remember meetings with Teuton and meetings
20 with Detectives Dillard and Allen of the police department.

21 Q. In this case there were a number of suspects.
22 This case had a number of suspects; would that be safe to
23 say?

24 A. True.

25 Q. And it turned out that the jury found that

1 there was a pretty, I guess, wide range in conspiracy with
2 a number of people involved; is that correct?

3 A. I inferred that from their decision. However,
4 you must remember, we took pleas of guilty from quite a
5 number of the conspirators.

6 Q. Can you tell me how this case progressed and
7 how you came -- how John Snow came to be named as a
8 defendant?

9 A. I don't remember the details of the
10 investigation now. I think you'd be better advised to ask
11 the primary investigating officers that pursued the case.

12 A Sally Cook, as I remember, a sister of Peggy
13 Wham, in the early phases of the investigation -- I think
14 probably during the grand jury proceedings -- was
15 undoubtedly the major source of information.

16 I know there was -- at some point the finger
17 was pointed in the direction of Snow. There were the
18 prints that were developed at the Golden City Motel, there
19 were a series of telephone calls which we felt established
20 the trail of Mr. Snow from the East out here and that
21 probably summarizes, given my vague recollection now, the
22 evidence which initially pointed at Snow.

23 Q. Was Sally Cook a member of the conspiracy or a
24 member of the crime, to your knowledge?

25 A. I don't think that the evidence ever

1 conclusively established whether she was or wasn't. She
2 maintained that she was not.

3 Q. Okay. Did she ever discuss driving around
4 with John Snow, John Biancone, and the Parker brothers?

5 A. I don't remember, no.

6 Q. Okay. There were two attempts on Harry Wham's
7 life, the second one being successful?

8 A. Yes.

9 Q. Can you tell me what you remember about the
10 facts of the first shooting?

11 A. Not very much. I've refreshed my memory
12 regarding the date.

13 As I remember, that was January the 26th,
14 1983. I know that we had Harry -- as I remember, a
15 statement by Harry Wham giving whatever his account was.

16 Q. Do you recall what that statement was?

17 A. No, not really.

18 Q. Okay.

19 A. I know we would have medical evidence
20 establishing the nature of the wound or wounds that he
21 suffered. I don't remember details.

22 Q. Let's just take a small side track.

23 What documents did you review before this
24 deposition or in preparation for this deposition?

25 A. I looked at some notes in what I called a

1 trial notebook, which basically were my entries summarizing
2 salient points in the case, which I have here with me. I
3 also reviewed the testimony of Kathy Faltinowski, and I
4 reviewed my testimony of when attorney Joe Houston
5 questioned me on behalf of John Snow as it was.

6 Q. That would have been as of the post relief
7 action?

8 A. No. That was during the trial.

9 Q. That was during the trial?

10 A. Yes.

11 Q. And did you discuss this matter, today's
12 deposition, with anybody?

13 A. I spoke briefly -- I think it was several days
14 ago -- with Mr. Higgins.

15 Q. What was the nature of that conversation?

16 A. Well, there were a number of things involved.
17 I had some concern, and I explained this to him, about even
18 being available for this morning's hearing. We also talked
19 generally about the timing, a different jurisdiction,
20 different depositions. I knew that Kathy Faltinowski was
21 to be deposed yesterday. I knew already that --
22 independently of what Mr. Higgins said yesterday -- that
23 Mr. Snow was make -- is making certain allegations
24 concerning Kathy Faltinowski, and I know that there is an
25 informant who has surfaced who claims that Faltinowski made

1 certain statements to her inconsistent with her testimony.
2 That was published in the local media some time ago.

3 Q. Is that how you found out about it
4 independently?

5 A. That's how I found out about it. Initially I
6 talked with the detective on the case and the -- very
7 generally Mr. Higgins and I talked about the issues
8 involved several days ago.

9 Q. Okay. When did you first meet Kathy
10 Faltinowski?

11 A. I don't remember specifically.

12 Q. Would it have been after she was arrested?

13 A. Oh, it would have been considerably after she
14 was arrested. It probably -- in terms of -- well, I'll
15 take that back. I was involved a substantial period of
16 time before Harry Wham was murdered as the prosecutor in a
17 burglary case that involved his business. And I may have
18 met Kathy Faltinowski at that time. As I remember, it may
19 have been a year before Harry Wham's murder. I know I met
20 one of the girls. In fact, as I remember, it was her
21 sister, I think, who was scheduled to be a witness in that
22 case. And it turned out that she was quite reluctant. I
23 don't specifically remember, but I may have met Faltinowski
24 at that time.

25 In terms of this case, I really doubt that I

1 had any formal contact with her until after an agreement
2 was reached through her attorneys.

3 Q. What were the terms of that agreement?

4 A. She, like the other conspirators, was
5 originally charged with three counts. The first count, as
6 I remember, was conspiracy to commit murder; Count II was
7 attempt murder with use of a deadly weapon; and Count III
8 was an open murder charge with use of a weapon.

9 The agreement, in return for her truthful
10 testimony, was that she plead guilty to murder in the
11 second degree. We agreed, after the rendition of
12 sentencing, to drop Counts I and II and we dropped the use
13 allegation as to Count III.

14 Q. Would you term that deal to have been a
15 benefit to her?

16 A. Yes.

17 Q. At some point after that you met with her to
18 discuss this case?

19 A. I'm sure we did. In this type of case I would
20 meet with every witness who had substantive information to
21 offer. I may have met several times with her in pretrial
22 conferences.

23 Q. Do you recall how she described the person
24 that she would later identify as John Snow?

25 A. No.

1 Q. Do you recall any of the details of her
2 testimony as to how Mr. Snow was dressed, what he looked
3 like, how he walked, ran, whatever?

4 A. No.

5 Q. Okay. Could you tell me whether
6 Ms. Faltinowski's story in any way changed, other than in
7 minor details, between the time she first talked to you and
8 the time she testified at trial?

9 A. I don't remember any significant changes,
10 but -- frankly, I don't even remember pretrial conferences.
11 I'm simply assuming, because of my standard procedure, that
12 we surely would have talked to her.

13 Q. Okay.

14 A. Since I examined her during the Snow trial, I
15 would have been the person to conduct a pretrial interview.

16 Q. Then it is likely that you would have met with
17 Sally Cook to discuss her testimony?

18 A. Probably in Sally's case a great many more
19 times than Kathy Faltinowski because Cook was actively
20 cooperating almost from the beginning. She, in the early
21 phases of this case, was pretty much the linchpin of the
22 prosecution.

23 Q. Do you recall how Sally Cook described the
24 killer?

25 A. I don't remember details of any of the

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Q. Okay. Or any of the pretrial meetings you have had with her?

A. That's correct.

Q. At any time did you either tell Kathy
owski or send a message through her attorneys that if
didn't cooperate, she would never see her child again?

A. No, I didn't.

Q. Do you know of anybody who did?

A. No.

Q. During the trial, during Ms. Faltinowski's testimony, she was asked whether she had entered into a bargain that benefited her and she testified "no."

A. I remember that having refreshed my memory by
the testimony.

Q. You recall that?

A. Yes.

Q. And she testified "no"?

A. She testified "no," but I think I understood he was talking about.

Q. Did you offer that to the Court, your
 etion?

A. No. I wasn't asked, when I was called to the stand, to give my interpretation.

She had a very small child, she was facing, at

1 that time, a life sentence. I suppose if I was behind
2 bars, I wouldn't feel like I got too much of an advantage
3 either if I was given a life sentence. She didn't have any
4 parole.

5 Q. Were there any other additional terms to the
6 plea bargain agreement other than for her truthful
7 testimony, she would be allowed to plead to second degree
8 murder without weapons enhancement?

9 A. Those were the terms set forth in the
10 testimony. Since I was the examiner, had she not fully
11 described what I felt were the parameters of the agreement,
12 I, through leading questions, would have led her into other
13 categories. So I must conclude from that that that was the
14 agreement.

15 Q. Was there an agreement whether you would
16 assist her in getting parole?

17 A. I don't recall that being part of the
18 agreement. I would have asked her about that. I would
19 have felt obligated to fully advise the jury of the
20 complete terms of the agreement. Since we didn't talk
21 about that -- although except for refreshing my memory -- I
22 can't even tell you that I remember now the total
23 parameters of the agreement. I'm simply telling you that
24 it's our obligation in every case, not just this one, if we
25 proffer a witness, if we struck a bargain with the witness,

1 then the trier of fact is entitled to know what the
2 agreement was. That was brought out. And I'm confident
3 what we brought out completely described the terms of our
4 agreement with her.

5 Q. When Kathy Faltinowski -- let me go back.

6 If Kathy Faltinowski had not reached an
7 agreement and offered to testify, do you believe you still
8 would have been able to convict John Snow?

9 A. I think that's completely supposition. I have
10 no way of knowing.

11 Q. Well, you were the person who prosecuted the
12 case and you obviously have an idea --

13 A. I was one of two people.

14 Q. -- and you obviously should have a pretty good
15 idea of the evidence that you had.

16 A. Well, I definitely did then.

17 Q. Do you remember whether -- I mean, a couple of
18 minutes ago you were saying that in the early stages, Sally
19 Cook was the linchpin of the case.

20 Was Kathy Faltinowski's testimony a linchpin
21 in the case against John Snow?

22 A. Any time you have a witness who is describing
23 the transportation of a hit man to the crime scene and who
24 actually describes how she and her boyfriend, John Parker,
25 got Snow inside and then she has contact with him

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Q. Okay. And about three and a half years after
Litnowski went to prison, she was up for her first
Board hearing; does that sound about right?

A. I don't remember.

Q. She contacted you to ask you to write a letter
behalf to the Parole Board; is that correct?

A. I don't specifically remember that. I'm not
she didn't.

Q. Did you write a letter to the Parole Board on half?

A. I don't remember if I did.

Q. Then you wouldn't remember the contents of
letter either?

A. No.

Q. Okay. Would you have that letter anywhere in files?

A. I don't think so. It's possible, assuming letter was written.

Q. Well, let me represent to you --

A. Not specifically. I remember vaguely getting

1 a telephone call from her when she was in Las Vegas. How
2 soon that was after her parole, I don't remember.

3 Q. Were you surprised in any way by how early she
4 had gotten out?

5 A. Not particularly.

6 Q. Can you give me a reason why?

7 A. In 24 and a half years I've learned not to be
8 surprised at anything the Department of Parole and
9 Probation does.

10 Q. That's fair.

11 Tell me what you remember about John Biancone
12 and his involvement in this case.

13 A. Not very much. I know that Faltinowski said
14 that he had come to Las Vegas, as I remember, twice. I
15 know the detectives and the representatives of the District
16 Attorney's Office shared their view and always believed
17 that Biancone was involved as a conspirator in this case.
18 But to be more specific than that, I'm unable to be.

19 After the Snow trial, there was some talk
20 about whether a viable prosecution would lie against him.
21 And with no memory of specifics, I only know that it was
22 concluded that unless there was additional information,
23 that it would probably not be productive to file charges.

24 Q. He was, in fact, listed as a witness in one of
25 your pretrial documents, wasn't he?

1 A. I don't know which document you're referring
2 to unless it was the Indictment. Since it was an
3 Indictment, though, it occurs to me, as I provide the
4 answer, we would list only the witnesses that testified
5 before the grand jury hearing and probably felt obligated
6 as a result of that, because of the type of case, to file a
7 separate document listing potential witnesses. At that
8 time we did the same thing that we do with a pleading, an
9 information, we list everyone whose name appears in any of
10 the reports who was not the charged defendant. And
11 Biancone would have fallen into that category.

12 Q. Do you know the name Ann Atkinson?

13 A. Yes.

14 Q. How do you know that name?

15 A. Ann Atkinson was a witness for me, a jail
16 house snitch, on another murder case which I handled some
17 years ago having absolutely nothing to do with the murder
18 of Harry Wham. It was the murder of a cab driver, John
19 Schwitzer (phonetic).

20 Q. Was she a truthful witness for you?

21 A. It's hard to say. When a witness comes from
22 either the jail house or prison context, I'm certainly --
23 since I proffered her as a witness -- not going to tell you
24 that I thought it was perjured information she was giving.

25 But through the years I've developed a healthy

1 skepticism of anyone who surfaces from the jail house
2 climate. They have various motivations.

3 My feeling is that it was someone like
4 Atkinson as it applied to my other murder case. It was a
5 woman named Maggie Kozar (phonetic) to whom Atkinson
6 allegedly had conversed and Kozar had allegedly confessed
7 to her. I believe that the woman was viable, she was
8 willing to testify, she wanted things done for her and that
9 was explained to the jury, too.

10 The bottom line was, I felt the jury was
11 entitled to the information and they could accept it or
12 discard it. I didn't know. But the woman claimed that
13 Kozar had talked to her about the crime and so we presented
14 the information.

15 Q. Was that defendant convicted?

16 A. Oh, she had been convicted before. The
17 Supreme Court had reversed her first conviction for murder
18 in the first degree with use and robbery with use on the
19 grounds of an Edwards violation. She was convicted again
20 in the trial that Atkinson participated in.

21 Q. Did you ever have any other dealings with Ann
22 Atkinson?

23 A. I don't remember specifically, but I would
24 imagine that there might have been a letter or two, there
25 may have been a phone call. As both of you can probably

1 appreciate, when you deal with an inmate, it seems like in
2 a sense you sort of get married to the person. If there is
3 anything they ever want, they feel like you are there as a
4 connection in law enforcement. There has been no contact
5 for years.

6 Q. Have you reviewed the deposition of Ann
7 Atkinson?

8 A. No.

9 Q. All you know about her allegations are what
10 you read in the Review Journal article?

11 A. Basically. Mr. Higgins and I had talked in
12 very general terms a few days ago about that. But as I
13 recall, I told him that I had met Ann Atkinson and I was
14 aware that she was alleging now that she had had
15 conversations with Faltinowski.

16 Q. And the nature of the conversations were
17 related to you. What did you understand about those
18 conversations?

19 A. I don't remember the specific details except
20 to summarize it, I believe Atkinson is alleging that
21 Faltinowski told her that she lied about Snow's
22 involvement.

23 Q. When Kathy Faltinowski first entered the
24 courtroom in the trial against John Snow, did she say
25 anything to you or ask you any questions?

1 A. When she first entered the courtroom?

2 Q. Yes. If you remember.

3 A. I don't remember.

4 Q. Would you remember if she had asked which one
5 was John Snow?

6 A. Yes.

7 Q. I take it that didn't happen.

8 A. That did not happen.

9 Q. Let me ask you another question.

10 When she first entered the courtroom in the
11 trial of John Snow, how many people were at the defense
12 table?

13 A. I don't remember that either. But I don't
14 remember that Joe Houston was assisted by anyone else. I
15 could stand corrected. I know Houston was an attorney --
16 we always, on capital cases, have two attorneys now. The
17 only two people I could be sure of would be John Snow and
18 Joe Houston. They don't look alike.

19 Q. I was going to say, what color is Joe Houston,
20 what is the color of his skin?

21 A. He's white. He's Caucasian.

22 Q. Okay. Hypothetically, if Kathy Faltinowski
23 did not know what John Snow looked like, it would be pretty
24 easy to tell by just looking at the defense counsel table?

25 A. It would be pretty easy to deduce who John

1 Snow was.

2 Q. All right. Do you remember much about the
3 defense's case in chief?

4 A. No.

5 Q. Do you recall ever getting any evidence or any
6 information from the defense or seeing any presented at the
7 trial about Mr. Snow's physical condition?

8 A. I know there was some evidence presented
9 concerning an alleged alibi as of January the 26th. I
10 think he had a dental appointment or something.

11 Q. Anything about any leg or hip problems?

12 A. It's possible. I don't remember that now.

13 Q. Was anything presented regarding -- or that
14 you knew of regarding a telephone conversation Mr. Snow had
15 with somebody on the date of Harry Wham's murder where he
16 had received a call in New Jersey?

17 A. It's possible. I'm sorry, I don't remember.

18 Q. That's fine.

19 In your opinion, based on your prior
20 experience -- let me go back and ask a different question.
21 I'm sorry.

22 How many trials have you had against Joe
23 Houston?

24 A. Perhaps three or four.

25 Q. What is your opinion of his ability as a

1 defense attorney?

2 A. He has a very nice manner in court. I think
3 he argues vigorously and fluently. I would rate him
4 substantially above average.

5 Q. Have you had an experience to judge or to view
6 his preparation for trial?

7 A. No.

8 Q. Does it appear to you he comes prepared?

9 A. Yes.

10 Q. How was he in the John Snow trial, is your
11 opinion any less or any greater than that?

12 A. No. It's probably somewhat greater. I
13 thought he presented a somewhat vigorous defense.

14 Q. There was some, I guess, argument, is the best
15 word I can use, about jury instructions regarding
16 accomplices or co-conspirators. Do you recall that?

17 A. I'm sure there was given the nature of the
18 case, but I don't remember details.

19 Q. So you don't remember the positions each side
20 took?

21 A. No.

22 Q. Okay. Just bear with me a second here. I'm
23 trying to make sure I've asked all of my questions.

24 Have you had any contact with Kathy
25 Faltinowski other than the one phone call since her parole?

1 A. I know she called me again at least once. It
2 was after I read in the newspaper that Atkinson had
3 surfaced and was alleging that Faltinowski had told her she
4 lied at the Snow trial. Kathy called me to assure me that
5 that was not true, that she had been truthful at the trial.

6 Q. How did she sound during that telephone
7 conversation?

8 A. Concerned that her reputation or character was
9 being compromised.

10 Q. If it turns out that she did lie at trial, do
11 you think that would affect her parole?

12 A. I have no way of knowing. I really lost track
13 of this case.

14 Q. Just some cleanup questions.

15 Have you taken any prescription medication or
16 alcohol or any controlled substances in the last 24 hours?

17 A. No.

18 Q. Is there any reason why your -- is there
19 anything that would have affected your testimony this
20 morning?

21 A. The pressure of another trial, perhaps.

22 MR. PICKER: That, we can understand. I guess
23 what we'll do is have the original -- after Mr. Higgins
24 asks his cleanup questions -- we'll have the original sent
25 to Mr. Harmon at the Clark County D.A.'s Office and if you

1 will then forward it on to my office --

2 THE WITNESS: That would be fine.

3 MR. PICKER: -- after you sign it -- that's
4 all I have.

5 MR. HIGGINS: I just have a few questions,
6 Mr. Harmon.

7 CROSS EXAMINATION

8 BY MR. HIGGINS:

9 Q. Did you prosecute the other cases as well, the
10 Parker brothers and Peggy Wham?

11 A. Bob Teuton and I were co-counsel on all the
12 cases. The Parker brothers and Faltinowski, of course,
13 entered pleas of guilty, so trials were not necessary.
14 Sally Cook was never prosecuted, never charged, to my
15 memory, with anything arising out of the attempt or the
16 actual murder of Harry Wham.

17 I did also participate in the prosecution of
18 Peggy Wham. That case, like the Snow case, went to trial.
19 She was convicted of murder in the first degree and she got
20 life without parole.

21 Q. And Kathy Faltinowski didn't testify at her
22 mother's trial?

23 A. No, she did not.

24 Q. Was Peggy Wham convicted prior to the Snow
25 trial?

1 A. Yes.

2 Q. Why were you called to the stand during the
3 Snow trial?

4 A. You should ask Joe Houston. He apparently
5 seized upon some point that he thought was pertinent. I
6 found it to be trivial. It had something to do with
7 whether I had spoken briefly with Kathy Faltinowski prior
8 to the commencement of cross-examination.

9 As I remember, we had completed direct, then
10 the evening recess occurred -- and not because I
11 undoubtedly remember this, but because I've read over the
12 transcript of her testimony and mine -- apparently I spoke
13 briefly with Kathy Faltinowski the morning prior to her
14 cross-examination.

15 The dispute seemed to be whether the
16 conference occurred in the hallway or somewhere else.
17 Kathy Faltinowski said it was in the hallway. My
18 recollection, which I'm sure was accurate at the time, was
19 that we spoke in the judge's law clerk's office, which was
20 just a small cubicle off of the court -- the judge's
21 hallway. It was not a hallway open to the public, but it
22 was a hallway.

23 Q. Okay. Part of the deal with the Parker
24 brothers -- were they ever required to testify or were they
25 just allowed to plead guilty?

25 |||

REDIRECT EXAMINATION

BY MR. PICKER:

Q. Do you know or have any evidence or know of any reason why Ann Atkinson would lie about what Kathy Faltinowski told her?

A. I have no explanation whatsoever for that. I don't know. You know, like anyone else, I can speculate. I would assume Peggy Wham is assigned to the same facility. I don't know that to be a fact.

Q. Let me tell you for a fact that they are not.

A. They have never been together?

Q. No. They were previously, but they have not been for a couple of years.

A. Well, since I believe that Kathy Faltinowski was truthful, since Atkinson is claiming that she said she was not, I'm concluding, without any factual predicate, that for whatever the motivation and regardless of the axe she's grinding, Atkinson is making this up. But I don't have any explanation as to why. I don't know the circumstances. She could be a boyfriend of John Snow for all -- a girlfriend of John Snow for all I know.

Q. If it turns out that Kathy Faltinowski did lie under oath at John Snow's trial, could she be charged with perjury?

A. Of course she could be. Almost anything is

1 possible. But of course -- how is it you phrased the
2 question again?

3 Q. If she had lied, if it turns out that -- if
4 it's proven that she lied --

5 A. I don't know how that's going to be proven at
6 this point. Judges make judgments just as juries do, but
7 that doesn't change the salient truth in the case. So I
8 think you're posing to me a hypothetical which actually can
9 never happen. Who is to prove it? How could it be proven?
10 Certainly not to the lips of John Snow. And Ann Atkinson
11 doesn't have the type of credibility, because of her
12 criminal history, that would cause us -- unless there was
13 some substantial other corroborating evidence -- to
14 conclude that Faltinowski offered perjured testimony.

15 Q. Would you agree that Kathy Faltinowski
16 certainly had motivations to lie as well?

17 A. No. To the contrary. I would say that her
18 entire agreement was premised upon her being truthful. Of
19 course we don't have any truth serum, we don't have any way
20 of actually measuring that. But that's always the
21 agreement.

22 Q. Let me ask you a question. If she had been
23 truthful and her story was the same as Ann Atkinson's and
24 she had stood up and testified that way, that John Snow was
25 not the killer and she had never seen him before that day

1 in trial, would that have been something you would have
2 given a plea bargain for?

3 A. No, but that isn't the truth in this case. In
4 my opinion, it never will be. John Snow is the contract
5 killer of Harry Wham. I'm very confident of that.

6 MR. PICKER: That's all I have.

7 MR. HIGGINS: Nothing further for me.

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16 (Thereupon the taking of the
17 deposition was concluded.)

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* * * * *

CERTIFICATE OF DEPONENT

I, MELVYN T. HARMON, ESQ., Deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action, subject to any corrections I have heretofore submitted; that I have read, corrected and do hereby affix my signature to said deposition.

MELVYN T. HARMON, ESQ., Deponent

Subscribed and sworn to before me this

_____ day of _____, 1992.

Notary Public

STATE OF NEVADA)
COUNTY OF CLARK)

ss: CERTIFICATE OF REPORTER

I, Stacy L. Briggs, CSR #335, do hereby
certify:

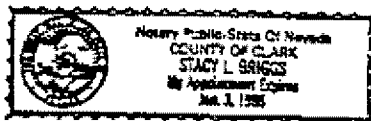
That I reported the taking of the deposition of
MELVYN T. HARMON, ESQ., commencing on the 25th of
September, 1992, at the hour of 9:00 a.m.

That I thereafter transcribed my said shorthand
notes and that the typewritten transcript of said
deposition is a complete, true and accurate transcription
of my shorthand notes.

I further certify that I am not a relative or
employee of the parties, attorneys or counsel involved
in said action, nor a person financially interested in the
action.

IN WITNESS WHEREOF, I have hereunto set
my hand this 6th day of October, 1992.

Stacy L. Briggs
Stacy L. Briggs, C.S.R.



ORIGINAL

1

IN THE SEVENTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR WHITE PINE COUNTY

JOHN OLIVER SNOW,

Petitioner,

vs.

Case No. 6-12-89 WPHC

RON ANGELONE, Director,
NEVADA DEPARTMENT OF
PRISONS,

Respondent.

DEPOSITION OF MELVYN T. HARMON, ESQ.

Taken on Friday, September 25, 1992

At 9:00 A.M.

At 411 East Bonneville

Fourth Floor

Las Vegas, Nevada 89101

Reported by: Stacy L. Briggs, C.S.R. No. 335


100-100000-000117

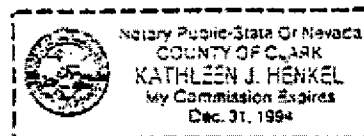
CERTIFICATE OF DEPONENT

I, MELVYN T. HARMON, ESQ., Deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action, subject to any corrections I have heretofore submitted; that I have read, corrected and do hereby affix my signature to said deposition.


MELVYN T. HARMON, ESQ., Deponent

Subscribed and sworn to before me this
26th day of October, 1992.


Notary Public



DEPOSITION CORRECTION SHEET

DEPOSITION OF: Melvin T. Harman

TAKEN ON: 9/25/92

PAGE:	LINE:	CORRECTION:
5	13	Worked
8	5	Strike the words "as it was."
13	4	insert after "any" + before "pile" - guarantee of
14	3	insert after "brought up" before "completely" - and
16	10	strike "one" + substitute - going
19	3	Feelings) - strike "is that is was" + substitute - apply +
19	5	Koza
19	6	Koza
19	7	Warnants) - insert after Warnants before was - inform:
19	13	Koza
20	3	Strike "there as a" + substitute - their
26	11	Strike "undoubtedly" + substitute - necessarily
29	10	Strike "to" + substitute - through

10/23/92
DATE

Melvin T. Harman
SIGNATURE OF DEPONENT

● ●

EXHIBIT 86

EXHIBIT 86

[Return to the referring page.](#)

Las Vegas SUN

Today: May 03, 2004 at 11:34:00 PDT

Police say Binion witness not credible

By Jace Radke

[<jace@lasvegassun.com>](mailto:jace@lasvegassun.com)

LAS VEGAS SUN

Clark County prosecutors shouldn't have been surprised late last week when they learned that a Nevada prison inmate had told investigators last year that he had information about how casino heir Ted Binion had been killed.

The FBI had told Metro Police about the development four and a half months ago.

In a letter dated Dec. 15, Las Vegas Supervisory Special Agent Jerry Hanford wrote that convicted felon Avery Church, "claimed to have information regarding the Ted Binion homicide. A great deal of the information appears to lack credibility including claims that the Binion family had paid of(f) the Clark County District Attorney and Judge Bonaventure."

The letter was addressed to Lt. Tom Monahan, the man in charge of Metro's homicide detectives.

Reached this morning, Monahan at first did not remember receiving the letter, but after looking it over, said he did recall it.

"I don't remember if I gave it to the detective on the case, or if I put it in the file, but I don't think I gave it to the district attorney's office," Monahan said.

Monahan said that he found the letter to be of an investigative nature and that, because the FBI said that Church lacked credibility, it wasn't something that was sent along to the district attorney's office. If the letter had stated that the FBI had thought Church's claims were credible, it would have been forwarded to the district attorney's office, Monahan said.

Roger said he first saw the letter late last week when it was faxed over to his office by Ellen Knowlton, special agent in charge of the Las Vegas FBI office.

"I think what happened was that the detective on the case had moved from homicide to robbery and it just got put in the case file, but I'm just guessing," Roger said.

Roger said had he received the letter sooner he would have given it to defense attorneys for Rick Tabish and Sandy Murphy, who are charged with Binion's murder.

Roger said he didn't think Church's statements would have any bearing on the guilt or innocence of the defendants, however.

"I bet you dollars to donuts that the defense will never admit that Ted Binion was murdered," Roger

said. "All along their defense has been a drug overdose."

Hanford's letter states that although Church's information appeared to lack credibility he may have had some contact with the Binion family in the past, possibly with Benny Behnen, Ted Binion's nephew.

The FBI letter notes that, "Church claims that Becky and Nick Behnen were responsible for the murder."

Becky Behnen is Ted Binion's sister. She and Nick Behnen are Benny Behnen's parents.

Hanford's letter notes Church's lengthy arrest record and states that, "Church has credibility problems but in an excess of caution I am bringing this to your attention."

Church is an inmate at the High Desert State Prison in Indian Springs, where he is serving a five-year to life term for attempted murder, robbery and kidnapping.

Tabish has also been at High Desert.

Roger said he was bothered that a Los Angeles federal prosecutor didn't notify prosecutors about Church's comments, though the prosecutor did notify the attorneys for Tabish and Murphy.

In January Assistant U.S. Attorney Mark A. Young in Los Angeles sent a letter to Murphy and Tabish's attorneys making them aware of Church's statements, after Church was interviewed in Los Angeles about an unrelated drug case.

In response, Murphy's attorney, Michael Cristalli, has filed a motion in U.S. district court asking for any reports, documents, tape recordings or information that the Justice Department might have that is exculpatory or could lead to exculpatory evidence in the case.

The request does not change the defense's argument that Binion died of a drug overdose, but seeks any information in order to ensure Murphy's due process rights, according to the motion.

Attorneys for Tabish said they weren't likely to file a similar motion.

Murphy's motion relies on Young's letter sent to the defense attorneys in January.

Young's two-paragraph letter states, "During the course of an unrelated investigation, the United States has learned of potentially exculpatory information relating to your clients and their alleged role in the murder of Ted Binion.

"Specifically, the government has learned that an individual, Avery Church, has previously stated that he had personal knowledge that your clients did not participate in the murder of Mr. Binion."

Tabish and Murphy are accused of the September 1998 murder of Ted Binion, 55. The former part-owner of Binion's Horseshoe was found dead in the Las Vegas home he shared with Murphy.

Tabish and Murphy were originally convicted and sentenced to life in prison, but their convictions have since been overturned by the Nevada Supreme Court. A new trial is scheduled for Oct. 13, according to the motion.

● ●

EXHIBIT 87

EXHIBIT 87

OCT-16-1995 12

7023257155 P.02

LAW OFFICES OF
ROBISON, BELAUSTEGUI, ROHS AND SHARP

A PROFESSIONAL CORPORATION

71 WASHINGTON STREET

RENO, NEVADA 89503

TELEPHONE (702) 328-3101

FACSIMILE (702) 328-7100

(702) 328-7841

KENT E. ROBISON
THOMAS L. BELAUSTEGUI
WALTER BRUCE ROHS
P. BERNARD SHARP
KEESAN G. LOW
SUSAN GAIL ROTH
SARAH L. BREKLOW
HAL TAYLOR
BRIAN SANDOVAL
MICHELLE M. SELACH
GABRIELLE J. CARR

October 16, 1995

E. Leslie Combs, Jr., Esq.
704 South Ninth Street
Las Vegas, NV 89101

Re: Kathryn Cox v. Circus Circus et al

Dear Les:

In response to your letter of October 13, 1995, you are advised that the documents that I have in my possession are being hate-stamped and will be sent to a copy store this week for you and Mr. Palazzo.

In response to your letter of October 3, 1995, you are advised that Circus Circus will pay Mrs. Cox's recent medical expenses. They will do so pursuant to the understanding that you and I have that my clients' payment of medical bills will not be used in any way against them. Since we did not discuss the matter at the NRCP 30(b)(6) depositions, I am relying on you to honor the position I have taken in this case that my clients' generosity not be used against them in any way. Whether my clients are in any way responsible for payment of your client's medical bills is disputed. The only thing that is not disputed is my clients' compassion for your client's situation.

In response to your other letter of October 3, 1995, please be advised that a Motion to Consolidate the case has been filed, a copy of which is enclosed herewith. All future discovery must be coordinated with the office of Palazzo and Murdock so that there is not an unnecessary duplication of costs and fees for the parties and counsel involved.

In response to your letter of September 29, 1995, you are advised that the Early Case Conference Report which will be filed in Randall Cox matter will also be designated as the Defendants' supplement to the Early Case Conference Report filed in this case. It will list additional documents upon which the Defendants will rely in both cases.

William, Winter
Rec'd Date 4/13/03
Cox vs. Rampart Civil Litigation
CL-236

JA010926

ROBISON, BELAUSTZOUT, ROBB AND SHARP
A PROFESSIONAL CORPORATION

E. Leslie Combs, Jr., Esq.

October 16, 1995

Page 2

In response to your letter of September 26, 1995, please be advised that any future effort to take depositions pursuant to NRCP 30(b)(6) will be carefully scrutinized, given your technique of exceeding the boundaries of the specific designations. Moreover, please be advised that I object to any effort you make to solicit opinion testimony from my clients without proper notice, designation, and compensation.

In response to your other letter of September 26, 1995, the Joint Case Conference Report was filed and it will be supplemented in the near future.

In response to your letter of September 19, 1995, please be advised that the security manuals, training manuals, treatises, articles and other documents in my clients' library will not be duplicated, because to do so would be cost prohibitive. You will, however, be provided an opportunity to visit the security offices of my clients to review the security treatises, manuals, articles, papers and documents at the Luxor, the Excaliber and the Circus Circus corporate offices.

In response to your letter of September 18, 1995, I consider this request met.

In response to your letter of August 10, 1995, you have been provided the necessary information by virtue of my delivering copies of the applicable policies to you. There exists an additional policy, and I have requested from my clients a copy of that insurance agreement.

In response to your letter of August 25, 1995, you are advised that my client has tentatively agreed to continue payment of Ms. Cox's medical bills, but we are reluctant to continue any payments for Ms. Zeno.

You have been advised to send the medical bills directly to Mr. Martin, but please copy me with every communication you have with Mr. Martin concerning medical bills. In all other respects, Mr. Martin is to be considered my client, and you are to refrain from any contact with Mr. Martin that does not exclusively relate to payment of Mrs. Cox's medical bills. You, your investigator, and your client must also refrain from contacting present or former employees of my clients regarding this case.

In response to your letter of July 18, 1995, you should be advised that as discovery proceeds, the names and identities of additional witnesses will and have become known. We will supplement accordingly. Also, the identity of additional documents and things will be revealed by the discovery process, and we will

William, Witter
Rec'd Date 4/23/03 CL-257
Cox vs. Rampart Civil Litig

ROBINSON, BELLUSTROW, ROBB AND SHARP
A PROFESSIONAL CORPORATION

E. Leslie Combs, Jr., Esq.
October 16, 1995
Page 3

supplement, if required, by NRCP 16.1 and the applicable Rules of Civil Procedure. To be more specific, however, you are advised of the following concerning your specific requests:

1. Provided.
2. None.
3. Provided.
4. To be provided.
5. None "created or existing at any time prior to date of incident".
6. None "created or existing at any time prior to date of incident".
7. Available for your inspection upon reasonable notice at the offices of the Luxor.
8. Available for your inspection upon reasonable notice at the offices of the Luxor.
9. Provided.
10. Available for your inspection upon reasonable notice at the offices of the Luxor.
11. Provided. See also documents at Clark County Building Department.
12. To be provided.
13. Provided.
14. My clients will object to having to produce this information as being unduly oppressive and burdensome.
15. Although minutes do not exist, the agenda and topics discussed at security meetings are available for your inspection upon reasonable notice.
16. Will be provided if not unduly burdensome.
17. Provided.
18. Provided.
19. Provided.
20. Provided.
21. Employee security awareness is part of employee orientation. The documents used for that orientation are available for your inspection upon reasonable notice.
22. Provided. (See Clark County Building records.)
23. The request is unintelligible.
24. Provided.
25. None.
26. See above. All supplements to discovery and early case conference reports may also be responsive to no. 28.

William, Winter
Revised Date 4/23/03
Cox vs. Rampart Civil Litigation

CL-238

ROBISON, BELANSTEGUI, ROSS AND SHARP
A PROFESSIONAL CORPORATION

E. Leslie Combs, Jr., Esq.

October 16, 1995

Page 4

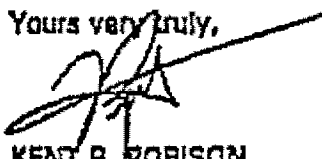
In response to your letter of July 20, 1995, the temporary lot was transformed into a permanent parking facility. The plans and details of that transformation are at the Clark County Building Department. What is in the Defendants' possession have been provided.

The ownership documents for the parking facility are in my possession and are being duplicated for you and Mr. Palazzo.

Enclosed please find a notice of a records deposition for the Clark County District Attorney's office. Mr. Guymon, the prosecuting attorney, has informed me that he will designate an investigator to be responsive to the records deposition. He will simply instruct the investigator to have a copy of the entire file (excluding Witter's psychiatric examination and the presentence report) be duplicated at Kinko's. If this arrangement is in any way not satisfactory, please advise.

Please also find enclosed our First Set of Interrogatories, Requests for Admission and Requests for Production of Documents. Please also find enclosed Notices of Depositions for participant witnesses. Please advise if the dates are not available. We can rearrange to suit the calendar of your office, Mr. Palazzo's office and the witnesses.

Yours very truly,



KENT R. ROBISON

KRR:jf

Encls.

cc: Louis Palazzo, Esq. (w/enclosures)

61WPCATA\CL5V71477.01.JL-COMB5.075

William, Witter
Rec'd Date 4/22/03
Cox vs. Rampart Civil Litigation
CL-339

JA010929

● ●

EXHIBIT 88

EXHIBIT 88

Las Vegas Metropolitan Police Department
Training Bureau

This is to certify that

BRYON A CANDIANO

has satisfactorily completed a course in

INFORMANT MANAGEMENT

3 HOURS

Conducted by

Las Vegas Metropolitan Police Department
In-Service Training

4412



Sheriff

APRIL 14, 1994

Date

• •

EXHIBIT 89

EXHIBIT 89

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
COOPERATING INDIVIDUAL AGREEMENT

I, _____ the undersigned understand that while I am cooperating with and assisting the Las Vegas Metropolitan Police Department, I am *forbidden* to do any of the following:

- A. Sell or deliver any controlled substance, dangerous drugs, marijuana, or any substance purported to be same, to anyone.
- B. Sell or deliver or cause to be sold or delivered any controlled substance, dangerous drug, marijuana, or any substance purported to be same, to any person who would then in turn sell or deliver said controlled substance, dangerous drug, marijuana, or any substance purported to be same to any member of the unit.
- C. Use my sex, sexuality, or sexual activity to induce or persuade any individual to sell or deliver a controlled substance, dangerous drug, marijuana, or any other substance purported to be same to any member of the unit.
- D. Search any suspect, person, house, papers, or personal effects.
- E. Become involved in any activities that would constitute entrapment.
- F. Engage in any illegal or improper conduct so long as I am working with the Las Vegas Metropolitan Police Department.
- G. Present myself as an agent, police officer, or employee of the Las Vegas Metropolitan Police Department to anyone at any time.

I understand that any violations arising from my actions in violation of the above circumstances will result in an investigation of matters and if the charges are substantiated, appropriate action (including the possibility of criminal prosecution) will be taken.

I am agreeing to cooperate with the Las Vegas Metropolitan Police Department of my own free will and accord, and not as a result of any intimidation or threats.

In agreeing to work with the Las Vegas Metropolitan Police Department, I understand that no officer may make any explicit or implicit promises or predictions regarding the likely disposition of any criminal proceedings that are pending against me, but that officers will make their best efforts to arrange a meeting with prosecutorial authorities at which time such matters can be discussed.

SIGNED: _____

WITNESSES : _____

TIME : _____

DATE : _____

PLACE : _____

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

SPECIAL CONSENT AND WAIVER OF LIABILITY

I, _____, hereby agree to assist the Las Vegas Metropolitan Police Department in the investigation of criminal violations occurring in the Las Vegas Metropolitan Police Department jurisdiction. I hereby release and acquit the Las Vegas Metropolitan Police Department, their officers, agents, and employees from any injury or liability which I may suffer or sustain in the future as a result of these investigations. I am fully aware that I may have to testify in future court proceedings concerning cases in which I might participate. I have entered into this agreement freely and without duress. I fully understand that I am not to participate in any investigations of any criminal activities, unless the investigation is being directly supervised by a sworn member of the Las Vegas Metropolitan Police Department. I agree to follow the instruction of the supervising officer while assisting in such investigations. I agree that any compensation paid me with respect to any services rendered by me in connection with any such investigation shall be the full and complete payment for those services. I shall have no other or further claim against the Las Vegas Metropolitan Police Department in connection with such services.

(WITNESS)

(DATE)

(SIGNATURE)

(WITNESS)

(DATE)

(SIGNATURE)

● ●

EXHIBIT 90

EXHIBIT 90



REX BELL
District Attorney

OFFICE OF THE DISTRICT ATTORNEY

Clark County, Nevada

DONALD K. WASSWORTH
ASSISTANT DISTRICT ATTORNEY

WILLIAM E. KOOT
CHIEF CRIMINAL DEPUTY

December 3, 1990

Bryn Armstrong
Nevada State Parole Board, Chairman
5500 Snyder Avenue, Bldg. 6
Carson City, Nevada 89710

RE: Robert Bezak

Dear Mr. Armstrong:

The Office of the District Attorney wishes to advise Parole Board Members that Robert Bezak provided valuable information and cooperated fully as a witness in the trial of Daniel Steven Jones conducted in November, 1990. As a result, Daniel Steven Jones was convicted of First Degree Murder With Use of a Deadly Weapon and was sentenced to death.

The prosecution was substantially assisted in its successful prosecution of Daniel Steven Jones by the cooperation and testimony of Mr. Bezak. Please give this information what ever weight you feel is appropriate at the time of his parole hearing.

Very truly yours,

A handwritten signature in dark ink, appearing to read "David J. J. Roger".

DAVID J. J. ROGER
Deputy District Attorney

DJJR/jj

cc: Robert Bezak

• •

EXHIBIT 91

EXHIBIT 91

Declaration of Herbert Duzant

Herbert Duzant hereby declares as follows:

1. I am an Investigator currently employed with the law office of the Federal Public Defender for the district of Nevada. I began my employment with this office in April, 2004. In the normal course of my work, I was assigned to work on the petition of Michael Rippo. I have had an opportunity to speak with his father, Domiano Campanelli, on several occasions since October 2007.
2. During my communications with Mr. Campanelli we discussed his health condition. Mr. Campanelli suffers from Emphysema and he is in the advanced stages of the illness. Mr. Campanelli told me that he only has 30 percent functioning capacity in his lungs and his condition is not expected to improve.
3. During our conversations, Mr. Campanelli's breathing was visibly labored and I paused at various times to allow him to catch his breath.
4. As a result of his illness, Mr. Campanelli has to remain connected to oxygen tubes twenty-four hours of the day and he does not get out of his home much.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 15, 2008 in Las Vegas, Nevada.


Herbert Duzant

● ●

EXHIBIT 92

EXHIBIT 92

Law Offices of the Federal Public Defender
411 E. Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101

Franny A. Forsman
Federal Public Defender
District of Nevada

Michael J. Kennedy
First Assistant

Tel: 702-388-6577
Fax: 702-388-5819

John C. Lambrose
Chief, Non-Capital Habeas Unit
Brian Abbington
Chief, Capital Habeas Unit
Rene L. Valladares
Chief, Trial Unit
Michael Pescetta
Habeas Resource Counsel

COPY

May 14, 2008

Juvenile Justice Division
Eighth Judicial District Court
Records Supervisor
601 N. Pecos Rd.
Las Vegas, Nevada 89101

Re: Carol Anne Campanelli (deceased)
DOB: 5/23/1968
SS#: 530-82-4875

Dear Clerk:

Enclosed please find the Juvenile Records Request Form and accompanying affidavit relating to Carol Ann Campanelli. Also enclosed is a release to the juvenile court system from Ms. Campanelli's mother, Carole Duncan, together with a copy of the death certificate for Carole Campanelli.

It is unknown when Ms. Campanelli entered the juvenile justice but she previously was placed with Child Haven in March of 1976 when her parents were arrested.

We are seeking all records in the possession, custody or control of the juvenile department.

Very truly yours,

FEDERAL PUBLIC DEFENDER



David Anthony
Assistant Federal Public Defender

DA/ebs
Enclosures

1
2 AFFIDAVIT IN SUPPORT OF REQUEST TO COPY JUVENILE FILE
3
4

5 STATE OF NEVADA)
6 COUNTY OF CLARK) ss:
7

8 DAVID S. ANTHONY, being first duly sworn, deposes and says:

9 I am an attorney licensed to practice law in the courts of the State of Nevada;

10 I am an Assistant Federal Public Defender employed with the Law Offices of the Federal
11 Public Defender.

12 On April 20, 2007, the United States District Court appointed the Federal Public Defender
13 to represent Michael Damon Rippo, as attorney of record in his habeas corpus proceedings.

14 As a part of our representation of Mr. Rippo, it is necessary that our office obtain all records
15 relating to any and all matters involving him and his family. Carol Ann Campanelli was Mr. Rippo's
16 sister. Ms. Campanelli's juvenile records are contained in the Eighth Judicial District Court of the
17 State of Nevada.

18 There are currently no case numbers known relating to Ms. Campanelli. It is believed she
19 was in Child Have in 1976 and that in 1977-1978 a Social Services Investigation occurred. She may
20 have had other contacts with the juvenile justice system but, as she is deceased, those are not known
21 at this time.

22 These records are necessary in order to assist in the full development of material facts relating
23 to the family of Michael Damon Rippo for his capital habeas corpus proceeding; We have provided
24 a release from Ms. Campanelli's mother, Carole Duncan, as well as a copy of Carole Campanelli's
25 death certificate.

26 ///

27 ///


28 ///

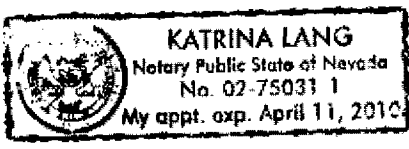
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I respectfully request that this Court provide me with permission to access and copy all juvenile records of Carol Anne Campanelli.


DAVID S. ANTHONY

SWORN and SUBSCRIBED to before me,
this 14th day of May, 2008.


NOTARY PUBLIC in and for said
County and State



REQUEST FOR COPY(IES) OR TO VIEW A JUVENILE FILE

(CHECK AS TO WHICH TYPE OF CASE)

ABUSE/NEGLECT CASE ☒

DELINQUENT CASE ☒

(CHECK WHETHER REQUEST TO VIEW OR COPY REQUEST)

REQUEST TO VIEW FILE ☐

REQUEST FOR COPY ☒

DATE OF REQUEST May 14, 2008

NAME/PHONE/ADDRESS OR DEPARTMENT OF REQUESTOR

David S. Anthony, Assistant Federal Public Defender
702-388-6577
411 E. Bonneville, Suite 250, Las Vegas, Nevada 89101

CASE NUMBER OF FILE (IF KNOWN) _____

REQUESTOR'S RELATIONSHIP TO CASE (i.e., Probation Officer, Attorney of Record, etc.)

Attorney for capital habeas proceedings in federal court

DETAILED REASON FOR REQUEST: Mr. Rippo is presently incarcerated at Ely State Prison under sentence of death. The office of the Federal Public Defender has been appointed to represent Mr. Rippo in his capital habeas proceedings. As part of those proceedings, it is necessary to perform a complete investigation of Mr. Rippo's life history, which includes the juvenile records of his sister Carol Anne Campanelli.

DOCUMENTS REQUESTING (BE SPECIFIC - INCLUDE FILED DATES IF KNOWN)

As indicated in the attached affidavit, Ms. Campanelli's contacts with the juvenile court system began approximately in 1976. We are requesting all files, reports, examinations, reports of examinations and papers and pleadings in any case filed in juvenile court.

CLERK'S NAME IN RECEIPT OF REQUEST _____

DATE REQUEST RECEIVED _____

APPROVED BY _____ DATE _____
DISTRICT COURT JUDGE

**AUTHORIZATION FOR RELEASE
OF CONFIDENTIAL INFORMATION AND RECORDS**

Dated: 5/14/08

To: Eighth Judicial District Court, Juvenile Justice Division
Records Supervisor
601 W Pecos Rd.
Las Vegas, NV 89101

Re: Carol Ann Campanelli

I, CAROLE ANN DUNCAN, by this release, authorize and request you to release to the Federal Public Defender for the District of Nevada, David Anthony, Assistant Federal Public Defender, and/or their designated representatives, any and all information and/or records relating to my daughter, CAROLE ANN CAMPANELLI (DECEASED), including but not limited to, birth certificates and records, death certificates and records, autopsy findings, records and recordings, marriage certificates and records, dissolution files, academic, correctional, employment, law enforcement and military records, medical, psychological, psychiatric, probation and rehabilitation (including alcohol and drug rehabilitation) records as well as any files prepared in connection with prior civil or criminal litigation; any other correspondence or document and all other records, raw data, notes, test results, narrative reports and recordings, together with all time and billing records pertaining to my daughter, Carole Ann Campanelli (deceased). I specifically consent to the disclosure of any and all records pursuant to 5 U.S.C. § 552a(b) and to any consent to disclosure provision of state and local law. This document also authorizes any physicians, experts or other personnel to discuss their otherwise confidential information with the above mentioned legal representatives. In consideration of such disclosure, I hereby release you (in your individual and/or institutional capacity) from any and all liability arising from the disclosure of otherwise confidential information.

This release is limited in the following ways: NOT LIMITED

You are specifically authorized to photocopy these records and to release copies to the above mentioned legal representatives. A photographic copy of this authorization shall be as valid as the original.

30-82-4875
Social Security Number
Carole Ann Campanelli

5/23/68
Date of Birth
Carole Ann Campanelli

Carole A. Duncan
Signature
Carole Ann Duncan as mother of Carole Ann
Campanelli (deceased)

November 20, 07
Date

FEDERAL PUBLIC DEFENDER

District of Nevada

411 E. Bonneville Avenue, #250

Las Vegas, Nevada 89101

(702) 388-6577

**HIPAA - AUTHORIZATION TO RELEASE
PROTECTED HEALTH INFORMATION**

I, the patient/parent/legal guardian give Records Supervisor 8300 - Juvenile Justice Division permission to release, use and/or share my medical information pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and give this permission voluntarily.

Purpose or Need For Releasing, Using and/or Sharing My Protected Health Information: disclosure to me, the individual who is the subject of this information, by and through FRANNY A. FORSMAN, Federal Public Defender, and/or her associates, representatives, or agents.

Pursuant to 45 CFR 164.502(b)(2) the minimum necessary requirement does NOT apply to this request. This request pertains to the whole or entire medical record of the specific section(s) initialed by me for disclosure in paragraphs 4 and 5 below.

1. Person(s) and/or Organization(s)/Entity(s) To Disclose My Protected Health Information:

Name(s): Records Supervisor
Organization/Entity: Eighth Judicial District Ct, Juvenile Justice Division
Address: 601 W. Pecos Rd
City, State Zip Code: Las Vegas, NV 89101

2. Patient Information & Statement: I give my authorization/permission for the above specified person(s) and/or organization(s) or entity(s) to release, use and/or share the medical information described below. I understand that once this information is released, used and/or shared, the person or organization that received it may share it again without my permission. If this happens, the information may no longer be protected under applicable privacy laws. I understand what type of information is going to be released, used and/or shared and how this is going to be done.

Patient Name (First, Middle, Last): CAROLE ANN CAMPANELLI (as authorized by her mother, Carole Ann Duncan)

Patient Address: Deceased

City, State, Zip: _____

Telephone No: _____

Date of Birth: 5/23/68

Social Security No: 530-82-4875

3. Release of Information to:

Name (First, Middle, Last): ATTN: David Anthony

Company: OFFICE OF THE FEDERAL PUBLIC DEFENDER

Address: 411 E. BONNEVILLE AVENUE, STE. 250

City, State, Zip: LAS VEGAS, NEVADA 89101

Telephone No: (702) 388-6577

Fax No: (702) 388-5819

**HIPAA - AUTHORIZATION TO RELEASE
PROTECTED HEALTH INFORMATION
Page No. 2**

4. Records to Be Released, Used And/or Shared: Please indicate the section(s) of the record below that you would like released or that you permit us to use and/or share, and specify the dates of treatment, if known.

Description:	Date(s)	Description:	Date(s)	Description:	Date(s)
<input type="checkbox"/> Admission		<input type="checkbox"/> Immunization Records		<input type="checkbox"/> Progress Notes	
<input type="checkbox"/> Consultation Report(s)		<input type="checkbox"/> Inpatient Records		<input type="checkbox"/> Radiology Report(s)	
<input type="checkbox"/> Correspondence		<input type="checkbox"/> Intake/Outake		<input type="checkbox"/> Releases	
<input type="checkbox"/> Counseling Notes		<input type="checkbox"/> Laboratory Report(s)		<input type="checkbox"/> Social Work Notes/Reports	
<input type="checkbox"/> Designated Record Set/Abstract		<input type="checkbox"/> Nursing Notes		<input type="checkbox"/> Therapy/Rehabilitation Records	
<input type="checkbox"/> Discharge/Clinical Summary		<input type="checkbox"/> Operative Procedure Report(s)		<input type="checkbox"/> Transfer Forms	
<input type="checkbox"/> Drug Administration Records		<input type="checkbox"/> Outpatient Records		<input type="checkbox"/> Treatment Plans	
<input type="checkbox"/> Emergency Record(s)		<input type="checkbox"/> Pathology Report(s)		<input checked="" type="checkbox"/> Entire Medical Record for all sections listed above:	
<input type="checkbox"/> History & Physical Report(s)		<input type="checkbox"/> Physician's Notes			
<input type="checkbox"/> Home Care Records		<input type="checkbox"/> Physician's Orders			

Other: Be Specific: _____

Of the records noted above, please list any areas of those records that you do not wish to release, use and/or share: _____

5. Records to Be Released Containing Information Related to my Treatment for AIDS/HIV, Psychiatric/Psychological Care/Treatment/Testing, and Treatment/Testing for Drug and/or Alcohol Use/Abuse:
(Patient **MUST INITIAL** each item to be disclosed.)

AIDS/HIV Records	→	<u>it</u>	Date(s) of Service: _____
Drug and/or Alcohol Use/Abuse Records	→	<u>it</u>	Date(s) of Service: _____
Psychiatric/Psychological Records	→	<u>it</u>	Date(s) of Service: _____
Psychotherapy Notes	→	<u>it</u>	Date(s) of Service: _____

Other: Be Specific: _____

**HIPAA - AUTHORIZATION TO RELEASE
PROTECTED HEALTH INFORMATION
Page No. 3**

6. Expiration Date: This authorization is valid for one year or 365 days from the date signed unless revoked by me in writing, except to the extent that action has already been taken or as required by law.

7. Your Rights: This authorization to release health information is voluntary. Treatment, payment, enrollment or eligibility for benefits may not be conditioned on signing this authorization except in the following cases: (1) to conduct research-related treatment, (2) to obtain information in connection with eligibility or enrollment in a health plan, (3) to determine an entity's obligation to pay a claim, or (4) to create health information to provide to a third party.

You are entitled to receive a copy of this Authorization.

I understand that I may revoke (withdraw) this authorization at any time. If I wish to revoke (withdraw) this authorization, I must make this request in writing and send it to the person(s) and/or organization(s)/entity(s) listed in paragraph one above. I understand that if I send a letter withdrawing my permission, that letter cannot bring back any information that was already released, used and/or shared. I also understand that it will take time for the person(s) and/or organization(s)/entity(s) listed in paragraph one to receive and process my request.

I release the person(s) and/or organization(s)/entity(s) listed in paragraph one above disclosing this information from any liability arising from the release of information to the person(s) and/or organization(s)/entity(s) designated above.

A photocopy or fax copy of this authorization shall be acceptable as an original.

Signature of Patient/Parent/Legal Guardian: *Carol Ann Duncan*
CAROLE ANN DUNCAN ON
BEHALF OF CAROLE ANN CAMPANELLI, Deceased

Date: 11/20/07

Signature of Witness: *Robert C. Duncan*

Date: 11/20/07

Print Name

If a person cannot provide a written signature, two witnesses must sign below:

Witness: _____

Date: _____

Address: _____

Witness: _____

Date: _____

Address: _____

STATE OF NEVADA

DEPARTMENT OF HUMAN RESOURCES DIVISION OF HEALTH VITAL STATISTICS

STATE OF NEVADA — DEPARTMENT OF HUMAN RESOURCES DIVISION OF HEALTH — SECTION OF VITAL STATISTICS CERTIFICATE OF DEATH

97 008930

LOCAL FILE NUMBER		STATE FILE NUMBER	
DECEASED—NAME First Middle Last Carole Ann CAMPANELLI		DATE OF DEATH Month, Day, Year August 20, 1997	
CITY, TOWN, OR LOCATION OF DEATH Carson City		COUNTY OF DEATH Carson City	
HOSPITAL OR OTHER INSTITUTION—Name (If not author, give street and number) Warren Springs Correctional Center		SEX Female	
RACE—(e.g., White, Black, American Indian, etc.) (Specify) White		DATE OF BIRTH (Mo., Day, Yr.) May 23, 1968	
AGE—Last Birthday (Years) 29		MARRIAGE STATUS Never Married	
STATE OF BIRTH (If not U.S.A., name country) New York		CITY OF BIRTH (If not U.S.A., name country) U.S.A.	
SOCIAL SECURITY NUMBER 530-82-4875		USUAL OCCUPATION (Give kind of work done during most of Working Life. Even if retired) Clerical	
RESIDENCE—STATE Nevada		CITY, TOWN, OR LOCATION Las Vegas	
CITY, TOWN, OR LOCATION Clark		STREET AND NUMBER 5765 N. Campbell	
FATHER—NAME First Middle Last Domiano Campanelli		MOTHER—NAME First Middle Last Carole Rippo	
REPORTANT—NAME (Type or Print) Carole Duncan—Mother		MARRIAGE ADDRESS (Street or R.F.D. No., City or Town, State, Zip) 5765 N. Campbell Rd., Las Vegas, Nevada 89129	
BURIAL, CREMATION, REMOVAL, OTHER (Specify) Burial		LOCATION City or Town State Las Vegas, Nevada	
FUNERAL DIRECTOR—SIGNATURE (If Person Name is Not Known) With Leah		FUNERAL DIRECTOR LICENSE NUMBER 36	
NAME AND ADDRESS OF FACILITY FitzHenry's Funeral Home		CITY, TOWN, OR LOCATION Carson City, Nevada 89701	
21a. To the best of my knowledge, death occurred at the time, date and place and due to the causes stated. (Signature and Title) Eric Cantlin DATE SIGNED (Mo., Day, Yr.) 8-20-97 HOUR OF DEATH 0745		22a. On the basis of observation and investigation, in my opinion death occurred at the time, date and place and due to the causes stated. (Signature and Title) Eric Cantlin DATE SIGNED (Mo., Day, Yr.) 8-20-97 HOUR OF DEATH 0745	
21b. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print) Eric Cantlin, Coroner, 901 E. Musser St., Carson City, Nevada		22b. LICENSE NUMBER CO-6	
23a. SIGNATURE Laura M. Laughlin		23b. DATE RECEIVED BY REGISTRAR (Mo., Day, Yr.) September 9, 1997	
24. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR 24, 25, AND 26) Acute Subarachnoid Hemorrhage		25. INTERVAL BETWEEN ONSET AND DEATH minutes	
26. DUE TO, OR AS A CONSEQUENCE OF OTHER SIGNIFICANT CONDITIONS—Conditions contributing to death but not resulting in the underlying cause given in Part I		27. INTERVAL BETWEEN ONSET AND DEATH minutes	
28. ACCIDENT, SUICIDE, HOMICIDE, UNDETERMINED, OR PENDING INVEST. (Specify) Yes		29. AUTOPEY (Specify Yes or No) Yes	
30. INJURY AT WORK (Specify Yes or No) Yes		31. HAD CASE REFERRED TO CORONER (Specify Yes or No) Yes	
32. DATE OF INJURY (Mo., Day, Yr.) 8-20-97		33. HOUR OF INJURY 0745	
34. PLACE OF INJURY—(e.g., home, farm, street, factory, office building, etc.) (Specify) Home		35. LOCATION Las Vegas	
36. STREET OR R.F.D. No. 5765 N. Campbell		37. CITY OR TOWN Las Vegas	
38. STATE Nevada		39. ZIP CODE 89129	

STATE REGISTRAR

No.117902

This is to certify that the above is a true and correct copy of the certificate on file in this office.

Date issued: OCT 03 1997

State Registrar

WARNING: IT IS ILLEGAL TO ALTER OR COPY THIS DOCUMENT

07330-FMXH0019

JA010948

● ●

EXHIBIT 93

EXHIBIT 93

Law Offices of the Federal Public Defender
411 E. Bonneville Avenue, Suite 250
Las Vegas, Nevada 89101

Franny A. Forsman
Federal Public Defender
District of Nevada

Michael J. Kennedy
First Assistant

Tel: 702-388-6577
Fax: 702-388-5819

John C. Lambrose
Chief, Non-Capital Habeas Unit
Brian Abbingtion
Chief, Capital Habeas Unit
Rene L. Valledares
Chief, Trial Unit
Michael Pescetta
Habeas Resource Counsel

May 15, 2008

Nassau County Department of Social Services
Attn: Alan Licht
60 Charles Lindberg Blvd.
Uniondale, New York 11553-3656

Re: Michael Damon Rippo, *Rippo v. McDaniel*, United States District Court
Information Requested on ;
Carole Ann Campanelli fka Rippo aka Duncan;
SSAN 068-34-9587
DOB December 28, 1942
Michael Damon Campanelli, aka Rippo
SSAN: 530-82-4903;
DOB: February 26, 1965
Stacie Anne Campanelli
SSAN: 530-82-4882
DOB: October 4, 1969
Carol Anne Campanelli (deceased)
SSAN: 530-82-4875
DOB: May 23, 1968

Dear Mr. Licht:

The Federal Public Defender for the District of Nevada has been appointed to represent Nevada death row inmate Michael Damon Rippo (aka Michael Damon Campanelli) in his federal habeas corpus proceedings. We are gathering the records in this case pursuant to the directives of the court. Please produce copies of the documents specified in Attachment A.

This letter constitutes a formal request for any and all records, duplicates of all records, documents, files, notes, confidential and intelligence documents and tangible things maintained by and in the legal or physical custody of the Office of Legal Affairs from the time it was collected, including without limitation the categories of documents listed in the attachment to this letter, specifically including notes, files, and confidential documents, as well as any tangible evidence or items in your possession, relating or referring to Carole Ann Campanelli (mother) and her family, which includes Michael Damon Campanelli, Carole Ann Campanelli (daughter) and Stacie Campanelli. Carole Ann Campanelli received Medicaid benefits from approximately 1965-1974.

Human Resources Administration
Office of Legal Affairs
Page 2
May 15, 2008

If you cannot comply with this request, please provide a letter stating your requirements for compliance, i.e., subpoena, different release form, etc. If the documents have been destroyed, please provide a copy of the statute or records retention policy under which authority for destruction was had, and a description of the documents destroyed. If you require pre-payment of copying expense, please notify me in writing of the number of pages and the amount due. If you require pre-payment of copying expense, or if the expense will exceed \$50.00 (fifty dollars), please notify me in writing of the number of pages and the amount due. Also, please provide your EIN/TIN number for accounting purposes.

Releases (general and HIPAA) to your agency signed by Ms. Duncan (fka Campanelli), Stacie Campanelli, Carol Anne Campanelli (signed by her mother), and Mr. Michael Rippo (fka Campanelli) are enclosed. Your prompt attention to this matter is greatly appreciated. We are operating under court-imposed deadlines and need a response as quickly as possible. Please call me at (702) 388-5173 should you have any questions or require additional information.

Very truly yours,

FEDERAL PUBLIC DEFENDER



Katrina Lang
Senior Legal Secretary
Capital Habeas Unit

/kml
Enclosures

JA010951

TO: NASSAU COUNTY DEPARTMENT OF SOCIAL SERVICES

Please produce and permit inspection and copying of the following designated books, documents or tangible things as (a) kept in the usual course of business, or (b) organized and labeled to correspond with the categories as set forth below.

If any of the books, documents, records or tangible things listed below are not being produced by you based on a claim of privilege or any other reason, please expressly state the basis or privilege claimed and describe the nature of the documents, communications or other things sufficient to enable a contest of the claim.

Please complete a Certificate of Custodian of Records for any documents produced. Please produce or permit inspection and copying all sealed, official and/or non-official memoranda, materials, files, tests, and/or documents of the following documents and things concerning:

Carole Ann Campanelli (aka Carole Ann Duncan)
DOB 12/28/1942
SSAN 068-34-9587
and children (Michael Campanelli, Carole Ann Campanelli (daughter), Stacie Campanelli)

This request includes, without limitation:

1. All applications for benefits;
2. All documents reflecting denial of any benefits;
3. All reports or other documents reflecting the type of benefits granted;
4. Reports or other documents reflecting payment of benefits and amounts;
5. All personal financial reporting documents;
6. All claims information;
7. All disability records;
8. All medical records;
9. All documents reflecting use of medical care providers (including providers' addresses);
10. Billings to the Social Services Division from medical care providers for services rendered;
11. Employment records and/or histories;
12. Correspondence;
13. Notes;
14. Memoranda;
15. Status reports;
16. Case worker files;
17. Referrals to other governmental agencies;
18. Document reflecting cessation and/or termination of benefits;
19. Any other documents in your possession regarding the above-named individuals;
20. A list of any and all purged, deleted or destroyed documents, or documents

- transferred to storage;
21. Any and all microfilm, microfiche documents;
 22. Electronic data regarding all above to include: voice mail messages and files; back-up voice mail files; e-mail messages and files; back-up e-mail files; deleted e-mails; data files; program files; backup and archival tapes; temporary files; system history files; web site information stored in textual, graphical or audio format; web site log files; cache files; cookies; and other electronically recorded information. The disclosing party shall take reasonable steps to ensure that it discloses any back-up copies of files or archival tapes that will provide information about any "deleted electronic data." This list is not exhaustive.

If you are claiming that any of the documents described above have been destroyed or purged, please provide a copy of Certificate of Destruction, evidencing what was destroyed and the date.

**DECLARATION OF CUSTODIAN OF RECORD
RE DESTRUCTION OF RECORDS**

I, [name] _____, declare under penalty of perjury:

1. I am the [position] _____ of the _____ and in my capacity as [position] _____, am a custodian of the records of _____ the Nassau County Department of Social Services.

2. That on the _____ day of _____, 20____, the Nassau County Department of Social Services was served with a records request in connection with United States District Court case, *Rippo v. McDaniel, et al.*, calling for the production of records as set forth in the exhibit(s) attached to the request.

3. Records were destroyed pursuant to _____ [cite here Nevada Revised Statutes ("NRS"), agency rules and regulations authorizing destruction of documents (and attach copy of rule or regulation, if other than NRS)].

4. The requested documents, pursuant to the above statute, rules and/or regulations were destroyed on or about _____ [date].

5. No form of the requested documents remain, whether paper, microfilm, microfiche, or electronic.

CUSTODIAN OF RECORDS

[Print Name]

DECLARATION OF CUSTODIAN OF RECORD

I, [name] _____, declare under penalty of perjury:

1. I am the [position] _____ of the Nassau County Department of Social Services and in my capacity as [position] _____ am a custodian of the records of the Nassau County Department of Social Services.
2. That on the _____ day of _____, 20____, I received a records request in connection with Michael Damon Rippo requesting production of records [as set forth in the exhibit(s) attached to the request].
3. I have examined the original of those records and have made or caused to be made a true and exact copy of those records and the reproduction of those records as attached is true and complete.
4. That the original of those records was made at or near the time of the act(s), event(s), condition(s), opinion(s), or diagnosis set forth in them by or from information transmitted by a person with knowledge, in the course of my regularly conducted activity of or for the Nassau County Department of Social Services.

Custodian of Records

[Print Name]

REQUIREMENTS TO FULFILL DOCUMENT REQUEST

I, [name] _____, am the records custodian for the Nassau County Department of Social Services. I have reviewed the records request from the Federal Public Defender for the District of Nevada. I am unable to comply with the request because:

1. ☐ The agency requires a subpoena for the requested information, pursuant to _____ [please detail here the statute or institutional rules; attach copy if not statutory]
2. ☐ The requested documents were destroyed. Certificate of Destruction attached.
3. ☐ Additional information is required: _____

4. ☐ Pre-payment in the sum of \$ _____ is required for production of [number] _____ copies.
5. ☐ Other [please specify]: _____

If there are questions, my telephone number is _____.

[date]

[signature]

[printed name]

**AUTHORIZATION FOR RELEASE
OF CONFIDENTIAL INFORMATION AND RECORDS**

Dated: 5/15/08

To: NASSAU COUNTY DEPT. OF SOCIAL SERVICES

Re: CAROLE ANN CAMPANELLI
MICHAEL DAMON RIPPO

I, Michael Damon Rippo, by this release, authorize and request you to release to the Federal Public Defender for the District of Nevada, Michael Pescetta, Assistant Federal Public Defender, and/or their designated representatives, any and all information and/or records relating to Michael Damon Rippo, including but not limited to, birth certificates and records, death certificates and records, autopsy findings, records and recordings, marriage certificates and records, dissolution files, academic, correctional, employment, law enforcement and military records, medical, psychological, psychiatric, probation and rehabilitation (including alcohol and drug rehabilitation) records as well as any files prepared in connection with prior civil or criminal litigation; any other correspondence or document and all other records, raw data, notes, test results, narrative reports and recordings, together with all time and billing records pertaining to Michael Damon Rippo. I specifically consent to the disclosure of any and all records pursuant to 5 U.S.C. § 552a(b) and to any consent to disclosure provision of state and local law. This document also authorizes any physicians, experts or other personnel to discuss their otherwise confidential information with the above mentioned legal representatives. In consideration of such disclosure, I hereby release you (in your individual and/or institutional capacity) from any and all liability arising from the disclosure of otherwise confidential information.

This release is limited in the following ways: NOT LIMITED

You are specifically authorized to photocopy these records and to release copies to the above mentioned legal representatives. A photographic copy of this authorization shall be as valid as the original.

4-9-07
Date

Michael Rippo
Signature

530-82-4903
Social Security Number

02-26-65
Date of Birth

07166-MISC0022

07332-RRX00005

JA010957

FEDERAL PUBLIC DEFENDER

District of Nevada
11 E. Bonnevill Avenue, #250
Las Vegas, Nevada 89101
(702) 388-6577

HIPAA - AUTHORIZATION TO RELEASE PROTECTED HEALTH INFORMATION

I, the patient/parent/legal guardian give NASSAU COUNTY DEPT. OF SOCIAL SERVICES permission to release, use and/or share my medical information pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and give this permission voluntarily.

Purpose or Need For Releasing, Using and/or Sharing My Protected Health Information: disclosure to me, the individual who is the subject of this information, by and through my attorney, FRANNY A. FORSMAN, Federal Public Defender, and/or her associates, representatives, or agents.

Pursuant to 45 CFR 164.502(b)(2) the minimum necessary requirement does NOT apply to this request. This request pertains to the whole or entire medical record of the specific section(s) initiated by me for disclosure in paragraphs 4 and 5 below.

1. Person(s) and/or Organization(s)/Entity(s) To Disclose My Protected Health Information:

Name(s): _____
Organization/Entity: NASSAU COUNTY DEPT. OF SOCIAL SERVICES
Address: _____
City, State Zip Code: _____

2. Patient Information & Statement: I give my authorization/permission for the above specified person(s) and/or organization(s) or entity(s) to release, use and/or share the medical information described below. I understand that once this information is released, used and/or shared, the person or organization that received it may share it again without my permission. If this happens, the information may no longer be protected under applicable privacy laws. I understand what type of information is going to be released, used and/or shared and how this is going to be done.

Patient Name (First, Middle, Last): Michael Rippe
Patient Address: P.O. Box 1989
City, State, Zip: Elv. Nevada 89391
Telephone No: N/A
Date of Birth: 02/26/65
Social Security No: 530-82-4903

3. Release of Information to:

Name (First, Middle, Last): ATTN: ELISABETH B. STANTON
Company: OFFICE OF THE FEDERAL PUBLIC DEFENDER
Address: 411 E. BONNEVILLE AVENUE, STE. 700
City, State, Zip: LAS VEGAS, NEVADA 89101
Telephone No: (702) 388-6577
Fax No: (702) 388-6261

**PAA - AUTHORIZATION TO RELEASE
DETECTED HEALTH INFORMATION
Page No. 2**

4. Records to Be Released, Used And/or Shared: Please indicate the section(s) of the record below that you would like released or that you permit us to use and/or share, and specify the dates of treatment, if known.

Description:	Date(s)	Description:	Date(s)	Description:	Date(s)
<input type="checkbox"/> Admission		<input type="checkbox"/> Immunization Records		<input type="checkbox"/> Progress Notes	
<input type="checkbox"/> Consultation Report(s)		<input type="checkbox"/> Inpatient Records		<input type="checkbox"/> Radiology Report(s)	
<input type="checkbox"/> Correspondence		<input type="checkbox"/> Intake/Outake		<input type="checkbox"/> Releases	
<input type="checkbox"/> Counseling Notes		<input type="checkbox"/> Laboratory Report(s)		<input type="checkbox"/> Social Work Notes/Reports	
<input type="checkbox"/> Designated Record Set/Abstract		<input type="checkbox"/> Nursing Notes		<input type="checkbox"/> Therapy/Rehabilitation Records	
<input type="checkbox"/> Discharge/Clinical Summary		<input type="checkbox"/> Operative Procedure Report(s)		<input type="checkbox"/> Transfer Forms	
<input type="checkbox"/> Drug Administration Records		<input type="checkbox"/> Outpatient Records		<input type="checkbox"/> Treatment Plans	
<input type="checkbox"/> Emergency Record(s)		<input type="checkbox"/> Pathology Report(s)		<input checked="" type="checkbox"/> Entire Medical Record for all sections listed above:	→
<input type="checkbox"/> History & Physical Report(s)		<input type="checkbox"/> Physician's Notes			
<input type="checkbox"/> Home Care Records		<input type="checkbox"/> Physician's Orders			

Other: Be Specific: _____

Of the records noted above, please list any areas of those records that you do not wish to release, use and/or share: _____

5. Records to Be Released Containing Information Related to any Treatment for AIDS/HIV, Psychiatric/Psychological Care/Treatment/Testing, and Treatment/Testing for Drug and/or Alcohol Use/Abuse: (Patient **MUST INITIAL** each item to be disclosed.)

AIDS/HIV Records → MR Date(s) of Service: _____

Drug and/or Alcohol Use/Abuse Records → MR Date(s) of Service: _____

Psychiatric/Psychological Records → MR Date(s) of Service: _____

Psychotherapy Notes → MR Date(s) of Service: _____

Other: Be Specific: _____

1 PAA - AUTHORIZATION TO RELEASE
2 PROTECTED HEALTH INFORMATION
3 Form No. 3

4 Expiration Date: This authorization is valid for one year or 365 days from the date signed unless revoked by me in writing, except to
5 the extent that action has already been taken or as required by law.

6 Your Rights: This authorization to release health information is voluntary. Treatment, payment, enrollment or eligibility for benefits may
7 be conditioned on signing this authorization except in the following cases: (1) to conduct research-related treatment, (2) to obtain information
8 in connection with eligibility or enrollment in a health plan, (3) to determine an entity's obligation to pay a claim, or (4) to create health
9 information to provide to a third party.

You are entitled to receive a copy of this Authorization.

I understand that I may revoke (withdraw) this authorization at any time. If I wish to revoke (withdraw) this authorization, I must make this
request in writing and send it to the person(s) and/or organization(s)/entity(s) listed in paragraph one above. I understand that if I send a letter
withdrawing my permission, that letter cannot bring back any information that was already released, used and/or shared. I also understand that
it will take time for the person(s) and/or organization(s)/entity(s) listed in paragraph one to receive and process my request.

I release the person(s) and/or organization(s)/entity(s) listed in paragraph one above disclosing this information from any liability arising from
the release of information to the person(s) and/or organization(s)/entity(s) designated above.

A photocopy or fax copy of this authorization shall be acceptable as an original.

Signature of Patient/Parent/Legal Guardian: →

Michael R. Sharma

Date:

4-9-07

Signature of Witness:

Michael R. Sharma

Date:

4/9/07

Michael Sharma

Print Name

If a person cannot provide a written signature, two witnesses must sign below:

Witness: _____

Date: _____

Address: _____

Witness: _____

Date: _____

Address: _____

**AUTHORIZATION FOR RELEASE
OF CONFIDENTIAL INFORMATION AND RECORDS**

Dated: 5/15/08.

To: NASSAU COUNTY DEPT. OF SOCIAL SERVICES

Re: CAROLE ANN CAMPANELLI
MICHAEL DOMAN RIPPO

I, CAROLE ANN DUNCAN, by this release, authorize and request you to release to the Federal Public Defender for the District of Nevada, David Anthony, Assistant Federal Public Defender, and/or their designated representatives, any and all information and/or records relating to CAROLE ANN DUNCAN, AKA CAROLE ANN RIPPO, AKA CAROLE ANN CAMPANELLI, AKA CAROLE ANN ANZINI, including but not limited to, birth certificates and records, death certificates and records, autopsy findings, records and recordings, marriage certificates and records, dissolution files, academic, correctional, employment, law enforcement and military records, medical, psychological, psychiatric, probation and rehabilitation (including alcohol and drug rehabilitation) records as well as any files prepared in connection with prior civil or criminal litigation; any other correspondence or document and all other records, raw data, notes, test results, narrative reports and recordings, together with all time and billing records pertaining to CAROLE ANN DUNCAN, AKA CAROLE ANN RIPPO, AKA CAROLE ANN CAMPANELLI, AKA CAROLE ANN ANZINI. I specifically consent to the disclosure of any and all records pursuant to 5 U.S.C. § 552a(b) and to any consent to disclosure provision of state and local law. This document also authorizes any physicians, experts or other personnel to discuss their otherwise confidential information with the above mentioned legal representatives. In consideration of such disclosure, I hereby release you (in your individual and/or institutional capacity) from any and all liability arising from the disclosure of otherwise confidential information.

This release is limited in the following ways: NOT LIMITED

You are specifically authorized to photocopy these records and to release copies to the above mentioned legal representatives. A photographic copy of this authorization shall be as valid as the original.

068-34-9587
Social Security Number

12/28/42
Date of Birth

Carole A. Duncan
Signature

November 20, 07
Date

FEDERAL PUBLIC DEFENDER

District of Nevada

411 E. Bonneville Avenue, #250

Las Vegas, Nevada 89101

(702) 388-6577

**HIPAA - AUTHORIZATION TO RELEASE
PROTECTED HEALTH INFORMATION**

I, the patient/parent/legal guardian give NASSAU COUNTY DEPT. OF SOCIAL SERVICES permission to release, use and/or share my medical information pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and give this permission voluntarily.

Purpose or Need For Releasing, Using and/or Sharing My Protected Health Information: disclosure to me, the individual who is the subject of this information, by and through FRANNY A. FORSMAN, Federal Public Defender, and/or her associates, representatives, or agents.

Pursuant to 45 CFR 164.502(b)(2) the minimum necessary requirement does NOT apply to this request. This request pertains to the whole or entire medical record of the specific section(s) initialed by me for disclosure in paragraphs 4 and 5 below.

1. Person(s) and/or Organization(s)/Entity(s) To Disclose My Protected Health Information:

Name(s):

Organization/Entity:

Address:

City, State Zip Code:

NASSAU COUNTY DEPT. OF SOCIAL SERVICES

2. Patient Information & Statement: I give my authorization/permission for the above specified person(s) and/or organization(s) or entity(s) to release, use and/or share the medical information described below. I understand that once this information is released, used and/or shared, the person or organization that received it may share it again without my permission. If this happens, the information may no longer be protected under applicable privacy laws. I understand what type of information is going to be released, used and/or shared and how this is going to be done.

Patient Name (First, Middle, Last):

Patient Address:

City, State, Zip:

Telephone No:

Date of Birth:

Social Security No:

CAROLE ANN DUNCAN, AKA CAROLE ANN REFFO, AKA CAROLE ANN CAMPANELLI,
AKA CAROLE ANN ANZINI

39 Cactus Ranch Rd
Edgewood, New Mexico 87015
505-286-0477
12/28/42
068-34-9587

3. Release of Information to:

Name (First, Middle, Last):

Company:

Address:

City, State, Zip:

Telephone No:

Fax No:

ATTN: ELISABETH D. SANTON
OFFICE OF THE FEDERAL PUBLIC DEFENDER
411 E. BONNEVILLE AVENUE, STE. 250
LAS VEGAS, NEVADA 89101
(702) 388-6577
(702) 388-5819

HIPAA - AUTHORIZATION TO RELEASE PROTECTED HEALTH INFORMATION Page No. 2

4. Records to Be Released, Used And/or Shared: Please indicate the section(s) of the record below that you would like released or that you permit us to use and/or share, and specify the dates of treatment, if known.

Description:	Date(s)	Description:	Date(s)	Description:	Date(s)
<input type="checkbox"/> Admission		<input type="checkbox"/> Immunization Records		<input type="checkbox"/> Progress Notes	
<input type="checkbox"/> Consultation Report(s)		<input type="checkbox"/> Inpatient Records		<input type="checkbox"/> Radiology Report(s)	
<input type="checkbox"/> Correspondence		<input type="checkbox"/> Intake/Outtake		<input type="checkbox"/> Releases	
<input type="checkbox"/> Counseling Notes		<input type="checkbox"/> Laboratory Report(s)		<input type="checkbox"/> Social Work Notes/Reports	
<input type="checkbox"/> Designated Record Set/Abstract		<input type="checkbox"/> Nursing Notes		<input type="checkbox"/> Therapy/Rehabilitation Records	
<input type="checkbox"/> Discharge/Clinical Summary		<input type="checkbox"/> Operative Procedure Report(s)		<input type="checkbox"/> Transfer Forms	
<input type="checkbox"/> Drug Administration Records		<input type="checkbox"/> Outpatient Records		<input type="checkbox"/> Treatment Plans	
<input type="checkbox"/> Emergency Record(s)		<input type="checkbox"/> Pathology Report(s)		<input checked="" type="checkbox"/> Entire Medical Record for all sections listed above	
<input type="checkbox"/> History & Physical Report(s)		<input type="checkbox"/> Physician's Notes			
<input type="checkbox"/> Home Care Records		<input type="checkbox"/> Physician's Orders			

Other: Be Specific: _____

Of the records noted above, please list any areas of those records that you do not wish to release, use and/or share: _____

5. Records to Be Released Containing Information Related to my Treatment for AIDS/HIV, Psychiatric/Psychological Care/Treatment/Testing, and Treatment/Testing for Drug and/or Alcohol Use/Abuse:
(Patient **MUST INITIAL** each item to be disclosed.)

AIDS/HIV Records → OK Date(s) of Service: _____

Drug and/or Alcohol Use/Abuse Records → OK Date(s) of Service: _____

Psychiatric/Psychological Records → OK Date(s) of Service: _____

Psychotherapy Notes → OK Date(s) of Service: _____

Other: Be Specific: _____

**HIPAA - AUTHORIZATION TO RELEASE
PROTECTED HEALTH INFORMATION
Page No. 3**

6. **Expiration Date:** This authorization is valid for one year or 365 days from the date signed unless revoked by me in writing, except to the extent that action has already been taken or as required by law.

7. **Your Rights:** This authorization to release health information is voluntary. Treatment, payment, enrollment or eligibility for benefits may not be conditioned on signing this authorization except in the following cases: (1) to conduct research-related treatment, (2) to obtain information in connection with eligibility or enrollment in a health plan, (3) to determine an entity's obligation to pay a claim, or (4) to create health information to provide to a third party.

You are entitled to receive a copy of this Authorization.

I understand that I may revoke (withdraw) this authorization at any time. If I wish to revoke (withdraw) this authorization, I must make this request in writing and send it to the person(s) and/or organization(s)/entity(s) listed in paragraph one above. I understand that if I send a letter withdrawing my permission, that letter cannot bring back any information that was already released, used and/or shared. I also understand that it will take time for the person(s) and/or organization(s)/entity(s) listed in paragraph one to receive and process my request.

I release the person(s) and/or organization(s)/entity(s) listed in paragraph one above disclosing this information from any liability arising from the release of information to the person(s) and/or organization(s)/entity(s) designated above.

A photocopy or fax copy of this authorization shall be acceptable as an original.

Signature of Patient/Parent/Legal Guardian: → *Carole Ann Duncan*
CAROLE ANN DUNCAN

Date: 11/20/07

Signature of Witness: → *Robert C. Duncan*

Date: 11/20/07

Print Name

If a person cannot provide a written signature, two witnesses must sign below:

Witness: _____

Date: _____

Address: _____

Witness: _____

Date: _____

Address: _____

**AUTHORIZATION FOR RELEASE
OF CONFIDENTIAL INFORMATION AND RECORDS**

Dated: 5/15/08

To: Nassau County Dept. of Social Services

Re: Stacie Anne Campanelli, aka Rotterdam,
Giszczynski

I, STACIE ANNE CAMPANELLI AKA STACIE ROTTERDAM, AKA STACIE GLISZCZYNSKI, by this release, authorize and request you to release to the Federal Public Defender for the District of Nevada, David Anthony, Assistant Federal Public Defender, and/or their designated representatives, any and all information and/or records relating to me, including but not limited to, birth certificates and records, death certificates and records, autopsy findings, records and recordings, marriage certificates and records, dissolution files, academic, correctional, employment, law enforcement and military records, medical, psychological, psychiatric, probation and rehabilitation (including alcohol and drug rehabilitation) records as well as any files prepared in connection with prior civil or criminal litigation; any other correspondence or document and all other records, raw data, notes, test results, narrative reports and recordings, together with all time and billing records pertaining to me. I specifically consent to the disclosure of any and all records pursuant to 5 U.S.C. § 552a(h) and to any consent to disclosure provision of state and local law. This document also authorizes any physicians, experts or other personnel to discuss their otherwise confidential information with the above mentioned legal representatives. In consideration of such disclosure, I hereby release you (in your individual and/or institutional capacity) from any and all liability arising from the disclosure of otherwise confidential information.

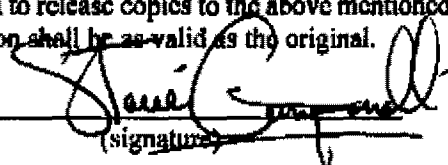
This release is limited in the following ways: **NOT LIMITED**

You are specifically authorized to photocopy these records and to release copies to the above mentioned legal representatives. A photographic copy of this authorization shall be as valid as the original.

4-29-08
DATED

530-82-4882

Social Security Number


(signature)

10/04/69

Date of Birth

FEDERAL PUBLIC DEFENDER
District of Nevada
411 E. Bonneville Avenue, #250
Las Vegas, Nevada 89101
(702) 388-6577
**HIPAA - AUTHORIZATION TO RELEASE
PROTECTED HEALTH INFORMATION**

I, the patient/parent/legal guardian give _____ permission to release, use and/or share my medical information pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and give this permission voluntarily.

Purpose or Need For Releasing, Using and/or Sharing My Protected Health Information: disclosure to me, the individual who is the subject of this information, by and through FRANNY A. FORSMAN, Federal Public Defender, and/or her associates, representatives, or agents.

Pursuant to 45 CFR 164.502(b)(2) the minimum necessary requirement does NOT apply to this request. This request pertains to the whole or entire medical record of the specific section(s) initiated by me for disclosure in paragraphs 4 and 5 below.

1. Person(s) and/or Organization(s)/Entity(s) To Disclose My Protected Health Information:

Name(s): _____
Organization/Entity: _____
Address: _____
City, State Zip Code: _____

2. Patient Information & Statement: I give my authorization/permission for the above specified person(s) and/or organization(s) or entity(s) to release, use and/or share the medical information described below. I understand that once this information is released, used and/or shared the person or organization that received it may share it again without my permission. If this happens, the information may no longer be protected under applicable privacy laws. I understand what type of information is going to be released, used and/or shared and how this is going to be done.

Patient Name (First, Middle, Last): **STACIE ANNE CAMPANELLI AKA STACIE ROTTERDAM AKA STACIE GLIEZCZYNSKI**
Patient Address: **10221 Bentley Oaks Ave**
City, State, Zip: **Las Vegas, Nevada 89135**
Telephone No: **702-373-8888**
Date of Birth: **10/4/1969**
Social Security No: **530-82-4882**

3. Release of Information to:

Name (First, Middle, Last): **ATTN: David Anthony**
Company: **OFFICE OF THE FEDERAL PUBLIC DEFENDER**
Address: **411 E. BONNEVILLE AVENUE, STE. 250**
City, State, Zip: **LAS VEGAS, NEVADA 89101**
Telephone No: **(702) 388-6577**
Fax No: **(702) 388-5819**

HIPAA - AUTHORIZATION TO RELEASE PROTECTED HEALTH INFORMATION Page No. 2

4. Records to Be Released, Used And/or Shared: Please indicate the section(s) of the record below that you would like released or that you permit us to use and/or share, and specify the dates of treatment, if known.

Description:	Date(s)	Description:	Date(s)	Description:	Date(s)
<input type="checkbox"/> Admission		<input type="checkbox"/> Immunization Records		<input type="checkbox"/> Progress Notes	
<input type="checkbox"/> Consultation Report(s)		<input type="checkbox"/> Inpatient Records		<input type="checkbox"/> Radiology Report(s)	
<input type="checkbox"/> Correspondence		<input type="checkbox"/> Intake/Outtake		<input type="checkbox"/> Releases	
<input type="checkbox"/> Counseling Notes		<input type="checkbox"/> Laboratory Report(s)		<input type="checkbox"/> Social Work Notes/Reports	
<input type="checkbox"/> Designated Record Set/Abstract		<input type="checkbox"/> Nursing Notes		<input type="checkbox"/> Therapy/Rehabilitation Records	
<input type="checkbox"/> Discharge/Clinical Summary		<input type="checkbox"/> Operative Procedure Report(s)		<input type="checkbox"/> Transfer Forms	
<input type="checkbox"/> Drug Administration Records		<input type="checkbox"/> Outpatient Records		<input type="checkbox"/> Treatment Plans	
<input type="checkbox"/> Emergency Record(s)		<input type="checkbox"/> Pathology Report(s)		<input checked="" type="checkbox"/> Entire Medical Record for all sections listed above:	
<input type="checkbox"/> History & Physical Report(s)		<input type="checkbox"/> Physician's Notes			
<input type="checkbox"/> Home Care Records		<input type="checkbox"/> Physician's Orders			

Other: Be Specific: _____

Of the records noted above, please list any areas of those records that you do not wish to release, use and/or share: _____

5. Records to Be Released Containing Information Related to my Treatment for AIDS/HIV, Psychiatric/Psychological Care/Treatment/Testing, and Treatment/Testing for Drug and/or Alcohol Use/Abuse:

(Patient **MUST INITIAL** each item to be disclosed.)

AIDS/HIV Records → SC Date(s) of Service: _____

Drug and/or Alcohol Use/Abuse Records → SC Date(s) of Service: _____

Psychiatric/Psychological Records → SC Date(s) of Service: _____

Psychotherapy Notes → SC Date(s) of Service: _____

Other: Be Specific: _____

**HIPAA - AUTHORIZATION TO RELEASE
PROTECTED HEALTH INFORMATION**
Page No. 3

6. **Expiration Date:** This authorization is valid for one year or 365 days from the date signed unless revoked by me in writing, except to the extent that action has already been taken or as required by law.

7. **Your Rights:** This authorization to release health information is voluntary. Treatment, payment, enrollment or eligibility for benefits may not be conditioned on signing this authorization except in the following cases: (1) to conduct research-related treatment, (2) to obtain information in connection with eligibility or enrollment in a health plan, (3) to determine an entity's obligation to pay a claim, or (4) to create health information to provide to a third party.

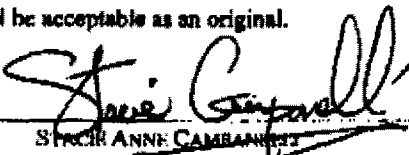
You are entitled to receive a copy of this Authorization.

I understand that I may revoke (withdraw) this authorization at any time. If I wish to revoke (withdraw) this authorization, I must make this request in writing and send it to the person(s) and/or organization(s)/entity(s) listed in paragraph one above. I understand that if I send a letter withdrawing my permission, that letter cannot bring back any information that was already released, used and/or shared. I also understand that it will take time for the person(s) and/or organization(s)/entity(s) listed in paragraph one to receive and process my request.

I release the person(s) and/or organization(s)/entity(s) listed in paragraph one above disclosing this information from any liability arising from the release of information to the person(s) and/or organization(s)/entity(s) designated above.

A photocopy or fax copy of this authorization shall be acceptable as an original.

Signature of Patient/Parent/Legal Guardian: →


STACIE ANNE CAMBANIS

Date:

4-29-08

Signature of Witness:

→ 

Date:

4/29/08

Print Name

If a person cannot provide a written signature, two witnesses must sign below:

Witness: _____

Date: _____

Address: _____

Witness: _____

Date: _____

Address: _____

**AUTHORIZATION FOR RELEASE
OF CONFIDENTIAL INFORMATION AND RECORDS**

Dated: 5/15/08

To: Nassau County Dept. of Social Services

Re: Carole Ann Campanelli (deceased)

I, CAROLE ANN DUNCAN, by this release, authorize and request you to release to the Federal Public Defender for the District of Nevada, David Anthony, Assistant Federal Public Defender, and/or their designated representatives, any and all information and/or records relating to my daughter, CAROLE ANN CAMPANELLI (DECEASED), including but not limited to, birth certificates and records, death certificates and records, autopsy findings, records and recordings, marriage certificates and records, dissolution files, academic, correctional, employment, law enforcement and military records, medical, psychological, psychiatric, probation and rehabilitation (including alcohol and drug rehabilitation) records as well as any files prepared in connection with prior civil or criminal litigation; any other correspondence or document and all other records, raw data, notes, test results, narrative reports and recordings, together with all time and billing records pertaining to my daughter, Carole Ann Campanelli (deceased). I specifically consent to the disclosure of any and all records pursuant to 5 U.S.C. § 552a(b) and to any consent to disclosure provision of state and local law. This document also authorizes any physicians, experts or other personnel to discuss their otherwise confidential information with the above mentioned legal representatives. In consideration of such disclosure, I hereby release you (in your individual and/or institutional capacity) from any and all liability arising from the disclosure of otherwise confidential information.

This release is limited in the following ways: NOT LIMITED

You are specifically authorized to photocopy these records and to release copies to the above mentioned legal representatives. A photographic copy of this authorization shall be as valid as the original.

530-62-4875
Social Security Number
Carole Ann Campanelli

5/23/68
Date of Birth
Carole Ann Campanelli

Carole A. Duncan
Signature
Carole Ann Duncan as mother of Carole Ann
Campanelli (deceased)

November 20, 07
Date

FEDERAL PUBLIC DEFENDER

District of Nevada

411 E. Bonneville Avenue, #250

Las Vegas, Nevada 89101

(702) 388-6577

HIPAA - AUTHORIZATION TO RELEASE PROTECTED HEALTH INFORMATION

I, the patient/parent/legal guardian give _____ permission to release, use and/or share my medical information pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and give this permission voluntarily.

Purpose or Need For Releasing, Using and/or Sharing My Protected Health Information: disclosure to me, the individual who is the subject of this information, by and through FRANNY A. FORSMAN, Federal Public Defender, and/or her associates, representatives, or agents.

Pursuant to 45 CFR 164.502(b)(2) the minimum necessary requirement does NOT apply to this request. This request pertains to the whole or entire medical record of the specific section(s) initiated by me for disclosure in paragraphs 4 and 5 below.

1. Person(s) and/or Organization(s)/Entity(s) To Disclose My Protected Health Information:

Name(s): _____
Organization/Entity: _____
Address: _____
City, State Zip Code: _____

2. Patient Information & Statement: I give my authorization/permission for the above specified person(s) and/or organization(s) or entity(s) to release, use and/or share the medical information described below. I understand that once this information is released, used and/or shared, the person or organization that received it may share it again without my permission. If this happens, the information may no longer be protected under applicable privacy laws. I understand what type of information is going to be released, used and/or shared and how this is going to be done.

Patient Name (First, Middle, Last): CAROLE ANN CAMPANELLI (as authorized by her mother, Carole Ann Duncan)

Patient Address: _____ Deceased _____

City, State, Zip: _____

Telephone No: _____

Date of Birth: 5/23/68

Social Security No: 530-82-4875

3. Release of Information to:

Name (First, Middle, Last): ATTN: _____

Company: OFFICE OF THE FEDERAL PUBLIC DEFENDER

Address: 411 E. BONNEVILLE AVENUE, STE. 250

City, State, Zip: LAS VEGAS, NEVADA 89101

Telephone No: (702) 388-6577

Fax No: (702) 388-5819

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4. Records to Be Released, Used And/or Shared: Please indicate the section(s) of the record below that you would like released or that you permit us to use and/or share, and specify the dates of treatment, if known.

Description:	Date(s)	Description:	Date(s)	Description:	Date(s)
<input type="checkbox"/> Admission		<input type="checkbox"/> Immunization Records		<input type="checkbox"/> Progress Notes	
<input type="checkbox"/> Consultation Report(s)		<input type="checkbox"/> Inpatient Records		<input type="checkbox"/> Radiology Report(s)	
<input type="checkbox"/> Correspondence		<input type="checkbox"/> Intake/Outtake		<input type="checkbox"/> Releases	
<input type="checkbox"/> Counseling Notes		<input type="checkbox"/> Laboratory Report(s)		<input type="checkbox"/> Social Work Notes/Reports	
<input type="checkbox"/> Designated Record Set/Abstract		<input type="checkbox"/> Nursing Notes		<input type="checkbox"/> Therapy/Rehabilitation Records	
<input type="checkbox"/> Discharge/Clinical Summary		<input type="checkbox"/> Operative Procedure Report(s)		<input type="checkbox"/> Transfer Forms	
<input type="checkbox"/> Drug Administration Records		<input type="checkbox"/> Outpatient Records		<input type="checkbox"/> Treatment Plans	
<input type="checkbox"/> Emergency Record(s)		<input type="checkbox"/> Pathology Report(s)		<input checked="" type="checkbox"/> Entire Medical Record for all sections listed above:	
<input type="checkbox"/> History & Physical Report(s)		<input type="checkbox"/> Physician's Notes			
<input type="checkbox"/> Home Care Records		<input type="checkbox"/> Physician's Orders			

Other: Be Specific: _____

Of the records noted above, please list any areas of those records that you do not wish to release, use and/or share: _____

5. Records to Be Released Containing Information Related to my Treatment for AIDS/HIV, Psychiatric/Psychological Care/Treatment/Testing, and Treatment/Testing for Drug and/or Alcohol Use/Abuse:
(Patient **MUST INITIAL** each item to be disclosed.)

AIDS/HIV Records → *CE* Date(s) of Service: _____

Drug and/or Alcohol Use/Abuse Records → *CE* Date(s) of Service: _____

Psychiatric/Psychological Records → *CE* Date(s) of Service: _____

Psychotherapy Notes → *CE* Date(s) of Service: _____

Other: Be Specific: _____

**HIPAA - AUTHORIZATION TO RELEASE
PROTECTED HEALTH INFORMATION
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6. **Expiration Date:** This authorization is valid for one year or 365 days from the date signed unless revoked by me in writing, except to the extent that action has already been taken or as required by law.

7. **Your Rights:** This authorization to release health information is voluntary. Treatment, payment, enrollment or eligibility for benefits may not be conditioned on signing this authorization except in the following cases: (1) to conduct research-related treatment, (2) to obtain information in connection with eligibility or enrollment in a health plan, (3) to determine an entity's obligation to pay a claim, or (4) to create health information to provide to a third party.

You are entitled to receive a copy of this Authorization.

I understand that I may revoke (withdraw) this authorization at any time. If I wish to revoke (withdraw) this authorization, I must make this request in writing and send it to the person(s) and/or organization(s)/entity(s) listed in paragraph one above. I understand that if I send a letter withdrawing my permission, that letter cannot bring back any information that was already released, used and/or shared. I also understand that it will take time for the person(s) and/or organization(s)/entity(s) listed in paragraph one to receive and process my request.

I release the person(s) and/or organization(s)/entity(s) listed in paragraph one above disclosing this information from any liability arising from the release of information to the person(s) and/or organization(s)/entity(s) designated above.

A photocopy or fax copy of this authorization shall be acceptable as an original.

Signature of Patient/Parent/Legal Guardian: → *Carole Ann Duncan*
CAROLE ANN DUNCAN ON
BEHALF OF CAROLE ANN CAMPANELLI, Deceased

Date: 11/20/07

Signature of Witness: → *Robert C. Duncan*

Date: 11/20/07

Print Name

If a person cannot provide a written signature, two witnesses must sign below:

Witness: _____

Date: _____

Address: _____

Witness: _____

Date: _____

Address: _____

STATE OF NEVADA

DEPARTMENT OF HUMAN RESOURCES DIVISION OF HEALTH VITAL STATISTICS STATE OF NEVADA — DEPARTMENT OF HUMAN RESOURCES DIVISION OF HEALTH — SECTION OF VITAL STATISTICS CERTIFICATE OF DEATH

97 008930

TYPE
ON PRINT
IN
PERMANENT
BLACK INK

DECEDENT

IF DEATH
OCCURRED IN
HOSPITAL
USE HANDBOOK
REGARDING
COMPLETION OF
RESIDENCE ITEM

PARENTS

DISPOSITION

CERTIFIER

CONDITIONS
IF ANY
WHICH GAVE
RISE TO
IMMEDIATE
CAUSE
STATING THE
UNDERLYING
CAUSE LAST

CAUSE OF
DEATH

LOCAL FILE NUMBER		STATE FILE NUMBER	
1. DECEASED—NAME Carole Ann CAMPANELLI		2. DATE OF DEATH (Month, Day, Year) August 20, 1997	
3. CITY, TOWN, OR LOCATION OF DEATH Carson City		4. COUNTY OF DEATH Carson City	
5. HOSPITAL OR OTHER INSTITUTION—Name (If not other, give street and number) Warren Springs Correctional Center		6. SEX Female	
7. RACE—(a) White, Black, American Indian, etc. (Specify)	8. Year Decedent of Hispanic Origin? Specify <input type="checkbox"/> yes <input checked="" type="checkbox"/> no If yes, specify Mexican, Cuban, Puerto Rican, etc.	9. Age—Last Birthday (Years)	10. Date of Birth (Mo., Day, Yr.)
7a. White	8a. <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	9a. 29	10a. May 23, 1968
11. STATE OF BIRTH (If not U.S.A., name country)	12. COUNTRY OF BIRTH	13. Decedent's Education—Specify highest grade completed	14. MARITAL STATUS—NEVER MARRIED, WIDOWED, DIVORCED, RE-MARRIED
11a. New York	12a. U.S.A.	13a. 12	14a. Never Married
15. SOCIAL SECURITY NUMBER	16. USUAL OCCUPATION (Give kind of work done during most of Working Life. Even if Retired)	17. TYPE OF BUSINESS OR INDUSTRY	18. SURVIVING SPOUSE (If wife, give maiden name)
15a. 530-82-4875	16a. Clerical	17a. Office Work	18a. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
19a. Nevada	19b. Clark	20a. Las Vegas	20b. 5765 N. Campbell
21a. Domiano	21b. Campanelli	21c. Carole	21d. Rippo
22a. Informant—Name (Type or Print) Carole Duncan—Mother		22b. Mailing Address (Street or R.F.D. No., City or Town, State, Zip) 5765 N. Campbell Rd., Las Vegas, Nevada 89129	
23a. Burial	23b. Memory Gardens	23c. Las Vegas, Nevada	
24a. With Family	24b. 36	24c. 833 N. Edmonds Dr., Carson City, Nevada 89701	
25a. To the best of my knowledge, death occurred at the time, date and place and due to the causes stated. (Signature and Title) DATE SIGNED (Mo., Day, Yr.) 25b. Eric Cantlin		25c. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the causes stated. (Signature and Title) DATE SIGNED (Mo., Day, Yr.) 25d. 9-8-97	
26a. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print) Eric Cantlin, Coroner, 901 E. Musser St., Carson City, Nevada		26b. HOUR OF DEATH 0745	
27a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER OR CORONER) (Type or Print)		27b. LICENSE NUMBER CO-6	
28a. REGISTRAR (Signature) LARRY M. SAUGHAN		28b. DATE RECEIVED BY REGISTRAR (Mo., Day, Yr.) September 9, 1997	
29a. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c)) PART I (a) Acute Subarachnoid Hemorrhage DUE TO, OR AS A CONSEQUENCE OF: (b) DUE TO, OR AS A CONSEQUENCE OF: (c) OTHER SIGNIFICANT CONDITIONS—Conditions contributing to death but not resulting in the underlying cause given in Part I		29b. DEATH DUE TO COMMUNICABLE DISEASE 29c. YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
30a. AGG., SUICIDE, HON., UNDEF., OR PENDING INVEST. (Specify) 30b. INJURY AT WORK (Specify Yes or No)		30c. DATE OF INJURY (Mo., Day, Yr.) 30d. HOUR OF INJURY 30e. M 30f. DESCRIBE HOW INJURY OCCURRED 30g. LOCATION 30h. STREET OR R.F.D. No. 30i. CITY OR TOWN 30j. STATE	

STATE REGISTRAR

No. 117902

This is to certify that the above is a true and correct copy of the certificate on file in this office.

Date issued: OCT 03 1997

State Registrar

WARNING: IT IS ILLEGAL TO ALTER OR COPY THIS DOCUMENT

07330-FMXH0019

JA010973

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RIPPO,

Appellant,

-vs-

E.K. McDANIEL, et al.,

Respondent.

No. 53626

FILED

OCT 19 2009

TRACIE L. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

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13	Reporter's Transcript of Proceedings: Jury Trial Vol. I, 10:30 a.m.	03/04/96	JA03065-JA03120
14	Reporter's Transcript of Proceedings: Jury Trial, 11:00 a.m.	03/05/96	JA03121-JA03357
16	Reporter's Transcript of Proceedings: Jury Trial Vol. 1 11:30 a.m.	03/13/96	JA03594-JA03808
17	Reporter's Transcript of Proceedings: Jury Trial, 9:30 AM	03/14/96	JA03841-JA04001
3	Reporter's Transcript of Proceedings: Motions Hearing	03/18/94	JA00575-JA00582
3	Reporter's Transcript of Proceedings: Motions Hearing	04/14/94	JA00591-JA00618
15	Reporter's Transcript of Proceedings: Penalty Phase 10:00 a.m.	03/12/96	JA03413-JA03593
2 3	Reporter's Transcript of Proceedings Re: Defendant's Motion to Disqualify District Attorney's Office	03/07/94	JA00403-485 JA00486-564

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2	Reporter's Transcript of Proceedings re: Oral Request of District Attorney	01/31/94	JA00322-JA00333
3	Reporter's Transcript of Proceedings: Ruling on Defense Motion	03/11/94	JA00570-JA00574
17	Reporter's Transcript of Proceedings: Sentencing	05/17/96	JA04014-JA04036
15	Reporter's Transcript of Proceedings: Verdict	03/06/96	JA03403-JA03411
2	Response to Defendant's Motion for Discovery of Institutional Records and Files Necessary to His Defense	02/07/94	JA00351-JA00357
36 37	State's Motion to Dismiss and Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)	04/23/08	JA08673-JA08746 JA08747-JA08757
2	State's Motion to Expedite Trial Date or in the Alternative Transfer Case to Another Department	02/16/93	JA00268-JA00273
2	State's Opposition to Defendant's Motion for Discovery and State's Motion for Reciprocal Discovery	10/27/92	JA00260-JA00263
2	State's Opposition to Defendant's Motion to Exclude Autopsy and Crime Scene Photographs	02/07/94	JA00346-JA00350
18	State's Opposition to Defendant's Supplemental Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction)	10/14/02	JA04154-JA04201
2	State's Response to Defendant's Motion to Strike Aggravating Circumstance Numbered 1 and 2 and for Specificity as to Aggravating Circumstance Number 4	02/14/94	JA00367-JA00370
18	State's Response to Defendant's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)	04/06/04	JA04259-JA04315
2	State's Response to Motion to Disqualify the District Attorney's Office and State's Motion to Quash Subpoenas	02/14/94	JA00358-JA00366
18	Supplemental Brief in Support of Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)	02/10/04	JA04206-JA04256

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17 18	Supplemental Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction)	08/08/02	JA04052-JA04090 JA04091-JA04153
15	Verdicts	03/06/96	JA03399-JA03402
16	Verdicts and Special Verdict	03/14/96	JA03835-JA03840

1 investigation." Id. The informant interview reports identified above are part of that file.
2 Exhibits 92-98. See also Exhibit 99. Thus, both LVMPD and the Clark County District
3 Attorney's Office had exculpatory information establishing that Catt was lying.

4 These specific facts establish good cause to conduct the requested discovery.

5 **b. The Art Taylor Interview Reports and Raw Notes**

6 At trial, Mr. Homick sought to establish an alibi based upon his driving Mr. Ettinger and
7 Ms. Hines to and from the meeting with Stewart Bell. The prosecutor made a two pronged attack
8 on the alibi. First, he argued that Mr. Homick did not do the driving that day since the only
9 evidence for that claim came from the testimony of Susan Hines. The prosecutor strongly
10 suggested that she was lying to protect Mr. Homick because she was his lover. Exhibit 79. The
11 prosecution also attacked the alibi by arguing that even if Mr. Homick did drive Ms. Hines and
12 Mr. Ettinger to the meeting, they left by no later than 10:30 a.m. The prosecutor claimed that
13 Mr. Homick had plenty of time to drive to Ettinger's house, get a cup of coffee and then make it
14 to the Tipton house by 11:00 a.m. Exhibit 80.

15 Both arguments of the prosecutor are refuted by information provided by a paid
16 government informant, Art Taylor. In particular, Mr. Taylor reported to FBI Special Agent
17 James Livingston on December 11, 1985, and again on January 10, 1985, that Mr. Homick was
18 with him on the morning of the Tipton homicides. Exhibits 100 and 101. Taylor told Livingston
19 that Mr. Homick was driving Mr. Ettinger's Cadillac and they went to a bank to cash a check.
20 Exhibits 100 and 101. Taylor stated that while they were at the bank, Mr. Homick received a
21 page to return to a lawyer's office to pick up Susan Hines and Larry Ettinger. Id. Taylor stated
22 that after the page was received, Homick drove Taylor back to his shop and then he left for the
23 lawyer's office. Id. Taylor testified during the California proceedings that it would have taken
24 Homick 15-20 minutes to drive to the Stewart Bell's office after he was paged. Exhibit 102.

25 The information from Art Taylor, as detailed in Exhibits 100 and 101, was never
26 disclosed to Mr. Homick during the Nevada proceedings. Exhibit 56. The typewritten reports
27 (Exhibit 100) were provided later, during discovery in the federal case. Exhibit 1. Related raw
28 notes (Exhibit 101), which were even more definitive in terms of the information given by

1 Taylor, were not provided until 1993. Exhibits 132 and 133.

2 The failure to disclose this information was prejudicial because it corroborated Susan
3 Hines statements that Mr. Homick did in fact drive her and Ettinger to the meeting at Bell's
4 office. Art Taylor even confirms the fact that Mr. Homick was in Mr. Ettinger's Cadillac. Even
5 more significantly, Mr. Taylor provided fresher information concerning the time when Mr.
6 Homick would have returned to Bell's office. Mr. Homick did not leave Taylor until 10:30 a.m.
7 He then needed 15-20 minutes to drive approximately 5 miles to Bell's office. This information
8 directly contradicts the prosecutor's argument that Mr. Homick left Bell's office at "no later than
9 10:30" and had "plenty of time" to get to the Tipton residence by 11:00 a.m.

10 These specific facts establish good cause justifying the requested discovery.

11 c. Records of Payment to Art Taylor

12 During the penalty phase of Mr. Homick's Nevada trial, the prosecution called LAPD
13 Detective Jack Holder to provide a hearsay summary of the Woodman homicide investigation.
14 During that testimony, Det. Holder offered the hearsay statements of Art Taylor for purposes of
15 placing Mr. Homick in Los Angeles on the afternoon and evening of the Woodman homicides.
16 Exhibit 54. Although Mr. Homick's attorneys introduced evidence that Mr. Homick appeared at
17 a divorce hearing in Las Vegas on that same morning, (Exhibit 103), that information could not
18 directly rebut Mr. Taylor's claims about Mr. Homick's whereabouts during the afternoon and
19 evening.

20 Unbeknownst to defense counsel at the time of trial was the fact that Mr. Taylor has been
21 paid approximately \$10,000 for the information that he provided against Mr. Homick. Exhibit
22 104. The defense did not and could not offer any evidence concerning those payments because
23 that information had been withheld.

24 These specific facts establish good cause justifying the issuance of the requested
25 subpoenas.

26 d. Impeachment Information Relating to the Testimony of
27 Michael Dominguez

28 Michael Dominguez was a key witness who testified that at approximately 1:30 p.m. on

1 the day of the homicides, he supposedly saw a .22 caliber gun on the floorboard of Mr. Homick's
2 car. Dominguez stated that he was standing next to or near the car when he saw the weapon.
3 Dominguez also claimed that this was the same gun that he (Dominguez) had used in a burglary
4 and attempted homicide of Craig Maraldo and Cheryl McDowell, committed many months
5 earlier. Exhibit 72. Cartridges recovered from the scene of that attempted homicide on Mr.
6 Maraldo matched cartridges recovered from the Tipton homicides. Exhibit 73.

7 The defense argued that Mr. Dominguez was lying and that he was the actual perpetrator
8 of the Tipton homicides since he admitted possession and prior use of the murder weapon during
9 the attempted homicide on Maraldo and McDowell. As set forth below, additional impeachment
10 evidence of Mr. Dominguez was available, but never disclosed to the defense.

11 In an effort to corroborate statements made by Mr. Dominguez during the investigation,
12 the FBI attempted to investigate certain claims made by Dominguez. Among other things,
13 Dominguez claimed to investigators that he had committed an arson in Texas at the behest of
14 Homick. Exhibit 105. The FBI investigated this claim and failed to corroborate any significant
15 detail. Exhibits 106 and 107.

16 This information was ever produced to the defense during the Nevada trial.

17 e. Critical Impeachment Evidence of LAPD Detective Jack
18 Holder was Withheld from Mr. Homick.

19 During the penalty phase of Mr. Homick's trial, prosecutors offered the testimony of
20 LAPD Officer Jack Holder. Det. Holder, in turn, presented a hearsay summary of the Woodman
21 homicide investigation. Cross examination of Det. Holder was substantially hindered because he
22 minimized or could not recall inconsistencies within the hearsay declarants' statements.¹⁴

23 Even more significant, however, is the fact that Det. Holder had just one day prior to the
24 start of the Nevada trial signed a contract with an author for purposes of writing a book about his
25 involvement in Woodman homicide investigation. Exhibit 109. As part of that contract, Det.

26
27 ¹⁴ For example, Det. Holder summarized information provided by paid informant Steward
28 Siegel. Exhibit 108. When asked about the varying versions of events provided by Siegel during
sworn testimony, Det. Holder stated that any inconsistencies were minor and he could not recall
how many inconsistencies there may have been.

1 Holder received an advance of \$500 and a promise of future profits from the sale of that book.
2 Exhibit 110. This existence of this contract and its benefits were never disclosed to the defense
3 prior to or during Mr. Hornick's Nevada trial. Id. As a result, the defense was unable to argue
4 that Det. Holder was biased and had a motive for making the case against Mr. Hornick appear
5 stronger than the available evidence he was summarizing.

6 **f. FBI Surveillance Records**

7 During the Nevada trial, FBI Special Agent Donn Owens testified that he had personally
8 surveilled Mr. Hornick driving on more than 200 occasions between March 1985 and March
9 1986. Exhibit 6. The evidence was introduced for the purpose of claiming that Mr. Hornick had
10 certain driving patterns (like speeding and running red lights) that made it possible for him to get
11 to the Tipton house on December 11 quickly. At trial, the prosecution did not produce records
12 for all of these days. Id. When the defense requested production of all surveillance records for
13 those 200 occasions, the trial court denied the request. Id.

14 To date, counsel still has not received information reflecting on Owens' 200 days of
15 surveillance. Exhibit 4. In fact, a review of the surveillance records obtained from all sources to
16 date (Nevada discovery, California discovery, federal discovery, FOIA productions) reveals that
17 Agent Owens was in a position to observe Mr. Hornick's driving patterns on a mere five
18 occasions. Exhibits 115 - 119. Either a substantial amount of surveillance has been improperly
19 withheld or Mr. Owens perjured himself when he claimed to have personally surveilled Mr.
20 Hornick on 200 occasions.

21 These specific facts justify the issuance of the requested discovery. Mr. Hornick needs
22 the information to develop his Brady claims insofar as exculpatory evidence (missing
23 surveillance records) was either improperly withheld and/or the prosecution relied upon perjured
24 testimony.

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1 g. Steward Siegel

2 Prior to trial, the prosecutors represented that Steward Siegel was a government informant
3 used in the case. Exhibit 48. During the penalty phase, Det. Holder testified about hearsay
4 statements from Mr. Siegel. Exhibit 108. Despite this reliance upon Mr. Siegel, critical
5 impeachment evidence was withheld:

- 6 • Exhibit 165 is an FBI Teletype dated October 4, 1985. In that document, Siegel is
7 described as "a man without integrity which reflects upon his morals." This
8 document is located within Siegel's FBI file and was produced, in redacted form,
9 pursuant to Petitioner's FOIA request.
- 10 • Exhibit 166 is an FBI Teletype dated September 10, 1985. That document states,
11 "In view of the past prior difficulties involved in the operation of captioned
12 individual as an informant for the Tampa Division and also in view of the current
13 investigation being conducted into alleged illegal activities concerning his
14 association with Bingo games in the San Diego Division, FBIHQ [Headquarters]
15 denies Las Vegas request to utilize captioned individual as an informant. This
16 document is located within Siegel's FBI file and was produced, in redacted form,
17 pursuant to Petitioner's FOIA request.
- 18 • Exhibit 167 is an FBI Memorandum dated 8/31/77. This document states,
19 "Atlantic City had no interest in Siegel and that in our opinion he was possibly
20 using the Bureau for his own interests." This document is located within Siegel's
21 FBI file and was produced, in redacted form, pursuant to Petitioner's FOIA
22 request.
- 23 • Exhibit 168 is an FBI Memorandum dated 1/13/76. This document states, "Siegel
24 is so unreliable and would do or say anything to weasel out of appearing in court
25 or going to trial in any matter." This document is located within Siegel's FBI file
26 and was produced, in redacted form, pursuant to Petitioner's FOIA request.

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6. Prosecutors and Law Enforcement Agents Have Engaged in Deceptive and Misleading Conduct.

Although it is not necessary to establish bad faith on the part of the prosecution when asserting a Brady claim, there is nonetheless substantial evidence of bad faith and deceptive or misleading conduct. The following examples are illustrative:

a. "We don't document what we don't believe."

During the Tipton investigation, LVMPD detectives Dillard and Leonard interviewed Susan Hines and Larry Ettinger. When first interviewed, both of these individuals made statements that would have further corroborated Mr. Homick's alibi. In particular, both initially claimed that after the meeting at Bell's office, they all went to a delicatessen for coffee and a bagel. These statements were never memorialized by Detectives Dillard or Leonard. Both of them claimed that they did not believe the statements and therefore did not create written reports memorializing them. Exhibit 120.¹⁵

Detectives Dillard and Leonard also conducted an interview of Timothy Catt that was never memorialized. During that first interview, Catt never mentioned the threats or confession supposedly made by Mr. Homick. Catt never made those claims until after a search warrant was executed at his home, several thousand dollars worth of valuable gems were seized, and he was told that he was a suspect in the Tipton homicides. Exhibit 256. Unfortunately, that first interview also was never memorialized because the officers claimed it did not provide them with any useful information. Exhibit 120.

b. "Steward Siegel is the Only Paid Informant."

The Clark County District Attorney expressly represented during pre-trial discovery proceedings that Steward Siegel was the only informant used in the case. Exhibit 48. This

¹⁵ Interestingly enough, the FBI also interviewed Larry Ettinger and he too told them that he, Hines and Homick went to a deli after the meeting at Bell's office. Exhibit 121. The notes also reflect that Ettinger described the meeting as lasting less than an hour." These notes also were never disclosed to Mr. Homick during the Nevada trial. Disclosure of this information would have substantially bolstered the defense argument that law enforcement agents threatened and or intimidated Hines and Ettinger out of offering alibi evidence for which they were the only source. Exhibit 122. Ettinger did not testify because he had been named in the federal indictment. Exhibit 49.

1 statement was false and the prosecutor should have known that fact, especially since Detective
2 Dillard subsequently testified about the use of Art Taylor in the investigation. Exhibit 52.

3 c. "The FBI has Provided All Interview Reports to the Defense."

4 U.S. Attorney Stan Parry appeared at a discovery hearing and subsequently represented to
5 defense counsel that they had all of the FBI interview reports. Exhibits 45 and 46. This
6 statement was false. Among other things, the defense did not have the FBI 302 report relating to
7 Norma Thompson, the FBI interview reports relating to Art Taylor, the FBI 302 report relating to
8 the failed attempt to corroborate information provided by Michael Dominguez, or the Steward
9 Siegel reports.

10 d. FBI Special Agent James Livingston

11 FBI Special Agent James Livingston was intimately involved in the investigation of Mr.
12 Homick, even prior to the dates of the Woodman and Tipton homicides. When the Woodman
13 and Tipton homicides occurred, he worked closely with LVMPD detectives Dillard and Leonard,
14 as well as LAPD detectives Holder and Crotsley. He shared pen register information with them.
15 Exhibit 23. He shared surveillance information with them. Id. He gave them information from
16 his informants, including Art Taylor. Exhibits 20-22. When Mr. Homick was tried in Nevada,
17 Agent Livingston testified for the Clark County District Attorney's Office. Exhibit 234.
18 Despite this intimate knowledge and involvement, he never disclosed the exculpatory
19 information that had been provided to him directly by Art Taylor.

20 e. "There was no joint investigation" and "The Raw Notes of
21 Livingston's Interviews with Art Taylor Do Not Exist, Can't
22 Be Found and/or Are Not Exculpatory."

23 After obtaining Mr. Livingston's typewritten reports of information from Art Taylor
24 during the federal discovery, Mr. Homick's California attorneys attempted to obtain the rough
25 notes of the December 11, 1985 and January 10, 1986 interviews. The history relating to those

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1 efforts is significant.¹⁶

2 In California, at a September 30, 1992 discovery hearing, the Los Angeles County Deputy
3 District attorney represented that he did not know if there were any raw notes. Exhibit 123. The
4 trial judge ordered the prosecutor to request the rough notes from the FBI. *Id.* As of October 8,
5 1992, information about the rough notes still was not forthcoming. Exhibit 124.

6 California defense counsel, working with Mr. Homick's FOIA counsel, also corresponded
7 directly with the U.S. Attorney's Office in Nevada in an effort to obtain the information. Exhibit
8 125. In response to this request, the U.S. Attorney's Office responded that the "Government has
9 reviewed its files and found no rough notes of interviews with Taylor." Exhibit 126.

10 At that point, Mr. Homick's FOIA counsel utilized existing information (including the
11 deleted page information sheets, the redacted documents and correspondence identifying main
12 file and subfile names) to analyze the structure of the FBI files. He and California defense
13 counsel then drafted a letter to the FBI and U.S. Attorney's Office telling them where the notes
14 should be located. Exhibit 127. Only then did the FBI admit, albeit implicitly, that the rough
15 notes relating to Livingston's interviews of Taylor did, in fact, exist. Exhibit 128.

16 Despite the discovery of the raw notes, the FBI and U.S. Attorney's Office continued to
17 refuse production of the raw notes, claiming "witness rough notes are not generally discoverable
18 and the Government as a general rule does not release such notes as discovery. The defendants
19 were never entitled to access to the witness rough notes during their federal trial." *Id.*

20 The FBI also claimed that the rough notes "contain information related to other matters
21 and individuals besides Steven Homick and his associates." Exhibit 129. This claim was claims
22 were false, at least with respect to the notes relating to December 11, 1985. Exhibit 101. The
23 U.S. Attorney's Office also denied the request for raw notes claiming, among other things, that
24 "The F.B.I. was not involved in a joint investigation with the Las Vegas Metropolitan Police
25 Department concerning its investigation of Steven Homick for the Tipton murders." Exhibit 129.

26
27 ¹⁶ The efforts to obtain the notes was a multi-year effort and involved many more
28 documents than are discussed in this section. Once counsel completes their review of the record,
counsel anticipates being able to demonstrate even more outrageous conduct on the part of the
FBI and U.S. Attorney's Office in attempting to withhold the information. Exhibit 1.

1 Department concerning its investigation of Steven Homick for the Tipton murders." Exhibit 129.
2 This claim was likewise false. Exhibits 177-180. Even FBI William Webster had characterized
3 the effort as a joint investigation. Exhibits 191-198. See also 181-229.

4 Based on the continued refusal of the FBI and the U.S. Attorney's Office to produce the
5 rough notes, California defense counsel sought dismissal of the case. Exhibit 130. The Los
6 Angeles Judge and her staff then called the United States Attorney's Office and the notes were
7 finally produced. Exhibits 131-133.

8 The denied existence of the notes, the refusal over several years to produce the raw notes,
9 and the denial of the existence of a joint investigation indicate a pervasive pattern of
10 deceptiveness and a desire to suppress exculpatory material by the FBI and the U.S. Attorney's
11 Office.

12 7. The Clark County District Attorney's Office Has a History of Failing
13 to Comply with its Discovery Obligations.

14 Several recent cases reveal a pervasive failure by the Clark County District Attorney's
15 Office to comply with its discovery obligations:

- 16 • In Jimenez v. State, 112 Nev. 610, 620-21, 918 P.2d 687 (1996), the CCDA,
17 acting through its prosecutor Mel Harmon, was found to have failed to comply
18 with its Brady obligation to disclose evidence of benefits given to prosecution
19 witnesses by law enforcement and evidence of other suspects, even in capital
20 cases. (Mel Harmon is one of the two prosecutors that was assigned to Mr.
21 Homick's trial.)
- 22 • In D'Agostino v. State, 112 Nev. 417, 423-424, 915 P.2d 264 (1996), the CCDA
23 was again found to have failed to disclose benefits to prosecution witness. That
24 failure, however, was found harmless because other evidence of guilt was
25 overwhelming and the effect of the witness's cooperation with police was
26 explored on cross-examination. Once again, Mel Harmon was the prosecutor
27 found to have failed in his disclosure obligations.
- 28 • In Jones v. State, Clark County Case No. C091066, a detective assigned to the

1 homicide section of the Las Vegas Metropolitan Police Department testified that
2 no promises were made, nor any inducements offered, to witness Robert Bezak in
3 exchange for his testimony. Exhibit 134. Mr. Bezak testified at the penalty phase
4 of Mr. Jones' trial about statements allegedly made by Mr. Jones while they were
5 incarcerated in the Washoe County Jail. Mr. Bezak also testified that the
6 detective promised him nothing in exchange for his testimony. Exhibit 135.
7 However, at the time of Mr. Bezak's plea in Washoe County, the prosecutor
8 acknowledged that, because Mr. Bezak "did provide some information to the
9 authorities," he received a lesser sentence for his Washoe County charges in
10 return for his cooperation. Exhibit 136. In addition, the prosecutor in the Jones
11 case sent a letter to the parole board on the inmate's behalf because of his
12 "valuable" information and full cooperation. Exhibit 137 and 138. Bezak later
13 acknowledged during an interview with the Nevada Attorney General and in a
14 deposition that he was looking for some help for his sentence when he was
15 cooperating with the Las Vegas homicide detective about Mr. Jones. Exhibit 139
16 and 140. The prosecutor in the Jones case took no action to correct the inmates'
17 false testimony or to disclose the benefit received. Exhibit 141.

18 In Clark County Juvenile Court Case No. J51978, Transcript of Entry of Plea,
19 Exhibit 142, one of the most senior former prosecutors in Clark County appeared
20 at a juvenile entry of plea. The prosecutor suggested to the judge that he bind
21 himself to a sentence for the defendant, and indicated that this was how things
22 were done in the district court, when the prosecutor would obtain an off-the-
23 record commitment from the court to impose a specific sentence. Id. at 2. The
24 implication of the prosecutor's suggestion is that a witness who had entered a
25 guilty plea but had not yet been sentenced could testify that he had not received a
26 promise of a specific sentence, because the sentencing decision was up to the
27 judge, when in fact the prosecutor had obtained a commitment from the judge to
28 impose an agreed-upon sentence. This further calls into question the credibility of

1 testimony by any prosecution witness that no benefits had been promised in return
2 for the witness' favorable testimony.

3 **8. The CCDA and LVMPD Have No Institutional Mechanism for**
4 **Sharing Information.**

5 The failure of the CCDA to historically comply with their disclosure obligations reflects a
6 pattern of organizational behavior that is further established by evidence that the CCDA and
7 LVMPD have no institutional mechanism for sharing information to ensure that the disclosure
8 requirements of Kyles are satisfied.¹⁷ The records custodians of the CCDA and LVMPD have
9 testified in depositions that there is no institutional procedure by which LVMPD ensures that all
10 evidence that is disclosable under Kyles is forwarded to the District Attorney. Exhibits 143-

11 148.. Likewise, there is no institutional procedure by which the CCDA ensures that its "open
12 file" contains all material it is required to disclose. *Id.*¹⁸ This direct testimony of the state's

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14 ¹⁷ Kyles v. Whitley, 514 U.S. 419, 437 (1995) makes it clear that the prosecutor's duty to
15 disclose material evidence includes material in the possession of other agencies cooperating with
16 the prosecution. See Giglio v. United States, 405 U.S. 150, 154 (1972) (prosecutor's office
17 "single entity" for purpose of duty to disclosure); United States v. Osorio, 929 F. 2d 753, 760-62
18 (1st Cir. 1991); Fulford v. Maggio, 692 F.2d 354, 358 n.2 (5th Cir. 1982) ("The State's duty of
19 disclosure is imposed not only upon its prosecutor, but also on the state as a whole, including its
20 investigative agencies."), reversed on other grounds, 462 U.S. 111 (1983); United States v.
21 Butler, 567 F.2d 885, 889, 891 (9th Cir. 1978); Barbee v. Warden, Maryland Penitentiary, 331
22 F.2d 842, 846 (4th Cir. 1964); Gorham v. State, 597 So.2d 782, 784 (Fla. 1992) (knowledge that
23 witness was police informant in other cases); see Pina v. Henderson, 752 F.2d 47, 50 (2nd Cir.
24 1985) (duty to disclose evidence in possession of law enforcement agencies acting as "arm of the
25 prosecution"); United States v. Scruggs, 583 F.2d 238, 242 (5th Cir. 1978) (construing
26 Fed.R.Crim.P., Rule 16(a)(1)(C); see also Imbler v. Pachtman, 424 U.S. 409, 427 n.25 (1976)
(ethical duty of continuing disclosure).

27 ¹⁸ The Custodian of Records of the Las Vegas Metropolitan Police Department, who was
28 deposed in another capital habeas case from this district, testified that the "Records Section" of
the Las Vegas Metropolitan Police Department is not the only division of that agency in which
records are kept. Records are also kept in the various sub-divisions themselves, including the
homicide division, the fingerprint division, the photolab, the criminalistics division, the evidence
vault, Metro Communications and the Clark County Detention Center Records Division. Exhibit
143 at pp. 15-16, 30-31). In addition, the Technical Services Division, Information Services
Systems and the Special Operations Division maintain their own records. Exhibit 144 at pp.5-6,
8-9.) Detective and investigator notes as well as their daily logs are kept with the detectives and
investigators in the Investigative Bureau. *Id.* at pp. 14, 50. The LVMPD's homicide section
retains its own "homicide file," which is kept at the detective bureau and is not provided to the
Records section unless and until the detective on the case releases all or part of the file. Exhibit
143 at pp. 8-9. No one at the CCDA routinely reviews what is in the LVMPD files. *Id.* at pp.
45-46, and defense attorneys are never permitted to examine them. *Id.* at p. 48. No one in the
LVMPD Records Section examines the files of other LVMPD "records" repositories to see what

1 practices is sufficient to show a pattern of organizational behavior under Fed.R.Evid. 406. See
2 Bouchat v. Baltimore Ravens, Inc., 228 F.3d 489, 493 (4th Cir. 2000) (testimony as to routine
3 practices admissible under Rule 406).

4 The practice of the Clark County District Attorney in failing to comply with disclosure
5 obligations is also supported by the fact that individual district attorneys, including Mel Harmon,
6 have openly expressed ignorance of the scope of those obligations and have expressed disdain for
7 the requirements of Kyles.¹⁹

8 9. Petitioner has Made Informal Attempts to Obtain Records

9 a. Clark County District Attorney's Office

10 Counsel contacted, via telephone and letter, the Clark County District Attorney's Office
11 to obtain a copy of open file discovery provided to Mr. Homick's defense attorneys. Exhibit 152.
12 The CCDA said the matter was out of their hands since the case was in federal habeas
13

14 materials are available in response to a subpoena or other request. Exhibit 144 at p. 26). Some
15 records, such as informant files, are kept under lock and key and are never provided and they are
not stored in the Police Records Section. Id. at pp. 56-57.

16 A similar situation exists with respect to the records kept by the CCDA and the Clark
17 County Detention Center. With respect to the records of the Clark County Detention Center, a
18 sub-division of the Las Vegas Metropolitan Police Department, a subpoena for "all records" will
19 likely yield a copy of the "inmate file" and "official" classification files only, but not any
20 materials in the "unofficial" files of the Classification section, Business Record Section, Medical
and Mental Health sections. Exhibit 145 at pp. 9-12, 16, 32-33, 37-38, 41.) Nor will the request
yield any materials contained in that agency's "unofficial files," that can remain in the possession
of either the lieutenant who supervises the classification section, or in the personal custody of
one of the other captains or lieutenant. Id. at pp. 12, 16; Exhibit 146 at pp. 40-42, 43-54.)

21 The District Attorney's various specialty units maintain their own files, and the materials
22 in their pertaining to the LVMPD include whatever the police provide to the District Attorney.
23 Exhibit 147 at pp. 11-12, 19-20, 22-23; Exhibit 148 at p. 9, 15-16, 20-21, 25). According to the
District Attorney's records custodian, the LVMPD is relied upon to provide the Clark County
District Attorney's Office with everything in the LVMPD file, Id. at pp. 22-23, 33). No one from
the District Attorney's Office routinely examines the files of the LVMPD to ensure compliance
with that expectation. Id. at pp. 22-23.

24 ¹⁹ Mel Harmon, one of the most senior former prosecutors in the CCDA has openly
25 disparaged the disclosure requirements imposed by Kyles v. Whitley, 514 U.S. 419 (1995), as
26 "very fine for judges to write about but... a legal fiction." Exhibit 149 (Transcript, pp. 131-32,
February 8, 1996, from State v. Rippe, Eighth Judicial District Court Case No. 106784). In other
27 cases, Mr. Harmon and another D.A. acknowledged that they were not even familiar with the
United States Supreme Court's decision in Giglio v. United States, 405 U.S. 150 (1972). Exhibit
28 150 (Transcript, p. 257, April 19, 1993, from State v. Jimenez, Eighth Judicial District Court
Case No. C77955). Exhibit 151 (Transcript, July 30, 1996 from State v. Bailey, Eight Judicial
District Court Case No. C129217).

1 Attorney General's Office stated they had no objection to a copy of the discovery being made
2 available to counsel, but that it was up to the District Attorney's Office which had the files.
3 When counsel then recontacted the District Attorney's Office, they initially said they would
4 cooperate, but ultimately refused to provide copies of any discovery without a subpoena. Exhibit
5 153; Exhibit 1.

6 b. **LVMPD**

7 Counsel contacted, via letter, various divisions of LVMPD. Exhibits 154 - 162. Two of
8 the divisions, LVMPD Photo Lab and LVMPD Communications, responded by stating that a
9 subpoena would be necessary before they could produce any documents. The Secret Witness
10 division called and claimed that they did not have any documents. Counsel asked for a
11 confirming letter. Such as letter was never received. The remaining divisions, LVMPD
12 Criminalistics, LVMPD Evidence Vault, LVMPD Organized Crime Bureau and LVMPD
13 Robbery/Homicide Bureau, never responded at all. Exhibit 55.

14 c. **FBI**

15 Petitioner has been attempting, through FOIA proceedings, to obtain copies of FBI
16 documents. Petitioner submitted a FOIA request in 1992. Pursuant to that request,
17 approximately 8000 pages of material has been made available. Much of it is redacted, however.
18 In addition, a very substantial number of pages have been withheld in their entirety. Petitioner is
19 currently litigating the propriety of the various exemptions claimed by the FBI. Exhibit 1.

20 d. **Bureau of Alcohol, Tobacco & Firearms**

21 Petitioner filed a Freedom of Information Act request with the Bureau of Alcohol,
22 Tobacco & Firearms. Exhibit 1. In response to that request, a number of documents were
23 withheld and those that were produced contained a substantial amount of redactions. Exhibit 1.

24 e. **Drug Enforcement Administration**

25 Petitioner filed a Freedom of Information Act request with the Drug Enforcement
26 Administration. Exhibit 1. In response to that request, a number of documents were withheld
27 and those that were produced contained a substantial amount of redactions. Exhibit 1.

28 f. **U.S. Postal Inspectors**

1 f. U.S. Postal Inspectors

2 Petitioner filed a Freedom of Information Act request with the U.S. Postal Inspectors.
3 Exhibit 1. In response to that request, a number of documents were withheld and those that were
4 produced contained a substantial amount of redactions. Exhibit 1.

5 h. Los Angeles County District Attorney's Office

6 On October 11, 2001, Petitioner's counsel wrote to the Los Angeles County District
7 Attorney's Office to request copies of documents. Exhibit 163. In response to that letter, that
8 office responded that Petitioner would have to first serve a subpoena before any documents could
9 be produced. Exhibit 1.

10 10. Conclusion

11 After years of attempting and failing to obtain a conviction of Mr. Homick, the FBI
12 joined forces with LVMPD, LAPD and others in a joint investigation that targeted Steve Homick
13 as the individual responsible for the the Tipton and Woodman homicides. Deceptive
14 investigation practices were utilized. Alternative suspects were ignored. Lies were elicited.
15 Information that should have been disclosed, including evidence that would have corroborated
16 Mr. Homick's alibi and evidence that would have impeached the testimony of key witnesses, was
17 buried. The claimed existence of an "open file" policy by the Clark County District Attorney
18 was simply one of many misrepresentations made by the law enforcement and prosecutorial
19 agencies involved in this case.

20 Based on the identification of exculpatory evidence that was withheld by the prosecution,
21 the misrepresentations, the deceptive conduct, and the CCDA's historic failure to comply with
22 their obligation to disclose exculpatory material, specific facts have been set forth to establish
23 good cause. Moreover, one has only to look at the substantial amount of redacted and withheld
24 documents produced during the FOIA action, but never produced in any of the criminal cases
25 against Mr. Homick, to know that additional exculpatory evidence exists.

26 Therefore, Petitioner is seeking the issuance of subpoenas to law enforcement that and
27 prosecutorial agencies involved in the joint investigation. Those subpoenas seek information
28 about the Tipton homicides, the Woodman homicides and the other crimes evidence introduced

1 against Mr. Homick during the trial. The subpoenas also seek information relating to key
2 witnesses and informants (Steward Siegel, Art Taylor, Ronald Bryl, Susan Hines, Larry Ettinger,
3 Rena Homick, Michael Champion, and David Tipton), codefendants in the other proceedings
4 (William Homick, Robert Homick, Stewart Woodman, Neil Woodman, Dolores Homick,
5 Nadine Homick, Charles Dietz, Louis Anthony Cordileone, and Anthony Majoy), alternative
6 suspects (Timothy Catt, Michael Dominguez, Kelly Danielson²⁰, and Laurence O'Dell,), and the
7 victims (Bobbie Jean Tipton, James Meyer, Marie Bullock, Raymond Godfrey, Gerald
8 Woodman, Vera Woodman) Lastly, based on the number of misrepresentations, the suppression
9 of exculpatory information that had been specifically requested, and the undisclosed book
10 contract, the subpoenas are seeking disciplinary records relating to any history of misconduct
11 committed by the main investigating agents in this case (James Livingston, Jerome Doherty, Tom
12 Dillard, Robert Leonard, Jack Holder and Richard Crotsley).

13 **C. GOOD CAUSE EXISTS TO DEPOSE MEL HARMON, BRAD JERBIC,**
14 **JAMES LIVINGSTON, JEROME DOHERTY, TOM DILLARD, ROBERT**
15 **LEONARD, JACK HOLDER, AND RICHARD CROTSLEY**

16 Based on the facts set forth in section B, directly above, Petitioner submits that good cause
17 also exists to depose the prosecutors who tried the case against him, as well as the lead law
18 enforcement officers from LVMPD, the FBI and LAPD. Petitioner seeks permission to issue the
19 subpoenas attached as Exhibits 352 - 357.

20 **D. GOOD CAUSE EXISTS TO OBTAIN RECORDS FROM THIRD PARTIES**
21 **RELATING TO MR. HOMICK'S ALIBI**

22 Petitioner is seeking the issuance of subpoenas for information relevant to establishing
23 and/or corroborating Mr. Homick's alibi. The requested subpoenas are for Michael's Gourmet
24 Steaks and Fine Seafood, Sprint Telephone Company, and Wells Fargo Bank. Petitioner also has
25 included information in his subpoena to LVMPD relating to William Keeton. This information
26 is relevant to petitioner's claims for ineffective assistance of counsel and prosecutorial failure to
27

28 ²⁰ See section E, below, with respect to an explanation of why Mr. Danielson and Mr.
O'Dell are potential alternative suspects.

1 disclose exculpatory evidence.

2 With respect to the subpoena sought for Michael's Gourmet Steaks and Fine Seafood
3 (Exhibit 351), Petitioner is seeking records from this entity because it was the employer for
4 victim James Meyers. Petitioner is seeking records relating to other deliveries made that
5 morning, as well as other contacts with the Tiptons for purpose of further defining the time of the
6 homicides.

7 With respect to the subpoena sought for Sprint Telephone Company (Exhibit 350),
8 Petitioner is seeking telephone records of David Tipton. Mr. Tipton testified to making a
9 telephone call to Mrs. Tipton on the morning of the homicides. Exhibit 59.

10 With respect to the subpoena sought for Wells Fargo Bank (Exhibit 349), it is the
11 successor bank to First National Bank, the institution that supposedly cashed a check for Mr.
12 Homick and/or Mr. Taylor on the morning of the homicides. Petitioner anticipates that to the
13 extent documents still exist, a time stamp may further define the time when Mr. Homick and Mr.
14 Taylor were present in the bank. Wells Fargo is also the successor bank to Continental Bank, the
15 institution that Ms. Hines, Mr. Ettinger and Mr. Homick stopped at on their way to the meeting at
16 Bell's office. Again, Petitioner anticipates that to the extent documents still exist, a time stamp
17 may further define the time when these individuals were present at that bank.

18 With respect to the LVMPD subpoenas, which includes a paragraph seeking information
19 relating to Bill Keeton (Exhibits 257-266), it is needed because Mr. Keeton is a former LVMPD
20 officer who issued the check cashed by Mr. Taylor and Mr. Homick on the morning of December
21 11, 1985. Exhibit 100-101. Keeton was subsequently disciplined by LVMPD for his contact
22 with Homick (Exhibit 174) and petitioner believes that the bank and/or the LVMPD disciplinary
23 records may contain information about the check that was cashed.

24 E. GOOD CAUSE EXISTS TO OBTAIN RECORDS FROM THIRD PARTIES
25 RELATING TO ALTERNATIVE SUSPECTS.

26 Petitioner is seeking permission to issue subpoenas to the Department of Interior, Steve
27 Stein, and Stuart Bell for information relating to an alternative suspects.

28 With respect to the Department of Interior, Petitioner is seeking information relating to its

1 investigation into a January 31, 1986 boating accident involving Kelly Danielson and Laurence
2 O'Dell. Mr. Danielson and Mr. O'Dell were associates of Mr. Dominguez and someone fitting
3 Mr. Danielson's description was seen in the vicinity of the Tipton home on the morning of the
4 homicides. In addition, in January, Mr. Danielson paid a visit to District Attorney Rex Bell,
5 ostensibly for social purposes. Exhibit 173. After this visit, the boating accident occurred and
6 Mr. Danielson died on or February 1, 1986. Exhibit 175.

7 **IV. CONCLUSION**

8 Based on the foregoing, Petitioner submits that good cause has been shown. Petitioner
9 respectfully requests this Court issue an order authorizing service of the proposed discovery
10 requests.

11 Dated: October 9, 2003

Respectfully submitted,

12 LAW OFFICES OF DOUGLAS W. LOFGREN

13 By


Douglas W. Lofgren

14 OH & BARRERA, LLP

15 By


Teresa R. Barrera

16 Attorneys for Petitioner
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PROOF OF SERVICE

HOMICK V. MCDANIEL, ET. AL., CASE NO CV-N-99-299-DWH(RAM)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 601 West Fifth Street, 8th Floor, Los Angeles, California 90071. On October 10, 2003, I served the within documents.

**PETITIONER'S MOTION FOR LEAVE TO CONDUCT DISCOVERY;
MEMORANDUM OF POINTS AND AUTHORITIES**

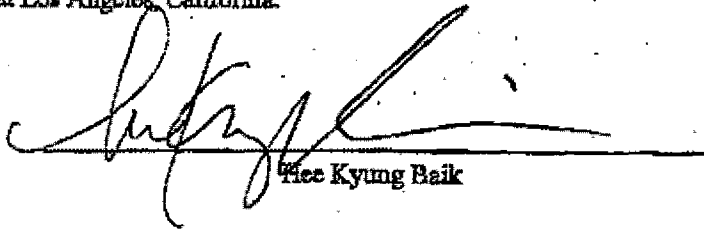
- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. The transmission was reported as complete and without error and was properly issued by the transmitting facsimile machine.
- ☐ **BY HAND:** by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.

Robert E. Wisland, Esq.
Senior Deputy Attorney General
Criminal Justice Division
1325 Airmotive Way, Suite 340
Reno, NV 89502

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of that party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on October 10, 2003 at Los Angeles, California.


Hee Kyung Baik

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EXHIBIT 71

EXHIBIT 71

COPY

DISTRICT COURT

FILED

CLARK COUNTY, NEVADA

JUN 10 2 01 PM '93

STATE OF NEVADA,

Plaintiff,

VS.

VICTOR MAXIMILIAN JIMINEZ
aka VICTOR DINO JIMINEZ,

Defendant.

L. J. Simmons
CLERK

Case No. C77955

Dept. No. I

Docket J

BEFORE THE HONORABLE J. CHARLES THOMPSON, DISTRICT JUDGE

RECORDER'S TRANSCRIPT RE:

EVIDENTIARY HEARING

MONDAY, APRIL 19, 1993

APPEARANCES:

For the Plaintiff:

MELVYN T. HARMON, ESQ.
Chief Deputy District Attorney

For the Defendant:

LAURA FITZSIMMONS, ESQ.
302 East Carson Avenue, #622
Las Vegas, Nevada 89101
(702) 388-9111

Recorded by: JANICE LISTON, Special Recorder/Transcriber.

1 Harry testified that Billy — at this trial, that Billy Ray
2 Thomas received nothing for his cooperation in this case,
3 which is inconsistent with what he said here.

4 Whether or not it was bargained for, the benefit was
5 received. And whether or not it was bargained for, Billy Ray
6 Thomas, at the time he testified at the trial that ended up in
7 the adjudication of guilt in this case, had been working for
8 some time as an informant in other cases. And that needed to
9 be disclosed too, and was not.

10 Now, Billy Ray Thomas —

11 THE COURT: I'm having a little trouble with your —

12 MS. FITZSIMMONS: Okay.

13 THE COURT: — benefit received argument. If a police
14 officer knows that a particular snitch is out there and
15 happens to see him doing something wrong and lets him walk for
16 selling cocaine, or whatever he's doing out there, does the
17 police officer have to sue sponta, in his own mind say, guess
18 what, I'll bet you some day some defense counsel in that other
19 case is going to want to — in all the cases that he's ever
20 snitched on, is going to want to know about that. I have to
21 start writing reports on all the cases he's snitched on so
22 that defense counsel picks up on that.

23 I don't think police would be expected to do that.

24 MS. FITZSIMMONS: Well, obviously, we have different

1 views. That's not what happened here.

2 What I do think, yes. I think, if -- Let's just --

3 THE COURT: That's what he testified happened. He said
4 he caught him doing something, and because he's been good to
5 the prosecutor and the police, he let him off.

6 MS. FITZSIMMONS: Well, that's not what happened, your
7 Honor. He was arrested by other people. Detective Scroggins
8 stepped in in the course of reviewing the case.

9 THE COURT: Okay. Stepped in. Maybe he was arrested
10 by -- He was arrested by somebody.

11 MS. FITZSIMMONS: He was --

12 MR. HARMON: NCF'd, is what he said.

13 MS. FITZSIMMONS: Yeah. He was formally arrested.

14 THE COURT: Right.

15 MS. FITZSIMMONS: He would have been prosecuted, although
16 other cases summarily are NCF'd and some aren't. I mean,
17 that's -- this could have gone either way. But Detective
18 Scroggin's clear testimony in this courtroom was consistent
19 with what he told me, which is that he made the decision to
20 NCF this case because of Billy Ray Thomas' assistance in the
21 case against Victor Jiminez and other cases in which he --

22 THE COURT: similar things happen all the time.

23 MS. FITZSIMMONS: Well, they have to be disclosed.

24 THE COURT: I have criminal calendars on a daily basis

1 where prosecutors, police, even defense attorneys, will come
2 to me and say, my client is helping the cops on a murder case.
3 They want him out of jail. Or, they want whatever. Will you
4 OR him?

5 And in cases where we normally wouldn't grant an OR,
6 we do it.

7 MS. FITZSIMMONS: Of course you do.

8 THE COURT: Now, am I supposed to write a report?

9 MS. FITZSIMMONS: No. Because you are a judge. You're
10 immune from this, your Honor.

11 What -- of course you OR them. This is what I was
12 saying earlier. You can give the guy a Cadillac and a million
13 bucks.

14 THE COURT: Right.

15 MS. FITZSIMMONS: You can do anything to --

16 THE COURT: It's going to have a chilling effect on
17 helping people out that help police, isn't it?

18 MS. FITZSIMMONS: Well, what happens is that the deals
19 are cut, and whether or not the deals are cut the quid pro quo
20 occurs. As Detective Scroggins testified to, the benefits
21 flow.

22 That's also fine as long as it's disclosed. You
23 can't then take the stand and have an informant say, I just
24 had a revelation and decided to do this. And, no, I've never

1 minimize when I would say, well, I'd like to get this in the
2 record for Federal Court. It's because that's where I've
3 been.

4 But this is where I am now. And I am not minimizing
5 this. I am hoping that the Court recognizes that these issues
6 are substantial, and these issues do merit relief at this
7 level. And I thank you for the time that you've given me.

8 MR. HARMON: Your Honor, I, too, will try to be brief. I
9 have equally strong feelings about the case. Counsel says
10 we're here about a fair trial for Victor Jimenez. I believe
11 he got a fair trial; however, I would say to the Court that
12 part of it is incidental.

13 The entire proceeding was initiated because two
14 citizens of this community were brutally murdered. There's no
15 evidence they provoked their assailant or assailants. They
16 were victims of robbery homicide. And one senior citizen, in
17 his late sixties, probably dropped like a rock when he was
18 stabbed many times in the back.

19 But we're here because anyone who has been proven to
20 have been involved in that crime should pay the price, and pay
21 the full price.

22 It's always a matter of perspective. My perspective
23 is that the Nevada Supreme Court has already twice reviewed
24 this case. I'll start with a disclaimer. I don't remember a
25
26
27

1 lot of what went on. I don't remember the details and all the
2 nuances of the testimony of Billy Ray Thomas. But I know that
3 the State Supreme Court has already ruled that there was
4 certainly sufficient evidence in this record to sustain all
5 the convictions against Victor Jiminez.

6 I know that Mr. Jiminez, and I don't want defense
7 counsel or the Court or anyone down the line to lose sight of
8 this fact, basically convicted himself. It is Mr. Jiminez.
9 Regardless of these other leads, that, in all probability,
10 from the prosecutive point of view, were always rabbit tricks.

11 They weren't going anywhere. This case isn't
12 substantively different than any murder case. As one of the
13 detectives said, you start out with a million suspects. It
14 could be anyone.

15 But they got a call from a confidential informant,
16 who pointed them towards Mr. Jiminez, and then they confronted
17 him. And they obtained some of his clothing. And after they
18 ran some luminol tests and they established that there was
19 blood from the knees down on his pants -- they'd already
20 started the interview -- they went back to him, and
21 Mr. Jiminez said, after they explained to him, there's blood
22 on your trousers --

23 This isn't something John Johnson hears from people
24 who really are not even positively identified. And Johnson

1 doesn't have the foggiest idea what the context was of the
2 conversation he overheard.

3 This is Jiminez who says to the cops, all right, you
4 got me. And there's more conversation about, well, suppose I
5 did this by myself. If I talk to you, is that going to help
6 out? And they say, well, tell us. And then Mr. Jiminez says,
7 I can't, because my family will be in danger. And he puts his
8 head down on the table and presumably sobs softly and doesn't
9 say anymore.

10 But this is the same Victor Jiminez who talked to
11 his parents. Now whether they are stepparents or natural
12 parents or foster parents or whatever, it doesn't really make
13 any substantiative difference. But they had strong ties to
14 Mr. Jiminez. They were protective of Victor Jiminez.

15 The behavior of Frank and Lydia Jiminez in this
16 courtroom at various times was featured in issues presented to
17 the State Supreme Court. But the bottom line is, after he had
18 talked with his parents, Bruce Scroggin was with him on the
19 elevator, and Jiminez was sobbing. And Scroggin implied,
20 what's wrong, Victor? And Victor said, after a short pause,
21 it just feels better to tell someone about it.

22 Now, what had he told them? Well, we know at least,
23 Judge, because it came into evidence, it had the necessary
24 trustworthiness under the evidence code to come into evidence,

1 even though Lydia Jiminez would never proceed far enough with
2 her testimony to acknowledge it, but we know that she had
3 written a little postscript to her formal statement to the
4 officers. And according to the mother of the defendant, he
5 said, I did it. I did it. But I wasn't there by myself. And
6 then he said the bartender jumped on him.

7 But, Judge, it was for those reasons, and other
8 corroborating evidence, the burglary of Richard Warner's
9 truck, the stealing of knives that were consistent with
10 weapons used in the crime, the statement to — of Leandrew
11 Domingo, the big Indian, who may or may not have been involved
12 in the crime. But the comment while they awaited the court
13 hearing, well, we're going to be locked up for a long time.
14 And there was an illusion of not getting any sexual
15 gratification.

16 There was testimony from Terry Cook, the
17 criminalist, who didn't even find the six spots of blood on
18 the right shoulder of Mr. Jiminez's jacket the first time.
19 But he was directed to go back and examine the jacket, and he
20 found human blood.

21 But this is representative of the type of evidence
22 that persuaded the jury — in essence two juries. It's true
23 the first jury was hung. But without going into some diatribe
24 about the mentality of that juror, I witnessed her performance

1 out in the hallway after the first trial. Two juries, at
2 least twenty-three out of twenty-four, were persuaded that
3 Victor Jiminez was a killer.

4 And on two separate occasions jurors have imposed
5 the death penalty. And whether I disagree or not with this
6 reversal of his first penalty, it really doesn't matter to
7 these proceedings. If the State Supreme Court saw fit to
8 reverse the penalty, we did it again, and they reviewed it and
9 they affirmed it.

10 But now, Judge, we have a great system in this
11 country, and we tolerate these appellate procedures to go on
12 ad infinite. And it's not surprising that even though I'm the
13 primary prosecutor on the case, a lot has slipped my mind
14 during the years.

15 We've had over six years go by and Mr. Jiminez is
16 still on death row and we're still affording him the effective
17 counsel of Mrs. Fitzsimmons. We're still giving him the
18 procedural safeguards. And it seems to me, at some point,
19 we've got to streamline the procedure.

20 But I just want to take a few moments, having put
21 this in what I believe to be its proper perspective. I want
22 to address for a few minutes the issues raised.

23 Judge, I can stand without any reservation and tell
24 you that, in my mind, there's been no Brady violation. There

1 hasn't been a Giglio violation.

2 I was asked about this case when I was on the
3 witness stand. I remember Brady v. Maryland very well.
4 Actually Giglio, G-i-g-l-i-o, it's reported at 92 Supreme
5 Court at 158, is a little opinion that I wasn't really that
6 familiar with.

7 But Giglio, and I start in reverse order, is the one
8 which would appear possibly to deal with the issue regarding
9 Billy Ray Thomas. I want to put Giglio in context, however,
10 because I will note, in reading from Page — Actually, I
11 interpolated the U.S. Citation and the Supreme Court Reporter
12 Citation. It's 92 Supreme Court 763.

13 I want to read to the Court a few lines from Page
14 766 of Giglio v. United States, which actually, I think, sums
15 up what has happened in this evidentiary hearing.

16 "We do not, however, automatically require a new
17 trial whenever a combing of the prosecutor's files, after the
18 trial, has disclosed evidence possibly useful to the defense,
19 but not likely to have changed the verdict." And they cite
20 then U.S. v. Kagoh, K-a-g-o-h.

21 Judge, the Giglio case, which did involve the
22 failure of the prosecution to disclose — Actually, it
23 involved the prosecutor's office, and it was apparently the
24 left hand not knowing what the right hand was doing. Because

1 the first prosecutor involved in the prosecution had agreed
2 that the witness -- in fact, he was an accomplice of Giglio.
3 In fact, he was the only witness -- unlike this case -- the
4 only witness who furnished any type of evidence that connected
5 Giglio in any way to the passing of forged checks.

6 He was a felon who had worked as a bank teller, and
7 they evidently, according to his version, they cooked up this
8 conspiracy for him to approve checks that were forged by
9 Giglio. And the first prosecutor on the case apparently
10 agreed that he wouldn't be charged. He'd be given immunity if
11 he cooperated, first at the grand jury in giving testimony,
12 and later on if he cooperated at trial. And, evidently, at
13 least, the prosecutor who handled the trial claimed not even
14 to have known that this was bargained for.

15 Your Honor, this isn't even remotely close to the
16 fact situation we have. Counsel was talking. She was
17 confronting me with this being clearly a Giglio situation we
18 have in this case, not mentioning that the witness in Giglio
19 was his accomplice, and not mentioning that he was the only
20 witness who had a shred of connecting evidence.

21 THE COURT: What you just explained to me as being the
22 facts of that case have to do with bargained for
23 consideration. In other words, you testify and I won't
24 prosecute you.

1 MR. HARMON: Absolutely.

2 THE COURT: Is that right?

3 MR. HARMON: Yes.

4 THE COURT: Okay. Now, that's not what I see as the
5 Billy Ray Thomas issue —

6 MR. HARMON: That is not this case. And, your Honor, the
7 suggestion by counsel that someone has misrepresented what
8 happened isn't true.

9 THE COURT: Well, her suggestion is, if a police officer
10 knows an individual who that officer sees being prosecuted or
11 arrested for something and knows that individual has done
12 favors for the State, he can't release that individual or
13 decide to NCF him without writing some sort of a report to —
14 on that other case so that the defense attorney becomes aware
15 of it. Now, that's, as I understand it, what the issue is.

16 MR. HARMON: Or disclosing it in some way to the defense.

17 THE COURT: I don't — I've never heard of a case that
18 says he has to do that. If he does, I think we better teach
19 the prosecutors —

20 MR. HARMON: Well, certainly Giglio doesn't require that.
21 Not in the type of circumstance we're talking about. This was
22 a specific bargain worked out with the accomplice/witness. In
23 this case, Bruce Scroggin truthfully testified that there was
24 no bargain in connection with Billy Ray Thomas. Whatever

1 happened to him was independent of any bargain which occurred.

2 And this situation, which was NCF'd in April of '87,
3 was something Scroggin made very clear the witness hadn't
4 asked for. In fact, there's no evidence Billy Ray Thomas even
5 knew he did it. It was done out of consideration for his
6 continued activity as an informant. There was no express
7 bargain in the Giglio situation. That simply is not
8 applicable.

9 Counsel talks about things being clearly
10 exculpatory. And, I agree, if evidence is clearly
11 exculpatory, that it must be disclosed.

12 Your Honor, the courts, however, have traditionally,
13 in defining what that means, made a distinction between
14 exculpatory evidence and evidence offered simply for the
15 purpose of impeachment. And at the very most, that's all this
16 business about Thomas from time to time being an informant
17 could have been, is impeachment evidence.

18 Now, if the defense digs sufficiently beforehand,
19 perhaps they discover this on their own. I'm simply saying
20 that the prosecution and the police, under Brady v.
21 Maryland -- And the same applies to these hispanics who were
22 arrested three days after the murder. If the defense is
23 resourceful enough to discover that, then they can have a
24 crack at introducing it at trial. Although, I submit, it's

1 not nearly as likely to be as admissible as Ms. Fitzsimmons
2 maintains now.

3 I'm saying that that may be interesting information
4 It may be something that Arnie Weinstock says now, six years
5 later, or four, or five, might be useful. But it does not
6 fall into the category of Brady v. Maryland, in that context,
7 your Honor, because with the defense talking about exculpatory
8 evidence.

9 I certainly was curious to know exactly how the
10 courts define that, because it was apparent early in these
11 proceedings that Ms. Fitzsimmons would have a different
12 definition than I had.

13 I remember that Louis Carroll had one of his
14 characters say once, when I use a word, it means exactly what
15 I want it to mean, neither more nor less. And I would imagine
16 when the defense uses exculpatory, it's not going to always
17 mean the same as when a prosecutor uses it.

18 I do observe in the context of the grand jury
19 proceeding that we have a statutory definition, which in
20 effect is, if it explains away the charge, then it's
21 exculpatory and prosecutors must present it at a grand jury
22 hearing. And we have the Frank case in this jurisdiction,
23 which in the context of grand jury hearings discusses that
24 definition of exculpatory evidence.

1 And there certainly are a number of areas where
2 obviously it is exculpatory. If I have evidence that someone
3 has mistakenly identified Victor Jiminez, that is, if we had
4 have had eyewitnesses and there was someone who saw an
5 assailant or assailants and made the wrong identification, and
6 I know about that, then that is clearly exculpatory. That is
7 something which tends to explain away the charge.

8 If we've got fingerprint evidence or firearms
9 evidence or blood evidence or DNA evidence that exonerates
10 someone, then that is clearly exculpatory. Now that's Brady
11 material.

12 What the defense in this case is talking about is,
13 evidence of two people who were arrested, and it's not right
14 by the offense, it's over a mile away, and it's three days
15 later, and it's a robbery. And if we went in every direction
16 a mile away, there's no telling how many offenses we would
17 have come up with.

18 Now, that may be interesting. The defense may feel
19 that's something that possibly we'd like to explore. But it
20 sounds to me like that was covered in the language in the
21 Giglio case. It's just something that they think might be
22 hopeful, but it's not Brady material.

23 Now, the United States v. Agurs, A-g-u-r-s, case;
24 there is a discussion of the type of evidence that actually

1 falls into the Brady category. And this decision is reported
2 at 96 Supreme Court 2392. And I'd like to read, with the
3 Court's indulgence, a few lines from Page 1401.

4 They're saying, on the other hand, since we have
5 rejected the suggestion that the prosecutor has a
6 Constitutional duty routinely to deliver his entire file to
7 defense counsel, we cannot consistently treat every
8 nondisclosure as though it were air.

9 Then they go on to say: The proper standard of
10 materiality must reflect our overriding concern with the
11 justice of the finding of guilt. And that's what I'm here
12 wanting to talk about.

13 Reading on: Such a finding is permissible only if
14 supported by evidence establishing guilt beyond a reasonable
15 doubt. It necessarily follows that, if the omitted evidence
16 creates a reasonable doubt that did not otherwise exist,
17 Constitutional error has been committed. This means that the
18 omission must be evaluated in the context of the entire
19 record. If there is no reasonable doubt about guilt, whether
20 or not the additional evidence is considered, there is no
21 justification for a new trial.

22 Now, what the defense is talking about and has been
23 the primary thrust of the issue they've presented in their
24 brief and at this evidentiary hearing, really boils down to

1 what was conveyed by a lady named Sharon Bromley, now Lundy —
2 apparently she used to work with the Las Vegas Metropolitan
3 Police Department Pawn Shop Detail — to North Las Vegas
4 detectives.

5 She, at some point, and, of course, the detective
6 doesn't remember, maybe doesn't want to remember that he
7 furnished on a casual basis to someone who is certainly of a
8 non-investigative status — But there was some photographs,
9 according to her, given her, and she went out and there were
10 several times she made contact with John Johnson.

11 Judge, I don't question his good faith. I don't
12 question his sincerity. I will observe, to me, it seems like
13 there's an inherent implausibility in this idea that — it
14 sounds like it was the very evening after she got in touch
15 with him, he happened to be out here. They'd been talking
16 about the Gabe's Bar case and he happens to be out at Jack
17 Daniels, and supposedly these two people — if we're to
18 believe counsel's version — are confessing to their own
19 involvement in a public place.

20 I heard what Mr. Johnson said. It just so happens,
21 my experience as a prosecutor is that culprits are a bit more
22 subtle — in my twenty-five years. I haven't observed that it
23 would be something that killers would readily want to do
24 when — as Johnson explained — one of these declarants is

1 face to face with him, to be disclosing a murder.

2 And what I think is far more reasonable in this
3 conversation he overhears, which is a mixture of English and
4 Spanish, and he apparently understands very few words of
5 Spanish, is that they may have been discussing the same case,
6 but as a news item. In the same context that he discussed it
7 with Lundy, a lot of people.

8 I asked Al Adams, formerly of North Las Vegas, where
9 Jack Daniels was. And, apparently, it's about a mile in the
10 other direction. It's in the 2400 block, according to him,
11 and we're talking about 1622 for Gabe's Bar. If you want to
12 call it in the same neighborhood, that's fine. We can define
13 neighborhood anyway we want to.

14 But the fact is, it sounds like it was very soon
15 afterwards. And it may have been a totally innocent
16 conversation.

17 Now, I first heard counsel complaining that
18 Weinstock couldn't get the hearsay out through Bromley. He
19 tried, and clearly it was hearsay.

20 And my position now is, and I certainly anticipated
21 that the Court might be interested in what the actual
22 statutory definition is of a statement against penal interest,
23 and it is spelled out in 51.345. And it's got to be a
24 statement against interest which so far tended to subject the

1 declarant to criminal liability that a reasonable man in his
2 position would not have made the statement unless he believed
3 it to be true. And then it goes on to talk about the need for
4 corroborating circumstances, which clearly indicate the
5 trustworthiness of the statement.

6 But, now counsel surprises me, since she's relying
7 on this as her main point. She didn't make any effort to
8 present to the Court the exact testimony of the witness. I
9 did. I thought that was the most germane thing to focus on.
10 And what he said is, from the witness stand — and this is all
11 he knows — Whatever evening it was. In a public place. He
12 was there, others were there. These people were having a
13 conversation. And he said he wasn't even paying any attention
14 until he heard something about the killing of a bartender.

15 Well, I suppose if Sharon Lundy would have been
16 there and they would have had their meeting at the Jack
17 Daniels Bar, as opposed to his office, and these people were
18 subpoenaed to come into court, they could have said, at some
19 point, we don't understand a lot of English, and we weren't
20 paying attention to what Johnson and Lundy were saying, but at
21 some point, we heard something about the killing of a
22 bartender, and, so, our interest perked up. That in and of
23 itself doesn't establish anything.

24 I didn't understand how counsel can say it would have

1 been admissible had Mr. Weinstock known about it, it would
2 have come before the jury, when, to me, it's quite patent
3 hearsay.

4 Then the witness went on to say: And after that,
5 when I began to listen and it was a combination of Spanish and
6 English — and these are his exact words — I heard something
7 to the effect of — He's not even sure what he heard. I wish
8 we could have made sure the other one was dead. And that
9 doesn't even sound like our case.

10 Judge, I don't know what they're talking about. He
11 didn't know what they were talking about.

12 There were multiple stab wounds in the bodies of
13 these two victims. And there's little doubt in my mind — I
14 still have a little bone to pick with the high court. When
15 you've got a multiple killing — and for Velasquez there was
16 no excuse for his murder, except to seal his lips. But the
17 court ruled, well, it wasn't a killing which was undertaken
18 for the purpose of avoiding a lawful arrest. There wasn't any
19 evidence of that, and, so, initially, of course, they
20 reversed. They said we didn't prove that aggravating
21 circumstance.

22 But that's the only reason to get rid of him. And I
23 feel very sure that Mr. Jimenez and whoever else was there
24 with him, were quite positive when they left that premise —

1 the premises of Gabe's Bar that morning, both of those men
2 were dead.

3 Judge, it's my contention that there's been no Brady
4 violation. This isn't even Brady material. And I urge the
5 Court to deny the Petition for Post Conviction Relief.

6 MS. FITZSIMMONS: Your Honor, if I might respond to a few
7 points raised by Mr. Harmon. Mr. Harmon, and certainly
8 justifiably so, goes through some of the evidence in an
9 attempt to convince this Court, I suppose, that each of the
10 errors that we have raised individually and cumulatively are
11 harmless.

12 If you look at the totality of the evidence of the
13 trial as it is in the record before this Court, if you look at
14 the factors relied on by the Nevada Supreme Court, clearly the
15 claimed admissions by Victor Jiminez were factors, as was the
16 testimony of Billy Ray Jacobs, as were other factors.

17 I would just point out that Detective Harry --
18 Obviously there's nothing really to corroborate the fact that
19 Victor made those statements, as Detective Harry claimed he
20 did, but Detective Harry's recollection.

21 Your Honor, in -- this is the problem that I am
22 having in presenting what I see as the full totality of the
23 problems with this conviction. Because I believe had -- but
24 for the instances of ineffective assistance of counsel that I

1 have raised -- or alleged in the petition, these other issues
2 would not -- Mr. Harmon would not be in a position to sit
3 here, as he has done, and discuss the other evidence in quite
4 the way he's been able to do so. But that is what I am left
5 with.

6 Your Honor, I find it interesting that Mr. Harmon is
7 a twenty-five-year prosecutor in this jurisdiction -- was not
8 quite familiar with Giglio. In my mind, your Honor, that is
9 in some ways more significant than if he had said he was
10 unfamiliar with Miranda.

11 When he is reading to this Court from the Giglio
12 opinion, and he is talking about how in Giglio we are talking
13 about bargained for testimony, absolutely -- and Giglio is
14 about checks and this is about murder. But there are
15 countless cases in every -- in certainly the Ninth Circuit, in
16 every circuit in every state in this country that are progeny
17 of Giglio, and those cases establish what the law is
18 concerning this duty.

19 And I'm really -- This is not the histrionics of
20 somebody arguing before the court. I'm amazed of the limited
21 view of the responsibility that has been portrayed by
22 Mr. Harmon in these proceedings.

23 THE COURT: I must confess to you, I was not familiar
24 with this case, Giglio versus U.S., either.

1 MS. FITZSIMMONS: Okay. Well, this is obviously — You
2 know, you have not had many capital cases, Mr. Harmon has. I
3 would appreciate an opportunity, if the Court is interested in
4 considering this further, to brief this.

5 I noticed Mr. Harmon has read from a couple of cases
6 that he has not — were not contained in his briefs. And I
7 could certainly be happy to supply this Court with the laws
8 that exist in the Ninth Circuit, and as it existed at the time
9 of the trial, concerning the obligation to disclose the kind
10 of material that we're talking about here.

11 And, your Honor, I just — one more point on the
12 Billy Ray Thomas issue. In Mr. Harmon's answer and opposition
13 to the supplemental petition, on Page 39, he states in
14 response, in arguing against the prospective Billy Ray Thomas
15 claim — This is before the evidence was produced: Defendant
16 claims that there were "inducements offered to Thomas for his
17 testimony, when the record clearly indicates there were no
18 inducements. Thomas testified he had been promised nothing
19 for his testimony. So far so good. And received no benefits
20 for it.

21 Now, Mr. Harmon's saying, well, maybe Billy Ray
22 Thomas didn't know that he was getting out of jail on this
23 charge. Maybe he just thought it was his lucky day. I, of
24 course, questioned what it would have been like for the State

1 to bring a jailhouse informant who had been released on one
2 charge and is now -- was now coming in chains in custody to
3 testify against Victor Jiminez.

4 But, in any event, Mel Harmon continues.
5 Furthermore, the detective who took his statement -- that's
6 Bruce Scroggins -- confirmed he did not threaten Thomas. No
7 indication of that. Or promised him any favors. No testimony
8 from Detective Scroggins there were any promises. And that he
9 did not secure any benefits for Thomas in exchange for the
10 information he gave.

11 Well, he did secure benefits. At the very minimum,
12 Detective Scroggin's testimony is, these benefits, these NCF
13 of these felony charges, occurred because of the --

14 THE COURT: There's no evidence that Scroggins called up
15 Thomas and said, I just NCF'd you. That's so you'll do this.

16 MS. FITZSIMMONS: Exactly. Two different factors. And
17 that's why I was reading it and trying to make the distinction
18 for the Court.

19 What Mr. Harmon said is that Thomas didn't know it.
20 You know, didn't ask for it. Didn't know it. Didn't get it.
21 And he also said Detective Scroggins testified, and Detective
22 Scroggins clearly knew what he had done.

23 Mr. Harmon has told this Court, again at Page 39,
24 that Detective Scroggins confirmed in this trial testimony

1 that he didn't threaten Thomas, promise him anything, and he
2 didn't secure any benefits for Thomas in exchange for his
3 testimony.

4 He did secure benefits for Thomas. He reduced
5 charges. I'm just telling your Honor, without laboring it,
6 because, obviously, we're all — and, again, Mr. Harmon has
7 said this and it's true. We have a very different view of
8 exculpatory, and, obviously, we have a very different view of
9 the state of the law in Giglio. And I think that maybe — We
10 can sit here and argue until we're all blue in the face. I
11 would like a chance to brief that for the Court.

12 Moving on to the next issue, which is the Brady
13 issue. Again, Brady's Brady. You know, Miranda's Miranda.
14 These things evolve. And what we're talking about here in the
15 context of this case is — and the law is — And, if you'd
16 like, I'll be happy to brief this for you.

17 There are cases that say that a prosecutor has a
18 duty to disclose other suspect information because it's Brady
19 material. We can't argue. I mean, there are other arguments
20 that have been made. But this is clearly other suspect
21 information.

22 Mr. Harmon has posed examples to the Court of what
23 he views as Brady material: a false identification,
24 fingerprints that don't match, maybe a hair that belongs to

1 somebody else. Well, why is that Brady? Why is that
2 exculpatory? Because it points away from the guilt of the
3 defendant and towards other suspects. That's what this
4 information was, your Honor.

5 I didn't go — and Mr. Harmon said this on Friday
6 and he said it again today. We could go anywhere in a one
7 mile radius for Gabe's Bar and find other things, other
8 events, I suppose, other rivalries.

9 Your Honor, we didn't come upon this information by
10 me doing a blanket subpoena for location incident reports for
11 a mile radius of Gabe's Bar. This material was found in this
12 file, in this case, under this DR Number. I am not the person
13 who's coming in late in the day and saying, oh, but look.
14 Here's this other crime.

15 This came to me in the context of the investigative
16 detectives in this case feeling there is a connection, working
17 on the connection, going and — Well, I don't believe they
18 went. But, in any event, that's where this is.

19 I'm not the person that's making this connection.
20 This connection was made at a time very close in proximity —
21 temporally to the event and prior to the arrest of Victor
22 Jimenez.

23 So I hope the Court is not misled. Because that's
24 not what I'm doing here. And I hope I made that clear.

1 Now, although Mr. Harmon says, and has said before,
2 that he does not argue the good faith of Mr. Johnson -- and
3 because he said that, I let go a police detective who was in
4 the hall waiting to testify to the credibility of Mr.
5 Johnson -- Mr. Harmon has kind of back doored the Court. I
6 mean, back doored the subject by saying, but I find it
7 inherently implausible that Mr. Johnson could hear this
8 information in the morning, overhear this conversation at
9 night, and that two people would be in a public place talking
10 about such an event.

11 I think we all recall Mr. Harmon making that
12 argument. That's because it suits Mr. Harmon to say it's
13 implausible to think that two people would be somewhere
14 talking about a murder. Because why? Because that would be a
15 reckless thing to do. Because they could get in trouble.

16 Then Mr. Harmon, in the context of his hearsay
17 objection says, well, this doesn't come into our statutory
18 exception because, of course, it's a statement against penal
19 interest. But he didn't believe --

20 You know, this isn't a statement -- I mean, it's one
21 or the other. Either Mr. Harmon doesn't believe that the
22 conversation was interpreted correctly by Mr. Johnson, because
23 it's difficult to believe two people could be blurted out a
24 murder in public. But if that's the case, then, your Honor, ...

1 than the first criteria, the hearsay exception is met, because
2 it is a declaration of interest that would substantially put
3 these people in jeopardy for their criminal conduct.

4 And I believe that it does. I believe that the
5 statute is dead on point in this case, and the prophylactic
6 reasons that we have -- this concern are not met here. That
7 we don't have any showing that this was a set-up job. That
8 Mr. Johnson has any reason to become involved. These are
9 innocent bystanders. People that are volunteered information,
10 much as people often do.

11 And I think that a jury ought to be -- I mean, a
12 jury should be entitled to hear this. Mr. Harmon can then
13 argue against it.

14 You see, this is the basic problem as I'm hearing it
15 from Mr. Harmon. And I am concluding, your Honor. But we're
16 both advocates, and I think Mr. Harmon is a, you know,
17 entrenched prosecutor. I'm an entrenched defense attorney. I
18 haven't been at it as long. But we both really do view the
19 world differently. And the law puts on him a duty, and this
20 is a duty that I quite confidently don't think I could handle
21 because I'm an advocate. I think it would be very difficult
22 for me.

23 It's this man, coming from where he comes in life
24 and his perspective and his belief in the rightness of his

going to determine what — or what is not

And I believe that Mr. Harmon can do that and
at honorably.

But I question what happens when you have someone
an advocate who then thinks — This is what the mental
mess is — Well, here's two guys, and, yeah, you know, they
are overheard, and they were I.D.'d, and they had a knife. I
mean, all of what we have bundled together here.

9 But then in the same thought process we're going to
10 have Mr. Harmon say, but, on the other hand, isn't it kind of
11 coincidental, and it's hard — you know, arguing against the
12 position. And then in his own thought process, perhaps — and
13 I am not saying, nor does Mr. Harmon claim, that he knew this
14 material, he is arguing now that it is not exculpatory.

15 But this is the problem. Clearly — I mean,
16 Mr. Weinstock, who tried the case, I, who would love to try
17 this case and would do so for free if we got a new trial, am
18 telling you that as an advocate on this side —

19 THE COURT: I don't know about this one, but I've got
20 some more if you're interested in volunteering.

21 MS. FITZSIMMONS: No, no. This has been — They're
22 difficult cases, your Honor, in this —

23 But, in any event, this is mother's milk to defense
24 counsel. This kind of information. And beyond just the

● ●

EXHIBIT 72

EXHIBIT 72

FILED

Case No. CR89-1745

79 DEC 29 P2 05

Department No. 3

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

HONORABLE DEBORAH A. AGOSTI, DISTRICT COURT JUDGE

STATE OF NEVADA,

Plaintiff,

TRANSCRIPT OF PROCEEDINGS

vs.

SENTENCING

ROBERT JAMES BEZAK,

November 27th, 1989

Defendant.

Reno, Nevada

APPEARANCES:

For the State:

Kristine Brown
Deputy District Attorney,
Washoe County Courthouse
Reno, Nevada

For the Defendant:

Doug Nicholson
Deputy Public Defender
195 South Sierra
Reno, Nevada

Defendant:

Robert James Bezak

Reported by:

STEPHANIE KLINA, CSR #207

ORIGINAL

1 RENO, NEVADA, November 27th, 1989, 9:00 a.m.

2 -000-

3
4 THE COURT: State versus Robert James Bazak.

5 MR. NICHOLSON: Ready for Mr. Bazak, your Honor.

6 THE COURT: Mr. Bazak is in court; once again, with Mr.
7 Nicholson.

8 Miss Brown for the State.

9 Mr. Peale for the Department of Parole and Probation.

10 Once again, this is a sentencing on Being An Ex-Felon In
11 Possession Of A Firearm.

12 I have reviewed the report.

13 Do you feel sufficiently prepared to go forward at this
14 time, Mr. Nicholson?

15 MR. NICHOLSON: I do, your Honor.

16 THE COURT: Can I have one second here? I'm confused
17 about one thing, and I want to make sure that my confusion isn't
18 going to affect what I understand is the plea bargain in this
19 case. The way I understand it, the plea bargain was for two
20 years concurrent to the term he is currently serving, and that
21 would be the term he's currently serving in the Nevada State
22 Prison for which he was sentenced in August, that being one
23 count of Possession Of Stolen Property.

24 MR. NICHOLSON: That is the negotiation and that term is

1 running concurrently with the sentence he'll be finishing up in
2 Ohio.

3 THE COURT: That's where I'm confused. Page five of the
4 report indicates under plea bargain, two years concurrent with
5 the defendant's existing sentence remaining in Ohio. Now, I
6 can't tell the Ohio court how to run their sentences. And so I
7 cannot require this -- any sentence that I give here to run
8 concurrent with an Ohio sentence, if the Ohio court doesn't
9 agree. Does everyone understand that? The negotiations were
10 that basically this is a freebie for Mr. Bezak to clear up some
11 paper work for the State and get back to Ohio.

12 So as long as it's entered concurrent here, he can go
13 back to the State of Ohio and they can do what they want with
14 him. Is that your understanding?

15 MS. BROWN: That's my understanding.

16 THE COURT: Mr. Nicholson, you can proceed.

17 MR. NICHOLSON: Factually, there's a few changes my
18 client would like to have to the report. On page one, social
19 security, the second and third ones, he says he never used them,
20 that being 293-54-5483, 294-54-2931.

21 On page two, aliases, he denies using the name Jeffery
22 Bezak.

23 Prior felony convictions by my calculations, based on
24 what the Department has put in their report, there's only three

1 prior felony convictions exclusive of this one.

2 THE COURT: Which aka doesn't he go by?

3 MR. NICHOLSON: Only Jeffery.

4 THE COURT: So the others are correct aliases?

5 MR. NICHOLSON: That's correct.

6 THE COURT: I suppose in light of five different aliases,
7 doesn't make much difference that he's striking one.

8 MR. NICHOLSON: Except on page five, in the institution
9 probation parole adjustment, it's indicated in the last sentence
10 the defendant is listed by Ohio Department of Parole and
11 Probation as Jeffery Bezak with respect to a prior
12 incarceration, and he says that's never been the case.

13 THE COURT: Okay. Go ahead.

14 MR. NICHOLSON: And factually, there's no other
15 corrections to make. As far as the report goes, the
16 recommendation is probably in line with what the Department
17 would ordinarily recommend under different circumstances.
18 However, in this particular case, Mr. Bezak's plea was basically
19 for some housekeeping to get some paper work done. Also, the
20 chronology is fairly significant. This incident occurred in
21 February of this year. The State was aware of it in discussing
22 this with Mr. Drakulich as they were with some other offenses,
23 but because this was part of the Reno Police Department sting
24 operation, an arrest was not affected until after June, when he

1 was arrested on some other offenses as well.

2 As the Court is aware, August 25th of this year, he was
3 sentenced in regards to one of those other offenses, which
4 occurred subsequent to this one. That's one of the reasons for
5 the negotiations, and the other is, as I indicated to the Court
6 earlier, basically housekeeping to get some paper work cleared
7 up so that Mr. Bezak can get on with a sentence, get back to
8 Ohio and eventually get on with his life.

9 It's significant to note that his substance abuse is
10 significant. He is a heroin abuser. Most of his arrests since
11 about 1981 are the result of this substance abuse. He's never
12 had the benefit of, nor has he participated in any kind of
13 substance abuse program.

14 His goal, once he is in prison, is to participate in a
15 substance abuse program and hopefully come out a clean and sober
16 individual, so that he can be more productive in society.

17 We would ask that the Court follow the negotiations and
18 sentence him to a term of two years concurrent with his other
19 sentence in Nevada, which will be run, as well, with the term in
20 Ohio.

21 MR. BROWN: Your Honor, the State would recommend the
22 negotiations as they've been stated.

23 THE COURT: Thank you. Mr. Peala?

24 MR. FEELE: Your Honor, Mr. Bezak has committed crimes

1 since 1974. According to the information he gave us regarding
2 controlled substances, he began having problems with controlled
3 substances at the age of 15 and was subsequently placed in a
4 program with methadone at the age of 16. We can't give any
5 credence to his assertion that he wants this short sentence so
6 he can address his substance abuse problem. He's had ample time
7 to do that already. He has been consistently involved in
8 criminal behavior. We feel that this recommendation is very,
9 very fair and appropriate and probably lenient in the
10 defendant's behalf. We think it's appropriate. We ask that you
11 follow it.

12 THE COURT: Mr. Nicholson?

13 MR. NICHOLSON: The only thing I would like to add, your
14 Honor, is the length of his record is significant, and I'm sure
15 the Court will take notice of it. However, the majority of his
16 record is theft related to support a drug habit, and it's
17 something that he indicates that he is now prepared to deal
18 with. He knows he's going to prison. It's just a matter of
19 where and for how long.

20 THE COURT: Well, is he wanted for anything in Ohio,
21 except this warrant for absconding on this one-year sentence?

22 MR. NICHOLSON: Nothing other than being a parole
23 absconder.

24 THE COURT: Mr. Beak, anything you would like to say?

1 THE DEFENDANT: Your Honor, I have a serious alcohol and
2 drug problem. It's hard to just say no to anything. I put
3 myself into that situation, and my life went astray, and I am
4 going to become a better man while I'm incarcerated so that I
5 can become a functional member of society and to my family. And
6 I took my second step in life back in June, when I told the New
7 York Officer who I really was and I was wanted in a parole
8 violation when I was arrested, and I just -- I want to get away
9 from drugs, and if I have to be incarcerated to do it, I guess,
10 I don't know. That's all.

11 MR. NICHOLSON: If I may, there was one other factor in
12 considering this recommendation, and that was the authorities
13 here had some contact with the district attorney and with Mr.
14 Mazak regarding some incidents in Las Vegas, and it's my
15 understanding that because he did provide some information to
16 the authorities here that had the potential for being helpful to
17 them, that was another factor in making this recommendation of
18 two years concurrent.

19 MS. BROWN: That's also a correct statement, your Honor.

20 THE COURT: Does anyone know a legal reason why Mr. Mazak
21 should not be adjudged guilty and sentenced at this time?

22 MR. NICHOLSON: None, your Honor.

23 THE COURT: There being no legal reason why I should not,
24 I will adjudge you are guilty of Being An Ex-Felon In Possession

1 Of A Firearm. I'll order that you pay a \$70 administrative
2 assessment fee to the Clerk of the Court in this case. I'll
3 order that you be sentenced to a term of three years in the
4 Nevada State Prison. I'll authorize the service of that term
5 concurrent to any other sentence you're obligated to serve. No
6 time served is credited. It was given to the case he's
7 currently serving.

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1 STATE OF NEVADA

2 County of Washoe

ss.

3 I, STEPHANIE KLIMA, a Certified Short
4 Second Judicial District Court of the State
5 for the County of Washoe, do hereby certify:

6 That I was present in Department No.
7 above-entitled Court on Monday, November 27th
8 of 1945 A.M., and took verbatim stenotype notes
9 proceedings had upon the sentencing in the m
10 OF NEVADA, Plaintiff, vs. ROBERT JAMES HILL, No. CR89-1783, and thereafter, by means of a
11 transcription, transcribed them into typewritten
12 appears;

13 That the foregoing transcript, consists
14 through 5, both inclusive, contains a full,
15 transcript of my said stenotype notes, and is
16 correct record of the proceedings had at said

17 DATED: At Reno, Nevada, this 27th day
18
19
20
21
22
23
24

Stephanie Klima
STEPHANIE KLIMA

• •

EXHIBIT 73

EXHIBIT 73

COPY

1 FRANKIE SUE DEL PAPA
Attorney General
2 DOROTHY NASH HOLMES
Deputy Attorney General
3 Nevada Bar No. 2057
Criminal Justice Division
4 100 North Carson Street
Carson City, Nevada 89701-4717
5 Telephone: (702) 687-3533

6 Attorney for Respondents.

7
8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF NEVADA
11

12 DANIEL S. JONES,

13 Petitioner,

14 vs.

15 E. K. McDANIELS, et al.,

16 Respondents.

Case No. CV-N-96-633-ECR
(DEATH PENALTY CASE)

17
18 RESPONSE TO MOTION
19 TO COMPEL DISCOVERY

20 COMES NOW, E. K. McDANIEL, Warden of the Ely State Prison, Respondent, through
21 FRANKIE SUE DEL PAPA, Attorney General of Nevada, by DOROTHY NASH HOLMES, Deputy
22 Attorney General in the Criminal Justice Division, and timely responds to petitioner's Motion to
23 Compel Discovery and to Conduct Further Discovery. This response is based upon the following
24 Points and Authorities and all the documents and pleadings on file in this case.

25 POINTS AND AUTHORITIES

26 Currently, the named respondent, and thus party, is E.K. McDaniel, warden of Ely State Prison
27 where petitioner is being held. None of the discovery requests are directed at him and none seek any
28 documents, or information about his actions or facilities. Parties are the proper recipients of discovery
29 requests if they pertain to information within the possession, custody or control of that party. F.R.C.P.
30 26. Siding with the federal public defender recently in another case, Magistrate Judge McQuaid of the

1 United States District Court for Nevada stated that the respondent, through counsel the Attorney
2 General, had no standing to challenge discovery requests made of local law enforcement agencies in a
3 federal habeas case. See Edward Gordon Bennett v. E.K. McDaniel, CV-N-96-429-DWH.

4 Respondent McDaniel has no knowledge or information about witness inducements. He has no
5 attorney notes or correspondence. He has no knowledge of, nor control over, Florida law enforcement
6 records, Clark County Detention records or Carl Jones' family records.

7 Within the limitations of relevance, and restricted to issues already actually presented in Daniel
8 Jones' habeas corpus petition, petitioner should be required to take depositions of non-party witnesses
9 whom he reasonably believes have non-privileged information calculated to lead to the discovery of
10 admissible evidence in this case. He should not be permitted to continue to engage in an open-ended
11 hunt for non-specific information in an effort to identify possible habeas issues not yet raised.
12 Theoretically at least, his habeas discovery took place in state court as federal habeas is simply an
13 opportunity for the federal courts to review the propriety of decisions made by the highest state courts.
14 28 U.S.C. § 2254(e)(1) and (2). Keene v. Tamayo-Reyes, 504 U.S. 1, 112 S.Ct. 1715 (1992).
15 Deference and a presumption of correctness are accorded factual determinations made in state courts. If
16 the facts underlying a new claim in federal court haven't been raised previously in a claim, the claim
17 will be found to be successive or abusive, 28 U.S.C. § 2244, or unexhausted, 28 U.S.C. § 2254 and
18 petitioner will not be entitled to an evidentiary hearing in federal court. If he is not entitled to an
19 evidentiary hearing, there is no point in allowing a petitioner unlimited preparation for such a hearing.
20 Thus, there should not be the need for the kind of unlimited exploratory discovery that petitioner seeks.

21 If Jones can present reason, other than speculation, to believe that there were specific
22 inducements given to Robert Bezak to get him to testify for the Clark County District Attorney in the
23 trial, then he should be permitted to seek such evidence through the proper civil discovery techniques,
24 but not through simply continuing to serve non-party after non-party with generalized records
25 subpoenas. Up to this point in time, there has been no depositions set and thus respondent has not had
26 the opportunity to participate in nor challenge anything being sought or alleged by Jones. Either there
27 is a court proceeding to which Jones should subpoena the various persons/agencies, or Jones should set
28 and take depositions of the non-parties. He should not be permitted an endless fishing expedition. The

1 same is true for Jones obtaining Clark County DA attorney files and correspondence, Florida records.
2 family records, Clark County detention records and any other information sought from the trial
3 prosecutor's office.

4 Each of those persons/agencies subpoenaed must then raise their own objections or privileges
5 within 14 days of receipt of their subpoenas. F.R.C.P. 45(c)(2)(B). Then the parties responsible for the
6 documents or information alleged to be in existence will have the opportunity to oppose production if it
7 is burdensome or there is some other reason for them to object to production.

8 Concomitantly, it should follow that if the respondent, through counsel, has no standing to
9 object to discovery requests made of other law enforcement or prosecutorial agencies, neither should
10 respondent be penalized and otherwise held responsible for the failure of such an agency to comply with
11 a proper discovery request.

12 Nothing in the Brady v. Maryland, 373 U.S. 83 (1963), line of cases, nor in Kyles v. Whitley,
13 514 U.S. 419 (1995), imposes discovery obligations on one agent/agency for records that are totally
14 outside his case and over which he has no knowledge, possession or control. And nothing in those
15 cases requires the prosecutor or any other representative of the State to provide to a defendant every and
16 anything the defendant considers to be material. In fact, Kyles puts the determination of materiality on
17 the prosecutor, not the defendant or his counsel. ("Thus, the prosecutor, who alone can know what is
18 undisclosed, must be assigned the responsibility to gauge the likely net effect of all such evidence and
19 make disclosure when the point of 'reasonable probability' is reached." Kyles at p. 437).

20 Brady did not mandate "open file" discovery. Kyles at p. 437. U.S. v. Dots, 33 F.3d 1179,
21 1185 (9th Cir. 1994). Nor does Brady require the State to provide neutral, irrelevant, speculative or
22 inculpatory evidence. Wood v. Bartholomew, 116 S.Ct. 7, 11 (1995); U.S. v. Manning, 56 F.3d 1188,
23 1198 (9th Cir. 1995).

24 Brady does not require the government to discover and disclose information possessed by other
25 governmental agencies which have no involvement in the investigation or prosecution of the case. U.S.
26 v. Morris, 80 F.3d 1151, 1169 (7th Cir.), *cert. denied*, 117 S.Ct. 181 (1996); U.S. v. Burns, 15 F.3d 211,
27 213-215 (1st Cir. 1994); U.S. v. Sepulveda, 15 F.3d 1161, 1178-79 (1st Cir. 1993), *cert. denied*, 114
28 S.Ct. 2714 (1994); U.S. v. Moore, 25 F.3d 563, 569 (7th Cir.), *cert. denied*, 115 S.Ct. 341 (1994). The

1 government cannot be required to disclose evidence that it neither possesses nor controls. U.S. v.
2 Marshall, 132 F.3d 63, 68 (U.S.C.A., D. C. (1998), *citing* United States v. Pinto, 905 F.2d 47, 50 (4th
3 Cir. 1990). The term "government" does not encompass local law enforcement agencies. U.S. v.
4 Brazel, 102 F.3d 1120, 1150 (11th Cir.), *cert. denied*, 118 S.Ct. 79 (1997); U.S. v. Hamilton, 107 F.3d
5 499, 509 n.5 (7th Cir.), *cert. denied*, 117 S.Ct. 2528 (1997). A party cannot produce what it does not
6 have. U.S. v. Cannington, 729 F.2d 702, 712 (11th Cir. 1984).

7 Finally, Respondent asserts that any connection between Jones' Uncle Carl's mental retardation
8 (possibly resulting from his mother's attempts to abort him pre-birth) and the petitioner's mental
9 capacity or health is too attenuated to be relevant or calculated to lead to the discovery of evidence
10 admissible in a habeas proceeding. There is absolutely nothing established in this case that makes any
11 connection between Daniel Jones' mentality and that of his maternal uncle. Respondent asserts this
12 area is entirely speculative and irrelevant and too far flung to come within the realm of reasonable
13 discovery. No good cause is established on this issue at all. Rule 6, Rules Governing Section 2254
14 Cases in the United States District Courts. The court should deny issuance of this subpoena beyond the
15 statutory distance. F.R.C.P. 45(b)(2).

16 RESPECTFULLY SUBMITTED this 4th day of March, 1999.

17 FRANKIE SUE DEL PAPA
18 Attorney General

19 By: Dorothy Nash Holmes
20 Dorothy Nash Holmes
21 Deputy Attorney General
22 Criminal Justice Division
23
24
25
26
27
28

100 N. Court
Caracas City, New
701-4717

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General of the State of Nevada, and on this 5th day of March, 1999, I served a copy of the foregoing RESPONSE TO MOTION TO COMPEL DISCOVERY, by mailing a copy thereof to:

MICHAEL PESSETTA
Assistant Federal Public Defender
330 South Third Street, #700
Las Vegas, Nevada 89101

Traci L. Dwy

Attorney General's Office
100 N. Cay
Carson City, Nevada 89601-4717

● ●

EXHIBIT 74

EXHIBIT 74

Declaration of David J.J. Roger

1. I am an attorney licensed to practice law in the state of Nevada, and I am currently employed as a Chief Deputy District Attorney in the Clark County District Attorney's Office in Las Vegas, Nevada.
2. In 1989 and 1990, I was assigned, along with then Deputy District Attorney John Hami, to prosecute Daniel Steven Jones in the Eighth Judicial District Court in Clark County, Nevada. Mr. Jones pleaded guilty and was sentenced to death by a three-judge panel.
3. In April of 1999, I was contacted by Assistant Federal Public Defender Rebecca A. Blasky, who advised me that she represented Mr. Jones in federal habeas corpus proceedings. Ms. Blasky later provided me with a subpoena duces tecum requesting that I give deposition testimony as part of the federal court discovery proceedings in Mr. Jones' case. This information from Ms. Blasky in April of 1999 was the first notification I had received as to the current status of Mr. Jones' case.
4. Deputy District Attorney Christopher Laurent advised me prior to my deposition that the issue of privilege had not been resolved in our favor in the federal court proceedings. In an effort to comply with the subpoena duces tecum, I asked my secretary to gather the entire District Attorney file on Mr. Jones' case. My secretary provided me with two bankers boxes of documents which I believed to have constituted our complete trial files in the case, and which I subsequently took to my deposition. On May 7, 1999, I provided testimony under oath pursuant to my federal court subpoena, and provided Ms. Blasky with an opportunity to inspect the two boxes and to copy from them whatever documents she chose. I also agreed to return for continued deposition testimony, based upon Ms. Blasky's representation that some of the materials contained in the boxes, including prosecution notes, had never been provided to her.
5. On June 18, 1999, I returned for my continued deposition. Ms. Blasky questioned me, as she had in my May 7, 1999 deposition, about a letter I had written to the Nevada Parole Board on behalf of Robert Bezak, a cooperating prosecution witness during Mr. Jones' sentencing hearing. As Ms. Blasky questioned me about the location of the District Attorney's copy of the letter, I began to wonder whether the two boxes she had been given to inspect had included the Major Violator's Unit (M.V.U.) court file, which is also referred to as the "red file" or the "purple file." I agreed to go back to my office to search for and review that particular file to see whether it contained a copy of the letter Ms. Blasky was seeking.
6. Upon returning to my office on June 18, 1999, I located and reviewed the purple file, which had been kept separately from the stored trial files and which, to the best of my knowledge, had not been reviewed previously by anyone in responding to the subpoena. That court file contained a copy of a letter I wrote to the Nevada Parole Board on behalf of Robert Bezak, dated December 3, 1990. I then left a voicemail message for Ms. Blasky in which I advised her that the letter had been located, and read the contents of the letter into the message.

On June 21, 1999, I allowed Ms. Blasky to inspect the contents of the M.V.U. court file.

7. In my experience, the case's individual M.V.U. court file is separately maintained from the trial files. The boxes of the trial files are placed in storage. The M.V.U. court file is regularly kept in the ordinary course of business in the Clark County District Attorney's Office, and, in the case of a life sentence or death sentence verdict, is designed to be retained indefinitely. Its contents typically contain pleadings and other court documents, as well all of the attorney's case progress notes from each individual court appearance in the case. In this particular case, this file also contained a copy of the letter I had written for Mr. Bezak, asking the Parole Board to take into consideration the fact that Bezak had substantially assisted us in the prosecution and sentence of Mr. Jones. I do not know why no one examined the M.V.U. court file to search for documents prior to June 18, 1999, when I located and reviewed the file. The first time I was asked by anyone about the case, or was asked by anyone to search for documents pertaining to it, was when Ms. Blasky contacted me in April of 1999.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed in Las Vegas, Nevada on June 21, 1999.


David J.J. Roger

• •

EXHIBIT 75

EXHIBIT 75

Transcription of VCR Tape of the Adam Evans hearing in front of Judge Hardcastle

JUVENILE COURT

Case No. J51978

Judge: Hardcastle

Dan Seaton - Prosecutor

Bill Skupa - Defense Attorney

Transcribed by K.C. Corradetti on August 18, 1999

Court: This is in the matter of Adam Owens Evans, Case No. 52293. The presence of Mr. Skupa, representing the subject minor, the subject minor's mother, Mr. Touton and Mr. Seaton representing the District Attorney's Office and in the back are. . . .

Mr. Seaton: Just this is Mrs. Logan and her daughter, Dawn, and they are the mother and sister of the victims in one of the murder cases that we'll be addressing, in fact, in this particular case.

....

BENCH CONFERENCE

Mr. Seaton: And before we go further Judge, can we approach the bench?

Court: Yes.

Mr. Seaton: Thank you. I don't know how you want to handle this on the record. Um, what we were wondering about, about probation . . . oh a camera, I'll be darned this is a nice set up.

Court: That's only (inaudible).

Mr. Seaton: Are these things triggering the court reporter too, a tape or something?

Court: There's a tape and right now because you've got it on bench conference, it only goes to this microphone, it's not broadcast.

Mr. Seaton: I'll be darned, that's interesting.

Court: So the bench conferences are all on tape.

Mr. Seaton: Barbara would hate this system.

Court: Yeah.

Mr. Seaton: (laughing) Um, I think what we want to do, is to assure him, at this point, as part of the plea bargain, assure him that he's going to get probation. Now, I know in District Court we can go to the Judge, and, and if he's agreeable, set down the terms of the sentence. Another words, do sentence bargaining before we get started. I don't know what your practice is down here and I didn't want to get rattling on the record and . . .

Court: I guess what my concern is, is, I'm worried about . . . wasn't it Maxwell, isn't the holding of probation over his head and not just absolutely leaving it to my discretion, ah, ah, gonna be a violation?

Mr. Seaton: I, I don't know. I don't know how to put it. . . .

Court: I mean as my understanding, as a matter I believe it's a matter you do know I think it's a matter, you do know. . . .

Mr. Skupa: It's a Maxwell which required that plea bargains to be completed before a person can testify and isn't that. . . .

Mr. Seaton: Well, the plea bargaining is completed.

Mr. Skupe: A statute?

Court: I know what the concern is is that you're holding out that last, your holding that one last carrot, that says, you know, whether you go to camp or whether you stay down is. . . .

Mr. Seaton: No, no, no, he's testifying . . . this happens before he ever testifies.

Court: Oh, I see.

Mr. Skupa: Yeah, but we want to lock you in, is what he is saying.

Mr. Seaton: Part of the responsibility you would carry is that if he doesn't go through with his end of the bargain then he's going to find his way up to Elko. Or if we're able to legally, then we'll re-charge him in adult court with the murder charge.

Court: I guess my reaction is, is that, you know I don't know what his involvement is, I will not place him in today. I don't know what he did, I would not like to be bound.

Mr. Skupa: Okay.

Mr. Seaton: That's part of our deal. That's why we're up here.

Mr. Skupa: Okay, what would you be bound to complete this today? Would you agree that ah, you'd accept his plea if you were not inclined to place him on probation and he can withdraw that and then they can decide what they want to do at that point? If you are inclined?

Court: I'll do that.

Mr. Seaton: That's satisfactory, I think. And I think when you hear the level he's involved you're not gonna be inclined to put him away - I'm not sure what his background is gonna show, but in terms of...

Mr. Skupa: Well, we know he's only got three - this is only his third petition we know.

Court: I don't know, I don't know that much about him. . . .

Mr. Seaton: Our main concern here, is to deal with him as a juvenile.

Court: I think what might be help is to have the victim's or the parents come back, who's ever child was shot, if they figure it's appropriate and would support such a conclusion.

Mr. Seaton: They'll ah, on the record they'll sound like they're doing fairly well. I've worked with them, they're good people and they understand what we're doing. And our main purpose is we want this kid to succeed and we want him to testify against the other kids.

Court: I understand all that but I mean, I also, I also I just don't know there's got to be some sense of justice, in that if they've gotta go to a camp, they've gotta go to a camp. But I, I just don't know that.

Mr. Seaton: Yeah.

Court: I don't want to be bound. I mean I'll give him a conditional plea, if he changes his mind then I'll let you do what you want to do with him

Mr. Seaton: That'll work, won't it Bill. Probably be the best we can do.

....

● ●

EXHIBIT 76

EXHIBIT 76

CASE NO. C129540

APR 12 12 35 PM '96

ORIGINAL

DEPT. NO. XV

DISTRICT COURT

CLARK COUNTY, NEVADA

-ooo-

THE STATE OF NEVADA,

Plaintiff,

vs.

KEVIN JAMES LISLE, AKA
GATO AKA VATO, JERRY LOPEZ,

Defendants.

REPORTER'S TRANSCRIPT

OF

PROCEEDINGS

BEFORE THE HONORABLE SALLY LOEHRER, DISTRICT JUDGETHURSDAY, FEBRUARY 29, 1996
9:00 A.M.

APPEARANCES:

For the State:

C. DAN BOWMAN, ESQ.
Deputy District Attorney

For Defendant Lopez:

DAVID M. SCHIECK, ESQ.

For Defendant Lisle:

REBECCA BLASKEY, ESQ.

Reported by: Janie L. Olsen
CCR No. 406, RPR

CE41

1 you have everything that's in their file. Absent that you will
2 not have it.

3 Is that what you want to do? If you want to do
4 that, I will order that you be allowed to do that.

5 MR. HERNDON: Judge, I had kind of briefly
6 discussed a couple of Mr. Schieck's motions with him previously
7 while we were in another trial and I told him that with regards
8 to his motion for discovery and our open file policy and I put
9 it in my motion. We can set down a time convenient to both of
10 us. He could go through our file. And with the Lusch murder
11 case, I think we actually have a carbon copy of Metro's homicide
12 file. He is welcome to look at that, too.

13 THE COURT: If someone actually goes and looks at
14 it and compares the Metro homicide files with what's been given
15 to the DA's office, there's always the possibility that there
16 are reports and notes and whatever in the homicide files that
17 are never given to the DAs. Then on the day of trial when the
18 homicide detective comes in here and testifies about it and says
19 it's written down right here. Everybody goes bizerk. Everybody
20 goes nuts. Everybody moves for a mistrial or a continuance.
21 You're a month or more out from trial in this case -- months out
22 from trial and I'm telling you if you don't do it now don't cry
23 to me about it when it happens at the time of trial because I'm
24 telling you that these things happen and I'm telling you you
25 have the opportunity to do this in pre-trial fashion.

• •

EXHIBIT 79

EXHIBIT 79



HOWARD P. MCCLAIN
DIRECTOR OF PUBLIC SAFETY

City of Orlando, Florida

POLICE DEPARTMENT

POLICE HEADQUARTERS
POST OFFICE BOX 913
ORLANDO, FLORIDA 32801



JAMES NURSEY
CHIEF OF POLICE

1-29-81

Nevada Div. of Inv. and Narcotics
430 Jeanell Dr.
Carson City, Nevada 89701
ATT: Inv. Bob Milby

Bob,

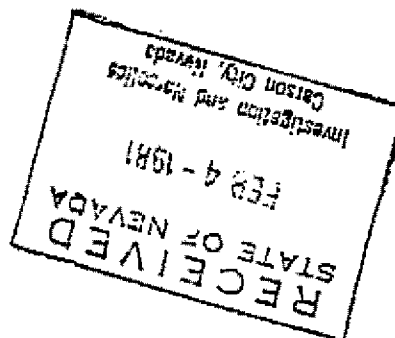
Enclosed is everything that we have on file for Bonnette. A check was made with our Sheriff's Dept. but nothing was found in their records. No other local history was found.
Hopefully this will assist you and good luck in court.

Inv. Larry A. Schuchman

COPY

MADE FOR Michael Wysock
BY OS

DATE 1-12-98



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
IDENTIFICATION DIVISION
WASHINGTON, D.C. 20537

PAGE 1

08/08/80

Use of the following FBI record, NUMBER 627 575 R2 is REGULATED BY LAW. It is furnished FOR OFFICIAL USE ONLY and should ONLY BE USED FOR PURPOSE REQUESTED. When further explanation of arrest charge or disposition is needed, communicate directly with the agency that contributed the fingerprints.

Contributor: Identifier (ORI) Name Case Number (OCA)	Subject: Name State Number (SID)	Arrested or Received	C - Charge D - Disposition
THE SUBJECT'S IDENTIFICATION RECORD APPEARING HEREUNDER HAS BEEN RETRIEVED FROM THE IDENTIFICATION DIVISION FILES BASED ON DESCRIPTORS FURNISHED IN YOUR REQUEST WHICH MATCHED THOSE ON FILE.			
ALL DESCRIPTORS ON FILE ARE LISTED BELOW.			
NAME OF YOUR DESCRIPTOR REQUEST	IDENTIFICATION DIVISION FILES	NAME OF YOUR DESCRIPTOR REQUEST	IDENTIFICATION DIVISION FILES
RACE	WHITE	BIRTH DATE	02/01/56
SEX	MALE	BIRTH CITY	
HEIGHT	505	BIRTH PLACE	LOUISIANA
WEIGHT	150	SOC SEC NO.	433-94-8795
HAIR	BROWN	MISC ID NO.	
EYES	BROWN		
ST IS ETC.-			
ATTENTION— SINCE NEITHER FINGERPRINTS NOR ANY IDENTIFYING NUMBER WHICH IS INDEXED IN OUR FILES ACCOMPANIED YOUR REQUEST, THE FBI CANNOT GUARANTEE IN ANY MANNER THAT THIS MATERIAL CONCERNS THE INDIVIDUAL IN WHOM YOU ARE INTERESTED.			
NATIONAL CRIME INFORMATION CENTER FEPT- CLASS.		PG PD 14 20 17 PI PI 14 CI 17	
FL0480400 PD ORLANDO 63626	EENNETTE, TERRY CARL FL1238114	C5/30/77	C-DISORDERLY INTOX D-CONVICTED-06/21/77 PROBATION-3M \$75
REQUESTING AGENCY COPY NV0139900 HWY PAT CARSON CITY CRIM-JUST			
SUBJECT'S CRIMINAL HISTORY ALSO RECORDED IN NCIC CCH FILE			

COPY

MADE FOR Michael Wysocki
BY BS
DATE 1-12-98

FL

Mon ORANGE COUNTY, FLORIDA

ARREST DATE: Mo. 5 Day 30 Year 77 Police Case No. 97908E

Yes ☒ No

Given By: NIA
Officer

I, the undersigned, certify, swear or affirm, that I have just and reasonable grounds to believe, and do believe that, on the 30th I. O. F.

May 19 77 at 3200 BIK Pickfair, Orlando Fl
Bonnette Terry (Car)
(LAST NAME) (FIRST NAME) (MIDDLE NAME) committed the following violation (s) of la

(NARRATIVE -- BE SPECIFIC IN FIRST PERSON)

Witnesses:

Richard Moser w/m 8-21-58 Gloria L. Allen w/F 8-19-2
Rt 1 Box 383 3211 Pickfair
Webster, Fla Orlando, Fla

I, Ose Scaletta, Ose Busch, Sgt McKinley, and above named witnesses were present at above location, where we observed the defendant, who appeared to be intoxicated, use loud and profane language. During the defendant's tirade, I personally heard him say "Fuck", "God damn" and other profane words. The defendant also called out to some people at 3211 Pickfair. He called them "Niggers". The two witnesses were in the yard at that time. At this time, the defendant was placed under arrest.

COPY

MADE FOR Michael Wysocki

BY OS

Sworn to and subscribed before me the undersigned authority, this

30 day of May 19 77

[Signature]
NOTARY PUBLIC

I swear/affirm the above statements and/or attached statements are correct and true to the best of my knowledge and belief.

[Signature] 2483
Officer's Signature I. O. No.

HOLD FOR

1. Agency Requesting

BOOKING OFFICER
CLERK

1. No Bond Total Bond Set At \$ 100 Date/Time of Bond (two day/year)
2. X Not Posted Surety Cash
3. Received At Booking Location OPD 2355
4. Assigned to Complex APD Section 3 Block (time) Call TK
5. Released Time Car

• •

EXHIBIT 80

EXHIBIT 80

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

FEB 13 9 42 AM '96

THE STATE OF NEVADA

Plaintiff,

vs.

ROBERTO HERNANDEZ MIRANDA,

Defendant.

Justitia
Case No. C057788
Dept. No. XI
Docket No. "S"

NOTICE OF ENTRY OF DECISION AND ORDER

TO: PETITIONER, ROBERTO MIRANDA, by his counsel LAURA FITZSIMMONS;

TO: ERIC JORGENSEN, DEPUTY DISTRICT ATTORNEY;

TO: DAVID SARNOWSKI, CHIEF DEPUTY ATTORNEY GENERAL;

PLEASE TAKE NOTICE that on the 13 day of February, 1996, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the supreme court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within 33 days after the date this notice is mailed to you. This notice was mailed on Feb 13, 1996 to David Sarnowski, Chief Deputy Attorney General, 198 S. Carson St., Capitol Complex, Carson City, NV 89710, and was placed in the files of the District Attorney and Laura FitzSimmons at the Clark County Courthouse on Feb. 13, 1996.

Dated this 13th day of Feb. 1996.

(SEAL)

Clerk of the Court

By: *Brian Durrillo*
Deputy

1 Laura Wightman FitzSimmons, Esq.
2 Nevada Bar No. 1263
3 438 E. Sahara Ave.
4 501 S. Rancho Road
5 Las Vegas, NV 89104
6 (702) 870-3975
7 Attorney for Roberto Miranda

FILED

FEB 13 9 41 AM '96

Shirley D.
CLERK

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA

12 Plaintiff,

13 vs.

14 ROBERTO HERNANDEZ MIRANDA,

15 Defendant.

Case No. C057788
Dept. No. XI
Docket No. "S"

16 AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW,
17 AND ORDER

18 This proceeding stems from a judgment of conviction and sentence of death for the
19 crime of first degree murder which was imposed upon the petitioner on August 28, 1992.
20 Petitioner has filed a petition for writ of habeas corpus in this court, challenging the
21 constitutionality of his conviction and sentence on several grounds.

22 The trial judge, the Honorable Addeliar D. Guy, conducted evidentiary hearings in
23 this matter. However, due to ill health and retirement, Judge Guy was unable to finalize
24 any decision in this case. The undersigned was assigned by the Nevada Supreme Court to
25 hear and determine all matters in this department which Judge Guy was unable to hear and
26 decide. The undersigned has reviewed the documents filed by the parties in this action, as
27 well as the file in this case, prior decisions of the Nevada Supreme Court, transcripts of the
28 evidentiary hearing and arguments of counsel.

This Court notes that this case began in 1981, and the petition for writ of habeas

1 corpus was filed in May of 1994. This matter has been pending since that time. NRS
2 34.820(7) requires a court that considers a petition filed by a petitioner who has been
3 sentenced to death to "make all reasonable efforts to expedite the matter and shall render
4 a decision within 60 days after submission of the matter for decision".

5 Based upon the entire record in this case, this Court finds that the conviction and
6 sentence of petitioner is unconstitutional. Accordingly, this court grants the relief requested
7 by petitioner, and orders that a new trial be held.

8 FINDINGS OF FACT

9 1. On April 27, 1982 Roberto Miranda was arraigned in this Court. He was
10 represented by Thomas Rigsby, of the Clark County Public Defender's office. Prior to trial,
11 Mr. Miranda requested the appointment of another lawyer, and complained to the Court
12 that Mr. Rigsby had not attempted to locate witnesses whom he had identified as being
13 valuable to his defense. Mr. Miranda's motion to discharge counsel was denied, and the case
14 proceeded to trial.

15 2. At the conclusion of trial, Mr. Miranda was convicted of first degree murder,
16 robbery with the use of a deadly weapon and grand larceny. He was sentenced to death by
17 the jury. Sentence was imposed by the trial judge on September 9, 1982.

18 3. An appeal was taken from the judgment of conviction and sentence. Mr. Rigsby
19 represented petitioner on direct appeal, in spite of Mr. Miranda's continuing objection to
20 Mr. Rigsby's representation.

21 4. The Nevada Supreme Court affirmed the conviction and sentence. *Miranda v.*
22 *State*, 101 Nev. 562, 707 P.2d 1121 (1985).

23 5. On November 25, 1985, petitioner appeared in court for reimposition of the death
24 penalty. Mr. Miranda was advised by both Mr. Rigsby and the deputy district attorney that
25 he had four petitions for post-conviction relief available to him in state court in addition to
26 procedures available in the federal system.

27 The court appointed Mark Bailus, Esq. to represent petitioner in post-conviction
28

1 proceedings on December 10, 1985. Evidentiary hearings were conducted on before the trial
2 court. Determinations by the trial judge denying post-conviction relief were twice appealed
3 to the Nevada Supreme Court. Ultimately, the Supreme Court dismissed petitioner's appeal
4 on February 1, 1991.

5 6. Thereafter, petitioner filed a petition for writ of habeas corpus in the United
6 States District Court for the District of Nevada. Laura FitzSimmons was appointed to
7 represent petitioner in those proceedings. The United States District Judge ultimately
8 dismissed the federal petition to afford petitioner an opportunity to present issues to the
9 state court which had not been adjudicated in the previous state proceedings.

10 7. In May of 1994, this petition for writ of habeas corpus was filed. Also filed with
11 the petition was an appendix which contained several declarations and other documents. In
12 early September, 1994, the state filed a motion to dismiss the petition alleging that
13 petitioner had waived his right to challenge his conviction and sentence. On November 15,
14 1994 counsel for petitioner filed an opposition to the state's motion to dismiss, and
15 requested the court defer ruling on the motion to dismiss until the evidentiary hearing was
16 held on the petition. An evidentiary hearing was then set for March 13, 1995. On February
17 21, 1995, counsel for petitioner appeared in court and informed the court that the case had
18 been reassigned within the district attorney's office. Subsequently, on February 23, 1995,
19 the matter was continued at the state's request so that the newly-assigned deputy district
20 attorney could be present. On March 2, 1995, counsel appeared and the Court reaffirmed
21 the date of March 13, 1995 for the evidentiary hearing. On March 13, 1995, the court
22 continued the matter until April 6, 1995. Due to the ill health of Judge Guy, the matter was
23 reset until July 13, 1995.

24 8. On July 13, 1995, an evidentiary hearing was held. At that hearing, Belkis Ibarra
25 Cumerma was called and testified.

26 9. The court, having read the transcribed testimony of that witness finds that her
27 testimony impeached the testimony of the state's key witness, Fernando Cabrera, and that
28

1 her testimony, had it been presented to the jury, would have impeached the credibility of
2 Fernando Cabrera. Ms. Cumerma testified that Fernando Cabrera had threatened to cause
3 harm to petitioner after Cabrera found petitioner with Ms. Cumerma in Cabrera's home.
4 The court notes that Ms. Cumerma was identified by petitioner to his counsel prior to trial,
5 but that trial counsel did not attempt to locate this witness. Indeed, in post-conviction
6 proceedings, it was Judge Guy that noted the witness' full name appeared in the record of
7 the preliminary hearing. The Court finds that the testimony of Ms. Cumerma was material
8 and would, in all probability have effected the outcome of the trial because the state's case
9 depended, in large part, upon the testimony of Fernando Cabrera. The court concludes
10 from the transcripts of the hearing that Ms. Cumerma was apparently present in Las Vegas
11 and was registered at the Department of Motor Vehicles prior to and at the time of trial.
12 At the time of Mr. Bailus' representation of petitioner, Ms. Cumerma was not present in
13 Nevada, had married and changed her name. Through the investigative funds available
14 through the federal court, Ms. Cumerma was able to be located and her testimony was,
15 finally, heard. The Court finds that trial counsel's failure to attempt to locate, interview, and
16 present this witness to the jury was objectively unreasonable and that the testimony of this
17 witness would have, in reasonable probability, have effected the outcome of the trial.

18 10. The Court also finds, based upon the uncontradicted declarations submitted in
19 this case on behalf of petitioner, the admission of which was stipulated to by the state which
20 reserved its rights to object to the testimony only on the basis of waiver, that there were
21 other witnesses reasonably available to trial counsel who would have provided testimony
22 which the jury should have heard. These witnesses include Roberto Escobedo, who was a
23 friend of the victims who discovered the body. Defense counsel never interviewed this
24 witness, and therefore the jury never learned that Fernando Cabrera knew the victim - a fact
25 Cabrera denied at trial. Roberto Escobedo testified as a prosecution witness at trial.
26 However, because trial counsel made no attempt to interview this witness, he remained
27 unaware that Mr. Escobedo would provide testimony which was valuable to the defense, if
28

1 asked. Other affidavits and documents submitted in this case by petitioner indicate that
2 evidence was available to trial counsel through a number of reasonably available sources,
3 including police reports, that should have been presented to the jury in this case by defense
4 counsel. The lack of pre-trial investigation and preparation by trial counsel, as is set forth
5 in the petition for writ of habeas corpus and unchallenged by the state, cannot be justified.
6

7 11. The petition filed in this case details many additional challenges to the
8 constitutionality of the conviction and sentence. This Court has not considered these issues
9 in light of its determination of the merits of the petition on the issue of ineffective assistance
10 of counsel, which is indisputably present from the record. It does, however, appear from
11 the petition, which has not been opposed by the state on its merits, that there are many
12 additional grounds upon which relief would be warranted.

13 The failure of trial counsel to effectively investigate and prepare this case for trial is so
14 glaring and clear that this Court finds there is no need to proceed beyond the issue of the
15 violation of the Sixth Amendment guarantee of effective assistance of counsel in order to
16 decide the merits of the petition and grant relief.

17 12. As to the State's motion to dismiss, the court finds that this petitioner was
18 expressly advised by both his former counsel and the state in court on November 25, 1985,
19 that he had nine levels of appeal available to him after the denial of his direct appeal. The
20 Court further finds that Mr. Miranda was never advised by either the Court or his counsel
21 that the failure to raise all issues in the prior proceedings could result in a waiver of those
22 issues. The Court also finds from the affidavit of Mr. Bailus and the affidavit of Mr.
23 Miranda that Mr. Miranda did not, at any time in these proceedings, make a tactical choice
24 to forgo presenting any of the claims contained in the petition before this Court. Further,
25 NRS 34.820(3) required that, in this death penalty case, the court was required to personally
26 address both Miranda and Mr. Bailus and inform them that all claims which challenged the
27 conviction and the death penalty must have been joined in the petition. This did not occur
28

1 in the prior proceedings in which Mr. Miranda was represented by Mr. Bailus.

2 Accordingly, based upon the foregoing findings, and in accordance with N.J.
3 34.830(1) the Courts makes the following conclusions of law.

5 CONCLUSIONS OF LAW

6 1. The failure of trial counsel to investigate and present available witness testimony,
7 much of which had been identified to trial counsel by petitioner prior to trial, violated
8 petitioner's rights to due process and effective assistance of counsel under the Sixth and
9 Fourteenth Amendments to the United States Constitution. Petitioner has demonstrated
10 in these proceedings that his trial counsel's performance fell below any reasonable objective
11 standard of constitutionally adequate representation. Based upon this Court's consideration
12 of the evidence that has been adduced by petitioner in these proceedings, the Court
13 concludes that the verdict returned by the jury is unreliable. *Strickland v. Washington*, 406
14 U.S. 668 (1984); *Sanborn v. State*, 107 Nev. 388, 812 P.2d 1279 (1991).

15 2. The state has not challenged seriously the facts as set forth in the petition, nor
16 has the state argued that trial counsel was indeed effective. The State did not file a written
17 opposition to the petition, but instead relied solely upon its argument that petitioner's
18 challenges to his conviction had been waived because they had not been presented by Mr.
19 Bailus in prior proceedings. Based upon the record in this case, including the affidavit of
20 Mr. Bailus, the affidavit of Roberto Miranda, and the transcript of the prior proceedings,
21 this Court concludes that Mr. Miranda did not waive his right to present the arguments
22 contained in his petition.

23 It is clear from the record in this case that at every point in which he was given an
24 opportunity to do so, petitioner attempted to present all evidence which supported his
25 innocence to the Court. The fact that there have been substantial impediments to his ability
26 to present the evidence to support his claim of ineffective assistance of counsel cannot be
27 attributed to the petitioner. Petitioner's claim of ineffective assistance of counsel has merit.

28

1 The inability of Mr. Bailus to present the evidence since gathered by current counsel is
2 attributable to many factors, including, as noted by Judge Guy on a number of previous
3 occasions, the passage of time that occurred when the case was on direct appeal. In now
4 determining the issue of ineffective assistance of counsel, supported by the additional
5 evidence presented in these proceedings, this court finds that good cause exists to excuse any
6 procedural default that may be suggested by the state. *Lozada v. State*, 110 Nev. 349, 871
7 P.2d 944 (1994).

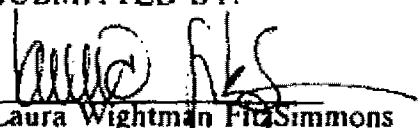
8 ORDER

9 Based upon the foregoing, it is hereby ORDERED that the petition for writ of
10 habeas corpus be granted, that the writ be issued, and that the petitioner be granted a new
11 trial.

12 Dated this 23rd of February, 1996.

13
14
15 
16 SENIOR DISTRICT JUDGE
17 (Norman C. Robinson)

18 SUBMITTED BY:

19 
20 Laura Wightman Fitts Simmons
21 438 E. Sahara Ave.
22 Las Vegas, NV 89104
23 (702) 870-3975

24 Attorney for Roberto Miranda
25
26
27
28

EXHIBIT 5.63



U.S. Department of Justice

006606

TAR:RLB:WSP:ht
(213) 894-5669

United States Attorney
Central District of California

United States Courthouse
32 North Spring Street
Los Angeles, California 90012

May 7, 1993

VIA FACSIMILE

Hon. Florence-Marie Cooper
210 West Temple Street
Department 110
Los Angeles, CA 90012
Fax Number 213/897-2430

Re: People v. Konick, Case No. A973541

Dear Judge Cooper:

Enclosed please find the rough notes of FBI Special Agent Jim Livingston relating to Art Taylor dated December 11, 1985. These notes have not been redacted.

If you have any questions, please contact me.

Very truly yours,

TERRELL A. BOWERS
United States Attorney


WASHINGTON S. PARKER III
Assistant United States Attorney

Enclosures.

cc: Patrick Dixon, Deputy District Attorney (w/o encl.)
Seymour Applebaum, Esq. (w/o encl.)
Roger Potash, Esq. (w/o encl.)
Mark S. Kaiserman, Esq. (w/o encl.)

HB072745

JA010827

EXHIBIT 5.79



HOWARD P. McCLAIN
DIRECTOR OF PUBLIC SAFETY

City of Orlando, Florida

POLICE DEPARTMENT

POLICE HEADQUARTERS
POST OFFICE BOX 913
ORLANDO, FLORIDA 32801



JAMES NURSEY
CHIEF OF POLICE

1-29-81

Nevada Div. of Inv. and Narcotics
430 Jeanell Dr.
Carson City, Nevada 89701
ATT: Inv. Bob Milby

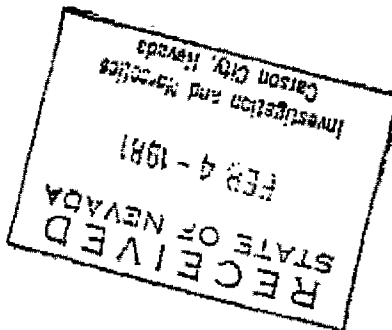
Bob,

Enclosed is everything that we have on file for Bonnette. A check was made with our Sheriff's Dept. but nothing was found in their records. No other local history was found. Hopefully this will assist you and good luck in court.

Inv. Larry A. Schuchman

COPY

MADE FOR Michael Wysock
BY OS
DATE 1-12-98



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
IDENTIFICATION DIVISION
WASHINGTON, D.C. 20537

PAGE 1

08/08/80

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Contributor: Identifier (ORI) Name Case Number (OCA)	Subject: Name State Number (SID)	Arrested or Received	C - Charge D - Disposition
THE SUBJECT'S IDENTIFICATION RECORD APPEARING HEREUNDER HAS BEEN RETRIEVED FROM THE IDENTIFICATION DIVISION FILES BASED ON DESCRIPTORS FURNISHED IN YOUR REQUEST WHICH MATCHED THOSE ON FILE.			
ALL DESCRIPTORS ON FILE ARE LISTED BELOW.			
NAME OF YOUR DESCRIPTOR REQUEST	IDENTIFICATION DIVISION FILES	NAME OF YOUR DESCRIPTOR REQUEST	IDENTIFICATION DIVISION FILES
RACE	WHITE	BIRTH DATE	02/01/56
SEX	MALE	BIRTH CITY	
HEIGHT	5CS	BIRTH PLACE	LOUISIANA
WEIGHT	150	SEC SEC NO.	433-94-8795
HAIR	BROWN	MISC ID NO.	
EYES	BROWN		
5' 10" ETC.			
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NATIONAL CRIME INFORMATION CENTER FGPT. CLASS. PG PG 14 20 17 PI PI 14 CI 17			
FL0480400 PD ORLANDO 63626	ECANNETTE, TERRY CARL FL1236114	C5/30/77	C-DISORDERLY INTOX D-CONVICTED-06/21/77 PROBATION-3M \$75
REQUESTING AGENCY COPY NV0135900 HWY PAT CARSON CITY CRIM-JUST			
SUBJECT'S CRIMINAL HISTORY ALSO RECORDED IN NCIC CCH FILE			

COPY

MADE FOR Michael Wysocki
BY BS
DATE 1-12-98

FL

Mon ORANGE COUNTY, FLORIDA

ARREST DATE: Mo. 5 Day 30 Year 77 Police Case No. 97908E

Yes ☒ No ☐

Given By: N/A
Officer

I, the undersigned, certify, swear or affirm, that I have just and reasonable grounds to believe, and do believe that, on the 30th I. O. P.

May 19 77 at 3200 BIK Pickfair, Orlando Fl
Bonnette Terry Carl
(LAST NAME) (FIRST NAME) (MIDDLE NAME) committed the following violation (s) of la

(NARRATIVE -- BE SPECIFIC IN FIRST PERSON)

Witnesses:

Richard Moser w/m 8-21-58 Gloria L. Allen w/F 8-19-2
Rt 1 Box 383 3211 Pickfair
Webster, Fla Orlando, Fla

I, Ofc Scaletta, Ofc Busch, Sgt McKinley, and above named witnesses were present at above location where we observed the defendant, who appeared to be intoxicated, use loud and profane language. During the defendant's tirade, I personally heard him say "F---", "God damn" and other profane words. The defend also called out to some people at 3211 Pickfair. He called them "Niggers". The two witnesses were in the yard at that time. At this time, the defendant was placed under arrest.

COPY

MADE FOR

BY DS

Sworn to and subscribed before me, the undersigned authority, this

30 day of May 19 77

[Signature]
NOTARY PUBLIC

I swear/affirm the above statements are/are attached statements are correct and true to the best of my knowledge and belief.

[Signature] 2483
Officer's Signature I. O. No.

HOLD FOR

1. Agency Requesting

BOOKING OFFICER
CLERK

1. No Bond Total Bond Set At \$ 100 Date/Time of Bond (MO./DAY/YEAR)
2. X Not Posted Surety Cash
3. Received At Booking Location OPD 2355 (Time)
4. Assigned to Complex OPD Section 3 Block Cell TK
5. Released Time Date

EXHIBIT 5.78

**NOT
USED**

EXHIBIT 5.76

1 CASE NO. C129540

APR 12 12 35 PM '96

ORIGINAL

2 DEPT. NO. XV

Lisle

DISTRICT COURT

CLARK COUNTY, NEVADA

-oOo-

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 KEVIN JAMES LISLE, AKA

12 GATO AKA VATO, JERRY LOPEZ,

13 Defendants.

REPORTER'S TRANSCRIPT

OF

PROCEEDINGS

15 BEFORE THE HONORABLE SALLY LOEHRER, DISTRICT JUDGE

16 THURSDAY, FEBRUARY 29, 1996
9:00 A.M.

19 APPEARANCES:

20 For the State:

C. DAN BOWMAN, ESQ.
Deputy District Attorney

21 For Defendant Lopez:

DAVID M. SCHIECK, ESQ.

22 For Defendant Lisle:

REBECCA BLASKEY, ESQ.

24 Reported by: Janie L. Olsen
25 CCR No. 406, RPR

CE41

1 you have everything that's in their file. Absent that you will
2 not have it.

3 Is that what you want to do? If you want to do
4 that, I will order that you be allowed to do that.

5 MR. HERNDON: Judge, I had kind of briefly
6 discussed a couple of Mr. Schieck's motions with him previously
7 while we were in another trial and I told him that with regards
8 to his motion for discovery and our open file policy and I put
9 it in my motion. We can set down a time convenient to both of
10 us. He could go through our file. And with the Lusch murder
11 case, I think we actually have a carbon copy of Metro's homicide
12 file. He is welcome to look at that, too.

13 THE COURT: If someone actually goes and looks at
14 it and compares the Metro homicide files with what's been given
15 to the DA's office, there's always the possibility that there
16 are reports and notes and whatever in the homicide files that
17 are never given to the DAs. Then on the day of trial when the
18 homicide detective comes in here and testifies about it and says
19 it's written down right here. Everybody goes bizerk. Everybody
20 goes nuts. Everybody moves for a mistrial or a continuance.
21 You're a month or more out from trial in this case -- months out
22 from trial and I'm telling you if you don't do it now don't cry
23 to me about it when it happens at the time of trial because I'm
24 telling you that these things happen and I'm telling you you
25 have the opportunity to do this in pre-trial fashion.

EXHIBIT 5.77



NOT
USED

● ●

EXHIBIT 81

EXHIBIT 81

3

COPY

DISTRICT COURT

CLARK COUNTY, NEVADA

The State of Nevada,

Plaintiff,

vs.

Michael Damon Rippe,
#0619119.

Defendant.

Case No. C106784
Dept. No. IV
Docket No. "C"

Before the Honorable Gerard J. Bongiovanni

Thursday, February 8, 1996, 10:15 o'clock a.m.

Reporter's Transcript of Proceedings

VOLUME I

REPORTED BY: Renee Silvaggia, C.C.R. No. 122

JA010840

3 1 APPEARANCES:

2 For the State: MELVYN T. HARMON, ESQ.
3 DANIEL SEATON, ESQ.
4 Deputies District Attorney

5 For the Defendant: STEVEN B. WOLFSON, ESQ.
6 PHILIP H. DUNLEAVY, ESQ.
7 Attorneys at Law

8 Law Clerk: Delwin Potter
9
10
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24

I N D E X

WITNESSES ON BEHALF OF DEFENDANT:

PAGE

SIMS, Thomas

Direct Examination by Mr. Dunleavy

17

LUKENS, John

Direct Examination by Mr. Wolfson

29

Cross-Examination by Mr. Seaton

46

Redirect Examination by Mr. Wolfson

51

Redirect Examination (Resumed)

72

ARCHIE, Robert

Direct Examination by Mr. Wolfson

53

Cross-Examination by Mr. Harmon

68

Redirect Examination by Mr. Wolfson

70

LOWRY, Teresa

Direct Examination by Mr. Wolfson

95

Cross-Examination by Mr. Seaton

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HARMON, Melvyn

Direct Examination by Mr. Dunleavy

112

Cross-Examination by Mr. Seaton

124

Redirect Examination by Mr. Dunleavy

128

EXHIBITS ON BEHALF OF DEFENDANT:

Marked

Admitted

A

DA File History Notes

73

75

B

Police Department Memorandum

133

-ooo-

(Whereupon, a sotto voce at this time.)

BY MR. DUNLEAVY:

Q Could it have been last Wednesday or Thursday?

A It may very well have been.

Q It was while we were going through jury selection?

A I don't distinctly remember that, Mr. Dunleavy.

Q We started jury selection last Wednesday.

MR. WOLFSON: No, I'm sorry. As an officer of the Court, let me just make a representation. I believe it was the preceding Thursday before we started the trial.

THE WITNESS: That would be more consistent with my recollection.

BY MR. DUNLEAVY:

Q I didn't know what would you say to the context in case it says the State is held to disclosure standards based on what all State officers knew at the time.

A Well, I would say that's very fine for Judges to write about that, but it's a legal fiction because just because Cabrales knew it and just because Captain Cannett knew it, that doesn't mean that Seaton and Harman know it.

3 1 Q But you are aware that the United States
2 Supreme Court has put the burden on the prosecution to seek
3 this information out.

4 A We did seek it out. I had no idea that that
5 would be something authored by Cabrales that tended to be
6 exculpatory.

7 He already had submitted -- I
8 had a number of Cabrales' reports that indicated presence at
9 the crime scene. We had the complete recitation of the
10 findings of Sherree Norman, his partner, and we knew Cabrales
11 examined the black Datsun that presumably was owned by Lauri
12 Jacobson.

13 I didn't know anything about
14 this; had no reason to think there was some internal police
15 department memorandum.

16 Q And hadn't asked for one until just before
17 the trial.

18 A No, hadn't asked; had assumed that we
19 probably had everything.

20 I, in fact, went through
21 personally the Las Vegas homicide -- the police department
22 homicide folder. I don't recall this being in there either.

23 But there was something about
24 the comparison of what I had, and even what the homicide

1 **EXH**

2 **FRANNY A. FORSMAN**

3 Federal Public Defender

4 Nevada Bar No. 00014

5 **DAVID ANTHONY**

6 Assistant Federal Public Defender

7 Nevada Bar No. 7978

8 **STEPHANIE KICE**

9 Nevada Bar No. 10105

10 Assistant Federal Public Defender

11 411 Bonneville Avenue, Suite 250

12 Las Vegas, Nevada 89101

13 Telephone: (702) 388-6577

14 Facsimile: (702) 388-5819

15 Attorneys for Petitioner

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 **MICHAEL DAMON RIPPO,**

19 Petitioner,

20 vs.

21 **E. K. McDANIEL, Warden, and**

22 **CATHERIN CORTEZ-MASTO,**

23 Attorney General of the State of
24 Nevada,

25 Respondents.

Case No. C106784

Dept. No. XX

Date of Hearing: _____

Time of Hearing: _____

(Death Penalty Case)

26 **EXHIBITS TO MOTION FOR LEAVE TO CONDUCT DISCOVERY**
27 **VOLUME FIVE OF SEVEN**

28 1 Reporter's Transcript of Proceedings, State v. Bailey, Case No. C129217, Eighth Judicial District Court, July 30, 1996

2 Answers to Interrogatories p. 7, Bennett v. McDaniel, et al., Case No. CV-N-96-429-DWH (RAM), February 9, 1998

3 Reporter's Transcript of Proceedings, partial, State v. Bennett, Case NO. C083143, September 14, 1998

4 Non-Trial Disposition Memo, Clark County District Attorney's Office regarding Joseph Beeson, in Bennett v. McDaniel, Case No. CV-N-96-429-DWH, District of Nevada, October, 1988

5 Reporter's Transcript of Evidentiary Hearing, partial, State v. Bennett, Case No. C083143, November 18, 1999

FILED

2008 MAY 21 P 3 01

Clara
CLERK OF THE COURT

● ●

EXHIBIT 82

EXHIBIT 82

COPY

CASE NOS. (SEE BELOW)

DEPARTMENT TWO

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,
PLAINTIFF,

VS.

RICHARD JOSEPH MORELLI,
DEFENDANT.

CASE NO. C84603

THE STATE OF NEVADA,
PLAINTIFF,

VS.

RICHARD JOSEPH MORELLI,
DEFENDANT.

CASE NO. C84604

REPORTER'S TRANSCRIPT OF CALENDAR CALL.

BEFORE THE HONORABLE JAMES BRENNAN, DISTRICT JUDGE

THURSDAY, JANUARY 12, 1984

APPEARANCES:

FOR THE STATE:

DANIEL M. SEATON, ESQUIRE
DEPUTY DISTRICT ATTORNEY
200 SOUTH THIRD STREET
LAS VEGAS, NEVADA 89101

FOR THE DEFENDANT:

GARY H. LIESERMAN, ESQUIRE
DEPUTY PUBLIC DEFENDER
309 SOUTH THIRD STREET
SUITE 226
LAS VEGAS, NEVADA 89101

REPORTED BY:

J. DIAMATO, C.S.R. NO. 17

Free Court Reporters, Inc.
818 EAST BONNEVILLE AVENUE
LAS VEGAS, NEVADA 89101

Free Lance Court Reporters, Inc.
918 EAST BONNEVILLE AVENUE
LAS VEGAS, NEVADA 89101

1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 12, 1984, 10:00 A. M.

2 " " " " "

3
4 THE COURT: CASE C64603 AND C54604,
5 STATE OF NEVADA, PLAINTIFF, VERSUS RICHARD JOSEPH MORELLI.

6 SHOW THE PRESENCE OF COUNSEL, PRESENCE
7 OF THE DEFENDANT.

8 HAS THIS MATTER BEEN NEGOTIATED?

9 MR. LIEBERMAN: YES, YOUR HONOR.

10 THE COURT: WHAT ARE THE NEGOTIATIONS?

11 MR. LIEBERMAN: QUITE A FEW POINTS, YOUR
12 HONOR. FIRST, HE'S GOING TO PLEAD GUILTY TO COUNT 11 OF EACH
13 CASE, CASE C64603 AND 54604.

14 AT THE TIME OF SENTENCING, ALL OF
15 THE OTHER COUNTS OF EACH CASE WILL BE DISMISSED. NO OTHER
16 CHARGES ARISING OUT OF EITHER OR BOTH OF THESE TWO CASES WILL
17 BE FILED OR PURSUED. NO OTHER SEX-TYPE CHARGES WILL BE FILED
18 OR PURSUED WHEREIN ANY VICTIM IS EITHER LISA SLEPAKOFF
19 OR TONI LOPEZ, WHO ARE THE TWO ALLEGED VICTIMS IN THESE TWO
20 CASES.

21 NEXT, NO SEX-TYPE CHARGES WILL BE
22 FILED OR PURSUED WHEREIN THE POSSIBLE VICTIM IS A LADY NAMED
23 RHONDA, R-H-O-N-D-A.

24 NEXT, IT'S STIPULATED BY THE STATE
25 AND THE DEFENSE THAT EACH VICTIM IN THESE TWO CASES WAS OVER
26 THE AGE OF 18 AT THE TIME OF THE OFFENSE, AND IT'S ALSO
27 STIPULATED THAT NEITHER VICTIM SUFFERED SUBSTANTIAL BODILY
28 HARM, SO THERE IS NO SUBSTANTIAL BODILY HARM TO EITHER VICTIM.

29 NEXT, IT'S STIPULATED BY BOTH SIDES
30 THAT THE DEFENDANT IS TO RECEIVE A SENTENCE ON COUNT 11 OF
31 CASE 64603 OF LIFE PLUS LIFE. THE SECOND LIFE IS, OF COURSE,
32 MANDATORILY CONSECUTIVE TO THE FIRST LIFE.

Free Lance Court Reporters, Inc.
815 EAST BONNEVILLE AVENUE
LAS VEGAS, NEVADA 89101

1 HE WILL ALSO RECEIVE A SENTENCE OF
2 LIFE PLUS LIFE ON COUNT II -- YOUR HONOR, BEFORE I PROCEED,
3 MAY I ASK -- MAY WE JUST HAVE A BRIEF -- BE AT EASE?

4 THE COURT: SURE.

5 (OFF THE RECORD.)

6 MR. SEATON: YOUR HONOR, I THINK PERHAPS
7 WE SHOULD APPROACH THE BENCH.

8 THE COURT: SURELY.

9 (DISCUSSION AT BAR.)

10 THE COURT: READY TO CONTINUE?

11 MR. LIEBERMAN: IF I MAY JUST HAVE A SECOND,
12 YOUR HONOR.

13 (OFF THE RECORD.)

14 MR. LIEBERMAN: THANK YOU, YOUR HONOR.

15 THE LAST THING I MENTIONED, IN TOTO,
16 WAS THAT WE STIPULATED THAT THE VICTIM IN EACH CASE WAS OVER
17 13 AND NEITHER VICTIM SUFFERED SUBSTANTIAL BODILY HARM.

18 THE NEXT POINT IS THAT BOTH SIDES
19 STIPULATE THAT THE DEFENDANT IS TO RECEIVE LIFE PLUS LIFE
20 ON C64603, COUNT II, AND LIFE PLUS LIFE ON C-64604, COUNT
21 II, AND THAT THE TWO LIVES ARE -- ON 64603 WILL RUN CONCURRENTLY
22 WITH THE TWO LIVES ON C64604, AND THAT WOULD BE GRANTED BY
23 THE COURT. NOT JUST STIPULATED BY THE PARTIES, BUT GRANTED
24 BY THE COURT.

25 THE DEFENDANT KNOWS THAT NEITHER
26 OFFENSE IS PROBATIONABLE.

27 ALSO, YOUR HONOR, BOTH SIDES STIPULATE
28 THAT ALL OF THE TIME THAT THE DEFENDANT HAS SERVED IN CUSTODY,
29 SINCE THE DATE OF ARREST, ON EACH CASE WILL BE ACCREDITED
30 TO HIM BY VIRTUE OF CREDIT FOR TIME SERVED ON EACH CASE,
31 NOT JUST ON ONE, BUT ON BOTH. AND THAT IF THE COURT -- THAT
32 WOULD BE GRANTED BY THE COURT, ALSO, IF THE COURT CHOOSES

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1 TO ACCEPT THE NEGOTIATIONS.

2 FINALLY, YOUR HONOR, MR. MORELLI
3 FACES A REVOCATION HEARING ON AN ATTEMPTED GRAND LARCENY
4 CASE, CASE C30591, APPARENTLY IN DEPARTMENT TEN. THAT IS
5 GOING TO BE HELD IN ABEYANCE FOR ABOUT A MONTH AND THE
6 STATE'S MOTION TO REVOKE MAY BE WITHDRAWN, BUT THERE ARE
7 NO PROMISES.

8 MR. MORELLI UNDERSTANDS ALL THAT.

9 MR. SEATON: YOUR HONOR, THAT IS
10 SUBSTANTIALLY THE UNDERSTANDING THAT WE HAVE BETWEEN US.
11 THE ONLY THING I DIDN'T HEAR, AND I WAS DOING SOME WRITING
12 AND I'M NOT SURE IF IT WAS STATED OR NOT, BUT THAT THE TWO
13 SENTENCES -- IT SHOULD BE -- DEFENDANT SHOULD KNOW THAT THE
14 TWO LIFE TERMS THAT HE RECEIVES THE SENTENCING ON ARE TO
15 RUN CONSECUTIVE, TO RUN WITH THE TWO LIFE SENTENCES IN THE
16 OTHER CASE TO RUN CONCURRENT WITH THOSE TWO CONSECUTIVE LIFE
17 TERMS.

18 I'M SURE THE COURT WILL MAKE THAT
19 CLEAR TO THE DEFENDANT WHEN IT TAKES THE PLEA.

20 MR. LIEBERMAN: HE'S GOING TO GET LIFE
21 AND A CONSECUTIVE LIFE IN ONE CASE, AND ONE CASE LIFE AND
22 A CONSECUTIVE LIFE ON THE OTHER CASE, BUT THE TWO LIVES IN
23 ONE CASE WILL RUN CONCURRENT WITH THE LIFE ON THE TWO OTHER
24 CASES, THE NEXT LINE BEING TWO LIFE SENTENCES.

25 THE COURT: THE BOTTOM LINE IS HE WOULDN'T
26 BE ELIGIBLE FOR PAROLE UNTIL HE SERVES TEN YEARS; IS THAT
27 CORRECT?

28 MR. LIEBERMAN: THAT IS CORRECT, YOUR
29 HONOR, TEN YEARS.

30 THE COURT: IS THAT YOUR UNDERSTANDING
31 OF THE NEGOTIATIONS, MR. MORELLI?

32 THE DEFENDANT: YES, YOUR HONOR.

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1 THE COURT: DID YOU AUTHORIZE YOUR ATTORNEY
2 TO ENTER INTO THOSE NEGOTIATIONS ON YOUR BEHALF?

3 THE DEFENDANT: YES, I DID.

4 THE COURT: IS IT YOUR DESIRE AT THIS
5 TIME TO WITHDRAW YOUR PLEAS OF NOT GUILTY TO COUNTS (1
6 OF BOTH OF THESE INFORMATIONS IN THESE TWO CASES?

7 THE DEFENDANT: YES, YOUR HONOR.

8 THE COURT: DO YOU CONCUR, COUNSEL?

9 MR. LIEBERMAN: YES, YOUR HONOR.

10 THE COURT: THOSE NOT GUILTY PLEAS MAY
11 BE WITHDRAWN.

12 WHAT IS YOUR PLEA NOW, MR. MORELLI,
13 TO COUNT (1 OF THE INFORMATION IN CASE C-64603, WHEREIN
14 YOU ARE CHARGED WITH SEXUAL ASSAULT WITH USE OF DEADLY WEAPON,
15 A FELONY, GUILTY OR NOT GUILTY?

16 THE DEFENDANT: GUILTY.

17 THE COURT: WHAT IS YOUR PLEA TO COUNT
18 (1 OF THE INFORMATION IN CASE C64604, WHEREIN YOU ARE
19 CHARGED WITH SEXUAL ASSAULT WITH USE OF DEADLY WEAPON, A
20 FELONY, GUILTY OR NOT GUILTY?

21 THE DEFENDANT: GUILTY.

22 THE COURT: BEFORE THE COURT CAN ACCEPT
23 YOUR PLEAS OF GUILTY, I HAVE TO BE SATISFIED THAT THOSE PLEAS
24 ARE FREELY AND VOLUNTARILY GIVEN. ARE THEY?

25 THE DEFENDANT: YES, THEY ARE.

26 THE COURT: HAVE ANY THREATS BEEN MADE
27 AGAINST YOU OR ANYONE CLOSELY ASSOCIATED WITH YOU TO FORCE
28 YOU TO PLEAS GUILTY?

29 THE DEFENDANT: NO, YOUR HONOR.

30 THE COURT: HAS YOUR ATTORNEY ADVISED
31 YOU OF THE ELEMENTS OF THE CRIMES WITH WHICH YOU ARE CHARGED?

32 THE DEFENDANT: YES, YOUR HONOR.

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1 THE COURT: HAS HE TOLD YOU THAT IT'S
2 THE BURDEN OF THE PROSECUTION TO PROVE YOUR GUILT BEYOND A
3 REASONABLE DOUBT?

4 THE DEFENDANT: YES, YOUR HONOR.

5 THE COURT: HAS HE TOLD YOU OF ANY
6 AVAILABLE DEFENSES THAT YOU MIGHT HAVE?

7 THE DEFENDANT: YES, YOUR HONOR.

8 THE COURT: IS THAT TRUE, COUNSEL?

9 MR. LIEBERMAN: YES, YOUR HONOR.

10 THE COURT: HAS YOUR ATTORNEY TOLD YOU
11 WHAT PENALTIES THE COURT COULD IMPOSE?

12 THE DEFENDANT: --YES, SIR.

13 THE COURT: WHAT HAVE YOU BEEN TOLD?

14 THE DEFENDANT: FIVE TO LIFE ON EACH COUNT.

15 MR. LIEBERMAN: IT'S BEEN AGREED THAT
16 THEY WOULD ACTUALLY BE LIFE, SO THERE IS NO DISCRETION, AS
17 SUCH.

18 THE COURT: DO YOU UNDERSTAND THAT IT'S
19 THE INTENTION OF THE COURT THAT ON EACH OF THESE COUNTS THAT
20 YOU WOULD BE SENTENCED -- AND LET'S TAKE CASE C54603, COUNT
21 11, THE COURT WOULD BE SENTENCING YOU TO LIFE IN THE NEVADA
22 STATE PRISON, PLUS ANOTHER CONSECUTIVE LIFE IN THE NEVADA
23 STATE PRISON. DO YOU UNDERSTAND THAT?

24 THE DEFENDANT: YES, SIR.

25 THE COURT: AND DO YOU UNDERSTAND THAT
26 IT IS NONPROBATIONABLE AND YOU WOULD NOT BE ELIGIBLE FOR
27 PAROLE UNTIL YOU SERVED TEN YEARS?

28 THE DEFENDANT: YES, SIR.

29 THE COURT: MINIMUM OF TEN YEARS. DO
30 YOU UNDERSTAND THAT?

31 THE DEFENDANT: I UNDERSTAND THAT.

32 THE COURT: AND THAT ALSO THE COURT WOULD

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1 BE SENTENCING YOU IN CASE C54604 ON YOUR PLEA OF GUILTY TO
2 COUNT 11 TO ANOTHER LIFE SENTENCE IN THE NEVADA STATE PRISON
3 FOR THE SEXUAL ASSAULT, AND A LIKE SENTENCE, ANOTHER LIFE
4 SENTENCE FOR THE ENHANCEMENT FOR THE USE OF A DEADLY WEAPON.
5 TO RUN CONSECUTIVE, ALSO.

6 DO YOU UNDERSTAND THAT?

7 THE DEFENDANT: YES, SIR.

8 THE COURT: AND THAT THAT ALSO IS, OF
9 COURSE, NONPROBATIONABLE AND, IN THAT CASE, YOU WOULDN'T
10 BE ELIGIBLE FOR PAROLE UNTIL YOU SERVED TEN YEARS ON THAT
11 CHARGE, ALSO.

12 DO YOU UNDERSTAND THAT?

13 THE DEFENDANT: YES, SIR.

14 THE COURT: DO YOU UNDERSTAND, HOWEVER,
15 THAT BOTH OF THESE COUNTS THAT YOU ARE PLEADING GUILTY TO
16 WOULD RUN CONCURRENT, AT THE SAME TIME, AND SO CONSEQUENTLY,
17 AFTER YOU SERVED A MINIMUM OF TEN YEARS, YOU WOULD BE ELIGIBLE
18 FOR PAROLE?

19 THE DEFENDANT: YES, YOUR HONOR.

20 THE COURT: BY ENTERING A PLEA OF GUILTY,
21 YOU ARE SURRENDERING VALUABLE, CONSTITUTIONAL RIGHTS.

22 DO YOU UNDERSTAND THAT YOU HAVE A
23 RIGHT TO A SPEEDY AND PUBLIC TRIAL BY AN IMPARTIAL JURY FREE
24 OF PREJUDICIAL PUBLICITY?

25 THE DEFENDANT: YES, I DO.

26 THE COURT: DO YOU UNDERSTAND THAT YOU
27 HAVE A RIGHT TO BE CONFRONTED BY THE WITNESSES AGAINST YOU
28 AND HAVE AN OPPORTUNITY TO CROSS-EXAMINE THEM?

29 THE DEFENDANT: YES, I DO.

30 THE COURT: DO YOU UNDERSTAND THAT YOU
31 ARE ENTITLED TO COMPULSORY PROCESS FOR THE PURPOSE OF
32 OBTAINING WITNESSES TO COME TO COURT AND TESTIFY IN YOUR BEHALF?