

1 defenses and failed to interview any of the victims whose credibility was crucial for a conviction.
2 Mr. Dunkley's attorney's performance was deficient to the point that he deprived Mr. Dunkley of
3 any defense and provided the District Court and Mr. Dunkley with a completely unreliable outcome
4 and that deficient performance prejudiced Mr. Dunkley. Competent counsel would have sought a
5 court-ordered investigator, had that investigator explore with his client the facts surrounding the
6 underlying crime and any mitigating circumstances and Mr. Dunkley's alibi defense. Competent
7 counsel would have had that investigator complete an independent investigation with an eye toward
8 defenses, and used the facts uncovered by the independent investigation in the trial and in
9 sentencing. There is no reasonable trial and/or sentencing strategy designed to effectuate Mr.
10 Dunkley's best interest that would have justified his attorney's failures in this regard. Moreover,
11 that the independent investigation would have shown Mr. Dunkley's alibi defense was true and that
12 Mr. Dunkley was innocent. The independent investigation and interview of the victims would have
13 also shown that the alleged victims lacked sufficient credibility because of alcohol impairment, age,
14 and/or the length of time between the alleged crime and the trial to support a conviction. Any
15 decision that Mr. Dunkley's attorney may have made not to conduct a pretrial investigation could
16 not have been informed and could not have constituted a reasonable professional judgment. Had Mr.
17 Dunkley's attorney conducted a pretrial investigation and interview of the victims, Mr. Dunkley
18 would not have been convicted of Lewdness with a Child under the Age of Fourteen Years and
19 Attempted Sexual Assault. Accordingly, Mr. Dunkley is entitled to relief.

20 **Ground Two:** Petitioner Dunkley was deprived of due process, equal protection, a
21 fair proceeding, and a reliable sentence in violation of the Constitution and Laws of Nevada and the
22 United States Constitution. Nev. Const. Art. 1, § 8; United States Constitution, Amendment XIV.

23 **Supporting Facts:**

24 (1) The State knowingly and intentionally offered Mr. Dunkley an illusory Guilty Plea
25 Memorandum which required Mr. Dunkley to spend months obtaining a psychosexual evaluation in
26 accordance with NRS 176.139. Indeed, during the guilty plea hearing counsel for the defense and the
27 State informed the District Court as follows:

28 **Mr. O'Mara:** Your honor, there's been negotiations with the district

1 attorney's office to see this out five to six months so that Mr. Dunckley can get sexual
2 offender therapy during that period of time. And basically the D.A. is giving him
3 every opportunity to try to qualify for probation and to do the things that will be
4 beneficial for him to present to you at sentencing. So she's allowed for a five- to six-
5 month extension so that he can get those type of therapy classes, and so we'd ask for
6 that type of time before sentencing.

Ms. Viloria: Your Honor, my agreement is just to see if this defendant is
worthy of any type of grant of probation, whether he can earn it or not. I want to see
what he does between now and then.

So I do not object to any type of continuance that Mr. O'Mara is asking for to
set out the sentencing date.

(Transcript of Proceedings, Motion to Confirm Trial; March 6, 2008; pages 12 and 13; attached as
Exhibit 1.)

(2) Mr. Dunckley complied in all respects with the terms of the Guilty Plea
Memorandum – Mr. Dunckley attended all required classes and appointments and obtained the
appropriate psychosexual evaluation in accordance with NRS 176.139 that would have allowed him
probation.

(3) Yet the State deprived him of the benefit of his bargain. The State vigorously,
inappropriately, and in violation of the spirit of the Guilty Plea Memorandum argued for a prison
sentence that exceeded even the recommendation of the Division of Parole and Probation.

(4) The State offered Mr. Dunckley a Guilty Plea Memorandum which allowed him an
opportunity of probation, but deprived Mr. Dunckley of the benefit of probation by acting in bad
faith thereby depriving Mr. Dunckley of the sole benefit to him of the Guilty Plea Memorandum.
The State had no intention of allowing Mr. Dunckley probation and proved its intention to deprive
Mr. Dunckley of the benefit of his bargain through its inappropriate sentencing arguments. A plea
agreement includes an implied obligation of good faith and fair dealing. *U.S. v. Jones*, 58 F.3d 688
(D.C. Cir. 1995); and the State breached the Guilty Plea Memorandum by acting in bad faith.

(5) The Due Process and Equal Protection Clauses of the Fourteenth Amendment
mandate that a guilty plea be knowingly and intelligently entered. *Smith v. O'Grady*, 312 U.S. 329,
334 (1941); accord, *Bryant v. Smith*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), limited on other
grounds by *Smith v. State*, 110 Nev. 1009, 879 P.2d 60 (1994).

(6) This claim is of obvious merit. Mr. Dunckley was deprived of both due process and
equal protection under the law because the State extracted an illusory Guilty Plea Memorandum

1 from him which held out the hope of probation, and then argued in bad faith against probation.
2 Accordingly, Mr. Dunckley is entitled to relief.

3 **Ground Three:** Petitioner Dunckley was deprived of due process, equal protection, a
4 fair proceeding, and a reliable sentence in violation of the Constitution and Laws of Nevada and the
5 United States Constitution. Nev. Const. Art. 1, § 8; United States Constitution, Art. 1, § 9, cl. 3, and
6 Amendment XIV.

7 **Supporting Facts:**

8 (1) During sentencing, District Court made the following statement about Mr.
9 Dunckley's request for probation as provided in his Guilty Plea Memorandum:

10 **The Court:** I know you plead to something that allows for a lesser
11 offense, *but it does not allow for probation.*

12 (Transcript of Proceedings, Sentencing; August 5, 2008; page 59; emphasis added; attached as
13 Exhibit 2.)

14 (2) The District Court deprived Mr. Dunckley of the benefit of the Guilty Plea
15 Memorandum through an *ex post facto* application of NRS 176A.110.

16 (3) According to the terms of the Amended Information, Mr. Dunckley allegedly
17 committed Count I, Lewdness with a Child under the Age of Fourteen Years, a violation of NRS
18 201.230, "on or between the 14th day of August A.D. A.D., 1998, and the 13th day of August A.D.
19 A.D., 2000, or thereabout...." (Amended Information; filed on February 28, 2008; page 1, lines 23 –
20 25; attached as Exhibit 3.)

21 (4) At the time the alleged crime occurred, NRS 176A.110(1) and (3)(j) permitted
22 probation for a person convicted of "Lewdness with a child pursuant to NRS 201.230." At the time
23 of sentencing, however, the Nevada Legislature had amended NRS 176A.110 to eliminate probation
24 for a person who had committed lewdness with a child pursuant to NRS 201.230. The District Court
25 applied the later version of NRS 176A.110 *ex post facto* to Mr. Dunckley.

26 (5) The *Ex Post Facto* Clause of the United States Constitution prohibits laws which
27 make more burdensome the punishment for a crime, after its commission. *Flemming v. Oregon*
28 *Board of Parole*, 998 F.2d 721, 723 (9th Cir.1993).

1 (6) This claim is of obvious merit. Mr. Dunckley was deprived of both due process and
2 equal protection under the law and subjected to improperly harsher sentencing because the District
3 Court applied the later version of NRS 176A.110 *ex post facto* to Mr. Dunckley. Accordingly, Mr.
4 Dunckley is entitled to relief.

5 **Ground Four:** Petitioner Dunckley received ineffective assistance of counsel in pre-
6 trial proceedings and sentencing in violation of the Constitution and Laws of Nevada and the United
7 States Constitution. Nev. Const. Art. 1, §§ 3, 6 & 8; United States Constitution, Amendments V, VI,
8 VIII & XIV.

9 **Supporting Facts:**

10 (1) The State charged Mr. Dunckley with counts of Sexual Assault on a Child, Lewdness
11 with a Child under the Age of Fourteen Years, Statutory Sexual Seduction, and Sexual Assault.

12 (2) There was no corroborating evidence in support of the alleged crimes of Sexual
13 Assault on a Child, Lewdness with a Child under the Age of Fourteen Years, Statutory Sexual
14 Seduction, and Sexual Assault. In fact, there was a stunning lack of evidence – there was no DNA;
15 there were no bite marks; and there were no physical or psychological examinations conducted of
16 any of the victims. To make matters worse, one of the victims had a blood alcohol content of 0.226
17 at the time of one of the alleged crimes. Finally, some of the crimes were alleged to have occurred
18 years prior to the State bringing charges against Mr. Dunckley. Accordingly, the evidence in support
19 of the alleged crimes consisted of the testimony of the alleged victims; and that testimony was highly
20 suspect, but crucial for a conviction at trial.

21 (3) Mr. Dunckley's attorney failed to inform Mr. Dunckley of the elements of the crimes
22 involved and further failed to inform Mr. Dunckley that the State could not prove its case. Instead,
23 Mr. Dunckley's attorney became caught up in the media frenzy surrounding the Brianna Dennison
24 investigation, misinformed Mr. Dunckley that no jury would believe him, and convinced Mr.
25 Dunckley to plead guilty to crimes the State could not prove.

26 (4) The Sixth Amendment to the United States Constitution guarantees to a defendant the
27 right to effective assistance of counsel in a criminal prosecution. *McMann v. Richardson, supra*;
28 *Strickland v. Washington, supra*; *Kirksey v. State, supra*. That right applies to both retained and

1 appointed counsel. *Cuyler v. Sullivan, supra*. That right also applies at both the guilt and penalty
2 phases. *Strickland v. Washington, supra*; *Paine v. State, supra*.

3 (5) This claim is of obvious merit. Mr. Dunckley's attorney failed to properly inform his
4 client of the elements of the crimes involved so that Mr. Dunckley could make an informed decision
5 about whether or not to plead guilty. There is no reasonable trial strategy designed to effectuate Mr.
6 Dunckley's best interest that would have justified his counsel's failure in this regard. Mr. Dunckley's
7 attorney's performance was deficient to the point that he deprived Mr. Dunckley of any defense and
8 provided the District Court and Mr. Dunckley with a completely unreliable outcome and that
9 deficient performance prejudiced Mr. Dunckley. Mr. Dunckley would not have been convicted of
10 Lewdness with a Child under the Age of Fourteen Years and Attempted Sexual Assault.
11 Accordingly, Mr. Dunckley is entitled to relief.

12 **PRAYER FOR RELIEF**

13 Mr. Dunckley has demonstrated that he is entitled to relief. For the reasons stated above, Mr.
14 Dunckley prays this Court:

- 15 (1) Issue a Writ of Habeas Corpus;
16 (2) Grant an evidentiary hearing;
17 (3) Vacate Mr. Dunckley's conviction and sentence;
18 (4) Enter an order granting Mr. Dunckley a trial on all issues and new sentencing, should
19 Mr. Dunckley be convicted through the new trial; and
20 (5) Grant any other relief as this Court may deem necessary in the interest of justice.

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////

28 ////

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.

Respectfully submitted on March 23, 2010.

STORY LAW GROUP

By:


ROBERT W. STORY, ESQ.

Attorneys for Petitioner Brendan Duncley

CERTIFICATE OF SERVICE

I, Robert W. Story, hereby declare and state as follows:


I am over the age of eighteen years, a member of Story Law Group in the City of Reno, County of Washoe, State of Nevada, and I am not a party to this action. My business address is 245 East Liberty Street, Suite 530, Reno, Nevada 89501.

On March 23, 2010, I served the **Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)** by placing a true and correct copy for delivery in the United States mail, postage prepaid, to the following address:

Terrence McCarthy
Deputy District Attorney
1 S. Sierra Street
Reno, Nevada 89501

I declare under penalty of perjury that the foregoing is true and correct.

Dated on March 23, 2010, at Reno, Nevada


Robert W. Story

INDEX OF EXHIBITS

1			
2	Exhibit 1	Transcript of Proceedings, March 6, 2008	4 Pages
3	Exhibit 2	Transcript of Proceedings, August 5, 2008	3 Pages
4	Exhibit 3	Amended Information filed February 28, 2008	4 Pages

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1 CODE No. 1130
2 RICHARD A. GAMMICK
3 #001510
4 P. O. Box 30083
5 Reno, Nevada 89520-3083
6 (775) 328-3200
7 Attorney for Respondent

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE

12 ***

13 BRENDAN DUNCKLEY,

14 Petitioner,

15 v.

Case No. CR07P1728

16 JACK PALMER,

Dept. No. 4

17 Respondent.
18 _____/

19 ANSWER TO PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS
20 (POST-CONVICTION)

21 COMES NOW, Respondent, by and through counsel, to answer the petition and
22 supplemental petition as follows:

23 1. That Respondent denies each and every allegation contained in the petition and
24 supplemental petition.

25 2. That Respondent is informed and does believe that all relevant pleadings and
26 transcripts necessary to resolve the petition are currently available.

3. That Respondent is informed and does believe that aside from an unsuccessful appeal
from his judgment of conviction, an unsuccessful motion for modification of sentence, a
pending appeal from the denial of his motion for modification of sentence, and a pending
motion for withdrawal of guilty plea, Petitioner has not applied for any other relief from this

1 conviction.

2 AFFIRMATION PURSUANT TO NRS 239B.030

3 The undersigned does hereby affirm that the preceding document does not contain the
4 social security number of any person.

5 DATED: May 5, 2010.

6 RICHARD A. GAMMICK
7 District Attorney

8 By /s/ GARY H. HATLESTAD
9 GARY H. HATLESTAD
10 Chief Appellate Deputy

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Second Judicial District Court on May 5, 2010. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Robert Story, Esq.
for Petitioner Brendan Dunckley

/s/ SHELLY MUCKEL
SHELLY MUCKEL

DC-9900015265-066
CR07-1728 BRENDAN DUNCKLEY 15 Pages
STATE VS BRENDAN DUNCKLEY 09:26 AM
District Court 03/03/2010 09:26 AM
Washoe County 2490
IFLOREY
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FILED

2010 MAR -3 AM 9:26

RECEIVED # 80178

BY 8/
CLERK

BRENDAN DUNCKLEY (*1023236)

LOVELOCK CORRECTIONAL CENTER

200 PRISON ROAD

4 LOVELOCK, NEVADA 89419

5

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

7 IN AND FOR THE COUNTY OF WASHOE

8

9 THE STATE OF NEVADA,

10 PLAINTIFF CASE NO: CR07-1728

11 VS. DEPT. NO: 4

12 BRENDAN DUNCKLEY,

13 DEFENDANT, /

14

15 MOTION FOR WITHDRAWAL OF GUILTY PLEA

16

17 COMES NOW, DEFENDANT, BRENDAN DUNCKLEY, AND

18 SUBMITS TO THIS COURT HIS MOTION FOR WITHDRAWAL OF

19 GUILTY PLEA MEMORANDUM, ENTERED ON MARCH 6, 2008.

20 THIS MOTION IS MADE BASED ON THE COURT'S INHERENT

21 AUTHORITY AND THE DEFENDANT'S RIGHT TO WITHDRAW A

22 GUILTY PLEA TO CORRECT A MANIFEST INJUSTICE, UNDER,

23 NRS. 176.165. ALL PAPERS, PLEADINGS AND DOCUMENTS

24 ON FILE HEREIN; AND THE FOLLOWING POINTS AND

25 AUTHORITY.

AA000187

Abstract

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11

18

1 AT THE HEARING ON MARCH 6, 2008 UPON ACCEPTANCE
2 OF THE GUILTY PLEA, THE FOLLOWING QUESTIONS AND COMMENTS
3 WERE MADE BY JUDGE CONNIE STEINHEIMER. ON PAGE 6; 18-
4 19: "DO YOU HAVE ANY QUESTIONS ABOUT THE MODIFICATION
5 TO THE TYPED DOCUMENT?" REFERRING TO PGS, 4; 25, 5; 2
6 ALLOWING PROBATION TO BE A POSSIBLE SENTENCING OPTION.
7 ALSO ON PAGE 10; 9-12: "NOW, DO YOU UNDERSTAND THAT
8 PROBATION IS NOT AVAILABLE ON THESE CHARGES UNLESS
9 YOU ARE CERTIFIED BY A PROFESSIONAL PURSUANT TO NRS
10 176.139, NOT TO REPRESENT A HIGH RISK TO REOFFEND
11 AS TO BOTH COUNTS."

12 ALSO AT THE HEARING ON MARCH 6, 2008, DEFENSE ATTORNEY
13 DAVID O'MARA REFERRED TO PROBATION BEING A SENTENCING
14 OPTION WHEN HE STATED: "YOUR HONOR, THERE'S BEEN NEGOTIATIONS
15 WITH THE DISTRICT ATTORNEY'S OFFICE TO SET THIS
16 OUT FIVE TO SIX MONTHS SO THAT MR. DUNKLEY CAN GET
17 SEXUAL OFFENDER THERAPY DURING THAT PERIOD OF TIME. AND
18 BASICALLY THE D.A. IS GIVING HIM EVERY OPPORTUNITY TO TRY
19 TO QUALIFY FOR PROBATION AND TO DO THINGS THAT WILL
20 BE BENEFICIAL FOR HIM TO PRESENT TO YOU AT SENTENCING
21 (PAGE 12; 24 TO PG 13; 7)

22 FURTHER INFERENCE THAT PROBATION WAS IN FACT AN
23 AVAILABLE SENTENCING POSSIBILITY, PROVIDED DEFENDANT KEEPS
24 HIS END OF THE "CONTRACT" WAS ADA VILORIA COMMENTING ON
25 MARCH 6, 2008 - PG. 13; 8-14: "YOUR HONOR, MY AGREEMENT

1 IS JUST TO SEE IF THIS DEFENDANT IS WORTHY OF ANY
2 TYPE OF GRANT OF PROBATION, WHETHER HE CAN EARN IT OR
3 NOT. I WANT TO SEE WHAT HE DOES BETWEEN NOW AND THEN
4 SO I DO NOT OBJECT TO ANY TYPE OF CONTINUANCE THAT
5 MR. O'MARA IS ASKING FOR TO SET OUT THE SENTENCING
6 DATE."

7 ON AUGUST 5, 2008 THE IDEA OF PROBATION BEING
8 ALLOWED FOR THE CRIMES AS ACCEPTABLE SENTENCING OPTION,
9 DEFENSE ATTORNEY CONTINUED THIS 'FARE' ON Pg. 4; 10, 11: " I
10 WANT TO MAKE THE COURT AWARE OF THE FACT THAT PROBATION
11 IN BOTH THESE CHARGES IS AVAILABLE IN THIS CASE."
12 THEN Pg. 6; 2, 3: "GRANT MR. DUNCLEY THE OPPORTUNITY TO BE ON
13 PROBATION FOR BOTH THESE CHARGES." (Pg 7; 6, 7, Pg 10; 3) Pg 10; 14
14 "SO HE DOES QUALIFY FOR PROBATION." AND FINALLY ON Pg 8; 12,
15 13: "I RESPECTFULLY REQUEST THAT YOU ALLOW FOR PROBATION."

16 ASSISTANT DISTRICT ATTORNEY VILORIA ON AUGUST 5, 2008
17 STATED ON PAGE 12; 11, 12: "STATE'S CONCERN ARE THAT THE
18 COMMUNITY HAVE TO BE SAFE. AND IF BRENDAN DUNCLEY
19 IS GIVEN PROBATION, IT WILL NOT BE." ANAMITLY FIGHTING
20 AND ARGUING AGAINST ANY TYPE OF PROBATION BEING AWARDED.
21 ALSO SPECIFICALLY ON PAGE 27; 18, 19: JUDGE STEINHEIMER
22 STATED: "I KNOW YOU PLED TO SOMETHING THAT ALLOWS
23 FOR A LESSER SENTENCE, BUT IT DOES NOT ALLOW FOR
24 PROBATION." (EMPHASIS ADDED) PROBATION FOR NRS 201.230 OR
25 NRS 193.330 IS NOT EVEN ALLOWED IN SENTENCING GUIDELINES

ARGUMENTS

"A PLEA AGREEMENT IS CONSTRUED ACCORDING TO WHAT THE DEFENDANT REASONABLY UNDERSTOOD WHEN HE OR SHE ENTERED THE PLEA" SULLIVAN V. STATE, 96 P.3d 761, 120 NEV. 537, 2008 WL 2566743 (1999); GUNN V. IGNACIO, 263 F.3d 965 (NEV. 2001).

"TO DETERMINE WHETHER A PLEA BARGAIN IS VIOLATED, THE COURT MUST LOOK AT WHAT THE PARTIES HAD REASONABLY UNDERSTOOD TO BE THE TERMS OF THE AGREEMENT, AND TYPICALLY THE GOVERNMENT MUST BEAR RESPONSIBILITY FOR ANY LACK OF CLARITY IN THOSE TERMS, BECAUSE THEY HAD CRAFTED THE AGREEMENT" US V. JOHNSON, 199 F.3d 1015 120 S.Ct. 2206, 530 US 1207, 147 L.Ed2d. 239 (1999)

"DISTRICT JUDGE'S ACCEPTANCE OF DEFENDANT'S GUILTY PLEA TO A CRIME OF SEXUAL ASSAULT WAS FATALLY DEFECTIVE BECAUSE RECORD DOES NOT INDICATE THAT DEFENDANT WAS INFORMED THAT SEXUAL ASSAULT WAS NOT A PROBATIONABLE OFFENSE." MEYER V. STATE, 603 P.2d 1066, 95 NEV. 885. (NEV. 1979)

"ACCEPTANCE OF GUILTY PLEA IS FATALLY DEFECTIVE IF RECORD DOES NOT AFFIRMATIVELY SHOW THAT DEFENDANT WAS INFORMED THAT PROBATION IS NOT AVAILABLE... ACCEPTANCE OF A GUILTY PLEA WITHOUT DEFENDANT BEING INFORMED THAT PROBATION IS NOT AVAILABLE REQUIRES THAT DEFENDANT

1 BE ALLOWED TO WITHDRAW HIS GUILTY PLEA "SKINNER
2 V. STATE, 930 P.2d 748, 113 Nev. 49 (NEV. 1997)
3 ONE OF THE FOUR INDICIA TO ESTABLISH A "MANIF-
4 EST INJUSTICE" IS A INVOLUNTARY PLEA. SINCE A VALID
5 ENTRANCE AND ACCEPTANCE OF A PLEA THAT IS BOTH
6 KNOWINGLY AND VOLUNTARY REQUIRES THAT DEFENDANT
7 BE FULLY AND ACCURATLY INFORMED OF BOTH THE CRIMES
8 AND THE TRUE SENTENCING GUIDLINES FOR SUCH CRIMES.
9 "REQUIREMENT OF VOLUNTARY GUILTY PLEA IS THAT
10 THE PLEA BE ENTERED WITH UNDERSTANDING OF CONSEQUENCES
11 OF PLEA, INCLUDING POSSIBLE RANGE OF PUNISHMENT, IS NOT
12 MET WHEN A DEFENDANT IS EXPRESSLY GIVEN MISINFORMATION
13 BY THE STATE OR DISTRICT COURT AT TIME OF ENTRY OF HIS
14 PLEA TO EFFECT THAT MANDATORY MINIMUM SENTENCE HE
15 MIGHT RECEIVE IS MUCH LESS THAN WHAT IS ACTUALLY POSSIBLE
16 UNDER THE STATUTE... RECORDS SHOW IT DID NOT AFFIRM-
17 ATIVELY DEMONSTRATE FULL UNDERSTANDING BY DEFENDANT OF
18 CONSEQUENCES OF PLEA, AND THUS DID NOT REFLECT THAT
19 PLEA WAS ENTERED KNOWINGLY AND VOLUNTARY." SIERRA V.
20 STATE, 691 P.2d 431, 100 NEV. 614 (NEV. 1984)
21 "ANY DOUBT AS TO WHETHER PLEA WAS VOLUNTARY MUST
22 BE RESOLVED IN FAVOR OF THE DEFENDANT" STATE V. SCHOMER,
23 973 P.2d 230, 293 MONT. 54. (MONT. 1999)
24 THE RECORD IS CLEAR. NOT AT ANY POINT DID
25 ADA VILORIA, DAVID O'MARA NOR JUDGE STEINHEIMER CORRECT

1 THE INFORMATION IN REGARDS TO PROBATION BEING A
2 OPTION. AT NO POINT DID THE "OFFICERS OF THE STATE / COURT"
3 STATE TO THE DEFENDANT THAT NRS. 207.230 AND NRS
4 193.330 DONT EVEN ALLOW FOR PROBATION TO EVEN
5 BE CONSIDERED. THUS INTENTIONALLY MISINFORMING THE
6 DEFENDANT, AND FALSELY IMPLYING, AND LEADING DEFENDANT
7 TO BELIEVE PROBATION WAS AVAILABLE. WITH THE NUMEROUS
8 COMMENTS AND REFERENCE TO SUCH BY ADA VILORIA, DAVID
9 O'MARA AND JUDGE STEINHEIMER ON MARCH 6, 2008 AND
10 AUGUST 5, 2008.

11 WHEN ADA VILORIA FOUGHT AT SENTENCING, FOR
12 NOT GRANTING PROBATION (PG 12;12) AND PG 14;12,13: "WE
13 CREATED THIS ALLEGATION OR THIS PLEA BARGAIN SO THAT
14 THIS DEFENDANT COULD ASK YOU FOR PROBATION". THE
15 CONTINUAL FACT THAT PROBATION IS NOT EVEN AVAILABLE
16 BY LAW, BUT THAT WAS KEPT 'HIDDEN' ALLOWING THE
17 DEFENDANT TO BELIEVE IF HE KEPT HIS END OF THE
18 'CONTRACT' HE WOULD 'QUALIFY FOR PROBATION'. (SEE
19 SULLIVAN V. STATE & GUNN V. IGNACIO.) THEREFORE MEETING
20 THE REQUIRED 'INDICIA' OF NUMBER 3 - INVOLUNTARY PLEA.

21 AS STATED THE COMMENTS AND MISINFORMATION
22 WAS NOT JUST INVOLVING ADA VILORIA SOLEY. BUT IT
23 ALSO INCLUDED DEFENSE ATTORNEY DAVID C. O'MARA,
24 "ENTERING A PLEA UPON MISTAKEN LEGAL ADVICE
25 THAT NO DEFENSE TO MISCONDUCT EXISTS, ESTABLISHES FAIR

1 AND JUST REASON TO WITHDRAW PLEA." HANSEN V. STATE,
2 824 P.2d 1384 (ALASKA 1992)
3 BY NOT ONLY NOT CORRECTING THE RECORD, BUT
4 TO ADVISE AND ALLOW DEFENDANT TO SIGN AND ENTER
5 A PLEA OF GUILTY, WITH THE FULL KNOWLEDGE HE THINKS
6 PROBATION IS AN OPTION. A BELIEF AND UNDERSTANDING
7 THAT ALONG WITH ADA VILORIA, DEFENSE ATTORNEY O'MARA
8 CONTINUALLY COMMENTED ON AND REFERED TO. SUCH ADVICE
9 WOULD NEVER HAVE BEEN GIVEN BY A DEFENSE ATTORNEY
10 WHO WAS TRUELY WORKING AS AN ADVISARY TO THE STATE.
11 HIS 'ADVICE' AND COMMENTS INCOURAGING THE MISINFORMATION
12 AND FARSE ON PART OF THE STATE FELL BELOW A BAR
13 OF STANDARDS ATTORNEY'S HOLD THEMSELVES TO. THE BASIC
14 AND FULL KNOWLEDGE OF THE CRIME IS A 'BASIC/BEGINNER'
15 REQUIREMENT OF A COMPETANT ATTORNEY. DAVID O'MARA HAS
16 PROVEN HE WAS NOT ACTING AND ADVISING HIS CLIENT IN
17 A COMPETANT WAY. HIS MISADVICE AND DECEPTION PREJUDICED
18 THE DEFENDANT LEADING HIM TO PLEAD GUILTY. BY HIS IN-
19 COMPETANT PREJUDICIAL ADVICE / ACTION, BOTH 'PRONGS' OF
20 STRICKLAND V. WASHINGTON HAVE BEEN MET. YET ANOTHER 'INDICIA' OF
21 NUMBER 1) DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL. A VALID
22 'MANIFEST INJUSTICE' TO ALLOW REVERSAL / WITHDRAWAL OF PLEA.
23 "THE BEST COURSE OF ACTION FOR THE DISTRICT COURTS
24 DURING PLEA CANVASS IS TO AFFIRMATIVELY STATE THAT
25 PROBATION IS NOT A SENTENCING OPTION FOR THE CHARGED CRIME!

1 RIKER V. STATE, 905 P.2d 706, 111 NEV. 1316 (NEV. 1995)

2 THE DISTRICT COURT HAS IN ITS DISCRETION AND
3 POWER TO GRANT THE DEFENDANT'S MOTION TO WITHDRAW
4 HIS GUILTY PLEA FOR ANY SUBSTANTIAL REASON IF IT IS
5 JUST AND FAIR. INTENTIONAL MISREPRESENTATION OF THE
6 LAW AND STATUTES, INCLUDING THE STATUTE OF SENTENCING,
7 STRUCTURE IS A STRONG AND VALID REASON TO ALLOW THE
8 WITHDRAWAL OF PLEA.

9 "COUNSEL'S DELIBERATE MISREPRESENTATION CONCERNING
10 SENTENCING, THAT INDUCES A GUILTY PLEA IS A VALID AND
11 JUST CAUSE CONSTITUTING INEFFECTIVE ASSISTANCE OF COUNSEL"
12 PEOPLE V. DIGUGLIELMO; 33 P.3d 1248 (COLO. 2001)

13 THIS 'COUNSEL' CAN REFER TO BOTH DEFENSE AND
14 PROSECUTING ATTORNEYS. SINCE BOTH HAVE A DUTY AS OFFICERS
15 OF THE COURT TO SEEK JUSTICE. IN THE DEFENDANT'S IMME-
16 DIATE CASE AND THE RECORD SHOW THAT IT IS SO
17 OBVIOUS, DIRECTLY OBSERVABLE, AND BOTH OVERT AND NOT
18 OBSCURE THAT SUCH MISINFORMATION WAS INFACIT INTENTIONAL
19 INTENTIONAL WITH THE INTENT TO INDUCE A GUILTY PLEA.

20 BUT IN SUCH A CASE 'INDUCE' IS INCORRECT WORD. COERSION
21 IS MORE APPROPRIATE. THE ONLY REASON WOULD BE
22 THAT 'COUNSEL' DID NOT KNOW PROBATION WAS NOT AVAILABLE.
23 THAT IS FAR FROM LIKELY TO BE THE CASE HERE.

24 NRS. 176.165 STATES: "... TO CORRECT A MANIFEST
25 INJUSTICE, THE COURT AFTER SENTENCING MAY SET ASIDE THE

1 JUDGEMENT OF CONVICTION; AND PERMIT THE DEFENDANT
2 TO WITHDRAW HIS PLEA." (RULE OF CRIM. PROC. RULE 11(h)(1))
3 PURSUANT TO BRYANT V. STATE WHEN A DEFENDANT
4 BRINGS FORWARD A MOTION TO WITHDRAW A GUILTY PLEA
5 THE TRIAL COURT HAS A DUTY TO REVIEW THE ENTIRE RECORD
6 TO DETERMINE WHETHER THE PLEA IS VALID, ESPECIALLY IF
7 THE DEFENDANT CAN PROVE A CREDIBLE CLAIM OF
8 FACTUAL INNOCENCE, AND LACK OF PREJUDICE TO THE STATE.
9 ALSO THE STATE VIOLATED THE 'PLEA BARGAIN' TO EST
10 ABISH NUMBER 4) VIOLATION OF PLEA BARGAIN BY PROSECUTOR.
11 WITH THE GUILTY PLEA BEING CONSTRUED AND GOVERNED
12 UNDER CONTRACT LAW NOT CRIMINAL, THE STATE BREACHED IT
13 BY MEANS OF FRAUD. SINCE ADA VILORIA CREATED AND GENERATED
14 THE GUILTY PLEA MEMORANDUM, SHE KNEW IT WAS FALSE AND
15 INVALID, BECAUSE SHE KNEW THAT THE STATE LAW RESTRICTS
16 THE CONSIDERATION OF PROBATION FOR THE CRIMES CHARGED.
17 BY HER ACTIONS AND COMMENTS AT THE HEARINGS SHE
18 INTENTIONALLY COMMITTED FRAUD BY ENTERING / INTRODUCING
19 A CONTRACT UNDER FALSE PRETENSE, THEREFORE UNDER
20 CONTRACT LAW VOIDING THE 'CONTRACT'. ALSO A TRUE AND
21 JUST MANIFEST INSJUSTICE ALLOWING WITHDRAWAL OF GUILTY PLEA.
22 " IF MISINFORMATION AS TO SENTENCE EXISTS IT RENDERS
23 A GUILTY PLEA INVOLUNTARY MADE, AND IT MUST BE VACATED,
24 EVEN IF THE ACTUAL SENTENCE IMPOSED WAS WITHIN THE PERIMETER."
25 TAYLOR V. WARDEN, NSP, 607 P.2d 587, 96 NEV. 272 (NEV. 1980)

1 SINCE A MOTION TO WITHDRAW A PLEA IS INCIDENT
2 TO PROCEEDINGS IN TRIAL COURT AND IS THEREFORE NOT
3 SUBJECT TO STATUTORY TIME LIMITATIONS APPLICABLE TO
4 A PETITION FOR WRIT OF HABEAS CORPUS.

5 "WHEN STATE ENTERS INTO A PLEA AGREEMENT IT
6 IS HELD TO THE MOST METICULOUS STANDARDS OF BOTH
7 PROMISE AND PREFORMANCE, VIOLATIONS OF TERMS OR OF
8 "SPIRIT" OF PLEA BARGAIN REQUIRES AN IMMEDIATE REVERSAL."
9 CITT V STATE, 807 P.2d 724, 107 NEV. 89 (NEV. 1991): S
10 STATZ V. STATE, 944 P.2d 813, 113 NEV. 987 (NEV. 1997)

11
12 CONCLUSION

13
14 THE REVIEW OF BOTH THE RECORD AND THIS MOTION
15 IT IS CLEAR THAT THE DEFENDANT WAS INFACIT INTENTION-
16 ALLY MISINFORMED, BY BEING LED TO BELIEVE PROBATION WAS
17 A VALID SENTENCING OPTION, BY ADA VILORIA, DAVID O'MARA AND
18 EVEN JUDGE STEINHAMER STATING PROBATION WAS AN
19 OPTION, AND NOT AFFIRMATIVELY STATING TO DEFENDANT
20 IT IS NOT AN OPTION, ACTUALLY THERE WAS TWENTY-THREE
21 DIRECT REFERENCES TO PROBATION BEING AN OPTION. SUCH
22 BEHAVIOR SHOWS SUCH MISINFORMATION INVALIDATES THE
23 PLEA MAKING IT BOTH NOT KNOWINGLY GIVEN NOR VOLUNTARY.

24 AS MENTIONED IN THIS MOTION DEFENDANT HAS
25 PROVEN NOT ONE, NOT TWO BUT THREE OF THE FOUR INDICIA.

1 ALLOWING REVERSAL OF GUILTY PLEA. MORE THAN SATISFIED
2 THE PICTURE OF A "MANIFEST INJUSTICE" AS PER NRS. 176.165.
3 WHEN A DEFENDANT ENTERS INTO A PLEA AGREEMENT
4 THAT INCLUDES AS A MATERIAL ELEMENT A REFERENCE
5 FOR AN ILLEGAL SENTENCE, THE GUILTY PLEA IS INVALID.
6 AND MUST BE VACATED. BECAUSE THE BASIS THAT THE
7 DEFENDANT ENTERED THE PLEA INCLUDED THE IMPERMISSIBLE
8 INDUCEMENT OF AN ILLEGAL SENTENCE, PROBATION, WHICH
9 IS NOT AN OPTION, LEGALLY. NO SOUND PUBLIC POLICY
10 SUPPORTS ALLOWING A DEFENDANT TO BARGAIN FOR AN
11 ILLEGAL SENTENCE. THUS SUCH A PLEA AGREEMENT CAN
12 NOT BE ALLOWED TO STAND.
13 SINCE PROPER INTERPRETATION OF A PLEA AGREEMENT
14 IS A QUESTION OF LAW: IT IS NOT JUST BASED ON THE
15 SUBJECTIVE UNDERSTANDINGS OF THE DEFENDANT, BUT RATHER
16 ON THE MEANING A REASONABLE PERSON WOULD HAVE
17 ATTACHED TO IT UNDER THE CIRCUMSTANCES. WHEN A
18 PARTY ATTEMPTS TO FASHION A SENTENCE TO INDUCE A
19 GUILTY PLEA, THAT IN ITSELF IS CONTRARY TO LAW, SUCH
20 A PLEA MUST BE REGARDED AS INVALID AND INVOLUNTARY.
21 VIOLATIONS OF A PLEA BARGAIN BY AN OFFICER OF
22 THE STATE SUCH AS ADA VILORIA, DAVID O'MARA AND
23 EVEN JUDGE STEINHEIMER RAISES THE NECESSITY TO PROTE
24 CT THE CONSTITUTIONAL RIGHTS OF THE DEFENDANT, AS A
25 REMEDY, ALLOWING WITHDRAWAL OF GUILTY PLEA.

1 THE REMEDY FOR THIS, BREACH, COERCION, INTENTIONAL
2 MISREPRESENTATION, MANIFEST INJUSTICE IS THAT THE
3 DEFENDANT BE ALLOWED TO WITHDRAW HIS GUILTY PLEA,
4 BY ALLOWING SUCH TO ALSO ALLOW DEFENDANT TO RETURN
5 TO STATUS OF NOT GUILTY. REQUIRING THE STATE TO PROVE
6 HIS GUILT BEYOND A REASONABLE DOUBT, AND UNTIL
7 SUCH TIME BE CONSIDERED INNOCENT.

8 SINCE THE PLEA WAS INFECT NOT ENTERED KNOW-
9 INGLY NOR VOLUNTARY, THE MOTION AND RECORD ESTABLISH
10 THAT PLEA OF GUILTY WAS CONSTITUTIONALLY INVALID.
11 THE DEFENDANT ASKS THAT HE BE ALLOWED TO RETURN
12 TO THE STATUS OF NOT GUILTY.

13 DEFENDANT ALSO REQUESTS THAT WITH THE WITHDRAWAL
14 OF HIS GUILTY PLEA, RETURN TO NOT GUILTY STATUS, THAT THE
15 ORDER OF CONVICTION ENTERED ON AUGUST 11, 2008 BE
16 REVERSED AND CONVICTIONS BE VACATED.

17 IN THE INTEREST OF JUSTICE AND AS ATTORNEY
18 PRO PER FOR CASE NUMBER: CR07-1728, IN ACCORD
19 WITH DCR 13(3) A IMMEDIATE DECISION IS REQUESTED,
20 FOR "JUSTICE DELAYED IS CLEARLY JUSTICE DENIED." DOUGAN
21 V. GUSTAVENSON, 835 P.2d 795, 799, 108 NEV. 517 (NEV. 1992)
22 IF TEN (10) DAYS PASS FROM SERVICE OF THIS MOTION TO
23 THE STATE, AND NO OPPOSITION IS FILED BY THE STATE,
24 DEFENDANT REQUESTS THAT SUCH FAILURE TO
25 OPPOSE THE MOTION FOR WITHDRAWAL OF GUILTY PLEA,

1 BE VIEWED AND CONSTRUED AS AN ADMISSION BY THE
2 STATE THAT THE MOTION IS MERITORIOUS AND AS
3 A CONSENT TO GRANTING THE SAME, AND ANY
4 OTHER RELIEF YOUR HONOR SEES FIT TO GRANT
5 DEFENDANT.

6

7

8 DATED THIS 26TH DAY OF FEBRUARY, 2010

9

10

11

Brendan Dunchley

12

13

BRENDAN DUNCHLEY # 1023236

14

LOVELOCK CORRECTIONAL CENTER

15

1200 PRISON ROAD

16

LOVELOCK, NEVADA 89419

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1
2 CERTIFICATE OF SERVICE BY MAIL

3 I do certify that I mailed a true and correct copy of the
4 foregoing MOTION FOR WITHDRAWAL OF GUILTY PLEA
5 to the below address(es) on this 26th day of FEBRUARY,
6 2010, by placing same in the U.S. Mail via prison law library
7 staff, pursuant to NRCP 5(b):

8 WASHOE COUNTY DISTRICT ATTORNEY
9 c/o GARY HARESTAD
10 P.O. Box 30083
11 RENO NEVADA 89520-3083

12 &
13 CLERK OF THE COURTS
14 SECOND JUDICIAL DISTRICT
15 c/o DEPT 4.
16 P.O. Box 30083
17 RENO, NEVADA 89520-3083

18 Blendan Dinahley
19 BRENDAN DUNKLEY #1023256
20 Lovelock Correctional Center
21 1200 Prison Road
22 Lovelock, Nevada 89419
23 DEFENDANT In Pro Se

24 AFFIRMATION PURSUANT TO NRS 239B.030

25 The undersigned does hereby affirm that the preceding
26 MOTION FOR WITHDRAWAL OF GUILTY PLEA filed in
27 District Court Case No. CR07-1722 does not contain the
28 social security number of any person.

Dated this 26th day of FEBRUARY, 2010.

29 Blendan Dinahley
30 BRENDAN DUNKLEY
31 DEFENDANT In Pro Se

1 CODE #2645
RICHARD A. GAMMICK
2 #001510
P. O. Box 30083
3 Reno, Nevada 89520-3083
(775)328-3200
4 Attorney for Plaintiff

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

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

Case No. CR07-1728

12 BRENDAN DUNCKLEY,

Dept. No. 4

13 Defendant.
14 _____/

15 OPPOSITION TO MOTION TO STRIKE STATE'S OPPOSITION TO
16 MOTION TO WITHDRAW GUILTY PLEA AND SUPPLEMENT IN
CONSIDERATION OF MOTION TO WITHDRAW GUILTY PLEA

17 Comes now, the State of Nevada, by and through counsel, to submit this Opposition to
18 Dunckley's Motion to Strike State's Opposition to Motion to Withdraw Guilty Plea and
19 Supplement in Consideration of Motion to Withdraw Guilty Plea. This Opposition is based on
20 the accompanying discussion.

21 DISCUSSION

22 Although titled a Motion to Strike, Dunckley's argument sounds more like a Reply to our
23 previously filed Opposition to his Motion to Withdraw Guilty Plea. Moreover, aside from
24 taking a few predicable potshots at the State's Opposition, Dunckley has cited no reason to
25 strike our Opposition, nor has he cited case law supporting it.

26 In short, the Court should treat Dunckley's Motion for what it is: a Reply. Accordingly,

1 Dunckley's Motion should be denied.

2 AFFIRMATION PURSUANT TO NRS 239B.030

3 The undersigned does hereby affirm that the preceding document does not contain the
4 social security number of any person.

5 DATED: January 3, 2011.

6 RICHARD A. GAMMICK
District Attorney

7 By /s/ GARY H. HATLESTAD
8 GARY H. HATLESTAD
9 Chief Appellate Deputy

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on January 3, 2011, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Brendan Dunckley #1023236
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

Robert W. Story, Esq.
245 E. Liberty Street, Suite 530
Reno, NV 89501

/s/ SHELLY MUCKEL
SHELLY MUCKEL

CR07-1728
DC-9900021170-009
STATE VS. BRENDAN DUNCKLEY 14 Pages
District Court 11/03/2010 09:18 AM
Washoe County 3880
DOC

3880

FILED

1 BRENDAN DUNCKLEY # 1023236

10 NOV -3 AM 9:18

2 LOVELOCK CORRECTIONAL CENTER

HOWARD W. CONYERS

3 1200 PRISON ROAD

BY: *[Signature]*
DEPUTY

4 LOVELOCK, NEVADA 89419

5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE

7 OF NEVADA IN AND FOR THE COUNTY OF WASHOE

8

9 THE STATE OF NEVADA,

10 PLAINTIFF

CASE NO: CR07-1728

11 VS.

DEPT. NO: 4

12 BRENDAN DUNCKLEY,

13 DEFENDANT,

14

15 DEFENDANT'S RESPONSE TO STATE'S OPPOSITION TO MOTION

16 TO WITHDRAW GUILTY PLEA, SUPPLEMENTAL TO MOTION TO

17 WITHDRAW GUILTY PLEA AND SUPPLEMENTAL IN CONSIDERATION

18 OF MOTION TO WITHDRAW GUILTY PLEA

19

20 COMES NOW, DEFENDANT, BRENDAN DUNCKLEY, AND SUBMITS TO

21 THIS COURT THE RESPONSE TO THE ABOVE-MENTIONED MOTIONS. THIS

22 RESPONSE TO OPPOSITION IS BASED ON THE ACCOMPANYING POINTS

23 AND AUTHORITIES.

24

POINTS AND AUTHORITIES

25 THE STATE IN IT'S OPPOSITION STATED THAT THE ARGUMENT IN

26 CONNECTION TO THE ABOVE-MENTIONED MOTION IS A SIMPLE ISSUE,

27 ONE THAT CAN EASILY BE DENIED, AT THE BASIC EXAMINATION OF

28

AA000205

1 NRS 176A.110. FIRST AND FOREMOST THE STATE LISTED AS IT'S AUTHORITY
2 ASWEGAN V. STATE, 101 NEV. 760, 710 P.2d 83 (1985); HEMRICH V. STATE,
3 97 NEV. 358, 630 P.2d 1224 (1981); MEYER V. STATE, 95 NEV. 885, 603 P.2d
4 1066 (1979); OVERRULED BY LITTLE V. WARDEN, 117 NEV. 845, 849-51, 34 P.3d
5 540, (2001)

6 THE BASIS FOR ALL THESE CASES WERE THAT PROBATION WAS
7 NOT SPECIFICALLY INFORMED TO THE DEFENDANT UPON THE ENTRANCE
8 OF THE PLEA OF GUILTY, INCLUDING MY CURRENT 'CELLIE' LITTLE, C.,
9 IN LITTLE V. WARDEN. THE ERROR IN THIS ARGUMENT AS A FOUNDATION
10 TO OPPOSE THE MOTIONS UNDER ATTACK, IS THESE CASES ARE THE
11 EXACT OPPOSITE. AT NO POINT WAS THERE EVER ANY ARGUMENT
12 THAT PROBATION WAS NOT MENTIONED. TO BE SPECIFIC PROBATION
13 WAS DIRECTLY REFERENCED TO IN THE RECORD AS A VIABLE SENTENCING
14 OPTION FOR THIS COURT TO CONSIDER A TOTAL OF ONE HUNDRED
15 AND TWELVE (112) TIMES. (UP TO AND INCLUDING THE SUPREME
16 COURT'S AFFIRMATION)

17 ONCE AGAIN ALLOW THE ISSUES TO BE PRESENTED AGAIN.
18 THE ARGUMENT IS NOT IN QUESTION OF NRS 176A.110, ESPECIALLY
19 IMPORTANT SINCE MR. HATLESTAD STATED ON PAGE 230 PERFECTLY
20 STATED THE 'ISSUE':

21 "IT NECESSARILY FOLLOWS THAT IF PROBATION WAS NOT
22 AVAILABLE, THE COURT SHOULD GRANT THE MOTION." (2;2-3)

23 "HOW THE COURT RESOLVES THIS DISPUTE REVOLVES AROUND
24 NRS 176A.110..." (2;5,6)

25 "COUNT I ALLEGED THAT DUNKLEY COMMITTED THE CRIME OF
26 LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN BETWEEN
27 AUGUST 1998 AND AUGUST 2000. DUNKLEY CONTENTS THAT PROBATION

1 WAS NOT AVAILABLE FOR THIS OFFENSE DURING ALL OR
2 PART OF THAT TIME FRAME, WE DISAGREE. (2) 7-9)
3 "EVEN-THOUGH THE CHARGE, AS ALLEGED, COVERS A TWO YEAR
4 PERIOD OF TIME, OUR LEGISLATURE HAD MADE PROBATION AVAILABLE
5 FOR THIS OFFENSE DURING THE ENTIRETY OF THAT TIME FRAME.
6 SEE 1997 STATUTES OF NEVADA, PP 2504-5, ESP. SEC 7(3)(J) AND
7 SEC 9 (1); 1997 STATUTES OF NEVADA, P. 2509, SEC. 13; 1997 STATUTES
8 OF NEVADA P. 1187, SEC. 13; 1999 STATUTES OF NEVADA, P. 567, SEC 67; 1999
9 STATUTES OF NEVADA, P. 1192, SEC. 10 (1)(A)(C). ACCORDINGLY, THIS COURT
10 PROPERLY ADVISED DUNKLEY OF THE CONSEQUENCES OF HIS PLEA" (2) 10-13)
11 "IT SHOULD BE NOTED THAT IN 2003, THE LEGISLATURE DECIDED
12 THAT PROBATION WOULD NO LONGER BE AVAILABLE FOR LEWDNESS
13 WITH A CHILD. SEE 2003 STATUTES OF NEVADA, P. 2827, SEC. 3;
14 STATUTES OF NEVADA, P. 2828, SEC. 4." (FN 1)
15 IN RESPECT FOR THE LEARNED MR. HATLESTAD, AS I HAVE PREVIOUSLY
16 NOTED I HAVE RESPECT FOR. BUT I DISAGREE.
17 AS ALWAYS THIS RESPONSE WILL DISPECT THE STATE'S EXACT VERBAGE.
18 AND ONCE AGAIN SHOW HOW THE STATE HAS MADE THE ARGUMENT
19 FOR THIS MOTION TO BE GRANTED IN IT'S ENTIRETY.
20 LETS BEGIN WITH LINE 10(C)-11 AS NOTED BY BOLD PRINT
21 ABOVE "... OUR LEGISLATURE HAD MADE PROBATION AVAILABLE FOR THIS
22 OFFENSE DURING THE ENTIRETY OF THAT TIME PERIOD." THAT IS
23 INCORRECT. AT NO POINT CAN A PERSON EVER BE CONVICTED OF
24 VIOLATING NRS. 176A.110. SO IT IS NOT A CRIMINAL OFFENSE AND
25 THUS BECOMES A 'SECONDARY STATUTE'. WITH THAT SAID, MR.
26 HATLESTAD IS CORRECT, NRS 176A.110 DID INCLUDE THE OFFENSE
27 OF "(C) LEWDNESS WITH A CHILD PURSUANT TO NRS 207.230 " UP UNTIL

1 JUNE 10, 2003. BUT BY ALL MEANS LETS BE SPECIFIC. ON PAGE

2 2828 SEC. 4 (2003 NEVADA STATUTES) IT SAYS: " NRS 176A.110 IS HEREBY

3 AMENDED TO READ AS FOLLOWS: 176A.110 1. THE COURT SHALL

4 NOT GRANT PROBATION TO OR SUSPEND THE SENTENCE OF A PERSON

5 CONVICTED OF AN OFFENSE LISTED IN SUBSECTION 3 UNLESS...

6 CONVICTED OF AN OFFENSE, THUS NOT A CRIME. SO THE 'OFFENSE'

7 CONVICTED OF IS THE 'PRIMARY STATUTE' A VIOLATION OF NRS 201.230.

8 FORGIVE MY 'USE' OF MR. HATLESTAD'S FOOTNOTE FOR MY OWN

9 BENEFIT. IT SHOULD BE NOTED THAT, IN 1997, THE LEGISLATURE

10 DECIDED THAT PROBATION WOULD NO LONGER BE AVAILABLE FOR

11 LEWDNESS WITH A CHILD UNDER FOURTEEN YEARS OF AGE. (NRS

12 201.230). SEE 1997 STATUTES OF NEVADA, CHAPTER 524, PP 2502-3,

13 (DELETING SECTION 6 RELATING TO PROBATION); 1997 STATUTES OF NEVADA, CHAPTER

14 455, P. 1722 (MAKING A VIOLATION OF NRS 201.230 A CATEGORY 'A' FELONY

15 WITH THE SENTENCE OF LIFE IN PRISON WITH PAROLE AVAILABLE AFTER TEN YEARS)

16 NOW LETS EXAMINE THIS INFORMATION AND 'SPELL IT OUT'

17 NRS 201.230 IS THE ACTUAL CHARGE / CRIME AND THAT IS THE

18 CHARGE THE DEFENDANT PLED GUILTY TO, NOT NRS 176A.110. AS

19 A BASIC EXPLANATION OF COMMON SENSE, A SECONDARY

20 STATUTE THAT IS SIMPLY A 'LIST' OF PROBATIONABLE SEXUAL

21 OFFENSES, DOES NOT SUPERCEDE THE PRIMARY OFFENSE. IN

22 LEGAL TERMS IF THE DECISION OF THE 1997 LEGISLATURE

23 WERE SPECIFIC AND NOT AMBIGUOUS IN ITS INTENTIONS TO

24 NO LONGER ALLOW CONSIDERATION OF PROBATION TO NRS 201.230.

25 A SECONDARY STATUTE CAN NOT NEGATE THE INTENT OF THE

26 LEGISLATIVE DECISION.

27 AS A COMMON LEGAL CONTENTION IS THAT A GUILTY PLEA

1 AGREEMENT AS THIS MOTION DEALS WITH, IS GENERALLY COVERED
2 BY THE STANDARD OF CONTRACT LAW, TEMPERED WITH THE AWARENESS
3 OF DUE PROCESS.

4 A 'INSTRUCTIVE TOOL' RECOGNIZED BY THE COURTS IS THE
5 CORPUS JURIS SECUNDUM (CJS), VOLUME 17A TO BE USED AS
6 REFERENCE TO FOLLOWING STATUTES (§).

7 "A MUTUAL MISTAKE OCCURS WHEN BOTH PARTIES, AT TIME OF
8 CONTRACTING, SHARE A MISCONCEPTION ABOUT A VITAL FACT, UPON
9 WHICH THEY BASE THEIR BARGAIN." GRAMANZ V. GRAMANZ, (113 NEV. 1, 930
10 P.2d 753) (NEVADA 1997)

11 §150 STATES THAT WHEN ONE OR MORE PARTY MISUNDERSTOOD
12 THE LAW AT THE TIME OF THE CONTRACT BEING ENTERED INTO
13 AND THE OTHER PARTY KNOWS ABOUT THIS MISUNDERSTANDING, BUT
14 FAILS TO RECTIFY SAME, RECISSION IS PERMITTED.

15 §156 A MATERIAL MISSTATEMENT, WHEN RELIED UPON, AVOIDS A
16 CONTRACT, BECAUSE THE STATED SUBJECT MATTER OR TERMS OF IT
17 DID NOT INFACT EXIST.

18 SINCE THIS DIRECT OPPOSITION IS BASED SOLEY ON NRS 176A.110
19 AND THE STATES FAILURE TO INTERPET NRS 201.230 (1997 C. 524)
20 CORRECTLY, THIS WILL BE ARGUED CONTRACTURALLY IN THAT ISSUE

21 TO START. BUT SINCE NUMBER 4 OF THE INDICIA LISTED IN THE
22 PRIMARY MOTION FILED TEN MONTHS AGO WAS "4) VIOLATION OF
23 PLEA AGREEMENT BY THE PROSECUTION." THE INITIAL ARGUMENT OF
24 NRS 201.230 /176A.110 WILL BE ADDRESSED, FOLLOWED BY CONTRACT
25 LAW PROVING BREACH BY THE STATE.

26 §208 SHOWS THAT A CONTRACT IS 'PLAINLY ILLEGAL' WHEN
27 MADE CONTRARY TO A STATUTE OR REGULATION EITHER BECAUSE OF

SOME ACTIONS OR STATEMENTS, ANY SUCH ILLEGALITY VOIDS AN
ENTIRE CONTRACT.

THE FACT THAT THE INTENTIONS OF THIS 'CONTRACT' WAS TO
IMPLY AND INDUCE THE BELIEF, BY BOTH THE LETTER OF THE
CONTRACT AND BY THE COMMENTS OF ALL ATTORNEYS, THAT PROBATION
WAS AVAILABLE. AS THE OPPOSITION CLEARLY CLAIMS, IN DIRECT
VIOLATION OF NRS. 201.230, MAKING THE 'CONTRACT' ILLEGAL.

IF AN AGREEMENT OR CONSIDERATION CONTAINED IN A 'CONTRACT'
IS IN EFFECT ILLEGAL, IT IS NOT RENDERED LEGAL BY A DIRECT
OR IMPLIED PROVISION IN A 'CONTRACT' THAT IT'S PURPOSE IS A
LAWFUL ONE, OR BY THE FACT THAT THE ILLEGAL AGREEMENT IS
INCIDENT TO THE ACCOMPLISHMENT OF A LAWFUL PURPOSE, MERE
WORDS AND INGENUITY OF CONTRACTUAL EXPRESSIONS, WHATEVER
THEIR EFFECT BETWEEN THE PARTIES CANNOT BY DESCRIPTION MAKE
PERMISSIBLE A COURSE OF CONDUCT FORBIDDEN BY LAW.

SINCE A GUILTY PLEA AGREEMENT HAS BEEN RULED BY THE
COURTS TO STAND AND FALL AS AN ENTIRETY, WHERE PART OF THE
CONSIDERATION IS ILLEGAL (AS IS THE INTENT TO ALLOW PROBATION).
BECAUSE IT VIOLATES THE LAW, THE ENTIRE CONTRACT IS VOID, IF
THE CONTRACT IS ENTIRE AND INDIVISIBLE, AS ARE GUILTY PLEAS.

IN SUM, TO CONSIDER PROBATION WHEN IT IS RESTRICTED BY
STATUTES, TO DO CONTRARY TO A LAW IS AN ILLEGAL CONTRACT AND
AS SUCH CAN NOT BE ENFORCED OR ALLOWED TO STAND. THE USUAL
REMEDY TO A WITHDRAWAL OF GUILTY PLEA BECAUSE OF A BREACH
BY THE STATE IS 1) ALLOWANCE OF DEFENDANT'S WITHDRAWAL OF HIS
GUILTY PLEA AND GO TO TRIAL ON ORIGINAL CHARGES; OR 2) SPECIFICALLY
ENFORCE THE AGREEMENT. SINCE SUCH ENFORCEMENT WOULD BE

1 ILLEGAL, THE LATTER IS NOT AN OPTION.

2 " WHEN PARTIES ATTEMPT TO FASHION A SENTENCE THAT IS IN
3 ITSELF IS CONTRARY TO LAW, ASSUMING THAT THE TRIAL COURT
4 ERRONIOUSLY APPROVES OF SUCH AN ILLEGAL BARGAIN, PLEA
5 MUST BE REGARDED AS INVALID AND INVOLUNTARY." (RAIG V. PEOPLE,
6 (986 P.2d 951) (COLO. 1999).

7 " PLEA BARGAINING AGREEMENTS CANNOT EXCEED STATUTORY
8 AUTHORITY GIVEN TO THE COURTS." MATTER OF GARNER, (617 P.2d 1001,
9 94 WASH. 2d 504) (WASH. 1980)

10 § 161 GIVES ANOTHER EXTREMELY RELEVANT AREA OF 'FRAUD'
11 THAT THE STATE AND DEFENSE ATTORNEY O'MARA PREFORMED THAT
12 CONSTITUTES A BREACH BY THE STATE AND INEFFECTIVE ASSISTANCE OF
13 COUNSEL BY O'MARA. SUPPRESSION OF TRUTH.

14 " SUPPRESSION OF TRUTH BY ONE OR TWO PARTIES TO A CONTRACT
15 IS AS AFFIRMATIVE A FRAUD AS A FALSE STATEMENT OF FACT.
16 SINCE IT PREVENTS THE MINDS OF THE PARTIES FROM MEETING
17 ON THE ACTUAL TERMS OF THEIR CONTRACT." MORRIS V. MCGOUGH,
18 (230 S.W. 1092)

19 THE RULE OF CRIMINAL / CONTRACT LAW THAT FAILURE TO
20 DISCLOSE FACTS IS NOT FRAUD DOES NOT APPLY WHERE THE
21 CIRCUMSTANCES ARE SUCH TO IMPOSE A DUTY TO DISCLOSE THEM, THUS,
22 WHERE, WITH INTENT TO DECEIVE A PARTY TO A CONTRACT CONCEALS
23 MATERIAL FACTS WHICH GOOD FAITH REQUIRES HIM OR HER TO
24 DISCLOSE, THIS IS EQUIVALENT TO A FALSE REPRESENTATION, FRAUD,

25 THE RULE OF CRIMINAL PROCEEDINGS REFER TO THE INTENTIONAL
26 WITHHOLDING OF 'MATERIAL EXCULPATORY EVIDENCE' AS A SERIOUS
27 CONSTITUTIONAL VIOLATION OF DUE PROCESS

1 BY ADA VILORIA BEING IN POSSESSION OF THE WASHOE COUNTY
2 CRIME LAB REPORT DATED MAY 21, 2007, STATING THE DNA TEST
3 RESULT TO COUNT II 'NO FOREIGN DNA TO SOURCE, BRENDAN
4 DUNCKLEY, WAS OBTAINED FROM GENITAL SWABS. AND NEVER
5 INTRODUCING THIS INFORMATION TO THE COURTS, SHOWING THAT
6 THERE IS 'QUESTION' AS TO THE FACTUAL BASIS THE 'CONTRACT'
7 IS BASED ON. (FED. RULES, CRIMINAL PROC. 11(h)). NOR CORRECTING
8 JUDGE STEINHEIMER FROM ACCEPTING A GUILTY PLEA AND STATING:
9 "YOU PICKED SOMEONE YOU DIDN'T KNOW, AND YOU COMMITTED A
10 SEXUAL ASSAULT ON HER." (SENTENCING P. 27) 16, 17)

11 ON FEBRUARY 7, 2008, THREE DAYS AFTER SHE OFFERED THIS
12 'CONTRACT' ADA VILORIA FAXED THIS 'REPORT' TO DEFENSE ATTORNEY
13 O'MARA. WHO KNOWINGLY ALLOWED THE 'CONTRACT' TO BE ENTERED
14 INTO ON MARCH 6, 2008, WITH NEVER INFORMING HIS CLIENT OF
15 THE SCIENTIFIC TEST RESULT THAT CLEARS HIM.

16 AT NO POINT ON MARCH 6, 2008 OR AUGUST 5, 2008 DID EITHER
17 OF THESE 'OFFICERS OF THE COURT' DO THEIR DUTY TO SPEAK UP AND
18 BRING THIS INFORMATION FORWARD. SUCH SILENCE FORMS A BASIS
19 FOR ACTIONABLE FRAUD, WHEN THERE IS A DUTY TO SPEAK. NOT
20 ONLY WAS IT A SUPPRESSION OF TRUTH, BUT IT WAS AN ACT OF
21 INTENTIONAL FRAUD ON THE COURT.

22 THIS 'INSTANCE' OF FRAUD IS A SMALL AREA OF FRAUD, THIS
23 DEFENDANT CAN SHOW, PROVE, ESTABLISH, INSTANCING AMOUNTING TO
24 INTENTIONAL VIOLATION OF GOOD FAITH AND FAIR DEALING (NRS. 104, 1203)
25 MUNN V. THORTON, (956 P.2d 1213, 1220) (ALASKA 1998); MUTUAL MISTAKE OF
26 BOTH LAW AND FACT; (NRS 201.230, 1997 C. 524) GRAMANZ V. GRAMANZ; CJS
27 § 148, 149, 150, 153, 156, 158, 160, 161, 163, 164, 195, 196, 197, 199, 208, 213, 215, 297 & 333

1 MISINTERPETATION OF LAW, MISSTATEMENT OF FACT, FRAUDULENT INDUCE-
2 MENT AND ILEGALITY OF CONTRACT IN GENERAL.
3 THE STATES CONTINUAL IGNORANCE AT THE COST OF THE
4 DEFENDANT'S CONSTITUTIONAL RIGHTS, BY NOT INTERPETING THE LAWS
5 THAT THEY ARE ENTRUSTED WITH, TO BOTH KNOW AND DEFEND, CORRECTLY
6 IS INEXCUSABLE. THIS ARGUMENT MADE BY MR. HATLESTAD IS THE
7 EXACT SAME AS HIS OPPOSITION TO MR. O'MARA'S DIRECT APPEAL
8 THE ARGUMENT HAS NOT CHANGED, NETHER HAS HIS 'IGNORANCE OF
9 LAW', 'MISINTERPETATION OF LAW', 'MISTAKE OF LAW', TO THE FACT THAT AS THIS
10 MOTION HAS STATED, THROUGH ALL THE 'MOVING PAPERS' THAT 1) NRS 201.230
11 DOES NOT ALLOW FOR PROBATION AFTER OCTOBER 1, 1997, AND 2) NO MATTER
12 HOW MANY TIMES THE STATE NOTES IT NRS 176A.110 DOES NOT CHANGE
13 THE LAW - AND MIRACULOUSLY ALLOW PROBATION.
14 AS I HAVE STATED PRIOR, AND MR. HATLESTAD KNOWS, I HAVE THE
15 UTMOST RESPECT FOR HIM, BUT THAT DOES NOT NEGATE THE FACT THAT
16 ADA KELLI VILORIA'S ACTION, CONDUCT, COMMENTS, BEHAVIOR BREACHED
17 THE 'CONTRACT' LONG BEFORE THIS CASE EVER LANDED ON HIS DESK. THE
18 PASSAGE OF TIME DOES NOT CHANGE THE FACT THAT KELLI VILORIA
19 WHILE HOLDING THE PRECIOUS TITLE OF PROSECUTOR ABUSED THAT SACRED PUBLIC
20 TRUST, INTENTIONALLY VIOLATING THE 'CONTRACT' BY 1) WITHHOLDING EXCULPATORY
21 EVIDENCE; LIED TO AND MISLED JUDGE STEINHAMER; 2) FAILED TO UPHOLD THE
22 'SPIRIT' OF THE CONTRACT, BY HER ANIMATED ARGUMENT TO THE MAXIMUM
23 SENTENCE TO BOTH CHARGES; 3) BY ORIGINALLY INSTITUTING THIS MISTAKEN
24 INTERPETATION OF THE LAWS (NRS 201.230 / 176A.110); 4) TRUE, THE STATE DID
25 RESERVE IT'S RIGHT TO ARGUE AT SENTENCING, BUT IT (ADA VILORIA) COMMITTED
26 A BREACH BY INTENTIONALLY CIRCUMVENTING THE CONTRACT, AND THIS
27 INCLUDES THE 'SPIRIT'. WHAT THE DEFENDANT REASONABLY UNDERSTOOD WHEN HE

ENTERED INTO THIS 'CONTRACT'. SULLIVAN V. STATE, (96 P.3d 761, 120 NEV. 537);
CITI V. STATE, (807 P.2d 724, 107 NEV. 89); STATZ V. STATE, (944 P.2d 813, 113 NEV. 987)

THE COURTS HAVE RULED REPEATEDLY THAT "ANY DOUBT AS TO
WHETHER THE PLEA WAS VOLUNTARY MUST BE RESOLVED IN FAVOR OF THE
DEFENDANT." STATE V. SCHONOVER, (973 P.2d 230, 293 MONT 54) (MONT. 1999):

BY ADA VILORIA AND UNBELIEVABLY, DEFENSE ATTORNEY DAVID OMARA
WITHHOLDING A MATERIAL FACT, AS BLACK'S LAW DICTIONARY DEFINES:

"PLEADINGS AND PRACTICE: ONE WHICH IS ESSENTIAL TO THE CASE
DEFENSE, APPLICATION, ETC, AND WITHOUT WHICH IT COULD NOT BE SUPPORTED
ONE WHICH TENDS TO ESTABLISH ANY ISSUES RAISED. THE MATERIAL FACTS
OF AN ISSUE OF FACTS ARE SUCH AS ARE NECESSARY TO DETERMINE
THE ISSUE. MATERIAL FACTS ARE ONE UPON WHICH OUTCOMES OF
LITIGATIONS DEPEND." (2nd ED. P. 881)

THIS COURT NEEDS TO ACCEPT THE OBVIOUS ISSUE, HOW CAN THERE BE
ANY CONFIDENCE IN THE OUTCOME OF ANY LITIGATION, WHETHER BY WAY OF
A 'CONTRACT' OR A JURY TRIAL, IF THE 'OFFICERS OF THE COURT' CHOSE NOT
TO LET THE DEFENDANT, OR JUDGE AWARE OF SERIOUS MATERIAL FACTS?

WITH THE 'FORMAL' INTRODUCTION OF THE LETTER DATED FEBRUARY 4, 2008
IN WHICH ADA VILORIA OFFERED AN TENTATIVE 'OFFER' THAT IS THE IDENTICAL
TERMS, CHARGES, STIPULATIONS, CONSIDERATIONS, SENTENSING OFFERS, AS
THE 'CONTRACT' PRESENTED TO THE DEFENDANT ON MARCH 6, 2008 IS OF
HUGE IMPORTANCE, THIS LETTER IN CONNECTION TO THE PREVIOUSLY EVIDENCE
ENTERED OF THE FAX DATED FEBRUARY 7, 2008, IN AND OF ITSELF IT
ESTABLISHES INEFFECTIVE ASSISTANCE OF COUNSEL, IN THE LAST
TWO YEARS OF LEGAL RESEARCH, REVIEWING AND READING AROUND
3,000 CASES, AS MANY WEST VOLUMES POSSIBLE AND EVEN THOUGH
THERE ARE COUNTLESS CASES OF PROSECUTORS WITHHOLDING 'BRADY'

1 EVIDENCE. BUT I HAVE NOT SEEN ANY CASE THAT THE DEFENSE
2 COUNSEL HAD EXCULPATORY EVIDENCE TO CLEAR HIS CLIENT AND
3 THEY HID THE EVIDENCE. UNTIL I HAD DAVID O'MARA AS AN ATTORNEY.
4 IN 1948 SUPREME COURT JUSTICE BLACK SAID: "THE RIGHT TO COUNSEL
5 GUARANTEED BY THE U.S. CONSTITUTION CONTEMPLATES THE SERVICE OF AN
6 ATTORNEY DEVOTED SOLELY TO THE INTEREST OF HIS CLIENT... UNDIVIDED
7 ALLEGIANCE AND FAITHFUL, DEVOTED SERVICE TO A CLIENT ARE PRIZED
8 TREASURES OF AN AMERICAN LAWYER. IT IS THIS KIND OF SERVICE FOR
9 WHICH THE SIXTH AMENDMENT MAKES PROVISION. AND NOWHERE IS THIS
10 SERVICE DEEMED MORE HONORABLE THAN IN A CASE OF APPOINTMENT
11 TO REPRESENT AN ACCUSED TOO POOR TO HIRE A LAWYER".
12 "AN ATTORNEY WHO ADOPTS OR ACTS UPON A BELIEF THAT HIS
13 CLIENT SHOULD BE CONVICTED, FAILS TO FUNCTION IN ANY MEANINGFUL WAY
14 AS THE GOVERNMENT'S ADVESARY." OSBORNE V. SHILLINGER, (361 F.2d 612, 625)
15 & U.S. V. CRONIC, (416 U.S. 648, 658-9, 104 U.S.S.CT. 2039, 2046-7, 80 L.ED.2d 657)
16 BY ATTORNEY O'MARA FAILING TO ACT AS THE STATES ADVESARY, HE
17 CONSTRUCTIVELY DENIED THE DEFENDANT OF ANY TYPE OF COUNSEL, HE JOINED
18 THE STATE IN AN EFFORT TO OBTAIN A CONVICTION OF HIS CLIENT.
19 THEREBY SUCH CONDUCT WAS A CONFLICT OF INTEREST.
20 "THE COURTS HAVE HELD THAT DEPRIVATION OF THE RIGHT TO COUNSEL
21 IS SO INCONSISTANT WITH THE RIGHT TO A FAIR TRIAL, THAT IT CAN
22 NEVER BE TREATED AS HARMLESS ERROR" FRAZIER V. U.S., (18 F.3d 788)
23 THERE IS NO EXCUSE, NO EXPLANATION, NO WAY TO IGNORE OR 'SKATE
24 OVER' ALL THE ISSUES, LITERALLY SCREAMING TO BE RECOGNIZED AND TO BE
25 CORRECTED. I FIND IT APPALLING THAT MR. HADLESTAD FELT IT WAS SO
26 SIMPLE AN ISSUE, SO THAT TO STATE: "THE UPSHOT OF DUNCLEY'S
27 SUBMISSION IS FAIRLY SIMPLE," THEN, "IN SUM, SINCE ALL DUNCLEY'S COMPLAINTS

1 IN HIS MOVING PAPERS - UNKNOWNING PLEA, INEFFECTIVE ASSISTANCE AND
2 PROSECUTORIAL MISCONDUCT - DEPENDS ON THE VALIDITY OF HIS CENTRAL
3 PREMISE - THE UNAVAILABILITY OF PROBATION.

4 BUT IT HAS BEEN TEN MONTHS AND THE STATE STILL SEEMS
5 TO VIEW ALL THE OTHER ISSUES AFOREMENTIONED TO BE UNIMPORTANT.
6 AFTER ALL THEY ALREADY DID THEIR JOB AND GOT A CONVICTION AT
7 ANY COST, EVEN IF IT WAS AT THE COST OF A CITIZEN'S PESKY
8 CONSTITUTIONAL RIGHTS.

9 THIS MOTION WAS NOT INTENDED, NOR MEANT TO BE SO LENGTHY,
10 BUT CONSIDERING THE IMPORTANCE OF THIS MOTION, I FELT IT TO BE
11 IMPERRATIVE TO SHOW ONCE AGAIN, ALL THE ISSUES THAT GO TO THE
12 ACCEPTABLE 'SCOPE' FOR A MOTION TO WITHDRAW A GUILTY PLEA. IN
13 ANALYZING THIS 'CONTRACT' WHILE RESEARCHING AND REVIEWING CONTRACT
14 LAW, WARRENTING RECISSION, OR AVOIDANCE I WAS ABLE TO DRAFT
15 22 PAGES.

16 OUR SYSTEM OF JUSTICE REPRESENTS A RULE OF LAW BASED ON THE
17 PREMISE /PRINCIPLE THAT OFFICERS OF THE COURT ARE BOUND BY AND MUST
18 ACT WITHIN THE LAW. PROSECUTING ATTORNEYS AND APPOINTED COUNSEL
19 OCCUPY A SPECIAL POSITION OF PUBLIC TRUST. SOCIETY RELIES ON
20 THESE PUBLIC SERVANTS TO BE HONORABLE ADVOCATES FOR NOT JUST
21 THE COMMUNITY ON WHOSE BEHALF THEY LITIGATE, BUT ALSO THE
22 JUDICIAL SYSTEM OF WHICH THEY ARE AN INTEGRAL PART. WHEN AN
23 ATTORNEY BETRAYS THEIR SOLEMN OBLIGATION, AND ABUSE THE IMMENSE
24 POWER THEY HOLD, THE FAIRNESS OF OUR ENTIRE SYSTEM OF JUSTICE
25 IS CALLED INTO DOUBT, AND PUBLIC CONFIDENCE IN IT IS UNDER-
26 MINED.

27 AS A FINAL CITATION OF AUTHORITY THAT IS A PERFECT FIT IS

1 STATE V. BENNETT, (81 P.3d 1, 119 NEV.584) (NEVADA 2003) "A PROSECUTOR
2 HAS A DUTY TO BRING TO THE ATTENTION OF THE COURTS OR OF PROPER
3 OFFICIALS ALL SIGNIFICANT EVIDENCE SUGGESTIVE OF INNOCENCE OR
4 MITIGATION. AT TRIAL THIS DUTY IS ENFORCED BY THE REQUIREMENTS
5 OF DUE PROCESS. BUT AFTER A CONVICTION THE PROSECUTOR IS
6 ALSO BOUND BY THE ETHICS OF HIS OFFICE TO INFORM THE
7 APPROPRIATE AUTHORITY OF AFTER ACQUIRED OR OTHER INFORMATION
8 THAT CASTS DOUBT UPON THE CONFIDENCE, CORRECTNESS OR VALIDITY
9 OF THE CONVICTION."

10 IT HAS BEEN USEFUL TO UTILIZE MR. HATLESTAD'S OPPOSITION
11 AS A JUMPING OFF POINT. SO I USE HIS CONCLUSION, THIS ENTIRE
12 ARGUMENT HOLDS SUBSTANTIAL, SUPPORTED, VERIFIED MERITS, AS A
13 RESULT THE REQUEST FOR PLEA WITHDRAWAL SHOULD BE GRANTED.

14 IN THE INTEREST OF JUSTICE, CONSTITUTIONAL REMEDY IS NEEDED, BY
15 NOT ONLY GRANTING THIS MOTION, BUT ALSO CONSIDERATION AFTER
16 THE REVERSAL OF THIS CONVICTION, A FULL DISMISSAL OF ALL
17 RELATED CHARGES WITH EXTREME PREJUDICE.

18 IN ADDITION TO WHATEVER OTHER RELIEF THIS HONORABLE COURT
19 DEEMS APPROPRIATE TO GRANT IN THIS MOTION TO WITHDRAW GUILTY PLEA,
20 IN ADDITION TO ALL PREVIOUS PRAYERS FOR RELIEF IN PRIOR MOTIONS

21
22 DATED: OCTOBER 28, 2010

23
24 Brendan Dunchley # 1023236

25 BRENDAN DUNCHLEY # 1023236

26 DEFENDANT IN PTD SET

27

28

1 CERTIFICATE OF SERVICE

2 I DO CERTIFY THAT I MAILED A TRUE AND CORRECT COPY OF THE
3 FOREGOING MOTION TO THE BELOW ADDRESSES ON THE 28TH DAY OF
4 OCTOBER, 2010, BY PLACING SAME IN THE U.S. MAIL VIA PRISON LAW
5 LIBRARY STAFF, PURSUANT TO NRC P 5(b):

6
7 CLERKS OF THE COURT

WASHOE COUNTY D.A.

8 SECOND JUDICIAL DISTRICT COURT

% GARY HATLESTAD

9 P.O. BOX 30083

P.O. BOX 30083

10 RENO, NEVADA 89500-3083

RENO NV. 89520-3083

11
12 ROBERT STORY ESQ.

13 *Brendan Dunchley* #1023236

14 OCTOBER 28, 2010

15
16
17 AFFIRMATION IN PURSUANT TO NRS 239B.030

18 THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE RECEIVING DOCUMENT
19 FILED IN DISTRICT COURT CASE NO: CR02-1728 DOES NOT CONTAIN THE SOCIAL
20 SECURITY NUMBER OF ANY PERSON.

21 DATED THIS 28TH DAY OF OCTOBER, 2010

22
23 *B-D*

24 BRENDAN DUNCHLEY #1023236

25 DEFENDANT IN PRO SE.

FILED

BRENDAN DUNKLEY (#1023236)

10 JUL 14 AM 9:30

LOVELOCK CORRECTIONAL CENTER

HOWARD T. MYERS

1200 PRISON ROAD

BY

LOVELOCK, NEVADA 89419

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

THE STATE OF NEVADA,

PLAINTIFF,

CASE NUMBER: CR07-1728

VS.

DEPT. NUMBER: 4

BRENDAN DUNKLEY,

DEFENDANT.

SUPPLEMENTAL IN CONSIDERATION OF MOTION TO WITHDRAW GUILTY PLEA.

COMES NOW, DEFENDANT, BRENDAN DUNKLEY, IN PROPER PERSON, SUBMITS
TO THIS HONORABLE COURT, AN OFFICIAL TRUE AND CORRECT COPY OF A LETTER
SENT TO THE HONORABLE JUDGE CONNIE STEINHEIMER ON MAY 25, 2010. A TRUE
AND CORRECT COPY WAS ALSO SENT TO ALL ATTORNEYS OF RECORD IN PRO-
TECTION AGAINST EX-PARTE COMMUNICATION.

THE FOLLOWING IS THE ABOVE REFERENCED LETTER IN ITS ENTIRETY.
FORMATED TO BE FILED WITH THE CLERK, AS AN OFFICIAL PART OF THE
RECORD, TO BE USED IN CONSIDERATION AS TO WHY A DECISION IS BOTH
REQUESTED AND NECESSARY, IN REGARDS TO THIS DEFENDANT'S MOTION TO WITHDRAWAL
OF GUILTY PLEA, FILED ON MARCH 1, 2010. ALSO IN DIRECT REFERENCE TO ORDER TO
STAY DECISION FILED ON APRIL 23, 2010. THE LETTER READS AS FOLLOWS:

AA000219

"
1 DEAR JUDGE STEINHEIMER,

2 " I UNDERSTAND AND APPRECIATE YOUR 'RULING' FILED ON APRIL
3 23, 2010 IN REGARDS TO THE MOTION TO WITHDRAW GUILTY PLEA FILED ON MARCH
4 1, 2010 AND THE SUPPLEMENTAL MOTION TO WITHDRAW GUILTY PLEA.

5 " IN YOUR ORDER IT STATED: 'THAT THE COURT, HAVING REVIEWED THE
6 PLEADINGS FILED HEREIN, FINDS THAT AT THIS TIME IT IS INAPPROPRIATE TO
7 RENDER A DECISION ON THE MOTION TO WITHDRAW GUILTY PLEA BASED ON THE
8 CASE HAVING BEEN APPEALED TO THE SUPREME COURT FOR REVIEW.'

9 " THERE IS ONE SERIOUS CONCERN I HAVE IN REGARDS TO THIS
10 'ORDER'. THE MOTION BEFORE THE SUPREME COURT 'FOR REVIEW' IS BASED ON
11 THE COURTS DENIAL OF THE MOTION FOR MODIFICATION OF SENTENCE, 'A
12 COMPLETELY DIFFERENT MOTION, ONE THAT WAS FILED AND SUBMITTED PURSUANT
13 TO NRS, ALLOWING YOUR COURT TO HAVE JURISDICTION TO CORRECT /MODIFY
14 A SENTENCE IF IT IS BASED ON MISINFORMATION PERTAINING TO MY CRIMINAL
15 HISTORY, LEADING TO THE 'EXTREME DETRIMENT' OF THE DEFENDANT. THE MOTION
16 FILED TO YOUR COURT FOR SUBMISSION ON MARCH 22, 2010 WAS A
17 MOTION TO WITHDRAW A GUILTY PLEA, A COMPLETELY SEPERATE MOTION, WITH
18 ENTIRELY DIFFERENT SCOPE.

19 " THE MOTION FOR WITHDRAWAL OF GUILTY PLEA WAS SUPPORTED BY SUB-
20 STANTIAL DOCUMENTATION WARRENTING A GRANTING OF THE MOTION IN ITS
21 ENTIRETY, THE MOTION ESTABLISHED AND PROVED BEYOND A REASONABLE DOUBT
22 THAT THE REQUIRED MANIFEST INJUSTICES HAVE INDEED OCCURED.

23 " AS THE SUPPLEMENTAL TO THE MOTION SHOWED, THAT AS OF OCTOBER 1,
24 1997, PER LAWS 1997 C.524, PROBATION WAS DELETED FROM THE STATUTE OF
25 NRS 201.230, AND IN CONNECTION TO TAYLOR V. WARDEN, N.S.P.; SIERRA V. STATE;
26 SKINNER V. STATE; MEYER V. STATE; SULLIVAN V. STATE; AND GUNN V. IGNACIO, THE
27 MOTION REQUIRES A ACCEPTANCE AND AN IMMEDIATE REVERSAL OF CONVICTION.

1 "ANOTHER FACT IS THAT IN RELATION TO DCR 13(2) THE STATE FAILED.
2 TO FILE AN OPPOSITION AS TO WHY THE MOTION SHOULD BE DENIED, AND AS
3 SUCH THE 'SILENCE' OF THE STATE SHOULD BE VIEWED AS AN ADMISSION OF
4 GUILT AND AS A CONSENT TO GRANTING THE SAME. YOU SEE, THERE IS
5 ABSOLUTLY NO WAY THE STATE CAN ARGUE OR FIGHT THE MOTION, SINCE IT IS
6 OVERWHELMINGLY SUPPORTED BY THE LAW AND STATUTES, AS WELL AS
7 SUPPORTED BY SUBSTANTIAL CASE LAW.

8 "YOUR HONOR, WITH ALL DUE RESPECT, I DO RESPECT YOUR 'CAUTIOUS'
9 DECISION, BUT I RESPECTFULLY ASK YOU TO RENDER A DECISION. THERE IS
10 SUBSTANTIAL EVIDENCE PROVING THAT THE MOTION SHOULD NOT ONLY BE
11 GRANTED, BUT ALSO THAT THE ENTIRE CASE RECORD PROVES ACTUAL AND
12 FACTUAL INNOCENCE.

13 "YOUR ORDER STATES THAT "IN THE INTEREST OF JUSTICE," THAT PHRASING IS
14 OF EXTREME IMPORTANCE SO I TOO WILL USE IT ALSO. IN THE INTEREST OF
15 JUSTICE, SINCE THE STATE HAS CONTINUALLY FAILED TO PROVE, ESTABLISH
16 ANY TYPE OF GUILT, AND ALL THE ACTUAL EVIDENCE THAT EXISTS PROVES
17 THAT IT IS IMPOSSIBLE FOR ME TO HAVE COMMITTED ANY OF THE CHARGES
18 FILED AGAINST ME. THE EVIDENCE NOT ONLY PROVES INNOCENCE BEYOND A
19 REASONABLE DOUBT TO THE 'AMENDED' CHARGES, BUT ALSO TO THE ORIGINAL
20 CHARGES.

21 "JESSICA CLAIMED THAT A PENIS WAS SHOVED INTO HER MOUTH AND
22 I WAS CHARGED WITH SEXUAL ASSAULT, THE ENTIRE CONVICTION TO THE
23 CHARGE AND ACCUSATION IS SOLEY BASED ON HER TESTIMONY, AND HER
24 TESTIMONY ALONE. THERE CAN BE NO IGNORING THE FACT THAT THE STATE
25 HAD THE RESULTS OF THE DNA SWABS OBTAINED ON THE NIGHT IN QUESTION AND
26 NEVER INTRODUCED IT AS EVIDENCE. THE RESULTS WAS NOT ONLY RELEVANT, BUT
27 NECESSARY TO PROVE MY INNOCENCE, IT SAYS: "NO FOREIGN DNA TO SOURCE,

1 BRENDAN DUNKLEY, WAS OBTAINED FROM THE GENITAL SWABS."
2 "ASHLEY CLAIMED THAT BETWEEN AUGUST 14, 1998 - AUGUST 13, 1999
3 WE HAD CONSENSUAL SEX, AFTER SPENDING THE NIGHT AT MY HOME IN
4 RENO, IN MY FORD TAURUS. AGAIN THE ONLY EVIDENCE IN THIS CASE WAS
5 THE TESTIMONY OF ASHLEY. WHEN I HAVE GIVEN YOUR COURT AND THE STATE
6 IRS PAPERWORK, DMV REGISTRATION, COLLEGE TRANSCRIPTS, RPD REPORTS, COURT
7 PAPERWORK SERVING ME AT MY RESIDENCY IN FRESNO, CALIFORNIA ON 8/16/99,
8 AND MADERA COUNTY PAPERS. ALL PROVING I DID NOT EVEN LIVE IN RENO UNTIL
9 2000. SINCE ASHLEY STATED WITH CERTAINTY SHE WAS 12, AS DID KELLI A.
10 VILORIA IT IS IMPOSSIBLE TO HAVE DONE IT.
11 "SO, IN THE INTEREST OF JUSTICE, I HAVE BEEN OVERLY PATIENT GIVING
12 THE STATE COUNTLESS CHANCES TO CORRECT THIS GROSS MISJUSTICE, AND IT
13 HAS NOT OCCURED. AS I HAVE STATED BEFORE I HAVE NO DOUBT THAT THIS
14 CASE WILL BE REVERSED. THROUGHOUT THIS ENTIRE PROCESS I HAVE REPEATEDLY
15 MENTIONED AND SAID THAT THE STATE HAS CONTINUALLY WITHHELD
16 CRUCIAL AND RELEVANT INFORMATION TO ENSURE UNFAIR AND UNJUST
17 PROCEEDINGS. THIS IS A WONDERFUL OPPORTUNITY TO CORRECT THIS GROSS
18 MISCARRIAGE OF JUSTICE, AND I WOULD PREFER IT BE YOUR COURT THAT
19 REVERSES IT. IN THE INTEREST OF JUSTICE, A DEFENDANT SUCH AS MYSELF
20 HAVING PROVED ACTUAL AND FACTUAL INNOCENCE TO ALL THE CHARGES. THE
21 OBVIOUS CORRECTION IS IN YOUR POWER AND ALSO AT YOUR DISCRETION TO
22 VACATE AND DISMISS ALL THE CHARGES RELATED TO CR07-1728 WITH PREJUDICE.
23 "SINCE THE STATE KNEW EVEN PRIOR TO EVEN THE PRELIMINARY HEARING
24 THAT IT WAS IMPOSSIBLE FOR ME TO HAVE COMMITTED THE CRIMES AS ACCUSED
25 BY THE "VICTIMS". BUT INSTEAD OF CORRECTING THE RECORD, THEY CHOSE TO
26 IGNORE, HIDE AND DISREGARD ALL THE ACTUAL EVIDENCE PROVING MY
27 INNOCENCE. IT IS ON YOU TO DO WHAT IS RIGHT AND JUST.

"
1 IT SHOULD BE NOTED THAT A COPY OF THIS ENTIRE LETTER HAS
2 BEEN SENT TO ADA. G. HATLESTAD, ATTORNEY ROBERT STORY, NEVADA ATTORNEY GEN
3 NEVADA SUPREME COURT C.S., KOLO 8, KRNVTNN, RENO GAZETTE AND THE NEVADA
4 BAR ASSOCIATION. ALSO SINCE THIS LETTER IS IN DIRECT REFERENCE TO CRO7-172
5 AND THE MOTION IN WHICH I AM LISTED AS DEFENDANT IN PROPER PERSON ON RECORD
6 SINCE I AM REPRESENTED BY MR. ROBERT STORY IN CRO7P1728 FOR THE PET-
7 ITION FOR WRIT OF HABEAS CORPUS ONLY, THIS LETTER IS VALID.

8 "I EMPLORE YOU, YOUR HONOR TO HELP ME. AS THE EVIDENCE FOR THE INSTANT
9 MOTION PROVES, THE OVERWHELMING DOCUMENTED EVIDENCE IN THE PETITION, I AM
10 AN INNOCENT MAN. A INNOCENT MAN WHO WAS DECEIVED BY AN INCOMPETANT
11 ATTORNEY, PROSECUTED BY AN OVERZEALOUS DISTRICT ATTORNEY, PRESSURED BY
12 COMMUNITY OUTRAGE DUE TO BRIANNA DENNISON. ALL I ASK YOUR HONOR IS
13 TO ALLOW THE OVERWHELMING EVIDENCE TO SPEAK FOR ITSELF. TO BE
14 RETURNED TO THE FAMILY I WAS RIPPED AWAY FROM. THIS RELIEF IS ENTIRELY
15 WITHIN YOUR POWER, TO DO SO BEFORE ANOTHER COURT RULES AND
16 DECIDES TO DO JUST THAT.

17 "AS I HAVE STATED AT THE OUTSET OF THIS LETTER, I DO UNDERSTAND AND
18 APPRECIATE YOUR 'CAUTIOUS' DECISION, BUT IN THE INTREST OF JUSTICE, PLEASE
19 ALLOW ME TO GO HOME WHERE I TRULY BELONG. IN THE LEAST PLEASE.
20 GRANT MY MOTION SO THAT I MAY HAVE MY 'DAY IN COURT'.

21 "I AM MORE THAN CONFIDENT THAT THE SUPREME COURT JUSTICES WILL UNDERSTAND
22 AND COMMEND YOU FOR TAKING THE STEPS TO ENSURE THAT JUSTICE IS TRULY DONE.

23 "THANK YOU FOR ALLOWING ME THE OPPORTUNITY TO SEND YOU THIS LETTER. I AM
24 SURE, AS I AM SURE ALL THE OTHER RECIPIENTS OF THIS LETTER, THAT YOU WILL DO
25 WHAT IS RIGHT AND ENSURE AN INNOCENT MAN RETURNS TO HIS WIFE AND CHILDREN.

26 "I LOOK FOWARD TO YOUR HELP IN RESOLVING THIS SITUATION AND CORRECT
27 THIS MISCARRIAGE OF JUSTICE AND MANIFEST INJUSTICE."

1 THE SUPPLEMENTAL IN CONSIDERATION AND INCLUDED LETTER IS
2 HEREBY SUBMITTED TO THIS HONORABLE COURT, FOR CONSIDERATION
3 AFFIRMATION PURSUANT TO NRS239B.030

4 IT IS AFFIRMED BY THE UNDERSIGNED THAT THE PRECEEDING
5 DOCUMENT ENTITLED SUPPLEMENTAL IN CONSIDERATION OF MOTION
6 TO WITHDRAW GUILTY PLEA, FILED IN DISTRICT COURT CASE NO:
7 CR07-1728, DOES NOT CONTAIN THE SOCIAL SECURITY
8 NUMBER OF ANY PERSONS.

9
10
11 SUBMITTED THIS 8TH DAY OF JULY, 2010

12
13 *Brendan Dunchley*

14 BRENDAN DUNKLEY #1023286

15 LOVELOCK CORRECTIONAL CENTER

16 1200 PRISON ROAD

17 LOVELOCK, NEVADA 89419

18
19 DEFENDANT IN PROPER PERSON
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I DO CERTIFY THAT I MAILED A TRUE AND CORRECT COPY OF THE
PRECEDING: SUPPLEMENTAL IN CONSIDERATION OF MOTION TO WITHDRAW
GUILTY PLEA, TO THE BELOW ADDRESS(ES) ON THIS 8TH DAY OF
JULY, 2010, BY PLACING SAME INTO THE HANDS OF PRISON
STAFF FOR POSTING IN THE U.S. MAIL:

ADA. G. HARLESTAD

CLERK OF THE COURT

% W.C.D.A.

2ND JUDICIAL DISTRICT

P.O. Box 30083

P.O. Box 30083

RENO, NEVADA 89520-3083

RENO, NEVADA 89520-3083

Brendan Dunchley

BRENDAN DUNCHLEY #1028236

LOVELOCK CORRECTIONAL CENTER

1200 PRISON ROAD

LOVELOCK, NEVADA 89419

DEFENDANT IN PRO PER

1 EVEN IN ADA VILORIA'S. REBUTATION OF THE ...
2 INCIDENT IN REGARDS TO COUNT TWO OF THE ORDER OF ...
3 CONVICTION AS COMPARED TO THE TESTIMONY OF JESSICA
4 H. AT THE PRELIMINARY HEARING. BOTH ARE THE EXACT ...
5 OPPOSITE (SEE PS 46 / 16-17 III; Prelim. Tran. ps 54-55 II) ANOTHER
6 EXAMPLE OF HER NOT BEING ABLE TO KEEP TO THE FACTS OF
7 RECORD.

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

24
25 6) ON PAGE 45 LINE 8-11 (III) THE STATE REFERS TO THE
26 FULL INVESTIGATION DISPROVING PETITIONER'S ALIBI OF BEING ON
-33- 27 THE PHONE WITH WIFE. EXCEPT AGAIN EVIDENCE AND RECORD
28 IN THE POSSESSION OF THE STATE IN RPD REPORT DATED 5/24/07

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

8 IT IS IMPORTANT TO NOTICE THAT ADA VILORIA MAKES
9 IT A POINT TO HIDE THE TRUTH OF THE RECORD AND EVIDENCE.
10 ALL THE WHILE MAKING COMMENTS TO ATTEST AND SOLIDIFY HER
11 OWN CREDIBILITY BEFORE THE COURTS. "I ABSOLUTELY MADE
12 A REPRESENTATION AS AN OFFICER OF THE COURT," (pg 51 / LINE 19-20) (III)
13 AND MADE A POINT TO CORRECT THE PSI. "THE FACTUAL CORRECTION
14 THAT I NEED TO MAKE..." (pg 41/13) AS WELL AS THE STATE
15 CORRECTING THE RECORD IN THE AREA OF ASHLEY V'S AGE. "BUT
16 HE CALLS ASHLEY 14 YEARS OLD AT THE TIME WHEN WE ALL
17 KNOW SHE WAS 12. (pg 45/196)-21) (III) THIS IS IMPORTANT
18 BECAUSE NOT ONLY IS THE RECORD RIDDLED WITH INAPPROPRIATE
19 UNSUPPORTED COMMENTS, ACCUSATIONS AND ALLEGATIONS. NOT DOING
20 ANYTHING BUT INTENTIONALLY PREJUDICING PETITIONER, BUT NOWHERE
21 IS THE ADA CORRECTING THE RECORD IN REGARDS TO THE ACTUAL
22 INNOCENCE OF PETITIONER IN REGARDS TO COUNT ONE. AGAIN BY
23 THE WITHHOLDING OF FAVORABLE EVIDENCE PROSECUTION.
24 HINDERED PETITIONER TO RENDER AN ADEQUATE DEFENSE. ALSO
25 WITH THE COMMENTS OF ADA VILORIA'S INTENT TO PREJUDICE
26 AND INFLUENCE THE SENTENCE IT SHOULD WARRANT GROUNDS
-34- 27 FOR PROSECUTORIAL MISCONDUCT.

1 With REGARDS TO ALL THE EVIDENCE SHOWING PROSECUTORIAL
2 MISCONDUCT, THE PETITIONER PROVES THAT THE STATE NOT ONLY
3 ILLEGALLY INFLUENCED SENTANCING, BUT MALICIOUSLY AND VINDICTIVELY
4 PROSECUTED PETITIONER. FOR SEVENTEEN (17) MONTHS, FROM APRIL
5 18, 2007 TO SENTENCING ON AUGUST 5, 2008 THE STATE HAD INF-
6 ORMATION TO PROVE THE ALLEGATIONS MADE BY ASHLEY V.
7 WERE IN FACT IMPOSSIBLE TO HAVE OCCURRED BY THE BASIC
8 RULES OF GILES! IN ITSELF IT WOULD BE PHYSICALLY IMPOSSIBLE
9 TO HAVE COMMITTED A CRIME IN A STATE PETITIONER DID NOT
10 RESIDE IN. DURING THE ALLEGATION OF ASHLEY V. SHE STATES
11 THAT INCIDENT OCCURED AFTER SPENDING THE NIGHT AT THE
12 PETITIONERS HOME, IN RENO NEVADA, BUT THE STATE KNEW
13 PETITIONER IN FACT RESIDED IN NEW YORK AND IN MADISON
14 COUNTY, CALIFORNIA. EXCEPT NOT ONLY DID THE STATE CONTINUALLY
15 FAIL TO CORRECT AND SET THE RECORD STRAIGHT, BUT THE
16 EXACT OPPOSITE. IT EAGERLY AND ZEALOUSLY PERSUED THE CHARGE
17 EVEN UP TO PRESENTING A 'DEAL' TO PETITIONER.
18 THAT 'DEAL' IN AND OF ITSELF SHOULD BE WITHDRAWN
19 AND DEEMED FRAUDULANT ON THE PART OF THE STATE, ALLOWING
20 PETITIONER TO WITHDRAW HIS GUILTY PLEAS. IN ADDITION THE
21 FACT THAT THE STATE INTENTIONALLY CONTINUED TO WITHHOLD
22 THE INFORMATION BUT MALICIOUSLY VIOLATED PETITIONERS RIGHTS,
23 WOULD IN THE LEAST WARRENT A DISMISSAL OF COUNT ONE
24 LEWDNESS WITH A CHILD (NRS 201.230) DUE TO BRADY VIOLATION,
25 INSUFFICIENT EVIDENCE, MANIFEST INJUSTICE AS WELL AS ACTUAL
26 INNOCENCE.

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

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

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13 SUPPORTING FACTS:

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15 1) IN ADMITTANCE BY STATEMENT OF DETECTIVE TOM BROOME
16 AT THE PRELIMINARY HEARING, THAT PRIOR TO ENTERING THE HOME
17 OF THE PETITIONER ON THE DAY PRIOR TO PETITIONER'S ARREST ON
18 MARCH 22, 2009, SECRETLY AND UNKNOWN TO PETITIONER RECORD-
19 ED THE 'INTERROGATION/INTERVIEW' CONDUCTED INSIDE PETITIONER'S
20 HOME. CONVERSATION AND QUESTIONING COMMENCED IMMEDIATELY IN
21 REGARDS TO THE INCIDENT ON MARCH 10, 2009. BY DETECTIVE TOM
22 BROOME SECRETLY RECORDING A CONVERSATION IN THE PETITIONER'S
23 PRIVATE HOME, HE VIOLATED THE PETITIONER'S FOURTH AMENDMENT
24 RIGHT, OF UNLAWFUL SEARCH AND SEIZURE. BECAUSE PETITIONER
25 AS WELL AS EVERY UNITED STATES CITIZEN HAS A RIGHT TO HAVE
26 A PRESUMPTION AND AN EXPECTATION OF PRIVACY IN ONE'S OWN
-36-27 HOME. WITH DETECTIVE BROOME RECORDING WITHOUT PERMISSION HE
28 DID NOT RECEIVE A CONSENTUAL AND VOLUNTARY WAIVER OF

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1 THE PETITIONERS RIGHT.

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3 2) MIRANDA RIGHTS HAVE BEEN A TOPIC OF DISPUTE AND
4 CHALLENGE IN THE COURTS FOR YEARS. IT IS A COMMON TRAIN
5 OF THOUGHT THAT TO REQUIRE THE NEED TO ADMINISTER THESE
6 RIGHTS TO AN ACCUSED / SUSPECT, TWO CRITERIA MUST BE MET.
7 FIRST BEING THE 'SUSPECT' OR INTENDED INDIVIDUAL WHO IS
8 BEING QUESTIONED MUST BE CONSIDERED IN CUSTODY. THE GEN-
9 ERAL RULE OF CUSTODY OCCURS WHEN A SUSPECT IS PLACED
10 IN A 'UNFAMILIAR AND HOSTILE SURROUNDINGS'. FOR EXAMPLE WOULD
11 BE A POLICE INTERROGATION ROOM BEING CONSIDERED A HOSTILE
12 SURROUNDINGS. THE SECOND IS INTERROGATION WHICH NEEDS TO BE
13 SPECIFIC QUESTIONS ABOUT A SPECIFIC INCIDENT THAT THE ACCUSED
14 IS INTERESTED IN BY LAW ENFORCEMENT. (PART IV PG 120-140, NO MANTS)

15 ON MARCH 22, 2009, PETITIONER ARRIVED AT
16 'RPD' SEX CRIMES UNIT, WHERE HE WAS TAKEN TO AN INTERROGATION
17 ROOM, AND QUESTIONING IMMEDIATELY COMMENCED ABOUT RPD CASE
18 07-9446. DURING THE QUESTIONING DETECTIVE TOM BROWN INFORMED
19 PETITIONER THAT HE WAS FREE TO GO AT ANY TIME. EXCEPT IT
20 SHOULD BE NOTED THAT DETECTIVE BROOME ENTERED THE ROOM
21 WITH A MANILLA FOLDER. THE TOP SHEET WAS A 'BOOKING SHEET'
22 FOR THE ARREST OF PETITIONER. AT NO POINT WAS THE PETITIONER
23 INFORMED OF HIS MIRANDA RIGHTS. WHEN THE RULE IS THAT
24 THE RIGHTS MUST BE READ PRIOR TO ANY QUESTIONING BEING
25 DONE. ALSO THAT THERE IS RECORD ON THE TRANSCRIPT THAT NO
26 SUCH WARNING IS GIVEN. AS WELL AS THE FACT THAT NO WHERE
-37-27 IN THE 'FILE' FOR PETITIONER IS A WAIVER / NOTIFICATION SHEET
28 SIGNED BY PETITIONER. THE COMMON CONTENTION IN LEGAL MINDS

1 IS THAT THE PRODUCT OF AN INTERROGATION THAT DOES NOT
2 COMPORT WITH MIRANDA AND ITS PERMUTATIONS, IS PRESUMED TO
3 BE INVOLUNTARY WITHOUT REGARDS TO WHETHER IT WAS IN
4 FACT INVOLUNTARY. SO BY DETECTIVE TOM BROOME SAYING
5 "YOU KNOW YOU'RE NOT UNDER ARREST. YOU'RE FREE TO LEAVE ANY
6 TIME YOU WANT." DOES NOT ALLEVIATE OR LESSEN THE REQUIRE-
7 MENT TO INFORM/ISSUE THE PETITIONER HIS RIGHTS PROTECTED
8 BY THE FIFTH AMENDMENT. THE SITUATION MET BOTH OF THE
9 REQUIREMENTS DEMANDING THE READING OF THE PETITIONER'S 'M-
10 IRANDA RIGHTS'. (SEE PAGE 18 IN PTIV WAIVER FOR 05 MARCH 07)

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

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

D) GROUND FOUR: DIRECT SUBJECT MATTER JURISDICTION

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PETITIONER'S CONVICTION AND SUBSEQUENT IMPRISON-

MENT IS ILLEGAL DUE TO VIOLATIONS OF PETITIONER'S RIGHT

TO DUE PROCESS AND EQUAL PROTECTION UNDER THE GUARAN-

TEED RIGHTS PROTECTED IN THE FIFTH AND FOURTEENTH

AMENDMENTS OF THE UNITED STATES CONSTITUTION. BECAUSE THE

STATE OF NEVADA IN FACT LACKED SUBJECT MATTER JURISDICTION

FOR COUNT ONE IN THE AMENDED CRIMINAL COMPLAINT DATED

FEBRUARY 28, 2008. (LEWDNESS WITH A CHILD UNDER 14 YEARS OF

AGE. NRS. 201.230)

SUPPORTING FACTS:

1) THE CHARGE OF LEWDNESS WITH A CHILD UNDER 14 YEARS

OF AGE A VIOLATION OF NRS 201.230, FALLS UNDER THE SUBSECTION

OF (2) IN NRS 171.085, IN WHICH THE NEVADA LEGISLATURE

DEFINES THE DIFFERENT OFFENSES AND SUBSEQUENT STATUTE

OF LIMITATIONS IN WHICH A CHARGE MUST BE FILED. SINCE

THIS CRIME IS NOT ONE OF THE SPECIFICLY NAMED OFFENSES IN

SUBSECTION (1) IE: THEFT, ROBBERY, BURGLARY, FORGERY, ARSON,

SEXUAL ASSAULT; IT FALLS INTO SUBSECTION (2): MAKING THE

STATUTE OF LIMITATION TO FILE, MUST BE FOUND, OR AN INFORMATION

OR COMPLAINT FILED, WITHIN 3 YEARS AFTER THE COMMISSION

OF THE OFFENSE. NRS 171.085. STARTS BY SAYING "EXCEPT AS

OTHERWISE PROVIDED IN ... NRS. 171.095.

NRS 171.095 IS A STATUTE THAT ALLOWS THE TOLLING

OF THE STATUTE OF LIMITATION FOR A LONGER TIME IF THE

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

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

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

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

14 TRUE ALL THE 'VICTIMS' (ASHLEY V. AND MICHELLE ANTHONY)
15 WERE STILL UNDER 21 YEARS OF AGE, AS REQUIRED IN NRS 171.095
16 (b)(1) BUT IT ALSO READS "HE DISCOVERS OR REASONABLY SHOULD
17 HAVE DISCOVERED THAT HE WAS A VICTIM OF SEXUAL ASSAULT."

18 BESIDES THE OBVIOUS FACT THAT PETITIONER WAS NOT EVEN IN
19 THE RENO AREA DURING THIS TIME, ASHLEY V IN HER
20 INTERVIEW WITH DETECTIVE TOM BLOOME ON 3-29-2007 STATES
21 THAT AT THE TIME SHE WAS SEXUALLY ACTIVE, AND SHE WAS
22 NOT FORCED. ALSO NOT NOTED IS THAT ONE YEAR LATER SHE
23 HAD A SON BY A MUCH OLDER 'BOYFRIEND'. SO THE AREA
24 OF 'SHOULD HAVE DISCOVERED' IS MET. AS WELL AS STATING
25 NOT FORCED. COUNT VII OF THAT SAME COMPLAINT WAS
26 SEXUALLY MOTIVATED COERCION; NRS 207.190 DEFINES COERCION

41-27 "IT IS UNLAWFUL FOR A PERSON, WITH THE INTENT TO COMPEL
28 ANOTHER TO DO OR ABSTAIN FROM DOING AN ACT WHICH

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

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

-42-27

27 THEREFORE PETITIONERS PROSECUTION UNDER NRS 201.230
28 IS THEREFORE PRECLUDED BY THE STATUTE OF LIMITATION NRS 171.085
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E GROUND FIVE: STATES FAILURE TO INVESTIGATE ALLEGATIONS

PETITIONER IS IN CUSTODY IN VIOLATION OF HIS RIGHTS TO DUE PROCESS AND A FAIR TRIAL AS GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND AS A RESULT OF NEVADA LAW THAT PERMITS PETITIONER TO BE CONVICTED OF LEWDNESS WITH A CHILD UNDER FOURTEEN YEARS (NRS 201.230) AND ATTEMPTED SEXUAL ASSAULT (NRS 193.330) BASED SOLELY ON THE UNCORROBORATED TESTIMONY AND ALLEGATIONS OF THE VICTIMS. AS WELL AS BY THE RENO POLICE DEPARTMENT'S FAILURE TO ADEQUATELY INVESTIGATE THE ACCUSATIONS OF THE VICTIMS AGAINST PETITIONER.

SUPPORTING FACTS:

1) HAD AN ADEQUATE AND EVEN BASIC INVESTIGATION BEEN DONE BY THE 'INVESTIGATORS' IN THE AREA OF A SIMPLE RESIDENCE HISTORY AND DMV RECORD SEARCH THE STATE WOULD HAVE SEEN THAT THE PETITIONER DID NOT EVEN RESIDE IN RENO NEVADA UNTIL 2000 (SEE PS 91-99 IRS PAR. 11; PS 86-88 DMV. PART II). THE LEAD INVESTIGATOR DETECTIVE TOM BROOME DID INVESTIGATE AND HAD DISCOVERED THAT PETITIONER WAS NOT IN RENO DURING AUGUST 14, 1998 TO AUGUST 13, 1999 BY MEANS OF A INTERVIEW WITH PETITIONER EX-WIFE JENNY DUNKLEY. (SEE PS 128 PART II) AND A MADERA COUNTY POLICE REPORT DATED 7-19-99 (PS 129,30 PART II) BOTH SHOWS PETITIONER RESIDING IN MADERA, COUNTY CALIFORNIA AND NEW YORK. BUT INVESTIGATORS CHOSE TO IGNORE THIS EXTREMELY MATERIAL AND RELEVANT INFORMATION GOING DIRECTLY TO PETITIONER'S INNOCENCE.

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1 2) ON MARCH 29, 2007 DETECTIVE TOM BROOME CALLED
2 SILVER SPRINGS WOMAN'S CAMP AND INTERVIEWED ASHLEY V. AND IN
3 THAT INTERVIEW ASHLEY V. TELLS DETECTIVE BROOME ABOUT TWO
4 DIFFERENT INCIDENTS THAT OCCURED WHEN SHE WAS TWELVE YEARS OLD
5 NAMELY BETWEEN 1998 AND 1999, A SPAN OF NINE TO TEN YEARS
6 BETWEEN THE INTERVIEW AND THE ALLEGED INCIDENTS. YET THERE
7 WAS ABSOLUTELY NO INVESTIGATION DONE. AS NOTED IN RPD 053402706
8 PG (4) DETECTIVE BROOME STATES: "GIVEN THE NEW INFORMATION LEARNED
9 IN 0179446 INVESTIGATION AND ADDITIONAL WITNESSES I DROVE TO
10 SUSPECT DUNKLEY'S RESIDENCE ON HIGH PLAINS DRIVE TO PLACE
11 DUNKLEY UNDER ARREST FOR THIS SEXUAL ASSAULT." (SEE PG 47 PART IV
12 HAD DETECTIVE BROOME ACTUALLY LOOKED IN THE RECORD
13 AND HIS NOTES HE WOULD SEE THAT THERE IS ABSOLUTELY NO
14 MODUS OPERANDI CONNECTING THE TWO CASES. LURA IN 2005 WAS
15 SOBER AS CONFIRMED BY RPD TRANSCRIPT OF INTERVIEW (SEE PG 25 /17-
16 PART IV) AND THE ONLY MENTION OF ALCOHOL WAS IN RPD 0534027
17 PG 4. "SERTON DID NOT ANSWER HER AND POURED A SHOT OF VODKA
18 AND INGESTED IT" (PG 9 PART IV). IN 2007 JESSICA WAS
19 CLEARLY INTOXICATED WITH A BLOOD ALCOHOL LEVEL (BAL) OF .226
20 (SEE PG 11/24 PART IV). EXCEPT DETECTIVE BROOME USED THAT AS A
21 AREA OF CREDITING PROBABLE CAUSE WHERE IT IN FACT DID NOT
22 EXIST. ALSO CONFIRMED AT THE PRELIMINARY HEARING ON (PG 103/
23 3-13 II) INTOXICATED VICTIMS WAS THE CONNECTION. BUT ALSO
24 STATING THAT PETITIONER WAS ON THE PHONE WITH HIS WIFE
25 DURING INCIDENTS TO ESTABLISH AN ALIBI. (PG 127/1/2 PART IV) EXCEPT
26 AT NO POINT DURING THE 0534027 INTERVIEW WAS WIFE MENTIONED AS
-44- 27 AN ALIBI. FAILURE TO INVESTIGATE EVEN HIS OWN NOTES BUT IGNORING
28 IT TO CREATE PROBABLE CAUSE IN AREAS HE FELT WAS NEEDED TO

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

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

1 IN RPD 07944601 THERE IS ANOTHER MENTION OF THE BAND-
2 AID AND AGAIN ANOTHER DISMISSAL BY DETECTIVE BROOME.
3 EVIDENCE OR INFORMATION THAT COULD CREATE REASONABLE
4 DOUBT IN REGARDS TO A CHARGE THE POLICE SHOULD INV-
5 ESTIGATE NO MATTER WHERE IT MAY LEAD. (SEE PT. IV pg 58)
6 BY DETECTIVE BROOME MAKING A ROUTINE 'FOLLOW-UP'
7 PHONE CALL TO THE VICTIM JESSICA'S BOYFRIEND TO EITHER
8 CONFIRM THE BAND-AID OR NOT. IT WOULD HAVE CAST A
9 DOUBT ON EITHER THE VICTIMS STATEMENT AND ACCOUNT OF
10 THE INCIDENT OR THAT OF THE PETITIONERS. RENDITION OF
11 THE INCIDENT. ALAS BECAUSE THE STATE SPECIFICALLY DETECTIVE
12 TOM BROOME IGNORED YET ANOTHER CRUCIAL PIECE OF INFORMATION
13 THE WORLD OR THIS COURT WILL NEVER KNOW WHERE THAT
14 INFORMATION WOULD HAVE LED. PROVING YET AGAIN THAT
15 MINOR THINGS LIKE MATERIAL EXCULPATORY EVIDENCE WILL NOT
16 GET IN DETECTIVE BROOMES WAY OF REACHING HIS ULTIMATE
17 GOAL SEEING THE PETITIONER 'BEHIND BARS'.

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

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

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

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

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

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

22
23 SUPPORTING FACTS:

24
25 1) PETITIONER IS INCARCERATED DUE TO A GUILTY PLEA
26 MEMORANDUM OFFERED TO HIM BY THE STATE, IN WHICH HE
-48- 27 WAS LED TO BELIEVE THAT THE STATE WAS IN POSSESSION OF
28 ENOUGH EVIDENCE TO PRODUCE A VERDICT OF GUILTY IF THE

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

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

19 SINCE THE ONLY EVIDENCE THAT A CRIME EVEN DID
20 OCCUR WAS BASED SOLEY ON ASHLEY V.'S TESTIMONY AT THE
21 PRELIMINARY HEARING (SEE PART II PGS 61-90) WE WILL EXAMINE
22 THAT 'EVIDENCE'. ASHLEY COULD NOT GIVE A DATE, ANY DATE
23 FOR THAT MATTER IN WHICH SHE MET THE PETITIONER, NOR
24 COULD SHE GIVE ANY INFORMATION AS TO HOW SHE MET HIM.
25 EXCEPT THAT SHE WOULD CONCEDE THAT SHE COULD HAVE MET
26 PETITIONER THE SAME TIME MICHELLE MET HIM, WHICH WOULD

-49- 27 PUT IT INTO LATE SUMMER EARLY FALL OF 2000. (SEE PART II
28 PG 46/14-24) MICHELLE STATES HOW SHE MET PETITIONER DURING HER

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

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

24 ON MARCH 20, 2007 JESSICA MADE THE
25 ALLEGATION THAT THE PETITIONER FORCED HIS PENIS INTO
26 HER MOUTH WHICH SHE CLAIMED SHE SUBSEQUENTLY BIT
-50- 27 REPEATEDLY. (SEE PART IV PG 49-53 RPD 079446), AND THEN SHE
28 EXPLAINS TO MR. CLIFTON AT THE PRELIMINARY HEARING

1 THAT THE PENIS WAS PLACED /FORCED INTO HER MOUTH WITH
2 HER MOUTH OVER THE HEAD AND SHE BIT THE SHAFT. HARD
3 ENOUGH AS SHE CLAIMS TO LEAVE TEETH MARKS. (SEE PART II
4 PAGES 38/16 to 39/2). SO BY DEFINITION OF SEXUAL ASSAULT
5 THE FORCIBLE INSERTION OF THE PENIS INTO JESSICA'S MOUTH
6 WOULD WARRANT A CHARGE OF SEXUAL ASSAULT. BUT THE
7 ACTUAL EVIDENCE DOES NOT SUPPORT THIS CLAIM AT ALL.
8 IN THE RPD REPORT 0709446 IT STATES "NO VISIBLE INJURY
9 TO BRENDAN'S PENIS SHAFT, HEAD OR BASE" (SEE PART IV PG 52)
10 BUT SURELY THE DNA SAMPLES OBTAINED THAT NIGHT OF
11 PETITIONER'S PENIS SHOWS DNA TRANSFER WHICH IS TO
12 BE IMPOSSIBLE FOR A SEXUAL PENETRATION TO HAVE OCCURRED
13 AND NO DNA TRANSFER. YET DNA RESULTS DATED "MAY 21, 2007
14 STATES "NO DNA FOREIGN TO THE SOURCE, BRENDAN DUNKLEY, WAS
15 OBTAINED FROM THE GENITAL SWABS" SO NO MARKS AND NO
16 DNA THE ONLY LOGICAL EXPLANATION TO THIS QUADRY IS
17 THE MOST OBVIOUS.. NO SEXUAL PENETRATION OCCURED.. SO
18 THEREFORE NO CRIME. (SEE PART II PG 58,59)

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

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

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

23 BECAUSE THE STATE HAS NO EVIDENCE FOR
24 COUNT ONE AND THE EVIDENCE IT HAS FOR COUNT TWO PROVES
25 NO ATTACK OR PENETRATION HAPPENED THE ONLY JUSTIFIABLE
26 REMEDY TO CORRECT THIS MANIFEST INJUSTICE IS TO VACATE
-52- 27 DISMISS AND REVERSE ALL COUNTS IN THE ORDER OF CONVICTION
28 ON GROUNDS OF THE STATES FAILURE TO PROVIDE SUFFICIENT EVIDENCE

9) GROUND SEVEN: BRADY VIOLATION (WITHHOLDING FAVORABLE EVIDENCE)

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PETITIONERS CONVICTION AND SENTENCE ARE INVALID UNDER FEDERAL CONSTITUTIONAL GUARANTEES OF DUE PROCESS AND EQUAL PROTECTION, DUE TO THE STATES FAILURE TO DISCLOSE MATERIAL AND EXCULPATORY EVIDENCE, AS WELL AS DEFENSE COUNSELS FAILURE TO INTRODUCE IMPERCHMENT EVIDENCE IT HAD IN ITS POSSESSION. - UNITED STATES CONSTITUTIONAL AMENDMENTS V, VI AND XIV.

SUPPORTING FACTS:

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

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

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

17 WHEN THE STATE HAS EVIDENCE AND FAILS TO BRING IT
18 FOWARD, THEN THEY INTENTIONALLY DECIDE TO VIOLATE THE
19 ACCUSED RIGHTS OF DUE PROCESS. BUT DEEPER THAN THAT IT
20 CAN ALSO CAST SERIOUS DOUBT ON THE PROSECUTIONS CREDABILITY
21 BOTH THE CASE AND THE PROSECUTOR HIS/HERSELF, KNOWING
22 THAT THE EVIDENCE WAS FAVORABLE TO THE ACCUSED AND AT
23 THE SAME TIME IT MUST BE ASSUMED THAT IT WOULD
24 BE EQUALLY DAMAGING TO THE STATES CASE, SO BY THE
25 STATE DECIDING NOT TO INTRODUCE/PRODUCE THE EVIDENCE
26 IT DECIDED THAT WINING THE CASE WAS MORE IMPORTANT
-51- 27 THAN THE ACCUSED RIGHT TO ADAQUATLY DEFEND HIMSELF.
28 NEGLECTING THE FACT THAT A PROSECUTORS DUTY IS NEVER

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

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

17

18 2) IN COUNT TWO OF THE ORDER OF CONVICTION

19 THAT IS UNDER ATTACK AS WELL AS THE GUILTY PLEA

20 MEMORANDUM, THE CHARGE IS AN AMENDED CHARGE OF

21 ATTEMPTED SEXUAL ASSAULT A VIOLATION OF NRS. 193.330

22 FROM THE ORIGINAL CHARGE OF SEXUAL ASSAULT A VIOLATION

23 OF NRS. 200.366. THIS IS RELEVANT TO THE CURRENT

24 GROUND OF THE STATE WITHHOLDING FAVORABLE EVIDENCE

25 FROM THE ACCUSED / PETITIONER, AS WELL AS THE STATE

26 KEEPING THE COURTS UNINFORMED. THE STATE LEGISLATURE

-55- 27 DEFINES THE CHARGE OF SEXUAL ASSAULT IN PART AS:

28 "A PERSON WHO SUBJECTS ANOTHER PERSON TO SEXUAL

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

4 IN THE VICTIMS TESTIMONY AT THE PRELIMINARY HEAR-
5 ING (PART II PG 38/16-40/2) AS WELL AS THE NIGHT IN QUESTION TO
6 RENO POLICE (PART II PGS. 52, PG. 87/37 TO 88/10) AND LATER WITH
7 DETECTIVE BLOOME AT THE INTERVIEW ON 3/19/07 (PART II PG. 112/49 TO
8 113/20 & 113/29-40). SHE CLAIMED TO HAVE HAD THE PETITIONER
9 SHOVE HIS PENIS INTO HER MOUTH LENGTH WISE 'MOUTH
10 OVER HEAD' AND SUBSEQUENTLY BIT AS HARD AS SHE
11 COULD REPEATEDLY. ASSURING DETECTIVE BLOOME THAT THERE
12 WOULD BE POSITIVE DNA TRANSFER. EXCEPT THE STATE
13 FAILED TO PRODUCE A REPORT FROM THE WASHOE COUNTY
14 SHERIFF'S OFFICE FORENSIC SCIENCE DIVISION DATED
15 MAY 21, 2007 (PART II PG. 58-59) A FULL FORTY-FOUR
16 DAYS PRIOR TO THE PRELIMINARY HEARING.. THAT REPORT
17 STATES "NO DNA FOREIGN TO THE SOURCE, BRENDAN DUNCKLEY,
18 WAS OBTAINED FROM THE GENITAL SWABS." NO DNA, THAT
19 IS EXTREMELY RELIANT, ADD TO THAT THE FACT THAT ON
20 THE NIGHT IN QUESTION WHICH JESSICA CLAIMED TO HAVE
21 BIT THE PETITIONER RPD OFFICER HEGALAR STATED "BRENDAN
22 HAD NO VISIBLE INJURY TO PENIS SHAFT, HEAD OR
23 BASE" (PART II PG 52). THE STATE KNEW PRIOR TO THE
24 PRELIMINARY HEARING THAT THE EVIDENCE IN FACT POINTED
25 TO THE EXACT OPPOSITE OF THE NRS DESCRIPTION TO
26 SUPPORT A CHARGE OF SEXUAL ASSAULT. NO DNA PLUS
56- 27 NO MARKS EQUALS NO PENETRATION WHICH EQUALS NO CRIME.
28 HAD DEFENSE GOTTEN THAT PRIOR TO THE PRELIMINARY HEARING
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1 AND NOT AS (PART II pg 58) SHOWS FEBRUARY 7, 2008, IT
2 WOULD HAVE BEEN ABLE TO CREATE REASONABLE DOUBT
3 AT THE PRELIMINARY HEARING, AND USE IT AS POSSIBLE
4 IMPEACHMENT EVIDENCE TO JESSICA. BUT BECAUSE THE
5 STATE DECIDED TO WITHHOLD THIS FAVORABLE EVIDENCE
6 WE MAY NEVER KNOW WHAT JUDGE ALBRIGHT WOULD
7 HAVE DECIDED IN REGARDS TO CASE NO. 2007-033534 AND
8 COUNT VI OF SEXUAL ASSAULT AGAINST JESSICA H.

9
10 3) ON APRIL 18, 2007 DETECTIVE TOM BROOME (RPD)
11 HAD A CONVERSATION WITH JENNY DUNCLEY, PETITIONERS EX-WIFE.
12 IN THAT CONVERSATION DETECTIVE BROOME WAS INFORMED THAT
13 SHE AND THE PETITIONER WERE MARRIED AND RESIDED TOGE-
14 THER UNTIL OUR MARRIAGE 'BROKE UP' IN JULY OF 1999. SHE
15 STATED THAT WE RESIDED IN OAKHURST CALIFORNIA IN MADERA
16 COUNTY UNTIL THEN AFTER COLLEGE. HE ALSO LEARNED
17 THAT WE MET IN NEW YORK AND HAD BEEN DIVORCED FOR
18 ABOUT 5 TO 6 YEARS. (PART II pg 128). HE ALSO OBTAINED A
19 MADERA COUNTY SHERIFF REPORT ON APRIL 19, 2007 (PART
20 II pg 129, 130) IN IT IT SHOWS PETITIONER RESIDED IN OAKHU-
21 RST, CALIFORNIA AT LEAST UNTIL JULY 19, 1999, THAT
22 INFORMATION IS RELEVANT BECAUSE COUNT ONE IN THE
23 ORDER OF CONVICTION IS LEWDNESS WITH A CHILD UNDER
24 14 YEARS, IN WHICH ASHLEY CLAIMED THAT BETWEEN
25 AUGUST 14, 1998 AND AUGUST 13, 1999 SHE AND THE
26 PETITIONER HAD CONSENSUAL SEX. (PART II pg 71/21 to 72/4; PART
-57- 27 III pg 45/19-21; PART III pg 47) BUT NOWHERE DURING HIS TEST-
28 IMONY ON JULY 2, 2007 DOES DETECTIVE BROOME MENTION THIS

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

6
7 4) PETITIONER'S COUNSEL DAVID C. O'MARA WAS IN
8 POSSESSION OF THIS REPORT BECAUSE DETECTIVE BROOME HAD
9 RELEASED IT TO PETITIONER'S EX-WIFE'S ATTORNEY KENNETH
10 BALLARD ON MAY 25, 2007 (PART II PG 115, 121) AND ENTERED
11 INTO CASE NO: CVO3749 AS EVIDENCE EXHIBIT D (SEE PART II
12 PG 111). PETITIONER PROVIDED COUNSEL DAVID C. O'MARA WITH
13 THIS REPORT AS WELL AS ORIGINAL DMV REGISTRATION FOR
14 FORD TAURUS, CULINARY INSTITUTE TRANSCRIPTS, (PART II PGS 86 to
15 90) AS WELL AS INTERNAL REVENUE RECORDS (PART II PG 91-99)
16 ALL CONFIRMING RESIDENCY DURING THE ALLEGED TIME FRAME
17 OF AUGUST 1998 to AUGUST 2000. CONFIRMATION OF HIS HAVING
18 THESE RECORDS IS HIS LETTER RETURNING THEM. (PART II PG 56-
19 57). YET AT NO POINT DID HE EVER USE THIS DOCUMENTATION
20 TO PROVE HIS CLIENT'S INNOCENCE.

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

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

3 PETITIONER HAS ATTEMPTED REPEATEDLY TO ALLOW THE
4 STATE TO TAKE IT UPON ITSELF TO CORRECT THE RECORD
5 AND WITHDRAW A CHARGE THEY KNOW TO BE SUPPORTED BY
6 PRESUDICIAL AND PERJURED TESTIMONY. AS WELL AS EVIDENCE
7 IT KNOWS CONTRADICTS A CONVICTION IN ATTEMPTED SEXUAL
8 ASSAULT KNOWING NO PENETRATION COULD HAVE OCCURRED.

9 BUT ALAS THE STATE STILL FEELS THAT THE CONVICTION
10 IS MORE IMPORTANT THAN SEEKING 'TRUTH' AND 'JUSTICE'

11 LIKE ITS SEAL STATES. SO THE PETITIONER NOW HUMBLY
12 REQUESTS THIS COURT TO GRANT HIM RELIEF THAT HE
13 DESERVES. FOX HAD ALL THIS EVIDENCE AND INFORMATION

14 COME FORWARD. IT WOULD AND DOES CAST DOUBT ON THE
15 CONFIDENCE OF THE CONVICTION AND THE MOTIVES OF THE
16 STATE AND DEFENSE COUNSEL BY OFFERING AND ALLOWING

17 A DEAL BASED ON FICTION, LIES AND UNSUPPORTED CHARGES.

18 PREJUDICING THE PETITIONER, WHO HAD HE BEEN AWARE OF

19 THIS HE WOULD HAVE INSISTED ON A TRIAL. BY THE SUPPORT-
20 ING FACTS IN THIS MATTER IT WOULD JUSTIFY VACATING ON THE

21) GROUNDS OF OBVIOUS VIOLATION OF PETITIONERS RIGHT TO

22 DUE PROCESS BY GROSS NEGLIGENCE AND INCOMPETENCE ON

23 THE PART OF BOTH THE PROSECUTION AND THAT OF THE

24 DEFENSE COUNSEL DAVID C. O'MARA.

25 THE PRIMARY PURPOSE OF BRADY REQUIREMENT DISCLOSURE OF EVI-
26 DENCE FAVORABLE TO THE ACCUSED IS NOT TO DISPLACE THE ADJUDICATORY SYST-

58- 27 EM AS THE PRIMARY MEANS BY WHICH TRUTH IS UNCOVERED BUT TO

28 ENSURE THAT A MISCARriage OF JUSTICE DOES NOT OCCUR AA000152

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

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SUPPORTING FACTS:

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1) A CONTRACT BY DEFINITION IS SIMPLY A PROMISE SUPPORTED

BY CONSIDERATION, WHICH ARISES, IN THE NORMAL COURSE OF EVENTS

CONTRACTS IN ITSELF MUST BE SUPPORTED BY VALID AND SUFFICIENT

CONSIDERATION IN ORDER TO BE BOTH VALID AND LEGALLY ENFORCEABLE

GENERALLY SPEAKING CONSIDERATION MUST FLOW FROM BOTH PARTIES INVOLVED.

AT NO POINT DID PETITIONER BENEFIT FROM THIS CONTRACT, IF ANYTHING,

IT PREJUDICED AND PUNISHED HIM.

A CONTRACT MAY BE RESCINDED ON THE GROUNDS OF FRAUD,

FAILURE TO DISCLOSE FACTS, MISREPRESENTATION OF FACTS, COERSION, AND

BREACH OF CONTRACT, IT MUST BE NOTED THAT IN THE CASE OF THE

MISREPRESENTATION OF FACTS INVALIDATING A CONTRACT IT MAY CONSIST

IN DECEPTIVE CONDUCT AS WELL AS WORDS.

BECAUSE THE GUILTY PLEA MEMORANDUM AS WAS USED IN

PETITIONER'S CASE IS COVERED BY THE STANDARD PRACTICE OF

CONTRACT LAW ANALYSIS, TEMPERED WITH THE AWARENESS OF DUE

PROCESS CONCERNS FOR BOTH FAIRNESS AND ADEQUACY. AS WITH

ANY CONTRACT. IN WHICH THE DRAFTING PARTY HAS OVERWHELMINGLY

SUPERIOR BARGAINING POSITION, PLEA AGREEMENTS ARE TO BE CONSTRUED

STRICTLY AGAINST THE GOVERNMENT.

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

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

3 IN REGARDS THAT INFORMATION IT SHOULD BE ASSUMED THAT
4 AS A COMPETANT REPRESENTATIVE OF THE STATE ADA VILORIA KNEW
5 THAT AS THE PROSECUTING ATTORNEY SHE HAD AND STILL HAS A DUTY
6 TO LEARN OF ANY FAVORABLE EVIDENCE KNOWN TO OTHERS ACTING
7 ON BEHALF OF THE GOVERNMENT IN THE CASE, INCLUDING THE POLICE.
8 SO WITH THAT BEING SAID AND THAT WOULD MEAN EITHER ONE OF TWO
9 THINGS HAVE IN FACT OCCURED IN THIS CASE. EITHER ONE, ADA VILORIA
10 IN FACT FAILED TO OBTAIN THE EXCULPATORY EVIDENCE PROVING ACTUAL
11 AND FACTUAL INNOCENCE TO THE SPECIFIC ALLEGATIONS IN COUNT ONE,
12 DEEMING THE 'CONTRACT' NULL AND VOID ON THE BASIS THAT IT WAS
13 NOT CREATED WITH FULL KNOWLEDGE OF THE FACTS IN QUESTION. OR,
14 SECOND, THE FACT THAT ADA VILORIA DID IN FACT KNOW OF THE RPD
15 REPORT AND STILL PROCEEDED FOWARD ON A CHARGE SHE KNEW WAS
16 IN THE LEAST SUPPORTED BY PERTURED TESTIMONY, THAT SHE CONTINUALLY
17 FAILED TO CORRECT, AND EAGERLY PERSEVED A DEAL STILL INCLUDING
18 COUNT ONE, THAT BEING THE CASE RENDERS THE DEAL VOID AND
19 SUBJECT TO RELIEF, BECAUSE ADA VILORIA KNOWINGLY AND INTENTIONALLY
20 ENTERED AND CREATED A CONTRACT DENING PETITIONERS OF SUBSTANTIAL
21 CONSTITUTIONAL RIGHTS, WITH THE EXPLICIT INTENT TO DECEIVE AND TO
22 DEFRAUD PETITIONER. IN ADDITION EITHER BY INTENTIONALLY OR BY MEANS
23 OF NEGLIGENCE BY MISREPRESENTING OF THE FACTS IT LED TO THE
24 DETREMENT OF THE PETITIONER, AS WELL AS PREJUDICE,
25

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

1 OF SAID CONTRACT AT THE SENTENCING HEARING. PETITIONER
2 SIGNED THE CONTRACT IN GOOD FAITH, GIVING UP NUMEROUS
3 CONSTITUTIONAL RIGHTS, SO THE QUESTION IS TO REVIEW THE
4 MUTUAL CONSIDERATIONS EQUALLY BENEFITING BOTH PARTIES. THE
5 STATE BENEFITED BY OBTAINING A GUILTY PLEA, AND A RESULTING
6 CONVICTION, BUT THE PETITIONER HAD HE GONE TO TRIAL WOULD
7 FACE THE POSSIBILITY OF TEN YEARS TO LIFE IN COUNT ONE AND
8 TWO TO TWENTY YEARS IN COUNT TWO. AT THE TIME OF SIGNING
9 AND ENTERING PLEA, PETITIONER HAD THE BELIEF, BY BOTH
10 THE WRITTEN ADDITIONS TO THE DEAL (ps 14/200) AS WELL
11 AS THE COMMENTS OF ADA VILORIA AT THE HEARING ON MARCH
12 6, 2008 "MY AGREEMENT IS JUST TO SEE IF THIS DEFENDANT IS
13 WORTHY OF ANY TYPE OF GRANT OF PROBATION. WHETHER HE CAN
14 EARN IT OR NOT. I WANT TO SEE WHAT HE DOES BETWEEN NOW
15 AND THEN" (ps 29/8-10) PETITIONER ABIDED BY ALL ASPECTS OF
16 THE DEAL, BUT AT SENTENCING THAT ABIDING BY THE DEAL
17 WAS CALLED POSTURING BY THE STATE TO THE COURTS. (ps 47/8)
18 PETITIONER KEPT AND FULLY HONORED HIS SIDE OF THE DEAL.
19 ALL THE WHILE THE ADA KNEW THAT SHE HAD NO INTENTION
20 ON HONORING THE OPTION OF PROBATION. IN FACT SHE WENT AS
21 FAR AS ARGUING AGAINST THE PSI RECOMMENDATION OF TWO.
22 TO FIVE YEARS FOR COUNT TWO, (ps III 49/2-5) BY ARGUING AND
23 ADIMATLY CAMPAIGNING FOR TWENTY YEARS. SHE FOUGHT FOR,
24 SUGGESTED AND RECOMMENDED FOR EXACTLY WHAT PETITIONER WOULD
25 HAVE BEEN FACING HAD HE GONE TO TRIAL WITH A JURY. EXCEPT
26 THE STATE (ADA VILORIA) KNOWINGLY MANIPULATED THE "CARROT"
27 OF PROBATION KNOWING IT TO BE FALSE, DECEIVING PETITIONER AND
28 DENING HIM HIS RIGHT TO DEFEND HIMSELF PROPERLY.

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

9
10 4) IN PARAGRAPH SEVEN (7) (pg 13) OF THE GUILTY PLEA MEMOR-
11 ANDUM THE STATE ADDED A LINE TO THE DEAL THAT WAS NOT
12 PART OF THE ORIGINAL CONSTRUCTION. IT STATED "INCLUDING ALL
13 COUNTS FILED AND DISMISSED IN RJC CASE NUMBER 2007-033884," BY ADDING
14 THAT THE STATE, AGAIN BEING CONSIDERED FULLY COMPETENT AND
15 HELD TO A HIGHER STANDARD, KNEW OR SHOULD HAVE KNOWN THAT
16 DUE PROCESS PROHIBITS A PROSECUTOR FROM REFILE CHARGES ONCE
17 DISMISSED FOR INSUFFICIENT EVIDENCE UNLESS THE PROSECUTOR CAN
18 PROVE EITHER, THAT NEW EVIDENCE PREVIOUSLY UNAVAILABLE HAS
19 SURFACED OR, THAT IT CAN SHOW GOOD CAUSE OTHERWISE EXISTS TO
20 JUSTIFY THE REFILE OF THE CHARGES. THE DISMISSED CHARGES/COUNTS
21 IN RJC 2007-033884 WERE ALL DISMISSED ON GROUNDS OF
22 INSUFFICIENT EVIDENCE TO ESTABLISH PROBABLE CAUSE, THE BASIC LEVEL
23 OF A CRIMINAL CHARGE. BY THE PETITIONER NOT BEING EDUCATED IN
24 THE AREA OF LAW AND CONSIDERED A LAYMEN, WOULD ONLY LOOK
25 AT THIS AS A NOTICE THAT IF DEAL IS NOT ACCEPTED IT WOULD
26 MEAN THE OTHER CHARGES WOULD BE FILED AND REFILE. REFI-
27 LING A MISREPRESENTATION OF FACTS, FALSE PRETENSE, AND SLIGHT
28 COERSION FOR IF IT CAN, AND WAS TAKEN AS A THREAT OF FURTHER
AA000157

1 CRIMINAL PROSECUTION IF DEAL WAS NOT ACCEPTED. IN THE
2 ADDITION TO FALSE PRETENSE IT SHOWED INEFFECTIVE ASSISTANCE
3 OF COUNSEL FOR DEFENSE NOT CATCHING THE INTENTIONAL MISREP-
4 RESENTATION OF FACTS BUT AGREEING TO IT AND ADVISING PETITIONER
5 IN FAVOR OF IT. THE ADDITIONAL STATEMENT ADDED TO THE 'DEAL'
6 ON pg 14/2 STATING "AND ALLOW ME THE OPPORTUNITY TO QUALIFY FOR
7 PROBATION WHICH WOULD OTHERWISE BE UNAVAILABLE", COULD AND
8 IS CONSIDERED DECEPTIVE CONDUCT BY BOTH THE WORDS AND
9 ACTS OF ADA VILORIA AT SENTENCING HEARING ANAMANTLY
10 FIGHTING AGAINST THE SLIGHT POSSIBILITY OF PROBATION. (pg 44/10-
11 pg 48/7-8 & 14/19-20). (SEE PT. III)
12

13 5) DURING THE SENTENCING HEARING ADA VILORIA ATTESTED
14 REPEATEDLY TO PETITIONERS HAVING AN EXTENSIVE AND SUBSTANTIAL
15 HISTORY OF INAPPROPRIATE AND CRIMINAL BEHAVIOR SPANNING TEN
16 (10) YEARS OF CRIMES. (SEE 43/24 to 44/1; 45/12; 46/4-6). YET
17 THE STATE ADDED IN PARAGRAPH TEN (10) (pg 14) OF THE 'DEAL' THE
18 FOLLOWING: "I REPRESENT I DO NOT HAVE A CRIMINAL RECORD." SO IN
19 THIS MATTER THE QUESTION IS WHICH CONTENTION AND CLAIM IS THE
20 STATE SIDING WITH. EITHER PETITIONER IS A HABITUAL MASTER
21 CRIMINAL WITH TEN YEARS OF ALLEGATIONS AND ATTACKS THAT
22 THE POLICE HAVE BEEN INVESTIGATING HIM FOR, DEMANDING HIS
23 INCARCERATION. AND YET, BY THAT ARGUMENT, AT SENTENCING, IT
24 MAKES THE ADDITION OF THAT STATEMENT TO BE FRAUDULANT AND
25 A GROSS MISREPRESENTATION OF FACTS AND A BLATANT FAILURE TO
26 DISCLOSE FACTS, NAMELY PETITIONER'S CRIMINAL HISTORY. OR, THE STATE
27 NAMELY ADA VILORIA IN FACT MADE STATEMENTS SHE KNEW TO
28 BE BOTH FRAUDULANT AND NOT SUPPORTED BY FACTS, RECORD, OR BY
AA000158

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

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

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

23
24 SUPPORTING FACTS:

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

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

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

2 THE EVIDENCE THAT PETITIONER HAS REFERRED TO
3 NUMEROUS TIMES PROVING THAT BETWEEN AUGUST 14, 1998 AND
4 AUGUST 13, 1999, HE DID NOT RESIDE IN RENO, NEVADA. SO
5 IT WOULD BE IMPOSSIBLE FOR ASHLEY TO HAVE SPENT
6 THE NIGHT AT MY HOME AND I DRIVE HER HOME THE
7 NEXT MORNING ON LONGLEY LANE, WHERE THE ALLEGED
8 INCIDENT OCCURED. (PART II PG 73/560 74/2). FROM 11/11/1996
9 UNTIL 2/23/99 PETITIONER WAS IN HYDE PARK, NEW YORK ATTENDING
10 THE CULINARY INSTITUTE OF AMERICA. (PART II PG 89-90)
11 AS WELL AS IN 1998 PETITIONER WAS EMPLOYED AT THE
12 CULINARY INSTITUTE AND ALSO AT MARINE HARBOR IN RED
13 HOOK, NEW YORK. (PART II PG 94) IRS PAPERWORK GOING FROM
14 2000 WHEN PETITIONER FIRST CAME TO RENO. ESTABLISHED
15 EMPLOYMENT AND RESIDENCE VERIFICATION (PART II PAGES 91-99)
16 OVER THE YEARS OF 2000 UNTIL 1997. THE ENTIRE TIME THAT
17 PETITIONER WAS MARRIED TO JENNY DUNKLEY, DMV RECORD
18 OF THE FORD TAURUS REFERED TO BY ASHLEY (PART II PG. 66/22)
19 BUT THAT VEHICLE WAS NOT PURCHASED UNTIL 6/5/2000 (PART II
20 PGS 86-88). THEN ALSO THAT ON AUGUST 16, 1999 PETITIONER
21 WAS SERVED WITH DIVORCE PAPERS AT HIS RESIDENCE IN
22 FRESNO, CALIFORNIA AT 255 EAST NEEB # 257 AT 2:45 PM
23 (SEE PART II PG. 102-104) ALSO IRS VERIFICATION (PART II PG 93)

24 ALL THIS DOCUMENTED VERIFIABLE DOCUMENTATION BY
25 BOTH STATE COURTS, FEDERAL AND STATE AGENCIES AND A RESPECTED
26 ACCREDITED COLLEGE PROVE IT IS IMPOSSIBLE FOR PETITIONER TO
68- 27 HAVE COMMITTED ANY CRIME IN RENO BETWEEN AUGUST 14
28 1998 AND AUGUST 13, 1999. (SEE PART II PGS 70/216 72/4). AA000161

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

1 ATTENTION FROM THE PEOPLE WATCHING HIM OR THE POLICE WHO
2 ARRIVED QUICKLY ON SCENE. NO, THE OBVIOUS TRUTH IS THAT
3 WITH NO DNA AND THE COMMENT BY RPD OFFICER HEGLAR
4 "NO VISIBLE INJURY TO BRENDAN'S PENIS SHAFT, HEAD OR BASE"
5 (PART IV pg. 52) IT PROVES NO SEXUAL (GENITAL) CONTACT HAD
6 OCCURRED LET ALONE THE NECESSARY ELEMENT OF PENETRATION
7 EVEN TO STATE ATTEMPTED WOULD STILL REQUIRE SOME
8 CONTACT IN A SEXUAL NATURE AS JESSICA CLAIMS.
9 3) AS SHOWN THROUGHOUT THIS ENTIRE PETITION WITH
10 THE OBVIOUS INEFFECTIVENESS OF APPOINTED COUNSEL DAVID C O'M-
11 ARA, THE MISREPRESENTATION OF FACTS AND INAPPROPRIATE BEHAV-
12 IOR OF ADA VILORIA AND DETECTIVE TOM BRUOME. BY THE
13 BLATANT VIOLATION OF THE PETITIONER'S FOURTH AND FIFTH AMEND-
14 MENTS BY DETECTIVE BRUOME ILLEGALLY OBTAINING TESTIMONY/STATE-
15 MENTS FROM PETITIONER, LEADING TO EVIDENCE AND INFORMATION THAT
16 SHOULD BE DEEMED INADMISSIBLE FRUITS OF A POISONOUS TREE, TO
17 THE STATES LACK OF SUBJECT MATTER JURISDICTION IN COURT ONE, LACK OF
18 ANY INVESTIGATING ON THE PART OF BOTH THE STATE AND ALSO BY
19 DEFENSE COUNSEL DAVID C. O'MARA, THE INSUFFICIENT EVIDENCE TO
20 SUPPORT ANY OF THE CURRENT CHARGES UNDER ATTACK, BUT KNOW-
21 ING THAT IT HAD EVIDENCE DAMAGING TO THE STATES CASE FAILING
22 TO EVER BRING IT FORWARD. A OBSENE VIOLATION OF CONTRACT
23 LAW WITH A HUGE BREACH OF CONTRACT, ALL OF THIS ADDS
24 UP TO SERIOUS PREJUDICE TO THE EXTREME DETRIMENT OF
25 THE PETITIONER. WARRANTING IN THE LEAST RELIEF TO...
26 SET ASIDE THE GUILTY PLEA MEMORANDUM, DISMISS GROUND
-70- 27 ONE FOR ACTUAL INNOCENCE, AND COURT TWO FOR WITH
28 NO DNA & NO MARKS = NO PENETRATION / CONTACT = NO CRIME. Court Two
AA000163

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

23 24 CONCLUSION

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

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

13 TO ASSERT AND SHOW/PROVE INEFFECTIVE ASSISTANCE OF
14 COUNSEL TWO FACTORS MUST BE SHOWN. FIRST, IS THAT THE CON-
15 DUCT AND ACTIONS OF COUNSEL FELL BELOW THE STANDARD OF
16 CONDUCT THAT REASONABLY COMPETANT ATTORNEYS JUDGE THEMSELVES,
17 AND THE SECOND, IS THAT SUCH CONDUCT PREJUDGED THE DEFEN-
18 DANT AND A REASONABLE PROBABILITY EXISTS THAT BUT FOR
19 COUNSEL'S UNPROFESSIONAL ERRORS THE RESULTS OF THE PROCEEDINGS
20 WOULD HAVE BEEN DIFFERENT. A REASONABLE PROBABILITY IS A
21 PROBABILITY SUFFICIENT TO UNDERMINE THE CONFIDENCE IN THE
22 OUTCOME. IN PAGES 5 TO 27 OF THIS PETITION THERE ARE
23 SIXTEEN DIFFERENT AREAS WHERE COUNSEL FELL BELOW THE
24 'BAR'. SUPPORTED BY (PART II PGS 1 TO 60) HIS PERFORMACE AT
25 SENTENCING (PART III PG 33-61) AND HIS OBVIOUS UNPREPAREDNESS AT
26 THE PRELIMINARY HEARING (PART II PGS 1-123). ALL HIS ACTIONS AND
-72- 27 LACK OF ANY INVESTIGATION, REQUEST FOR MONEY TO COPY FILES
28 (PART II PG 26, 29, 30) PROVING HIS INEXPERIENCE BY FILING THE

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

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

20 BY THE STATE'S INAPPROPRIATE BEHAVIOR AND INTERJECTION
21 OF COMMENTS NOT SUPPORTED BY RECORD SHOWS AND ALSO
22 JUSTIFIES THE CLAIM AND FINDING OF PROSECUTORIAL MISCONDUCT
23 INCLUDING ALL THE ACTIONS OF DETECTIVE TOM BROWNE, ADA
24 VITORIA'S FAILURE TO REMEMBER NO RULE GOVERNING ORAL ARGUMENT
25 IS MORE FUNDIMENTAL THAN THAT REQUIRING COUNSEL TO CONFINE
26 REMARKS TO MATTERS IN EVIDENCE STATING MATTERS NOT IN EVI-
-73- 27 DENCE IS CLEARLY IMPROPER AND SHOWS PROSECUTORIAL MISCONDUCT.
28 ALL THE COMMENTS (PART III PG 43/24-44/5; 46/4-6; 49/13-16; 50/2-3)

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

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

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

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

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

1 WHEREFORE, PETITIONER PRAYS THAT THE COURT GRANT...
2 PETITIONER RELIEF TO WHICH HE MAY BE ENTITLED IN THIS
3 PROCEEDING, ALSO WHAT RELIEF THE COURT DEEMS APPROPRIATE.
4
5 EXECUTED AT LOVELOCK CORRECTIONAL CENTER, LOVELOCK,
6 NEVADA ON THE 15TH DAY OF JULY, 2009.

7
8 *Brendan Thomas Dinchley*

9 BRENDAN THOMAS DINCKLEY, PETITIONER

10 BAC. NO. 1023236

11 Address: L.C.C.

12 1200 PRISON ROAD

13 LOVELOCK, NEVADA 89419
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AFFIRMATION

(PURSUANT TO NRS. 239B.030)

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

PART NO: I

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

-OR-

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

-OR-

_____ FOR THE ADMINISTRATION OF A PUBLIC PROGRAM

-OR-

_____ FOR THE APPLICATION OF A FEDERAL OR STATE GRANT

-OR-

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

DATED: 7/15/09



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

ATTORNEY: PRO PER

ORIGINAL

FILED

2010 MAR 23 PM 12:47

FORWARDED BY

BY *[Signature]*
DEPUTY

Code: 4100
ROBERT W. STORY, ESQ., Bar No. 6835
STORY LAW GROUP
245 East Liberty Street, Suite 530
Reno, Nevada 89501
Telephone: (775) 284-5510
Facsimile: (775) 284-0800

Attorneys for Petitioner Brendan Dunckley

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

BRENDAN DUNCKLEY

Petitioner,

Case No. CR07P1728

vs.

Dept. No. 4

STATE OF NEVADA, et al.,

Respondents.

SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS

(Post Conviction)

Petitioner Brendan Dunckley, through his appointed counsel Robert W. Story, hereby files the following Supplemental Petition for Writ of Habeas Corpus (Post Conviction).

Mr. Dunckley alleges as follows, incorporating by reference his original and amended Petitions for Writ of Habeas Corpus (Post Conviction):

CURRENT CUSTODY

(1) Mr. Dunckley is currently incarcerated in the Lovelock Correctional Center, 1200 Prison Road, Lovelock, Nevada 89419 pursuant to a Judgment entered on August 11, 2008, by District Judge Connie J. Steinheimer of the Second Judicial District Court, Washoe County, Nevada.

(2) The District Court sentenced Mr. Dunckley to serve life in prison with the minimum

CR07P1728
POST BRENDAN DUNCKLEY (04 13 Pages
District Court
Washoe County
4100
SS11004E

1 parole eligibility of ten years for Count I and a concurrent ten years with a minimum parole
2 eligibility of twenty-four months for Count II. The District Court gave Mr. Dunckley credit for four
3 days time served.

4 PROCEDURAL HISTORY AND STATEMENT OF FACTS

5 A. Justice Court

6 (3) On April 5, 2007, the State filed a Criminal Complaint against Mr. Dunckley in Reno
7 Township Justice Court, charging him as follows: Count I Sexual Assault a violation of NRS
8 200.366 a felony.

9 (4) On April 16, 2007, the State filed an Amended Criminal Complaint against Mr.
10 Dunckley in Reno Township Justice Court, charging as follows: Count I Sexual Assault on a Child a
11 violation of NRS 200.366 a felony; Count II Lewdness with a Child Under the Age of Fourteen
12 Years a violation of NRS 201.230 a felony; Count III Statutory Sexual Seduction a violation of NRS
13 200.364 and NRS 200.368; Count IV Lewdness with a Child Under the Age of Fourteen Years a
14 violation of NRS 201.230; Count V Sexual Assault a violation of NRS 200.366; Count VI Sexual
15 Assault a violation of NRS 200.366; Count VII Sexually Motivated Coercion a violation of NRS
16 207.190 and NRS 207.193

17 (5) On April 20, 2007 Defendant appeared before Pro Tem Judge Jenny Hubach and was
18 duly arraigned, advised of rights and informed of Complaint. The Justice of the Peace set the
19 preliminary examination for May 2, 2007, and continued Mr. Dunckley's bail.

20 (6) On April 20, 2007, Mr. Dunckley requested appointment of Washoe County Public
21 Defender.

22 (7) On May 7, 2007 Conflict Attorney David O'Mara was appointed to represent Mr.
23 Dunckley.

24 (8) On July 2, 2007, Mr. Dunckley appeared together with attorney David O'Mara before
25 Justice of the Peace Harold Albright for the preliminary examination. The State was represented by
26 David Clifton. The State amended the Complaint by interlineation to conform to evidence. The
27 Justice of the Peace found probable cause to believe the offenses set forth in the Criminal Complaint
28 Counts I, II, III and VI were committed and there was probable cause that Mr. Dunckley participated

1 as the principal in such offenses. Mr. Dunckley was bound over to answer in the Second Judicial
2 District Court of the State of Nevada. The Court found insufficient probable cause to believe the
3 offenses set forth in the Criminal Complaint Counts IV, V and VII were committed and/or there was
4 insufficient probable cause that Mr. Dunckley participated as principal in such offenses. Accordingly
5 the Justice of the Peace dismissed Counts IV, V and VII.

6 **B. District Court**

7 (9) On July 12, 2007, the State filed in The Second Judicial District Court an Information
8 against Mr. Dunckley charging as follows: Count I Sexual Assault on a Child a violation of NRS
9 200.366; Count II Lewdness With a Child Under the Age of Fourteen Years a violation of NRS
10 201.230; Count III Statutory Sexual Seduction a violation of NRS 200.364 and 200.368; Count IV
11 Sexual Assault a violation of NRS 200.366

12 (10) On February 28, 2008, the State filed against Mr. Dunckley in the District Court an
13 Amended Information charging as follows: Count I Lewdness with a Child Under the Age of
14 Fourteen Years a violation of NRS 201.230; Count II Attempted Sexual Assault a violation of NRS
15 193.330 being an attempt to violate NRS 200.366 a felony.

16 (11) On March 6, 2008, Mr. Dunckley pleaded guilty to Count I Lewdness with a Child
17 Under the Age of Fourteen Years a violation of NRS 201.230; Count II Attempted Sexual Assault a
18 violation on NRS 193.330 being an attempt to violate NRS 200.366, pursuant to a Guilty Plea
19 Memorandum in the District Court. District Judge Connie J. Steinheimer accepted Mr. Dunckley's
20 guilty pleas and set sentencing for August 5, 2008, sufficient time to allow Mr. Dunckley the
21 opportunity to attend counseling sessions so that he would be able to show he was a likely candidate
22 for probation.

23 (12) On August 11, 2008, the District Judge entered Judgment against Mr. Dunckley as
24 follows: Count I, Lewdness with a Child Under the Age of Fourteen, NRS 200.230 – imprisonment
25 in the Nevada Department of Prisons for the maximum term of Life with the minimum parole
26 eligibility of 10 years; Count II, Attempted Sexual Assault, NRS 193.330 and NRS 200.366 –
27 imprisonment in the Nevada Department of Prisons for the maximum term of One Hundred Twenty
28 Months with the minimum parole eligibility of 24 months for Count II to be served concurrently

1 with sentence imposed in Count I with credit for four days time served.

2 **C. Nevada Supreme Court**

3 (13) On November 19, 2008, the Nevada Supreme Court entered an Order Conditionally
4 Imposing Sanction against Mr. O'Mara. And on November 20, 2008, the Nevada Supreme Court
5 returned as unfiled Appellant's Fast Track Appeal Statement.

6 (14) On January 8, 2009, Mr. O'Mara filed Appellant's Opening Brief filed in the Nevada
7 Supreme Court; on January 20, 2009, the State filed Respondent's Answering Brief; and on March
8 12, 2009, Mr. O'Mara filed Appellant's Reply Brief.

9 (15) On March 21, 2009, the Order Submitting for Decision Without Oral Argument was
10 filed in the Supreme Court.

11 (16) May 8, 2009, the Nevada Supreme Court entered an Order of Affirmance of the
12 Judgment.

13 **D. Petition for Writ of Habeas Corpus (Post Conviction)**

14 (17) On July 21, 2009, Mr. Dunckley filed his Petition for Writ of Habeas Corpus (Post
15 Conviction).

16 **Request For An Evidentiary Hearing**

17 Mr. Dunckley respectfully requests that this Court grant an evidentiary hearing on the
18 allegations in his Petition and Supplemental Petition in order to properly and fully develop the
19 following claims to demonstrate that Mr. Dunckley's conviction and sentence are unconstitutional.

20 **Ground One:** Petitioner Dunckley received ineffective assistance of counsel in pre-
21 trial proceedings and sentencing in violation of the Constitution and Laws of Nevada and the United
22 States Constitution. Nev. Const. Art. 1, §§ 3, 6 & 8; United States Constitution, Amendments V, VI,
23 VIII & XIV.

24 **Supporting Facts:**

25 (1) The State charged Mr. Dunckley with counts of Sexual Assault on a Child, Lewdness
26 with a Child under the Age of Fourteen Years, Statutory Sexual Seduction, and Sexual Assault.

27 (2) Mr. Dunckley provided his attorney with physical evidence, including school
28 enrollment and attendance documentation and DMV records, to corroborate his alibi that he was not

1 in the State of Nevada at the time some of the crimes were alleged to have occurred and provided his
2 attorney with alibi witnesses that could corroborate his whereabouts. Mr. Dunckley's attorney failed
3 to seek funds to conduct an investigation and failed to independently conduct such investigation
4 about the alleged underlying crimes or his alibi defense and failed to interview any witnesses in
5 support of his alibi defense.

6 (3) In addition, there was no corroborating evidence in support of the alleged crimes of
7 Sexual Assault on a Child, Lewdness with a Child under the Age of Fourteen Years, Statutory
8 Sexual Seduction, and Sexual Assault. In fact, there was a stunning lack of evidence – there was no
9 DNA; there were no bite marks; and there were no physical or psychological examinations
10 conducted of any of the victims. To make matters worse, one of the victims had a blood alcohol
11 content of 0.226 at the time of one of the alleged crimes. Finally, some of the crimes were alleged to
12 have occurred years prior to the State bringing charges against Mr. Dunckley. Accordingly, the
13 evidence in support of the alleged crimes consisted of the testimony of the alleged victims; and that
14 testimony was highly suspect, but crucial for a conviction at trial. Mr. Dunckley's attorney failed to
15 independently interview any of the victims.

16 (4) In *Warner v. State of Nevada*, 102 Nev. 635, 729 P.2d 1359 (1986), the Nevada
17 Supreme Court held that trial counsel who failed to conduct a pretrial investigation and failed to
18 interview victims in a case involving charges of lewdness with a child under the age of fourteen
19 years and sexual assault denied his client his Sixth Amendment right to the effective assistance of
20 counsel, left his client without a defense, and was so deficient as to render the trial result unreliable.

21 (5) The Sixth Amendment to the United States Constitution guarantees to a defendant the
22 right to effective assistance of counsel in a criminal prosecution. *McMann v. Richardson*, 397 U.S.
23 759, 771 n. 14 (1970); *Strickland v. Washington*, 466 U.S. 668 (1984); *Kirksey v. State*, 112 Nev.
24 980, 923 P.2d 1102 (1997). That right applies to both retained and appointed counsel. *Cuyler v.*
25 *Sullivan*, 446 U.S. 335 (1980). That right also applies at both the guilt and penalty phases.
26 *Strickland, supra*; *Paine v. State*, 110 Nev. 609, 877 P.2d 1025 (1994).

27 (6) This claim is of obvious merit. Mr. Dunckley's attorney failed to conduct a pretrial
28 investigation into the alleged underlying crimes or into any potential mitigating circumstances or

III. PLEA NEGOTIATIONS

The State will be free to argue for an appropriate sentence. The State will not file additional criminal charges resulting from the arrest in this case, and/or will refrain from pursuing additional and/or transactionally related offenses including all counts filed and dismissed in RJC case number 2007-033884. I understand that I am entering my plea to Count I as a legal fiction, pursuant to plea negotiations, to allow me to avoid the more serious charge of sexual assault in the original Count I, and to allow me the opportunity to qualify for probation, which would otherwise be unavailable. Full restitution.

XI. CUSTODY STATUS/CREDIT FOR TIME SERVED

Custody Status: Released on bail.

CTS: 3/30/07 - 3/31/07 = 2 days

4/30/07 - 5/01/07 = 2 days

Total = 4 days

XII. RECOMMENDATIONS

FEES

Administrative Assessment: \$25.00

Chemical/Drug Analysis N/A

DNA: \$150.00

Domestic Violence: N/A

Psychosexual fee: \$950.00

Attorney fee: \$500.00

COUNT I SENTENCE

Minimum Term: N/A

Maximum Term: For life with the possibility of parole, with eligibility of parole beginning when a minimum of 10 years has been served.

Location: NDOC

Consecutive to/Concurrent With: N/A

Probation Recommended: No

Probation Term: N/A

Fine: N/A

Restitution: N/A

COUNT II SENTENCE

Minimum Term: 24 months

Maximum Term: 60 months

Location: NDOC

Concurrent With: Count I

Probation Recommended: No

Probation Term: N/A

Pursuant to NRS 176.0931, the Instant Offense requires that an additional sentence of Lifetime Supervision be imposed.

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PRESENTENCE INVESTIGATION REPORT
BRENDAN DUNCKLEY
CC#: CR07-1728

Page 10

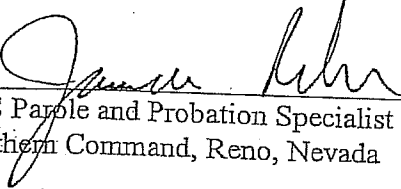
Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

X Pursuant to NRS 239B.030, the undersigned hereby affirms this document contains the social security number of a person as required by NRS 176.145.

Respectfully Submitted,

BERNARD W. CURTIS, CHIEF

Prepared by: James M. Rountree


DPS Parole and Probation Specialist IV
Northern Command, Reno, Nevada

//jr/rpf

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DEFENDANT'S STATEMENT


Write in your own words the circumstances of your offense, why you committed the offense, your present feelings about your situation, and why you may be suitable for probation. A copy of this statement will be sent to the judge. Write or print clearly. If using a pencil, please write as dark as possible.

During the last few years I have done things that I never meant to do, Nor at the time ever attempted to hurt anyone. While being a older role model to a gangster friend I took advantage of the trust she had in me and completely violated the bond we had as friends. Unfortunately I should have taken the adult approach to her being attracted to me and stopped it there. But, I Allowed myself to be selfish and act on those feelings not taking into consideration how my actions would affect not only her & myself but those around us both. What I did was wrong and I truly felt horrible about it, Vowing that it would never happen again. And IT NEVER DID.

IN my whole life I was raised to Always Help people in need. On one night in MARCH 2007 while driving home I saw someone in need of help. so I followed behind in my car to make sure she got home safe. When I realized she needed assistance I helped her into her apartment. While making sure she was okay she got affectionate and tried to "thank" me when she reached down my pants I did not stop her till I realized what was going on as she tried to pull at my penis I got up and she screamed "rape". She was drunk and not in a clear state of mind. I was so I NEVER should have let anything remotely happen. I Allowed a situation to get out of control.

Allowing these offenses to happen makes me feel sick knowing that I had the option to not do anything but did not stop and think it through. I wish it didn't take possible prison time to see that I need to work out personal issues to get to the bottom of why these things happen.

Signature

Brendan 

Date

3/26/08

(Con't)

Being that prior to the last year I have had very minor brushes with the law & the courts. I have tried to establish myself a good reputation in the community as an upstanding member of society. I feel that probation would be suitable for the fact I have no history of violence, substance abuse. I made mistakes and am taking responsibility for them. I am the sole financial support to my family and feel that I can be of better use to them providing & working hard to prove that I will never put myself in a situation that makes anyone feel less than they deserve to feel. I know that this is something that I will have to prove every day for the rest of my life.

I would like the opportunity to show everyone that I can make this better by my actions. I know that it is going to be tough but I pray that I can be in my children's lives. We are a very close family. My children cry when I come home late from work, I can only imagine what will happen if I went to prison.

Therefore I would greatly appreciate the opportunity to prove that I can make a difference. Knowing that at any time I can be put in prison if I violate any conditions of my probation.

Brendan Dineley

3/26/08



ROBERT P. STUYVESANT, M.S.W.

Licensed Clinical Social Worker
Licensed Marriage & Family Therapist

PSYCHOSEXUAL EVALUATION/RISK ASSESSMENT

NAME: Dunckley, Brendon

DATE OF BIRTH: 7/4/1976

CURRENT AGE: 31 Years, 9 Months

ETHNICITY: Caucasian, Male

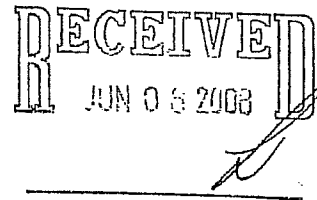
RESIDENCE: Reno, Nevada

CURRENT STATUS: Mr. Dunckley resides in Reno, Nevada; he is scheduled for sentencing on two charges: Lewdness with a Child Under the Age of Fourteen Years; Attempted Sexual Assault.

DATE OF ASSESSMENT: 05/21/08; 5/29/08

DATE OF REPORT: 6/4/08

REFERRAL SOURCE: State of Nevada, Division of Parole and Probation



REASON FOR REFERRAL/PRESENTING INFORMATION:

Mr. Dunckley is a 31-year-old Caucasian male charged with Lewdness With a Child under the Age of Fourteen Years, a violation of NRS 201.230, and Attempted Sexual Assault, a violation of NRS 200.366; both felony charges. Mr. Dunckley entered a guilty plea in Washoe County District Court, Reno, Nevada to both charges on March 4th, 2008 and sentencing is scheduled for August 5th, 2008. In regard to the lewdness charge, the guilty plea memorandum states that "on or between August 14th, 1998 and August 13th, 2000, or thereabouts, Mr. Dunckley did willfully and unlawfully commit a lewd or lascivious act upon or with the body of (identified victim), a female child under the age of fourteen years at the time that the said act was committed, in that he engaged the victim in sexual intercourse in Reno, Washoe County, Nevada, and/or put his hand down her pants to fondle her genital area in an elevator at the Atlantis Hotel and Casino, Reno, Nevada with the intent of

Dunckley, B.

Page 1

arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or the child". Regarding the attempted sexual assault charge, the memorandum stipulates that "on March 10th, 2007, he attempted to subject (identified second victim) to sexual penetration against the victim's will, and /or under conditions in which he knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of the conduct, to wit, fellatio in Reno, Nevada". The victim in the first offense is identified as an acquaintance, and records indicate she was 12 to 14 years old during the time frame identified in the guilty plea memorandum. The second victim was an adult female, identified as a stranger to Mr. Dunckley. He was arrested March 20th, 2007 for the attempted sexual assault charge. He was detained, posted bail the same day and was released. He was arrested again on March 30th, 2007 on the lewdness charge. He was detained for about twelve hours. At the time of both arrests, he was residing in Reno, working for a parking control company. Mr. Dunckley was married, living with his wife and two young sons. He continues to reside in Reno, with his family, and is employed in the construction industry. Two other females made allegations that Mr. Dunckley had sexually assaulted them. He is not charged from those allegations. He admitted to consensual sex with one of the individuals in 2005, and denied sexual behaviors with the other. The person whom he admitted consensual sex occurring with was an acquaintance, whom he identified as eighteen years old at the time. Mr. Dunckley has no history of prior convictions, or arrests, for sexual offense behaviors.

This is a preliminary risk assessment aimed at developing an estimation for sexual reoffense risk. Static and dynamic factors determined by research to be associated with adults were considered. The overall estimation for reoffense risk is based on these factors. Clinical judgement is incorporated in the process, resulting in a "clinically adjusted actuarial risk assessment." *The overall goal of the evaluation is to provide information as to whether the offender represents a high risk to reoffend sexually based on currently accepted standards of assessment.*

Sources of Information

1. Review of police reports pertaining to referral offenses/court documents stipulating charges and plea.
2. Burns Depression Checklist.
3. Abel Assessment for Sexual Interest Questionnaire
4. Rapid Risk Assessment for Sexual Offense Recidivism.
5. Static 99.
6. Mental Status Exam
7. Sex Offense Self Report Inventory

SOCIAL HISTORY:

Background Information

Mr. Dunckley is a 31-year-old Caucasian male who was born in Carmel, New York, to James and Linda Dunckley. His parents have been married over 33 years, and reside in three places; California, New York, and China. He has a twin brother who resides in China, and an older sister in New York. He had another sister who died in a car accident at age 17. Brendon lived with his family to age 17. His parents owned some nursing homes in New York. Neither parents is reported to have a criminal history, or history of substance abuse. He described stability in family life, and he was always in the care of his parents. He was raised primarily in the Hudson County area of New York. He did not account for a history of physical or sexual abuse, violence or exposure to significant risk factors during his youth. Mr. Dunckley felt his relationship with his parents was close, and the primary trauma was associated with the death of his sister, when he was 21. He described his sister's death as traumatic for the family, stating, "It destroyed the closeness, and separated us". His relationship with his parents became strained following the death of his sister. Mr. Dunckley stated his parents also opposed his decision to stop practicing the Jehovah Witness religion at age 20. He currently has minimal contact with his parents, claiming his religious changes, and problems with their not accepting his relationship with his first wife. His parents are aware of his current legal situation.

Mr. Dunckley completed high school in New York and attended the Culinary Institute of America to become a chef. He graduated from that program in 1999 in Hyde Park, New York. Mr. Dunckley married his first wife Jenny in 1997. They were both twenty years old. They have a ten year old son and nine year old daughter. They met while both were attending the culinary institute, and moved to the Fresno, California area for employment after they completed their training. They divorced in 2000, which he attributed to problems managing work and family life. They have shared custody of their children, though she has primary physical custody. Post divorce, he developed a relationship with a neighbors' sister, Morgan. They moved to Reno for employment in January 2000. He has lived in the Reno area since. Mr. Dunckley and Morgan married in 2001, and have two sons, ages seven and three. They plan to continue the marriage per Mr. Dunckley. His wife does not work outside the home.

Educational Background

Mr. Dunckley graduated high school in 1994 in New York. He described himself as an average student who was an "underachiever". He attained an associates degree from the Culinary Institute of America in 1999. He has no formal education beyond that.

Military History

Mr. Dunckley has not been in the military.

Employment History

Mr. Dunckley is currently employed by Northern Nevada Construction Company, in the disaster management unit. He has been there for five months. For two years previous, he worked in parking control, and from 2000 to 2005 he was employed as a chef at various local hotel/casinos. His current employer is aware of the charge against him.

Substance Abuse History

Mr. Dunckley did not account for significant use of alcohol or substances in his history.

Previous Mental Health Treatment

Mr. Dunckley was diagnosed in March 2008 with obsessive compulsive disorder, and ADHD. He is taking Welbutrin, and participating in outpatient therapy in Reno, with Stephen Ing, MFT, in response to the referral offense.

Legal History

Mr. Dunckley reported no arrest history as a juvenile. As an adult, he was charged in 2005 with petty larceny. He claimed the charge came about when his child, whom he was pushing in a stroller, had taken a DVD from a store shelf unbeknownst to Mr. Dunckley. He was cited, and fined. The referral charges are his only additional arrests as an adult.

Significant Medical History

Mr. Dunckley experienced multiple concussions while participating in hockey during his youth. He did not account for recurring problems associated with those injuries, and reports to be in good health overall.

Relationship History

Mr. Dunckley has been married twice. He married Jenny in 1997, and divorced in 2000. They have a ten year old son, and nine year old daughter, who live primarily with their mother in California. He married his second wife, Morgan, in 2001. They have two sons, ages seven and three. They live together in Reno.

Available Support/Primary Interests

Mr. Dunckley identified his immediate family, spouse, and mother in law as his primary support, along with his employer. His interests include cooking, tennis, roller balding, and spending time with family and a few close friends.

CLINICAL INTERVIEW/ACCOUNT OF REFERRAL OFFENSE/SEXUAL HISTORY

Mental Status

Brendon Dunckley is a 31-year-old Caucasian male who was interviewed in an outpatient setting. He arrived on time and participated in a positive manner. He is of moderate build and height. His memory appears to be intact with no evidence of impaired judgment or thinking. Mr. Dunckley was oriented to person, place, time and situation and affect was appropriate to content. He maintained good eye contact and intellectual functioning appears to be within the average range. He did not account for a history of substance abuse. Mr. Dunckley denied suicidal ideation or interest in absconding. He understood the charges against him.

The purpose and scope of the assessment was explained to Mr. Dunckley. Some of the risks and benefits associated with the evaluation were reviewed. He read and signed an informed consent to participate in the evaluation with results to be forwarded to the State of Nevada, Division of Parole and Probation.

Synopsis of Referral Offense

Mr. Dunckley admits to sexual behaviors with an under age female. The police reports indicated she was 12 to 14 years of age. He admits to two instances that involved fondling and intercourse, and claimed both instances were in 2000, when she was 14. The police reports indicate they took place between 1998 and 2000. Mr. Dunckley was 24 at the time, and claimed he was not aware of her age. He admitted to sexual behaviors with a 24 year old female, identified as a stranger to him, occurring in March 2007. He admits to engaging her in fellatio, while she was under the influence of substances.

Onset/Progression of Referral Offenses

Mr. Dunckley provided his account of both offenses. He claimed to have met the younger victim, in 2000, when she would have been about 14 years of age. Mr. Dunckley claimed she "accidentally" dialed his cell phone number, and his wife spoke with her. From the initial conversation, he claimed he and his wife developed a friendship with her, and her girlfriend. He claimed they also met their parents. He claimed this occurred about eight years ago, in 2008. Mr. Dunckley stated the other younger female called Mr. Dunckley's wife for a ride, as the younger female who was not the victim, and Mr. Dunckley's wife were both pregnant. He stated, "they had the cravings for fast food, so we took them". Mr. Dunckley stated he thought both of the younger females were about 17 years old, and he described a friendly relationship with them. The non-victim 14 year old also made allegations that Mr. Dunckley had fondled her when she was 12 or 13, which he denied, and was not charged.

He stated within a month of meeting them, "I was driving A.(victim in referral offense) home and she was very flirtations, so was I, in 2000. We ended up having sex in my car. Her and the other girl had spent the night at our house". He reported a second instance of sexual behaviors with her.

Dunckley, B.

He stated they were in an elevator at a local hotel-casino alone and he put his hand down her pants. He denied force during both instances, and said she was probably 14 at the time, but he thought she was 17. In her statements to law enforcement, she did not account for force, threats or bribes. Mr. Dunckley stated, "I can't remember what I said to her" prior to the acts occurring. He said he learned she was 14 within a couple weeks of the second instance, from one of her friends. Mr. Dunckley said he admitted the behaviors to his wife within a couple months. He described her as "upset and hurt". He denied additional sexual behaviors occurring with the under age female, however, two of her friends made allegations, which Mr. Dunckley denied and is not charged. Mr. Dunckley said once he realized her age, he had no further contact with her. He was not clear how the allegations surfaced, and was not made aware until after his arrest in March 2007 in the second charge. He believed the offense against the under age youth was reported after one of her friends accused him of sexually assaulting her in August, 2005. He admitted to sexual behaviors with her, stating she was 19. He described intercourse occurring, and she alleged force. The case was closed as the investigator concluded there were inconsistencies in her statements, making the force aspect difficult to prove.

The second charge came about from an incident on March 10th, 2007 that involved a 24 year old female, identified as a stranger. Mr. Dunckley gave the following account of that incident: "On March 10th, 2007, while coming home (he was driving his car) I passed a person staggering on the side of the street who was drunk and falling all over the place. I turned my car to make sure she was okay and safe. My wife was on the phone with me and I followed the woman to an apartment complex, where she fell while going up the stairs to the second floor. It was then that I got out and helped her up. I asked her what her name was. I asked if she knew where she was. Had she done any drugs, and she said weed. I asked how much she had to drink, and she said a lot. I helped her to her feet and asked which apartment was hers and she pointed and I helped her to the door. I asked if she had a key or if anyone was home. She said her boyfriend was and swatted the door handle and it popped. I then turned to leave. I heard a thud and turned around and saw the door was ajar from her feet. I ran to the door and yelled her name with no response. I entered the apartment and turned her over onto her back. She was not breathing. I saw she was aspirating so I swept her mouth to clear the airway and applied a sternum rub to revive her. She came to and started to cry and talk about slippers and how she lost them and her boyfriend was going to be mad. I told her it was ok, and they were right next to her. All the while the door was still open. She passed out again and I rubbed her again. This time she started to cry again on my shoulder and I put my hand on the shoulder and said it was going to be okay. She then started to be affectionate towards me and I let her. She undid my pants and slid her hand in and took out my penis and proceeded to perform oral sex on me saying is this okay. I said yes at first then realized this was wrong and stopped her and got redressed (just my zipper), and started to leave. She freaked out and stated to yell rape, rape. I got out and called the police to come. All this took place in about 2-5 minutes. Shortly after, the police arrived." He stated he gave the same account to the investigator. He denied use of force, but said he was aware she was under the influence. The police report identified her blood alcohol content at .23. Mr. Dunckley felt he used poor judgement in allowing the sexual behavior to occur. The police report indicated she made statements that she had bit his penis aggressively. His penis was examined by investigators, and no bruising was found.

Mr. Dunckley admitted during this evaluation to having intercourse, and fondling an under age female. He believed when the behaviors occurred she was 14 years of age, and he was 24. At the time, he thought she was about 17. He also admitted to having an adult female, who was intoxicated and/or under the influence beyond her ability to consent, engage in fellatio against him on one occasion. He admitted being accused of sexual assault in 2005 by a 19 year old female acquaintance. He admitted to having intercourse with her one time, and described the act as consensual. He is not charged for that instance.

Additional Sexual Offense History

Mr. Dunckley did not account for additional sexual offense behaviors, or sexual relations with under age youth beyond what has been reported.

Sexual History

Mr. Dunckley did not report having been sexually victimized. His first sexual experience was at age 19 with an adult female. He did not report sexual experiences with males. Since age 18, he estimated having over twenty different sexual partners. He did not report sexual relations with prostitutes. He has viewed some adult pornographic material on the Internet, which he described as occasional. He did not report a history of deviant sexual behaviors.

Cognitive Distortions/Motivational Factors to Referral Offense

From an acute perspective, Mr. Dunckley was in a situation that allowed opportunity to act on sexual arousal with an under age youth, and a person under the influence of substances. He acted impulsively, exhibiting problems with regulation of arousal, and may have approached the situations from an entitled perspective. Prevailing factors are linked to ongoing relationship challenges, divorce, blended family challenges, history of impulsivity, history of promiscuity. He viewed both victims in the referral offense as cooperating. He stated, "Had I known how old the first victim was I wouldn't have done it. The second one was me being stupid".

Perception of Victim Impact

Mr. Dunckley believed both victims were harmed, as he described having taken their sense of security away. Insight, however, was limited and somewhat superficial.

RESULTS OF INVENTORIES/TESTS

On the **Burns Depression Checklist** which screens for endorsement of symptoms generally associated with depression, Mr. Dunckley's overall responses point to the presence of some symptoms generally associated with depressed mood. The moderate symptoms were a sense of guilt, indecisiveness, poor self image, appetite changes, sleep changes, loss of libido. Symptoms occurring somewhat included sadness, discouragement, low self esteem, inferiority, and loss of

motivation. He denied suicidal impulse on this scale.

On the **Sex Offense Self Report Inventory**, he described the referral offenses as "sexual intercourse with a minor in 2000 in my car. She was 14. Attempted sexual assault, I allowed a drunk woman to perform oral sex and I knew better". He denied additional sexual offense behaviors, and indicated he was 100% responsible for the offenses, writing "I was the adult and the sober one. They did not deserve any of it, nor did they ask to be treated so". He wrote the primary reason for the offenses was "Very poor judgement and impulsivity".

Abel Assessment for Sexual Interest Questionnaire Mr. Dunckley completed the Abel Assessment for Sexual Interest Questionnaire which summarizes a self reported history of sexual behaviors and experiences, and sexual health concerns. There are also scales that screen for sexual fantasies/arousal, cognitive distortions, social desirability, a danger registry and self reported history of accusations, arrests and convictions for sexual offense behaviors. Mr. Dunckley did not complete the objectively measured sexual interest category, in that he has no substantiated history of sexual behaviors involving prepubescent children (there is some question about the age of the first victim, as she may have been as young as 12). In regard to self reported history of deviant sexual behaviors, Mr. Dunckley reported a history of sexual affairs, on ten occasions, from age 21 to 30. This is described as sexual relations with someone outside his primary relationship. He identified his partners as adult females, and claimed no recurring fantasies of such behaviors. He did not report additional deviant sexual behaviors, including use of pornography or having sexually molested a child. There were no additional sexual health concerns identified, and he did not indicate having been the victim of sexual abuse. On the sexual behaviors and fantasies scales, he reported no arousal to any of the behaviors listed, though his responses were neutral to the following: exposing himself in a public place; masturbating in public without being seen; fetishes; frottage; voyeurism; writing obscene notes; sexual affairs; sex with adults who are strangers; phone sex; use of pornography and Internet sexual materials. He reported sometimes having fantasies about touching a child. On the Cognitive Distortion Scale which screens for attitudes tolerant of sexual behaviors with children, Mr. Dunckley scored in the 8% range which is well below the range to be considered problematic, and does not indicate attitudes tolerant of adults engaging in sexual behaviors with children. On the Social Desirability Scale, which measures a persons unwillingness to admit to any violation of common social mores, such as impatience, or feelings of anger, he scored in the 50% range which is a problematic score, but not a high score. There is some indication of problems with attempts at responding truthfully to others regarding topics unrelated to sexual deviance. The Danger Registry did not yield any concerns, as he did not self report attraction to, fantasies about, or sexual interest in children since he turned 18 years of age. To the question about sexually molesting a child, Mr. Dunckley indicated he has been accused, has sexually touched a child, but the child was a willing participant. He reported two investigations or arrests and no convictions for a sexual crime.

CLINICAL IMPRESSIONS/ESTIMATION OF REOFFENSE RISK/RECOMMENDATIONS

Clinical Impressions

Mr. Dunckley is a 31-year-old Caucasian male charged with Lewdness With a Child under the Age of Fourteen Years, a violation of NRS 201.230, and Attempted Sexual Assault, a violation of NRS 200.366. Mr. Dunckley entered a guilty plea in Washoe County District Court, Reno, Nevada to both charges on March 4th, 2008 and sentencing is scheduled for August 5th, 2008. The guilty plea memorandum states that on or between August 14th, 1998 and August 13th, 2000, or thereabout, Mr. Dunckley did willfully and unlawfully commit a lewd or lascivious act upon or with the body of (identified victim), a female child under the age of fourteen years at the time that the said act was committed, in that he engaged the victim in sexual intercourse in Reno, Washoe County, Nevada, and/or put his hand down her pants to fondle her genital area in an elevator at the Atlantis Hotel and Casino, Reno, Nevada with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or the child. The plea further stipulates that on March 10th, 2007, he attempted to subject (identified second victim) to sexual penetration against the victim's will, and/or under conditions in which he knew or should have known that the victim was mentally or physically incapable of resisting or understanding the nature of the conduct, to wit, fellatio, in Reno, Nevada. The victim in the first offense is identified as an acquaintance, and records indicate she was 12 to 14 years old during the time frame identified in the guilty plea memorandum. The second victim was an adult female, identified as a stranger to Mr. Dunckley. He was arrested March 20th, 2007 for the attempted sexual assault charge. He was detained, posted bail the same day and was released. He was arrested again on March 30th, 2007 on the lewdness charge. He was detained for about twelve hours. Two other females made allegations that Mr. Dunckley had sexually assaulted them. He is not charged from those allegations. He admitted to consensual sex with one of the individuals in 2005, and denied sexual behaviors with the other. The person whom he admitted consensual sex occurring with was an acquaintance, whom he identified as eighteen years old at the time. Mr. Dunckley has no history of prior convictions, or arrests, for sexual offense behaviors.

Mr. Dunckley admitted during the evaluation to having intercourse against, and fondling an under age female. He believed when the behaviors occurred she was 14 years of age, and he was 24. He also admitted to having an adult female, who was intoxicated and/or under the influence beyond her ability to consent, engage in fellatio against him on one occasion. He admitted being accused of sexual assault in 2005 by a 19 year old female acquaintance. He admitted to having intercourse with her one time, and described the act as consensual. He is not charged for that instance.

In considering both acute and prevailing or stable dynamic factors, from an acute perspective, Mr. Dunckley was in a situation that allowed opportunity to act on sexual arousal with an under age youth, and a second person several years later, who was under the influence of substances. He has demonstrated problems with regulation of emotions and impulsivity in general, and more specifically, sexual arousal. His sexual history points to a promiscuous lifestyle, that may have reinforced a sense of entitlement in regard to sexual behaviors. Feeling or thinking from an entitled perspective when it comes to sexual behaviors makes it easier to dismiss cues from others, thereby diminishing empathy. Prevailing factors are linked to ongoing relationship challenges, divorce,

Dunckley, B.

blended family challenges, history of impulsivity, and a promiscuous lifestyle. He viewed both victims in the referral offense as cooperating. He stated, "Had I known how old the first victim was I wouldn't have done it. The second one was me being stupid". The younger victim from the offense several years ago was an acquaintance, whom Mr. Dunckley and his wife had developed a relationship, along with some of her friends. The second victim was a stranger. The second instance which occurred in March, 2007, was against a woman who was under the influence, with a blood alcohol level over .20. Mr. Dunckley was aware of her state, and acted opportunistically, using the situation to his advantage under the guise of being helpful.

Opportunity to Reoffend Sexually

Mr. Dunckley engaged in sexual behaviors with an under age youth, several years ago. She was an acquaintance. He self reported two instances, one led to intercourse, and a second incident involved fondling her in a public place (elevator). He has no substantiated history of sexual behaviors with other under age youth, though there have been allegations. Opportunity for recurrence is evident, based on his being in the community, which creates access to other under age youth. The second instance involved a stranger, and creates high risk for reoffense opportunity, as there is evidence that his modus operandi is not limited to acting out sexually against only individuals he is familiar with.

Initial Diagnostic Impressions

AXIS I: V61.21 Sexual abuse of a child, perpetrator; 302.9 paraphilia nos
AXIS II: Deferred
AXIS III: none
AXIS IV: Current legal charge, relationship challenges
AXIS V: GAF = 60

Reoffense Risk

The risk assessment process is a preliminary estimation for reoffense risk that is strengthened when factors related to sexual reoffense risk for adults are considered. The strongest evidence of factors characteristic of sexual reoffense risk come from follow-up studies that compare the recidivism rate of offenders with certain characteristics. No single risk factor is sufficiently related to recidivism that it can be used on its own, therefore evaluators need to consider a range of risk factors. *The strongest predictors of sexual reoffense recidivism are variables related to sexual deviance, such as deviant sexual preferences as determined by physiological/objective measures, prior sexual offenses, early on sexual offending history and the diversity of sexual crimes (Hanson, 1997).* The single strongest predictor has been determined in various studies to be sexual interest in children, based on objective measures, and expressed intent to commit a sexual crime. Measures of criminal lifestyle are also significantly related to sexual recidivism. Response to treatment is another factor when considering risk assessment. The most well established risk factors are static, such as prior sexual offenses and dynamic risk factors (acute and stable). The acute factors are those which are immediately associated with the offense, such as being intoxicated and experiencing arousal in the presence of a child. Stable dynamic factors are those which occur over a longer period of time, such

as mood disorder, deviant sexual interest, and alcoholism.

In considering these factors, Mr. Dunckley self reports arousal to adult females, though he victimized an under age female. There is no legal or self reported information of continued sexual interest in under age females. He has admitted to multiple sexual relations outside his primary relationships, often with people he does not know well. He has a sexual history of promiscuity and impulsivity, which may often leave him in very risk, dangerous, if not illegal sexual situations. He did not report sexual arousal to, or fantasy about sexually touching a child since he turned 18 years of age. The primary concern is two sexual offense related charges, against two victims, in which the behaviors were spread out over a seven year time frame. The second offense involved a stranger, which presents greater risk to the community from a safety and prevention management perspective, though there is no evidence of overt force; the act occurred while she was intoxicated.

On the RRASOR, which provides a reasonable baseline for sexual reoffense risk, but does not include a complete evaluation of the risk factors for recidivism, he was in the low range. His raw score was one, and studies of individuals at five and ten-year follow-up that scored in this range showed recidivism rates of about 7% at five years and 11% at ten years. The lone factor that registered a point was : the victim was not related to him.

The Static 99 is an enhanced version of the RRASOR which incorporates a few more factors: prior sentencing dates; convictions for non-contact sex offenses; index non-sexual violence; prior non-sexual violence; relationship status. The added factors elevated risk slightly, to the moderate-low range based on: unrelated victim; stranger victim.

In considering the risk scales along with clinical judgement, Mr. Dunckley is estimated in the moderate range for sexual reoffense risk. Clinical judgement elevated risk due to reoffense behaviors occurring over an elapsed period of time, and involved an offense against a stranger. Furthermore, his promiscuous and impulsive sexual lifestyle places him at greater risk for further allegations/charges. There is evidence of being indiscriminate in regard to victim selection, meaning his modus operandi is not limited to a particular victim type, age, or preference.

*It is the opinion of this evaluator that Mr. Dunckley **DOES NOT REPRESENT A HIGH RISK TO REOFFEND SEXUALLY** based on current standards for assessment (NRS 176a.110)*

Risk Population

Based on historical information, responses to inventories, self reported arousal and objective measures of sexual interest, the identifiable risk population is varied, and can include adult females who are strangers, and under age youth whom he has access to, or has developed a relationship with. Much younger children do not present as immediate risk, in that there is no evidence of sexual interest in younger children.

Amenability to Treatment/Prognosis

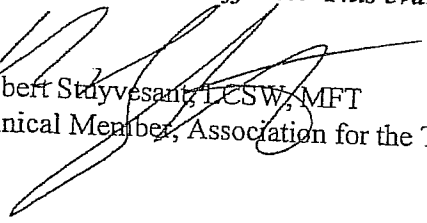
Mr. Dunckley presents as a positive candidate for treatment, based on his willingness to openly discuss and explore the factors related to the referral offense; primarily his disclosure of his sexual offense history. He does not present as antisocial or defiant [though there may be some resistance to treatment upon realization of a longer term process.] Although there may be some minimization and presence of cognitive distortions that support and maintain the behaviors, these issues can be addressed in the treatment process with Mr. Dunckley. Mr. Dunckley recognizes the need for intervention, and reported having initiated treatment to date.

Recommendations

In the event that Mr. Dunckley is not incarcerated, placing him under the supervision of the probation department would ensure compliance and cooperation with recommendations. If he is released to the community, the following recommendations are respectfully submitted:

1. Mr. Dunckley should be directed to participate in sexual offense specific treatment. Ideally a treatment program that provides individual, group and family-based intervention would be suitable for this situation. Generally speaking, sexual offense specific treatment will focus on: dynamic factors related to the offense behaviors; denial; consequences for the offender; identification of motivating factors; identification/confrontation of the sexual offense cycle and strategies for interrupting the pattern; recognition of cognitive distortions associated with sexual offense behaviors; victim impact; relapse prevention; social and communication skill building; healthy relationship development; strategies for managing emotions/physiological states including sexual arousal; and, victim restitution. Treatment progress reports will reflect such components as having been addressed, while providing measurements for progression through treatment, or lack thereof.
2. Mr. Dunckley should not have access to younger pre-teen or early teenage females, especially if alone or unsupervised. There is no evidence that his children are at risk, however, the family needs to be informed of risk factors, and actively participate in the treatment process (contingent upon consent). A period of electronic monitoring, combined with limited driving opportunities may help reduce reoffense opportunities, as he participates in treatment.
3. Mr. Dunckley should be directed to complete a comprehensive substance abuse evaluation, and adhere to recommendations.
4. It is recommended that treatment and progress reports are made available on a regular basis to the probation department. Treatment may also include continued sexual interest screening and maintenance/disclosure polygraph assessments. Random searches of his residence by the supervising probation department further enhances environmental controls and compliance with treatment and probation terms. Failure to comply with such terms should be considered an immediate risk factor, and responded to expeditiously by the court.

Level of risk does not reflect the harm or trauma associated with the sexual offenses for the victims. Failure to comply with external controls may elevate risk. Studies have shown that those who are noncompliant with terms of probation or treatment contracts demonstrate higher recidivism rates. This is a preliminary estimation for sexual reoffense risk and risk may change based on identification of new factors and lack of adjustment to the stable dynamic factors associated with the offense. This evaluation is time limited.


Robert Stuyvesant, LCSW, MFT

Clinical Member, Association for the Treatment of Sexual Abusers

7/21/08

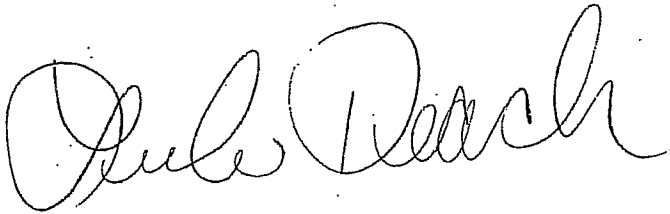
To whom it may concern,

I have known Brendan Dunkley for over eight years. I met him through a co-worker and he worked as a cook and Food Server for our Food and Beverage department at the Fitzgerald's Hotel casino. He has a stellar reputation as a chef in the community and is known as the cook who can be dropped anywhere and pulls any function together. After being transferred to another property owned by Cashell Group, the Alamo Casino. I was pleasantly surprised in February to see Brendan's capable face show up during a broken pipe incident in the restaurant, which flooded the entire casino crawl space. Brendan was running the team that cleaned, cleared, sanitized and restored our restaurant in less than 24 hours. I turned my keys to the restaurant over to Brendan knowing my stock and equipment were as safe with him as it would be with me.

I was very surprised to hear of the alleged allegation against Brendan. He has been professional and respectful in his actions with me and interactions with my staff both male and female.

Feel free to contact me at cell # (775) 223-1806 or work # (775) 355-8888

Leslie Deach, Food & Beverage Director, Alamo Casino
1950 E. Greg Street
Sparks NV 894321



LESLIE DEACH
Food and Beverage Director

1950 E. Greg Street
Sparks, Nevada 89431

Phone: 775.355.8888
Cell: 775.223.1806
leslie@thealamo.com



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AA000088

ING Counseling

Steven Ing, M.A., M.F.T.

3500 Lakeside Court, Suite 120

Reno, Nevada 89509

775.329.6002 Tel

August 4, 2008

To: David O'Mara, Esq.

Fax: 323-4082

Re: Brendon Dunckley

Dear Mr. O'Mara,

The following dates document Brendon Dunckley's clinical contact with Steven Ing, M.A., M.F.T. for sex offender specific counseling.

Individual Sessions: 3-03-08

3-26-08

4-29-08

Sex Offender Group Attendance: 4/23/08

4/30 (absent)

5/7

5/14

5/21

5/28

6/4

6/11

6/18 (absent)

6/25

7/2

7/16 (absent)

7/23

7/30

Please contact our office if we can be of any further assistance.

Sincerely,



Sharon Burnside,
Business Manager

CR07-1728
DC-9900008688-041
STATE VS BRENDAN DUNCKLEY
District Court
Washoe County
06/03/2009 04:17 PM
4134
NOC
CKEPLER

FILED

JUN 03 2009

IN THE SUPREME COURT OF THE STATE OF NEVADA
BY: HOWARD W. CONYERS CLERK
DEPUTY CLERK

BRENDAN DUNCKLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52383

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.

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

SUPREME COURT
OF
NEVADA

(O) 1947A

09-11461

AA000090

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.

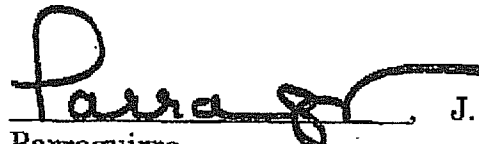
State's comments at sentencing

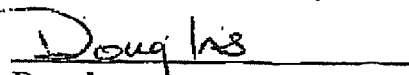
Dunckley next contends that the district court was improperly influenced by the State's "unsubstantiated belief" that the plea agreement was crafted to allow him to better posture himself at sentencing. Paragraph 7 of the guilty plea memorandum, signed by Dunckley, states in part, "I understand that 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

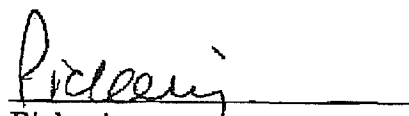
sentencing opportunities is therefore substantiated in the record. Dunckley has failed to show how the district court was improperly influenced by the state's comments.

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

CR07P1728
DC-5500009788-034
POST BRENDAN DUNCKLEY (DA 77 Pages
District Court 07/21/2009 02:23 PM
Washoe County 3586
NOC TFI nps

CASE NO CR07-1728
DEPT. NO 4

FILED

2009 JUL 21 PM 2:28

HOWARD W. CONYERS

BY H. W. Conyers
DEPUTY

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

1023236

Brendan Dunckley,
PETITIONER
v.
JACK PALMER,
RESPONDANT

PETITION FOR WRIT OF
HABEAS CORPUS
(Post-Conviction)

PETITION

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

8) WHAT WAS YOUR PLEA? GUILTY BE MEANS OF A DEAL.

9) IF YOU ENTERED A GUILTY PLEA TO ONE COUNT OF AN INDICTMENT, AND NOT GUILTY PLEA TO ANOTHER COUNT OF AN INDICTMENT, OR A GUILTY PLEA WAS NEGOTIATED, GIVE DETAILS: PETITIONER PLEAD TO LEWDNESS CHARGE AS LEGAL FICTION IN A LESSER CHARGE OF ORIGINAL CHARGE OF SEXUAL ASSAULT ON A CHILD, AND ALSO ATTEMPTED SEXUAL ASSAULT IN COUNT TWO (2). TO ALLOW THE AVAILABILITY OF PROBATION.

10) DID YOU APPEAL FROM THE JUDGEMENT OF CONVICTION? YES

11) IF YOU DID APPEAL, ANSWER THE FOLLOWING :

a) NAME OF COURT: NEVADA SUPREME COURT

b) CASE NUMBER: 52383

c) RESULT: ORDER OF AFFIRMANCE FILED WITH THE CLERK OF THE COURT ON MAY 8, 2009 (COPY ATTACHED)

12) OTHER THAN A DIRECT APPEAL FROM THE JUDGMENT OF CONVICTION AND SENTENCE, HAVE YOU PREVIOUSLY FILED ANY PETITIONS, APPLICATIONS, OR MOTIONS WITH RESPECT TO THIS JUDGMENT IN ANY COURT, STATE OR FEDERAL? NO

13) IF ANY OF THE GROUNDS LISTED IN NOS. 18 (a), (b), (c), (d), (e), (f) AND (g), OR LISTED ON ADDITIONAL PAGES YOU HAVE ATTACHED, WERE NOT PREVIOUSLY PRESENTED IN ANY COURT, STATE OR FEDERAL, LIST BRIEFLY WHAT GROUNDS WERE NOT SO PRESENTED, AND GIVE YOUR REASON FOR PRESENTING THEM.

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

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

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

A) GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL

2

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

12 SUPPORTING FACTS:

13

14 1) PETITIONER'S ENTRANCE OF A GUILTY PLEA MEMOR-
15 ANDUM WAS /IS BASED ON UNINFORMED LEGAL ADVISE. THE
16 DEFENSE COUNSEL FAILED TO CONDUCT ANY PRE-TRIAL /PRE-
17 DEAL INVESTIGATION, TO EVEN PURSUE WITNESSES OR EVIDENCE
18 IN SUPPORT OF PETITIONER'S CLAIM OF INNOCENCE. ALL THE
19 WHILE COUNSEL REQUESTED PETITIONER TO OBTAIN AND TO
20 COLLECT 'CHARIKTER LETTERS' TO HELP WHEN PETITIONER WENT
21 TO SENTENCING. AT NO POINT WAS ANY LEGAL STRATAGY
22 DISCUSSED, EXCEPT NUMEROUS TIMES COUNSEL INFORMED THE
23 PETITIONER THAT HE COULD BUY PETITIONER ENOUGH TIME
24 TO GET HIS FAMILY EMOTIONALLY AND FINANCIALLY SET
25 AND READY FOR PETITIONER GOING TO PRISON, AND
26 WAIT AND HOPE THAT THE STATE CAME WITH A DEAL.
-5- 27 THE ONLY STRATAGY PETITIONER SAW/SEES IS TO SIMPLY
28 SETTLE WITH STATE AND TO CONVICT HIS CLIENT.

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

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

1 2) DEFENSE COUNSEL DAVID C. O'MARA WAS PRES-
2 ENTED WITH EXCULPATORY EVIDENCE TO ESTABLISH
3 BOTH AN ALIBI FOR PETITIONER IN REGARDS TO
4 COUNTS I, II, III AND IV OF THE AMENDED CRIMINAL
5 COMPLAINT DATED APRIL 16, 2007. IN CASE RJC
6 2007-033884, AS WELL AS TO PROVE ACTUAL AND
7 FACTUAL INNOCENCE. BUT COUNSEL PREJUDICED THE
8 PETITIONER, BY NOT ACTING AS A REASONABLY COMPETENT
9 ATTORNEY, BECAUSE HE DID NOT REQUEST A CONTINUANCE
10 ON THE GROUNDS THAT TIME WAS NEEDED TO ADEQUATLY
11 INVESTIGATE THE NEWLY PRESENTED EVIDENCE. (pg. 3/10 PART II)
12 SUCH A CONTINUANCE SHOULD IN THE LEAST HAVE
13 BEEN REQUESTED BY COUNSEL, WHETHER IT WAS GRANTED
14 IS NOT RELEVANT, IT WAS NEEDED. TO BE ABLE TO
15 PROPERLY, AND INDEPENDENTLY INVESTIGATE ALL THE
16 CIRCUMSTANCES SURROUNDING THE ALLEGATIONS BY THE
17 STATE AS COMPARED TO THE NEW EVIDENCE. HAD THE
18 EVIDENCE BEEN IN THE SMALLEST ASPECT BEEN VERIFI-
19 ED INDEPENDENTLY TO VALIDATE THIER AUTHENTICITY, IT
20 WOULD HAVE SHOWN SERIOUS FLAWS AND HOLES IN THE
21 STATES CASE. ESPECIALLY SINCE A LARGE PART OF
22 THE STATES CASE / CHARGES WERE BASED ON NOTHING
23 MORE THAN THE WORDS OF ASHLEY V., MICHELLE A,
24 AND JESSICA H. AS WELL AS THE TESTIMONY OF THE
25 LEAD DETECTIVE TOM BROOME (RPD).

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

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

1 A MINIMUM OF TEN (10) YEARS HAS BEEN SERVED.
2 OTHER EVIDENCE WOULD HAVE GONE TO PROVE
3 THE CREDIBILITY OF DETECTIVE TOM BROOME TO BE IN
4 SERIOUS QUESTION. PETITIONER HANDED OVER EVIDENCE
5 THAT DETECTIVE TOM BROOME HAD RELEASED CRIMINAL
6 COMPLAINTS TO PETITIONER'S EX-WIFE'S (SENNY DUNCLEY)
7 ATTORNEY MR KENNETH BALLARD ON MAY 25, 2007.
8 THE INVESTIGATING OF THIS EVIDENCE WOULD HAVE SHOWN
9 THAT DETECTIVE IN FACT DID RELEASE CONFIDENTIAL CRIMINAL
10 COMPLAINTS TO A THIRD PARTY SIX WEEKS PRIOR TO THE
11 PETITIONER'S PRELIMINARY HEARING. (SEE PGS III-128 IV) AND THE
12 SUBSEQUENT ENTRANCE OF SAID POLICE REPORTS INTO
13 THE CIVIL CUSTODY 'BATTLE' BETWEEN PETITIONER AND HIS
14 EX-WIFE (SEE PGS 127/8 IV). IN ADDITION HAD A CONTINUANCE
15 BEEN REQUESTED AS ANY COMPETANT ATTORNEY WHO
16 IS ACTING AS A DILIGENT CONSCIENTIOUS ADVOCATE FOR
17 HIS CLIENT WOULD HAVE INSISTED ON OBTAINING. IT WOULD
18 HAVE GIVEN COUNSEL ENOUGH TIME TO PROVE THAT IN
19 THE POLICE REPORTS THAT WERE RELEASED BY DETECTIVE
20 TOM BROOME WAS THE 'PROVERBIAL' SMOKING GUN' TO
21 PUT A STOP TO THE STATES CASE ON COUNTS I, II, III AND IV
22 RIGHT THERE AT THE PRELIMINARY HEARING. AS ENTERED
23 IN AS EXHIBIT 'D' ON JUNE 22, 2007 (PGS III 128 IS BPD
24 DRAFT DATED APRIL 19, 2007. THREE DAYS AFTER THE STATE
25 AMENDED THE INDICTMENT TO ADDING THE ADDITIONAL CHARGES
26 THAT REPORT COULD HAVE BEEN USED TO BOTH QUESTION
-9- 27 DETECTIVE TOM BROOME'S MOTIVES FOR THE RELEASE AS
28 WELL AS TO QUESTION OR PROPERLY CROSS-EXAMINE A KEY

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

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

1 3) COUNSEL ALLOWED PETITIONER TO BE PREJUDICED AT
2 THE SENTENCING HEARING BY THE COMMENTS AND THE
3 INAPPROPRIATE INTERJECTIONS OF MISREPRESENTED FACTS ON THE
4 PART OF ADA VILORIA. COUNSEL ALLOWED THEM TO GO UN-
5 CHALLENGED. TRUE, DEFENSE COUNSEL DID OBJECT TO THE ALL-
6 EGATIONS OF DEFENDANT BEING THE REASON ASHLEY V. IS
7 INCARCERATED (pg 50 /12-17); AND ADA VILORIA'S REFERRAL TO THE
8 INCIDENT AND SURROUNDING CIRCUMSTANCES PERTAINING TO
9 COUNT TWO WITH REGARDS TO JESSICA H.'S TESTIMONY AT THE
10 PRELIMINARY HEARING (pg 50 /19-24); ALSO COUNSELING ATTENDANCE
11 WITH STEVEN ING (pg 51 /5-7); AND FINAL OBJECTION WAS TO THE
12 CONTRADICTING THE REASON COUNT V OF RJC 2007-033884
13 WAS DISMISSED (pg 51 /8-18) (ALL PART IV)
14 BUT AT NO POINT DID COUNSEL CORRECT ADA
15 VILORIA'S MISREPRESENTATION OF CRUCIAL FACTS. FOR EXAMPLE
16 ON pg 51 /19-24 ADA VILORIA STATES "MR DUNCLEY REFERS
17 TO HER THROUGHOUT DR. STUYVESANT'S REPORT. SHE IS THE
18 ONE HE ATTACKED ON THE HOOD OF A CAR, WHO HE CLAIMS
19 HAD CONSENSUAL SEX, BUT HE PUT HIS PENIS IN HER MOUTH".
20 BUT THE REPORT OF DR. STUYVESANT PETITIONER ONLY REFERS
21 TO LURA ONLY ONCE (pg 81 ~~IV~~) A FAR CRY FROM 'THROUGHOUT';
22 PLUS IN THE POLICE REPORT FOR THAT INCIDENT RPD 05-34027
23 (SEE pg 1-11 ~~IV~~) NO WHERE IS THERE THE ALLEGATION TO ORAL
24 SEX, OR PETITIONER PUTTING 'HIS PENIS IN HER MOUTH'. COUNSEL
25 FAILED TO OBJECT TO THAT OR TO; ALL THE REFERENCES
26 MADE TO A NON-EXISTANT CRIMINAL HISTORY, EXCEPT
-11- 27 IN THE MIND OF ADA VILORIA. (pg 43/24-44/5) 46/4-6; pg 49/17-16
28 pg 50/23). STATING PETITIONER HAD BEEN ACTIVELY PERSUED

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

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

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

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

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

14

15 4) PETITIONER WAS DENIED ADEQUATE REPRESENTATION.
16 IN REGARDS TO THE IMPORTANCE OF ATTORNEY-CLIENT CONSULTATION.
17 SINCE DAVID C. O'MARA WAS ASSIGNED BY THE COURTS
18 TO REPRESENT PETITIONER ON MAY 7, 2007, COUNSEL FAILED TO
19 CONTACT PETITIONER PRIOR TO THE PRELIMINARY HEARING, THE
20 FIRST MEETING OCCURED TEN MINUTES PRIOR TO THE HEARING
21 ON JULY 2, 2007. WITH THE EXCEPTION OF A FEW BRIEF PHONE
22 CALLS, THE TEN MINUTES IS FAR FROM ADEQUATELY ENOUGH
23 TIME TO ESTABLISH A SOLID "GAME PLAN" LEGALLY SPEAKING.
24 CONSIDERING THE IMPORTANCE DUE TO THE FACT THAT OUT OF
25 THE SEVEN CHARGES IN RJC 2007-033884 FIVE OF THEM CARRY
26 THE POSSIBILITY OF LIFE IN PRISON. YET NO CONSULTATION
-13- 27 WAS MADE BEFORE THE PRELIMINARY HEARING. WE LITERALLY
28 WALKED IN BLIND DUE TO THE INADEQUATE PREPARATION OF COUNSEL.

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

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

1 7) DEFENSE COUNSEL FAILED TO ACT AS A ADVOCATE
2 FOR HIS CLIENT BY NOT EFFECTIVELY CROSS-EXAMINING
3 DETECTIVE TOM BROOME IN REFERENCE TO HIS RELEASING
4 ALL THE CRIMINAL COMPLAINTS IN CONNECTION TO RJC
5 CASE NUMBER 2007-033884, TO KENNETH BALLARD'S
6 LAW OFFICE ON MAY 25, 2007. AT NO POINT DID
7 COUNSEL USE THE EVIDENCE OF THE RELEASE OF
8 THE REPORTS TO SHOW ISSUES OF CREDIBILITY AND
9 POSSIBLE EXISTING ANIMOSITY OR UNDERLYING HOSTILITY
10 TOWARDS THE PETITIONER. BECAUSE THERE IS NO VALID
11 OR JUSTIFIABLE REASON TO HAVE RELEASED CON-
12 FIDENTIAL CRIMINAL COMPLAINTS IN REFERENCE TO
13 CHARGES, THAT HAVE YET TO BE FOUND TO ESTA-
14 BLISH, OR POSSESS PROBABLE CAUSE TO WARRANT THEM
15 BEING BOUND OVER FOR TRIAL. THE PETITIONER AT
16 THE POINT OF RELEASE WAS STILL ENTITLED TO THE
17 OPINION OF INNOCENT UNTIL PROVEN GUILTY. (PART II PG 10-116)
18 SO AN EFFECTIVE ADVISORY TO THE STATE WHO
19 IS DILIGENTLY FIGHTING TO CLEAR THE RECORD IN
20 BEHALF OF HIS CLIENT WOULD HAVE SEEN NOTHING
21 MORE THAN A MALICIOUS ATTEMPT ON THE PART OF
22 DETECTIVE BROOME TO HARM AND SUDICIALY INSURE THE
23 PETITIONER IN A CIVIL MATTER IN A COMPLETELY DIFFERENT
24 STATE. NAMELY A CIVIL CUSTODY HEARING AT WHICH KEN-
25 NETH BALLARD REPRESENTED PETITIONERS EX-WIFE. THERE
26 WAS NO SUPPENA FOR THE REPORTS, AS PETITIONER
-15- 27 WOULD HAVE BEEN ISSUED A COPY BEING THAT HE
28 IS PRO PER IN THE REFERENCED CASE. SO THERE IS

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

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

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

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

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

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

1 DELAY ON THE PART OF COUNSEL, EITHER BY NEGLIGENCE,
2 OR INTENT IT DENIED THE PETITIONER THE ABILITY TO
3 MAKE A FULLY INFORMED AND EDUCATED DECISION. TO
4 ALLOW THE PETITIONER THE ADEQUATE TIME NEEDED
5 TO MAKE SUCH A SERIOUS AND WEIGHTED DECISION.
6 PREVENTING THE PETITIONER THE NECESSARY OPTION
7 TO TAKE IT HOME AND FULLY DISCUSS AND WEIGH
8 THE PROS. AND CONS OF THE ACCEPTANCE OR REJECTION
9 OF THE 'DEAL' WITH PETITIONER'S WIFE, WHO HAD A
10 SUBSTANTIAL STAKE IN THE ULTIMATE OUTCOME OF THE
11 CASE, YET A MERE THIRTY (30) MINUTES IS FAR FROM
12 ENOUGH TIME, WHEN LIFE IMPRISON HANGS IN THE BALANCE

13 BUT COUNSEL CLAIMED OR ATTEMPTED TO COVER
14 UP THIS INADEQUATE REPRESENTATION ON HIS PART BY
15 ADDING THE COMMENT "WE DISCUSSED NUMEROUS TIME
16 BEFORE YOU SIGNED THE GUILTY PLEA MEMORANDUM WHAT
17 THE RAMIFICATIONS WOULD BE IF YOU PLEAD GUILTY PUR-
18 SUANT TO THE DISTRICT ATTORNEY'S OFFER" (Letter 3/9/09 SEE
19 PGS 36-38). BUT THAT FEEBLE ATTEMPT TO COVER UP HIS
20 INCOMPETENCE BY NOT EVEN PRESENTING PETITIONER WITH
21 THE DEAL UNTIL THE LAST POSSIBLE MOMENTS PRIOR TO
22 COURT. SO WHEN WAS THERE ADEQUATE TIME TO
23 "DISCUSS NUMEROUS TIME"?

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

1 11) STILL ANOTHER EXAMPLE OF COUNSELS DEFICIENT,
2 PROFUNCTORY, PRO FORMA REPRESENTATION OF SIMPLY
3 GOING THROUGH THE MOTIONS, IS SHOWN BY HIS OBVIOUS
4 FEELING THAT THE PETITIONERS CASE DOES NOT DESERVE
5 HIS COMPLETE FOCUS AND ATTENTION. ANY OTHER ZEALOUS
6 ADVOCATE WOULD NEVER FILE AN AFFIRMATION WITH THE
7 WRONG CASE NUMBER REFERENCED ON IT. LET ALONE THREE
8 (3). BUT THAT IS EXACTLY WHAT DEFENSE COUNSEL O'MARA
9 DID. ON SEPTEMBER 8, 2008 IN THE 'NOTICE TO APPEAL' FOR
10 CASE NUMBER CR07-1728, HIS FILED AFFIRMATION HAD THE
11 CASE NUMBER CR07-1096. (pg 1-6 V) AGAIN ON OCTOBER 13,
12 2008 WHEN FILING THE 'REQUEST FOR ROUGH DRAFT TRANSCR-
13 IPTS' THE ATTACHED AFFIRMATION DID NOT HAVE CR07-1728
14 WHICH WAS PETITIONERS CASE NUMBER BUT REFERENCED CR03-
15 P0380 YET ANOTHER COMPLETELY DIFFERENT CASE. THAT ONE
16 WAS FOUR YEARS OLD, A FINAL EXAMPLE OF HIS CLEAR
17 LACK OF ATTENTIVE BEHAVIOR IS FROM THE VERY NEXT
18 DAY WITH THE FILING OF THE 'NOTICE OF ROUGH DRAFT TRANSCRIPT
19 REQUEST' FILED WITH THE NEVADA SUPREME COURT IN CASE NUMBER
20 52383, BUT THE AFFIRMATION ATTACHED TO THE NOTICE WAS
21 REFERENCED TO CASE NUMBER 52330.
22 ONE SUCH MISTAKE CAN BE UNDERSTOOD, BUT THREE
23 SEPERATE ERRORS SHOWS CARELESSNESS AND GROSS NEGLIGENCE
24 TO SEE THAT THE CASE IS IN FACT HANDLED IN
25 A PROFESSIONAL STANDARD ABOVE THE BAR AND PRE
26 FROM REPROACH USED TO JUDGE THE COMPETANT LEVEL
-20-27 OF BASIC PERFORMANCE NEEDED AND EXPECTED TO BE
28 SHOWN DOWN TO THE MINUTE DETAILS REQUIRED OF ATTORNEYS.

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

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

21 COUNSEL O'MARA FAILED TO BRING UP ANY
22 OF THE ILLEGAL INTENTIONAL PROSECUTORIAL INTERFERING
23 PREJUDICING THE PETITIONER AND THE SUBSEQUENT SENTENCING
24 EVEN WENT AS FAR AS TO SAY 'I DONT BELIEVE YOU
25 HAVE ANY APPEALABLE ISSUES IN THIS CASE.' (SEE pg 25 IV)
26 IT IS RELEVANT TO NOTE THE DATE OF THAT LETTER,
-21- 27 BEING AUGUST 6, 2008 JUST ONE DAY AFTER THE
28 PETITIONER WAS SENTENCED. WARRENTING THE QUESTION

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

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

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

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

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

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

15 ANY REASONABLY COMPETANT, EDUCATED AND KNOWLEDGABLE
16 ATTORNEY WOULD HAVE KNOWN THAT A FAST TRACK APPEAL
17 IS NOT THE PROPER AVENUE FOR THE CASE AT BAR. BUT
18 THAT COSTLY MISTAKE COST THE PETITIONER VALUABLE TIME,
19 THAT WAS TOLLING FOR AN APPEAL. IT TOOK THE NEVADA
20 SUPREME COURT TO CORRECT AND TO EDUCATE THE COUNSEL
21 AS NOTED IN THE LETTER TO PETITIONER DATED JANUARY 23,
22 2009 WHERE COUNSEL SAYS " BECAUSE YOUR SENTENCE WAS
23 FOR A LIFETIME SENTENCE, THE COURT RETURNED YOUR
24 FAST TRACK APPEAL AND REQUIRED ME TO FILE A
25 FULL BLOWN APPEAL BRIEF." (SEE pg 35 IV) WHEN APPEALING
26 A SENTENCE CARRING LIFE 'TO LEARN AS YOU GO' IS
-23- 27 NOT WHAT THE CONSTITUTION MEANT BY EFFECTIVE ASSISTANCE
28 OF COUNSEL.

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

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

21 BY THE COUNSELOR REFUSING TO PROVIDE ANY
22 REQUESTED DOCUMENTS, HE PREJUDICED THE PETITIONER FROM
23 HAVING AN ADEQUATE SAY AND PARTICIPATION IN HIS
24 APPEAL. NAMELY LEAVING IT TO THE FULL DISCRETION OF
25 COUNSEL WHO HAS ALREADY PROVED HIS GROSS INCOMPETANCE.
26

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

1 LETTER TO COUNSEL DATED FEBRUARY 5, 2008. (SEE PS 9, 10 V).

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

12 AT THE ORIGINAL AMENDED CHARGES FILED ON APRIL
13 16, 2007 IN RTC CASE NUMBER 2007-033884 COUNT VII (7)
14 WAS SEXUALLY MOTIVATED COERSION. BY MR. CLIFTON'S OWN
15 COMMENTS THE STATE HAD NO EVIDENCE TO PROVE THE CHARGE
16 OF SEXUALLY MOTIVATED COERSION, SO IT WAS SUMARIALLY
17 DISMISSED. (SEE PS 117-18/4/10). SO PETITIONER ALLEDGED TO COUNSEL
18 THAT ONCE THE STATE DISMISSED THE CHARGE OF COERSION THE
19 STATUTE OF LIMITATIONS IN NRS 171.095 CEASED TO BE THE
20 STATUTE OF LIMITATION AT BAR AND SUBSEQUENTLY NRS 171.085
21 BECAME THE STATUTE OF LIMITATIONS OF PREZIDENT. SO WITH
22 THAT BEING THE CASE THE STATE HAD THREE - FOUR YEARS
23 TO BRING A COMPLAINT / INDICTMENT FORWARD WITH COUNTS I, II,
24 III AND IV. BECAUSE THEY FAILED TO DO SO BY 2001-2003
25 IT PROVED THAT THOSE COUNTS WERE PROSECUTORIALLY BARED BY
26 THE STATUTES SET FORTH BY LEGISLATURE, BUT COUNSEL FAILED
-25- 27 TO ADD THIS REQUEST. IN HINDSIGHT COMPARED TO THE INADDAQUATE
28 APPELLATE GROUND COUNSEL DID FILE THIS SUGGESTION IN THE

1 LEAST CARRIED MORE MERIT.

2
3 16) PETITIONER CONTINUED TO BE PREJUDICED BY
4 APPELLATE COUNSEL'S DISREGARD FOR THE PETITIONER AND
5 SHOWING HOW IMPORTANT HE FELT THE PETITIONER'S CASE TRULY
6 MEANS TO HIM AS A SINGLE ACT OF LAZINESS OR IN THE
7 OBVIOUS ACT OF JUST PLAIN NOT CARING. BY THE LETTER
8 INFORMING PETITIONER OF THE ORDER OF AFFIRMATION BY THE
9 NEVADA SUPREME COURT DATED MAY 12, 2009 (SEE PS 39 ~~IV~~
10 WAS NOT MAILED UNTIL TEN(10) DAYS LATER ON MAY 21,
11 2009 (SEE PS 40 ~~IV~~). COSTING THE PETITIONER VALUABLE TIME
12 OF THE ONE YEAR WINDOW PETITIONER HAS FOR HIS WRIT OF
13 HABEAS CORPUS.

14 AN INTERESTING CONTRAST WAS WHEN COUNSEL WAS
15 TERMINATED BY LETTER SENT JUNE 8, 2009 (SEE 53-~~57~~) HE WASTED
16 NO TIME IMMEDIATELY SUBMITTING A WITHDRAWAL OF ATTORNEY OF
17 RECORD THE SAME DAY HE RECEIVED THE LETTER, HAVING ABSOL-
18 UTLY NO TROUBLE FINDING THE MAIL BOX THE VERY NEXT DAY, PETIT-
19 IONER FINDS IT HUMOROUS THAT WHEN IT BENEFITS COUNSEL THE
20 MAIL BOX IS NOT HARD TO FIND, TO BAD THAT SAME ZEALOUS BEHAVIOR
21 WAS NOT SHOWN TOWARDS THE ENTIRE HANDLING OF PETITIONER'S CASE;

22
23 THE SIXTH AMENDMENT IMPOSES ON COUNSEL THE IMPORTANCE
24 OF THE DUTY TO INVESTIGATE. BECAUSE REASONABLY EFFECTIVE
25 ASSISTANCE OF COUNSEL MUST BE BASED ON PROFESSIONAL DECISIONS
26 AND INFORMED LEGAL CHOICES AND ADVICE CAN ONLY BE MADE
-26- 27 AFTER AN INVESTIGATION OF ALL THE OPTIONS, FACTS, CIRCUMSTAN-
28 CES AND LAW PERTAINING TO A CHARGE. ONLY AFTER SUCH

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

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

B) Ground Two: PROSECUTORIAL MISCONDUCT

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

SUPPORTING FACTS:

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

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

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

7
8 2) BY THE DETECTIVE RELEASING RENO POLICE REPORTS IN THE
9 DIRECT CONNECTION TO ORIGINAL CASE FILED APRIL 16, 2007 IN
10 THE RENO JUSTICE COURT (RJC) IN CASE NUMBER RJC2007-
11 033884 TO PETITIONER'S EX-WIFE'S ATTORNEY KENNETH BALLARD
12 ON 5/25/07 HE VIOLATED PETITIONER'S RIGHT TO BEING CON-
13 sidered INNOCENT UNTIL PROVEN GUILTY, AS WELL AS PETITIONER'S
14 RIGHT TO A FAIR AND JUST TRIAL. THERE IS ABSOLUTELY NO
15 REASON TO RELEASE THE REPORTS TO A THIRD-PARTY ATTORNEY
16 WHO IS NOT A IMMEDIATE PARTY TO THE MATTER AT HAND,
17 EXCEPT THAT OF INTENTIONAL MOTIVE ON THE PART OF DETECTIVE
18 TOM BROOME TO CAUSE HARM TO PETITIONER IN REGARDS TO
19 THE ONGOING CUSTODY DISPUTE BETWEEN PETITIONER AND HIS
20 EX-WIFE IN MADERA SUPERIOR COURTS. THE ACTIONS OF DETECTIVE
21 BROOME IS BY THE DIRECT DEFINITION OF MALICIOUS INTENT
22 AND INJURY, BY HIM DOING IT WITH WANTON DISREGARD TO
23 THE HARM IT MAY OCCUR OR CAUSE TOWARDS THE PETITIONER.
24 THE ACTIONS OF THE DETECTIVE IS RECORDED BY THE REPORTS
25 BEING STAMPED INTO EVIDENCE ON JUNE 22, 2007 AS EXHIBIT
26 A', B', C' AND 'D', IN CASE NUMBER CVO3749. (SEE PAGES 111-128 PT V)
-30- 27 THE REASON THE ACTIONS BY DETECTIVE TOM BROOME IS BEING
28 INCLUDED UNDER PROSECUTORIAL MISCONDUCT BECAUSE THE

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

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

1 4) OTHER EXAMPLES OF MAKING COMMENTS AT THE SENTENCING
2 HEARING TO PREJUDICE PETITIONER IN THE EYES OF THE JUDGE. THAT
3 WERE BOTH UNSUPPORTED BY RECORD AND BLATANTLY INAPPROPRIATE
4 ARE ON PAGE III 43 / LINES 24, PS 44/1; PS 45/12; AND PAGE 46/6.
5 ALL DIRECTING THE COURTS TO THE ASSERTION THAT PETITIONER
6 HAS IN FACT BEEN A KNOWN CRIMINAL ON THE 'RADAR' OF THE
7 RENO POLICE DETECTIVES FOR TEN YEARS, EXCEPT THE ONLY CRIMINAL
8 RECORD PETITIONER IN FACT DID POSSESS WAS AN ARREST ON
9 7/25/05 FOR A GROSS MISDEMEANOR OF PETTY LARCANY AS NOTED ON
10 PAGE 67 IN THE PRESENTENCING REPORT GENERATED BY PAROLE AND
11 PROBATION. ALSO IN THAT SAME REPORT IT NOTED UNDER EDUCATION
12 ON PAGE 66 (III) "THE DEFENDANT GRADUATED FROM THE CULINARY INSTITUTE
13 OF AMERICA IN NEW YORK IN 1999" SO NOWHERE DOES THE STATE
14 HAVE ANY EVIDENCE TO SUPPORT THE CONTENTION OF A TEN YEAR
15 CRIMINAL HISTORY, BUT THE ABSOLUTE OPPOSITE, UNLESS PETTY LARCANY
16 IS NOW CONSIDERED A MAJOR CRIMINAL HISTORY IN THE EYES OF ADA
17 VITORIA. (SEE PART IV PS 60)

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

SUPREME COURT OF THE STATE OF NEVADA

BRANDAN DUNCKLEY,
Appellant,

vs.

THE STATE OF NEVADA and JACK
PALMER, Warden,

Respondents.

Electronically Filed
Jun 25 2012 02:56 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case Nos. 59957 & 59958

APPELLANT'S APPENDIX

VOLUME I

Appeal from Denial of Motion to Withdraw Pleas and Denial of Petition for
Writ of Habeas Corpus

Second Judicial District

Robert W. Story
Story Law Group
2450 Vassar Street, Suite 3B
Reno, Nevada 89502
(775) 284-5510

Terrance P. McCarthy
Deputy District Attorney
Post Office Box 30083
Reno, Nevada 89520-3083
(775) 328-3294

Attorneys for Appellant Brendan
Dunckley

Attorneys for Respondents the State of
Nevada and Jack Palmer

Document	Pages
Amended Information	Volume I, pages: AA000005-000008
Answer to Petition	Volume I, pages: AA000184-000186
Findings of Fact, Conclusions of Law	Volume II, pages: AA000361-000367
Guilty Plea Memorandum	Volume I, pages: AA000009-000015
Information	Volume I, pages: AA000001-000004
Judgment	Volume I, pages: AA000032-000033
Motion to Withdraw Guilty Plea	Volume I, pages: AA000187-000201
Notices of Appeal	Volume II, pages: AA000348-000368
Opposition to Motion to Strike	Volume I, pages: AA000202-000204
Order of Affirmance	Volume I, pages: AA000090-000093
Order Denying Motion to Withdraw	Volume II, pages: AA000353-000354
Petition for Writ of Habeas Corpus	Volume I, pages: AA000094-000170
Response to Opposition to Motion	Volume I, pages: AA000205-000218
Supplement in Consideration of Motion	Volume I, pages: AA000219-000225
Transcript of Arraignment	Volume I, pages: AA000016-000031
Transcript of Evidentiary Hearing	Volume II, pages: AA000226-000346

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////

////

DATED: June 25, 2012.

STORY LAW GROUP

By: /s/ Robert W. Story.
ROBERT W. STORY, ESQ.
Nevada Bar No. 1268
Story Law Group
245 E. Liberty Street, Suite 530
Reno, Nevada 89501
Telephone: (775) 284-5510
Facsimile: (775) 996-4103
Attorneys for Appellant Brendan
Dunckley

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on June 25, 2012. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Terrance P. McCarthy
Counsel for the State of Nevada.

Attorney General
Catherine Cortez Masto

I declare under penalty of perjury that the foregoing is true and correct

/s/Barbara A. Ancina
BARBARA A. ANCINA
Story Law Group

11/17
DA # 373085

FILED

RPD RP07-009446, RPD RP05-034027

2007 JUL 12 PM 2:42

1 CODE 1800

Richard A. Gammick

2 #001510

RONALD A. LONGTIN, JR.

BY J. Ames
DEPUTY

P.O. Box 30083

3 Reno, NV 89520-3083

(775) 328-3200

4 Attorney for Plaintiff

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

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR07-1728

11 v.

Dept. No. 4

12 BRENDAN DUNCKLEY,

13 Defendant.

14 _____/
15 INFORMATION

16 RICHARD A. GAMMICK, District Attorney within and for the

17 County of Washoe, State of Nevada, in the name and by the authority
18 of the State of Nevada, informs the above entitled Court that BRENDAN
19 DUNCKLEY, the defendant above named, has committed the crimes of:

20 COUNT I. SEXUAL ASSAULT ON A CHILD, a violation of NRS
21 200.366, a felony, (F1000) in the manner following:

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

AA000001

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 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
27 PCN RPD0726524C

28 07068446

DA # 373085

RPD RP07-009446, RPD RP05-034027

FILED

2008 FEB 28 PM 3:13

HOWARD W. CONYERS

BY D. Jaramillo

DEPUTY

1 CODE 1800
2 Richard A. Gammick
3 #001510
4 P.O. Box 30083
5 Reno, NV 89520-3083
6 (775) 328-3200
7 Attorney for Plaintiff

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
9
10 IN AND FOR THE COUNTY OF WASHOE.

11 THE STATE OF NEVADA,

12 Plaintiff,

Case No. CR07-1728

13 v.

Dept. No. 4

14 BRENDAN DUNCKLEY,

15 Defendant.

16 AMENDED INFORMATION

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

21 COUNT I. LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN
22 YEARS, a violation of NRS 201.230, a felony, (F650) in the manner
23 following:

24 That the said defendant on or between the 14th day of
25 August A.D. A.D., 1998, and the 13th day of August A.D. A.D., 2000,
26 or thereabout, and before the filing of this Information, at and
within the County of Washoe, State of Nevada, did willfully,

AA000005

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 ///

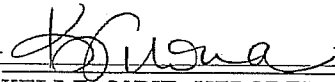
25 ///

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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25
26

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
Deputy District Attorney

25 PCN RPD0726517C
PCN RPD0726524C

26 07068446

COPY

1 CODE 1785
2 Richard A. Gammick
3 #001510
4 P.O. 30083
5 Reno, NV. 89520-3083
6 (775)328-3200
7 Attorney for Plaintiff

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE.

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No. CR07-1728

15 v.

Dept. No. 4

16 BRENDAN DUNCKLEY,

17 Defendant.

18
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22
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26
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.

AA000009

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,
; 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 ^{including all counts filed and dismissed in RJC Case No. 2007-1} I understand that I am entering my ⁰³³⁸⁴
26 plea to Count I as a legal fiction, pursuant to plea negotiations,

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)

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 ///

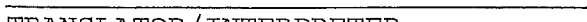
1 16. I am signing this Plea Memorandum voluntarily with
2 advice of counsel, under no duress, coercion, or promises of
3 leniency.

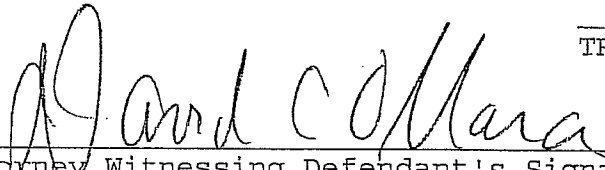
4 AFFIRMATION PURSUANT TO NRS 239B.030

5 The undersigned does hereby affirm that the preceding
6 document does not contain the social security number of any person.

7 DATED this 6th day of March, 2008.

8
9 
10 DEFENDANT

11
12 
13 TRANSLATOR/INTERPRETER

14 
Attorney Witnessing Defendant's Signature

15 
16 Prosecuting Attorney

17
18
19
20
21
22
23
24
26 07068446

A

Code No. 4185

COPY

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

-oOo-

STATE OF NEVADA,

Plaintiff,

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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4
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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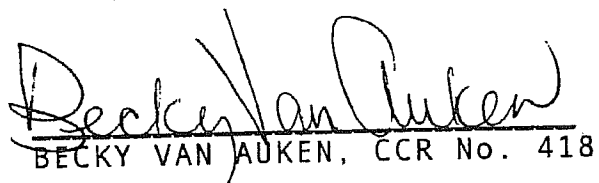
STATE OF NEVADA,)
COUNTY OF WASHOE.)

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, 10/16/2008.


BECKY VAN AUKEN, CCR No. 418

CR07-1728
STATE VS. BRENDAN DUNCKLEY (2 Pages
District Court 08/11/2008 03:14 PM
Washoe County 1850
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1 CODE 1850

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AUG 11 2008

HOWARD V. CONYERS, CLERK

By: *[Signature]*
DEPUTY CLERK

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4
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.

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12 Connie J. Steinheims
13 DISTRICT JUDGE
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1 Code No. 4185

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR THE COUNTY OF WASHOE

5 THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

6 -oOo-

7 STATE OF NEVADA,)

8 Plaintiff,)

Case No. CR07-1728

9 vs.)

Dept. No. 4

10 BRENDAN DUNCKLEY,)

11 Defendant.)

COPY

12
13 TRANSCRIPT OF PROCEEDINGS

14 SENTENCING

15 August 5, 2008

16 RENO, NEVADA

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19
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21
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23 Reported By:

LISA A. YOUNG, CCR No. 353

APPEARANCES:

For the Plaintiff: KELLI ANNE VILORIA
Deputy District Attorney
Reno, Nevada

For the Defendant: DAVID C. O'MARA
Attorney at Law
Reno, Nevada

Parole and Probation: LUPE GARRISON

EXHIBITS	MARKED	ADMITTED
A - Report from Eng Counselling	5	5
B - Letter from Alamo Casino	5	5

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. Viloria?

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. Vilorio?

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. Viloria 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. Viloria 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



Presentence Investigation Report

**The Honorable Connie Steinheimer
Department IV, Washoe County
Second Judicial District**

Date Report Prepared: July 17, 2008

**Prosecutor: Kelli Vilorio, DDA
Defense Attorney: David O'Mara, DPD**

PSI: 281424

I. CASE INFORMATION

Defendant: Brendan Dunckley

Date of Birth: 7/4/76

Age: 32

SSN: 098-60-5492

Address: 1570 Sky Valley #B202

City/State/Zip: Reno, NV 89523

Months/Years: 3 months

Phone: (775) 379-7668

Driver's License: 0001025012

State: NV

Status: Valid

POB: Carmel, NY

US Citizen: Yes

Notification Required Per NRS 630.307: No

Case: CR07-1728

DA #: 373085

PCN: RPD0726517C

P&P Bin: 1001831490

FBI: 704876JC6

SID: NV 04156735

Resident: Yes

Offense Date: CT. I Between 8/14/98 and 8/13/00

CT. II 3/10/07

Arrest Date: CT. I: 3/30/07

CT. II: 3/22/07

Plea Date: 3/6/08, by plea of guilty.

Sentencing Date: 8/5/08

II. CHARGE INFORMATION

Offense: CT. I Lewdness With a Child Under the Age of Fourteen Years (F)

NRS: 201.230

Category: A

IOC: 00191

Penalty: For life with the possibility of parole, with eligibility of parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$10,000.00.

Offense: CT. II Attempted Sexual Assault (F)

NRS: 193.330/200.366

Category: B

IOC: 02222

Penalty: By a minimum term of 2 years and a maximum term of 20 years Nevada Department of Corrections.

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III. PLEA NEGOTIATIONS

The State will be free to argue for an appropriate sentence. The State will not file additional criminal charges resulting from the arrest in this case, and/or will refrain from pursuing additional and/or transactionally related offenses including all counts filed and dismissed in RJC case number 2007-033884. I understand that I am entering my plea to Count I as a legal fiction, pursuant to plea negotiations, to allow me to avoid the more serious charge of sexual assault in the original Count I, and to allow me the opportunity to qualify for probation, which would otherwise be unavailable. Full restitution.

IV. DEFENDANT INFORMATION

Physical Identifiers:

Sex: M Race: W Height: 5'7" Weight: 185
Hair: Brown Eyes: Hazel
Scars: None noted.
Tattoos: None.
Aliases: None noted.
Additional SSNs: None.
Additional DOBs: None.

Social History: The following social history is as related by the defendant and is unverified unless otherwise noted:

Childhood: At the time of interview, the defendant reported he was physically abused by his mother. When he was a child, Mr. Dunckley related his mother would break wooden spoons on his buttocks when spanking him.

Immediate Family Members: The defendant reports his parents reside in California. One sister resides in New York. Another sister resides in California. Mr. Dunckley stated his brother resides in the nation of China.

Marital Status: Married.

Prior Marriages/Long Term Relationships: Two reported.

Children: Four, ages 10, 9, 7 and 3.

Custody Status of Children: The defendant stated his two oldest children reside with his former wife in California. His two youngest children reside with him and his present wife.

Monthly Child Support Obligation: \$397.00 per month. The defendant estimated he was approximately \$1,200.00 in arrears.

Employment Status: Employed, Northern Nevada Construction.

Number of Months Employed In The 12 Months Prior To Instant Offense: 12

Income: \$17.00 per hour.

Other Sources: None reported.

DEFENDANT INFORMATION (Continued)

Assets: Unspecified amount in his vehicle.

Debts: The defendant reported debts of \$30,000.00 in student loans and \$20,000.00 in medical bills. He reported additional debts of \$10,000.00 in miscellaneous bills.

Education: High school graduate, 1994. The defendant graduated the Culinary Institute of America in New York in 1999.

Military: N/A

Health and Medical History: At the time of interview, the defendant reported no health concerns.

Mental Health History: On May 21st and 29th, 2008, the defendant was evaluated by Robert Stuyvesant, MFT, with respect to this offense and pursuant to the dictates of NRS 176.133/176.135. The findings of the psychosexual evaluation are attached and reflect the following:

DSM IV:

Axis I: V61.21 Sexual abuse of a child, perpetrator; 302.9 paraphilia nos

Axis II: Deferred

Axis III: None

Axis IV: Current legal charge, relationship challenges

Axis V: GAF = 60

Risk of Dangerousness to the Community: In considering the risk scales along with clinical judgement, Mr. Dunckley is estimated in the moderate range for sexual reoffense risk. Clinical judgement elevated risk due to reoffense behaviors occurring over an elapsed period of time, and involved an offense against a stranger. Furthermore, his promiscuous and impulsive sexual lifestyle places him at greater risk for further allegations/charges. There is no evidence of being indiscriminate in regard to victim selection, meaning his modus operandi is not limited to a particular victim type, age or preference.

It is the opinion of this evaluator that Mr. Dunckley DOES NOT REPRESENT A HIGH RISK TO REOFFEND SEXUALLY based on current standards for assessment (NRS 176a.110)

Identification of Risk Population: Based on historical information, response to inventories, self reported arousal and objective measures of sexual interest, the identifiable risk population is varied, and can include adult females who are strangers, and under age youth whom he has access to, or had developed a relationship with. Much younger children do not present as an immediate risk, in that there is no evidence of sexual interest in younger children.

Amenability to Treatment: Mr. Dunckley presents as a positive candidate for treatment, based on his willingness to openly discuss and explore the factors related to the referral offense; primarily his disclosure of his sexual offense history. He does not present as antisocial or defiant, though there may be some resistance to treatment upon realization of a longer term process. Although there may be some minimization and presence of cognitive distortions that support and maintain the behaviors, these issues can be addressed in the treatment process with Mr. Dunckley. Mr. Dunckley recognizes the need for intervention, and reported having initiated treatment to date.

PRESENTENCE INVESTIGATION REPORT
BRENDAN DUNCKLEY
CC#: CR07-1728

Page 4

DEFENDANT INFORMATION (Continued)

Gambling History: At the time of interview, the defendant reported no problematic gambling concerns.

Substance Abuse History: Mr. Dunckley reported he smoked marijuana on one prior occasion and his alcohol consumption was non problematic.

Gang Activity/Affiliation: None reported.

V. CRIMINAL RECORD

CONVICTIONS: 1 FEL: 0 GM: 0 MISD: 1

INCARCERATIONS: 0 PRISON: 0 JAIL: 0

OUTSTANDING WARRANTS: None.

WARRANT NUMBER AND JURISDICTION: N/A

EXTRADITABLE: N/A

SUPERVISION HISTORY:

CURRENT: 0 Probation Terms: 0 Parole Terms: 0

PRIOR TERMS:

Probation: 0 Revoked: 0 Discharged: 0 Honorable: 0 Other: 0
Parole: 0 Revoked: 0 Discharged: 0 Honorable: 0 Other: 0

Adult:

Arrest Date:	Offense:	Disposition:
7/27/05 Reno Municipal Court	Petty Larceny (M)	Per defendant convicted (M), fined \$300.00.
3/22/07 Reno NV P.D.	Burglary Sexually Motivated (F) Sexual Assault (F) CR07-1728, CT. II	Instant Offense
3/30/07 Reno NV P.D.	Sexual Assault on a Child (F) Lewdness with Child Under 14 years (F) CR07-1728, CT I	Instant Offense

In addition to the above, records reflect the defendant was arrested on April 30, 2007 by the Reno Police Department for assault with no disposition being available.

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VI. OFFENSE SYNOPSIS

Count. II

On March 10, 2007, officers of the Reno Police Department were dispatched to a residence on Sky Ranch in reference to a disturbance call which involved a woman screaming in the caller's background. Upon arrival, officers observed a large group of people standing in front of an apartment building and a female setting on the curb of the road crying hysterically. The female was stating she had been sexually assaulted. One of the bystanders advised the officers the defendant, Brendan Dunckley, was the person the female had accused of the assault.

Officers contacted the defendant who was setting in a white van. Upon being questioned, the defendant advised the officers he had been driving through the parking lot on his way home when he observed the crying female stumbling in the parking lot. Mr. Dunckley related the female appeared intoxicated and he had stopped to assist her. He went on to state the victim appeared intoxicated and he continued to watch her as she fell on a stairway. He had then parked his van and gone to assist the victim up the stairs and into her apartment. As he and the victim reached her apartment he had asked her if she had a key and she replied that she did not. The victim then fell against the door of her apartment and it opened. The victim then fell to the floor onto a pile of clothing. The defendant reported the victim was unconscious at this point and he administered a sternum rub and checked her pulse. This action awoke the victim and he had asked her what her name was and how much alcohol she had consumed. Mr. Dunckley reported the victim had spoken to him and then again lost consciousness. He again rubbed her sternum and she awoke and began screaming at him and asking him who he was. The defendant reported he was on his cell phone speaking with his wife at the time of the occurrence and she had told him to leave the area. He had then left the victim and as he did the victim began to follow him and eventually attacked him. Mr. Dunckley stated he then went to the parking lot of the complex and asked an unidentified male to assist him. He related he was able to get away from the victim and went to his van where he ended the phone conversation with his wife and call the Reno Police Department non emergency number to report the incident. In checking the defendant, officers observed a red mark on his neck area.

Officers then spoke with the victim who reported she was arguing with her boyfriend and had decided to go for a walk. As she was walking to her apartment she noticed she was being followed by a van driven by a male who wanted her to get in the van. She had declined his offer and continued walking. The next thing she recalled, was waking up with the male who was driving the van attempting to force his penis in her mouth. She advised the officers that she had bitten the males penis at least four times when he had his penis in her mouth. Due to the victims apparent intoxication, an officer administered a PBT which revealed a blood alcohol content of .226%. At his point, officers requested the defendant submit to swabs of his penis for DNA analysis and also requested he submit to a visual inspection of his penis for injuries. The defendant was compliant with the officers' request. No visible injuries were noted to the defendant's penis.

As a result of the report, an investigation ensued and on March 12, 2007, the detective assigned recalled a prior sexual assault investigation in 2005 where defendant Dunckley was listed a suspect. The detective noted similarities in the two cases in that both victims had been drinking excessively and Mr. Dunckley was extremely cooperative with officers. In both instances, the defendant had been on the phone with his wife at the time of the reported offenses.

OFFENSE SYNOPSIS (Count. II): (Continued)

On March 19, 2007, the detective met with the victim in this offense and she was questioned. The victim reported she had been drinking and had become involved in an argument with her boyfriend. She had left her boyfriend's location and was walking back to her apartment when she noticed she was being followed by a van. She recalled going up the stairs to her apartment. She then entered her apartment and when she turned around, Mr. Dunckley was standing in her apartment's open doorway. She related the defendant had then told her to perform oral sex and believing she had no recourse, she complied. The victim stated she had bitten the defendant's penis when he put it in her mouth. At this time the detective collected an oral swab from the victim for comparison purposes.

On March 21, 2007, the defendant was contacted at his residence. When questioned, the defendant related the same information he had provided to the original responding officers. The detective then asked the defendant how the victim's saliva had ended up on his penis. Mr. Dunckley then advised the detective that when the victim had awoken the second time, she had removed his penis from his pants and performed oral sex upon him. The defendant stated he knew this was wrong and stopped the victim. He reported the victim had become angry and attacked him. The detective then requested the defendant respond to the police department on March 22, 2007, for an additional interview. The defendant complied and when questioned on this occasion, he reported the sexual contact with the victim on March 10, 2007 was consensual. Mr. Dunckley related he had observed the victim staggering while walking in the parking lot of the apartment complex. He had offered her a ride and asked her if she was ill. The victim had told him she had an argument with her boyfriend and continued walking toward an apartment staircase. She then fell on the stairs and the defendant parked his van and assisted the victim to her apartment. When they reached her apartment door, the victim knocked it open and fell on the floor. The defendant saw that the victim was unconscious and woke her up. At this point, the victim put her arms around him and became affectionate. He then backed away from the victim and she again passed out. He woke her a second time and on this occasion the victim removed his penis from his pants and said she wanted to thank him. She then passed out again. When the victim awoke the third time, the defendant reported she looked "possessed." She then accused him of raping him and he left her apartment. The detective asked the defendant how the victim managed to get his penis out of his pants if she was too intoxicated to stand up and he responded that it was a "bad judgement call." The defendant was reminded of the similarities in this case with the prior report which listed him as a suspect where the victim reported being forced to perform oral sex upon him while she was intoxicated and he responded that it was just a "stupid judgement call." When the victim came onto him, he made a "split second mistake." Upon conclusion of the interview, the defendant was arrested and booked accordingly.

Count. I

During the course of investigating Count II, the detective interviewed several other females who had contact with the defendant in the past. During the course of the interviews, the detective was advised of the name of a female who had been sexually abused by the defendant when she was a child. Further investigation revealed this victim was presently incarcerated in the Nevada Department of Corrections.

On March 29, 2007, the detective traveled to this victim's place of incarceration and she was interviewed. Upon being questioned, this victim reported that when she was twelve years of age, she and another juvenile female had gone with defendant Dunckley and his wife to the Atlantis Casino for dinner. After the dinner, the victim had mentioned to the defendant that she had never been in an elevator which allowed the view of the Reno area. This victim reported she and the defendant had entered an elevator alone. As the elevator ascended, the defendant pushed her into a corner of the elevator and put his hand down her pants.

OFFENSE SYNOPSIS (Count. I): (Continued)

This victim related a second encounter with the defendant and stated it had occurred when Mr. Dunckley was driving her to her residence. She reported at the time she was twelve years of age and was living with her parents near Longley Lane. The victim stated that upon arrival in the parking lot of her parent's apartment complex, Mr. Dunckley had parked his vehicle and had begun kissing her. She stated the defendant had sexual intercourse with her in his vehicle. The detective asked the victim if the act was forced upon her and she stated it was not, however, she stated "but I was only twelve years old." The victim went on to relate the defendant had told her not to say anything about the incident and that he would "teach her stuff." After the assault, the victim stated she avoided any further contact with the defendant. After receiving this information, the detective attempted to locate the defendant at his residence but was unsuccessful. On March 30, 2007, the defendant responded to the Reno Police Department where he was taken into custody and booked accordingly.

VII. CO-DEFENDANT'S/OFFENDER'S INFORMATION

N/A

VIII. DEFENDANT'S STATEMENT

The defendant was interviewed at the Division of Parole and Probation on March 26, 2008. At that time he submitted a statement for the Court's review.

IX. VICTIM INFORMATION/STATEMENT

(VC2175351) The victim in Count I has failed to respond to communication from the Division. Therefore impact and losses are unknown.

(VC2175350) The victim in Count II has failed to respond to communication from the Division. Therefore impact and losses are unknown.

X. CONCLUSION

The Division acknowledges the Instant Offense will constitute the defendant's first felony convictions. However, his conduct in the case before the Court displays a disturbing pattern of predatory behavior which has been ongoing for an extended period of time. In Count II, the defendant observed an opportunity to take advantage of the victim's intoxicated state and sexually abuse her in her own residence. When discovered, Mr. Dunckley attempted to fabricate a scenario which appeared to be believable to the responding officers. He was aware the victim's level of intoxication would cloud her memory and make it difficult for officers to obtain a coherent statement. When initially contacted by officers, he presented himself as a concerned citizen who was only attempting to assist an incapacitated female. During his assault, Mr. Dunckley attempted to establish an alibi by calling his wife while he is in the company of, and sexually abusing the incapacitated female. When questioned by authorities, the defendant provided several versions of events, however, he eventually acknowledged sexual contact with this victim. In Count I, the defendant created a scenario where he groomed a twelve-year-old female over a period of time, utilized his friendship with her parents, and then sexually abused her on two occasions. According to the psychosexual evaluation, the defendant presents as a moderate risk for reoffense. He is determined not to represent a high risk to reoffend based upon a currently accepted standard of assessment. It appears the defendant has invested an inordinate amount of time and planning and executing his aberrant behavior and considerable thought as to his responses if and when confronted by authorities. When his conduct before and during commission of the offenses was scrutinized by the investigating officer, his premeditation became apparent. Taking these factors into consideration, the Division cannot view the defendant as an appropriate candidate for a period of community supervision. Therefore, the following is submitted for the Court's consideration.