

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 09 2010 12:57 p.m.
Tracie K. Lindeman

BRENDAN DUNCKLEY,
Appellant,
vs.

Sup. Ct. Case No. 55545
Case No. CR07-1728
Dept. 4

THE STATE OF NEVADA,
Respondent.

CERTIFIED COPIES

VOLUME 2 OF 7

RECORD ON APPEAL

CR07-1728_DOCUMENTS_VOL2

Brendan Dunckley, #1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

Gary Hatlestad, Deputy District Attorney
Washoe County District Attorney's Office
P.O. Box 30083
Reno, NV 89520-3083

APPELLANT

RESPONDENT

ORIGINAL

FILED

JUL - 3 2007

RONALD A. LONGTIN, JR., CLERK

By: [Signature]
DEPUTY CLERK

Code 1491

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

THE STATE OF NEVADA,

Plaintiff,

Case No. CR07-1728

vs.

Dept. No. 4

BRENDAN DUNCKLEY

Defendant.

COURT SERVICES REPORT

CR07-1728 DC-9900001221-037
STATE VS. BRENDAN DUNCKLEY (3 Pages
District Court 07/03/2007 11:04 AM
Washoe County 1491
DOC TPRINCF

3

Washoe County Pretrial Services Assessment Report

Case Filing

Filed Name DUNCKLEY, BRENDAN
--

Arrest

Booked Name DUNCKLEY, BRENDAN	Arresting Agency RENO POLICE DEPT	Booking Number 07-09242	Arrest Date 04/30/2007
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Case Number	NOC	Type	Description	Counts	Court	Bail Amt/Type
07-16796	04346	M	ASSAULT	1	RMC	355 B

Defendant Information

Sex M	Race WHITE	Birthdate 07/04/1976	Age 31	Height 5' 08"	Weight 178	SS Number On File
Address 4458 HIGH PLAINS DRIVE RENO, NV 89523				Residence County: 07 Yr 06 Mo		Born CARMEL, NY,
Telephone (775) 787-1961		Time at Current Address 01 Yr 00 Mo		Primary Language ENGLISH		
Lives With MORGAN DUNCKLEY		Relationship WIFE		ID Number	Type	Expiration Date
Marital Status MARRIED		How Long		Military Service NONE		
Discharge						
Employment/Support Status Employed		How Long 01/00				
Employer ESSENTIAL PARKING		Employer Telephone (775) 379-7657				

Defendant Justice Identifier Codes/Criminal History

FBI Number	SID Number							
Arrests	Violent Fels	Felonies	Violent Misd	Misdemeanors	MMSD	Traffic	DUI	Pending

Comments

MR DUNCKLEY REPORTS HE HAS BEEN IN THE AREA FOR 7 1/2 YRS. HE HAS BEEN AT HIS CURRENT ADDRESS FOR 1 YR. HE LIVES WITH HIS WIFE. THE DEFENDANT AND HIS WIFE ARE EMPLOYED AT ESSENTIAL PARKING CONTROL (BOOTING). THE DEFENDANT HAS A HISTORY OF VIOLENCE. HE IS CURRENTLY PENDING FELONY CHGS IN DC. DANGER TO THE COMMUNITY WOULD APPEAR HIGH. NOTHING VERIFIED.

Assessment Status

Assessment MISD NR	Initials RLOVATO
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Determination of Indigency Report

07/03/2007

Page 1 of 1

Client: DUNCKLEY, BRENDAN

Case#: 07-16796

SSN: On File

DOB: 07/04/1976

Identification

Court:

RENO MUNICIPAL COURT

Charge(s):

ASSAULT

Address:

4458 HIGH PLAINS DRIVE RENO, NV 89523

Length:

01 Yr 00 Mo

Phone:

775 787-1961

Occupation and Employer:

DIRECTOR OF OPERATIONS

ESSENTIAL PARKING CONTROL

Financial Information

Asset	VEH	5,000	
Income	EMPLOYMENT	1,600	DEF 1,600/ SPOUSE 2,000
Expense	RENT AND UTL	1,000	
Expense	CAR PAYMENT	500	
Expense	CHILD SUPPORT	375	
Liability	CREDIT CARDS/ L	22,300	
SUMMARY:	ASSETS:	5,000	INCOME: 1,600
	LIABILITIES:	-22,300	EXPENSES: -1,875
	NET WORTH:	-17,300	CASH FLOW: -275

Determination: INDIGENT

Recommendation

The above constitutes my recommendation to the court. I have explained my recommendation to the party.

Screening Agent/Witness:**Date:** _____

Comments:

Mr. Dunckley claims no money or assets to retain private counsel. He lives with his mother in law who helps him financially.

● ORIGINAL ●

FILED

JUL - 3 2007

RONALD A. LONGTIN, JR., CLERK

By: *Prince*
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE
OF

STATE OF NEVADA,

Plaintiff,

Case No. CR07-1728

vs.

Dept No. D4

BRENDAN DUNCKLEY

Defendant.

APPLICATION FOR SETTING

TYPE OF ACTION:

Criminal

MATTER TO BE HEARD:

Arraignment

DATE OF APPLICATION:

7/3/2007

COUNSEL FOR DEFENDANT(S):

David C. O'Mara, Esq.

Setting at 09:00:00 on 7/17/2007

JOB	START TIME	USAGE	PHONE NUMBER/ADDRESS	TYPE	PAGES	MODE	STATUS
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FILED
JUL - 3 2007
RONALD A. LONGIN, JR., CLERK
By: *[Signature]*
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE
OF

STATE OF NEVADA,
Plaintiff,
vs.
BRENDAN DUNCKLEY
Defendant.

Case No. CR07-1728
Dept No. D4

APPLICATION FOR SETTING

TYPE OF ACTION: Criminal
MATTER TO BE HEARD: Arraignment
DATE OF APPLICATION: 7/3/2007
COUNSEL FOR DEFENDANT(S): David C. O'Mara, Esq.

Setting at 09:00:00 on 7/17/2007

ORIGINAL FILED

DA # 373085

RPD RP07-009446, RPD RP05-034027

CODE 1800

Richard A. Gammick

#001510

P.O. Box 30083

Reno, NV 89520-3083

(775) 328-3200

Attorney for Plaintiff

2007 JUL 12 PM 2:41

RONALD A. LONGTIN, JR.

BY

DEPUTY

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

IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR07-1728

v.

Dept. No. 4

BRENDAN DUNCKLEY,

Defendant.

INFORMATION

RICHARD A. GAMMICK, District Attorney within and for the County of Washoe, State of Nevada, in the name and by the authority of the State of Nevada, informs the above entitled Court that BRENDAN DUNCKLEY, the defendant above named, has committed the crimes of:

COUNT I. SEXUAL ASSAULT ON A CHILD, a violation of NRS 200.366, a felony, (F1000) in the manner following:

That the said defendant on or between the 14th day of August A.D., 1998, and the 13th day of August A.D., 2000, or thereabout, and before the filing of this Information, at and within the County of Washoe, State of Nevada, did willfully and unlawfully subject ASHLEY V., a female child under the age of fourteen years,

1 having a date of birth of August 14, 1986, to sexual penetration,
2 against the victim's will or under conditions in which the defendant
3 knew or should have known that the victim was mentally or physically
4 incapable of resisting or understanding the nature of the defendant's
5 conduct, to wit, sexual intercourse, in a parking lot at or near
6 Longley Lane, Reno, Washoe County, Nevada;

7 or in the alternative,

8 COUNT II. LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN
9 YEARS, a violation of NRS 201.230, a felony, (F650) in the manner
10 following:

11 That the said defendant on or between the 14th day of
12 August A.D., 1998, and the 13th day of August A.D., 2000, or
13 thereabout, and before the filing of this Information, at and within
14 the County of Washoe, State of Nevada, did willfully, unlawfully, and
15 lewdly commit a lewd or lascivious act upon or with the body of
16 ASHLEY V., having a date of birth of August 14, 1986, a female child
17 under the age of fourteen years at the time that the said act was
18 committed, in that the said defendant engaged the victim in sexual
19 intercourse at or near Longley Lane, Reno, Washoe County, Nevada,
20 and/or put his hand down her pants to fondle her genital area in an
21 elevator at the Atlantis Hotel and Casino, 3800 South Virginia
22 Street, Reno, Washoe County, Nevada, with the intent of arousing,
23 appealing to, or gratifying the lust, passions, or sexual desires of
24 himself or the child;

25 or in the alternative,

26 ///

1 COUNT III. STATUTORY SEXUAL SEDUCTION, a violation of NRS
2 200.364 and NRS 200.368, a felony, (F1010) in the manner following:

3 That the said defendant on or between the 14th day of
4 August A.D., 1998, and the 13th day of August A.D., 2000, or
5 thereabout, and before the filing of this Information, at and within
6 the County of Washoe, State of Nevada, did willfully and unlawfully,
7 being over 21 years of age, commit an act of statutory sexual
8 seduction with the person of ASHLEY V., having a date of birth of
9 August 14, 1986,, who was then and there under the age of 16 years,
10 in that the said defendant engaged in an act of sexual intercourse
11 with the said ASHLEY V. in a parking lot at or near Longley Lane,
12 Reno, Washoe County, Nevada.

13 COUNT IV. SEXUAL ASSAULT, a violation of NRS 200.366, a
14 felony, (F1000) in the manner following:

15 That the said defendant on the 10th day of March A.D.,
16 2007, or thereabout, and before the filing of this Information, at
17 and within the County of Washoe, State of Nevada, did willfully and
18 unlawfully subject JESSICA H. to sexual penetration, against the
19 victim's will and/or under conditions in which the defendant knew or
20 should have known that the victim was mentally or physically
21 incapable of resisting or understanding the nature of the defendant's
22 conduct, to wit, fellatio at 1675 Sky Mountain Drive, #827, Reno,
23 Washoe County, Nevada.

24 ///

25 ///

26 ///

1 All of which is contrary to the form of the Statute in such
2 case made and provided, and against the peace and dignity of the
3 State of Nevada.
4

5 RICHARD A. GAMMICK
6 District Attorney
7 Washoe County, Nevada

8 BY David W. Clifton
9 DAVID W. CLIFTON
10 1653
11 Chief Deputy District Attorney
12
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1 The following are the names and addresses of such witnesses
2 as are known to me at the time of the filing of the within
3 Information:

4
5 RENO POLICE DEPARTMENT

6 DETECTIVE T.K. BROOME
7 OFFICER SCOTT HEGLAR

8 ASHLEY V., Silver Springs Conservation Camp

9 JESSICA RAE H.
10
11
12
13

14 The party executing this document hereby affirms that this
15 document submitted for recording does not contain the social security
16 number of any person or persons pursuant to NRS 239B.230.
17

18 RICHARD A. GAMMICK
19 District Attorney
20 Washoe County, Nevada

21
22 By David W. Clifton
23 DAVID W. CLIFTON
24 1653
25 Chief Deputy District Attorney

26 PCN RPD0726517C
PCN RPD0726524C

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ORIGINAL

FILED

2007 JUL 19 AM 10:37

RONALD A. LONGTIN, JR.

BY DPJ
DEPUTY

CODE 3700

CR07-1728 DC-990001297-093
STATE VS. BRENDAN DUNCKLEY 142 Pages
District Court 07/19/2007 10:37 AM
Washoe County 3700
FILED

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

THE STATE OF NEVADA,

Plaintiff,

Case No. CR07-1728

Dept. No. 4

vs.

BRENDAN DUNCKLEY

PROCEEDINGS

w/b

July 19, 2007

Received of Justice of the Peace of Reno Township Documents to be filed:

1. TRANSCRIPT OF PROCEEDINGS HELD ON JULY 2, 2007
2. SECOND AMENDED CRIMINAL COMPLAINT; ARREST REPORT AND DECLARATION OF PROBABLE CAUSE (RPD 0726517C); CRIMINAL COMPLAINT; ARREST REPORT AND DECLARATION OF PROBABLE CAUSE (RPD 0726524C);
3. APPLICATION FOR APPOINTMENT OF PUBLIC DEFENDER; WASHOE COUNTY PUBLIC DEFENDER CASE CONFLICT NOTIFICATION
4. CERTIFIED COPY OF COURT DOCKET
5. ACTION BAIL BOND IN THE SUM OF \$15,000.00 (POWER NO. A25-00325488); ACTION BAIL BOND IN THE SUM OF \$18,500.00 (POWER NO. A25-00325487)

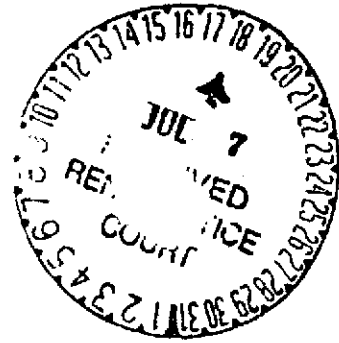
RONALD A. LONGTIN, JR.

Clerk of the Court

By


Deputy

ORIGINAL



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

--o0o--

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

TRANSCRIPT OF PROCEEDINGS
PRELIMINARY EXAMINATION
Monday, July 2, 2007

APPEARANCES:

For the Plaintiff:	DAVID W. CLIFTON, ESQ., Deputy District Attorney One South Sierra Street Reno, Nevada 89520
--------------------	--

For the Defendant:	DAVID C. O'MARA, ESQ., Attorney at Law P.O. Box 2270 Reno, Nevada 89505
--------------------	--

Reported by:	EVELYN J. STUBBS, CCR #356
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I N D E X

WITNESSES:

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

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

EXHIBITS:

Marked for
IDENTIFICATION

Admitted into
EVIDENCE

None Marked

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

2 --oOo--

3
4 THE COURT: This is the time set for Case Number
5 RCR 2007-033884, State versus Brendan Dunckley, who is
6 present in court with his attorney, David O'Mara.

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

8 Are we ready to proceed to preliminary hearing?

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

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

11 THE COURT: Thank you.

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

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

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

23 Will there be a Rule of Exclusion being invoked?

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

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

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

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

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

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

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

17 AUDIENCE MEMBER: Jessica.

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

19 AUDIENCE MEMBER: Jolene.

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

21 MR. CLIFTON: No.

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

23 MR. CLIFTON: Yes, and Detective Broome.

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

1 Who is going to be your first witness?

2 MR. CLIFTON: Jessica.

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

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

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

11 Let me swear you in, please.

12

13 JESSICA H.,

14 called as a witness by the plaintiff herein,

15 being first duly sworn, was examined

16 and testified as follows:

17

18 DIRECT EXAMINATION

19 BY MR. CLIFTON:

20 Q Please tell us your first name.

21 A Jessica.

22 Q Is that standard spelling?

23 A Yes.

24 Q And your last name begins with what letter?

1 A H.

2 Q What's your date of birth?

3 A 8-5-83.

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

6 A Yes, I am.

7 Q How long have you resided here?

8 A Five years.

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

12 A Yes.

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

15 A Yes.

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

18 A Yes, I did.

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

21 A Yes.

22 Q Was he living with you at the time?

23 A Yes.

24 Q What was that address?

1 A 1675 Sky Mountain Drive, Apartment 827.

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

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

10 MR. CLIFTON: Thank you.

11 BY MR. CLIFTON:

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

14 A Yes.

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

17 A Yeah.

18 Q Which was it? Was it both --

19 A It was just an argument.

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

22 A Emialiano.

23 Q Okay. E-M --

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

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

3 A Yes.

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

6 A No, it was just before that.

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

9 A No.

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

12 A Yes.

13 Q Do you remember where you went?

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

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

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

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

22 A No.

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

1 A Yeah.

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

5 A Yes.

6 Q Can you describe?

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

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

10 A Yeah.

11 Q So you were going back toward your apartment?

12 A Yes.

13 Q Was it a male or female?

14 A Male.

15 Q Was he in a vehicle?

16 A Yes.

17 Q What type?

18 A It was a minivan.

19 Q And he pulled up alongside of you?

20 A Um-hum.

21 Q Did he have his window down?

22 A Yes.

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

1 A The passenger.

2 Q He said what to you?

3 A "Do you need a ride?"

4 Q What did you respond, if anything?

5 A I just kept walking.

6 Q You didn't say anything?

7 A No.

8 Q What happened next?

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

10 Q You didn't say anything again?

11 A (Shakes head.)

12 Q Answer out loud for the reporter.

13 A No.

14 Q What happened after that, the second time?

15 A I just walked to my apartment.

16 Q Okay. Was he still following you or along side

17 of you or what?

18 A Not that I knew of.

19 Q So you thought when you were going to your

20 apartment he wasn't behind you anymore?

21 A Yes, sir.

22 Q Did anything happen as you approached your

23 apartment?

24 A No.

1 Q Okay. Are you on the first floor, second, what?
2 A Second.
3 Q Stairs or elevator?
4 A Stairs.
5 Q Is there a name for these apartments or
6 anything?
7 A Vista Ridge.
8 Q And you're still alone, correct?
9 A Yes.
10 Q You're not carrying anything?
11 A No.
12 Q Do you even have a purse, do you know?
13 A No.
14 Q Was your boyfriend at the apartment when you
15 left for this walk?
16 A Yes.
17 Q How long were you gone?
18 A 20 minutes, 15 minutes.
19 Q Did you know whether he would be there or not
20 when you got back?
21 A Yes.
22 Q All right. Did you think he would be or
23 wouldn't be?
24 A Yeah, I suspected he would be there. He

1 wouldn't have gone anywhere.

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

4 A Yes.

5 Q And you approached your door?

6 A Um-hum.

7 Q Was your door locked or open?

8 A It was unlocked.

9 Q Did you go inside?

10 A Yes, I did.

11 Q Can you tell us what happened next?

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

14 Q Who is Josh?

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

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

18 A Yeah, and I walked straight back --

19 Q Into the apartment?

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

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

1 A No.

2 Q Somebody else?

3 A Somebody else.

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

6 A No.

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

9 A Yeah.

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

12 A Yes.

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

15 A Yeah.

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

18 A Um-hum.

19 Q What was it?

20 A I heard someone come into my apartment.

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

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

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

3 A No.

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

6 A No.

7 Q It was shut?

8 A Yeah.

9 Q Was it locked?

10 A No.

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

13 A Yes.

14 Q The door itself was closed, though?

15 A Um-hum.

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

18 A No.

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

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

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

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

1 Q So he had come into the apartment?
2 A Um-hum.
3 Q And the door closed behind him?
4 A Yes.
5 Q Or he closed the door?
6 A (Nods head.)
7 Q And you didn't agree to this?
8 A No.
9 Q You didn't even know he was behind you?
10 A No.
11 Q You didn't even know he'd come into the
12 apartment?
13 A No.
14 Q How did you react?
15 A I was startled, I was scared.
16 Q What did you do?
17 A He told me -- he stood right there and he told
18 me to suck his dick.
19 Q Did you recognize this person from any earlier
20 occasion that night before you saw him in the apartment?
21 A No.
22 Q Was it the same man that was in the van outside
23 that had approached you on the street?
24 A I didn't really look at him that good when I was

1 walking down the street.

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

3 A No.

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

6 A Um-hum.

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

11 A Yes.

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

14 A No.

15 Q Didn't think you knew him?

16 A No.

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

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

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

22 Q Okay. Where were you when this happened?

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

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

1 bedroom or anything?

2 A No.

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

4 A I went to him.

5 Q This person you never met before?

6 A Yes.

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

8 off?

9 A No.

10 Q Did he take any of his clothes off?

11 A No.

12 Q Was it a zipper, buttoned?

13 A Buttoned, it was his pants.

14 Q Okay. And who undid his pants?

15 A He did.

16 Q When he said that to you, did he already have

17 his penis exposed?

18 A He was exposing it.

19 Q As he was saying it?

20 A Yes.

21 Q Were you scared, frightened?

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

23 Q Did he threaten you?

24 A No.

1 Q Did you argue with him, say anything to him?
2 A No, I didn't know what to do. He told me to do
3 it and --
4 Q What were you afraid of?
5 A Of him.
6 Q Did he have any weapon?
7 A No.
8 Q Did he threaten to hit you, strike you, anything
9 like that?
10 A No.
11 Q All right. And you didn't try to avoid him or
12 get away or say, "I'm going to call the cops," or
13 anything like that?
14 A I didn't have any way to.
15 Q I mean, you didn't say that though, either?
16 A No.
17 Q You had no way to call anybody or --
18 A No.
19 Q Was it close proximity, him to you?
20 A Um-hum. It's a very small apartment.
21 Q Do you have a phone in the apartment?
22 A No, I don't.
23 Q Okay. So when you went toward him --
24 A Um-hum.

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

3 A He was standing, I was standing.

4 Q Okay. And you just bent down?

5 A Um-hum.

6 Q And you said you bit him?

7 A Yes.

8 Q Did he have an erection?

9 A Yes.

10 Q Was this consensual in any way?

11 A No.

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

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

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

16 A Um-hum.

17 Q He had an erection?

18 A (Nods head.)

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

21 A No, no.

22 Q Did he say anything?

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

1 Q Don't go that far yet.
2 He said stop or said something?
3 A He said "ow."
4 Q Ow or stop?
5 A Um-hum.
6 Q Did he strike you, hit you?
7 A He slightly hit me upside my head so that I
8 would stop.
9 Q Okay. He was blocking your only realistic exit
10 to the apartment; is that what you said before?
11 A Yes.
12 Q And your boyfriend was not there?
13 A No.
14 Q So you had nowhere else you could go. And
15 you're afraid of him, but he didn't have a weapon. What
16 were you afraid of?
17 A I didn't know what would happen.
18 Q That he might strike you?
19 A Yes.
20 Q Okay. After you bit him, his penis went
21 flaccid?
22 A Yes.
23 Q It was no longer erect, correct?
24 A No.

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

3 A No, he ran.

4 Q That chair --

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

7 BY MR. CLIFTON:

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

10 A He pulled up his pants and ran out.

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

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

13 Q Okay. Chased him. Were you yelling?

14 A Yes.

15 Q What were you yelling?

16 A "Stop him. Stop him."

17 Q Were you yelling that to other people?

18 A Yeah.

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

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

23 Q And did they?

24 A Yes.

1 Q And were the police called?

2 A Yes.

3 Q And they came and interviewed you?

4 A Yes.

5 Q Did you tell them about the stranger that came

6 into your apartment and told you to, quote, suck his

7 dick?

8 A Yes.

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

10 A Yes.

11 Q Do you recall this person well enough to give us

12 a description of him?

13 A No.

14 Q Okay. Was he black or white?

15 A He was white.

16 Q Did he have hair?

17 A Yeah.

18 Q Was he wearing a hat?

19 A No.

20 Q Do you remember the color of the hair?

21 A Brown.

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

23 chance?

24 A In his 30s.

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

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

5 Q To grab when?

6 A When I was chasing him.

7 Q So you actually were like right behind him?

8 A Yes.

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

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

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

16 A No.

17 Q -- to your knowledge?

18 A No.

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

21 A No.

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

24 A (Nods head.)

1 Q You need to answer out loud.

2 A Yes.

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

5 A Yes.

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

8 A In front.

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

10 A A black suit.

11 Q Where is he seated in relation to me?

12 A To the side of you.

13 Q Right side or left side.

14 A Left.

15 Q How many people over, one or two?

16 A One.

17 Q The person right next to me?

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

19 Q Second person over?

20 A Yeah.

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

23 THE COURT: Record will so reflect.

24 ///

1 BY MR. CLIFTON:

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

5 A Yes.

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

8 A Um-hum.

9 Q Were you still angry?

10 A Yeah.

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

14 A What the stranger made me do with him.

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

16 A No.

17 MR. CLIFTON: Thank you. No further.

18 THE COURT: Mr. O'Mara.

19

20 CROSS-EXAMINATION

21 BY MR. O'MARA:

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

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

3 A Okay.

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

7 Do you need a break or anything?

8 A No.

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

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

15 BY MR. O'MARA:

16 Q So it was just a mere argument?

17 A Yes.

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

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

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

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

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

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

3 A Yes.

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

6 A Yeah, my brother's house.

7 Q What is your brother's name?

8 A Justin.

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

10 A Yes.

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

12 A Hang out.

13 Q Did you drink?

14 A Yes.

15 Q What did you drink?

16 A Beer.

17 Q And how many beers did you drink?

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

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

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

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

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

1 afternoon, up until the evening.

2 Q Up until what time?

3 A Around 9:00, 8:30.

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

7 A Yeah.

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

10 A Yeah.

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

13 A Maybe, like, two.

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

16 A Yes.

17 Q And what type of beers were they?

18 A Budweiser and Corona.

19 Q Did you have any shots of hard liquor?

20 A (Shakes head.)

21 Q Did you do any other recreational drugs?

22 A No.

23 Q How did you get back to your apartment?

24 A My brother.

1 Q Why did your brother take you back?

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

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

6 A Just like maybe two blocks.

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

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

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

13 A No.

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

17 A Yes.

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

21 I guess we will have to use the board.

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

24 A (Witness complies.)

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

2 Is that the entrance?

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

5 Q And what are you drawing now?

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

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

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

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

13 A Um-hum.

14 Q And you turned left, correct?

15 A Um-hum.

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

18 THE WITNESS: Yes.

19 BY MR. O'Mara:

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

22 A Josh (indicating).

23 Q So you weren't really screaming it?

24 A No.

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

3 A I was standing right here (indicating).

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

6 A Yes.

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

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

12 Q To the bar?

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

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

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

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

19 Q There was no weapon, correct?

20 A No.

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

23 A Yes.

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

1 to happen to you"?

2 A No.

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

6 A (Nods head.)

7 Q Did you try to avoid him?

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

10 THE WITNESS: Yes.

11 THE COURT: All right. Thank you.

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

13 BY MR. O'MARA:

14 Q How long did that take?

15 A Couple of seconds.

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

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

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

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

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

1 A Yeah.

2 Q Can you see the front door?

3 A No.

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

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

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

11 A Yes.

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

14 A No.

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

17 A No.

18 Q Do you have locks on your bathroom door?

19 A Yeah, but it doesn't work.

20 Q Did you ever go into your bedroom?

21 A No.

22 Q Are there locks on that door?

23 A No.

24 Q You testified that Mr. Dunckley, after you

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

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

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

6 A Yes.

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

9 A Correct.

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

11 A Yes.

12 Q Did he force you down?

13 A No, but he demanded it.

14 Q How did he demand it?

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

17 Q Did he say, "Bend down"?

18 A No.

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

20 A No.

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

23 A Yes.

24 Q How many times did you bite him?

1 A Once.

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

3 A No.

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

6 A A couple of seconds.

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

9 A What was that?

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

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

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

17 A No.

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

20 A Um-hum.

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

23 A No.

24 Q You testified that if you saw this person you

1 would recognize him, correct?

2 A That I would recognize him?

3 Q Yes.

4 A Yes.

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

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

12 Q What?

13 A I'm sorry.

14 Q Keep going?

15 A When Detective Broome called me to his office.

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

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

19 Q How many individuals did the lineup include?

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

21 Q Were they all white males?

22 A Yeah.

23 Q Did they all have brown hair?

24 A Yeah.

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

3 A No.

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

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

7 Q And what did you tell them?

8 A No.

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

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

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

15 A Yes.

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

17 A Kind of, yeah.

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

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

22 MR. CLIFTON: Just very little.

23 ///

24 ///

REDIRECT EXAMINATION

BY MR. CLIFTON:

Q Jessica, we're just about done.

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

A No, he did.

Q How did he do it?

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

Q Did he grab your head?

A No.

Q So he had a hold of his penis?

A Um-hum.

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

A The shaft.

Q Did your mouth go onto the penis?

A Yes.

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

A Yes.

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

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

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

3 Q He lost his erection?

4 A Yes.

5 Q Was your intent to keep biting?

6 A I tried to, but he pulled away.

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

10 A Yes.

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

13 A Yes.

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

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

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

19 A Yes.

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

22 A Yes.

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

1 bottom, correct?

2 A Yes.

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

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

6

7

RECROSS-EXAMINATION

8 BY MR. O'MARA:

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

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

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

16 Q So he actually said "stop"?

17 A Yes.

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

20 A No, I don't.

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

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

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

1 redirect.

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

3 BY MR. O'MARA:

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

7 A No.

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

11 A Yes.

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

14 A I figured there should have been.

15 Q And why do you say that?

16 A Because I know I bit pretty hard.

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

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

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

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

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

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

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

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

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

14 MR. CLIFTON: Michelle.

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

17 (Witness Sworn)

18 THE COURT: Thank you. Please be seated.

19

20 MICHELLE A.,
21 called as a witness by the plaintiff herein,
22 being first duly sworn, was examined
23 and testified as follows:
24

DIRECT EXAMINATION

BY MR. CLIFTON:

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

A Michelle.

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

A E-L-L-E.

Q And your first initial of your last name?

A A.

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

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

Q '86?

A Um-hum.

Q So that would make you almost 21?

A Yeah.

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

A Yeah.

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

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

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

A That's my best friend.

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

2 A Yes.

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

6 A Yeah.

7 Q Is it a he or a she?

8 A He.

9 Q Do you know his name?

10 A Yes.

11 Q What is it?

12 A Brendan.

13 Q Do you know his last name?

14 A Yes.

15 Q What is that?

16 A Dunckley.

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

20 A Morgan.

21 Q Who is Morgan?

22 A His wife.

23 Q Still to this day?

24 A I'm not sure.

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

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

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

6 A Correct.

7 Q Did you meet them through Lura?

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

10 Q How old was Lura at the time?

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

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

17 A No, I don't think so.

18 Q Girlfriend/boyfriend?

19 A Yes.

20 Q But they were together?

21 A Yes.

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

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

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

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

5 A No.

6 Q Were they older than you?

7 A Yes.

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

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

10 A No.

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

13 A No.

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

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

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

1 Q How old is your son now?

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

3 Q Do you have a son?

4 A No, they have a son.

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

7 A Yes.

8 Q And your daughter is six?

9 A Six.

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

13 A Yeah.

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

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

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

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

23 A Right.

24 Q But she's older than you?

1 A Yeah.

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

4 A Yeah, just to hang out.

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

7 A Right.

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

9 A Yes.

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

11 A Yes.

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

14 A No.

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

16 A Right.

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

19 A Yes.

20 Q All right.

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

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

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

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

2 A Yeah.

3 Q So you were pregnant with your daughter at the

4 time, so you couldn't have been any older than 13?

5 A Right.

6 Q And the four of you guys would hang out for

7 what, couple weeks, months, years? How long would you

8 say you were friends?

9 A For the longest time. Probably about two years

10 ago I started getting into my own thing, I guess.

11 Q How much older than you was Morgan and Brendan,

12 do you know?

13 A Maybe -- I don't remember, but it was quite a

14 bit, maybe like seven to ten, maybe, years.

15 Q Years older?

16 A Um-hum.

17 Q Each of them?

18 A Yes.

19 Q Was Brendan older than Morgan?

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

21 Q Okay. So they were adults, you were kind of --

22 you and Lura were kind of kids?

23 A Yes.

24 Q But the fact that you and Morgan were both

1 pregnant was something you had in common?

2 A Right.

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

6 A Yes.

7 Q Why or how was that coming about?

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

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

15 A No.

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

19 A Yes.

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

22 A No, Lura wasn't there.

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

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

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

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

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

8 A After.

9 Q Do you remember how much after?

10 A Probably about six months, maybe.

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

13 A September 23rd, 2000.

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

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

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

19 A Nope, never.

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

21 A Never anything.

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

24 A No.

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

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

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

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

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

14 A No, I was 14.

15 Q You had your daughter when you were 13?

16 A Yeah.

17 Q Then you turned 14 right after that?

18 A Yeah.

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

21 A I'm going to say yeah.

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

24 A As far as I knew, no.

1 Q Consensually or not or otherwise?

2 A None.

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

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

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

13 A Yes.

14 Q And that was involving Lura and Brendan?

15 A Yeah.

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

18 A None.

19 Q Okay.

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

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

2 Q Lura is about two or three months --

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

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

6 A Younger.

7 Q So she was born in 1987?

8 A Yeah.

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

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

12 Q But which one is correct?

13 A '86.

14 Q Okay. All right.

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

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

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

19

20 CROSS-EXAMINATION

21 BY MR. O'MARA:

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

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

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

6 A Yeah.

7 Q How many months pregnant were you?

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

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

14 A Yes, it would be.

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

16 A No.

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

20 A Right.

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

23 THE COURT: Okay. Mr. Clifton.

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

1 Honor.

2

3

REDIRECT EXAMINATION

4 BY MR. CLIFTON:

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

7 A Yeah.

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

10 A No.

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

13 A No.

14 Q And he told you not to tell?

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

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

20 A My vaginal area.

21 Q Inside or outside of the clothing?

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

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

2 A Yes.

3 Q Was there any kind of penetration?

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

5 Q Was it fondling, rubbing?

6 A Yeah.

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

8 A Yes.

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

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

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

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

20 A Maybe.

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

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

24 Q And forgot your birthday?

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

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

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

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

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

11 THE COURT: Mr. O'Mara.

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

13

14 RE CROSS-EXAMINATION

15 BY MR. O'MARA:

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

18 A After I hung out with them.

19 Q Can you give me a date?

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

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

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

3 A Yes, I did.

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

6 A No.

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

9 A When I talked to the detective?

10 Q Correct.

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

12 Q April of this last year, 2007?

13 A Yeah.

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

16 A Never.

17 Q The police officer came to you?

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

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

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

24 Q Do you have some type of anger issue against

1 Mr. Dunckley?

2 A No, I don't.

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

4 THE COURT: All right.

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

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

12 Next we might as well call Ashley.

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

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

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

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

22 (Witness sworn.)

23 THE COURT: Thank you.

24 ///

1 ASHLEY V.,
2 called as a witness by the plaintiff herein,
3 being first duly sworn, was examined
4 and testified as follows:
5

6 DIRECT EXAMINATION

7 BY MR. CLIFTON:

8 Q Please tell us your first name.

9 A Ashley.

10 Q Spell it.

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

12 Q And your first initial of your last name?

13 A V.

14 Q "V" as in Victor?

15 A Yes, sir.

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

18 A Correct.

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

23 A Yes, sir.

24 Q How would you know this person?

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

2 Q What is your date of birth?

3 A 8-14-86.

4 Q So you're going to be 21?

5 A In August.

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

8 A No.

9 Q Was it just friendship?

10 A Yes.

11 Q Is he older or younger than you?

12 A Older.

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

15 A 12.

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

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

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

23 A I think so.

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

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

3 A Yes.

4 Q Are you housed together?

5 A We're at the same camp.

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

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

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

11 A Yeah, like 11.

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

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

15 Q Do you remember Michelle having a child?

16 A Yes.

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

18 A Yes.

19 Q Were all three of you friends?

20 A We all went to the same middle school.

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

23 A I believe she was 13.

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

1 high school?

2 A Middle school.

3 Q Toward the end of the middle school years?

4 A Yeah.

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

6 A Yes.

7 Q Before Michelle was pregnant?

8 A Yes.

9 Q You're sure of that?

10 A Yes.

11 Q Okay. Do you know Morgan?

12 A Yes.

13 Q What was her relationship to any of you or to

14 him?

15 A She was also our friend and his wife or his

16 fiancée, I believe.

17 Q All right. When you first met him?

18 A I think so.

19 Q And they eventually got married?

20 A Yes.

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

22 house?

23 A Yes.

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

1 you were in school or anything?

2 A No.

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

5 A Yes.

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

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

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

11 A Yes.

12 Q Same girl?

13 A Yes.

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

15 A Yes.

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

17 A Yes. I never told him no.

18 Q Okay. So it was always consensual?

19 I need a yes or no out loud.

20 A Yes.

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

24 In normal conversations you can use those

1 expressions, but she really needs a word.

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

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

6 THE WITNESS: Yes, sir.

7 MR. CLIFTON: Thank you, Your Honor.

8 BY MR. CLIFTON:

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

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

15 Q Was there anyone else in the car?

16 A No.

17 Q Just you and him?

18 A Yes.

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

20 A Passenger.

21 Q What kind of car?

22 A Taurus, Ford Taurus.

23 Q Why was he dropping you off there?

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

1 Q With his girlfriend, fiancée or wife?
2 A Yes.
3 Q Were there any other people at the house?
4 A I don't remember.
5 Q Were there times when you Michelle and/or Lura
6 would stay over at the same time?
7 A Yes.
8 Q Were there times you would stay over there
9 without them?
10 A I don't remember.
11 Q And he is younger or older than you?
12 A He is older.
13 Q How much?
14 A I don't know.
15 Q Could it be ten years?
16 A Could be.
17 Q Was this the first time in the car that the two
18 of you had any romantic involvement, sexual involvement
19 at all?
20 A That was the first and only time we had
21 intercourse.
22 Q Intercourse. Were there times where it might
23 have started before the car situation, like at the
24 Atlantis?

1 A Yeah.

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

4 A I don't recall the first time.

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

7 A Probably 12.

8 Q In middle school?

9 A Yes.

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

13 A Pretty good recollection.

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

17 A Hum-um.

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

20 A At the Atlantis.

21 Q Was there anything before that?

22 A No.

23 Q At the Atlantis in the elevator?

24 A Yes.

1 Q Who else was in the elevator?

2 A Just him and I.

3 Q Tell us what happened.

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

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

11 A Okay.

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

14 A Yes.

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

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

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

22 A Yes.

23 Q The front of your pants or the back?

24 A The front.

1 Q Vaginal area?
2 A Yes.
3 Q Under your panties or over or were you wearing
4 any?
5 A Under.
6 Q So under everything. Skin to skin?
7 A Yes.
8 Q When he did that were you kissing?
9 A No.
10 Q Did he just do it like right when the door shut
11 or did he just do it as you were going down?
12 A As we were going down.
13 Q You didn't see it coming? You didn't know he
14 was going to do it?
15 A No.
16 Q I know you're saying you didn't voice an
17 objection and you're maintaining it was consensual, but
18 he just reached over and put his hand down your pants?
19 A Yes.
20 Q Didn't say he was going to do it, didn't ask if
21 he could do it; anything like that?
22 A No.
23 Q When he does that does he make any penetration
24 to your vagina?

1 A No.

2 Q Does he rub?

3 A Yes.

4 Q With his hand?

5 A Yes.

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

7 A No.

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

10 A 8th grade.

11 Q And you were 12 or 13 now?

12 A I was 12.

13 Q But definitely less than 14?

14 A Yes.

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

17 A I don't know.

18 Q Within a year?

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

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

1 A Yeah.

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

4 A Yes.

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

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

11 Q What happened to Lura and Michelle?

12 A I don't think Lura was there.

13 Q Michelle, what happened to her?

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

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

18 A No.

19 Q Brendan didn't tell her?

20 A No.

21 Q Did anything else happen in the elevator?

22 A No.

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

1 that was the end of it?

2 A Yes.

3 Q And nobody tells anybody what happened?

4 A No.

5 Q Going now to this next time where he drops you

6 off at your parents. That's off Longley Lane, south

7 Reno?

8 A Yes, by Mira Loma.

9 Q In the apartments there or in a house?

10 A It's apartments.

11 Q He drops you off, just the two of you in the

12 car. What happens there?

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

14 the apartments.

15 Q I see.

16 A And we both got into the back.

17 Q Was it at night?

18 A No, it was in the morning.

19 Q Was it dark or light out?

20 A Light.

21 Q How old were you now?

22 A I think about the same age.

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

24 A Yes.

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

3 A Yes.

4 Q Michelle hasn't had her baby yet?

5 A Are you asking me?

6 Q Yes.

7 A No.

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

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

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

13 A I'm older.

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

16 A We had intercourse.

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

19 A Correct.

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

22 A Correct.

23 Q And nobody told Morgan, I take it?

24 A No.

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

3 A No.

4 Q Would you recognize him if you saw him?

5 A Yes.

6 Q Is he here in the courtroom?

7 A Yes.

8 Q Where in relation to me?

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

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

12 A To your left.

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

15 A One over from that.

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

18 THE COURT: The record will so reflect.

19 MR. CLIFTON: Thank you.

20 No further questions.

21 THE COURT: Mr. O'Mara.

22 MR. O'MARA: Thank you.

23 ///

24 ///

CROSS-EXAMINATION

BY MR. O'MARA:

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

A Okay.

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

A Correct.

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

A Only for about two weeks.

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

A No.

Q Have you been detained with Michelle recently?

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

Q How long have you been in prison?

A Since November.

Q November 2000?

A No.

Q November 2007, I'm sorry.

1 A 2006.

2 Q Any time between November 2006, to today's date

3 besides the two weeks, were you housed with Michelle?

4 A No.

5 Q You testified that you don't remember how you

6 met Mr. Dunckley; is that correct?

7 A Correct.

8 Q Would it be fair to say that you and Michelle

9 met Mr. Dunckley at the same time?

10 A I don't remember.

11 Q Would it be plausible --

12 A Yeah.

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

14 A Yes.

15 Q You testified that you, Lura, and Michelle all

16 went to the same school; is that correct?

17 A Correct.

18 Q What school did you go to?

19 A Dilworth Middle School.

20 Q Have you kept in contact with this Lura?

21 A I haven't, no.

22 Q When was the last time you had contact with

23 Lura?

24 A I think I was maybe about 14.

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

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

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

6 A Like were we all together?

7 Q Correct.

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

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

12 A Yes.

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

16 A Correct.

17 Q Can you give us a specific month?

18 A No.

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

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

23 Q Do you remember which elevator you went to?

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

1 that was all glass that you can see through.

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

4 A I couldn't.

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

7 A Not more than a couple minutes.

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

10 A Correct.

11 Q How sure are you of those dates?

12 A Pretty sure.

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

15 A Like, maybe 80 percent.

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

18 A Not that I recall.

19 Q Could she have already had the baby?

20 A No.

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

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

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

5 A No.

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

7 A No.

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

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

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

13 A I don't recall.

14 Q Were you wearing a skirt?

15 A No.

16 Q Were you wearing a blouse?

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

18 Q Do you recall if you had buttons?

19 A No.

20 Q A zipper?

21 A (Shakes head.)

22 Q Were they baggie pants?

23 A I really don't remember.

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

1 A No.

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

4 A Yes.

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

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

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

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

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

12 A Yes.

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

16 A No.

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

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

23 That's new Nevada Supreme Court case law.

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

1 MR. CLIFTON: You can't ask one witness if
2 another witness is lying, and I think that's what he's
3 getting at.

4 THE COURT: Well, I think there's a discrepancy
5 in the testimony. To the extent he's trying to say
6 someone is lying, I don't know if that is where he's
7 headed.

8 I'll ask you to rephrase the question.

9 BY MR. O'MARA:

10 Q I'm trying to figure out the dates in which this
11 occurred.

12 If an individual told you they had met this
13 person in 2000, would they be correct?

14 A Yeah. I don't know. All I know is that when I
15 met him I was, like, 12 years old.

16 Q But you're not sure?

17 A Of what?

18 Q When you met him?

19 A I'm not sure of how I met him.

20 Q But you're sure of how you met him?

21 A I'm not sure how I met him. I'm sure of how old
22 I was when I met him.

23 Q So if someone says you met him for the first
24 time in 2000, they would be incorrect?

1 A Yes.

2 Q When did you first notify the police department
3 in regard to this incident?

4 A I never did.

5 Q How did this incident come about?

6 A What incident? Why I'm here today?

7 Q Correct.

8 A I got a call while I was in camp incarcerated, I
9 guess, pertaining to another case that's going on or
10 whatever.

11 Q And who contacted you?

12 A A Detective Tom Broome, I believe.

13 Q And what did he tell you?

14 A He just asked me some questions about what I
15 could remember or if I could remember anything. Kind of
16 like the same questions you guys are asking me now.

17 Q Was this at the camp?

18 A Yes, it was a telephone call.

19 Q So he was not at the camp?

20 A No.

21 Q Do you know if this conversation was recorded?

22 A It was recorded.

23 Q When you first met Mr. Dunckley did you tell him
24 that you were 16 years old?

1 A I don't think so.

2 Q When you talked about getting in a car when
3 going to Longley Lane and Mira Loma apartments where
4 another incident occurred, do you know what type of car
5 that was?

6 A That I got into?

7 Q Yes.

8 A I'm almost positive it was a Ford Taurus.

9 Q It was the same blue Taurus?

10 A It was either silver or blue. I can't remember.

11 Q You testified that you had intercourse with
12 Mr. Dunckley. Can you explain what occurred in the back
13 of this vehicle?

14 A We got into the back seat and he set in the
15 back. He pulled down his pants and he put me on top of
16 him and helped me pretty much, helped me have sex with
17 him.

18 Q Was this your first time having sex?

19 A No.

20 Q Did you ever tell him that this wasn't your
21 first time?

22 A Did I ever tell him that it was?

23 Q That it wasn't your first time?

24 A No.

1 Q Did you notify the police department that you
2 had sexual intercourse with Mr. Dunckley?

3 A No.

4 Q Did this incident come up only when Detective
5 Broome called you?

6 A Yes.

7 MR. O'MARA: I have no other questions, Your
8 Honor.

9 THE COURT: Mr. Clifton, any redirect?

10 MR. CLIFTON: I think just one question.

11
12 REDIRECT EXAMINATION

13 BY MR. CLIFTON:

14 Q Ashley, I'm sorry, but we have to make this very
15 specific.

16 In the back seat of the car when you were on top
17 of him, you said he helped you -- and you called it --
18 have sex, have intercourse. Are we talking his penis in
19 your vagina?

20 A Yes.

21 Q When you say he helped you, does that mean he
22 was able to insert his penis in your vagina?

23 A He was holding my hips and guiding me.

24 Q Through the act of sexual intercourse?

1 A Yes.

2 MR. CLIFTON: Thank you. No further.

3 MR. O'MARA: I don't have any other questions,
4 Your Honor.

5 THE COURT: All right. Thank you very much.
6 You can step down. I appreciate your testimony.

7 MR. CLIFTON: Your Honor, if I may, a couple
8 amendments now to make, so we don't get them confused
9 with later possible amendments.

10 On Count I, II, and III, you can see that the
11 charges are charged alternately. And to be consistent
12 with her date of birth, which is what I tried to
13 concentrate on, focus on with her testimony, I would move
14 to change the dates on all three of these counts to the
15 14th day of August 1998, which is when she turned 12, and
16 I'd like to go to the 14th day of August 2000, rather
17 than 1999, which is when she turned 14.

18 And, Your Honor, I'd like to make it the 13th
19 day rather than the 14th day on the second one.

20 THE COURT: You're at line 16?

21 MR. CLIFTON: Yeah. So it would be the 14th day
22 of August 1998.

23 THE COURT: 13th or 14?

24 MR. CLIFTON: This one is the 14th.

1 THE COURT: The 14th day of August.
2 MR. CLIFTON: August 1998.
3 THE COURT: So January to August on line 17?
4 MR. CLIFTON: Yes. And then it should read,
5 "And the 13th day of August 2000." So between those two
6 dates, 14th day of August 1998, to the 13th day of August
7 2000, which would be the day before she turned 14.
8 And that would be consistent with the lewdness
9 charge, which is the alternative Count II.
10 MR. O'MARA: Your Honor, is the District
11 Attorney moving to amend this?
12 MR. CLIFTON: Yes, but I'm not quite done. I'm
13 moving to amend all three.
14 THE COURT: He's moving to amend the complaint.
15 MR. CLIFTON: 173.095 --
16 THE COURT: Mr. Clifton, just a minute. He's
17 moving to amend the complaint at line 16 on Page 1,
18 striking the word first or the letters, "1st through the
19 14th." And then it says, "day of," and then on line 17
20 he's changing January to August. And then he's changing
21 the word 31st to 13th. And then December he's changing
22 to August, and he's changing the year from 1998 to 2000.
23 MR. CLIFTON: Correct.
24 MR. O'MARA: We obviously object to this, Your

1 Honor. This complaint is completely vague and doesn't
2 give any notice to Mr. Dunckley as to what the charges
3 are he's being charged with. They can't come back out
4 and say that within a 10-year period of time this
5 incident happened. There has to be a standard of notice
6 in the complaint that allows Mr. Dunckley to defend
7 himself.

8 This is so far out, he doesn't have the proper
9 notice to defend himself.

10 MR. CLIFTON: And NRS 173.095 allows, with leave
11 of Court, for the State to amend a complaint, information
12 or indictment -- a complaint or information I should
13 say -- up until the time of verdict.

14 We have had many cases where an amendment is
15 made to a date, even at trial, based upon the evidence.
16 To conform to the evidence, Your Honor --

17 THE COURT: Okay. Okay. I'm going to overrule
18 the objection.

19 MR. CLIFTON: Thank you.

20 Lastly, just for the record, I wanted to mention
21 that we are dealing with a child here when this happened.
22 So the courts are much more lenient with that.

23 With respect to Count II, the dates would be the
24 same on lines 4 and 5, the same changes that we just

1 made. That would be the State's motion.

2 In addition, line 8 --

3 THE COURT: Just a minute. Give me just a
4 minute. I have to write very carefully.

5 All right. Line 14, I've changed the word 1st
6 to 14th. Line 5, I've changed January to August, 31st to
7 13th, and December to August, and the year 1998 to 2000.

8 MR. CLIFTON: And additionally, Your Honor, on
9 line 8, it has Ashley's birth date incorrect. It should
10 be August 14th, not March 14th of 1986.

11 So I'd make the amendment to change March to
12 August.

13 THE COURT: Do you want to do that also on Count
14 I at line 20?

15 MR. CLIFTON: Oh, I didn't even realize we had
16 it on Count I. Yes. Thank you.

17 THE COURT: Then on Page 2 at line 21, same
18 amendments?

19 MR. CLIFTON: Yes. And line 26 for her birth
20 date.

21 THE COURT: Okay. I have made those amendments.

22 MR. CLIFTON: On Page 3, Your Honor, at the very
23 top on line 2, the fifth word is "at." If we could just
24 strike that word so that it reads, "Ashley V., in a

1 parking lot."

2 THE COURT: All right. I've stricken the word
3 "at."

4 MR. CLIFTON: And that's all I have based upon
5 her testimony, Your Honor. And if there's no objection
6 is that "at" being deleted, I take it?

7 MR. O'MARA: I don't have an objection to the
8 "at," but I still maintain my objection to the others.

9 THE COURT: So noted. Thank you.

10 MR. CLIFTON: I would like to call Tom Broome to
11 the stand, please.

12 THE COURT: Good afternoon. There's a door
13 handle that will let you into the witness stand there.
14 When you step in you may feel a little movement, but it's
15 a leveling device that works by itself.

16 (Witness Sworn)

17 TOM KEITH BROOME,
18 called as a witness by the plaintiff herein,
19 being first duly sworn, was examined
20 and testified as follows:

21
22 DIRECT EXAMINATION

23 BY MR. CLIFTON:

24 Q Please state your name.

1 A Tom Keith Broome.

2 Q Spell your last.

3 A B-R-O-O-M-E.

4 Q Your occupation, please.

5 A I'm a detective with the sex crimes unit for the

6 Reno Police Department.

7 Q How long have you been with Reno Police?

8 A Just short of 27 years.

9 Q How long as a detective?

10 A In this particular unit about seven-and-a-half

11 years.

12 Q How about total years?

13 A About half my career.

14 Q Okay. And in this particular unit did you have

15 occasion to become involved in the investigation of a

16 Brendan Dunckley, D-U-N-C-K-L-E-Y?

17 A Yes, sir, I did.

18 Q I want to direct your attention -- let's start

19 with the most recent incident of March 10th, 2007,

20 involving a Jessica H. Are you familiar with this

21 investigation?

22 A Yes, sir.

23 Q Did you know Mr. Dunckley even before this

24 investigation based upon other prior possible

1 investigations?

2 A Yes, sir, I did.

3 Q All right. In this one, with Jessica H., when
4 were you first called into it?

5 On March 10th, in other words what was happening
6 when you got involved?

7 A The patrol sergeant called me. We have two
8 on-call sex crimes detectives every week. And I was the
9 primary on-call detective. So we usually get calls
10 either giving us a heads up or asking advice or for
11 whatever reason, we decide whether or not we come out and
12 start an investigation right then or take a look at it at
13 a later time.

14 Q Well, this happened in the evening hours of
15 March 10th. Would it be safe to say you got involved on
16 that date; do you remember?

17 A Sure.

18 Q Did you have occasion to see Jessica at the
19 scene of her apartment?

20 A No, sir.

21 Q Did you have occasion to see the defendant any
22 time that night?

23 A No, sir.

24 Q Did you get briefed by the police officers,

1 patrol officers, on what she claimed had occurred?

2 A I did.

3 Q Let me just jump right ahead to -- well, let's

4 start with her, even before we get to his interviews.

5 You did have occasion at some point to interview

6 her, correct?

7 A I did.

8 Q Did she explain what happened at her apartment

9 that night?

10 A Yes, she did.

11 Q Did she indicate in any way, shape or form that

12 it was consensual or there was any consensual sexual

13 activity between her and the defendant?

14 A No, sir.

15 Q Is that "no"?

16 A No.

17 Q And the defendant I'm referring to is

18 Mr. Dunckley, you're aware of that?

19 A Yes, sir.

20 Q Did she indicate she knew him from any past

21 occasions?

22 A No, she said she didn't.

23 Q Did she indicate that she believed she had

24 bitten his penis?

1 A She said that, yes, sir.

2 Q Okay. When was it, would you say, that you had
3 occasion to interview him in relation to the time of the
4 event?

5 A About 10 days later.

6 Q Do you know his date of birth?

7 A I believe it's July 4th of 1976.

8 Q So he'll be 31 in two days?

9 A If I'm correct, yes, sir.

10 Q Okay. Are you familiar with Michelle, Lura,
11 Ashley, the names of some of these people in
12 Mr. Dunckley's life?

13 A I am.

14 Q And they're all significantly younger than him,
15 approximately ten years?

16 A Yes.

17 Q Okay. On this case, let's say approximately
18 March 20th, that's based on your recollection when you
19 interviewed him, was it at his home, at the station, at
20 his work or what?

21 A My first interview with him was at his home on
22 the 20th.

23 Q Was it there or was it over the phone?

24 A It was there in person.

1 Q Was he consensual to being interviewed?

2 A Yes.

3 Q Did you indicate to him what this interview was

4 about?

5 A I did.

6 Q And the allegation that was being made by

7 Jessica?

8 A Yes, sir.

9 Q Go ahead and, I guess, just jump to it and tell

10 us what his first explanation was as far as what occurred

11 that night with her.

12 A His first explanation was, as he originally

13 reported, that it was -- that there was no sex act of any

14 kind.

15 Q When you say when he first reported, you're

16 talking about the patrol officers on scene that night?

17 A That's correct.

18 Q And that was because she had chased him or given

19 chase to him outside of her apartment, two people had

20 tackled him or jumped him?

21 A He was detained, yes, sir.

22 Q The police came and he was still there?

23 A Yes.

24 Q But no arrest was made?

1 A Yes.

2 Q She had been drinking, that was clear?

3 A Yes.

4 Q You know what he has told the police, you'd been
5 briefed on that, correct?

6 A Yes.

7 Q And he gives a similar statement now to you?

8 A Yes.

9 Q In this first statement he claims there was no
10 sex act at all?

11 A That's correct.

12 Q Did he indicate why he happened to be at her
13 apartment?

14 A That he was just trying to help her. He'd seen
15 her staggering down the road. He was just trying to make
16 sure she got home okay.

17 Q He was not in custody with you even on this
18 interview, correct?

19 A That's correct.

20 Q At this time you made this clear to him?

21 A Sure. I was in his home and he invited me in.

22 Q And he was not arrested after the interview on
23 that date?

24 A That's correct.

1 Q So he was free to stop the interview at any
2 time?

3 A Sure.

4 Q He indicated no sexual act whatsoever. Did he
5 indicate he had to help her in any way, shape or form?

6 A Yes.

7 Q To do what or why?

8 A Help her up the stairs into her apartment, and
9 that she had passed out and had fallen down, and he was
10 rendering medical assistance to her.

11 Q Did that include rubbing her chest? He called
12 it sternum, I should be fair.

13 A That's correct.

14 Q Rubbing her sternum?

15 A Yes, sir.

16 Q Did he indicate that she came to?

17 A He did.

18 Q And then she passed out again or went
19 unconscious seemingly again?

20 A That's correct.

21 Q Then he had to rub her chest back to
22 consciousness again?

23 A I'm not sure. There was two chest rubs, but she
24 did wake up.

1 Q Woke up a second time, and then what happened?

2 A She just went crazy -- according to him -- that
3 she just went crazy and started screaming at him and
4 started chasing him down the stairs. Said that "you
5 raped me."

6 Q Anything about that interview that's noteworthy
7 or that we need to cover?

8 A We had started in his living room. And I told
9 him that -- I asked him if he remembered that we took
10 swabs of his penis that night, and he said he did. He
11 indicated that he was very uncomfortable talking there,
12 because his wife was just in the other room. I asked him
13 if he wanted to go out on the front steps. He said yeah,
14 so we did.

15 Walked out on the front steps, at that point is
16 when he told me that everything was kind of the same,
17 except that when she woke up she unzipped his pants, took
18 his penis out, put it in her mouth before he knew what
19 was happening.

20 Q And this was after you told him about some type
21 of DNA evidence?

22 A I reminded him that we had swabbed his penis and
23 he was fully aware of that. That happened -- the initial
24 patrol guys did that.

1 Q Did he say anything about why he didn't say
2 anything of this to the police, because his wife wasn't
3 there at that time, right, on March 10th?

4 A She might have been in the area.

5 Q Did he indicate why he didn't tell the police
6 the correct version, the truth, what he's saying now is
7 the truth?

8 A He said several times it was a bad judgment
9 call. I don't believe he wanted his wife to know.

10 Q But he admitted he lied to the patrol officers?

11 A Yes.

12 Q And he admitted he lied to you the first time in
13 giving you the events?

14 A It was clear he lied to me, because I was the
15 one there that he had lied to.

16 Q So now he's saying that in her state of
17 intoxication and semiconsciousness she unzips his pants,
18 pulls his penis out, and puts it in her mouth?

19 A Yes, sir.

20 Q You didn't arrest him though, correct?

21 A I did not.

22 Q You went back to the station?

23 A I asked him if he would meet me the following
24 day for an interview in our office, again. And I

1 happened to be on call that week and was on my way to
2 another sexual assault.

3 Q And did there come a point in time when he met
4 with you?

5 A I met with him at about 10:00 o'clock the
6 following day at the sex crimes office.

7 Q Did he drive himself there?

8 A He did.

9 Q Did you make it clear he was not in custody?

10 A I did.

11 Q Did you make it clear he was free to leave at
12 any time?

13 A Yes, sir.

14 Q Were any of these interviews taped?

15 A All of them were.

16 Q Audio? Visual?

17 A The ones in the office are audio and video, the
18 one at his house was just audio.

19 Q On this audio and videotape in your office did
20 he give another version of events?

21 A It was pretty similar to what we had talked
22 about the day before.

23 Q Do you remember at any time during these two
24 interviews him saying that she -- the reason that the DNA

1 or the penile swab might show positive had something to
2 do with her hand down his pants? Not oral copulation,
3 but her hand down his pants?

4 A He did say that at some point, yes, sir. I'm
5 not sure if that was in the initial interview or the
6 other one. I reminded him we were talking about saliva,
7 we were not talking about any other sort of transfer of
8 DNA but saliva.

9 Q That's what I'm referring to. You told him
10 about a saliva test that either did or could come out
11 positive regarding the victim's saliva on his penis; is
12 that correct?

13 A Yes, sir.

14 Q And his answer was, "Well that could be because
15 she put her hand down my pants," correct?

16 A Correct.

17 Q Then you reminded him what?

18 A That we were talking specifically about her
19 saliva on his penis.

20 Q So that couldn't be explained by her hand, then,
21 correct?

22 A Yes, sir.

23 Q Is that what you were getting at?

24 A Yes.

1 Q So we have no sex, her hand she forcibly put
2 down his pants, and thirdly she pulled out his penis and
3 put it in her mouth. Those three different scenarios?

4 A And kind of an addition to that one: When he
5 came to the office he said that when she woke up she
6 wanted to thank him for helping her up the stairs.

7 So that was in addition to the interview from
8 the day before that that's why she did that.

9 Q Why she did --

10 A Why she put his penis in her mouth was to thank
11 him.

12 Q The oral copulation?

13 A Correct.

14 Q Was the arrest of him made at that time?

15 A He was arrested at the end of that interview,
16 yes, sir.

17 Q For?

18 A Sexual assault.

19 Q On?

20 A On Jessica H.

21 Q And this was at Sky Mountain, I believe the
22 apartments off --

23 A 1670 Sky Mountain, I believe.

24 Q Good enough. So that was the March 10th, 2007,

1 incident. Can you explain to the judge how you connected
2 some of these previous cases to Mr. Dunckley?

3 A Well, as we talked about before, I was aware of
4 Mr. Dunckley from a previous investigation in 2005. Now,
5 when I got called the night of March 10th, when this
6 occurred I was not told it was Brendan Dunckley involved.
7 I didn't learn that until I came to work on the 12th
8 after days off. So I initially didn't know it was him.

9 When I saw that case, and of course I was the
10 investigator on the '05 case, I saw some similarities in
11 the two cases.

12 Q Including drunken or intoxicated victim?

13 A Intoxicated victim, the age of the victim, the
14 bizarreness in the stories, the fact that he made the
15 victims somewhat the aggressors and him somewhat of a
16 victim in both cases.

17 Q The 2005 case, what's the victim's name in that
18 case?

19 A Lura.

20 Q L-U-R-A?

21 A Correct.

22 Q And she's friends with Michelle?

23 A She is friends with Michelle.

24 Q Now Michelle has already testified here today

1 and Lura has not yet. Lura then, in 2005, would have
2 been approximately the same age you're saying Jessica was
3 in 2007. Is that what you were saying, they're similar
4 ages?

5 A That's correct.

6 Q But Lura actually goes back, with respect to
7 Mr. Dunckley, to way before 2005, correct?

8 A That's correct, as does Michelle, I believe.

9 Q But in 2005, the case you were investigating was
10 an actual sexual assault, correct?

11 A It was a reported sexual assault, yes, sir.

12 Q By Lura?

13 A Correct.

14 Q In other words, sex against her will?

15 A Yes, sir.

16 Q Similar to Jessica?

17 A Right.

18 Q Because Jessica was reported?

19 A Correct.

20 Q In further investigation or in your previous
21 knowledge of Mr. Dunckley in these cases, did you know of
22 an instance with Lura even before 2005?

23 A Yes.

24 Q Okay. And did that include Mr. Dunckley and

1 some type of sexual acts or relations with Lura while she
2 was under 14?

3 A Yes, sir.

4 Q And did it also include Michelle?

5 A It did.

6 Q Did you interview Michelle?

7 A On the phone.

8 Q Okay. Would this be in 2007, now?

9 A Yes, sir.

10 Q So when you took over that investigation from
11 the earlier cases in 2007, you called Michelle where?

12 A At -- I don't recall which facility, but the
13 Nevada Department of Corrections. I believe it was in
14 Las Vegas.

15 Q When you talked to her by the phone was any of
16 that recorded, do you know?

17 A I don't recall right now.

18 Q Okay. That's fine. But when you spoke to
19 Michelle did you find out that something happened when
20 she was 12 or 13 with Brendan Dunckley?

21 A I did.

22 Q Now she came in here today and said she's pretty
23 sure she was older than that. Did you attempt to tie
24 down the dates or age in any way? Did she mention she

1 was 12 or 13 or how did this go?

2 She said she had a baby when she was 13, a
3 daughter. Did she indicate to you whether it was before
4 she had the child or after, anything like that?

5 A I just don't remember exactly what she --

6 Q All right. You did a five-page report. You
7 have done several, but one being a five-page report
8 dealing with Michelle. Are you aware of this report?

9 A Yes, sir.

10 Q And it's just a short portion that's on
11 Michelle. Page 3 of 5 of your report. I want to give
12 you a date on this report, but I don't know if you've
13 done more than one on this date, and I don't want to get
14 it confused.

15 But it's the report that you have, "Phone
16 interview with Lura." You talked to Ashley and you
17 talked to Michelle. Are you familiar with this
18 supplemental report?

19 A Yes, sir.

20 Q Go ahead and review a little bit of Michelle, on
21 Page 3, and also onto Page 4. It's only about two
22 paragraphs.

23 A (Witness complies.)

24 MR. CLIFTON: Your Honor, I apologize. I should

1 have asked to approach him with his report to refresh his
2 recollection. That's my intent in doing this when he
3 said he couldn't remember, if that's all right with the
4 Court.

5 THE COURT: All right.

6 THE WITNESS: Yes, sir.

7 BY MR. CLIFTON:

8 Q Does that help refresh your recollection a
9 little bit about the interview with Michelle? You said a
10 minute ago you couldn't quite remember some of the
11 details.

12 A Yes.

13 Q All right. Let me ask you a few questions on
14 that. Does she indicate how old she was when this sexual
15 conduct happened with Mr. Dunckley?

16 A She talks about two different times, actually.
17 One time when she thought that she was older, 16 or 17,
18 and then an incident when she was 12.

19 Q And the time that she was 12, did that involve
20 sleeping with him and his girlfriend or wife named
21 Morgan?

22 A Yes, sir.

23 Q What did she say he did to her while she was
24 sleeping over at their house?

1 A He reached over Morgan and fondled her vagina in
2 the bed.

3 Q Reached over Morgan an fondled whose vagina?

4 A I'm sorry, fondled Michelle's vagina.

5 Q While she was 12?

6 A Yes, sir.

7 Q Did she, Michelle, indicate she was aware of
8 Ashley also being sexually assaulted -- that's the words
9 used in your report -- by Dunckley?

10 A Yes.

11 Q And she was the one that told you about Ashley?

12 A She was.

13 Q And then you went and interviewed Ashley?

14 A Same way, via telephone.

15 Q And you found out Ashley was how old when she
16 had some type of sexual contact with the defendant?

17 A She was 12 or 13 also.

18 Q And Mr. Dunckley is the defendant here in the
19 courtroom today?

20 A He is.

21 Q Did you use photographic arrays or photo lineups
22 or anything like that with any of these witnesses in
23 dealing with the defendant identity? Would that include
24 Jessica?

1 A Yes, sir.

2 Q Was she able to pick out Mr. Dunckley in that
3 photo array/lineup?

4 A She was.

5 Q How many people were in that array?

6 A I vary them. I don't always use six. Sometimes
7 I use eight. I don't recall how many was in this, but I
8 usually don't stick to a specific number.

9 Q But either way, you talked to Mr. Dunckley and
10 he admitted he had contact with this person at that
11 location that appeared to be Jessica that he was talking
12 about, correct?

13 A Oh, sure.

14 Q So there's no question now that we're talking
15 about the right person that Jessica was with that night
16 at her apartment?

17 A That's correct.

18 Q Okay. Thank you.

19 MR. CLIFTON: No further questions.

20 THE COURT: Mr. O'Mara.

21 MR. O'MARA: Thank you.

22 |||

23 |||

24 |||

CROSS-EXAMINATION

BY MR. O'MARA:

Q Detective Broome, my name is David O'Mara, and I represent Mr. Dunckley. If you can't hear me or you don't understand a question, please speak up so we can get a proper recording of the court record.

A Sure.

Q You talked about Mr. Dunckley stating that the saliva could have been on his penis from a hand; is that correct?

A Yes.

Q Could it have been a misinterpretation between Jessica's hand and Mr. Dunckley's hand?

A No.

Q Did Mr. Dunckley ever inform you that he had to do a finger sweep of Jessica in order to stop her from choking?

A No. I have heard that story, though.

Q When did you hear that?

A Last time I was here I heard that story.

Q So at no time during your investigation or your interviews with Mr. Dunckley he never mentioned that he did a finger sweep of Jessica?

A He told another Reno police officer that. He

1 never told me that, no, sir.

2 Q All right. Great. If we can go to Michelle and
3 the questions we just went through and how you just
4 reviewed your incident report, number 0534027706; do you
5 have it in front of you?

6 A I don't.

7 Q Do you recall why Michelle was over at Brendan
8 and Morgan's house?

9 A Not specifically. I got the impression they
10 were all --

11 Q Let me rephrase my question, because there's two
12 sections in here.

13 In your statement it talks about Michelle
14 sleeping over when she was 12, and then it later goes on
15 and says the reason why she was over there. Do you
16 recall why?

17 A Specifically that time, no, sir.

18 Q If it said she said that Brendan and Morgan were
19 babysitting her at the time, would that fresh your
20 memory?

21 A That's what I was going to say when you stopped
22 me is that all these girls were friends, more with Morgan
23 at the time. So they spent a lot of time together at
24 that time of their life. So, yeah.

1 Q So Michelle could have had her baby being at
2 Brendan and Morgan's to be babysat?

3 A She could have, yes, sir.

4 Q Do you know when Michelle had her baby?

5 A I don't.

6 Q Did she ever talk about her baby in the
7 interview?

8 A No. My interview was very short, and they were
9 trying to pull her away while I was talking to her, the
10 correction people.

11 Q Did you ever go into Michelle's past?

12 A Not in specifics, no.

13 Q Did you ever go into her drug habits?

14 A I knew why she was incarcerated, if that helps.
15 I knew she had a rough childhood, if that helps.

16 Q If you were told that she had a baby in 2000,
17 would your numbers be correct now about the age of 12?

18 A Without having the dates of birth in front of
19 me, I --

20 Q Let's see. Michelle was born on October of
21 1986. Do you recall that birth date?

22 A I don't, but I certainly believe you.

23 Q And her baby was born on September 23rd of 2000.
24 So if she had a baby in 2000, and she was born in 1986,

1 she couldn't have been 12 years old, correct?

2 A That's correct.

3 Q Did you look into when her baby was born?

4 A No, I didn't.

5 Q Are you aware that -- obviously you're not
6 aware. Would it surprise you if Michelle testified today
7 that she never said that Mr. Dunckley told her never to
8 tell anyone?

9 A Would it surprise, me?

10 Q Yeah.

11 A Somewhat, I guess, yes, sir.

12 Q In regards to -- let's go back to Jessica. In
13 regards to the incident in which she claimed happened,
14 did she ever acknowledge how long the incident occurred?

15 A I'm not sure specifically what part of the
16 incident.

17 Q Did she ever talk about the incident in the
18 apartment between the alleged -- her and the defendant
19 here?

20 A Yes, sir. Are you talking about the part about
21 the fellatio?

22 Q In between the period of time when she entered
23 the apartment to the end of this alleged incident where
24 she ran out of the apartment.

1 A Just that it was a short time, yes, sir.

2 Q But she didn't give you any 5, 10 minutes?

3 A I don't believe so, and I don't know that she
4 could have.

5 Q Did she describe what happened when she entered
6 the apartment originally?

7 A Yes.

8 Q What did she say?

9 A That she opened the door, walked to the back
10 part of the apartment, called for her boyfriend, was
11 looking for him, and when she turned around Brendan was
12 standing between her and the door.

13 Q And then what happened?

14 A And he told her to "suck his dick," and she said
15 that she had no way out. She said he was between her and
16 the door and she was scared.

17 Q What did she do after he allegedly said, "Suck
18 my dick"?

19 A She did what she was told to do.

20 Q Did you measure the distance between the back
21 room and the door?

22 A No.

23 Q Do you have any recollection of how far the back
24 room and the front door is?

1 A No, I don't.

2 Q Do you know of any report that measured the back
3 door?

4 A No, sir.

5 Q Do you know of any police officer that has been
6 inside of the apartment?

7 A Sure.

8 Q Is there any report that sets forth the distance
9 between the back room and the front door?

10 A Could be an FIS report that I don't have.

11 Q If you mean FIS report, what is that?

12 A The lab people, the county crime lab people. If
13 they were called they would have prepared something like
14 that.

15 Q And when Jessica informed you of the alleged
16 incident did she mention how many times she bit the
17 defendant?

18 A If she did, I don't recall how many times.

19 MR. O'MARA: May I have a few minutes, Your
20 Honor?

21 THE COURT: Certainly.

22 MR. O'MARA: Thank you.

23 BY MR. O'MARA:

24 Q In your review of other detectives' or officers'

1 reports, did any of the other officers in their reports
2 mention how many times she allegedly bit the defendant?

3 A If they did, I don't recall that.

4 MR. O'MARA: I have no other questions, Your
5 Honor.

6 THE COURT: Okay. Mr. Clifton.

7 MR. CLIFTON: No additional.

8 THE COURT: Okay. Thank you very much.

9 MR. CLIFTON: Your Honor, the State's last
10 witness is Lura. She lives in Yerington. And apparently
11 she had car trouble getting out of Yerington or is having
12 trouble finding a car ride out of Yerington, I don't know
13 which. So she has not been able to make it here.

14 I guess my first motion or option would be to
15 ask, since it's this late of an hour anyway, to continue
16 the rest of the prelim to a date that would allow us time
17 to drive her here, get her a ride here, whatever it
18 takes.

19 I know this is the second time she's been
20 subpoenaed for court. She is cooperative. She's
21 available. We know where she lives. She answers the
22 phone. We've talked to her two or three times today.

23 (Deputy District Attorney Sworn)

24 THE COURT: Is Lura subpoenaed?

1 MR. CLIFTON: Yes, she was, Your Honor. She was
2 subpoenaed for the May preliminary hearing and she was
3 subpoenaed again for today. I have not checked to see if
4 they were oral-service subpoenas or if they were
5 physically served upon her. But in either event, under
6 the oral service law she has been cooperative. She was
7 notified of today's date. She has always told us she
8 would be here. We expected her to be here.

9 And at the time of the prelim at 1:30 today, we
10 tried starting to call her from 1:30 to 2:30, and were
11 told she's having car trouble, she's trying to find a
12 ride, things like that. I've only been able to talk to
13 my witness advocate during breaks just now trying to find
14 out if she's here. She couldn't make it. So I don't
15 know the exact reason there.

16 But I do know she's a necessary witness on
17 several counts, I think it's two counts dealing with her
18 and Michelle on Count IV, and then her alone on Count V.
19 So it's just those two counts. But we certainly would
20 like to have her here.

21 THE COURT: Also on Count VII.

22 MR. CLIFTON: Yes, Count VII.

23 At this point, Your Honor, I haven't heard
24 anything yet about violence or injury or threats, even

1 from Jessica, so I don't know if we're going to be able
2 to mandate Count VII. And I'm not going to be asking
3 Your Honor to bind over on Count VII, even if Lura
4 testifies it was forced and threatened. And I'm sure she
5 will testify the sexual assault on her was forced.

6 This sexual coercion charge was based on all the
7 witnesses, and we have put three of the four on, so I am
8 satisfied, Your Honor, that we will not be going forward
9 on Count VII. But before I let Your Honor dispose of
10 that or make any kind of motion, I should wait and listen
11 to her testimony, because I can already see there's a
12 disparity between Michelle and Lura from what I see in
13 the police reports.

14 But that count was supposed to be for all of the
15 witnesses together mutually. And so far it's not looking
16 like there were threats involved, not to say there wasn't
17 sexual assaults, lewdness or other charges that are
18 charged here.

19 So I would ask that you allow us to go to a
20 separate date, maybe more than tomorrow, like after the
21 July 4th date to find out what it's going to take to get
22 her here.

23 I think Yerington is about a 90-mile drive, an
24 hour, hour-and-a-half.

1 THE COURT: About an hour-and-a-half, I think.

2 MR. CLIFTON: We could certainly provide a ride
3 and get her here, but doing it tomorrow might be a little
4 tight. So my motion, I guess, for continuance based upon
5 Hill/Bustos is that she is a necessary witness; it's not
6 for purposes of delay, of course; and we've done
7 everything we could, including subpoena her to get her
8 here today, and now it looks like we have to physically
9 transport her, so that will take a little more doing.

10 MR. O'MARA: Your Honor, we object to allowing a
11 continuance at this time. This was set out 45 days in
12 order to get discovery on this case. Whether or not they
13 subpoenaed her multiple times, she was required to be
14 here today, she has chosen not to be here today. This
15 hearing started at 1:30. It's almost four hours later.
16 She should have been in her car way before the 1:30
17 hearing before this time.

18 It isn't a good faith response by the DA to say
19 we can do this next week. This is the time set for the
20 preliminary hearing. This is the time that they're
21 supposed to put on their evidence for probable cause.
22 They have not done so, and they should not be entitled to
23 a continuance.

24 THE COURT: Mr. Clifton, additional comments you

1 want to make?

2 MR. CLIFTON: No, Your Honor.

3 THE COURT: Well, looking at the file, it has
4 been quite a period of time. May 2nd was the first time.
5 Stipulate to continue. Conflict group hadn't received
6 the case yet. Then there was another May 16 hearing.
7 Stipulate to continue 30 days at least.

8 Now we're here today. So I don't know.

9 I'm going to deny the motion to continue.

10 MR. CLIFTON: All right. Your Honor, we have no
11 further witnesses. As far as argument, we'd ask Your
12 Honor to bind over based upon the amended changes to
13 Count I, II, and III, and Count VI. With everything I
14 said with regard to Count VII, I'll leave it up to Your
15 Honor as to whether you heard any evidence to bind over
16 on that.

17 Michelle, Your Honor, it would be possible to
18 bind over on Count IV, since it's charged as "and/or"
19 with Michelle. That's the other thing I'll leave up to
20 Your Honor. Of course, we did not hear any testimony
21 with regard to Count V.

22 Thank you.

23 THE COURT: All right. Mr. O'Mara.

24 MR. O'MARA: Thank you, Your Honor.

1 In regards to Count IV with Michelle, it is
2 apparent that there is no -- they have failed to prove
3 any of the elements in this case. Michelle has testified
4 today that she was not forced. She was over the age of
5 14 when any type of actions occurred. She was never
6 touched inappropriately by Mr. Dunckley.

7 Her testimony also shows it was after she was
8 pregnant, which is clearly not within the date of which
9 the complaint of 1999 is. She has testified she did not
10 meet Mr. Dunckley until at least 2000, July or August of
11 2000. Thus they have not satisfied in showing that there
12 is a reasonable probable cause to bind over on Count IV.

13 In regards to Count I, II, and III, in regards
14 to Ashley. Again, Ashley could not give any date, she
15 could not give any time in which she met Mr. Dunckley.
16 She could not give any information in regards to how she
17 met Mr. Dunckley. She could not give any information as
18 to any of the elements in this crime in regards to a
19 sexual assault on a child in Count I. She is unsure of
20 when she met Mr. Dunckley, but would concede that it is
21 possible that she met Michelle on the same date, which
22 would then put it back to 2000, as well.

23 She is now older than her, which would have made
24 her probably older than 14. There's no evidence to show

1 what her age was. Thus they have not shown that this was
2 upon a child in this manner.

3 Lewdness with a child under the age of 14 in
4 Count II, same problems in regards to any type of date
5 that is given on when this alleged incident occurs.
6 Therefore Count II should also be dismissed.

7 Count III, statutory sexual seduction, we have
8 no information in regards to when this occurred as well.
9 Thus we cannot determine when the age that she was during
10 this period of time.

11 In regards to Count VI, the sexual assault in
12 regards to Jessica. Jessica testified today that she
13 could not give a description of the individual. She
14 could only do it today or when given pictures. And thus
15 they have failed to show that the defendant on my left is
16 the actual person to alleged to have done these
17 incidents.

18 And as to Count VII, as the DA has already
19 stated, there was no threats, there was no coercion,
20 there was no violence or injury in regards to these
21 cases, and he has already submitted that he probably
22 doesn't have a case in that respect. And Count VII
23 should also be dismissed.

24 THE COURT: All right. Thank you. I find that

1 there's probable cause to believe that the defendant
2 committed the crime of sexual assault on a child as
3 alleged in Count I; lewdness with a child as alleged in
4 Count II; statutory sexual seduction as alleged in Count
5 III; and sexual assault as alleged in Count VI were
6 committed and the defendant committed them.

7 I did not find and I dismiss Counts IV, V, and
8 VII.

9 Thank you very much.

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

11 MR. CLIFTON: Thank you.

12 MR. O'MARA: Have a great evening.

13 THE COURT: You too. Thank you.

14 (Proceedings Concluded)

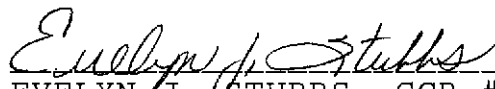
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1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

4 I, EVELYN J. STUBBS, a Certified Court
5 Reporter, do hereby certify that I reported the
6 proceedings in the within entitled cause, and that I was
7 present on Monday, July 2, 2007, at the hour of 2:47 P.M.
8 of said day, and reported the proceedings had and
9 testimony given therein in the Preliminary Hearing of the
10 case of THE STATE OF NEVADA, Plaintiff, vs. BRENDAN
11 DUNCKLEY, Defendant, Case No. RCR2007-033884.

12 That the foregoing transcript, consisting of
13 pages numbered 1 to 123, inclusive, is a full, true and
14 correct transcript of my said stenotype notes, so taken
15 in the said Preliminary Hearing, and is a full, true and
16 correct record of the proceedings had at said time and
17 place to the best of my knowledge, skill and ability.

18 DATED: At Reno, Nevada, this 18th day of
19 July, 2007.

20 
21 EVELYN J. STUBBS, CCR #356
22
23
24

B

DA # 373085

RPD RP07-009446, RPD RP05-034027

IN THE JUSTICE COURT OF RENO TOWNSHIP

IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA,

M. Grimes

Plaintiff,

RCR 2007-033884

v.

DEPT: R04

Second

BRENDAN DUNCKLEY,

Defendant.

AMENDED
CRIMINAL COMPLAINT

KELLI ANNE VILORIA of the County of Washoe, State of Nevada, verifies and declares upon information and belief and under penalty of perjury, that BRENDAN DUNCKLEY, the defendant above-named, has committed the crimes of:

COUNT I. SEXUAL ASSAULT ON A CHILD, a violation of NRS 200.366, a felony, (F1000) in the manner following, to wit:

That the said defendant on or between the ^{14th} ~~1st~~ day of ^{August} ~~January~~, 1998, and the ^{13th} ~~31st~~ day of ^{August} ~~December~~, ²⁰⁰⁰ ~~1998~~, at Reno Township, within the County of Washoe, State of Nevada, did willfully and unlawfully subject ASHLEY V., a female child under the age of fourteen years, having a date of birth of ^{August} ~~March~~ 14, 1986, to sexual penetration, against the victim's will or under conditions in which the defendant knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of the defendant's conduct, to wit, sexual intercourse, in a parking lot at or near Longley Lane, Reno, Washoe County, Nevada;

or in the alternative,

1 COUNT II. LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN
2 YEARS, a violation of NRS 201.230, a felony, (F650) in the manner
3 following, to wit:

4 That the said defendant on or between the ^{14th} ~~1st~~ day of
5 ^{August} ~~January~~, 1998, and the ^{13th} ~~31st~~ day of ^{August 2000} ~~December~~, 1998, at Reno Township,
6 within the County of Washoe, State of Nevada, did willfully,
7 unlawfully, and lewdly commit a lewd or lascivious act upon or with
8 the body of ASHLEY V., having a date of birth of ^{August} ~~March~~ 14, 1986, a
9 female child under the age of fourteen years at the time that the
10 said act was committed, in that the said defendant engaged the victim
11 in sexual intercourse at or near Longley Lane, Reno, Washoe County,
12 Nevada, and/or put his hand down her pants to fondle her genital area
13 in an elevator at the Atlantis Hotel and Casino, 3800 South Virginia
14 Street, Reno, Washoe County, Nevada, with the intent of arousing,
15 appealing to, or gratifying the lust, passions, or sexual desires of
16 himself or the child;

17 or in the alternative,

18 COUNT III. STATUTORY SEXUAL SEDUCTION, a violation of NRS
19 200.364 and NRS 200.368, a felony, (F1010) in the manner following,
20 to wit:

21 That the said defendant on or between the ^{14th} ~~1st~~ day of
22 ^{August} ~~January~~, 1998, and the ^{13th} ~~31st~~ day of ^{August 2000} ~~December~~, 1998, at Reno Township,
23 within the County of Washoe, State of Nevada, did willfully and
24 unlawfully, being over 21 years of age, commit an act of statutory
25 sexual seduction with the person of ASHLEY V., having a date of birth
26 of ^{August} ~~March~~ 14, 1986,, who was then and there under the age of 16 years,

1 in that the said defendant engaged in an act of sexual intercourse
2 with the said ASHLEY V. ~~W~~ in a parking lot at or near Longley Lane,
3 Reno, Washoe County, Nevada.

4 COUNT IV. LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN
5 YEARS, a violation of NRS 201.230, a felony, (F650) in the manner
6 following, to wit:

7 That the said defendant on or between the 1st day of
8 January, 1999, and the 31st day of December, 1999, at Reno Township,
9 within the County of Washoe, State of Nevada, did willfully,
10 unlawfully, and lewdly commit lewd or lascivious acts upon or with
11 the bodies of LURA S. and/or MICHELLE A., female children under the
12 age of fourteen years at the time that the said acts were committed,
13 in that the said defendant did touch LURA S. with his hands and tried
14 to place them into her pants and/or said defendant did simulate
15 sexual intercourse on the body of MICHELLE A. with the intent of
16 arousing, appealing to, or gratifying the lust, passions, or sexual
17 desires of himself or the children.

18 COUNT V. SEXUAL ASSAULT, a violation of NRS 200.366, a
19 felony, (F1000) in the manner following, to wit:

20 That the said defendant on or about the 20th day of August,
21 2005, at Reno Township, within the County of Washoe, State of Nevada,
22 did willfully, and unlawfully subject LURA S. to sexual penetration
23 against the victim's will or under the conditions in which the
24 defendant knew or should have known that the victim was mentally or
25 physically incapable of resisting or understanding the nature of the
26 defendant's conduct, in that the defendant caused the victim to

1 submit to sexual intercourse at 4050 Gardella Avenue, Washoe County,
2 Nevada.

3 COUNT VI. SEXUAL ASSAULT, a violation of NRS 200.366, a
4 felony, (F1000) in the manner following, to wit:

5 That the said defendant on or about the 10th day of March,
6 2007, at Reno Township, within the County of Washoe, State of Nevada,
7 did willfully and unlawfully subject JESSICA H. to sexual
8 penetration, against the victim's will and/or under conditions in
9 which the defendant knew or should have known that the victim was
10 mentally or physically incapable of resisting or understanding the
11 nature of the defendant's conduct, to wit, fellatio at 1675 Sky
12 Mountain Drive, #⁵²⁷~~287~~, Reno, Washoe County, Nevada.

13 COUNT VII. SEXUALLY MOTIVATED COERCION, a violation of NRS
14 207.190 and NRS 207.193, a felony, (F250) in the manner following, to
15 wit:

16 That the said defendant on or between the 1st day of
17 January, 1998, and the 10th day of March, 2007, at Reno Township,
18 within the County of Washoe, State of Nevada, did willfully and
19 unlawfully, with the intent to compel another to do or abstain from
20 doing an act which the other person has a right to do or abstain from
21 doing, use violence or inflict injury upon the person, or any member
22 of his/her family, or upon his/her property, or threaten such
23 violence or injury, to wit: said defendant did compel, induce or
24 require ASHLEY V. and/or LURA S. and/or MICHELLE A. and/or JESSICA H.
25 to engage in defendant's serial sexually inappropriate and/or ongoing
26 course of conduct wherein defendant forced and/or took advantage of

1 said victims when they were not able to abstain and/or stop him from
2 engaging in sexually inappropriate acts with them and that said
3 defendant did said conduct through the use of force and/or violence,
4 said conduct all occurring in Washoe County, Nevada.

5 DATED this 16 day of April, 2007

6
7 H. Duona
8

9 AFFIRMATION PURSUANT TO NRS 239B.030

10 The undersigned does hereby affirm that the preceding
11 document does not contain the social security number of any person.

12
13 H. Duona
14
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21
22

23 PCN RPD0726517C

24 PCN RPD0726524C

25 Custody:

26 Bailed: X

Warrant:

04046446

District Court Dept: 4

District Attorney: VILORIA

Defense Attorney:

Bail _____

Restitution:

ORIGINAL

ARREST REPORT AND
DECLARATION OF PROBABLE CAUSE

RPD 0726517 C

ARS _____ RMS _____ BT _____

CASE # 05-34027

COURT OF JURISDICTION

RENO JUSTICE

PHOTO #

R 019047

PRINT CLEARLY

ARRESTEE'S (Last, First, Middle)
NAME

DUNCLEY, BRENDAN ABR -2 A8:53

AKA/ALIAS

RESIDENCE (Street, City, State, Zip)
ADDRESS

4458 HIGHLAINS DR, RENO, NV

RACE

☒ White ☐ Indian
☐ Black ☐ Asian
☐ Unknown

SEX

☒ Male
☐ Female

ETHNICITY

☐ Hispanic
☒ Non-Hispanic
☐ Unknown

DOB

Grimes 11/76

SON

POB

CARMEL, NY

AGE 30

HT 5-8

WT 178

HAIR Bro

EYES 112L

OCCUPATION &
BUS ADDRESS

BOOTEZ ESSENTIAL PARTNERS

HOME PHONE

787-1961

DRIV LIC

0001025012

DRIV LIC

STATE NV

ARRESTEE'S VEH ☐ Stolen ☐ Left at Scene☐ Not Applicable ☐ Impounded ☐ Held to Oth Per

BUS PHONE

377-7657

NEXT OF KIN

MORGAN DUNCLEY

SCARS, MARKS, TATTOOS

BIRTHMARK LEFT EYE

ARREST DATE

TIME

LOCATION

OFFENSE DATE 8/20/05 TIME 2130

LOCATION 4050 GARDELLA AV RENO

NRS/ORD #

200,366

NOC

0114

BAIL

15,000

WARRANT # & DATE

CHARGE

F-Felony, G-Gross Misd, M-Misd F-G-M

1 SEXUAL ASSAULT F

2

3

4

5

6

7

8

ARRESTING OFFICER(S)
AND ID #

Broome 1509

TRANSPORTING OFFICER(S)
AND ID #PRIVATE PERSON MAKING
THE ARREST (Citizen Arrest)REVIEWING SUPERVISOR
AND ID #

David J. Lums, Sec. 11454

The undersigned, TK Broome, a police officer, of RENO POLICE, hereby declares under penalty of perjury, that the above-named defendant has been arrested on probable cause and is subject to detention for the above-listed offense(s). Either personally or upon information and belief this officer learned the following facts and circumstances which support the arrest and detention:

1509 10/12/05

- SEE SUPPLEMENT -

RELS TO

DISSEMINATION IS RESTRICTED TO CRIMINAL JUSTICE AGENCIES ONLY.

DATE

BY

SECONDARY DISSEMINATION TO NON-CRIMINAL AGENCIES IS PROHIBITED.

WHEREFORE, Declarant requests that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charge is a felony or gross misdemeanor) or for trial (if charge is a misdemeanor).

Page 1 of 3 DECLARANT

I.D.# 1509

REVIEWED FOR PROBABLE CAUSE (PC)

PC FOUND ☒PC NOT FOUND ☐

DATE 3/31/07

TIME 3:33 PM

DEFENDANT ORDERED RELEASED, DATE 3/31/07

S-308 (REVISED 3/06)

Def. to be sworn court date & superv by Det. Saw. 112

MAGISTRATE

MAGISTRATE

CASE# 07-34027

On August 20, 2005, Lura a then 18 year old adult female reported that she and a friend were walking through the apartment complex at 4050 Gardella Ave. in Reno, at approximately 2100 hours, when they were approached by defendant Dunckley. Lura was acquainted with the defendant and his wife, however had not seen them for several years. Defendant Dunckley was working at the Gardella apartment complex in parking enforcement and asked Lura if she wanted to go to the other side of the complex to put a boot on a car. The victim said that she had to be back in ten minutes. Lura reported that the defendant drove her to a dirt field next to the apartments and began talking to her about where she works now. Lura said the defendant just grabbed her by the throat with his right hand and the hair with his left hand. She fought the defendant away, at which time the defendant exited the driver's side of his vehicle walked to the passenger side and opened the door. Lura reported that the defendant pulled her from the vehicle and pushed her face down on the hood of the vehicle, pulled her pants and underwear down and forced penile/vaginal intercourse from behind the victim, to ejaculation. The victim was then driven back to her friend's apartment and dropped off by the defendant. The victim entered her friends apartment crying and after a short time disclosed what had happened to her.

During the investigation the Defendant insisted the sexual encounter was consensual and initiated by the victim. The case was closed in 2005 due to some problems in confirming portions of the victim's version of events; the victim who became extremely depressed was somewhat uncooperative at the time.

In March of 2007 Detective Broome, who investigated the 2005 Sexual Assault involving Lura became aware of another sexual assault allegation involving defendant Dunckley and another female victim. Initially the defendant denied any sexual contact. In subsequent interviews the defendant admitted to sexual activity, however insisted it was consensual. There were other similarities in the two cases which yielded additional investigative leads in the 2005 Sexual Assault. Detective Broome was able to talk to two other females who reported that they were also inappropriately sexually touched by the defendant prior to 2005. One of the females was 12 years old at the time and described how she was overpowered by the defendant in an elevator at the Atlantis Casino and sexually fondled by the defendant. Another female now 20 years old who was uncooperative in 2005 now supports some

WHEREFORE, Declarant requests that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charge is a felony or gross misdemeanor) or for a trial (if charge is a misdemeanor).

REVIEWED FOR PROBABLE CAUSE (PC)

DECLARANT

ID#

1509

PC FOUND ☐PC NOT FOUND ☐

DATE

MAGISTRATE

DEFENDANT ORDERED RELEASED, DATE:

MAGISTRATE

of Lura's disclosures. Lura reported that when she was staying at the defendant and his wife's house with a girlfriend, when she was 13 or 14 years old, she woke to find the defendant fondling her vaginal area. It was this incident that broke off relations with the defendant and his family. Michelle a now 20 year old female supports this disclosure as she was in bed with Lura when this occurred. Lura who was re-contacted in March of 2007 is now cooperative and maintains that she was sexually assaulted by the defendant in 2005 and there was nothing consensual about the encounter.

WHEREFORE, Declarant requests that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charge is a felony or gross misdemeanor) or for a trial (if charge is a misdemeanor).

REVIEWED FOR PROBABLE CAUSE (PC)

DECLARANT

ID# 1509

PC FOUND ☐

PC NOT FOUND ☐

DATE

MAGISTRATE

DEFENDANT ORDERED RELEASED, DATE:

MAGISTRATE

B

DA # 373085

RPD RP07-009446

IN THE JUSTICE COURT OF RENO TOWNSHIP

IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

7 APR -5 P1:55

* * *

THE STATE OF NEVADA,

M. Grimes
Plaintiff,

RCR 2007-033884

v.

DEPT: 4

BRENDAN DUNCKLEY,

Defendant.

CRIMINAL COMPLAINT

STEVEN M. BARKER of the County of Washoe, State of Nevada, verifies and declares upon information and belief and under penalty of perjury, that BRENDAN DUNCKLEY, the defendant above-named, has committed the crime of:

SEXUAL ASSAULT, a violation of NRS 200.366, a felony,
(F1000) in the manner following, to wit:

That the said defendant on or about the 10th day of March, 2007, at Reno Township, within the County of Washoe, State of Nevada, did willfully and unlawfully subject JESSICA H. to sexual penetration, against the victim's will and/or under conditions in which the defendant knew or should have known that the victim was

///

///

///

///

///

///

1 mentally or physically incapable of resisting or understanding the
2 nature of the defendant's conduct, to wit, fellatio at 1675 Sky
3 Mountain Drive, #287, Reno, Washoe County, Nevada.

4
5 DATED this 5 day of April, 2007

6
7 Steven M Barker

8 AFFIRMATION PURSUANT TO NRS 239B.030

9 The undersigned does hereby affirm that the preceding
10 document does not contain the social security number of any person.

11
12 Steven M Barker

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19
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21
22
23 PCN RPD0726524C

24 Custody:
25 Bailed: X
26 Warrant:

04046446

District Court Dept: 4
District Attorney: BARKER
Defense Attorney:

Bail 3/22 \$18,500 Action
Restitution:

ORIGINAL

ARREST REPORT AND
DECLARATION OF PROBABLE CAUSE

ARS _____ RMS _____ ET _____

RPD 0726524 C

COURT OF JURISDICTION _____

CASE # 07-9446

RENO JUSTICE

PHOTO # _____

R619047

PRINT CLEARLY

ARRESTEE'S (Last, First, Middle)
NAME

DUNKLEY, BRENDAN 7 MAR 23 A9:02

AKA/ALIAS

RESIDENCE (Street, City, State, Zip)
ADDRESS

4458 HILL PLAINS DR. Grimes RENO NV

RACE
☒ White
☐ Black
☐ Unknown☐ Indian
☐ AsianSEX
☒ Male
☐ FemaleETHNICITY
☐ Hispanic
☒ Non-Hispanic
☐ Unknown

AGE 30 HT 5-8 WT 178

SSN [REDACTED]

POB ARMY NY EYES BZO

OCCUPATION &
BUS ADDRESS

ESSENTIAL PARTIAL BOOTER

HOME PHONE 787-1961

DRIV LIC # 0001025012

DRIV LIC STATE NV

ARRESTEE'S VEH ☐ Stored ☐ Left at Scene
☒ Not Applicable ☐ Impounded ☐ Held to Oth Per

BUS PHONE 379-7657

NEXT OF KIN MORLAN DUNKLEY

SCARS, MARKS, TATTOOS BIRTHMARK LEFT EYE

ARREST DATE 3/23/07 TIME 1015 LOCATION 350 S. CENTER

OFFENSE DATE 3/20/07 TIME 1900 LOCATION 1675 SKY MOUNTAIN DR #287

NRS/ORD #	NOC	BAIL	WARRANT # & DATE	CHARGE	F-Felony, G-Gross Misd, M-Misd F-G-M
200,366	0114	15,000		1 SEXUAL ASSAULT	F
205,060	8988	3,500		2 BURGLARY (SEXUALLY MOTIVATED)	F
				3	
				4	
				5	
				6	
				7	
				8	

MAR 22 '07 12:10

ARRESTING OFFICER(S) AND ID # BROOME 1509

TRANSPORTING OFFICER(S) AND ID # ALLEN YAWN
REVIEWING SUPERVISOR [Signature] 1/1454PRIVATE PERSON MAKING
THE ARREST (Citizen Arrest)

The undersigned, T.M. Broome, a police officer, of RENO POLICE, hereby declares under penalty of perjury, that the above-named defendant has been arrested on probable cause and is subject to detention for the above-listed offense(s). Either personally or upon information and belief this officer learned the following facts and circumstances which support the arrest and detention:

- SEE SUPPLEMENT -

RELS TO _____ DATE 3/22 BY 885
DISSEMINATION IS RESTRICTED TO CRIMINAL JUSTICE AGENCIES ONLY. SECONDARY DISSEMINATION TO NON-CRIMINAL AGENCIES IS PROHIBITED.

WHEREFORE, Declarant requests that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charge is a felony or gross misdemeanor) or for trial (if charge is a misdemeanor).

Page 1 of 2 DECLARANT [Signature] I.D.# 1509

REVIEWED FOR PROBABLE CAUSE (PC)
PC FOUND ☒ PC NOT FOUND ☐ DATE 3-23-07 TIME 2:15 pm [Signature], MAGISTRATE

DEFENDANT ORDERED RELEASED, DATE _____, MAGISTRATE

CASE# 07-9446

On March 10, 2007 at approximately 1900 hours R.P.D. officers responded to the apartment complex at 1645 Sky Mountain Drive in Reno regarding multiple calls reporting a woman screaming. Upon arrival officers met with Jessica, a 23 year old adult female who was very intoxicated. Jessica reported that she left her apartment at 1645 Sky Mountain # 287 as she and her boyfriend were arguing and went for a walk. A male in a van approached and asked her to get in she refused and returned to her apartment. After entering her apartment she turned around to find a male standing behind her, who ordered her to perform fellatio on him. The victim complied, but bit the male on the penis. The male turned and ran outside the apartment with Jessica in pursuit yelling.

The male, now identified as defendant Dunckley was detained by neighbors and interviewed by the responding officers. Dunckley reported that he saw the victim staggering in the neighborhood and helped her to her apartment where she passed out. Dunckley rubbed the victim's sternum to wake her. When the victim did wake up she began screaming at him and trying to hit him. Dunckley said that he had his wife on the phone during this altercation and she could confirm his story. The officers spoke to Dunckley's wife who said that she was talking to her husband about the drunk female and did hear a commotion. Dunckley denied any sexual contact. Dunckley was cooperative and allowed the officers to obtain penile swabs. Dunckley was subsequently released.

On March 21, 2007 Dunckley was interviewed at his home where he changed the events of March 10, 2007 and reported that when he woke the victim after passing out she immediately came on to him, removing his penis from his pants and began performing fellatio. Dunckley stated that he was talking to his wife on the phone before this and after this but not during the sex act. Dunckley was requested to meet Detective Broome in the Sex Crimes Office for a formal interview on March 22, 2007 at 1000 hours.

During that interview Dunckley admitted that he did offer the victim a ride home prior to the Sexual Assault and that after the victim passed out and after he woke her she performed fellatio on him as thanks for helping her into the apartment. Dunckley admitted that he lied to the police and to his wife and called his wife before and after

WHEREFORE, Declarant requests that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charge is a felony or gross misdemeanor) or for a trial (if charge is a misdemeanor)

REVIEWED FOR PROBABLE CAUSE (PC)

DECLARANT

ID#

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PC FOUND ☐PC NOT FOUND ☐

DATE

MAGISTRATE

DEFENDANT ORDERED RELEASED, DATE:

MAGISTRATE

the assault and was not talking to his wife during the fellatio. Duncley also said that the victim was so intoxicated she did not know what she was doing.

WHEREFORE, Declarant requests that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charge is a felony or gross misdemeanor) or for a trial (if charge is a misdemeanor).

REVIEWED FOR PROBABLE CAUSE (PC)

DECLARANT

ID# 1509

PC FOUND ☐

PC NOT FOUND ☐

DATE

MAGISTRATE

DEFENDANT ORDERED RELEASED, DATE:

MAGISTRATE

Pre lum 5/2/07 @ 230

IN THE JUSTICE COURT OF RENO TOWNSHIP,
COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

APPLICATION FOR
APPOINTMENT OF
PUBLIC DEFENDER

Against

Brendan Dinkley Defendant.

RCR 07. 33884(4)

I apply for appointment of the Washoe County Public Defender and state under penalty of perjury: (1) I am indigent; and (2) I am without financial means to hire an attorney because: (a) I have no personal funds and no family or friends who can hire an attorney for me and/or (b) I have no assets of any kind in this State or elsewhere which can be used to hire an attorney.

Brendan Dinkley
DEFENDANT

WITNESSED: 4/20 2007.

M. Rybka
COURT SERVICES OFFICER

ORDER

The Court has reviewed Defendant's answers to Financial Inquiry To Determine Eligibility For Washoe County Public Defender and Application For Appointment Of Public Defender given and executed under penalty of perjury.

Application denied. The Court finds the Defendant is not indigent.

Comment:

The Court finds that the Defendant is without means to employ an attorney or otherwise determines that representation by the Washoe County Public Defender is required. Reimbursement may be ordered by the Justice Court or the District Court at a later time.

21 The Washoe County Public Defender is appointed to represent Defendant.

22 THE COURT BELIEVES SOME REIMBURSEMENT SHOULD BE REQUIRED AT A LATER TIME.

23 The Washoe County Public Defender is appointed to represent Defendant on the following condition(s):

26 DATED: 4/23/ 2007

Justice of the Peace
JUSTICE OF THE PEACE

28 Defendant notified and agrees to condition(s).

Date

CSO Initials 150

Washoe County Pretrial Services Assessment Report

Case Filing

Filed Name DUNCKLEY, BRENDAN
--

Arrest

Booked Name DUNCKLEY, BRENDAN	Arresting Agency RENO POLICE DEPT	Booking Number 07-06701	Arrest Date 03/30/2007
---	---	-----------------------------------	----------------------------------

Case Number	NOC	Type	Description	Counts	Court	Bail Amt/Type
05-34027	00114	F	SEXUAL ASSAULT- NO SUBSTANTIAL BODI	1	RJC	15,000 B

Defendant Information

Sex M	Race WHITE	Birthdate 07/04/1976	Age 30	Height 5' 05"	Weight 150	SS Number On File
Address 4458 HIGHPLAINS DR RENO, NV 89523				Residence County: 07 Yr 06 Mo		Born CARMEL, NY,
Telephone (775) 787-1961		Time at Current Address 01 Yr 00 Mo		Primary Language ENGLISH		
Lives With MORGAN DUNCKLEY		Relationship WIFE		ID Number	Type	Expiration Date
Marital Status MARRIED		How Long		Military Service NONE		
Discharge						
Employment/Support Status Employed		How Long 00/07				
Employer ESSENTIAL PARKING		Employer Telephone (775) 379-7657				

Defendant Justice Identifier Codes/Criminal History

FBI Number	SID Number							
Arrests	Violent Fels	Felonies	Violent Misd	Misdemeanors	MMSD	Traffic	DUI	Pending

Comments

DEF HAS BEEN IN THE AREA FOR 7.6 YRS AND AT CURRENT ADDRESS FOR 1 YR
 DEF HAS BEEN AT CURRENT EMPLOYMENT FOR 7 MONTHS
 DEF DENIES SUBSTANCE ABUSE
 DEF HAS CRIM HISTORY
 NOTHING WAS VERIFIED
 O.R. DENIED

Assessment Status

Assessment FELONY NR	Initials WWOLFF
--------------------------------	---------------------------

✓

WASHOE COUNTY PUBLIC DEFENDER CASE CONFLICT NOTIFICATION

Case Number: RCR07-033884

DATE: April 26, 2007

PD Number: 98628

Case Name: State of Nevada v. BRENDAN DUNCKLEY

Public Defender Client: MICHELLE ANTHONY & ASHLEY VANDERBY

Conflict Attorney:

Conflict Client: BRENDAN DUNCKLEY

David O'Mara

Felony

Charges: SEXUAL ASSAULT; LEWDNESS WITH A CHILD UNDER 14; STATUTORY
SEXUAL SEDUCTION; COERCION

Reno Justice Court: D/4

PRELIMINARY HEARING, set for the *05/16 @ 2:30*
~~2nd MAY, 2007 at 2:30 PM~~Reason for Conflict: **Victims**Approved: *J. Marshall 5-1-07*

Received: _____ Date: _____

cc: Conflict Attorney
File
hmb

ORIGINAL

CR07-1728
STATE VS. BRENDAN DUNCKLEY (6 Pages
District Court 07/20/2007 10:42 AM
Washoe County
3696
nmr:lp

1 CODE 3696

FILED

JUL 20 2007

RONALD A. LONGTIN, JR., CLERK

By: *M. Stone*
DEPUTY

2
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5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 *****

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR07-1728

12 BRENDAN DUNCKLEY,

Dept. No. 4

13 Defendant.
14 _____/

15 **PRETRIAL ORDER**

16 Good cause appearing and in the interests of justice, the Court hereby notices
17 all counsel of the following supplemental requirements of trial in Department IV, to
18 those found in Nevada Revised Statutes.

19 **I. PRETRIAL MOTIONS**

20 A. Counsel will file a stipulation with regard to Discovery and submit it to the
21 Court for Order. If a stipulation cannot be reached between counsel, a motion for
22 discovery shall be filed within fifteen (15) days of the date of this Order. Opposing
23 counsel shall have ten (10) days to respond. The moving party must formally submit
24 the matter to the Court for the Court to consider the motion. If counsel wish an oral
25 hearing on the matter they shall set such hearing after the time for filing an opposition
26

1 has ended or an opposition has actually been filed.

2 B. All motions by any party must be in writing. Any motion which should be
3 addressed prior to trial, including but not limited to motions to dismiss, motions to
4 suppress evidence, motions in limine, motions to sever, motions for continuance,
5 motions regarding jury selection, and motions regarding prior bad acts or other acts
6 evidence shall be filed, personally served upon opposing counsel no later than
7 September 17, 2007, answers shall be filed and personally served on opposing
8 counsel no later than September 28, 2007, reply shall be filed and personally served
9 on opposing counsel no later than October 5, 2007. The parties are to formally
10 submit all motions they want decided on the record and a hearing is set for those
11 motions counsel specifically request be heard in Open Court for October 19, 2007, at
12 9:00 a.m.

13 C. Except upon a showing of good cause and unforeseen circumstances, the
14 Court will not entertain any pretrial motions, including motions in limine filed or orally
15 presented after this deadline.

16 II. TRIAL STATEMENT

17 A. A trial statement on behalf of each party shall be delivered to Department
18 Four of the Second Judicial District Court no later than 5:00 p.m. on Thursday of the
19 week prior to trial, where it shall be held confidential until such time as the Trial
20 commences. Upon commencement of the Trial, the Trial Statement shall be filed and
21 served on opposing counsel.

22 B. The trial statement will address

23 1. Any practical matters which should be addressed prior to trial (e.g.,
24 suggestions or special requests as to the order of witnesses or evidence, view of the
25

1 premises, availability of audio or visual equipment).

2 2. All proposed general voir dire questions for the Court or counsel to
3 ask of the jury shall be included. Failure to include could result in the Court greatly
4 restricting counsel's verbal participation in the voir dire of the jury panel.
5

6 III. JURY INSTRUCTIONS

7 All proposed jury instructions are required to be prepared and served pursuant to this
8 Order.

9 A. The parties are required to each submit their instructions to the Court in
10 chambers no later than 5:00 p.m. on Friday of the week prior to trial. The parties
11 shall serve their proposed instructions on the other party at the close of the
prosecutor's case.

12 B. All instructions should be short, concise, understandable, and neutral
13 statements of law and gender. Argumentative or formula instructions are improper,
will not be given, and should not be submitted.

14 C. The parties are required to submit the jury instructions in the below
described format.

15 1. All proposed jury instructions shall be in clear, legible type on clean,
16 white, heavy paper, 8 ½ by 11 inches in size, and not lighter than 16-lb. Weight with a
black border line and no less than 24 numbered lines.

17 2. The last instruction **only** shall bear the signature line with the words
18 "District Judge" typed thereunder placed on the right half of the page, a few lines
below the last line of text.

19 3. The designation "Instruction No. " shall be at line 26, lower left hand
20 corner of the last page of each instruction.

21 4. The original instructions shall not bear any markings identifying the
attorney submitting the same, and shall not contain any citations of authority.

22 5. The authorities for instructions must be attached to the original
23 instructions by a separate copy of the instruction including the citation.

24 6. The parties should also note on the separate copy of the instruction
any modifications made on the instructions from statutory authority, Nevada Pattern
25 Jury Instructions, Devitt and Blackmar, CALJIC or other form instructions, specifically
stating the modification made to the original form instructions and the authority
26

1 supporting the modification.

2 D. Failure to comply with any of the above directions may subject the
3 noncomplying party and/or its attorneys, to sanctions.

4 E. Instructions will be settled at the close of the evidence. Jury instructions
5 offered during the trial will be considered by the Court only in the event that the Court
6 deems the instruction appropriate in view of unanticipated matters occurring during
7 trial.

8 IV. MISCELLANEOUS

9 A. This case has been set for a **jury trial of five (5) days, to commence**
10 **on March 24, 2008, at 10:00 a.m.** A **Motion to Confirm Hearing** has been set for
11 **March 13, 2008, at 9:00 a.m.** The Court expects that all counsel will cooperate to
12 conclude the case within the time set. Trial counsel are strongly encouraged to meet
13 and confer regarding the order of witnesses, stipulated exhibits and any other matters
14 which will expedite trial of the case.

15 B. The Court will allow notes to be taken by jurors during the trial unless a
16 party objecting to this procedure includes such objection in their trial statement.

17 C. All exhibits will be marked in one numbered series (Exhibit 1, 2, 3, etc.),
18 no matter which side is offering the particular exhibit. Once trial exhibits are marked
19 by the Clerk, they shall remain in the custody of the Clerk. When marking the exhibits
20 with the Clerk, counsel must advise the Clerk of all exhibits which may be admitted
21 without objection. In any case which involves fifteen or more document exhibit pages,
22 the exhibits shall be placed in a loose-leaf binder behind a tab noting the number of
23 each exhibit. The binder shall be clearly marked on the front and side with the case
24 caption and number, but no identification as to the party producing the binder. All
25
26

document exhibits shall be in **one** binder no matter which party is offering the exhibits.

At the time set for marking the trial exhibits, counsel for the Plaintiff shall provide the Courtroom Clerk with the binder containing the number tabs. Counsel for all parties shall provide all exhibits, no matter when marked, even if marked during the course of trial, in a condition appropriate for inclusion in the evidence binder.

Dated this 19 day of July, 2007.

Connie J. Steinheimer
DISTRICT JUDGE

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Pre-Trial Order to:

David O'Mara, Esq.
Attorney at Law
311 E. Liberty Street
Reno, Nevada 89501
Via U.S. Postal Service

Marshall Stone

CR07-1728
DC-990001296-417
STATE VS. BRENDAN DUNCKLEY (6 Pages
District Court 07/24/2007 04:11 PM
Washoe County BAIL
IFLORES
DOC

Code BAIL

ORIGINAL

FILED
JUL 24 2007
RONALD A. KONGSTAD, JR., CLERK
By: *[Signature]*
DEPUTY CLERK

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

THE STATE OF NEVADA,

Plaintiff,

Case No. CR07-1728

vs.

Dept. No. 4

BRENDAN DUNCKLEY,

Defendant.

BAILBOND POSTED

WARNING: THIS DOCUMENT CONTAINS A COLORED BACKGROUND AND MICRO PRINT PROTECTION

Accredited
Accredited Surety and Casualty Insurance Co., Inc.

400 SOUTH PARK AVENUE
SUITE 320
WINTER PARK, FL 32789-4320

POWER OF ATTORNEY

POWER NO.

A25-00325487

POWER AMOUNT \$

25,000.00

KNOW ALL MEN BY THESE PRESENTS that ACCREDITED SURETY AND CASUALTY CO., INC., a corporation duly organized and existing under the laws of the state of Florida and by the authority of the resolution adopted by the Board of Directors at a meeting duly called and held on April 14, 1999, which said resolution has not been amended or rescinded, does constitute and appoint and by these presents does make, constitute and appoint the named agent its true and lawful Attorney-in-Fact for it and in its name, place and stead, to execute, seal and deliver for and on its behalf and as its act and deed, as surety, **a bail bond only**. Authority of such Attorney-in-Fact is limited to appearance bonds and cannot be construed to guarantee defendant's future lawful conduct, adherence to travel limitation, fines, restitution, payments or penalties, or any other condition imposed by a court not specifically related to court appearance.

This Power of Attorney is for use with Bail Bonds only. Not valid if used in connection with Federal or Immigration Bonds. This power void if altered or erased, void if used with other powers of this company or in combination with powers from any other surety company, void if used to furnish bail in excess of the stated face amount of this power, and can only be used once.
The obligation of the company shall not exceed the sum of **TWENTY-FIVE THOUSAND DOLLARS** and provided this Power-of-Attorney is filed with the bond and retained as a part of the court records. The said Attorney-in-Fact is hereby authorized to insert in this Power-of-Attorney the name of the person on whose behalf this bond was given.

IN WITNESS WHEREOF, ACCREDITED SURETY AND CASUALTY CO., INC., has caused these presents to be signed by its duly authorized officer, proper for the purpose and its corporate seal to be hereunto affixed this 22 DAY of MARCH 2007 YEAR

Bond Amount \$ 18500

Defendant BRENDAN DUNCKLEY

Charges SEXUAL ASSAULT / Regulatory sexual misconduct

Court Justice 4-5-07 @ 8:00 AM

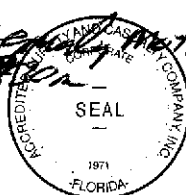
Case No. 079446

City RENO State NV

If rewrite, original No. _____

Executing Agent [Signature]

NAME



Deborah Jallad, President

VOID IF NOT ISSUED BY: 06/13/2008
FOR STATE USE ONLY
NOT VALID IF USED IN FEDERAL COURT

B/C 07 6025

COPY FOR COURT

RCX07-000611
CW7-1728



ACCREDITED SURETY AND
CASUALTY CO., INC.

PO Box 2067
Winter Park, FL 32790
(407) 841-8300 FAX (407) 841-4219

✓ 415102 @ 9:30
✓ RCX07-033884
Action Annie's, Inc.
dba Action Bail Bonds
5295 Sun Valley Blvd., #1
Sun Valley, NV 89433
(775) 322-7997

Bond
7/2/07
Dep. 4

(PLACE BAIL AGENT'S ADDRESS STAMP HERE)

Justice

COURT

Municipal, Justice, Judicial District

City of Reno County of Washoe

(City, Township, County)

STATE OF NEVADA

State of Nevada

Plaintiff

BAIL BOND No. A25-00325487

(POWER OF ATTORNEY WITH THIS NUMBER MUST BE ATTACHED)
(BOND NOT VALID IF MORE THAN ONE (1) POWER OF ATTORNEY
HAS BEEN ATTACHED)

vs.

Brendan Dunkley

Defendant

An order having been made on the 22 day of March, 2007

by Justice of the Peace

(Municipal Judge, Justice of the Peace, District Judge)

City of Reno County of Washoe, State of Nevada,

(of the City of, Township of, In and for the County of)

that the defendant be held to answer (or for examination) upon a charge of Sexual Assault

Burglary, Sexually Motivated

upon which he/she has been duly admitted
to bail in the sum of Eighteen thousand Five hundred dollars.

Now we, ACCREDITED SURETY AND CASUALTY CO., INC., a Florida corporation, as Surety, duly authorized to transact business as Surety in the State of Nevada, hereby undertake that the above named defendant will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and shall at all times render him/herself amenable to the orders and the process of the Court, and if convicted, shall appear for judgement and render him/herself in execution thereof, or if he/she fails to perform any of these conditions, that we will pay to the State of Nevada the sum of \$ 18,500.00

ACCREDITED SURETY AND CASUALTY CO., INC

Defendant notified to appear:

Date 4-5-07 @ 9:30 A.M. P.M.

approved by me this 23rd

day of March 2007
Patricia G. Lynch

Municipal Judge, District Judge, Justice of the Peace

City, Township

By

Rory Blair

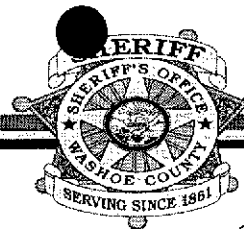
Attorney-in-Fact

NOTE: This is an Appearance Bond and cannot be construed as a guarantee for failure to provide payments, back alimony payments, FINES, or Wage Law claims, nor can it be as a Bond on Appeal

Dunkley, Brendan

CR 67-1728
**WASHOE COUNTY
SHERIFF**

Dedicated Service in Partnership with our Community



Michael Haley
Sheriff

Washoe County Detention Facility

\$ 18,500 B1B
RJC

POSTED ON: 3/22/2007 @ 6:09:02PM

INMATE NAME: DUNCKLEY, BRENDAN

WC INK 0001

BOOKING NUMBER: 0706025

DOB: 7/4/1976

DRIVER'S LICENSE: 0001025012

OLS STATE: NV

BAIL RECEIPT # B067643 ARRESTING AGENCY /CASE #: RPD 070009446 DUNCKLEY, BRENDAN

NOC: 00114 CHARGE LITERAL: SEXUAL ASSAULT Level: FELONY PCN: RPD0726524

COURT: RJC COURT CASE #:
ONE SOUTH SIERRA ST, RENO, NV 89520

COURT DATE/TIME: 4/5/2007 @ 09:30

7

WARRANT #: WARRANT AGENCY:

BAIL AMOUNT: \$ 15,000.00

POSTED BY: ACTION BAIL BONDS
ADDRESS:

COURT BOND FEE: \$ 40- INT:

MICHAEL HALEY, SHERIFF CLERK: [Signature] W1910

BAIL RECEIPT # B067644 ARRESTING AGENCY /CASE #: RPD 070009446 DUNCKLEY, BRENDAN

NOC: 08988 CHARGE LITERAL: BURGLARY (SEXUALLY M Level: FELONY PCN: RPD0726524

COURT: RJC COURT CASE #:
ONE SOUTH SIERRA ST, RENO, NV 89520

COURT DATE/TIME: 4/5/2007 @ 09:30

WARRANT #: WARRANT AGENCY:

BAIL AMOUNT: \$ 3,500.00

POSTED BY: ACTION BAIL BONDS
ADDRESS:

COURT BOND FEE: \$ See #1 INT:

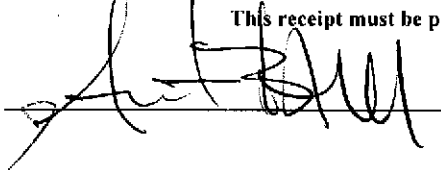
MICHAEL HALEY, SHERIFF CLERK: [Signature] W1910

TOTAL BAIL POSTED: \$ 18,500.00

NOTICE: NRS 178.528: Disposition of the bail is up to the court in which this case is terminated

This receipt must be presented to the court for any refund

SIGNED: _____

A handwritten signature in black ink, appearing to be "J. H. Smith", written over a horizontal line.

**In the Justice Court of Reno Township, County of Washoe,
STATE OF NEVADA**

STATE OF NEVADA BRENDAN DUNCKLEY RPD0726524C RPD0726517C		PLAINTIFF VS. DEFENDANT	COMPLAINT OF Kelli Anne Vilorio DA'S NO. 373085 ATTORNEY FOR PLAINTIFF DISTRICT ATTORNEY: Kelli Anne Vilorio ATTORNEY FOR DEFENDENT: DAVID O'MARA, ESQ. PUBLIC DEFENDER AGENCY NO: RPD RP07-009446 RPD RP05-034027
CHARGING: SEXUAL ASSAULT, a violation of NRS 200.366, a felony.			
DATE 2007	PROCEEDINGS		
Mar. 22	Bail bond deposited in the amount of \$18,500.00 (ACTION)		
Mar. 23	Probable Cause Affidavit reviewed by Judge. Probable Cause not found.		
Mar. 31	Bail Bond deposited in the amount of \$15,000.00. (ACTION)(2ND BAIL BOND)		
Apr. 5	Complaint filed and Defendant bailed.		
Apr. 16	AMENDED CRIMINAL COMPLAINT FILED ADDING AGENCY #: RPD RP05-034027; AMENDING THE DA TO: KELLI ANNE VILORIA; AMENDING COUNT I TO READ: SEXUAL ASSAULT ON A CHILD, a violation of NRS 200.366, a felony; ADDING COUNT II: LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN YEARS, a violation of NRS 201.230, a felony; ADDING COUNT III: STATUTORY SEXUAL SEDUCTION, a violation of NRS 200.364 and NRS 200.368, a felony; ADDING COUNT IV: LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN YEARS, a violation of NRS 201.230, a felony; ADDING COUNT V: SEXUAL ASSAULT, a violation of NRS 200.366, a felony; ADDING COUNT VI: SEXUAL ASSAULT, a violation of NRS 200.366, a felony; ADDING COUNT VII: SEXUALLY MOTIVATED COERCION, a violation of NRS 207.190 and NRS 207.193, a felony; AND ADDING PCN: RPD0726517C.		
Apr. 20	Defendant appeared before Pro Tem Judge Jenny Hubach was duly arraigned, advised of rights and informed of Complaint. Preliminary Examination set for May 2, 2007 at 2:30 P.M. Bail continued in full force and effect. Defendant requested appointment of the Washoe County Public Defender. Washoe County Public Defender appointed, however the Court believes some reimbursement should be required at a later time.		
May 2	Upon stipulation of counsel, the Preliminary Examination is continued to May 16, 2007, at 2:30 P.M. Bail continued in full force and effect.		
May 7	Conflict Attorney David O'Mara appointed to represent Defendant BRENDAN DUNCKLEY.		
(OVER)			

May 16

Upon stipulation of Counsel, the Preliminary Examination is continued to July 2, 2007, at 1:30 P.M. Bail continued in full force and effect.

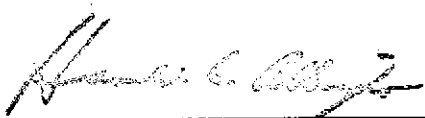
July 2

Defendant appeared together with attorney David O'Mara, Esq. before the Honorable Harold Albright and the State was represented by David Clifton. Preliminary Examination proceeded. Complaint AMENDED BY INTERLINEATION to conform to evidence. Defendant WAIVED right to testify and call witnesses.

The Court found probable cause to believe the offenses set forth in the Criminal Complaint Counts I, II, III and VI were committed and probable cause Defendant participated as principal in such offenses. Defendant was bound over to answer in the Second Judicial District Court of the State of Nevada.


The Court found INSUFFICIENT probable cause to believe the offenses set forth in the Criminal Complaint Counts IV, V and VII were committed and/or INSUFFICIENT probable cause Defendant participated as principal in such offenses. Criminal Complaint Counts IV, V and VII were DISMISSED. Bail continued in full force and effect.

SO ORDERED.



JUSTICE OF THE PEACE
DEPARTMENT NO. 4

hereby certify that the document to which this certificate is affixed is a full, true and correct copy of the original document found in the records or files of the Reno Justice Court.

Darin D. Canforti, Clerk, Reno Justice Court
By: 

Deputy Clerk of the Court

I further certify that this is a copy of a 2 page Original and that each page of this copy is a true and correct copy of the corresponding Original document found in the records or files of the Reno Justice Court.

Darin D. Canforti, Clerk, Reno Justice Court
By: 

Deputy Clerk of the Court

FILED

JUL 24 2007

RONALD A. LONGSTON, JR., CLERK
By: *[Signature]*
DEPUTY CLERK

ORIGINAL

Code BAIL

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

THE STATE OF NEVADA,

Plaintiff,

vs.

BRENDAN DUNCKLEY,

Defendant.

Case No. CR07-1728

Dept. No. 4

BAILBOND POSTED

WARNING: THIS DOCUMENT CONTAINS A COLORED BACKGROUND AND MICRO PRINT PROTECTION

Accredited
Surety and Casualty Insurance Co., Inc.

400 SOUTH PARK AVENUE
SUITE 320
WINTER PARK, FL 32789-4320

POWER OF ATTORNEY

POWER NO.

A25-00325488

POWER AMOUNT \$

25,000.00

KNOW ALL MEN BY THESE PRESENTS that ACCREDITED SURETY AND CASUALTY CO., INC., a corporation duly organized and existing under the laws of the state of Florida and by the authority of the resolution adopted by the Board of Directors at a meeting duly called and held on April 14, 1999, which said resolution has not been amended or rescinded, does constitute and appoint and by these presents does make, constitute and appoint the named agent its true and lawful Attorney-in-Fact for it and in its name, place and stead, to execute, seal and deliver for and on its behalf and as its act and deed, as surety, a bail bond only. Authority of such Attorney-in-Fact is limited to appearance bonds and cannot be construed to guarantee defendant's future lawful conduct, adherence to travel limitation, fines, restitution, payments or penalties, or any other condition imposed by a court not specifically related to court appearance.

This Power of Attorney is for use with Bail Bonds only. Not valid if used in connection with Federal or Immigration Bonds. This power void if altered or erased, void if used with other powers of this company or in combination with powers from any other surety company, void if used to furnish bail in excess of the stated face amount of this power, and can only be used once.

The obligation of the company shall not exceed the sum of **TWENTY-FIVE THOUSAND DOLLARS** and provided this Power-of-Attorney is filed with the bond and retained as a part of the court records. The said Attorney-in-Fact is hereby authorized to insert in this Power-of-Attorney the name of the person on whose behalf this bond was given.

IN WITNESS WHEREOF, ACCREDITED SURETY AND CASUALTY CO., INC., has caused these presents to be signed by its duly authorized officer, proper for the purpose and its corporate seal to be hereunto affixed this 31st of March 2007

Bond Amount \$ 15000

Defendant Brendan Dunkley

Charges SEXUAL ASSAULT

Court Justice

Case No. 05-34027

City Las Vegas State NV

If rewrite, original No. _____

Executing Agent Ron Blair

NAME

By *[Signature]*
Deborah Jallad, President



VOID IF NOT ISSUED BY: **06/13/2008**
FOR STATE USE ONLY
NOT VALID IF USED IN FEDERAL COURT

CB-011(A) (10/05)

BK 076701

RCX07-000682
C07.1728

CR07-1728
4

Ad Annie's, Inc.
dba Action Bail Bonds
5295 Sun Valley Blvd., #1
Sun Valley, NV 89433
(775) 322-7997

9.30
Bond
7/2/07
Def 4
RCR07-03384


ACCREDITED SURETY AND CASUALTY CO., INC.
PO Box 2067
Winter Park, FL 32790
(407) 841-8300 FAX (407) 841-4219

(PLACE BAIL AGENT'S ADDRESS STAMP HERE)

Justice COURT
Municipal, Justice, Judicial District
city of Reno County of Washoe
(City, Township, County)
STATE OF NEVADA

State of Nevada

Plaintiff

vs.

BAIL BOND No. A25-00325488
(POWER OF ATTORNEY WITH THIS NUMBER MUST BE ATTACHED)
(BOND NOT VALID IF MORE THAN ONE (1) POWER OF ATTORNEY HAS BEEN ATTACHED)

Brendan Dunkley Defendant

An order having been made on the 31 day of March, 2007
by Justice of the Peace
(Municipal Judge, Justice of the Peace, District Judge)
city of Reno County of Washoe State of Nevada,
(of the City of, Township of, in and for the County of)
that the defendant be held to answer (or for examination) upon a charge of SEXUAL ASSAULT

_____, upon which ~~he~~ she has been duly admitted
to bail in the sum of Fifteen thousand dollars.

Now we, ACCREDITED SURETY AND CASUALTY CO., INC., a Florida corporation,, as Surety, duly authorized to transact business as Surety in the State of Nevada, hereby undertake that the above named defendant will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and shall at all times render ~~him~~ herself amendable to the orders and the process of the Court, and if convicted, shall appear for judgement and render ~~him~~ herself in execution thereof, or ~~if he~~ she fails to perform any of these conditions, that we will pay to the State of Nevada the sum of \$ 15000

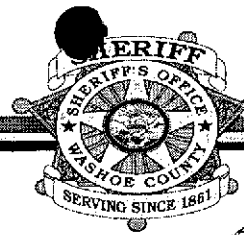
ACCREDITED SURETY AND CASUALTY CO., INC

Defendant notified to appear:
Date 4/20/07 @ 9:30 A.M.
approved by me this 2nd
day of April, 2007
Edmund [Signature]
City, Township

By Ron Blair
Attorney-in-Fact

NOTE: This is an Appearance Bond and cannot be construed as a guarantee for failure to provide payments, back alimony payments, FINES, or Wage Law claims, nor can it be as a Bond on Appeal

Dunkley, Brendan



Dedicated Service in Partnership with our Community

Washoe County Detention Facility

15000
RJC
Bond

POSTED ON: 3/31/2007 @ 1:16:16PM

INMATE NAME: DUNCKLEY,BRENDAN

WC H04 A01

BOOKING NUMBER: 0706701

DOB: 7/4/1976

DRIVER'S LICENSE: 0001025012

OLS STATE: NV

BAIL RECEIPT # B067936 **ARRESTING AGENCY /CASE #:** RPD 050034027 **DUNCKLEY,BRENDAN**

NOC: 00114 **CHARGE LITERAL:** SEXUAL ASSAULT **Level:** FELONY **PCN:** RPD0726517

COURT: RJC **COURT CASE #:**
ONE SOUTH SIERRA ST, RENO, NV 89520

COURT DATE/TIME: 4/20/2007 @ 09:30

WARRANT #: **WARRANT AGENCY:**

BAIL AMOUNT: \$ 15,000.00

POSTED BY: ACTION BAIL BONDS
ADDRESS:

COURT BOND FEE: \$

INT:

MICHAEL HALEY, SHERIFF

CLERK:

W2602

TOTAL BAIL POSTED: \$ 15,000.00

NOTICE: NRS 178.528: Disposition of the bail is up to the court in which this case is terminated

This receipt must be presented to the court for any refund

SIGNED: Morgan Dunckley

Code No. 4185

FILED

2007 AUG 16 AM 8:05

RONALD A. LONGIN, JR.

BY

DEPUTY

ORIGINAL

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

STATE OF NEVADA,

Plaintiff,

vs.

BRENDAN DUNCKLEY,

Defendant.

Case No. CR07-1728

Dept. No. 4

TRANSCRIPT OF PROCEEDINGS

ARRAIGNMENT

July 17, 2007

RENO, NEVADA

Reported By: STEPHANI L. LODER, CCR No. 862

CR07-1728
STATE VS. BRENDAN DUNCKLEY (7 Pages
District Court 08/16/2007 08:05 AM
Washoe County 4185
DOC JAMES

APPEARANCES:

For the Plaintiff:	KELLI ANNE VILORIA Deputy District Attorney Reno, Nevada
For the Defendant:	DAVID C. O'MARA Law Office of William O'Mara Reno, Nevada
Parole and Probation:	LUPE GARRISON

1 RENO, NEVADA, TUESDAY, JULY 17, 2007, 9:11 A.M.

2 -oOo-

3
4 THE COURT: Thank you. Please be seated.

5 Brendan Dunckley.

6 MS. VILORIA: Good morning, Your Honor. Kelli
7 Anne Viloria on behalf of the State.

8 MR. O'MARA: Good morning, Your Honor. I'm David
9 O'Mara on behalf of Mr. Dunckley, who is present in court
10 today.

11 THE COURT: Good morning. This is the time set
12 for arraignment on Information filed July 12th, 2007.

13 Mr. Dunckley, I'm going to hand a copy of the
14 Information to your attorney. I'd ask that you review it
15 with him.

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

17 THE COURT: You're welcome.

18 MR. O'MARA: Thank you, Your Honor. Mr. Dunckley
19 has reviewed the Information, and his name is spelled
20 correctly on line 12, page one.

21 Mr. Dunckley will be pleading not guilty to all
22 four counts this morning.

23 THE COURT: Okay. Waive the reading at this
24 time?

1 MR. O'MARA: We waive the reading, Your Honor.

2 THE COURT: Does your client waive the right to
3 have a trial within 60 days?

4 MR. O'MARA: Yes, we do, Your Honor. He waived
5 the right to 60 days, and counsel have agreed on a date to
6 have this trial on March 24th.

7 MS. VILORIA: Of 2008, Your Honor.

8 MR. O'MARA: Of 2008.

9 THE COURT: Mr. Dunckley, do you understand
10 what's going on here today?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you have any questions about
13 what's happening?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Are you comfortable with the
16 representation you've had so far from Mr. O'Mara?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: How do you plead to the Information?

19 THE DEFENDANT: Not guilty, Your Honor.

20 THE COURT: Do you understand you have a right to
21 have a trial within 60 days of today's date; if you waive
22 that right, you cannot later complain about continuances
23 that are required by the Court's calendar or any other
24 circumstances?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you waive that right?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. We'll set this matter for
5 trial. How long of a trial?

6 MS. VILORIA: It will be five days, Your Honor.
7 I met with your clerk. We've agreed on a date of
8 March 24th of 2008.

9 THE CLERK: That is correct, at 10:00 a.m., with
10 a motion to confirm, March 13th at 9:00 a.m.

11 MS. VILORIA: And, Your Honor, we will be having
12 a motions hearing in this case. I don't know if the Court
13 wants to set those now or do it by your briefing schedule
14 as you normally do, but we will be both having motions
15 filed in this case.

16 THE COURT: We will set a briefing schedule.
17 Pretrial motions must be filed no later than
18 September 17th. Answers to any motions must be filed no
19 later than September 28th. Replies, if any, must be filed
20 no later than October 5th. We'll set the hearing date the
21 week of October 15th, or thereabouts.

22 THE CLERK: How long do you think you'll need for
23 the pretrial motion?

24 MS. VILORIA: On the State's part, the State may

1 need an hour to two hours at the most. I think an hour
2 would be sufficient for my part of it.

3 MR. O'MARA: We would only need an hour.
4 30 minutes, probably.

5 THE CLERK: October 19th at 9:00 a.m.

6 MS. VILORIA: Thank you.

7 THE COURT: Are you okay on that, Mr. O'Mara?

8 MR. O'MARA: That would be great, Your Honor.
9 Thank you.

10 THE COURT: You're welcome.

11 MS. VILORIA: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 MR. O'MARA: Did you say 9:00 a.m.?

14 THE CLERK: I did.

15 (Proceedings concluded.)
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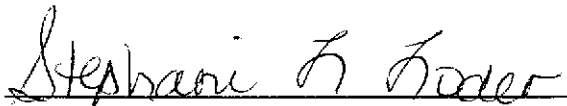
STATE OF NEVADA)
)
COUNTY OF WASHOE)

I, STEPHANI L. LODER, Certified Shorthand Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

That I was present in Department No. 4 of the above-entitled Court and took stenotype notes of the proceedings entitled herein, and thereafter transcribed the same into typewriting as herein appears;

That the foregoing transcript is a full, true and correct transcription of my stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 13th day of August, 2007.


STEPHANI L. LODER, CCR No. 862

CR07-1728
STATE VS. BRENDAN DUNKLEY (D 1 Page)
District Court 09/26/2007 09:29 AM
Washoe County 1250
RC011EP

CODE: 1250

ORIGINAL

FILED

SEP 26 2007

RONALD A. LONGSTIN, JR., CLERK

By: *[Signature]*
DEPUTY

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

STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR07-1728

BRENDAN DUNKLEY,

Dept. No. 4

Defendant.

APPLICATION FOR SETTING

TYPE OF ACTION:

CRIMINAL

MATTER TO BE HEARD:

MOTION TO CONFIRM TRIAL

DATE OF APPLICATION:

September 26, 2007

COUNSEL FOR PLAINTIFF:

DAVID CLIFTON

COUNSEL FOR DEFENDANT(S):

DAVID O'MARA

Setting at 9:00 p.m. on the 18th of March, 2007.

This vacates the 9:00 a.m. Motion to Confirm hearing on 3/13/07

ORIGINAL

FILED

OCT 08 2007

RONALD A. LONGTIN, JR., CLERK
By: *[Signature]*
DEPUTY

1 CODE: 1250

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

9 STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR07-1728

12 BRENDAN DUNKLEY,

Dept. No. 4

13 Defendant.
14

15 APPLICATION FOR SETTING

16 TYPE OF ACTION:

CRIMINAL

17 MATTER TO BE HEARD:

MOTION TO CONFIRM TRIAL

18 DATE OF APPLICATION:

October 8, 2007

19 COUNSEL FOR PLAINTIFF:

KELLI VILORIA

20 COUNSEL FOR DEFENDANT(S):

DAVID O'MARA

21
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26 Setting at 9:00 a.m. on the 4th of March, 2007.

27 ***This vacates the 9:00 p.m. Motion to Confirm Trial Hearing on 3/18/07***
28

CR07-1728
 DC-990001861-037
 STATE VS. BRENDAN DUNKLEY (3 Pages
 District Court 10/19/2007 09:25 AM
 Washoe County 3980
 MTRRFRF
 nnc

1 THE O'MARA LAW FIRM, P.C.
 2 WILLIAM M. O'MARA, ESQ.
 3 Nevada Bar No. 00837
 4 BRIAN O. O'MARA, ESQ.
 5 Nevada Bar No. 08214
 6 DAVID C. O'MARA, ESQ.
 7 Nevada Bar No. 08599
 8 311 East Liberty Street
 9 Reno, Nevada 89501
 10 Telephone: 775-323-1321
 11 775-323-4082 (fax)

FILED

OCT 19 2007

HOWARD W. CONTERS, CLERK

By: *[Signature]*
DEPUTY CLERK

Attorneys for Defendant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

STATE OF NEVADA,

Plaintiff(s),

vs.

BRENDAN DUNKLEY,

Defendant(s).

Case No. CR07-1728

Dept No. 4

STIPULATION AND ORDER VACATING HEARING

COMES NOW Plaintiff, by and through its counsel, KELLI VILORIA, ESQ., Deputy District Attorney, and Defendant, BRENDAN DUNKLEY, by and through his counsel, DAVID C. O'MARA, ESQ., of THE O'MARA LAW FIRM, P.C., and herewith stipulate to vacate the hearing currently scheduled for Friday, October 19, 2007.

DATED: October 16, 2007.

RICHARD A. GAMMICK
 WASHOE COUNTY DISTRICT ATTORNEY

THE O'MARA LAW FIRM, P.C.

BY: *[Signature]*

KELLI VILORIA, ESQ.

BY: *[Signature]*

DAVID C. O'MARA, ESQ.

ORDER

Based upon the Stipulation entered into by and between the parties, through their respective counsel, and good cause appearing therefor,

IT IS HEREBY ORDERED that the hearing currently scheduled for Friday, October 19, 2007, be, and the same hereby is, VACATED.

DATED: October 18, 2007.

Connie J. Steinhauser
DISTRICT JUDGE

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ORIGINAL

FILED

2008 FEB -4 PM 3:20

HOWARD W. CONYERS

BY DEPUTY

ODE 2490

Richard A. Gammick

#001510

P.O. Box 30083

Reno, NV 89520-3083

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Attorney for Plaintiff

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR07-1728

v.

Dept. No. 4

BRENDAN DUNCKLEY,

Defendant.

MOTION TO ALLOW LEAVE TO FILE A BELATED NOTICE OF INTENT TO SEEK
ADMISSION OF OTHER BAD ACT EVIDENCE FOR REBUTTAL PURPOSES

COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and KELLI ANNE VILORIA, Deputy District Attorney, and respectfully seeks leave to allow the State to file its NOTICE OF INTENT TO SEEK ADMISSION OF OTHER BAD ACT EVIDENCE FOR REBUTTAL PURPOSES. This motion is based upon the Points and Authorities contained herein.

POINTS & AUTHORITIES

I. STATEMENT OF FACTS OF INSTANT CASE

On March 10, 2007, Defendant, BRENDAN DUNCKLEY, (hereinafter Defendant) observed a woman, Jessica H., staggering along the side of

1 the road in the northwest area of Reno. Defendant claimed Jessica H.
2 was so drunk she was "smacked into a wall and smacked into a car."
3 He offered to assist her into her apartment because he did not want
4 her to get hurt. While doing so, he claims to have been on his
5 cellular telephone with his wife to tell her that he was going to
6 help the girl because he "didn't need any accusations." The girl
7 continued to stagger home, and Defendant followed her. According to
8 defendant, he stayed on the phone with his wife the whole time. Once
9 at the woman's home, Defendant escorted her up the stairs because she
10 could barely walk. They went inside and Defendant hung up the phone
11 to be able to get the girl off the ground so that she would not choke
12 on her vomit.

13 The next thing Jessica H. remembers is being on the ground and
14 told by Defendant to "suck my dick." Defendant then shoved his erect
15 penis into her mouth. Jessica H. bit Defendant's penis, causing him
16 to recoil, and her to scream she'd been raped. Jessica H.'s
17 neighbors came running. Defendant, who had called his wife back,
18 was cornered at the scene and telling his wife that he'd been set up.

19 Defendant was extremely cooperative with police, denying,
20 initially any sexual contact with the victim and claiming to have
21 been on the cell phone with his wife throughout the whole time and
22 that nothing of that nature occurred. Defendant even willingly
23 allowed his penis to be photographed (which was flaccid and showed no
24 signs of injury) and provided law enforcement with a swab of his
25 penis for DNA analysis. However, following a further investigation,
26 and a subsequent interview at Defendant's home, Defendant changed his

1 story. When asked whether the victim's saliva would be found on
2 Defendant's penis, Defendant became uncomfortable, changed his story,
3 asked to leave the room and speak outside the presence of his wife,
4 said Jessica had "come on" to him. On March 22, 2007, at 10:00 a.m.,
5 Defendant came in for a formal interview, then admitted the act had
6 occurred, but it was consensual. Defendant, for the first time,
7 acknowledged he had hung up with his wife for approximately two
8 minutes, at which time, the incident occurred.

9 In an unusual twist, that same day, on March 22, 2007, at 10:00
10 p.m., Defendant had contact with a Reno Police Officer on an
11 unrelated incident. Unsolicited, Defendant told the officer about
12 Jessica H.'s accusation and that he had put his finger in her mouth
13 to stop her from choking on her tongue and then urinated, which
14 involved touching his penis immediately after, which may have caused
15 her saliva to be deposited on his penis.

16 Forensic Analysts at the Washoe County Crime Laboratory found no
17 DNA foreign to Defendant on his penis. There was no sexual assault
18 exam performed.

19 **II. STATEMENT OF FACTS OF OTHER ACTS CASE**

20 On August 20, 2005, Defendant ran into an old friend, Lura S.
21 Defendant and his wife had known Lura S. since she was a little girl.
22 By all accounts, those who knew her, considered her a "special needs"
23 or developmentally disabled girl who has epilepsy. That day,
24 Defendant obtained Lura S.'s phone number so that they could keep in
25 touch.
26

1 The next day, Defendant called Lura S. and ran into her with
2 some of her friends. They were drinking alcohol and Lura S. was very
3 intoxicated. She agreed to go with Defendant to his work. Defendant
4 boots vehicles for a living. While at a vehicle, at a lot in the
5 northwest area of Reno, Defendant grabbed Lura S. by the throat and
6 hair, scared her, and had Lura S. perform fellatio on him. Defendant
7 grabbed Lura S. from the car, pulled her out, pushed her face down on
8 the hood of the car, and then subjected her to sexual intercourse
9 from behind. Defendant then drove Lura S. back to her apartment,
10 which she entered crying and disclosed what had occurred.

11 During the investigation, conducted by Reno Police Detective Tom
12 Broome, Defendant admitted the conduct, but claimed it was
13 consensual. A short time later, Lura S. was admitted to a mental
14 hospital and became unable to continue any cooperation with law
15 enforcement. The case was closed at that time.

16 In March of 2007, Reno Police Detective Tom Broome remembered
17 Defendant from the Lura S. case. Detective Broome contacted Lura S.
18 to see if she was in a better position to assist with the opening of
19 the case. At that time, Lura S. agreed. However, just prior to the
20 preliminary hearing, Lura S. had a change of mind, and became unable
21 to participate with the case again.

22 On Monday, February 04, 2008, at 11:41 a.m., the State learned
23 that Lura S. is stable, and now willing and able to testify, if
24 needed, in this case.

25
26 **III. ARGUMENT**

1 THE STATE HAS SHOWN GOOD CAUSE AND UNFORESEEN CIRCUMSTANCES
2 TO ALLOW IT TO BELATEDLY FILE ITS NOTICE OF INTENT TO SEEK
3 ADMISSION OF OTHER BAD ACT EVIDENCE FOR REBUTTAL PURPOSES

4 The State has good cause and unforeseen circumstance to allow
5 the Court to grant leave to file this and it's NOTICE OF INTENT TO
6 SEEK ADMISSION OF OTHER BAD ACT EVIDENCE FOR REBUTTAL PURPOSES. In
7 the Court's PRETRIAL ORDER dated July 23, 2007, the Court set a
8 deadline of September 17, 2007 for the filing of all motions. As of
9 that date, the State had not been able to secure cooperation with the
10 witness in the prior bad act case, Lura S. Lura S. was so upset and
11 concerned about not wanting to appear that she willfully did not
12 appear, though subpoenaed to the preliminary hearing. This precluded
13 the State from proceeding in that hearing on her case.

14 Lura S. is known to all to be fragile, mentally unstable,
15 terrified of Defendant, has moved away from Reno due to her case, has
16 been treated for medical and mental illness and was not willing, or
17 comfortable, to testify in this case. As such, the State could not,
18 in good faith, file any motion relating to her because the State
19 could not guarantee, and in fact, it was unlikely that she would
20 appear. Not wanting to risk wasting this Court's or the Defendant's
21 time, the State refrained from filing any motions relating to Lura S.

22 However, on Monday, February 04, 2008, at 11:41 a.m., the
23 State's prosecutor spoke with Lura S. and learned that Lura S.,
24 though tearful and still scared, is now willing to testify. The
25 State immediately filed this and the related other bad acts motion.
26 According to Lura S., though she does not wish to bring all of this

1 up or to relive her experience with Defendant, she feels compelled to
2 now provide her assistance to ensure there are no other victims. She
3 now understands that doing nothing only guarantees nothing will be
4 done. Therefore, under these unique circumstances, the Court should
5 grant the State leave to file these motions.

6
7 **IV. CONCLUSION**

8 The State has shown good cause to belatedly file its NOTICE
9 OF INTENT TO SEEK ADMISSION OF OTHER BAD ACT EVIDENCE FOR REBUTTAL
10 PURPOSES as the State has only just learned that the witness for the
11 other bad acts is stable and can testify.

12 **AFFIRMATION PURSUANT TO NRS 239B.030**

13 The undersigned does hereby affirm that the preceding
14 document does not contain the social security number of any person.

15 Dated this 4th day of February, 2008.

16 RICHARD A. GAMMICK
17 District Attorney
Washoe County, Nevada

18
19
20 By Kelli Anne Vilorio
21 KELLI ANNE VILORIA
5872
22 Deputy District Attorney

23
24
25
26 03140783

CERTIFICATE OF MAILING

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

David O'Mara
311 E. Liberty St.
Reno, NV 89501

DATED this 4th day of February, 2008.

P. O'Block

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STATE VS. BRENDAN DUNCKLEY 12 Pages
District Court 02/04/2008 03:31 PM
Washoe County
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HOWARD W. CONYERS
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Attorney for Plaintiff

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* * *

THE STATE OF NEVADA,

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Case No. CR07-1728

v.

Dept. No. 4

BRENDAN DUNCKLEY,

Defendant.

NOTICE OF INTENT TO SEEK ADMISSION OF OTHER ACTS EVIDENCE FOR
PURPOSES OF REBUTTAL

COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and KELLI ANNE VILORIA, Deputy District Attorney, and respectfully would like to place defendant, BRENDAN DUNCKLEY on notice that the State has evidence that he has engaged in other act conduct related to the charge in this case and, that if such evidence becomes relevant, the State would seek its admission in a rebuttal case. This notice is based upon the Points and Authorities contained herein.

POINTS & AUTHORITIES

I. STATEMENT OF FACTS OF INSTANT CASE

1 On March 10, 2007, Defendant, BRENDAN DUNCKLEY, (hereinafter
2 Defendant) observed a woman, Jessica H., staggering along the side of
3 the road in the northwest area of Reno. Defendant claimed Jessica H.
4 was so drunk she was "smacked into a wall and smacked into a car."
5 He offered to assist her into her apartment because he did not want
6 her to get hurt. While doing so, he claims to have been on his
7 cellular telephone with his wife to tell her that he was going to
8 help the girl because he "didn't need any accusations." The girl
9 continued to stagger home, and Defendant followed her. According to
10 defendant, he stayed on the phone with his wife the whole time. Once
11 at the woman's home, Defendant escorted her up the stairs because she
12 could barely walk. They went inside and Defendant hung up the phone
13 to be able to get the girl off the ground so that she would not choke
14 on her vomit.

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16 told by Defendant to "suck my dick." Defendant then shoved his erect
17 penis into her mouth. Jessica H. bit Defendant's penis, causing him
18 to recoil, and her to scream she'd been raped. Jessica H.'s
19 neighbors came running. Defendant, who had called his wife back,
20 was cornered at the scene and telling his wife that he'd been set up.

21 Defendant was extremely cooperative with police, denying,
22 initially any sexual contact with the victim and claiming to have
23 been on the cell phone with his wife throughout the whole time and
24 that nothing of that nature occurred. Defendant even willingly
25 allowed his penis to be photographed (which was flaccid and showed no
26 signs of injury) and provided law enforcement with a swab of his

1 penis for DNA analysis. However, following a further investigation,
2 and a subsequent interview at Defendant's home, Defendant changed his
3 story. When asked whether the victim's saliva would be found on
4 Defendant's penis, Defendant became uncomfortable, changed his story,
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7 Defendant came in for a formal interview, then admitted the act had
8 occurred, but it was consensual. Defendant, for the first time,
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10 minutes, at which time, the incident occurred.

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13 unrelated incident. Unsolicited, Defendant told the officer about
14 Jessica H.'s accusation and that he had put his finger in her mouth
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17 her saliva to be deposited on his penis.

18 Forensic Analysts at the Washoe County Crime Laboratory found no
19 DNA foreign to Defendant on his penis. There was no sexual assault
20 exam performed.

21 II. STATEMENT OF FACTS OF OTHER ACTS CASE

22 On August 20, 2005, Defendant ran into an old friend, Lura S.
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24 By all accounts, those who knew her, considered her a "special needs"
25 or developmentally disabled girl who has epilepsy. That day,
26

1 Defendant obtained Lura S.'s phone number so that they could keep in
2 touch.

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4 some of her friends. They were drinking alcohol and Lura S. was very
5 intoxicated. She agreed to go with Defendant to his work. Defendant
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7 northwest area of Reno, Defendant grabbed Lura S. by the throat and
8 hair, scared her, and had Lura S. perform fellatio on him. Defendant
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10 the hood of the car, and then subjected her to sexual intercourse
11 from behind. Defendant then drove Lura S. back to her apartment,
12 which she entered crying and disclosed what had occurred.

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14 Broome, Defendant admitted the conduct, but claimed it was
15 consensual. A short time later, Lura S. was admitted to a mental
16 hospital and became unable to continue any cooperation with law
17 enforcement. The case was closed at that time.

18 In March of 2007, Reno Police Detective Tom Broome remembered
19 Defendant from the Lura S. case. Detective Broome contacted Lura S.
20 to see if she was in a better position to assist with the re-opening
21 of the case. At that time, Lura S. agreed. However, just prior to
22 the preliminary hearing, Lura S. had a change of mind, and became
23 unable to participate with the case again.

24 On Monday, February 04, 2008, the State learned that Lura S. is
25 now willing and able to testify, if needed, in this case.
26

1 **III. ARGUMENT**

2 DEFENDANT'S REMARKABLY SIMILAR CONDUCT IS
3 ADMISSIBLE PURSUANT TO NRS 48.045(1) TO REBUT
4 DEFENSE CLAIMS AND/OR PURSUANT TO NRS 48.045(2)
5 FOR OTHER PURPOSES TO CIRCUMSTANTIALLY ESTABLISH
6 IN REBUTTAL, THE DEFENDANT'S MOTIVE, IMPEACHMENT,
7 OPPORTUNITY, INTENT, PREPARATION, PLAN,
8 KNOWLEDGE, IDENTITY, MODUS OPERANDI.

9 Nevada law expressly permits evidence of uncharged conduct
10 to be admitted "to rebut evidence of a character trait offered by an
11 accused." NRS 48.045(1)(a). Such evidence is also admissible for
12 "...limited purposes other than showing a defendant's bad character
13 so long as certain procedural requirements are satisfied and certain
14 substantive criteria met." Tavares v. State, 17 NAO 61 (September 17,
15 2001); see also Braunstein v. State, 118 Nev. 68, 40 P.3d 413 (2002).
16 This evidence is also ruled admissible in cases involving sexual
17 conduct as long as the evidence is not offered to establish bad
18 character or a specific emotional propensity for sexual aberration.
19 Braunstein at 417.

20 Admissible other act evidence is outlined in NRS 48.045.
21 Specifically, that statute states:

22 Evidence of other crimes, wrongs or acts is not
23 admissible to prove the character of a person in
24 order to show that he acted in conformity
25 therewith. It may, however, be admissible for
26 **other purposes**, such as proof of **motive**,
 opportunity, intent, preparation, plan,
 knowledge, identity, or absence of mistake or
 accident. (emphasis added.)

 Though the use of uncharged bad acts is heavily disfavored
by the Nevada Supreme Court, the Court has held that it is

1 appropriate for the Court to admit such evidence as long as the State
2 "...establishes, at a hearing outside the presence of the jury that:
3 (1) the incident is relevant to the crime charged; (2) the act is
4 proven by clear and convincing evidence; and (3) the probative value
5 of the evidence is not substantially outweighed by the danger of
6 unfair prejudice." Id.; see also Braunstein; see also NRS 48.035;
7 see also Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65
8 (1997), citing Walker v. State, 112 Nev. 819, 824, 921 P.2d 923, 926
9 (1996).¹ See also Rosky v. State, 111 P.3d 690 (May 2005) and
10 Ledbetter v. State, 129 P.3d 671 (March 2006).

11 It is also well established that such evidence is highly
12 probative when offered to prove motive, since "...motive generally
13 applies to establish the identity of the criminal, or to prove malice
14 or specific intent." Richmond v. State, 59 P.3d 1249, 1255 (2002).
15 The same is true when admitting evidence that supports a common plan
16 or scheme as long as it shows "...an integral part of an overarching
17 plan explicitly conceived and executed by the defendant." Id. "The
18 test is not whether the other offense has certain elements in common
19 with the crime charged, but whether it tends to establishes a
20 preconceived plan which resulted in the commission of the crime."
21 Id.; see also Ledbetter at 677.

22
23
24 ¹ Procedurally, "[a] prosecutor seeking the motion must do so in the pursuit of
25 justice and as a servant of the law." Tavares. To protect the defendant's rights,
26 the Nevada Supreme Court now also requires the State to request the Court to give a
limiting instruction at the time the evidence is proffered. Id.; see also Rosky
and Ledbetter.

1 Such evidence is also admissible to prove a distinct modus
2 operandi by the accused. Williams v. State 95 Nev. 830 (1979); see
3 also United States v. Baldarrama, 566 F.2d 560 (5th Cir. 1978);
4 People v. Hasten, 69 Cal.2d 233, 70 Cal. Rptr. 419, 444 P.2d 91
5 (1968) and People v. Rodriguez 68 Cal.App.3d 874, 137 Cal.Rptr. 594
6 (1977). Modus Operandi evidence is "...generally proper where a
7 positive identification of the perpetrator has not been made , and
8 the offered evidence establishes a crime so clear as to establish the
9 identity of the person on trial." Ledbetter at 677. The Court must
10 simply determine whether there is sufficient similarity between the
11 charged and uncharged crimes to allow evidence of modus operandi
12 include: (1) the time lapse between the two crimes and (2) the
13 geographic distance between the crimes. United States v. Farber, 630
14 F.2d 569 (8th. Cir. 1980); Walker v. State, 588 S.W.2d 920, 924
15 (Tex.App. 1982); Messenger v. State, 638 S.W. 2d 883 (Tex.App. 1982).
16 This evidence is especially relevant when identity is at issue.
17 Ledbetter at 677.

18 In this case, and only if it becomes necessary and under
19 NRS 48.045(1), the State will seek to admit this evidence to rebut
20 the defendant's placing of his character, his lack of motive, his
21 lack of criminal intent, his lack of criminal design in issue.
22 Naturally, before seeking admission of any of this evidence, the
23 State will prove these acts by clear and convincing evidence.

24 Here, DEFENDANT's conduct with Lura S. mirrors his conduct with
25 Jessica H. and, when made relevant, may be admissible to show
26 defendant's motive, modus operandi, common scheme or plan, identity

1 and intent. Though sexual in nature, and arguably prejudicial, it is
2 admissible, as it is relevant to prove the charged conduct here and
3 any prejudicial effect will be, by far, outweighed by the probative
4 value of the evidence.

5 Looking closely, the conduct is identical. First of all, the
6 incidents involve females, who were either intoxicated or mentally
7 disabled, and a cooperative suspect sex who claimed the sexual
8 conduct that occurred was consensual. Both incidents include
9 defendant being sexually forward, inviting the women to his world, to
10 initiating physical sexual contact, and when rebuffed, or refused,
11 agreeing to go along with the women's rejection, only to truly have
12 something else on his mind. In both incidents, defendant had a plan
13 to have sexual relations regardless of their ability to consent. The
14 only difference between the two cases is that he actually knew Lura
15 S., and only observed a drunken Jessica H. on the street. Either
16 way, it shows defendant's state of mind, his knowledge that the
17 conduct is inappropriate, his modus and his criminal intent. This
18 makes the evidence of defendant's conduct with Lura S. relevant for
19 every single reason listed above if and when Defendant raises the
20 issues in court.

21 *Motive & Intent*

22 Here, by the very entry of a "not guilty" plea, defendant
23 has placed his motive and intent at issue in this case. However, in
24 light of the Nevada Supreme Court's strong distaste for other acts
25 evidence, the State believes that this evidence will only become
26 relevant should Defendant open the door to it.. The evidence that

1 defendant committed, and/or suggested, almost an identical act with a
2 similar victim is highly relevant, at the very least to rebut
3 defendant's claims that this was consensual conduct by Jessica H.
4 and/or to establish that the defendant was aware his conduct was
5 illegal and intended to commit a criminal act.

6 *Common Scheme or Plan &/or Modus Operandi*

7 In addition, the other act evidence is relevant to show
8 defendant's common scheme or plan to show that he picks on low-
9 functioning victims, that he believes he can talk his way out of
10 criminal culpability, that he uses his wife as an alibi-type witness
11 to support his consent defense, knowing he fully intended to do with
12 these women whatever he sexually pleased. Defendant's choice of
13 connecting to the women, for a seemingly innocent purpose, then
14 choosing to have sex with them, when they are not in a position to
15 put up a fight, clearly depicts his criminal design.

16 The evidence also depicts defendant's distinct modus operandi in
17 how he committed this crime. A look at the other acts evidence
18 reveals that there is more than sufficient similarity between the
19 charged and uncharged crimes. There is a marginal time lapse between
20 the conduct, all occurring consistently with a low-to-non functioning
21 female, within a relatively close time, in the same part of time, and
22 involve the use of a victim who is under the influence intoxicating
23 liquor and/or, in the case of Lura S., mental disease.

24 *Other Purposes: Impeachment and Rebuttal (NRS 48.045(1))*

25 Moreover, and for all the reasons stated above, the other act
26 evidence is admissible to impeach and/or rebut the defense.

1 Defendant will undoubtedly attempt to cast dispersion on the victim's
2 character while trying to cast doubt on her credibility. As this
3 court is aware, sex crimes pose unique difficulties when the evidence
4 is largely of a testimonial nature. Thus, credibility of the victim
5 is extremely important. Surely, knowing the Defendant has committed
6 non-consensual sexual conduct will certainly be especially helpful in
7 assist the jury in assessing whether or not what this victim says is
8 true.

9 As with all evidence presented against a defendant in a criminal
10 case, the State acknowledges Defendant's other act evidence may seem
11 prejudicial. However, at worst, and under the analyses offered
12 above, the danger of any prejudice is minimal compared to its
13 probative value and will be cured by a limiting jury instruction
14 given with the admission of the evidence.

15 Accordingly, once the evidence becomes relevant and the State
16 fulfills its necessary and substantive requirements, the Court should
17 admit this other acts evidence.

18 CONCLUSION

19 The evidence relating to the defendant's other acts conduct
20 may become relevant to rebut the defense character claims, relevant
21 to prove DEFENDANT's motive, opportunity, intent, preparation, plan,
22 knowledge, identity, modus operandi and other purposes relevant for
23 the reasons listed above. Following a Petrocelli hearing in this
24 matter, the State will respectfully request this Honorable Court to
25 permit it to introduce the defendant's other acts evidence either if
26 and when it becomes relevant, or for purposes of rebuttal.

1
2 AFFIRMATION PURSUANT TO NRS 239B.030

3 The undersigned does hereby affirm that the preceding
4 document does not contain the social security number of any person.

5 Dated this 11th day of February, 2008.

6 RICHARD A. GAMMICK
7 District Attorney
8 Washoe County, Nevada

9
10 By Kelli Anne Viloria
11 KELLI ANNE VILORIA
12 5872
13 Deputy District Attorney
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03140783

CERTIFICATE OF MAILING

Pursuant to NRCp 5(b), I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing at Reno, Washoe County, Nevada, a true copy of the foregoing document, addressed to:

David O'Mara
311 E. Liberty St.
Reno, NV 89501

DATED this 4th day of February, 2008.

RO Block

CR07-1728 DC-9900002638-018
STATE VS. BRENDAN DUNCKLEY (4 Pages
District Court 02/25/2008 10:57 AM
Washoe County 3839
nnc

DA # 373085

FILED DV/D3

2008 FEB 25 AM 10:57
HOWARD V. CONYERS
BY [Signature]
DEPUTY

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

* * *

THE STATE OF NEVADA,
Plaintiff,
v.
Brendan Dunckley Defendant.

Case No. CR07-1728
Dept. No. 4

REQUEST, STIPULATION AND ORDER RE PRE-PRELIMINARY HEARING AND PRE-TRIAL RECIPROCAL DISCOVERY (FELONY AND GROSS MISDEMEANOR CASES)

I. DEFENDANT'S REQUEST FOR PRE-PRELIMINARY HEARING DISCOVERY

Pursuant to NRS 171.1965, the Defendant requests copies of any and all of the following items which come into the possession or custody of the prosecuting attorney not less than two (2) judicial days before the scheduled preliminary hearing: written or recorded statements or confessions made by the Defendant; written or recorded statements made by a witness or witnesses; reports of statements or confessions; results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the case; and books, papers, documents or tangible objects that the

1 prosecuting attorney intends to introduce into evidence during the
2 State's case in chief at the preliminary hearing.

3 II. DEFENDANT'S REQUEST FOR PRE-TRIAL DISCOVERY

4 Pursuant to NRS 174.235 through 174.295 the Defendant
5 requests copies of any and all of the following items within the
6 custody of the State, the existence of which is known, or by the
7 exercise of due diligence may become known, to the prosecuting
8 attorney: written or recorded statements or confessions made of the
9 Defendant; written or recorded statements made by a witness the
10 prosecuting attorney intends to call during the case in chief of the
11 State; results or reports of physical or mental examinations,
12 scientific tests or scientific experiments made in connection with
13 the particular case; and books, papers, documents or tangible objects
14 that the prosecuting attorney intends to introduce during the case in
15 chief of the State.

16 III. STATE'S REQUEST FOR PRE-TRIAL DISCOVERY

17 Pursuant to NRS 174.235 through 174.295 the State requests
18 copies of any and all of the following items within the possession,
19 custody or control of the Defendant, the existence of which is known,
20 or by the exercise of due diligence may become known, to the
21 Defendant: written or recorded statements made by a witness the
22 Defendant intends to call during the case in chief of the Defendant;
23 results or reports of physical or mental examinations, scientific
24 tests or scientific experiments that the Defendant intends to
25 introduce into evidence during the case in chief of the Defendant;
26 and books, papers, documents or tangible objects that the Defendant

1 intends to introduce into evidence during the case in chief of the
2 Defendant.

3 IV. WAIVER OF TIME REQUIREMENTS

4 By the execution of the instant request and stipulation,
5 both the State and the Defendant expressly waive the requirement that
6 the parties requests for pre-trial discovery must be made within
7 thirty (30) days of the District Court arraignment, pursuant to NRS
8 174.285. The parties stipulate and agree that said requests are
9 timely and satisfactorily made by the execution of the instant
10 request and stipulation.

11 V. ADDITIONAL STIPULATIONS

12 The parties agree to comply with the witness notification
13 provisions, including the expert witness notification provisions, of
14 Chapters 173 and 174 of the Nevada Revised Statutes.

15 The State agrees to provide the Defendant with all
16 exculpatory materials pursuant to Brady v. Maryland, 373 U.S. 83
17 (1963), and the provisions of this Request, Stipulation, and Order
18 are not intended to affect any obligation placed on the prosecuting
19 attorney by the Constitution of this state or the Constitution of the
20 United States to disclose exculpatory evidence, or other materials
21 required by law, to the defendant.

22 ///

23 ///

24 ///

25 ///

26 ///

1 The State and the Defendant shall have a continuing duty to
2 disclose copies of all discovery items noted supra.

3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the preceding
5 document does not contain the social security number of any person.

6 H. Buona
7
8 DEPUTY DISTRICT ATTORNEY

2/10/08
DATE

9 David C. Mara
10 DEFENSE ATTORNEY

1/8/08
DATE

11 Good cause appearing, the above stipulations are hereby
12 ratified and approved. The parties shall comply with the terms of
13 this document.

14 IT IS SO ORDERED.

15 Conrad J. Steinheimer
16 DISTRICT JUDGE

17 2/8/08
18 DATE

ORIGINAL

DA # 373085

RPD RP07-009446, RPD RP05-034027

CODE 1800

Richard A. Gammick

#001510

P.O. Box 30083

Reno, NV 89520-3083

(775) 328-3200

Attorney for Plaintiff

FILED

2008 FEB 28 PM 3:13

HOWARD H. CONTERS

BY *[Signature]*
DEPUTY

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

BRENDAN DUNCKLEY,

Defendant.

Case No. CR07-1728

Dept. No. - 4

AMENDED INFORMATION

RICHARD A. GAMMICK, District Attorney within and for the
County of Washoe, State of Nevada, in the name and by the authority
of the State of Nevada, informs the above entitled Court that BRENDAN
DUNCKLEY, the defendant above named, has committed the crimes of:

COUNT I. LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN
YEARS, a violation of NRS 201.230, a felony, (F650) in the manner
following:

That the said defendant on or between the 14th day of
August A.D. A.D., 1998, and the 13th day of August A.D. A.D., 2000,
or thereabout, and before the filing of this Information, at and
within the County of Washoe, State of Nevada, did willfully,

1 unlawfully, and lewdly commit a lewd or lascivious act upon or with
2 the body of ASHLEY V., having a date of birth of August 14, 1986, a
3 female child under the age of fourteen years at the time that the
4 said act was committed, in that the said defendant engaged the victim
5 in sexual intercourse at or near Longley Lane, Reno, Washoe County,
6 Nevada, and/or put his hand down her pants to fondle her genital area
7 in an elevator at the Atlantis Hotel and Casino, 3800 South Virginia
8 Street, Reno, Washoe County, Nevada, with the intent of arousing,
9 appealing to, or gratifying the lust, passions, or sexual desires of
10 himself or the child.

11 COUNT II. ATTEMPTED SEXUAL ASSAULT, a violation of NRS
12 193.330, being an attempt to violate NRS 200.366, a felony, (F1000) in
13 the manner following:

14 That the said defendant on the 10th day of March A.D.,
15 2008, or thereabout, and before the filing of this Information, at
16 and within the County of Washoe, State of Nevada, did willfully, and
17 unlawfully attempt to subject JESSICA H. to sexual penetration
18 against the victim's and/or under conditions in which the defendant
19 knew or should have known that the victim was mentally or physically
20 incapable of resisting or understanding the nature of the defendant's
21 conduct, to wit, fellatio at 1675 Sky Mountain Drive, #827, Reno,
22 Washoe County, Nevada.

23 ///

24 ///

25 ///

26 ///

1 All of which is contrary to the form of the Statute in such
2 case made and provided, and against the peace and dignity of the
3 State of Nevada.

4
5 RICHARD A. GAMMICK
6 District Attorney
7 Washoe County, Nevada

8 By  _____

9 KELLI ANNE VILORIA

10 5872

11 Deputy District Attorney
12
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1 The following are the names and addresses of such witnesses
2 as are known to me at the time of the filing of the within
3 Information:
4

5 RENO POLICE DEPARTMENT


6 DETECTIVE T.K. BROOME
7 OFFICER SCOTT HEGLAR

8 ASHLEY V., Silver Springs Conservation Camp

9 JESSICA RAE H.
10
11
12
13

14 The party executing this document hereby affirms that this
15 document submitted for recording does not contain the social security
16 number of any person or persons pursuant to NRS 239B.230.
17

18 RICHARD A. GAMMICK
19 District Attorney
20 Washoe County, Nevada

21
22 By 
23 KELLI ANNE VILORIA
24 5872
25 Deputy District Attorney

26 PCN RPD0726517C
27 PCN RPD0726524C

28 07068446

ORIGINAL

FILED

MAR 03 2008

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

CODE 4025
Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR07-1728

v.

Dept. No. 4

BRENDAN DUNCKLEY,

Defendant.

REQUEST FOR CONTINUANCE, STIPULATION AND ORDER

IT IS HEREBY STIPULATED, by and between the parties herein,
Defendant, BRENDAN DUNCKLEY, by and through his attorney, DAVID C.
O'MARA, and the Washoe County District Attorney, by and through KELLI
ANNE VILORIA, Washoe County Deputy District Attorney, and stipulate
that the HEARING TO CONFIRM TRIAL DATE currently set for MARCH 4,
2008, at 9:00 A.M. be vacated and rescheduled to MARCH 6, 2008, at
9:00 A.M.

Said continuance is necessary and not made for the purpose of
delay.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document

1 does not contain the social security number of any person.

2 DATED this 28 day of FEBRUARY, 2008.

3 RICHARD A. GAMMICK
4 District Attorney

5 By Kelli Anne Vilorio
6 KELLI ANNE VILORIA
Deputy District Attorney

By David C. O'Mara
DAVID C. O'MARA
Attorney for Defendant

7
8 ORDER

9 Good cause appearing, and in the interests of justice,

10 IT IS HEREBY ORDERED that the HEARING TO CONFIRM TRIAL DATE
11 currently scheduled for MARCH 4, 2008, at 9:00 A.M. be vacated and
12 rescheduled to MARCH 6, 2008, at 9:00 A.M.

13 DATED this 3 day of MARCH, 2008.

14
15 Connie J. Steinheimer
16 DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26

ORIGINAL

CODE 1785
Richard A. Gammick
#001510
P.O. 30083
Reno, NV. 89520-3083
(775) 328-3200
Attorney for Plaintiff

FILED

MAR 06 2008

HOWARD M. CONVERSE, CLERK
By: *[Signature]*
DEPUTY CLERK

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR07-1728

v.

Dept. No. 4

BRENDAN DUNCKLEY,

Defendant.

GUILTY PLEA MEMORANDUM

1. I, BRENDAN DUNCKLEY, understand that I am charged with the offense(s) of: COUNT I. LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN YEARS, a violation of NRS 201.230, a felony; or in the alternative, COUNT II. ATTEMPTED SEXUAL ASSAULT, a violation of NRS 193.330, being an attempt to violate NRS 200.366, a felony.

2. I desire to enter a plea of guilty to the offense(s) of COUNT I. LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN YEARS, a violation of NRS 201.230, a felony; ~~or in the alternative,~~ COUNT II. ATTEMPTED SEXUAL ASSAULT, a violation of NRS 193.330, being an attempt to violate NRS 200.366, a felony, as more fully alleged in the charge(s) filed against me.

1 3. By entering my plea of guilty I know and understand
2 that I am waiving the following constitutional rights:

3 A. I waive my privilege against self-incrimination.

4 B. I waive my right to trial by jury, at which trial the
5 State would have to prove my guilt of all elements of the offenses
6 beyond a reasonable doubt.

7 C. I waive my right to confront my accusers, that is, the
8 right to confront and cross examine all witnesses who would testify
9 at trial.

10 D. I waive my right to subpoena witnesses for trial on my
11 behalf.

12 4. I understand the charge(s) against me and that the
13 elements of the offense(s) which the State would have to prove beyond
14 a reasonable doubt at trial are that on or between August 14, 1998,
15 and August 13, 2000, or thereabout, in the County of Washoe, State of
16 Nevada, I did, as to Count I. willfully, unlawfully, and lewdly
17 commit a lewd or lascivious act upon or with the body of ASHLEY V.,
18 having a date of birth of August 14, 1986, a female child under the
19 age of fourteen years at the time that the said act was committed, in
20 that I engaged the victim in sexual intercourse at or near Longley
21 Lane, Reno, Washoe County, Nevada, and/or put my hand down her pants
22 to fondle her genital area in an elevator at the Atlantis Hotel and
23 Casino, 3800 South Virginia Street, Reno, Washoe County, Nevada, with
24 the intent of arousing, appealing to, or gratifying the lust,
25 passions, or sexual desires of myself or the child.

26 ///

1 I further understand the charge(s) against me and that the
2 elements of the offense(s) which the State would have to prove beyond
3 a reasonable doubt at trial are that on March 10, 2007, or
4 thereabout, in the County of Washoe, State of Nevada, I did, as to
5 Count II. willfully, and unlawfully attempt to subject JESSICA H. to
6 sexual penetration against the victim's and/or under conditions in
7 which I knew or should have known that the victim was mentally or
8 physically incapable of resisting or understanding the nature of the
9 my conduct, to wit, fellatio at 1675 Sky Mountain Drive, #827, Reno,
10 Washoe County, Nevada..

11 5. I understand that I admit the facts which support all
12 the elements of the offenses by pleading guilty. I admit that the
13 State possesses sufficient evidence which would result in my
14 conviction. I have considered and discussed all possible defenses
15 and defense strategies with my counsel. I understand that I have the
16 right to appeal from adverse rulings on pretrial motions only if the
17 State and the Court consent to my right to appeal. In the absence of
18 such an agreement, I understand that any substantive or procedural
19 pretrial issue or issues which could have been raised at trial are
20 waived by my plea.

21 6. I understand that the consequences of my plea of guilty
22 as to Count I. are that I may be imprisoned for a period of life in
23 the Nevada State Department of Corrections with parole eligibility
24 after ten years, and that I am not eligible for probation unless a
25 psychosexual evaluation is completed pursuant to NRS 176.139 which
26 certifies that I do not represent a high risk to reoffend based upon

1 a currently accepted standard of assessment and unless a psychiatric
2 or psychological evaluation is completed pursuant to NRS 176A.110
3 which certifies that I do not represent a high risk to reoffend based
4 upon a currently accepted standard of assessment. I may also be
5 fined up to \$10,000.00. I further understand that I will be required
6 to be on lifetime supervision pursuant to NRS 176.0931.

7 I further understand that the consequences of my plea of
8 guilty as to Count II. are that I may be imprisoned for a period of
9 two to twenty years in the Nevada State Department of Corrections and
10 that I am not eligible for probation unless a psychosexual evaluation
11 is completed pursuant to NRS 176.139 which certifies that I do not
12 represent a high risk to reoffend based upon a currently accepted
13 standard of assessment and unless a psychiatric or psychological
14 evaluation is completed pursuant to NRS 176A.110 which certifies that
15 I do not represent a high risk to reoffend based upon a currently
16 accepted standard of assessment. I further understand that I will be
17 required to be on lifetime supervision pursuant to NRS 176.0931. The
18 sentence on each count may be concurrent or consecutive to each
19 other.

20 7. In exchange for my plea of guilty, the State, my
21 counsel and I have agreed to recommend the following: The State will
22 be free to argue for an appropriate sentence. The State will not
23 file additional criminal charges resulting from the arrest in this
24 case, and/or will refrain from pursuing additional and/or
25 transactionally related offenses <sup>including all counts filed and dismissed in RJC Case No. 2007-
26 plea to Count I as a legal fiction, pursuant to plea negotiations,</sup> I understand that I am entering my ⁰³⁸⁸⁴

1 to allow me to avoid the more serious charge of sexual assault in the
2 original Count I, and to allow me the opportunity to qualify for probation, which would
3 otherwise be unavailable. (S) KTV PC

4 8. I understand that, even though the State and I have
5 reached this plea agreement, the State is reserving the right to
6 present arguments, facts, and/or witnesses at sentencing in support
7 of the plea agreement.

8 9. I also agree that I will make full restitution in this
9 matter, as determined by the Court. Where applicable, I additionally
10 understand and agree that I will be responsible for the repayment of
11 any costs incurred by the State or County in securing my return to
12 this jurisdiction.

13 10. I understand that the State, at their discretion, is
14 entitled to either withdraw from this agreement and proceed with the
15 prosecution of the original charges or be free to argue for an
16 appropriate sentence at the time of sentencing if I fail to appear at
17 any scheduled proceeding in this matter OR if prior to the date of my
18 sentencing I am arrested in any jurisdiction for a violation of law
19 OR if I have misrepresented my prior criminal history. I represent
20 that I do have a prior criminal record. I understand and agree that
21 the occurrence of any of these acts constitutes a material breach of
22 my plea agreement with the State. I further understand and agree
23 that by the execution of this agreement, I am waiving any right I may
24 have to remand this matter to Justice Court should I later withdraw
25 my plea.

26 11. I understand and agree that pursuant to the terms of
the plea agreement stated herein, any counts which are to be

1 dismissed and any other cases charged or uncharged which are either
2 to be dismissed or not pursued by the State, may be considered by the
3 court at the time of my sentencing.

4 12. I understand that the Court is not bound by the
5 agreement of the parties and that the matter of sentencing is to be
6 determined solely by the Court. I have discussed the charge(s), the
7 facts and the possible defenses with my attorney. All of the
8 foregoing rights, waiver of rights, elements, possible penalties, and
9 consequences, have been carefully explained to me by my attorney. I
10 am satisfied with my counsel's advice and representation leading to
11 this resolution of my case. I am aware that if I am not satisfied
12 with my counsel I should advise the Court at this time. I believe
13 that entering my plea is in my best interest and that going to trial
14 is not in my best interest.

15 13. I understand that this plea and resulting conviction
16 may have adverse effects upon my residency in this country if I am
17 not a U. S. Citizen.

18 14. I offer my plea freely, voluntarily, knowingly and
19 with full understanding of all matters set forth in the Amended
20 Information and in this Plea Memorandum. I understand everything
21 contained within this Memorandum.

22 15. My plea of guilty is voluntary and is not the result
23 of any threats, coercion or promises of leniency.

24 ///

25 ///

26 ///

16. I am signing this Plea Memorandum voluntarily with advice of counsel, under no duress, coercion, or promises of leniency.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 6th day of March, 2008.

DEFENDANT

TRANSLATOR/INTERPRETER

Attorney Witnessing Defendant's Signature

Prosecuting Attorney

Code No. 4185

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE J. STEINHEIMER, CHIEF DISTRICT JUDGE

-o0o-

STATE OF NEVADA,

Pl a i n t i f f ,

vs.

BRENDAN DUNCKLEY,

Defendant.

Case No. CR07-1728

Dept. No. 4

TRANSCRIPT OF PROCEEDINGS

MOTION TO CONFIRM TRIAL

THURSDAY, MARCH 6, 2008

RENO, NEVADA

Reported By: BECKY VAN AUKEN, CCR No. 418

APPEARANCES:

For the Plaintiff:

KELLI A. VILORIA
Deputy District Attorney
75 Court Street
Reno, Nevada 89520

For the Defendant:

O'MARA LAW FIRM
BY: DAVID C. O'MARA, ESQ.
311 E. Liberty Street
Reno, Nevada 89501

Parole and Probation:

LAURA PAPPAS

1 RENO, NEVADA, THURSDAY, MARCH 6, 2008, 9:03 A.M.

2 -oOo-

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5
6 THE COURT: Brendan Dunckley.

7 MS. VILORIA: Kelli Viloria on behalf of the
8 State.

9 MR. O'MARA: Good morning. David O'Mara on
10 behalf of Mr. Dunckley. He's present in court today.

11 THE COURT: There's an amended Information in
12 this file. It's also the time for a motion to confirm.

13 Do you want to go forward on the amended
14 Information?

15 MR. O'MARA: No, Your Honor. We have reached an
16 agreement -- oh, yes, Your Honor.

17 THE COURT: Okay. Then I'll hand you a copy of
18 the Amended Information. You can review it with your
19 client.

20 MR. O'MARA: Thank you, Your Honor.

21 We have received a copy of the Amended
22 Information. Mr. Dunckley's name is correctly spelled on
23 line 12. It states, Count I, lewdness with a child under
24 the age of 14 years, a violation of NRS 201.230, and

1 attempted sexual assault, a violation of NRS 193.330. We
2 waive the formal reading of this amended Information.

3 THE COURT: Are you ready to go forward and enter
4 a plea?

5 MR. O'MARA: Yes, Your Honor. I have provided
6 you with the original of the Guilty Plea Memorandum that
7 was signed. Mr. Dunckley desires to enter a plea of
8 guilty to the offense of lewdness with a child under the
9 age of 14 years, a violation of NRS 201.230, a felony, and
10 Count II, attempted sexual assault, a violation of
11 NRS 193.330, being an attempt to violate NRS 200.366, a
12 felony.

13 Mr. Dunckley understands that the consequences of
14 his plea of guilt to Count I is that he may be
15 imprisoned for a period of life in the Nevada Department
16 of Corrections with parole eligibility after ten years and
17 that he is not eligible for probation unless he satisfies
18 NRS 176.139, which certifies that he is not a high risk to
19 reoffend based upon current standards, and a psychiatric
20 or psychological evaluation to be completed pursuant to
21 NRS 176A.110. He also could be subject to a \$10,000 fine,
22 and he understands that he'll be under lifetime
23 supervision.

24 He also understands the consequences of his plea

1 of guilty to Count II, which is set forth in the Guilty
2 Plea Memorandum, that he would be -- could be imprisoned
3 for a period of 2 to 20 years in the Nevada State Prison,
4 and he's also not eligible for probation unless he
5 satisfies the same psychosexual and psychological
6 evaluations as set forth in Count I.

7 In exchange for his plea of guilty, Your Honor,
8 the State and counsel and Mr. Dunckley have agreed to
9 recommend the following:

10 The State will be free to argue for an
11 appropriate sentence. The State will not file additional
12 criminal charges resulting from the arrest in this case
13 and/or will refrain from pursuing additional and/or
14 transactionally-related offenses, including all counts
15 filed and dismissed in Reno Justice Court, Case
16 No. 2007-033884.

17 He understands that in entering his plea to
18 Count I, it is a legal fiction, pursuant to the plea
19 negotiations, to allow him to avoid the more serious
20 charge of sexual assault in the original Count I, and this
21 also allows him the opportunity to qualify for probation,
22 which would otherwise be unavailable.

23 THE COURT: Is that a complete statement of the
24 negotiations?

1 MS. VILORIA: It is, Judge. Thank you.

2 THE COURT: Mr. Dunckley, do you understand these
3 plea negotiations?

4 THE DEFENDANT: Yes, Your Honor, I do.

5 THE COURT: Do you have any questions about them?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Are you comfortable with the
8 representation you've received from counsel so far?

9 THE DEFENDANT: Yes, Your Honor, I am.

10 THE COURT: Did you read the Guilty Plea
11 Memorandum?

12 THE DEFENDANT: Yes, Your Honor, I have.

13 THE COURT: Did you understand it?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you have any questions about the
16 document?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Do you have any questions about the
19 modifications to the typed document?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: And did you initial all of those
22 changes?

23 THE DEFENDANT: Yes, ma'am, I did.

24 THE COURT: Did you sign the document?

1 THE DEFENDANT: Yes, ma'am, I did.

2 THE COURT: Are you aware that you have a right
3 to plead not guilty, have a trial by jury, be confronted
4 by the witnesses against you, bring witnesses here on your
5 own behalf, and testify or not testify at that jury trial?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you understand you have a right
8 against self-incrimination, you may assert that right by
9 refusing to testify, and the State must prove you guilty
10 beyond a reasonable doubt??

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Are you aware you'll be giving up all
13 of these rights if you plead guilty?

14 THE DEFENDANT: Yes, ma'am, I am.

15 THE COURT: I'm going to ask the clerk to read
16 the charge to which you're pleading, and then I'll ask if
17 you understand it.

18 (Whereupon, the Information was read
19 by the clerk.)

20 THE COURT: Is there anything about those charges
21 you do not understand?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Do you understand Count I is a legal
24 fiction?

1 THE DEFENDANT: As far as what a legal fiction
2 is?

3 THE COURT: Yes. What is it about Count I that's
4 a legal fiction?

5 THE DEFENDANT: That per the agreement, we're
6 changing the original count down to a lower one and
7 pleading guilty to that so that probation can be an
8 option.

9 THE COURT: Are all the facts and circumstances
10 the same?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: It's just that it's a lewdness
13 instead of a sexual assault?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Did you do what it says you did in
16 the charge?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And what about Count II?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Do you understand that charge?

21 THE DEFENDANT: Yes, ma'am, I do.

22 THE COURT: Did you do what it says you did in
23 that charge?

24 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Has your attorney told you the
2 possible maximum penalties?

3 THE DEFENDANT: Yes, ma'am, he has.

4 THE COURT: I know he told me that he had, but
5 now you have to tell me what those are in your own words.
6 What is the penalty for Count I?

7 THE DEFENDANT: The first count is a felony
8 carrying a sentence of no less than 10 years to a life
9 sentence, eligible for parole after 10 years in the Nevada
10 State correctional facilities.

11 Count II will carry a felony, as well as Count I
12 will carry a lifetime supervision, and Count II will carry
13 a felony with no less than two years served in the Nevada
14 State correctional facilities with a maximum of 20 years,
15 as well as carrying a lifetime supervision penalty as
16 well, and a fine in the first count of up to \$10,000.

17 THE COURT: Okay. And a fine in the second
18 count?

19 MS. VILORIA: There is no fine.

20 THE COURT: Okay.

21 Now, do you understand, with regard to Count I,
22 it's a penalty, a maximum penalty of life in prison?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: But you would be eligible for

1 probation after you served 10 years.

2 THE DEFENDANT: Yes, ma'am, I do.

3 THE COURT: And do you understand that with
4 regard to Count II, it's a maximum penalty of 20 years,
5 but you could be eligible for probation -- for parole at a
6 date that I give you, but it could be no less than two
7 years?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Now, do you understand that probation
10 is not available on these charges unless you are certified
11 by a professional pursuant to NRS 176.139 to not represent
12 a high risk to reoffend as to both counts?

13 THE DEFENDANT: I understand, Your Honor.

14 THE COURT: Do you understand that with regard to
15 lifetime supervision, that even if you completed your term
16 of sentence, you've satisfied all your obligations, if you
17 violated the terms of your lifetime supervision, you would
18 be subject to being back in prison?

19 THE DEFENDANT: Yes, ma'am, I do.

20 THE COURT: Do you understand that's totally up
21 to me whether I run these charges concurrent or
22 consecutive?

23 THE DEFENDANT: I do, Your Honor.

24 THE COURT: Do you understand I'm free to

1 sentence you up to and including the maximum allowed by
2 law?

3 THE DEFENDANT: I do.

4 THE COURT: Has anyone made any threats to get
5 you to enter these pleas?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Has anyone told you that you would be
8 guaranteed probation or any other particular result?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Has anyone made any promises or
11 representations to you to get you to enter these pleas
12 that you haven't told me about?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Do you have any doubt about what
15 you're doing here today?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: Do you understand that you have a
18 jury trial scheduled for March 24th, and by pleading
19 guilty, that trial is off?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Do you understand this is a permanent
22 entry of plea?

23 THE DEFENDANT: I do, Your Honor.

24 THE COURT: You can't tell me in a week or two

1 that you didn't understand what was happening. You have
2 to tell me that now.

3 THE DEFENDANT: I do, Your Honor.

4 THE COURT: And you won't be able to change your
5 mind with regard to these pleas of guilt.

6 THE DEFENDANT: I do.

7 THE COURT: With everything I've asked and you
8 your answers, do you still wish to go forward?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Are you doing so of your own free
11 will?

12 THE DEFENDANT: Yes.

13 THE COURT: How do you plead to Count I?

14 THE DEFENDANT: Guilty.

15 THE COURT: How do you plead to Count II?

16 THE DEFENDANT: Guilty.

17 THE COURT: The Court finds that your pleas are
18 voluntary, that you fully understand the nature of the
19 offenses charged and the consequences of your pleas.
20 Therefore, I will accept your pleas of guilt and we'll set
21 a date for sentencing.

22 MR. O'MARA: Your Honor, there's been
23 negotiations with the district attorney's office to set
24 this out five to six months so that Mr. Dunckley can get

1 sexual offender therapy during that period of time. And
2 basically the D.A. is giving him every opportunity to try
3 to qualify for probation and to do the things that will be
4 beneficial for him to present to you at sentencing. So
5 she's allowed for a five- to six-month extension so that
6 he can get those type of therapy classes, and so we'd ask
7 for that type of time before sentencing.

8 MS. VILORIA: Your Honor, my agreement is just to
9 see if this defendant is worthy of any type of grant of
10 probation, whether he can earn it or not. I want to see
11 what he does between now and then.

12 So I do not object to any type of continuance
13 that Mr. O'Mara is asking for to set out the sentencing
14 date.

15 THE COURT: Counsel approach.

16 (A sidebar was held off the record.)

17 THE COURT: Okay. What are the conditions of
18 Mr. Dunckley's release? Is he out on bail?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And what's your bail set at?

21 THE DEFENDANT: I don't remember. It's been a
22 year, Your Honor. I don't remember off the top of my
23 head.

24 THE COURT: We have two bails posted. One may be

1 in the Reno Justice Court case.

2 It looks like it's 15,000 and 18,500, which seems
3 somewhat sufficient to me with regard to the bail. But I
4 am going to modify the terms and conditions of his release
5 to include Court Services supervision.

6 If you are going to do some sort of treatment,
7 then you need to do that and report that to Court
8 Services. And I want you reporting at least once a week
9 to Court Services so we know where you are and what you're
10 doing.

11 You must abstain from the use, possession, and
12 control of alcohol between now and the date you're
13 sentenced, and you can't use controlled substances.

14 So I just want to make sure you understand these
15 special conditions of your release. Do you?

16 THE DEFENDANT: I do, Your Honor.

17 THE COURT: Okay. Then that will be the order,
18 and I'll see you back at sentencing the clerk is about to
19 give.

20 THE CLERK: August 5th at 9:00 o'clock.

21 THE COURT: Between now and that date it's your
22 responsibility to make appointments with the Division of
23 Parole and Probation, to complete the evaluation. It's
24 further your responsibility to see that the psychological

1 evaluation is conducted timely. And stay in touch with
2 Court Services.

3 MS. VILORIA: Your Honor, can we vacate the trial
4 date for March 24, '08?

5 THE COURT: That will be the order.

6 (Proceedings concluded.)

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STATE OF NEVADA,)
)
 COUNTY OF WASHOE.)

I, BECKY VAN AUKEN, Certified Shorthand Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

That I was present in Department No. 4 of the above-entitled Court and took stenotype notes of the proceedings entitled herein, and thereafter transcribed the same into typewriting as herein appears;

That the foregoing transcript is a full, true and correct transcription of my stenotype notes of said proceedings.

DATED: At Reno, Nevada, 04/02/2008.

/s/Becky Van Auken
 BECKY VAN AUKEN, CCR No. 418

ORIGINAL

FILED

AUG 05 2008

HOWARD W. CONYERS, CLERK

By: [Signature]
DEPUTY CLERK

CODE: 2528

CR07-1728
STATE VS. BRENDAN DUNCKLEY
District Court
Washoe County
DC-9900003832-197
08/05/2008 09:00 AM
DOC
2528
RCOTTER

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

STATE OF NEVADA,

Plaintiff,

Case No. CR07-1728

vs.

Dept. No. 4

BRENDAN DUNCKLEY,

Defendant.

NOTICE OF DOCUMENT RECEIVED BUT NOT CONSIDERED BY THE COURT

TO: District Attorney's Office and Defense counsel:

Take notice that the attached document has been received unsolicited by the Court. The Court has not reviewed the document. Further, the Court will not review the document absent an affirmative request to do so from a party.

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This document was considered by the Court only if initialed and dated by the Judge below.

8/5/08
Date

[Signature]
Judges Initials

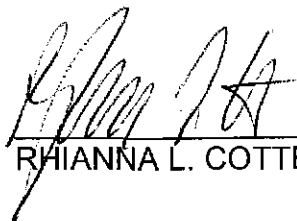
CERTIFICATE OF MAILING

Case No. CR07-1728

I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and
that on the 5th day of August, 2008, I hand delivered true copy of the Notice of
Document Received But Not Considered by the Court, addressed to:

Kelli Vilorio, Esq.
Washoe County Deputy District Attorney
Via Hand Delivery

David O'Mara, Esq.
Via Hand Delivery



RHIANNA L. COTTER

222 Altos Parkway – Sparks, NV 89436
(775) 626-2229 Phone
spanishspringssushi@yahoo.com



Fax

To: Anne E. Connor

From: Cheryl Gallagher

Fax: 775/789-7150

Pages: 2

Phone: 775/789-7100

Date: 8/4/2008

Re: Brendan Dunckley – [REDACTED]

CC: File

We have terminated the employment for the attached employee, so can not send any future payments towards his past-due child support.

Can you please pass this along to the DA prosecuting his case, Kelli Vioria (Case # CR07-1728), to ensure the courts are aware that no job, at least at our restaurant, should be considered in case an ankle bracelet type or release is being considered. The case is scheduled for sentencing tomorrow, August 5, 2008, at 9 a.m.

Copy to Connie Steinhammer via Fax at 775/328-3821

ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT☒ Original ☐ Amended ☐ TerminationState NEVADACo/City/Dist. of WASHOE COUNTYTribunal/Case Number EV04-03734

Employer/Withholder:

SPANISH SPRINGS SUSHI
JERALD O KIGER
10575 PALM DESERT DR
SPARKS NV 89441-0000

Attn: Cheryl
Fax 398-2083

26-1140998

Employer/withholder's Federal EIN Number (if known)

RE: DUNCKLEY, BRENDAN

Employee's/Obligor's Name (Last, First, MI)

Employee's/Obligor's Social Security Number

Employee's/Obligor's Case Identifier

DUNCKLEY, JENNY, A

Obligee Name (Last, First, MI)

Child(ren)'s Name(s):

DUNCKLEY, MADISON,
DUNCKLEY, JESSE,

DOB

01/07/1999

11/19/1997

☒ If checked, you are required to enroll the child(ren) identified above in any health insurance coverage available to the employee/obligor through his/her employment.

ORDER INFORMATION: This Order/Notice is based on the support order from NEVADA

You are required by law to deduct these amounts from the employee's/obligor's income until further notice.

\$350.00

per MONTH

current child support

\$35.00

per MONTH

past-due child support - Arrears 12 weeks or greater?

☒ yes ☐ no

per

current medical support

per

past-due medical support

per

spousal support

per

other (specify)

for a total of \$385.00 per MONTH to be forwarded to the payee below.

You do not have to vary your pay cycle to be in compliance with the support order. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

\$88.85

per weekly pay period.

\$192.50

per semimonthly pay period (twice a month).

\$177.69

per biweekly pay period (every two weeks).

\$385.00

per monthly pay period.

REMITTANCE INFORMATION: When remitting payment, provide the pay date/date of withholding and the case identifier 588274000B. If the employee's/obligor's principal place of employment is NEVADA, begin withholding no later than the first pay period occurring 14 days after the date of this Order/Notice. Send payment within 7 working days of the pay date/date of withholding. The total withheld amount, including your fee, cannot exceed 50% of the employee's/obligor's aggregate disposable weekly earnings.

If the employee's/obligor's principal place of employment is not NEVADA, for limitations on withholding, applicable time requirements, and any allowable employer fees, follow the laws and procedures of the employee's/obligor's principal place of employment (see #4 and #10, ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHHOLDERS).

Make check payable to: STATE COLL & DISB UNIT - SCADU Case Identifier 588274000B.

Send check to: PO BOX 98950, LAS VEGAS NV 89193-8950

Authorized by WASHOE COUNTY DISTRICT ATTORNEYDate 07/23/2008Print Name and Title ANNE E. CONNOR, caseworker

Of Authorized Official(s) _____

IMPORTANT: The person completing this form is advised that the information on this form may be shared with the obligor.

1 **CODE 1850**

FILED

AUG 11 2008

HOWARD W. CONYERS, CLERK

By: *[Signature]*
DEPUTY CLERK

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

8 **STATE OF NEVADA,**

9 **Plaintiff,**

10 **vs.**

Case No. CR07-1728

11 **BRENDAN DUNCKLEY,**

Dept. No. 4

12 **Defendant.**
13 _____/

14 **JUDGMENT**

15 The Defendant, having entered a plea of Guilty, and no sufficient cause
16 being shown by Defendant as to why judgment should not be pronounced against
17 him, the Court rendered judgment as follows:

18 That Brendan Dunckley is guilty of the crime of Lewdness with a Child
19 Under the Age of Fourteen Years, a violation of NRS 201.230, a felony, as charged
20 in Count I of the Amended Information, and Attempted Sexual Assault, a violation of
21 NRS 193.330, being an attempt to violate NRS 200.366, a felony, as charged in
22 Count II of the Amended Information; and that he be punished by imprisonment in the
23 Nevada Department of Prisons for the maximum term of life with the minimum parole
24 eligibility of ten (10) years, for Count I; and that he be punished by imprisonment in
25 the Nevada Department of Prisons for the maximum term of one hundred twenty
26 (120) months with the minimum parole eligibility of twenty-four (24) months, for Count

1 II, to be served concurrently with sentence imposed in Count I; with credit for four (4)
2 days time served, and by submission to a DNA Analysis Test for the purpose of
3 determining genetic markers. Defendant is further ordered to pay a Twenty-Five
4 Dollar (\$25.00) administrative assessment fee, a One Hundred Fifty Dollar (\$150.00)
5 DNA testing fee, and a Nine Hundred Fifty Dollar (\$950.00) Psychosexual Evaluation
6 Fee to the Clerk of the Second Judicial District Court.

7 It is further ordered that the Defendant serve a special sentence of
8 lifetime supervision to commence after any term of imprisonment or after any period
9 of release on parole.

10 Dated this 5th day of August, 2008.

11
12 Connie J. Steinheimer
13 DISTRICT JUDGE
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1 APPEARANCES:

2 For the Plaintiff: KELLI ANNE VILORIA
3 Deputy District Attorney
4 Reno, Nevada

5
6 For the Defendant: DAVID C. O'MARA
7 Attorney at Law
8 Reno, Nevada

9 Parole and Probation: LUPE GARRISON
10
11
12

13 EXHIBITS	MARKED	ADMITTED
14 A - Report from Eng Counselling	5	5
15 B - Letter from Alamo Casino	5	5

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1 RENO, NEVADA, TUESDAY, AUGUST 5, 2008; 9:00 A.M.

2 -oOo-

3 THE COURT: Brendan Dunckley.

4 MS. VILORIA: Morning, Your Honor. Kelli Anne Viloria
5 on behalf of the State.

6 MR. O'MARA: David O'Mara on behalf of Mr. Dunckley.

7 THE COURT: This is the time set for sentencing. I am
8 in receipt of the presentence report dated July 17th, 2008.

9 I also have a document which was received by the Court
10 Clerk that has not been considered by the Court that has been
11 filed in.

12 Counsel, do you want the Court to consider the
13 document?

14 MS. VILORIA: The State does, Your Honor.

15 MR. O'MARA: Your Honor, I don't think it has any
16 bearing on this case. But Mr. Dunckley can certainly tell you
17 why this has happened with regards to his child support and the
18 Sushi Club and we have no objection to the State introducing it.

19 THE COURT: Then the Court will review the document.

20 Okay. You had an opportunity to review the
21 presentence report with your client?

22 MR. O'MARA: Your Honor, we have reviewed the
23 presentence report dated July 17th of 2008 with a few
24 corrections. Defense attorney is David O'Mara who is conflict

1 counsel and not deputy public defender.

2 Also, under Category A and Category B in the charged
3 Information, the penalties for these charges should have
4 included that he may be in prison for a period of time and that
5 he is not eligible until a sexual evaluation is completed which
6 certifies that Mr. Dunckley does not represent a high risk to
7 re-offend.

8 That language and the language that was part of the
9 guilty-plea memorandum was not included in the presentence
10 report. I want to make the Court aware of the fact that
11 probation in both of these charges is available in this case.
12 While the laws have changed since the period of time when the
13 charge one began, it does not allow probation any more. So I
14 would like the Court to take that into consideration.

15 Other than that, we have no other corrections, Your
16 Honor.

17 THE COURT: Okay. You may proceed with argument.

18 MR. O'MARA: Okay. First, I would like to introduce
19 and have admitted two documents. One document is a letter from
20 a Leslie Dietsche (phonetic), if I may approach. Let me grab
21 the other document.

22 THE COURT: Why don't you grab everything, and the
23 Clerk will mark it all at one time.

24 MS. VILORIA: I have seen a copy of these, Judge.

1 MR. O'MARA: There is also another copy from Eng
2 Counseling setting forth information about Mr. Dunckley's
3 clinical contact with Steven Eng as a sexual offender.

4 THE CLERK: Exhibits A and B marked.

5 (Exhibits A and B were marked for identification.)

6 THE COURT: Okay. Exhibit A is a report from Eng
7 Counseling, and there is no objection to its admission so I will
8 admit it. And Exhibit B is a letter from Alamo Casino and no
9 objection so I will admit that.

10 (Exhibits A and B were admitted into evidence.)

11 MR. O'MARA: Your Honor, in regards to the Eng
12 Counseling, which is Exhibit A, you will notice that there are
13 numerous attendances by Mr. Dunckley for sexual-offender
14 counseling. He had individual sessions on March 3, 26 and
15 April 29th of this year.

16 He goes on to group attendance with Mr. Eng on 4/23.
17 You notice how the 4/30 has an absence? That was because he
18 went to his individual counseling the day before. Those are the
19 dates in which he did not attend group attendance because it was
20 the same week.

21 Mr. Dunckley informed me the 6/12 was a work
22 emergency. He basically went on a weekly basis to Eng
23 Counseling.

24 What we are going to ask for today, Your Honor, is

1 that you not follow the recommendations of the Parole and
2 Probation and actually award or not award but grant Mr. Dunckley
3 the opportunity to be on probation for both of these charges.

4 One of the reasons is that when we were going through
5 negotiations in the settlement, that was one of the main reasons
6 to give him the opportunity. As you recall about five months
7 ago when we were in here during the change of plea, we set it
8 out five months to give him an opportunity to go to these
9 counseling sessions.

10 From the letter, you can see he started his counseling
11 sessions prior to the entry of the guilty-plea memorandum which
12 I believe was done on the 6th of March. He went religiously to
13 those counseling services.

14 He is really taking hold and finding out what is
15 making him do these bad things. He is trying to take
16 responsibility for his actions. I believe these therapy
17 sessions are working toward making him a better person and
18 someone who will be, at least, someone who will be a benefit to
19 our society.

20 As you can see from the letter from the Alamo Casino,
21 Mr. Dunckley has been a good person to his employers and other
22 people with regards to stepping up and doing things when not
23 everybody would do it with regards to helping and cleaning the
24 floor and things like that when there was a broken pipe when he

1 wasn't required to do that. I think there are good things
2 involved that we need to look at in that regard.

3 Also, I have today Mr. Dunckley's mother in law who
4 would like to make a statement. Her name is Pam McFerren
5 M-c-f-e-e-r-e -- I apologize. M-c-f-e-r-r-e-n. And she would
6 like to make a statement, Your Honor, to the Court to ask for
7 probation as well.

8 THE COURT: You want her sworn, Ms. Viloría?

9 MS. VILORIA: No, ma'am.

10 THE COURT: You can come forward and stand next to Mr.
11 O'Mara.

12 MS. MCFERREN: I'm Brendan's mother in law, Pam. I
13 have known him for eight and a half years. He and my daughter
14 have quite a special relationship. He has four children, two by
15 a previous marriage. He is the soul provider of his home, his
16 family. That includes with my daughter, his wife, their two
17 children, my grand children. And, also, child support for his
18 first two children by a previous marriage.

19 He also has helped me financially as well as
20 physically when I have needed help off and on over the years.

21 I have noticed the counseling that Brendan is getting
22 has been very effective. I have noticed when he comes back from
23 his meetings with his counsellor, he is a lot more calm. His
24 demeanor is a lot more calm. As calm as you can be under these

1 kind of circumstances. I believe it has been effective with
2 him.

3 I feel that he really should continue with that, and
4 it's been very helpful so far.

5 And I would like to ask for probation for him and the
6 continued counselling so that he can be with his family which is
7 a very important thing.

8 As you know, families don't stick together too much in
9 these times. And it's very important especially to those little
10 boys.

11 THE COURT: Okay. Thank you.

12 MR. O'MARA: Your Honor, in going over, it's true Mr.
13 Dunckley has four children, 10, 9, 7 and 3 which is set forth in
14 the presentence report. I think, you know, we have heard a lot
15 today in other cases and things like that. I think in this case
16 it really is true that this is really a sad case for everyone
17 involved.

18 It's not only sad for the two victims that Mr.
19 Dunckley committed these crimes against, but it is also sad for
20 the kids and his wife that are now going to have to deal with
21 these types of situations. And in light of these four kids, he
22 does have child support he needs to continue.

23 I think that in this case we really have to think
24 outside the box in sentencing. And it comes down to a lot of

1 this coming from -- one of these cases is really old. And there
2 is a whole different type of sentencing structure at this point
3 in time. And now we are looking at a sentencing structure in
4 this system where we are looking at these cases differently.

5 I think if we look outside the box and really say how
6 can we properly make sure that Mr. Dunckley takes responsibility
7 for his action and so-called punishment for the crimes he
8 committed but also give him the opportunity to rehabilitate
9 himself and provide for those people so that other people, like
10 his kids and wife, are not victimized by his behavior. I think
11 his mother in law said it really well, in fact, when he takes
12 these therapy classes he is a different person.

13 Sometimes that's what people need. They need control
14 over their lives such as a probation to tell them they need to
15 go to probation and have a job and do these things. And I think
16 when we jump to the conclusion, let's throw this person away,
17 put him in jail for the rest of his life, if we do that, then we
18 are not helping anybody in this case.

19 I think that if we look at Mr. Stivensen's (phonetic)
20 recommendations, it talks about he specifically, in bold
21 letters, says Mr. Dunckley does not represent a high risk to
22 re-offend sexually. He goes on to say Mr. Dunckley presents as
23 a positive candidate for treatment.

24 Treatment process with Mr. Dunckley, treatment should

1 be the process with Mr. Dunckley. He recognizes the need for
2 intervention. I think that assessment is correct. I think if
3 we allow Mr. Dunckley to be on probation, he will get the
4 treatment he needs.

5 There are certain recommendations that I think are
6 clearly appropriate in this case, Your Honor, and will help do
7 what we need to do to take care of the punishment of Mr.
8 Dunckley as well as rehabilitate him so these incidents do not
9 occur.

10 Those recommendations are set forth on page six of his
11 report. I would like the Court to consider those as well.

12 Your Honor, the report says Mr. Dunckley is not
13 applicable to probation. He does not have a high risk to
14 offend, so he does qualify for probation.

15 If the Court is inclined to do some type of jail term
16 in this-- prison term in this thing, we ask that you really do
17 think outside the box and give him an opportunity to prove
18 himself, even in prison.

19 There are two counts. We can suspend the first count
20 of the ten-year maximum and hold that over Mr. Dunckley's head
21 to allow him the opportunity to go into prison and do something
22 with his life and get himself out in a few years instead of ten
23 years when his kids basically are grown up and past their
24 teenage years.

1 I think probation-- we are requesting you allow
2 probation in this case, but if you do not find probation is
3 appropriate, we do ask that you, at least, give him the
4 opportunity to go to prison on maybe one count. Hold the other
5 count above his head and sentence him according to the sentence
6 of probation which is two to five years on Count II, Your Honor.

7 I think Mr. Dunckley's statement at the back page
8 really sums it up about how remorseful he is and he did is want
9 an opportunity to be with his kids, pay his child support and
10 move forward and take responsibility of the two incidents that
11 caused him to be put in this position.

12 With that, I respectfully request that you allow for
13 probation.

14 THE COURT: Ms. Viloría?

15 MS. VILORIA: Judge, first of all, I want to state
16 that paragraph 11 of the guilty-plea memorandum allows me to
17 discuss with you any counts that were dismissed or any other
18 cases that were charged or uncharged which were either dismissed
19 or not pursued by the State at the time of sentencing. That's
20 important because you need to realize here who you are
21 sentencing today.

22 Hopefully today is going to be the end of Brendon
23 Dunckley and what we have to deal with him.

24 This has been ten years of inappropriate conduct, ten

1 years of sexual attacks mostly on young woman who were 12 years
2 old or mentally ill and intoxicated cultivating into the final
3 account with the stranger attack with a woman who was .226 that
4 the defendant saw walking down the street, drunk and falling
5 down.

6 We did craft this creative plea bargain so this
7 defendant could have the right to posture himself to ask the
8 Court for sentencing. That's what he required before he came to
9 you and admitted his conduct and entered his plea of guilty.

10 The Court needs to know that your concern and the
11 State's concern are that the community have to be safe. And if
12 Brendon Dunckley is given probation, it will not be.

13 The factual corrections that I need to make on the
14 presentence investigation report in page six on March 21, 2007
15 when -- this is omitted so I'm just adding it in. When the
16 detectives went to talk to Brendon Dunckley and he denied he had
17 done anything, nothing happened, and when he ultimately changed,
18 yes, he performed fellatio on me as a way of thanking me for
19 getting her back in the apartment, that only came about after
20 the detectives said to him why are we going to find her DNA on
21 your penis?

22 The original story that this defendant crafted to
23 police is that while she was laying there unconscious she
24 started to throw up and he reached into your mouth to clear her

1 tongue and follow that had gone to the bathroom and touched his
2 penis while urinating and that would be the story of why you
3 have DNA.

4 This defendant is sophisticated in the sense that he
5 uses his wife as an alibi during the attacks so his wife is
6 brought into the picture where she says, I was on the phone with
7 him the whole time. There is no way this could have occurred.
8 What the full investigation showed is there was a few minutes
9 where he said I need to call you right back in about five
10 minutes and the rape happened and he called his wife back. It
11 wasn't a true alibi.

12 This has been ten years. That's important for you to
13 know. There are not two victims, there are three. Jessica H.
14 Laura S, and also Ashley.

15 What concerns me is when you look at the evaluation
16 that that Dr. Stivensen (phonetic) reports, everything is on
17 self-admitted conduct. And Dr. Stivensen (phonetic) sort of
18 congratulates the defendant by that saying, Look, he came
19 forward with all these other incidents of sexual conduct. But
20 he calls Ashley 14 years old at the time when we all know she
21 was 12.

22 He is not being forthcoming, and the Court needs to
23 recognize that because Dr. Stivensen (phonetic) didn't say he is
24 a low risk to re-offend. He deemed him a moderate risk to

1 re-offend. And that's based on the self-given information from
2 this defendant.

3 Judge as a parent -- from the recitation of all the
4 facts you see on everything, and, basically, how we ended up
5 solving the ultimate case is because the detectives and law
6 enforcement have been on this defendant's tail for years.

7 The defendant avoided any type of prosecution because
8 of the victims he has chosen.

9 Ashley V. is in prison right now. A good part of it
10 is because she turned to drugs and alcohol as being molested by
11 this defendant when she was little girl.

12 We created this allegation or this plea bargain so
13 that this defendant could ask you for probation, but the Court
14 needs to acknowledge Jessica, our last victim, is the one who is
15 a complete stranger to this defendant, didn't know anything,
16 literally woke up on her back in the floor of her apartment
17 right by the door with him shoving his penis in her mouth.

18 He comes to you today and brings witnesses to say he
19 is a good provider. We need to think about his children. We
20 can't put him in prison. I ask you one question, why wasn't he
21 thinking of that when he was trolling for his next sexual
22 assault victim?

23 Things have finally caught up with him, and that's why
24 we are here today. And the Division has appropriately asked the

1 Court to give him life in prison with the possibility of parole
2 after ten years.

3 I do recognize following the day of this plea bargain,
4 and I would note for the Court not a day sooner, that the day
5 after he entered his plea of guilty he began his sex offender
6 treatment.

7 And the Court is concerned as is the State whether or
8 not all of this is posturing himself for some sort of beneficial
9 sentence or a good outcome for you today.

10 The reality is I have looked at the evaluation, and
11 there are a couple things in there that are alarming to me and I
12 want to point them out to you.

13 Beginning at page seven, the paragraph under
14 perception of victim impact. One of the things that Dr.
15 Stivensen (phonetic) noted that Mr. Dunckley believed both
16 victims were harmed--again, there were three victims--as he
17 described taking their sense of security away inside, however,
18 was limited and somewhat superficial.

19 On page 11, Judge, it says, In considering the risk
20 scales along with clinical judgment, Mr. Dunckley is estimated
21 in the moderate range for sexual re-offense risk. Clinical
22 judgement elevated risk is there due to re-offense behaviors
23 occurring over an elapsed time and involved with an offense
24 against a stranger.

1 His promiscuous and impulsive sexual lifestyle places
2 him at greater risks for further allegations and charges. There
3 is evidence of being indiscriminate in regards to victim
4 selection, meaning, his modus operandi is not limited to a
5 particular victim, type, age or preference.

6 The fact that an evaluator would put that in there
7 shows you the level of gravity of danger of this defendant. And
8 my concern is that the community is flat at risk.

9 He also states on page 12 under the amenability to
10 treatment and prognosis, the second full sentence, He, being
11 Brendan Dunckley, does not present as an antisocial or defiant,
12 though, there may be some resistance to treatment upon the
13 realization of a longer-term process.

14 Why that is important, Judge, is if this defendant is,
15 in fact, doing a posturing to present walk the walk and do all
16 he needs to do to present good in Court today, then anybody, any
17 woman, whether it's a 12 year old or 28 year old that comes
18 within his way is a risk.

19 The State cannot risk that, Judge. The community
20 cannot risk that.

21 This defendant has shown himself to be deserved a
22 grant of a prison sentence. The life in prison is appropriate.

23 He should be commended for the effort he has made, and
24 that's why when the Division recommends a concurrent sentence on

1 the attempted sexual assault charge, it could be appropriate
2 here. I think the Division has short sold that count a little
3 bit because that's, really, the more egregious count. The whole
4 sexual assault nature of this should not be a two to five
5 sentence. It should be a 20-year sentence.

6 This defendant deserves to go to prison and life time
7 supervision and everything else that the Division recommends is
8 appropriate.

9 I just am concerned, frankly, Judge that nobody get
10 caught up on focussing on the children that are involved in this
11 case. Those are all people that should have been thought of
12 before this defendant decided to act on his impulse and attack
13 and escalate in violence. What's happened over the years,
14 Judge, every time he has raped somebody or inappropriately
15 touched someone and gotten away with it, he has gone up to the
16 next level.

17 The 12 year old is a friend of the family. A little
18 girl who befriended his wife who then became his victim number
19 one. There were victims in between there. Including the Laura,
20 the mental-health victim. We couldn't pursue the case because
21 of her mental-health issues. She was all part of this final
22 case where once we ended up getting the allegations with this
23 defendant with Jessica and we started seeing a pattern of
24 conduct, similarity in defenses, every single time his statement

1 was to the law enforcement was, Yes, I shouldn't have sex with
2 this girl. It was bad judgment. And he just for years and
3 years, for ten years, has been able to get away with it to the
4 point where he is escalating where he is trolling where he sees
5 drunk women falling down drunk on the street, he formulates the
6 thought in his mind, followed her in the house, and in a very
7 opportunistic and predatory manner attacked her. That deserves
8 ten years in prison, minimum.

9 MR. O'MARA: If I can just respond to a few things
10 before Mr. Dunckley addresses the Court.

11 THE COURT: Okay.

12 MR. O'MARA: First of all, there is no evidence
13 whatsoever that this charge caused Ms. Ashley -- I'm not sure
14 what her last name is. Ashley to go into drugs and use alcohol
15 and that's why she is in prison. There is no evidence of that.
16 And I understand that the D.A. wants to paint a huge horrible
17 picture of Mr. Dunckley and--

18 THE COURT: I won't consider that argument.

19 MR. O'MARA: It is also important that her description
20 of what happened on that night by Jessica was not as that she
21 woke up on her back past out. Her description in the Justice
22 Court when she testified was that she was standing up and she
23 made the affirmative step of walking toward Mr. Dunckley to
24 perform the fellatio.

1 This just goes to the point of the D.A. not having all
2 the facts and telling you different stories. It has nothing to
3 do with Mr. Dunckley not taking responsibility of his action.
4 The Court should be aware that is the testimony.

5 Also, in regards of him going to counseling, it was
6 done before the guilty plea was entered into which was March
7 6th. His counseling started on March 3rd.

8 I want the Court to be aware that Mr. Dunckley was
9 charged with those allegations against the individual Laura.
10 Laura did not show up at the preliminary hearing even though the
11 District Attorney said she was more than willing to be there and
12 they contacted her. We went-- we had three or four hours of
13 testimony over in the Justice Court. She still did not show up.

14 It's disingenuous for the District Attorney to say it
15 was because of her mental stability, and we don't know or have
16 any documentation showing she had any mental stability. To
17 place that on Mr. Dunckley, it's inappropriate to bring up in
18 the sentence.

19 MS. VILORIA: Objection. I absolutely made a
20 representation as an officer of the Court as to that being the
21 issue. And you are allowed to think about her.

22 Mr. Dunckley refers to her throughout the report to
23 Dr. Stivensen (phonetic). She is the one who he attacked on the
24 hood of a car who he claims was consensual but he put his penis

1 in her mouth.

2 I don't why we are acting like she is not a victim.
3 She did not show up at the prelim. We did not go forward with
4 that, and it is because of her mental-health issues. I am
5 making that -- and he knows that based on all the discovery
6 provided. I don't know why he is saying that's disingenuous.
7 It's not. It's the facts of the case.

8 MR. O'MARA: Well, we will let that stand. With
9 what-- if that's what she understands, that's what she
10 understands.

11 THE COURT: Does it make a difference?

12 MR. O'MARA: It doesn't. I'm just trying to set
13 forth --

14 THE COURT: Your client has admitted to the behavior
15 with her?

16 MR. O'MARA: Yes, my client has admitted to the two
17 charges that are involved in this case. But I just wanted to
18 make the Court away of those three or four different things so
19 we know what we are dealing with regards to thinking outside of
20 the box in this case to figure out some type of sentencing that
21 is appropriate which will allow for the punishment for the
22 crimes that were committed as well as allow for the
23 rehabilitation and acknowledgment of trying to get Mr. Dunckley
24 back into society and being a productive part of your society

1 instead of just saying, We are trying to give you probation.
2 And let's see what we can do. And go out there and get some
3 type of treatment and go from there. We will come to
4 sentencing. We will take that into consideration.

5 I would like to introduce another document in that
6 regard. It's an e-mail between myself and Ms. Viloría that
7 really talks about--

8 MS. VILORIA: I'm going to object. This is outside
9 the context of negotiations. This is not appropriate for
10 sentencing. I'm going to object.

11 THE COURT: What is the appropriateness of
12 negotiations being admitted?

13 MR. O'MARA: I'm going through-- she has brought up
14 the fact he is just posturing, Your Honor --

15 MS. VILORIA: Judge, my statement is we don't know
16 whether he is or not. That's something we need to take a view
17 at it.

18 MR. O'MARA: Your Honor, if I can complete my
19 sentence, in the purpose of this, Your Honor, is to show that
20 when we were in negotiations of this case, that Ms. Viloría was
21 going to take into consideration what he did during this
22 five-month period. This was an e-mail that basically said I
23 understand you will not agree to probation if it is not
24 recommended.

1 But in this case, as we discussed that there would be
2 factors in which she would take into consideration that she
3 would look at to maybe consider probation at this time.

4 THE COURT: Are you alleging that she has violated her
5 negotiations?

6 MR. O'MARA: No, no, no. Not at all. I'm just trying
7 to paint the picture of what was happening during that period of
8 time. And her statement in regards to, We don't know if he is
9 posturing goes directly to this. He was doing this because
10 that's what was asked of him--

11 THE COURT: I don't think that's her statement. Her
12 statement was talking about the whole period of time he has been
13 in counseling, whether or not it was going to last indefinitely
14 or whether or not he was posturing prior to sentence.

15 MS. VILORIA: That's right.

16 MR. O'MARA: We have made a circle of where we are
17 going in that regard, and that is fine, Your Honor.

18 With that, Your Honor, again, I request probation in
19 this is, and I will let Mr. Dunckley address the Court.

20 THE COURT: Okay. I'm going to hear from the Division
21 of Parole and Probation first.

22 MR. O'MARA: Okay.

23 MS. GARRISON: Well, Your Honor, in listening to both
24 sides of the argument, Your Honor, one of the things that was

1 brought up was the fact that they didn't want to make his two
2 sons, I believe, victims in this matter because of his behavior.
3 I believe, Your Honor, he already has done that by his behavior.

4 They are going to grow up knowing the type of person
5 their father is, and that's not going to go unnoticed by them.

6 Your Honor, I believe that the recommendation as
7 stated is appropriate. I believe that he was opportunistic
8 regarding the victims that he chose.

9 My concern, as well as Ms. Vilorio has stated, I was
10 reading the psycho-sexual evaluation and the one that stood out
11 in my mind was that he, according to the evaluator, seemed to
12 have glossed over, it seems like, the culpability or the damage
13 or the harm he did to the victims. Even though he did
14 acknowledge he did damage them in some manner.

15 The Division is going to stand by the recommendation,
16 Your Honor. We have four days credit for time served.

17 THE COURT: Thank you.

18 Mr. Dunckley, the law affords you an opportunity to be
19 heard. I have read your written statement. Do you have
20 anything you would like to say at this time?

21 THE DEFENDANT: Your Honor, the State is doing their
22 job. I moved to Reno in the Spring of 2000. The allegations
23 were made against me from 1998.

24 I took the plea as opposed to going to trial to

1 prevent the victims from pursuing further.

2 Ms. Vilorio states that I made the comment of saying
3 that the victim Ashley was 14 because of the time that I had
4 known her, which was the summer of 2000 when I met her, she
5 indicated to me that she was 14. As a matter of fact, when we
6 met, she indicated she was 17. Upon finding out later her true
7 age, myself and my wife stopped contact all together with her.
8 It doesn't change the fact of what I did.

9 Posturing, whatever it may be called, I took the deal
10 as opposed to going to trial because I wanted to prevent any
11 further harm to the victims.

12 I can't say I know what they are going through because
13 I can't. It's not my place to assume I know what they feel.

14 I know what I did, and I know what I took from them.
15 I took their sense of respect, of certainty. I can't give that
16 back.

17 I have attended treatment programs. I made it a point
18 to try and attend victim impact panels at one of the local
19 churches here.

20 When the Division and the State state that I glanced
21 over, it's not my place to say how I affected them. I can only
22 assume what happened.

23 And with regards to my children, I agree. They are
24 victims as well, as is my wife, as is my mother in law and

1 everyone who knows me. And my reputation of being who I am as
2 an upstanding citizen, I took their trust a way, too.

3 Being a father is the most important thing to me in
4 the world. And knowing I'm a horrible example kills me more
5 than anything you can punish me with, Your Honor. I ask that I
6 be given the chance to show my children that people can make
7 differences in their life and make a change.

8 I pride myself that when my wife was pregnant I never
9 missed a single doctors appointment. I never missed an
10 appointment. I'm a dad through and through. Somewhere along
11 the line, I lost that. I disrespected my family and more
12 importantly I disrespected my family.

13 I love my family more than anything in the world. I
14 took this deal to prevent any further harm for them and for the
15 victims. I just ask to have the opportunity, if it's possible,
16 to continue to be a part of my children's life.

17 My wife didn't have a father growing up, and all she
18 ever wanted was a husband and a father to raise her children.

19 I'm the sole provider of my family. I have two
20 children who I owe money to, and I try being a single income
21 household and single income father, it is hard to get money to
22 them. I try and keep stable employment, and when I'm getting
23 laid off or working, I'm always working.

24 Your Honor, all I ask is for the opportunity to show

1 that I can do better. And I can be better at this. I screwed
2 up, and I admit the fact I made mistakes and I hurt people. I
3 want to prove that it won't happen again. And if it does, which
4 I pray it never will, because I'm getting treatment every week.
5 I'm keeping support with the people I need support from. I have
6 medication to deal with my inability to make correct calm
7 decisions as opposed to being spontaneous.

8 I don't know what more I can say to Your Honor.

9 I throw my heart to you to allow me to be a part of my
10 children's lives, and I understand the fact I have hurt people.
11 But at the same time, the last five months have been such an
12 awakening to see why I allowed myself to do that and why I felt
13 it was okay to disrespect my bonds of my marriage and my
14 children who I brought into this world.

15 They don't deserve what I put them through, but that's
16 something I will have to deal with the rest of my life and so
17 will the victims.

18 I ask you give me the opportunity, Your Honor, to be
19 there and to prove that there is good. And I can make a
20 difference. And I can be productive to society and a benefit.
21 I learned so much from the victim impact panels and counseling.
22 It's something I want to pursue further to help people who are
23 in that situation. They need me to be the dummy to beat up, I
24 have no problem with that either. But I just ask that you give

1 me that opportunity, Your Honor, to prove that I can do this and
2 not just the five months that I proved I can stay out of trouble
3 and make my appointments and meetings and go above and beyond
4 but continued to be allowed to do that, Your Honor.

5 THE COURT: Mr. Dunckley, perhaps your plea would have
6 more resonance with me with regard to the issue that you had
7 with the friend of the family, even though it was a very young
8 girl, and even though you argue you thought she was 17, I have
9 heard that many times. That argument for treatment if it was an
10 isolated incident may well resonate with me.

11 However, the latest victim. I'm not talking about the
12 victim in between you are not charged with. I'm very concerned
13 with your latest victim. I agree with Mrs. Vilorio. I don't
14 think that the sentence is recommended even by the Division is
15 appropriate given your behavior.

16 You picked someone you didn't know, and you committed
17 a sexual assault on her.

18 I know you pled to something that allows for a lesser
19 offense, but it does not allow for probation.

20 It is the order of this court you pay \$25
21 administrative assessment fee, \$150 in DNA testing fees. I
22 think you have already submitted to a DNA analysis test. So you
23 won't have to submit again, but you also will have to pay the
24 \$950 in psycho-sexual fees.

1 I am sentencing you as to Count I to life in prison
2 with the possibility of parole after ten years has been served.

3 As to Count II, I'm sentencing you to 120 months in
4 prison with minimum parole eligibility of 24 months. That will
5 be allowed to run concurrent to Count I.

6 You must pursuant to NRS 1760931 submit to lifetime
7 supervision.

8 And is that with regard to Count II only?

9 MS. VILORIA: No, it's to both counts, Judge.

10 THE COURT: As to both counts at any time you are
11 released from custody or released from parole.

12 You will be given credit for four days time served.
13 You are remanded to the custody of the Sheriff for
14 transportation to the warden.

15 (Whereupon the proceedings were concluded.)

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STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

I, LISA A. YOUNG, Certified Shorthand Reporter of the
Second Judicial District Court of the State of Nevada, in and
for the County of Washoe, do hereby certify:

That I was present in Department No. 4 of the
above-entitled Court and took stenotype notes of the proceedings
entitled herein, and thereafter transcribed the same into
typewriting as herein appears;

That the foregoing transcript is a full, true and
correct transcription of my stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 11th day of August,
2008.

/s/ Lisa A. Young
LISA A. YOUNG, CCR 353

ORIGINAL
FILED

2008 SEP -8 PM 2:38

HOWARD W. CONYERS

BY *[Signature]*
DEPUTY

O'MARA LAW FIRM, P.C.
WILLIAM M. O'MARA
NEVADA BAR NO. 00837
BRIAN O. O'MARA
NEVADA BAR 08214
DAVID C. O'MARA
NEVADA BAR NO. 08599
311 East Liberty St.
Reno, Nevada 89501
775-323-1321
775-323-4082 (fax)

Attorneys for Defendant

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

THE STATE OF NEVADA

Plaintiff,

vs.

BRENDAN DUNCKLEY

Defendants.

Case No. CR07-1728

Dept No. 4

NOTICE OF APPEAL

Notice is hereby given that Defendant Brendan Dunckley ("Dunckley") in the above named action, hereby appeals to the Supreme Court of Nevada from the Order filed on August 11, 2008.

DATED: September 8, 2008

THE O'MARA LAW FIRM, P.C.

[Signature: David C. O'Mara]
DAVID C. O'MARA

1 **CERTIFICATE OF SERVICE**

2 I hereby certify under penalties of perjury that on this date I served a true and correct
3 copy of the foregoing document by:
4

5 _____ Depositing for mailing, in a sealed envelope, U.S.

6 Postage prepaid, at Reno, Nevada

7 X Personal delivery

8 _____ Facsimile

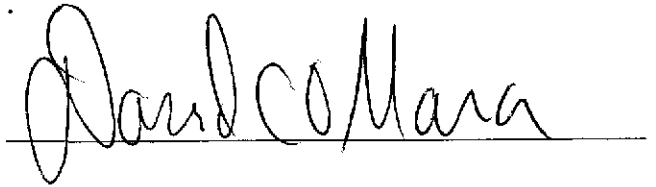
9 _____ Federal Express or other overnight delivery

10 _____ Messenger Service

11 addressed as follows:

12
13 Kellie Anne Vilorio
14 Deputy District Attorney
15 One South Sierra Street, 4th Floor
16 P.O. Box 30083
Reno, Nevada 89520

17 DATED: September 8, 2008

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AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in Case No. CR07-1096.

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

-or-

☐ For the administration of a public program

-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet (NRS 125.130, NRS 125.230 and NRS 125B.055)

DATED: September 8, 2008

THE O'MARA LAW FIRM, P.C.



DAVID C.O'MARA

ORIGINAL

FILED

2008 SEP -9 PM 4:33

HOWARD W. CONYERS

BY *[Signature]*
DEPUTY

1 CODE:
THE O'MARA LAW FIRM, P.C.
2 WILLIAM M. O'MARA
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Attorneys for Defendant

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

11 THE STATE OF NEVADA

12 Plaintiff,

13 vs.

14 BRENDAN DUNCKLEY

15 Defendants.

Case No. CR07-1728

Dept No. 3

CASE APPEAL STATEMENT

- 18 1. Mr. Brendan Dunckley is filing this case appeal statement
- 19 2. The Honorable Connie Steinheimer, Second Judicial District Court Judge, issued the
- 20 order appealed from.
- 21 3. Mr. Brendan Dunckley was the Defendant and the State of Nevada was the Plaintiff.
- 22 4. Mr. Brendan Dunckley is the Defendant/Appellant and the State of Nevada is the
- 23 Plaintiff/Respondent.
- 24 5. The name of the law firm, attorneys with their address and phone numbers are as
- 25 follows:
- 26
- 27
- 28

1 Defendant/Appellant Mr. Brendan Dunckley
2 The O'Mara Law Firm, P.C.
3 David C. O'Mara, Esq.
4 311 E. Liberty Street
5 Reno, Nevada 89501
6 (775) 323-1321

7
8 Plaintiff/Respondent the State of Nevada
9 Washoe County District Attorney's Office
10 P.O. Box 30083
11 Reno, Nevada 89520-3083

12 6. Mr. Brendan Dunckley was represented by appointed conflict counsel, The O'Mara
13 Law Firm, P.C., after a represent him after a conflict was found in the Public Defender's Office.

14 7. Mr. Brendan Dunckley is still represented by conflict counsel, The O'Mara Law
15 Firm, P.C.

16 8. Mr. Brendan Dunckley has not granted leave to proceed in forma pauperis.

17 9. The above referenced case began in the Second Judicial District Court on or about
18 July 12, 2007, with the filing of the Information.

19 DATED: September 9, 2008

20 THE O'MARA LAW FIRM, P.C.

21 
22 DAVID C. O'MARA

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CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct copy of the foregoing document by:

☒ Depositing for mailing, in a sealed envelope, U.S.

Postage prepaid, at Reno, Nevada

☐ Personal delivery

☐ Facsimile


☐ Federal Express or other overnight delivery

☐ Messenger Service

addressed as follows:

Kellie Anne Vilorio
Deputy District Attorney
One South Sierra Street, 4th Floor
P.O. Box 30083
Reno, Nevada 89520

DATED: September 9, 2008



AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in Case No. CR07-1096.

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

-or-

☐ For the administration of a public program

-or-

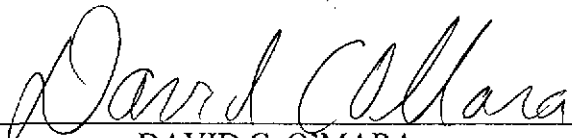
☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet (NRS 125.130, NRS 125.230 and NRS 125B.055)

DATED: September 9, 2008

THE O'MARA LAW FIRM, P.C.


DAVID C. O'MARA

FILED

SEP 10 2008

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

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CR07-1728
STATE VS. BRENDAN DUNCKLEY (D 1 Page)
District Court
Washoe County
09/10/2008 11:49 AM
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

BRENDAN DUNCKLEY,

Appellant(s)

Case No. CR07-1728

vs.

Dept. No. 4

THE STATE OF NEVADA,

Respondent(s)

CERTIFICATE OF CLERK

I hereby certify that the enclosed documents are certified copies of the original pleadings on file with the Second Judicial District Court, in accordance with the NRAP 3(e).

Dated: September 10, 2008

Howard W. Conyers, Clerk of the Court,

By: *[Signature]*

Cathy Kepler, Appeals Clerk



CR07-1728
STATE VS. BRENDAN DUNCKLEY (D 1 Page
District Court 09/10/2008 11:49 AM
Washoe County
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SEP 10 2008

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPT. CLERK

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

BRENDAN DUNCKLEY,

Appellant(s)

Case No. CR07-1728

vs.

Dept. No. 4

THE STATE OF NEVADA,

Respondent(s)

CERTIFICATE OF TRANSMITTAL

I hereby certify that the enclosed the Notice of Appeal and other required documents
(certified copies) were delivered to the Second Judicial District Court mailroom system for
transmittal to the Nevada Supreme Court.

Dated: September 10, 2008

Howard W. Conyers, Clerk of the Court,

By: *[Signature]*
Cathy Kepler, Appeals Clerk

FILED

SEP 15 2008

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

HOWARD W. CONYERS, CLERK
By: *[Signature]*
DEPUTY CLERK

BRENDAN DUNCKLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 52383

District Court Case No. CR071728

CR07-1728
STATE VS. BRENDAN DUNCKLEY (D. 1, Page
District Court 09/15/2008 01:49 PM
Washoe County 1188
no
CKEPI ER

RECEIPT FOR DOCUMENTS

O: O'Mara Law Firm, P.C. and Brian O. O'Mara and David C. O'Mara
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Howard W. Conyers, District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

09/10/08 Filing Fee Waived: Criminal.

09/10/08 Filed Certified Copy of Notice of Appeal.
Appeal docketed in the Supreme Court this day. (Docketing statement mailed to counsel
for appellant.)

DATE: September 10, 2008

Tracie Lindeman, Clerk of Court

By: *[Signature]*

Deputy Clerk

FILED

OCT 06 2008

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

HOWARD W. CONYERS, CLERK
By: 
DEPUTY CLERK

BRENDAN DUNCKLEY,
Appellant,
VS.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 52383

District Court Case No. CR071728

NOTICE TO FILE DOCKETING STATEMENT AND REQUEST TRANSCRIPTS

TO: O'Mara Law Firm, P.C. and Brian O. O'Mara and David C. O'Mara

On the date, appellant has not filed the Docketing Statement and the Transcript Request Form in this appeal. NRAP 14(b); NRAP 9(a).

Please file and serve the Docketing Statement and either a Transcript Request Form or, alternatively, a certificate that preparation of transcripts is not requested within 10 days from the date of this notice. See NRAP 10(b); NRAP 30(b)(1). Failure to file a Docketing Statement or the appropriate transcript document may result in the imposition of sanctions, including the dismissal of this appeal. See NRAP 9(a)(3); NRAP 14(c).

DATE: October 03, 2008

Tracie Lindeman, Clerk of Court

By: 
Deputy Clerk

Notification List

Electronic

Paper

Attorney General Catherine Cortez Masto/Carson City
Howard W. Conyers, District Court Clerk

08-25677

277

CR07-1728
DC-990004298-050
STATE VS. BRENDAN DUNCKLEY (D-1 Page
District Court 10/06/2008 04:16 PM
Washoe County 4133
NOC

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2008 OCT 13 AM 11:06

DROP BOX
HOWARD W. CONYERS
BY *[Signature]*
DEPUTY

THE O'MARA LAW FIRM, P.C.
WILLIAM M. O'MARA (Nevada Bar No. 00837)
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Telephone: 775/323-1321
Facsimile: 775/323-4082

Attorneys for Petitioner

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

STATE OF NEVADA

Plaintiff,

Case No. CR07-1728

vs.

BRENDAN DUCKLEY,

Defendant.

REQUEST FOR ROUGH DRAFT TRANSCRIPT

TO: Captions Unlimited,
Court Reporter, Department 3.

Defendant, Mr. Brendan Dunckley, ("Defendant" or "Mr. Duckley"), named above, requests preparation of a rough draft transcript of the entire proceedings before the District Court on March 6, 2008, and August 5, 2008, regarding the above named Defendant.

This notice request a transcript of only those portions of the district court proceedings which counsel reasonably and in good faith believes are necessary to determine whether appellate issues are present. Only the hearings, as they relate to Mr. Dunckley on March 6, 2008 and August 5, 2008, shall be transcribed.

CR07-1728
STATE VS. BRENDAN DUCKLEY (4 Pages
District Court 10/13/2008 11:06 AM
Washoe County
3868
CCAL TND

1 I recognize that I must personally serve a copy of this form on the above named court
2 reporter and opposing counsel, and that the above named court reporter shall have ten (10) days from
3 the receipt of this notice to prepare and submit to the district court the rough draft transcript
4 requested herein.

5 DATED: October 13, 2008

THE O'MARA LAW FIRM, P.C.

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8 DAVID C. O'MARA
9 Nevada Bar No. 8599
10 The O'Mara Law Firm, PC
11 311 E. Liberty Street
12 Reno, Nevada 89501
13 775.323.1321
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AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in Case
No. CR03-P0380

X Document does not contain the social security number of any person

-OR-

 Document contains the social security number of a person as required by:

 A specific state or federal law, to wit:

-or-

 For the administration of a public program

-or-

 For an application for a federal or state grant

-or-

 Confidential Family Court Information Sheet (NRS 125.130, NRS
125.230 and NRS 125B.055)

DATED: October 13, 2008

THE O'MARA LAW FIRM, P.C.


DAVID C. O'MARA, ESQ.

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CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct
copy of the foregoing document by:

Depositing for mailing, in a sealed envelope, U.S.
Postage prepaid, at Reno, Nevada

X Personal delivery

Facsimile

Federal Express or other overnight delivery

Messenger Service

addressed as follows:

Richard Gammick
Washoe County District Attorney
P.O. Box 30083
Reno, Nevada 89520

Captions Unlimited
Court Reporter, Dept. 3
75 Court Street
Reno, Nevada 89520

DATED: October 13, 2008

David Callara

FILED

MAY 11 2009

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD W. CONNERS, CLERK
By: *[Signature]*
DEPUTY CLERK

BRENDAN DUNCKLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52383

CR07-1728
FILED

MAY 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On August 5, 2008, the district court convicted appellant Brendan Dunckley, pursuant to a guilty plea, of one count of lewdness with a child under the age of fourteen years (lewdness) and of one count of attempted sexual assault. The district court sentenced him to serve a term of life in prison with a minimum parole eligibility of ten years for lewdness and to a concurrent term in prison of 120 months with a minimum parole eligibility of 24 months for attempted sexual assault.

Dunckley's sole issue on appeal is whether the district court abused its discretion when it sentenced him to prison rather than to probation, for which he was eligible. Dunckley challenges the district court's decision on two grounds. First, he contends that the district court, influenced by a "mendacious" presentence investigation (PSI) report, incorrectly stated that he was not eligible for probation. Second, he contends that the district court was improperly influenced at sentencing by the State's "unsubstantiated belief" that the plea agreement was made

CR07-1728 DC-9900008127-019
STATE VS. BRENDAN DUNCKLEY (4 Pages
District Court 05/11/2009 12:32 PM
Washoe County 4134
DNC CKEPLEF

to allow Dunckley to better posture himself at sentencing. We hold that the district court did not abuse its discretion.

Absent a showing that the district court abused its discretion, we will uphold its sentencing decisions. Castillo v. State, 110 Nev. 535, 544, 874 P.2d 1252, 1258 (1994). “[W]e afford the district court wide discretion in its sentencing decision. We will refrain from interfering with the sentence imposed so long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004) (citation and internal quotation marks omitted) (internal footnote omitted). Further, we will look “to the record as a whole to determine whether the sentencing court actually exercised its discretion.” Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000).

Eligibility for probation

Dunckley contends that the district court relied on a “mendacious” PSI report to conclude that probation was not available in his case. His allegation focuses on the report’s failure to explicitly state that he was eligible for probation and the district court’s statement, “I know you pled to something that allows for a lesser offense, but it does not allow for probation.” Both arguments are without merit.

Despite the PSI report’s failure to explicitly state that Dunckley was eligible for probation, the district court was informed of his eligibility. The PSI report itself alluded to that fact in its “Conclusion,” which states that Dunckley was not viewed as “an appropriate candidate for community supervision,” thereby implying that it was an option but that the Department of Parole and Probation was not recommending it. In

addition, the district court was explicitly informed that probation was an option in the written guilty plea memorandum, during the plea hearing, and during sentencing.

Furthermore, looking at the record as a whole, the district court clearly imposed prison as a result of exercising its discretion and not because it did not believe there was another option, i.e., probation. The district court did not dismiss probation outright but rather stated that Dunckley's plea for probation would have resonated more with the court had the only charge been lewdness. The court explained why it was rejecting not only Dunckley's request for probation but also the PSI report recommendation for a maximum prison term of 5 years for attempted sexual assault, again clearly exercising its discretion. The record is therefore clear that not only was the district court aware that probation was a sentencing option for Dunckley, but that it properly exercised its discretion by imposing prison terms for the offenses.

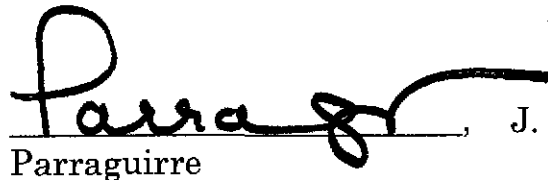
State's comments at sentencing

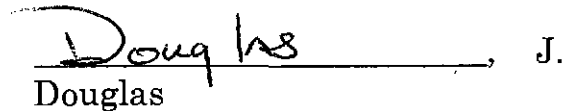
Dunckley next contends that the district court was improperly influenced by the State's "unsubstantiated belief" that the plea agreement was crafted to allow him to better posture himself at sentencing. Paragraph 7 of the guilty plea memorandum, signed by Dunckley, states in part, "I understand that I am entering my plea to [lewdness] as a legal fiction, pursuant to plea negotiations, to allow me to avoid the more serious charge of sexual assault . . . and to allow me the opportunity to qualify for probation, which would otherwise be unavailable." Further, defense counsel repeated this portion of the agreement nearly verbatim in his opening remarks during Dunckley's change of plea hearing. The State's belief that the plea agreement was crafted to give Dunckley more

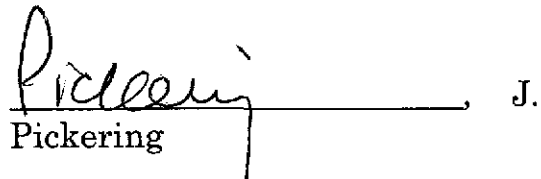
sentencing opportunities is therefore substantiated in the record. Dunckley has failed to show how the district court was improperly influenced by the state's comments.

The entire record before this court shows that the district court was aware of the sentencing options available for Dunckley, that it exercised its discretion in imposing terms of imprisonment, and that it was not improperly swayed by impalpable or highly suspect evidence in determining the sentence. We therefore

ORDER the judgment of conviction AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Connie J. Steinheimer, District Judge
O'Mara Law Firm, P.C.
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk ✓

FILED

JUN 03 2009

IN THE SUPREME COURT OF THE STATE OF NEVADA
By: Howard W. Conyers
DEPUTY CLERK

BRENDAN DUNCKLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52383

CR07-1728

FILED

MAY 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On August 5, 2008, the district court convicted appellant Brendan Dunckley, pursuant to a guilty plea, of one count of lewdness with a child under the age of fourteen years (lewdness) and of one count of attempted sexual assault. The district court sentenced him to serve a term of life in prison with a minimum parole eligibility of ten years for lewdness and to a concurrent term in prison of 120 months with a minimum parole eligibility of 24 months for attempted sexual assault.

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to allow Dunckley to better posture himself at sentencing. We hold that the district court did not abuse its discretion.

Absent a showing that the district court abused its discretion, we will uphold its sentencing decisions. Castillo v. State, 110 Nev. 535, 544, 874 P.2d 1252, 1258 (1994). “[W]e afford the district court wide discretion in its sentencing decision. We will refrain from interfering with the sentence imposed so long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004) (citation and internal quotation marks omitted) (internal footnote omitted). Further, we will look “to the record as a whole to determine whether the sentencing court actually exercised its discretion.” Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000).

Eligibility for probation

Dunckley contends that the district court relied on a “mendacious” PSI report to conclude that probation was not available in his case. His allegation focuses on the report’s failure to explicitly state that he was eligible for probation and the district court’s statement, “I know you pled to something that allows for a lesser offense, but it does not allow for probation.” Both arguments are without merit.

Despite the PSI report’s failure to explicitly state that Dunckley was eligible for probation, the district court was informed of his eligibility. The PSI report itself alluded to that fact in its “Conclusion,” which states that Dunckley was not viewed as “an appropriate candidate for community supervision,” thereby implying that it was an option but that the Department of Parole and Probation was not recommending it. In

addition, the district court was explicitly informed that probation was an option in the written guilty plea memorandum, during the plea hearing, and during sentencing.

Furthermore, looking at the record as a whole, the district court clearly imposed prison as a result of exercising its discretion and not because it did not believe there was another option, i.e., probation. The district court did not dismiss probation outright but rather stated that Dunckley's plea for probation would have resonated more with the court had the only charge been lewdness. The court explained why it was rejecting not only Dunckley's request for probation but also the PSI report recommendation for a maximum prison term of 5 years for attempted sexual assault, again clearly exercising its discretion. The record is therefore clear that not only was the district court aware that probation was a sentencing option for Dunckley, but that it properly exercised its discretion by imposing prison terms for the offenses.

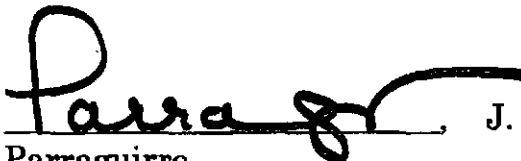
State's comments at sentencing

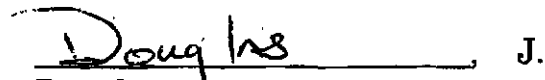
Dunckley next contends that the district court was improperly influenced by the State's "unsubstantiated belief" that the plea agreement was crafted to allow him to better posture himself at sentencing. Paragraph 7 of the guilty plea memorandum, signed by Dunckley, states in part, "I understand that I am entering my plea to [lewdness] as a legal fiction, pursuant to plea negotiations, to allow me to avoid the more serious charge of sexual assault . . . and to allow me the opportunity to qualify for probation, which would otherwise be unavailable." Further, defense counsel repeated this portion of the agreement nearly verbatim in his opening remarks during Dunckley's change of plea hearing. The State's belief that the plea agreement was crafted to give Dunckley more


sentencing opportunities is therefore substantiated in the record. Dunckley has failed to show how the district court was improperly influenced by the state's comments.

The entire record before this court shows that the district court was aware of the sentencing options available for Dunckley, that it exercised its discretion in imposing terms of imprisonment, and that it was not improperly swayed by impalpable or highly suspect evidence in determining the sentence. We therefore

ORDER the judgment of conviction AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Connie J. Steinheimer, District Judge
O'Mara Law Firm, P.C.
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: June 2, 2009
Supreme Court Clerk, State of Nevada

By H. Ingels Deputy

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUN 03 2009

HOWARD W. CONYERS, CLERK

By: *[Signature]*
DEPUTY CLERK

BRENDAN DUNCKLEY,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

Supreme Court No. 52383

District Court Case No. CR071728

CLERK'S CERTIFICATE

TATE OF NEVADA, ss.

Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

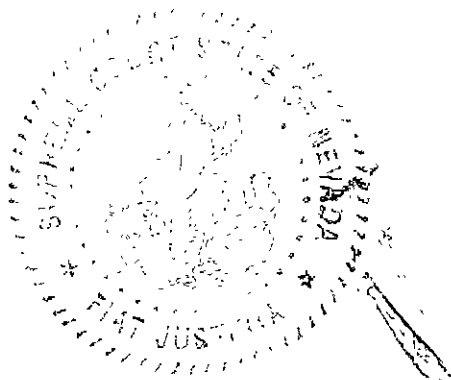
The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 8th day of May, 2009.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 2nd day of June, 2009

Tracie Lindeman, Supreme Court Clerk

By: *A. Ingerson*
Deputy Clerk



FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUN 03 2009

BRENDAN DUNCKLEY,
Appellant,
vs

Supreme Court No. 52383

HOWARD W. CONYERS, CLERK
DEPUTY CLERK

THE STATE OF NEVADA,
Respondent.

District Court Case No. CR071728

REMITTITUR

TO: Howard W. Conyers, Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: June 2, 2009

Tracie Lindeman, Clerk of Court

By: Deputy Clerk

A. Ingerson

cc (without enclosures):

Hon. Connie J. Steinheimer, District Judge
Attorney General Catherine Cortez Masto/Carson City
O'Mara Law Firm, P.C.
Washoe County District Attorney Richard A. Gammick

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN 03 2009

Howard W. Conyers
District Court Clerk

0292810

DC-9900008688-039
CR07-1728 BRENDAN DUNCKLEY (D 1 Page)
STATE VS BRENDAN DUNCKLEY (D 1 Page)
District Court 06/03/2009 04:17 PM
Washoe County
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DOC

CR07-1728 DC-9900009450-077
STATE VS BRENDAN DUNKLEY (4 Pages
District Court 07/07/2009 02:29 PM
Washoe County 2490
V.I.A.V.

Brendan Dunkley # 1023236

Lovelock Correctional Center
1200 Prison Road
Lovelock Nevada 89419
Defendant in Pro Se

FILED

09 JUL -7 PM 2:29

HOWARD M. CONYERS

BY [Signature]

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

* * * * *

THE STATE OF NEVADA,

Plaintiff,

-vs-

Brendan Dunkley,

Defendant.

Case No. CN07-1728

Dept. No. 4

Date of Hearing: _____

Time of Hearing: _____

NOTICE OF MOTION AND MOTION FOR WITHDRAWAL
OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS

COMES NOW Defendant, Brendan Dunkley, in pro se, and submits his
Notice of Motion and Motion for Withdrawal of Attorney of Record and Transfer
of Records, moving this Court to Order that DAVID O'MARA Esq. & O'MARA Law Firm,
counsel of record in the above-entitled action, be withdrawn as counsel of
record herein, and that said counsel deliver to Defendant all Documents,
Pleadings, Papers and Tangible Personal Property in counsel's possession and
control to Defendant, at counsel's expense, to the above address.

This motion is based upon NRS 7.055, Nevada Supreme Court Rules 46 & 166,
this Court's Local Rule of Practice corresponding to this Motion, as well as
the attached points and authorities and affidavit supporting same.

NOTICE OF MOTION

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
bring the foregoing motion on for hearing before the above-entitled Court and

1 Department Number, on the date and time set forth on the caption above, or as
2 soon thereafter as the matter may be heard.

3 Dated this 15th day of JUNE, 2009.

4 Brendan Dunchley

5 BRENDAN DUNCHLEY # 1023236

6 Lovelock Correctional Center
7 1200 Prison Road
8 Lovelock Nevada 89419
9 Defendant In Pro Se

8 POINTS AND AUTHORITIES

9 Although an attorney may not withdraw as counsel of record if doing so
10 would adversely affect the client's interest, Madrid v. Gomez, 150 F.3d 1030,
11 1038-39 (9th Cir. 1998), the client may terminate his counsel's
12 representation at any time, Kashefi-Zihagh v. I.N.S., 791 F.2d 708, 711 (9th
13 Cir. 1986). See NRS 7.055.

14 Upon being discharged by his client,

15 [The] attorney who has been discharged by his client shall,
16 upon demand and payment of the fee due from the client,
17 immediately deliver to the client all papers, documents,
pleadings and items of tangible personal property which
belong to or were prepared for that client.

18 NRS 7.055(1)(emphasis added). See also Nevada Supreme Court Rule
19 (SCR) 46 & 166; Second Judicial District Court Rule 23(1); and
Eighth Judicial District Court Rule 7.40(b)(2)(ii).

20 As the judgment of conviction has been entered in this case, with appeal,
21 if any, having been perfected, counsel's services are no longer required in
22 this criminal matter. Defendant has, pursuant to the mandates of NRS 7.055(3),
23 directed counsel to forward to him all documentation generated in this action
24 and to withdraw as counsel of record, but counsel has failed to comply. See
25 Affidavit in support of instant motion.

26 Counsel's refusal to withdraw himself and forward said documentation to
27 Defendant violates the letter and spirit of SCR 166(4), which directs a
28 discharged attorney to "protect a client's interests" by "surrendering papers

1 and property to which the client is entitled." Id. This rule governing
2 attorney conduct is a basic one of which the American Bar Association has
3 recognized by requiring of all attorneys within Canon 2 of the Code of
4 Professional Responsibility, EC2-32, and Disciplinary Rule 2-110(A)(2). The
5 Nevada Supreme Court has likewise adopted this rule within SCR 150. See, e.g.,
6 Jones, Waldo, Holbrook, Etc. v. Dawson, 923 P.2d 1366, 1376 (Utah 1996).

7 Counsel herein has no legal basis for withholding Defendant's papers in
8 this matter, as Defendant owes counsel NO fees which would permit counsel to
9 maintain said papers under a general or retaining lien. Figliuzzi v. District
10 Court, 111 Nev. 338, 340-41, 890 P.2d 798, 800-02 (1995).

11 Therefore, this Court is moved to exercise its jurisdiction in this
12 matter and ORDER counsel to be withdrawn as counsel of record and to deliver
13 to Defendant the entirety of documentation generated in the instant case, as
14 Defendant has no other remedy at law to compel counsel to do so.

15 Dated this 15th day of June, 2009.

16 Brendan Dunckley
17 BRENDAN DUNCKLEY # 1023236

18 Lovelock Correctional Center
19 1200 Prison Road
20 Lovelock Nevada 89419
21 Defendant In Pro Se

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

NOTICE OF MOTION AND MOTION FOR WITHDRAWAL
OF ATTORNEY OF RECORD AND TRANSFER OF RECORD
(Title of Document)

filed in case number: CR07-1728

☒ Document does not contain the social security number of any person

-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

(State specific state or federal law)

-or-

☐ For the administration of a public program

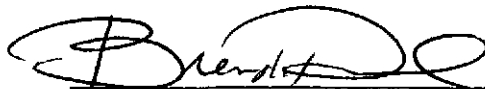
-or-

☐ For an application for a federal or state grant

-or-

☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 7/1/09


(Signature)

BRENDAN DUNCHLEY
(Print Name)

PRO PER
(Attorney for)

CR07-1728 DC-990009450-078
STATE VS. BRENDAN DUNKLEY (3 Pages
District Court 07/07/2009 02:29 PM
Washoe County
FILED

BRENDAN DUNKLEY # 1023236

Lovelock Correctional Center
1200 Prison Road
Lovelock Nevada 89419
Defendant In Pro Se

FILED

09 JUL -7 PM 2:29

HOWARD W. CHIVERS

BY [Signature]

IN THE Second JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Washoe

THE STATE OF NEVADA,

Case No. CR07-1728

Plaintiff,

Dept. No. 4

-vs-

Brendan Dunkley,

Defendant.

AFFIDAVIT IN SUPPORT OF MOTION FOR WITHDRAWAL
OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS

STATE OF NEVADA)

ss:

COUNTY OF PERSHING)

COMES NOW, BRENDAN T. DUNKLEY, who being first duly sworn and
under the penalty of perjury, do hereby depose and state the following:

(1) I am the Defendant in the above-entitled action.

(2) I mailed a letter to DAVID C. O'MARA Esq on the 8th
day of JUNE, 2009, which was at least five (5) days prior to
the date indicated below, wherein I gave notice to said counsel of his
termination as counsel of record and instructed said counsel to so withdraw
himself and forward to me my case files herein pursuant to NRS 7.055.

(3) I have received no response from said counsel, nor his office, as to
my said instruction. I am therefore submitting the instant motion in good
faith, as I have no other remedy than this Court's power to enforce my

1 statutory rights under NRS 7.055 to cause counsel to be withdrawn and to send
2 me my said case files.

3 Dated this 15th day of June, 2009.

4 Brendan Dunchley
5 BRENDAN DUNCHLEY # 1023236
6 Lovelock Correctional Center
7 1200 Prison Road
8 Lovelock Nevada 89419
9 Defendant/Affiant In Pro Se

10 VERIFICATION UNDER PENALTY OF PERJURY

11 I do verify under the penalty of perjury that the above affidavit is true
12 and correct and is stated to the best of my knowledge, and is made without
13 benefit of a notary pursuant to NRS 208.165, as I am an incarcerated person.

14 Brendan Dunchley
15 BRENDAN DUNCHLEY

16 Defendant In Pro Se

17 CERTIFICATE OF SERVICE

18 I do certify that I mailed a true and correct copy of the foregoing
19 NOTICE OF MOTION AND MOTION FOR WITHDRAWAL OF COUNSEL OF RECORD AND TRANSFER OF
20 RECORDS to the below addresses on this 22nd day of June,
21 2009, by placing same into the U.S. Mail via prison law library staff, in
22 compliance with N.R.C.P. 5:

23 DISTRICT ATTORNEY
24 WASHOE County
25 P.O. Box 30083
26 RENO, Nevada
27 89520-3083

28 DAVID C. O'MARA
P.O. Box 2270
311 East Liberty Street
RENO, Nevada
89505

Attorney for Plaintiff
CLERK OF THE COURT
SECOND JUDICIAL DISTRICT COURT
P.O. BOX 30083
RENO, N.V. 89520-3083
DISTRICT COURT

Attorney of Record
Brendan Dunchley
BRENDAN DUNCHLEY # 1023236
Lovelock Correctional Center
1200 Prison Road
Lovelock Nevada 89419
Defendant In Pro Se

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

AFFIDAVIT IN SUPPORT OF MOTION FOR WITHDRAWAL OF ATTORNEY OF

RECORD AND TRANSFER OF RECORD

(Title of Document)

filed in case number: CR07-1728



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 7/1/09



(Signature)

BRENDAN DUNCHIEY

(Print Name)

Pro Per

(Attorney for)

FILED

2009 JUL -8 AM 11:30

HOWARD W. CONYERS

BY

DEPUTY

1 BRENDAN DUNCKLEY (#1023236)

2 LOVELOCK CORRECTIONAL CENTER

3 1200 PRISON ROAD

4 LOVELOCK, NEVADA 89419

5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE

7 STATE OF NEVADA IN AND FOR THE

8 COUNTY OF WASHOE

9

10 THE STATE OF NEVADA,

CASE NO. CR07-1728

11 PLAINTIFF

DEPT NO. 4

12 -VS-

DATE:

13 BRENDAN DUNCKLEY,

TIME:

14 DEFENDANT

15

16 MOTION FOR MODIFICATION OF SENTENCE

17

18 COMES NOW, DEFENDANT, BRENDAN DUNCKLEY, AND

19 SUBMITS TO THIS COURT HIS MOTION FOR MODIFICATION OF SENTENCE.

20 THIS MOTION IS MADE AND BASED UPON THIS COURT'S

21 INHERENT AUTHORITY TO MODIFY ITS OWN MISTAKES; ALL PAPERS,

22 PLEADINGS AND DOCUMENTS ON FILE HEREIN; AND THE

23 FOLLOWING POINTS AND AUTHORITIES.

24

25 POINTS AND AUTHORITIES

26

27 LET THE RECORD SHOW THAT ON BOTH APRIL 21, 2009, A.D.

28 AS WELL AS ON JUNE 18, 2009, A.D; TWO LETTERS WERE

CR07-1728 DC-9900009494-072
STATE VS. BRENDAN DUNCKLEY 34 Pages
District Court 07/08/2009 11:30 AM
Washoe County 2380
nnc TBP INC

1 DEPOSITED FOR MAILING, IN A SEALED ENVELOPE, HANDED TO
2 PRISON LEGAL MAIL PERSONELL, BOTH BEING ADDRESSED TO THE
3 WASHOE COUNTY DISTRICT ATTORNEY OFFICE. THE LETTER DATED
4 APRIL 21, 2009, A.D. WAS SENT CERTIFIED MAIL WITH TRACKING
5 NUMBER 7007-0710-0005-2300-2620 SIGNED FOR BY THOMAS
6 FRUGOLI, (A COPY OF BOTH LETTER AND SIGNATURE CARD ATTACHED)
7 IN THE LETTER DIRECTLEY ADDRESSED TO D.A. GAMMICK (APRIL 21,
8 2009, A.D.) IT BRINGS FOWARD EVIDENCE PROVING ACTUAL AND
9 FACTUAL INNOCENCE IN BEGARDS TO COUNT ONE IN THE FILED
10 ORDER OF CONVICTION. COUNT ONE BEING A VIOLATION OF NRS.
11 201.230, LEWDNESS WITH A CHILD UNDER 14 YEARS OF AGE. THE
12 ORIGINALLY INCLUDED EVIDENCE THAT WAS SENT WAS AS FOLLOWS:
13 1) CULINARY INSTITUTE OF AMERICA TRANSCRIPTS IN HYDE PARK, NEW YORK
14 SHOWING DEFENDANT WAS A STUDENT ATTENDING FROM 11/11/1996 UNTIL
15 COMPLETION ON 2/23/1999. (INCLUDED) (PG 20)
16 2) DMV VEHICLE REGISTRATION INFORMATION FOR DEFENDANTS 1993
17 FORD TAURUS, GIVING THE BEGINING REGISTRATION DATE FOR DEFENDANT
18 ON JUNE, 5, 2000. A.D. (INCLUDED) (PG. 18-19)
19 3) A RENO POLICE DEPARTMENT (RPD) 'DRAFT REPORT' DATED 4/19/07.
20 CREATED BY RPD DETECTIVE TOM BROOME. IN THE REPORT AN INTERVIEW IS
21 REFERED TO BETWEEN DETECTIVE BROOME AND DEFENDANT'S EX-WIFE
22 JENNY DUNCLELY. DURING THAT INTERVIEW JENNY DUNCLELY INFORMED
23 DETECTIVE BROOME, SHE AND DEFENDANT MET AND MARRIED IN NEW
24 YORK, THEN AFTER COLLEGE MOVED TO MADERA COUNTY CALIFORNIA
25 IN THE CITY OF OAKHURST. WHERE SHE AND DEFENDANT RESIDED UNTIL
26 THIER MARRAGE BROKE UP IN JULY OF 1999. (INCLUDED) (PG. 21-22)
27 4) A COPY OF A SUMMONS OF FAMILY LAW ALONG WITH THE
28 ATTACHED PROOF OF SERVILE, SHOWING DEFENDANT WAS SERVED WITH

1 DIVORCE PAPERS AT HIS HOME LOCATED AT: 255 EAST NEES APT
2 #257, FRESNO, CALIFORNIA AT 2:45 PM ON AUGUST 16, 1999. (INCLUDED)

3 ALL OF THESE DOCUMENTS WERE SUBMITTED TO THE DISTRICT
4 ATTORNEY NOT ONCE BUT TWICE. THE SECOND LETTER DATED ON
5 JUNE 18, 2009 ADDRESSED TO CHIEF APPELLATE DEPUTY GARY HATLESTAD.
6 INCLUDED IN THAT LETTER WAS ALL THE EVIDENCE AND A COPY OF
7 THE ORIGINAL LETTER SENT TO D.A. GAMMICK. (NOTE: A COMPLETE
8 COPY OF THE JUNE 18, 2009 LETTER WAS ALSO SENT TO NEV. STATE AG.)

9 THE RELEVANCE OF THAT 'EVIDENCE' IS BECAUSE IT BOTH
10 PROVES ACTUAL/FACTUAL INNOCENCE, AND THAT THE STATE WAS IN
11 FACT IN POSSESSION OF EVIDENCE FAVORABLE TO THE DEFENDANT,
12 YET FAILED TO BOTH PRESENT IT NOR USE IT TO CORRECT A OBVIOUS
13 INJUSTICE. AND HAVE STILL FAILED TO CORRECT.

14 IN THE RECORD FOR CR07-1728 IN THE SENTENCING
15 TRANSCRIPTS ON PAGE 12 LINE 1 ADA VILORIA REFERS TO VICTIM
16 ASHLEY V.'S AGE. AS WELL AS pg 13/21; 17/19; 16/17 AND OF THE MOST
17 SIGNIFICANT QUOTE PROVING THESE THAT THE STATE'S CONTENTION
18 BEING SOLID THE INCIDENT OCCURED WHEN SHE WAS 12 IS ON
19 pg 13 LINES 19-21 "BUT HE CALLS ASHLEY 14 YEARS OLD AT THE
20 TIME WHEN WE ALL KNOW SHE WAS 12." ON THE ORIGINAL
21 COMPLAINT IT SHOWS ASHLEY V. WITH A DATE OF BIRTH OF AUGUST
22 14, 1986. SO SHE WOULD BE 12 FROM AUGUST 14, 1998 UNTIL
23 AUGUST 13, 1999. ALL THE ENCLOSED DOCUMENTATION SHOWS
24 NOT ONLY THAT PETITIONER/DEFENDANT WAS NOT EVEN A RESIDENT
25 IN RENO AS THE INCIDENT AND TESTIMONY OF ASHLEY V. AT
26 THE PRELIMINARY ON JULY 2, 2007 IN RJC CASE NUMBER 2007-
27 033884 SHOWS, ASHLEY CLAIMS THAT AFTER SPENDING THE
28 NIGHT AT DEFENDANTS HOUSE IN RENO WHILE DRIVING ON

1 LONGLEY LANE THE INCIDENT OCCURED, AS WELL AS A
2 SECOND INCIDENT ALLEGED AT ATLANTIS HOTEL AND CASINO
3 IT NOT ONLY PROVES ACTUAL AND FACTUAL INNOCENCE, BUT
4 ALSO THE STATE KNEW OF ALL THAT IN THE LEAST UP
5 UNTIL 'JULY OF 1999'. BECAUSE DETECTIVE TOM BROOM HAD BEEN
6 GIVEN ALIBI EVIDENCE ON 4/18/07, IMPORTANT TO NOTICE THE
7 DATE. AMENDED COMPLAINT INCLUDING THE PRESENT COUNT ON
8 4/16/07, AND SEVENTY-SEVEN DAYS PRIOR TO THE PRELIM-
9 INARY HEARING ON JULY 2, 2007. BUT NOT ONLY IS THERE
10 NO RECORD OF THE STATE CORRECTING THE RECORD, NOR MOVING
11 TO DISMISS AFTER WHAT WAS KNOWN TO BE PERJURED TESTIMONY.
12 EXCEPT THEY CONTINUED TO KEEP UP THE FARSE. EVEN TO GO
13 AS FAR AS INCLUDE IT IN A DEAL IT KNEW TO BE BASED ON
14 FALSE INFORMATION.

15 IT GOES WITHOUT SAYING THAT HAD THAT RELEVANT
16 INFORMATION COME FOWARD AT ANY STAGE OF THE CASE, EVEN
17 AS FAR BACK AS IN THE JUSTICE COURTS, THIS CASE WOULD BE
18 COMPLETELY DIFFERENT.

19 YOU, AS THE JUDGE, WERE NOT ONLY DEPRIVED OF
20 THIS INCREDIABLY IMPORTANT EVIDENCE, BUT WAS ALSO TOLD THAT
21 DEFENDANT HAD AN EXTENSIVE HISTORY OF BOTH CRIMINAL AND
22 INAPPROPRIATE BEHAVIOR. (pg 11/24-12/5; 14/4(b)-6; 17/13(b)-16)
23 18/2(c)-3. SENT. TRANSCRIPT) AND ADA VILORIA MAKING THE COMMENT
24 TO YOU THAT THE ONLY REDSON I'M NOT ALREADY IN PRISON IS
25 "BECAUSE "THE DEFENDANT AVOIDED ANY TYPE OF PROSECUTION
26 BECAUSE OF THE VICTIMS HE HAS CHOSEN" (pg 14/7-8). AS WELL
27 AS HER COMMENTS ON pg 17 LINES 13(b) TO 16. MAKING THE
28 INSINUATION THAT THERE ARE IN FACT NUMEROUS OTHER INCI-

1 DENTS THAT THEY CAN NOT BRING FORWARD LEGALLY. THE
2 PROBLEM WITH THIS LINE OF REASONING AND ARGUMENT
3 IS THAT THE PETITIONER IN FACT HAD ABSOLUTELY NO SUCH
4 CRIMINAL HISTORY TO SUPPORT EVEN REMOTELY SUCH
5 ALLEGATIONS, EXCEPT FOR A PETTY LARCANY CITATION IN
6 JULY OF 2005, WHICH IS A FAR CRY TO JUSTIFY SAYING
7 "HOPEFULLY TODAY WILL BE THE END OF BRENDAN DUNKLEY
8 AND WHAT WE HAVE TO DEAL WITH HIM" (PS. 11/22-23)

9 BY THIS CRUCIAL EVIDENCE AND INFORMATION NOT
10 BEING GIVEN TO YOU, YOU HAD NO IDEA THAT DUE TO THE LACK
11 OF PRESENTATION FROM BOTH SIDES OF THE AISLE THE SENT-
12 ENCE OF LIFE IN THE STATE PRISON WITH PAROLE AFTER A
13 MINIMUM OF TEN YEARS (120 MONTHS TO LIFE) FOR COUNT I
14 (NRS. 201.230) WAS SOLEY BASED ON PERJURED TESTIMONY,
15 THAT THE STATE KNEW IT TO BE SUCH, AS WELL AS YOU
16 DID NOT KNOW NOR WAS DEFENDANT INFORMED BY ADEQUATE
17 COUNSEL IN REGARDS TO THE GUILTY PLEA MEMORANDUM, THAT
18 IT INTSELF IS INVALID, DUE TO THE STATES KNOWLEDGE IT WAS
19 CREATED ON FALSE FACTS, ALL OF WHICH IS FALSE INF-
20 ORMATION PERTAINING TO DEFENDANTS CRIMINAL HISTORY AND
21 BEHAVIOR / ACTIONS.

22 DEFENDANT HUMBLEY REQUESTS THE COURTS TO FIX
23 AND SET ASIDE BOTH THE CONVICTION FOR COUNT ONE AS
24 WELL AS THE GUILTY PLEA MEMORANDUM ON THE GROUNDS OF
25 IT BEING INVALID BASED ON FALSE FACTS, IE, PERJURED TESTIMONY,
26 AND WITHHELD RELEVANT EXCULPATORY EVIDENCE, ALL TAINING
27 AND PAINTING A FALSE AND INADURATE PICTURE OF THE
28 DEFENDANTS CRIMINAL HISTORY TO THE JUDGE, YOU.

ARGUMENTS

COURTS HAVE JURISDICTION TO CORRECT OR MODIFY DEFECTIVE SENTENCES THAT, ALTHOUGH IMPOSED WITHIN THE STATUTORY LIMITS, ARE BASED UPON MATERIALLY UNTRUE ASSUMPTIONS OR MISTAKES WHICH WORK TO THE DEFENDANT'S EXTREME DETRIMENT. STANLEY V. STATE, 106 NEV. 75, 787 P.2d 396, 398 (1990). THIS COURT THEREFORE HAS JURISDICTION TO VACATE OR MODIFY SENTENCES WHICH ARE BASED ON A MISAPPREHENSION BY THE COURT OF A DEFENDANT'S CRIMINAL RECORD IN IMPOSING SENTENCE. EDWARDS V. STATE, 112 NEV. 704, 918 P.2d 321, 324 (1996).

THE POWER OF THE COURT TO MODIFY SUCH SENTENCE LIES IN ITS INHERENT AUTHORITY TO CORRECT ITS OWN MISTAKES, WHICH NATURALLY PROVIDES IT THE AUTHORITY TO ENTERTAIN MOTIONS REQUESTING IT TO DO SO. PASSANISI V. STATE, 108 NEV. 318, 831 P.2d 1371, 1373 (1992).

CONCLUSION

AS DEMONSTRATED ABOVE, THIS COURT RELIED ON FALSE INFORMATION CONCERNING DEFENDANT'S CRIMINAL HISTORY IN RENDERING ITS JUDGEMENT, AND AS SUCH SHOULD MODIFY THE SENTENCE ACCORDINGLY.

DATED THIS 26th DAY OF JUNE

2009
Brendan Dunckley 1023236
BRENDAN DUNCKLEY 1023236
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NEVADA 89415
DEFENDANT PRO 305E

1)	<u>SUPPORTING DOCUMENTATION</u>
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3)	
4)	LETTER ADDRESSED TO DISTRICT ATTORNEY GAMMICK . . . PG 1-7
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6)	CERTIFIED MAIL SIGNATURE CARD AND RECEIPT PG. 8-10
7)	
8)	LETTER ADDRESSED TO MR. HATTESTAD (W.C.D.A. CHIEF APP. DEP. . . PG. 11-17
9)	
10)	DMV - VEHICLE REGISTRATION INFORMATION PG. 18-19
11)	
12)	CULINARY INSTITUTE OF AMERICA TRANSCRIPTS PG 20
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14)	RENO POLICE DEPARTMENT 'DRAFT' DATED 4/19/07 PG. 21-22
15)	
16)	A SUMMONS OF FAMILY LAW AND PROOF OF SERVICE . . . PG. 23-25
17)	
18)	CERTIFICATE OF SERVICE
19)	
20)	
21)	
22)	
23)	
24)	
25)	
26)	
28)	
28)	

Dear District Attorney Janakich,

In recent research I came across an interesting piece of information. With regards to the American Bar Association Model Rules and Standards. Namely Standard 3-2.5 entitled "Prosecutor's Handbook. Especially of interest is subsection (b) second sentence "This handbook" should be available to the public, except for subject matters declared "Confidential".

You see I would be greatly interested in obtaining a copy of that handbook. If needed I will make sure it is promptly returned.

You may even be able to shed some light on the very reason that I wish to view the handbook that as subsection (c) states, "The objectives of these policies as to discretion and procedure should be to achieve a fair, efficient, and effective enforcement of the criminal law."

I find it of real importance that the ABA used the term discretion in this paragraph. Webster's dictionary defining discretion as being "Tactful, prudent." So maybe you can help me understand why it was felt to be tactful or prudent to allow release of a criminal complaint directly pertaining to a case that at the time of release had not yet been before a court to render its decision as to guilt. There for lending the accused the right of presumption of innocence until proven guilty.

That is a serious fundamental right anyone accused of a crime is automatically granted just for being an American citizen. Just the simple mistake of accidentally releasing such information in itself could be rendered a "harmless error" not to be considered an intentional violation of the accused Sixth Amendment right to a "fair and just trial".

But unfortunately, that is not the case here. The fact that a Detective working the case in which the criminal complaints were pertained to intentionally released the material to a third party attorney dealing with a Civil matter. The release of that evidence and entering it into a Civil Matter now made all the complaints that of Public Record. Being that the detective who released the confidential paperwork was a member of the Reno Police Department and the lead detective in the same referenced Criminal Matter he is considered a member of the prosecutorial investigation team, and subsequently all his actions has direct bearing on your office.

I also am curious as to what would warrant a detective to intentionally violate the accused right of innocence and release the said documents to the accused ex-wife's attorney, who at the time was in a nine year custody battle. That would under normal scrutiny constitute in the least malice intent on hindering the constitutional rights of the accused to a fair and just trial. Having such confidential information in the public I am sure you could agree would definitely prejudice the accused.

Also, knowing your impeccable reputation and that of your colleagues in your charge for striving to ensure that justice is done, I am sure you are familiar with the Standard set forth by the American Bar Association 4.41 which states "Effective investigation by the lawyer has an important bearing on competent representation at trial, for without adequate investigation the lawyer is not in a position to make the best use of such mechanisms as cross-examination or impeachment of adverse witnesses at trial." I understand the premise of this Standard is geared towards the defense counsel, but it can and also does apply to you the State.

The reason for that line of reference is to bring up the fact that the "Prosecution's duty is never to merely

convict, but to see that justice is done by seeking truth of the matter, and to ensure that jury tries cases solely on basis of actual facts presented to them." (People v. Maestra)

The fact that the opinion stated above used the words "seeking" and "actual facts" renders the fact that the prosecution investigated the charge, not simply taking the word of the complainant. That is the fact of severe relevance in the same case involving the forementioned detective and accused. In (State v. Estes) it states "Prosecutor is expected to be diligent and leave no stone unturned, but nevertheless expected to be fair" (State v. Estes 725 P.2d, 922, 111 10Amw 923). That brings up the other reason to my letter. Which I would like to express my appreciation for your taking the time to read. But I digress.

In the referenced case that your office filed and subsequently obtained a plea deal or as referred to a Guilty Plea Memorandum. The case no. is CR07-1728. Upon review you will notice that the record has charge 1 happening in the time frame of August 14, 1998 to August 13, 2000. As you will notice from the transcripts in the Preliminary Hearing the "victim" in count 1 stated she was sure it was when she was (12) twelve years old, as affirmed by your Adm. Victoria in the sentencing transcript (Pg 13; 19-21). "But he calls Ashley 14 years old at the time ~~for~~ when we all know she was 12." She is the representation of the state and therefore making it the states contention to her age of the attack being 12 years old. (August 14, 1998 to August 13, 1999). Again supported by record of sentencing hearing (Pg 11; 24-Pg 12; 1, Pg 16; 17, Pg 17; 12) The reason for bringing you this letter is this: Had your office and including the police department, as well as my own attorney appointed to me by your office done even the simplest basic investigation in the allegation you would have seen that in actuality I was not even a resident in the state of Nevada until 2000, and in 1998 at the time

the alleged incident occurred I was attending college in New York at the Culinary Institute of America in Hyde Park, NY. From 11/11/96 until 2/23/99. The information is easily verified by the college. That would have surely come up in a residential history search. Then that leaves 2/23/99 until the "victim's" thirteenth birthday 8/14/99. Well how amazed would you be to know that during that time frame I resided in Oakhurst, Ca with my former wife. And in August 1999 she filed for divorce and I was served papers in Fresno Ca. Again extremely simple information to have obtained if a due diligent investigation was in fact done. As the matter of the location of the alleged incident the said vehicle would have shown that I had not purchased and registered the said vehicle till 6/8/00. Therefore how could a crime have been committed by me in a state 3,000 miles away from my location in a vehicle I won't purchase for two years. If any evidence was deemed relevant I think this would. Not to mention "relevant in the favor of the accused" as mentioned in Brady v. Maryland. Now if you did not actually know including all members of your team including the police in the least we have a warranted example of prosecutorial misconduct. But if your office actually did know and still attempted to prosecute the case would warrant a serious case of malicious prosecution, and Brady violation, due process violation, Sixth, Fourteenth Amendment violation to say the least.

But still pursuing a conviction the Ada proceeded to bring forward a deal that to my knowledge and belief was for probation as noted in the Guilty Plea Memorandum pg. 4:25 & 4:26 both sites with initials of myself, my counsel and ADA Viloria. But the fact that the state fought hard to obtain the max bears a problem in regards

the validity of the original plea bargain. Especially when your ADA stated in the sentencing hearing transcripts "We did craft this creative plea bargain so this defendant could have the right to posture himself to ask the Court for sentencing. That's what he required before he came to you and admitted his conduct and entered his plea of guilt." (Pg 12; 6-9 sentencing hearing transcript)

You see the problem is that plea bargains are in fact protected under contract law. In a basic breakdown the agreement should be of benefit to both parties involved. Example; a defendant looking at the death penalty for a capital crime signs a deal and it takes the death penalty off the table. All sides benefited the State gained a conviction and saved the tax payers the expense and the accused was not to be put to death. In my case if I went to trial I would be facing 10 to life and 2 to 20 years. I got 30 to life and 2 to 10. But the state fought and argued to 2 to 20 (Pg Pg 17; 3b-5) Therefore I gave up four protected rights 1) Remain silent. 2) Bring witnesses on my own behalf. 3) Face my accusers and cross examine them. 4) Right to a trial by my peers. I gave it all up and I feel that had the attorney involved on both sides of the table been even slightly competent to have exercised due diligence in pre-trial investigation and entered the relevant evidence it would have seriously changed my mind in accepting the deal and had demanded going to trial.

You I am sure would agree that once you verify the information I have given you so as to meet the Giles standards could be considered substantial evidence. Black's dictionary defines Substantial evidence as "evidence that a reasonable person could accept as adequate and sufficient to support a conclusion of defendant's guilt or innocence beyond

a reasonable doubt."

All the information I have given to you as to the Giles Standards I had handed over to my appointed attorney of record. For that and all the information in this letter along with documented evidence ~~etc~~: the released police complaints with R.P.D. Detective Tom Brown's signature on each in addition to the clerk stamp of Superior Court of California Madera County in reference to Dunneley v Dunneley, College transcripts, court documentation of the location of residence, divorce paperwork, Department of Motor Vehicles record of registration. Just think how I easily obtained all this information and documentation independently how much more so should all involved in this case have done so as well.

I will leave you with a final citation of due relevance at the point at hand: "Thus, the system of criminal justice is adversarial in nature and prosecutors have a duty and are expected to be diligent and leave no stone unturned, he is required to be fair and has a duty to avoid any misrepresentation of the facts and unnecessary inflammatory tactics." (State v. Griffiths 610 P.2d 522, 101 IDemo 163).

With my stating all that I wished, in order to help me process my next step in filing all this information by means of a Post Conviction Writ of Habeas Corpus - which I have no reason to believe will be denied due to serious relevant evidence and dare I say, respectfully though your total lack of any physical evidence to the allegations, which I did not commit. I just wanted to allow you the opportunity to view this information which I truly believe you to feel is a gross miscarriage of justice that demands an immediate remedy of. Once again as I stated earlier I am respectfully appreciative of your taking the time to read my letter. I am a learner and I apologize if at any time I unknowingly bastardized the legal field of

references and records. Your response is greatly appreciated..

Cordially Yours

Brendan Dunckley

Brendan Dunckley
INMATE # 1023236
L.C.C.
1200 Prison Road
Love Lake, Nevada. 89419

CASE Reference NO: CVO7-1728
CASE Reference NO: 52383

P.S. Copies of this letter are as follows.

C.C.: Brendan Dunckley
Morgan Dunckley
NEVADA Supreme Court Clerk
David Olmara Esq.
DISTRICT ATTORNEY Richard Gammick

Documents Included:

C.I.A. transcripts

DMV. Registration information

RPD reports 04-19-07, 03/10/07 AND 8/20/05

Evidence Stamped 5/25/07 (RPD release)

MADERA Superior Court minutes Noting report

Proof of Service of Summons Dated 8/16/07 At residency in Fresno, CA.



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Brendan Dunchley (1023236)

L.C.C.

1200 Prison Road

Lowell, Nevada 89419

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1. Article Addressed to:

MR. Richard Gammick
Washoe County District Attorney
P.O. Box 30083
Reno, Nevada 89520

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A. Signature

X Thomas J. Frugo

☐ Agent☐ Addressee

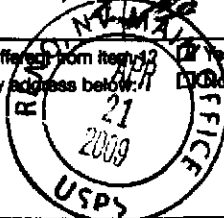
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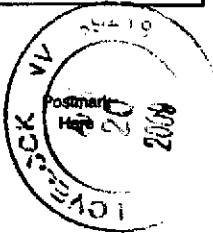
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Sent To Brendan Dunckley 1023236-48-508
RICHARD GAMMICK W.C.D.A.
Street, Apt. No.,
or PO Box No. P.O. Box 30038
City, State, ZIP+4[®] RENO, NV 89520

PS Form 3800, August 2006

See Reverse for Instructions

June 15, 2009

Dear Mr. Hatlestad;

First of all allow me to congratulate you on your victory in having my conviction affirmed by the State Supreme Court. With that being respectfully and genuinely stated I feel that some information needs desperately to be conveyed to you.

You see on April 21, 2009 a gentleman by the name of Thomas J. Frugoli accepted a certified letter from me. With Id number (7007-0710-0005-2300-2620). For your edification I have enclosed the letter (a copy that is) also the documents that originally were enclosed with the said letter.

As you read the letter you will see that in comparison to the alleged testimony of Ashley V. at the preliminary hearing she claims that the incident in Count 1 of the order of conviction occurred when she was twelve years old. Specific window of offense would place it August 14, 1998 until her thirteenth birthday of August 14, 1999. The State argued repeatedly (SDA Victoria) that the crime occurred on a twelve year old little girl. (Sentencing Transcript pg 12/line 1; pg 13/line 19(b) to 21; pg 16/line 17; and again on pg 17/line 17). No allegation or contention was ever made by the state that any other act occurred except during her twelfth year of life.

Except there is a serious flaw and problem with that allegation, I have mentioned this to my attorney but he failed to fix it or use the evidence I presented him. Also unfortunate is the fact that the State too had in its possession evidence to show not only that the testimony of Ashley V. was perjured but that the State had evidence proving the absolute impossibility of the crime occurring.

For the record allow me to detail and break down the allegation to you. Ashley testified that after spending 317

the night at my house with my girlfriend/wife
Morgan (in Reno) I drove her home the following
morning. While driving her home on Longly Lane (Reno)
I pulled over into a parking lot and she and I
had consensual sex in the back seat of my Ford
Taurus, then I drove her home. The second incident
occured (by her testimony) shortly afterward at the
Atlantis Hotel & Casino (Reno) in an elevator. When asked
by Mr David Clifton how old she was when these
incidents occurred, she responded she was twelve years
old, asked if she is certain she answered in the affirmative.
Meaning with a birth date of August 14, 1986 her twelfth
year would consist of August 14, 1998 until August 13, 1999.
With that being said heres where the problem lies and
again I told this to my attorney and recently sent
the enclosed letter and documents.

First you will see a letter / transcript from
the Culinary Institute of America located in Hyde Park,
New York. There you will see the time I was in
fact enrolled in college. dated 11/11/96 - 02/23/1999.
So there is documented proof up until February 23, 1999
I was in fact in Hyde Park, New York attending college. So
that would rule out 8/14/98 until 2/23/99 by the rules
of Gile. (Evidence that proves I could not have committed the
crime due to being in a location so far away that under
normal circumstances I could not have been in the location
of the crime.)

Next you will find a DMV print out dated
December, 05, 2008 showing that the vehicle in the
allegation my Ford Taurus was in fact not even purchased
or registered until 6/5/00. So how did we have
consensual sex in it in 1998-99 when I did not
even own it until 2000.

Third, you will see that the State in fact knew that I was not even in the area of Reno when Ashley alleges that the incident occurred. Enclosed you will find a Reno Police Department 'draft' dated 4/19/07. Created by Detective Tom Broome of RPD Sex crimes division. Please note the second page with the conversation between Detective Tom Broome and my ex-wife Jenny Dinchley. She mentioned we met in N.Y. then later moved to Madera California, our marriage broke up in July of 1999 while living in Oakhurst California. A allegation and investigation was done by Madera County Sheriff's department with me. A copy of that Detective Broome obtained. So Detective Broome knew that I was in fact residing in Madera County California in 1999 at least until July with my wife Jenny. Not as alleged residing in Washoe County, Reno with Magan. Yet the State never corrected known perjured testimony and continued to allow it to go uncorrected all the way up to sentencing, and beyond. (letter 4/21/08). As a note you will see a EXHIBIT 'D' stamp on the back of the report, that is because that was one of four criminal reports Detective Tom Broome released to my ex-wife's attorney Kenneth Ballard in Oakhurst Co, to use for an ongoing custody case. That was released 5/25/07. A full six weeks before my preliminary hearing proving the State had knowledge that I was in fact innocent of counts alleged from Ashley. But Nobody fixed it not the State nor my attorney who also had the reports released by Detective Broome. (The hearing for the exhibit was June 22, 2007, Prelim. hearing was 7/12/07)

Finally enclosed in the original letter is a copy of a Summons of Family Law & Prob & Service for divorce dated 8/16/99. Notice I was served at my residency at 2:45pm at 255 East Neese, #257, FRESNO, CALIFORNIA. Two days

after Ashley turned thirteen. Again proving beyond a reasonable doubt that I could not have committed the crime as testified by the "Victim". Since her testimony is in fact all the evidence the State has that these incidents even occurred and I proved by documented, verifiable evidence to the contrary, the conviction can not stand. It would continue to allow a manifest injustice to go uncorrected.

As an added area of interest I did not mention in the previous letter, Ashley testified that Morgan my girlfriend/wife was pregnant as was her friend Michelle Anthony. Yet Michelle daughter Brooklyn was born September 25, 2000 and our son Jacob was born January 12, 2001. Either they both had really long pregnancies or again the allegations could not have occurred.

Please take notice that even Dr. Story's report on page 3 second paragraph shows I did not move to Reno until 2000. And in the PSI report page 3 under education I graduated H.S. in 1994 and attended the Culinary Institute of America until 1999.

I hope that you see the gross manifest injustice, prosecutorial misconduct, Brady violations, and gross bad faith negligence that has occurred here. I humbly request that the DA do their duty and set the record straight and request a reversal and vacating of Court 1 and allowing me to reverse and set aside my Guilty Plea Memorandum, and plea anew to Court 2. I hope you realize I am going to include both letters in my writ of Habeas Corpus. I just felt it necessary to once again bring to the DA's attention so they can take it upon themselves to fix and correct this problem. Doreen the court trans-
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and in the interest of justice.

Besides is it not the ultimate duty of the Prosecutor to not seek a conviction by any and all means but to see that justice is done and obtained. Is it not why the Prosecutors are held to a higher standard to be diligent and leave no stone unturned. After all you the DA represent the State and all its people.

So, Mr. Hatlestad can you in good conscience and good faith simply ignore this information as David Clifton, Kelli Anne Villoria, and Thomas S. Frugoli not to mention also Detective Tom Broome have all done on repeated and numerous occasions. I included Detective Tom Broome because as you are I'm sure aware the misconduct by an investigating law enforcement agent is indistinguishable from misconduct by prosecuting attorneys.

Please know I truly respected your brief for the Supreme Court. I know you did not know about this information, because for my attorney to have added it in appeal would have meant admitting his ineffectiveness in acting as an advocate. But it does not excuse his actions or that of Mr Clifton and especially Mrs Villoria. As you are aware being the Chief Appellate Deputy it is the duty and obligation of a prosecuting attorney to obtain Brady evidence (evidence favorable to the defendant). Even if she is not in direct possession of said evidence, she had and still has a duty to learn of any favorable evidence known to other government agents, including the Police (i.e. Det. Broome, report 4/19/07) if those agents are involved in the investigation. Detective Broome was the lead detective.

I pray that you will do the right thing and allow an innocent man to return to his family. I again request that you vacate/dismiss and expunge Court I and allow the Guilty Plea to be reversed and allow

Continuation:

As an additional side note to help the courts and the taxpayers further court expense and time, I would like to make a humble request and possible solution. As of June 8, 2009 I represent myself pro per. Because I know that the overwhelming evidence I am in possession of will almost certainly in the least reverse my guilty plea memorandum. But prove blatant and obvious malicious disregard for my constitutional rights on the part of ADA Victoria as well as Detective Tom Broome. There is a total of 150-160 pages of documentation proving malice, prosecutorial misconduct, ineffective assistance of counsel, police harassment, Miranda violations, inappropriately obtaining evidence, perjured testimony, Brady violations, and that's just with the few pages I have given to you in this letter. Any of which will grant reversal of the deal and prove actual innocence in regards to Count 1.

So here as the chief appellate counsel you are aware that I only need to prove it with probable preponderance, except I can prove it all beyond a reasonable doubt. Or create enough reasonable doubt to a jury. So I propose the following deal for the States consideration: Guilty Plea reversed and set aside Count 1 (NRS. 201.230) dismissed on ground of insufficient evidence and actual and factual innocence, Count 2 (NRS 193.330) be amended to Assault (due to the fact the "victim" Jessica has yet to come forward since the prelim, and her testimony is inconsistent from 3/26/07 to 7/2/07 lacking credibility), So Amend Count 2 to Assault Gross Misdemeanor or at most a 'E' felony with credit for time served. I am released and allowed to leave Nevada (Reno) forever. In exchange I do not sue federally the County or D.A.'s office for the blatant Civil rights and Constitutional violations on the part of the O.A.'s office.

If that deal is accepted as a binding agreement w/ the judges signature. I will agree to sign it. Preventing your office from being flooded with appeals that ADA Victoria and Detective Tom Broome handled. Doc 16
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only knows how many other innocent men/women they have persecuted.

(Contd)

or in the alternative:

Reverse the Guilty plea Memorandum and dismiss count 1 on grounds of actual/factual innocence. Allowing me to plead anew for Count 2 and we proceed to trial. I would retain the right to file a lawsuit in regards to count 1's violations. Did you know my seven year old is in therapy because of the sentence I was given for a charge the state knew I could not have committed. But I digress, back to the proposed deal:

#1 - Guilty Plea Memorandum Reversed, Count 1 dismissed on grounds of insufficient evidence and Actual/Factual innocence. Count 2 (NRS 193.330) Amended to Assault (GM. or 'E' Felony) with Credit for time served (as of 6/15/09 \Rightarrow 419 Days = 142⁵⁴ Days As per AR 520 stat calculation 20%). Released and record is expunged for count 1 (NRS 201.230). In Exchange defendant (me) will Agree to abstain from suing the State, County and DA office, for civil rights and constitutional violations. Binding Agreement with sentence to be credit time served. (No Surprises).

(Or)

#2 Guilty Plea Memorandum reversed, Count 1 (NRS 201.230) dismissed on grounds of insufficient evidence and Actual/factual innocence. Count 2 Allowed to plead anew to (NRS. 193.330) And return to a not Guilty stage. Bail being allowed. And proceeding with trial -

I look forward to your response in this matter.



Jim Gibbons
Governor



Ginny Lewis
Director

555 Wright Way
Carson City, Nevada 89711-0900
Telephone (775) 684-4368
www.dmvnv.com

December 05, 2008

BRENDAN DUNCKLEY
1200 PRISON RD
LOVELOCK NV 89419

This is to certify that the records have been searched for the following;

VIN: 1FALP5244PG247860
Year/Make: 1993 FORD TAURUS GL 4 DR SEDAN
Plate: 631KWM

The records of the Dept of Motor Vehicles indicate that the above referenced
Was registered in Nevada State. We show this vehicle has been register from
06-05-2000 to 06-05-2001 under the name of Brendan Dunckley.

If you have any further questions regarding this request please feel free to
contact me at the above listed phone number.

Sincerely,

Pam Mendoza
Record Section

STATE OF NEVADA
DEPARTMENT OF MOTOR VEHICLES
CENTRAL SERVICES - RECORDS DIVISION
555 Wright Way
Carson City, Nevada 89711-0250
(775) 684-4590

REQUEST DATE : 12/05/2008

SUP.TRAN.ID : 45905961

BRENDAN DUNCHLEY
1200 PRISON RD
LOVELOCK NV 89419-5110

VEHICLE REGISTRATION DATA

I - VEHICLE DATA

YEAR : 1993 MAKE : FORD MODEL : TAG CYL : 06
VIN : 1FALP5244PG247860 VEHCL TYPE : VEH-SEDAN 4 DR

II - REGISTRATION INFORMATION

EXPIRATION DATE : 06/05/2001
PLATE NUMBER : 631KWM DECAL NUMBER : M39555

OWNER TYPE : REGISTERED COMBN TYPE : NONE
NAME : BRENDAN THOMAS DUNCKLEY
MAIL ADDRESS : 4458 HIGHPLAINS DR
CITY/STATE : RENO NV 89523-9176
PHYS ADDRESS : 4458 HIGHPLAINS DR
CITY/STATE : RENO NV 89523-9176

LAST TRANSACTION DATE:06/06/2001

NAME/ADDRESS AT THE TIME OF REGISTRATION

NAME : BRENDAN T DUNCKLEY
MAIL ADDRESS : 811 PLUMAS ST
CITY/STATE : RENO NV 89509-1739

END DT : 06/13/2002

PAGE NO: 1** LAST PAGE **

CEEB Code: 003301

DUNCKLEY, BRENDAN, T
 44782 SILVER SPUR CT
 AHWAHNEE, CA 93601

Student ID: 36556
 Birth Date: 07/04/1976
 Date Issued: Dec 1, 2008

Page 1 of 2

Major: Culinary Arts

Degree(s) Conferred:
 Assoc. in Occupational Studies in Culinary Arts awarded Jan 22, 1999

Course Number	Section	Course Title	Cred Course	Cred Ernd	Grd	Rep	Abs
Semester 0 (11/11/1996 - 02/23/1999)							
A1D-2B	1A	- CULINARY MATH	1.5	1.5	C-	0	
A1K-2B	0Q	- INTRO. TO GASTRONOMY	1.5	1.5	C-	0	
B1C-2B	1B	- CUL. FRENCH	0.0	0.0	B	0	
B1E-2B	17	- FOOD PURCHASING	1.5	1.5	C-	1	
B1G-2B	0Q	- SANITATION	1.5	1.5	B-	0	
C1A-2B	1D	- MEAT FABRICATION	1.5	1.5	A-	0	
C1F-2B	0Q	- MEAT IDENTIFICATION	1.5	1.5	B-	0	
B1F-2B	0Q	- NUTRITION	1.5	1.5	B+	0	
D1A-2B	1D	- SKILL DEV. I	3.0	3.0	B	0	
E1A-2B	1F	- SKILL DEV. II	3.0	3.0	A-	0	
F2A-2B	1I	- INTRO. HOT FOODS	3.0	3.0	C+	0	
F2B-2A	0V	- SUPERVISORY DEV.	1.5	1.5	C	0	
G2B-2B	1L	- AMERICAN CUISINE	1.5	1.5	D	0	
G2A-2B	1J	- SEAFOOD COOKERY	1.5	1.5	C	0	
H2C-2B	0X	- CHARCUTERIE	1.5	1.5	D	1	
H2B-2B	0X	- ORIENTAL	1.5	1.5	B	0	
I2F-2B	0Y	- LUNCH COOKERY	1.5	1.5	D	0	
I2E-2B	0X	- BREAKFAST COOKERY	1.5	1.5	C-	0	
J2A-2B	10	- GARDE MANGER	3.0	3.0	C	0	
J2B-2B	0X	- TERM II PRACTICAL	0.0	0.0	P	0	
00-2B	31	- EXTERNSHIP	6.0	6.0	C	0	
L4G-A	18	- BREAD BAKING	1.5	1.5	B	0	
L4C-A	1J	- COST CONTROL	1.5	1.5	D	1	
L4F-A	18	- PASTRY SKILLS DEV	1.5	1.5	B+	0	
M4A-A	24	- PATISSERIE	3.0	3.0	B+	0	
N4D-A	1S	- MENUS/FAC. PLANNING	1.5	1.5	B	0	
N4E-A	1R	- MGMT. WINES&SPIRITS	3.0	3.0	D	0	
N4F-A	1J	- RESTAURANT LAW	0.0	0.0	B+	0	
P4A-A	28	- INT'L COOKERY	1.5	1.5	B+	0	
P4D-A	1T	- ADV. CUL. PRINCIPLES	1.5	1.5	C	0	
CA5Q01-A	04	- CLAS BANQUET CUISINE	1.5	1.5	D	0	
CA5Q03-A	04	- INTRO TO CATERING	0.0	0.0	B	0	
CA5Q02-A	04	- INTRO TO TABLE SERV	1.5	1.5	A	0	
CA5R01-A	04	- A' LA CARTE SERVICE	1.5	1.5	B-	0	
CA5R02-A	04	- ST. ANDREW'S KITCHEN	1.5	1.5	C	0	
CA5S02-A	04	- 5TH SEM COSTING EXAM	0.0	0.0	P	0	
CA5S01-A	04	- DE MEDICI KITCHEN	1.5	1.5	D	0	
CA5S04-A	04	- 5TH SEM COOKING EXAM	0.0	0.0	P	0	
CA5S03-A	04	- TABLE D'HOTE SERVICE	1.5	1.5	C	0	
CA5T01-A	04	- FORMAL SERVICE	1.5	1.5	C+	1	
CA5T02-A	04	- ESCOFFIER KITCHEN	1.5	1.5	C-	1	
CA5U02-A	05	- AM BOUNTY SERVICE	1.5	1.5	C	1	
CA5U01-A	06	- AM BOUNTY KITCHEN	1.5	1.5	D	0	

Incident Report RENO POLICE DEPARTMENT



Address
[REDACTED]
Address
[REDACTED]
City State, Zip
[REDACTED]
Phone Number
[REDACTED]
Fax Number
[REDACTED]

DRAFT

Reported Date
04/19/2007
Nature of Call
SEXASSLT
Author
BROOME, TOM

Supplement No
0003

Administrative Information

Agency RENO POLICE DEPARTMENT	CCA # [REDACTED]	Supplement No 0003	Reported Date 04/19/2007	Reported Time 08:22	CAD Call No [REDACTED]
Status REPORT TO FOLLOW	Nature of Call SEXUAL ASSAULT	Crime/Inc Loc [REDACTED]			
City RENO	Rep Dist H4F2	Area RN	Beat 38	From Date 03/10/2007	From Time 18:50
Emp # R1509/BROOME, TOM	Assignment Detectives - Days - Sex Crimes/Juv				
Emp #2 TRANSCRIBER, REPORTS	Assignment Administration - Academy - Days			Author R1509	
Assignment Detectives - Days - Sex Crimes/Juv			Approving Officer		Approval Date
Approval Time					

DETECTIVE 1: DETECTIVE TK BROOME

Involvement DETECTIVE	Seq # 1	Type INDIVIDUAL	Name ; DETECTIVE TK BROOME
Work/School RENO POLICE SEX CRIMES UNIT	Position/Grade DETECTIVE		

SUBJECT 1: DUNCKLEY, JIM

Involvement SUBJECT	Seq # 1	Type INDIVIDUAL	Name DUNCKLEY, JIM	MNI 1244891
Relationship SON	Name DUNCKLEY, BRENDAN			

SUBJECT 1: DUNCKLEY, JENNY

Involvement SUBJECT	Seq # 1	Type INDIVIDUAL	Name DUNCKLEY, JENNY	MNI 1244903
Phone Type MESSAGE	Phone No (559) 760-5108			

SUSPECT 1: DUNCKLEY, BREN

Involvement SUSPECT	Seq # 1	Type INDIVIDUAL	Name DUNCKLEY, BREN	MNI 913249	Race WHITE	Sex MALE
Date of Birth 07/04/1976	Age 30	Juvenile? No	Height 5'08"	Weight 178#	Hair Color BROWN	Eye Color HAZEL

Modus Operandi

Crime Code(s) SEX CRIMES

Narrative

On April 18, 2007 I received a call from a Jim Dunckley, who identified himself as Brendan Dunckley's father. Jim explained that he, his wife and Brendan were estranged. Jim said that he was told by his former daughter in law (Brendan's first wife), Jenny that Brendan had been arrested in Reno for sex charges. Jim said that he and his wife did some research on the Internet and saw an article in the paper confirming such. Jim asked how serious the charges were and wondered if at some point he and his wife would need to make arrangements to assist Brendan's children with he and Morgan. I explained to Jim that I could not discuss the case in detail with him. I did confirm that Brendan Dunckley had been arrested on two separate sexual assaults in Reno. Brendan's mother got on the phone at this point and explained that they feared Brendan, as he had threatened to kill her at one point during a hearing in California about custody of his two children he had with Jenny. Mrs. Dunckley said that after the hearing he walked up to her and said "your dead". Mrs. Dunckley said that Brendan felt that they should not be associated with Jenny. Mrs. Dunckley described Brendan as very manipulative and Narcissistic. Mrs. Dunckley said that Jenny recently revealed that there were some disturbing sexual issues with Brendan in

Report Officer R1509/BROOME, TOM	Printed At 04/19/2007 09:51	Page 1 of 2 327
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Incident Report RENO POLICE DEPARTMENT

Supplement No
0003

DRAFT

Narrative

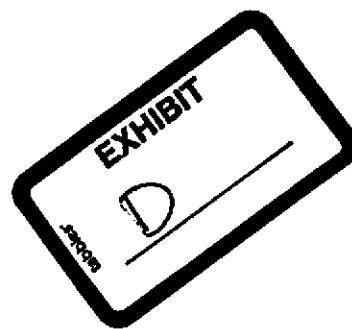
the past. I requested that Jim and his wife contact Jenny and ask if she would talk to me. They agreed. A short time later I did receive a phone call from Jenny Dunckley.

Jenny explained that she has been divorced from Brendan for 5 or 6 years. She said that they met in New York and moved to Madera County California together after they married. She said that early in their marriage in New York Brendan had affairs with friends of her's. She said that when they moved to California, her father got Brendan a job at the Pines Resort in Bass Lake California. She said that Brendan was fired two weeks later for Sexual Harassment of another employee, she described as a younger female.

During their marriage Jenny reported that Brendan was very controlling of who she could have as a friends, where she could go and it was Brendan's way or the highway. She said that Brendan was very aggressive with her both physically and sexually. I asked if there were ever any instances that she was forced to have sex with Brendan. Jenny said that she would not say that she was forced, but he did slap her around at times and she knew better than refuse him when he demanded sex.

Jenny said that the marriage broke up in July of 1999. She said that her parents owned a Bed and Breakfast in Oakhurst California and they were receiving calls from customers complaining of charges on their credit cards. Jenny said that eventually Brendan did admit to using the customer cards to pay for Internet porn and on line sex sites. She said that before he finally admitted to what he was doing he tried to "set up" her 16 year old brother by planting floppy disks with porn on them in his room, then calling her parents and tipping them off to where they could find the porn. Jenny said that there was a police report filed and there was somewhat of an investigation by Madera County Sheriffs department. She said that Brendan was not arrested since the money was paid back by the credit card companies. She said that the Sheriff's department referred to it as a victimless crime.

I asked if there were any other sexual allegations or anything involving their children. She said that there was not. The interview ended shortly thereafter. I did obtain a copy of the police report from Madera County Sheriff's Department. No Further...



SUMMONS -FAMILY LAW**CITACION JUDICIAL--DERECHO DE FAMILIA**

NOTICE TO RESPONDENT (Name): BRENDAN THOMAS
AVISO AL DEMANDADO (Nombre): DUNCKLEY

You are being sued. A usted le estan demandando.

PETITIONER'S NAME IS: JENNY ANN DUNCKLEY
EL NOMBRE DEL DEMANDANTE ES:

CASE NUMBER: (Numero del Caso)

Cv03749

FOR COURT USE ONLY
 (SOLO PARA USO DE LA CORTE)

FILED
MADERA SUPERIOR COURT

AUG 18 1999

CLERK

DEPUTY

Janet M. Gallagher

You have **30 CALENDAR DAYS** after this Summons and Petition are served on you to file a Response (form 1282) at the court and serve a copy on the petitioner. A letter or phone call will not protect you.

If you do not file your Response on time, the court may make orders affecting your marriage, your property, and custody of your children. You may be ordered to pay support and attorney fees and costs. If you cannot pay the filing fee, ask the clerk for a fee waiver form.

If you want legal advice, contact a lawyer immediately.

Usted tiene **30 DIAS CALENDARIOS** despues de recibir oficialmente esta citacion judicial y peticion, para completar y presentar su formulario de Respuesta (Response form 1282) ante la corte. Una carta o una llamada telefonica no le ofrecera proteccion.

Si usted no presenta su Respuesta a tiempo, la corte puede expedir ordenes que afecten su matrimonio, su propiedad y que ordenen que usted pague manencion, honorarios de abogado y las costas. Si no puede pagar las costas por la presentacion de la demanda, pida al actuario de la corte que le de un formulario de exoneracion de las mismas (Waiver of Court Fees and Costs).

Si desea obtener consejo legal, comuniquese de inmediato con un abogado.

NOTICE The restraining orders on the back are effective against both husband and wife until the petition is dismissed, a judgment is entered, or the court makes further orders. These orders are enforceable anywhere in California by any law enforcement officer who has received or seen a copy of them.

AVISO Las prohibiciones judiciales que aparecen al reverso de esta citacion son efectivas para ambos conyuges, tanto el esposo como la esposa, hasta que la peticion sea rechazada, se dicte una decision final o la corte expida instrucciones adicionales. Dichas prohibiciones pueden hacerse cumplir en cualquier parte de California por cualquier agente del orden publico que las haya recibido o que haya visto una copia de ellas.

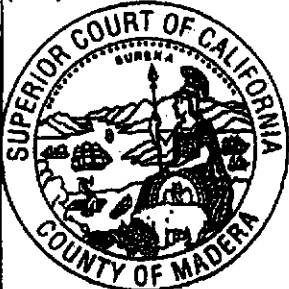
1. The name and address of the court is: (El nombre y direccion de la corte es)

Superior Court of California, County of Madera
 209 West Yosemite Ave.
 Madera, CA 93637

2. The name, address, and telephone number of petitioner's attorney, or petitioner without an attorney, is:

(El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)
KENNETH R. BALLARD
 Attorney at Law
 40327 Stagecoach Road, #1
 Oakhurst, CA 96344
 559-683-2122

[SEAL]



Date (Fecha) ⁵⁰⁰⁶² **AUG 16 1999** Clerk (Actuario), by **Janet M. Gallagher** Deputy **Dianna Ornelas**

NOTICE TO THE PERSON SERVED: You are served

- a. ☐ as an individual.
 b. ☐ on behalf of respondent
 under: ☐ CCP 416.60 (minor) ☐ CCP 416.90 (individual)
 ☐ CCP 416.70 (ward or conservatee) ☐ other:
 c. ☐ by personal delivery on (date):

(Read the reverse for important information)
 (Lea el reverso para obtener informacion de importancia)

WARNING: California law provides that, for purposes of division of property upon dissolution of marriage or legal separation, property acquired by the parties during marriage in joint form is presumed to be community property. If either party to this action should die before the jointly held community property is divided, the language of how title is held in the deed (i.e., joint tenancy, tenants in common, or community property) will be controlling and not the community property presumption. You should consult your attorney if you want the community property presumption to be written into the recorded title to the property.

ADVERTENCIA: Para los efectos de la division de bienes al momento de una separacion legal o de la disolucion de un matrimonio, las leyes de California disponen que se presuman como bienes de la sociedad conyugal aquellos adquiridos en forma conjunta por las partes durante el matrimonio. Si cualquiera de las partes de esta accion muriese antes de que se dividan los bienes en tenencia conjunta de la sociedad conyugal, prevalecera el lenguaje relativo a la tenencia de los derechos de propiedad contenido en la escritura -- como, por ejemplo, copropiedad con derechos de sucesion (joint tenancy), tenencia en comun (tenants in common) o bienes de la sociedad conyugal (community property) -- y no la presuncion de que los bienes son de la sociedad conyugal. Usted debe consultar a su abogado o abogada si desea que la presuncion de que los bienes son de la sociedad conyugal se especifique en el titulo de propiedad inscrito.

STANDARD RESTRAINING ORDERS--FAMILY LAW **PROHIBICIONES JUDICIALES ESTANDARES--DERECHO DE FAMILIA**

STANDARD FAMILY LAW RESTRAINING ORDERS

Starting immediately, you and your spouse are restrained from

1. removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court;
2. cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage including life, health, automobile, and disability held for the benefit of the parties and their minor child or children; and
3. transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life.

You must notify each other of any proposed extraordinary expenditures at least five business days prior to incurring these extraordinary expenditures and account to the court for all extraordinary expenditures made after these restraining orders are effective. However, nothing in the restraining orders shall preclude you from using community property to pay reasonable attorney fees in order to retain legal counsel in the action.

PROHIBICIONES JUDICIALES ESTANDARES--DERECHO DE FAMILIA

A usted y a su conyuge se les prohíbe

1. que saquen del estado al hijo o hijos menores de las partes, si los hay, sin el consentimiento previo por escrito de la otra parte o sin una orden de la corte; y
2. que cobren en efectivo, usen como colateral para prestamos, cancelen, transfieran, descontinuen o cambien los beneficiarios de, cualquier póliza de seguro u otras coberturas de seguro, inclusive los de vida, salud, automovil e incapacidad mantenido para el beneficio de las partes y su hijo o hijos menores; y
3. que transfieran, graven, hipotequen, escondan o de cualquier otra manera enajenen cualquier propiedad mueble o inmueble, ya sean bienes de la sociedad conyugal, quasi conyugales o bienes propios de los conyuges, sin el consentimiento por escrito de la otra parte o sin una orden de la corte, excepto en el curso normal de los negocios o para atender a las necesidades de la vida.

Ustedes deben notificarse entre si sobre cualquier gasto extraordinario propuesto, por lo menos con cinco dias de antelacion a la fecha en que se van a incurrir dichos gastos extrordinarios y responder ante la corte por todo gasto extraordinario hecho despues de que estas prohibiciones judiciales entren en vigor. Sin embargo, nada de lo contenido en las prohibiciones judiciales le impedira que use bienes de la sociedad conyugal para pagar honorarios razonables de abogados con el fin de obtener representacion legal durante el proceso.

MARRIAGE OF (last name, first name of pa . . .)
DUNCKLEY, Jenny and Brendan

NUMBER

CV03749

Serve a copy of the documents on the person to be served. Complete the proof of service. Attach it to the original documents. File them with the court.

PROOF OF SERVICE OF SUMMONS (Family Law)

1. I served the Summons with Standard Restraining Orders (Family Law), blank Response, and Petition (Family Law) on respondent (name): BRENDAN THOMAS DUNCKLEY

- a. with (1) ☐ blank Confidential Counseling Statement (2) ☐ Order to Show Cause and Application (3) ☒ blank Responsive Declaration (4) ☒ completed and blank Income and Expense Declarations (5) ☐ completed and blank Property Declarations (6) ☐ Other (specify):

b. ☐ By leaving copies with (name and title or relationship to person served):

c. ☒ By delivery at ☒ home ☐ business

(1) Date of: 8/16/99

(2) Time of: 2:45 p.m.

(3) Address:

455 E. Ness, #257
Fresno, CA

(2) Place of:

d. ☐ By mailing (1) Date of:

2. Manner of service: (Check proper box)

a. ☒ **Personal service.** By personally delivering copies to the person served. (CCP 415.10)

b. ☐ **Substituted service on natural person, minor, incompetent.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) (Attach separate declaration stating acts relied on to establish reasonable diligence in first attempting personal service.)

c. ☐ **Mail and acknowledge service.** By mailing (by first-class mail or airmail) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) (Attach completed acknowledgment of receipt.)

d. ☐ **Certified or registered mail service.** By mailing to address outside California (by registered or certified airmail with return receipt requested) copies to the person served. (CCP 415.40) (Attach signed return receipt or other evidence of actual delivery to the person served.)

e. ☐ Other (specify code section):

☐ Additional page is attached.

3. The NOTICE TO THE PERSON SERVED on the summons was completed as follows (CCP 412.30, 415.10, and 474):

a. ☒ as an individual

b. ☐ on behalf of Respondent

under ☐ CCP 416.90 (Individual)

☐ CCP 416.70 (Ward or Conservatee)

☐ CCP 416.60 (Minor)

☐ Other (specify):

c. ☒ by personal delivery on (date): 8/16/99

4. At the time of service I was at least 18 years of age and not a party to this action.

5. Fee for service: \$35.00

6. Person serving:

a. ☒ Not a registered California process server.

b. ☐ Registered California process server.

c. ☐ Employee or independent contractor of a registered California process server.

d. ☐ Exempt from registration under Bus. & Prof. Code section 22350(b).

e. ☐ California sheriff, marshal, or constable.

f. Name, address, and telephone number and, if applicable, county of registration and number:
40327 Stagecoach Road, #1
Oakhurst, CA 93644

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 8/16/99

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct.

Date:

W. Irving Curtis
(SIGNATURE)

(SIGNATURE)

CERTIFICATE OF SERVICE

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I HERBY CERTIFY UNDER PENALTIES OF PERJURY THAT
ON THIS DATE I SERVED A TRUE AND CORRECT COPY OF THE
FORGOING DOCUMENT BY:

X DEPOSITING FOR MAIL, IN A SEALED ENVELOPE, U.S. POSTAGE
PREPAID, TO LEGAL MAIL PRISON OFFICIALS, AT LOVELACK
CORRECTIONAL CENTER, LOVELACK, NEVADA.
 FACSIMILE
 PERSONAL DELIVERY
 FEDERAL EXPRESS OR OTHER OVERNIGHT DELIVERY
 MESSENGER SERVICE

ADDRESSED AS FOLLOWS:

RICHARD GAMMICK	CLERK OF THE COURTS
WASHOE COUNTY DISTRICT ATTORNEY	SECOND JUDICIAL DISTRICT
P.O. BOX 30083	P.O. BOX 30083
RENO, NEVADA 89520	RENO, NEVADA 89520

DATED: JUNE 26, 2009

Brendan Pinckley (#1023236)
DEFENDANT IN PRO SE