

EXHIBIT
HERO CONTINUE

1 (overruled on other grounds by, Kaczmarek v. State, 120 Nev. 314, 91 P.3d 16 (2004)).
2 Mere presence is never sufficient to make someone liable for a crime. See Winston v.
3 Sheriff, Clark County, 92 Nev. 616, 555 P.2d 1234 (1976). Moreover, in order to hold
4 someone liable for a crime on an aiding and abetting theory, it must be shown that the person
5 had the specific intent that the crime be committed. See Sharma v. State, 118 Nev. 648, 56
6 P.3d 868 (2002). As such, Defendant is not a co-conspirator as a matter of law. Therefore,
7 the determination of whether or not he is a co-conspirator is a question left to the jury. As
8 such, he need not be corroborated, unless and until, a jury determines he is a co-conspirator.
9 See Rowland v. State, 118 Nev. 31, 39 P.3d 114 (2002) and Ford v. State, 99 Nev. 209, 660
10 P.2d 992 (1983).

11 VI.

12 **EVEN IF DONNY WERE A CO-CONSPIRATOR AS A MATTER OF LAW,**
13 **HE WAS CORROBORATED**

14 The Nevada Supreme Court has defined sufficient corroboration as:

15 Corroboration evidence need not be found in a single fact or circumstance and
16 can, instead, be taken from the circumstances and evidence as a whole. LaPena
17 v. State, 92 Nev. 1, 544 P.2d 1187 (1976). Corroboration evidence also need
18 not in itself be sufficient to establish guilt, and it will satisfy the statute if it
merely tends to connect the accused to the offense. See State v. Hilbish, Et.
Al., 59 Nev. 469, 97 P.2d 435 (1940).

19 Cheatham v. State, 104 Nev. 500, 761 P.2d 419 (1988). As discussed *supra*, even without
20 the testimony of Donny, there was sufficient evidence to hold Defendant to answer for the
21 charges of murder. However, that is not the standard. Donny is sufficiently corroborated
22 should there be any evidence which "merely tends to connect the accused to the offense." *Id*
23 (citing State v. Hilbish, Et. Al., 59 Nev. 469, 97 P.2d 435 (1940)).

24 As has been repeatedly discussed, there is a mountain of evidence which tends to
25 connect Defendant Malone to the instant offense. He participated in the kidnapping and
26 beating of Red the night before. He threatened to kill the victims in the exact manner they
27 were killed. He made statements to Corrina Phillips both before and after the crime
28 connecting him to the offenses. Finally, he engaged in destruction of evidence and

07/23/2010 13:02

V8068H

DEPARTMENT OF CORRECTIONS
CLARK COUNTY DETENTION CENTER
Accounting Office Legal Sales

Page 1 of 1
OOROLVRC
6.04.4.12 NVLVD0C

S A L E S R E C E I P T

Sales Order Id : 1597315 Name : MALONE, DOMONIC
Sale Date : 07/23/2010 Birth Date : 05/14/1980
ID# : 0001670891 Location : LVMPD-NT-7D-10-L; :

ITEM CODE	I	QTY	ITEM NAME	ITEM PRICE	TOTAL PRICE
	2 Y	2	MANILLA ENVELOPE	0.25	0.50
				0.25	0.50

Trust Account Balance (before sale): 0.00

Trust Account Balance (after sale): 0.00

Total Obligations (as of 07/23/2010 13:02): 13.72

Offender : _____ Date : _____

Public Announcement:

NEW PRODUCTS EFFECTIVE IMMEDIATELY: #111 FRUIT PUNCH GATORADE & #115 LEMON-LIME
GATORADE POWDER PACKETS \$.75 EA. #119 SUGAR FREE HAWAIIAN PUNCH LEMON BERRY & #120
SUGAR FREE HAWAIIAN PUNCH JUICY RED SINGLE POWDER PACKETS \$.45 EA.

Inmate
Accounts

7D 10

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
INMATE REQUEST/GRIEVANCE

07/23/10 12:14 DSD BUSINESS OFC

Date 7/23/2010	
Housing Unit D	Bed 104
Prop Number	

Name: (last) Munoz	(first) Dionicio	(middle initial) R.	Floor 7th
ID Number 1670891			

☒ REQUEST ☐ GRIEVANCE

(All grievances must be submitted within 72 hours of incident.)

I would like to have the following please

two (2) Manila Envelope address to

Regional Justice Center
200 Lewis Ave, 3rd floor
Las Vegas, NV. 89101

Dionicio R. Munoz
Inmate's Signature

7/23/2010
Date

E764M 072310
Staff Person Receiving

Date/Time

Issue has been resolved as follows:

Attached

Signature of employee who resolved the Request/Grievance Problem

Date/Time

ORIGINAL—INMATE FILE

YELLOW—RETURNED TO INMATE WITH RESPONSE

PINK—INMATE KEEPS

8068

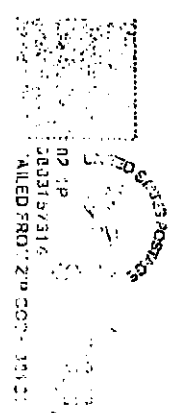
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1256

MAKORIE, Demone #1670891
Name/ID
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, NV 89101

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FILED

ORIGINAL JAN 12 TO 55 AM '11

John J. [Signature]
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DOMONIC RONALDO MALONE,

Defendant.

CASE NO. C224572-2

DEPT. XVII

08C224572-2
RTRAN
Recorder's Transcript of Hearing
1169008


BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

TUESDAY, OCTOBER 26, 2010

RECORDER'S TRANSCRIPT OF HEARING RE:

CALENDAR CALL

APPEARANCES:

For the State:	CHRISTOPHER LALLI, ESQ., MARC DIGIACOMO, ESQ., Deputy District Attorneys
For the Defendant:	RANDALL H. PIKE, ESQ., CHARLES A. CANO, ESQ., Special Public Defender (Standby Counsel)

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

RECEIVED
JAN 12 2011
CLERK OF THE COURT

1 LAS VEGAS, NEVADA; TUESDAY, OCTOBER 26, 2010

2 [Proceeding commenced at 9:29 a.m.]

3
4 THE COURT: Malone. Malone matter. Domonic Malone, 224572.
5 This is Calendar Call.

6 MR. LALLI: State's ready to proceed, Your Honor.

7 THE COURT: And we have Mr. Pike here.

8 MR. PIKE: Yes, Your Honor. Charles Cano and Randall Pike
9 present as stand-by counsel.

10 THE COURT: All right.

11 MR. PIKE: Mr. Malone's present in custody.

12 THE COURT: You may know 'cause I've seen you in Court, Mr.
13 Cano, and that we probably have another two weeks to go on the
14 McCarty matter and may go a little further if there's a guilty
15 verdict and it goes to penalty phase. And so we're just going to
16 have to reset this trial 'cause it's not overflow eligible
17 obviously. We'll give you the next --

18 MR. PIKE: We are ready for the penalty phase pursuant to the
19 Court's ruling. I believe Mr. Malone is present or is ready for
20 the trial, but just so the Court is aware we understand this trial,
21 the Co-defendant's trial is running a little bit longer than was
22 expected.

23 THE COURT: You understand that, Mr. Malone?

24 THE DEFENDANT: I understand it now. Yes, sir.

25 THE COURT: Okay. I'm still in trial.

1 THE DEFENDANT: No. I understand that.
2 THE COURT: Okay.
3 THE DEFENDANT: I was kind of hoping they hurry this along
4 'cause -- hurry up and go.
5 THE COURT: I'm sorry.
6 THE DEFENDANT: I was hoping they was [sic] hurry it up. You
7 know, get some additional time if they need too; that, you know,
8 'cause I'm pretty much really ready to go.
9 THE COURT: I understand that.
10 THE DEFENDANT: Yeah, so you know.
11 MR. LALLI: We're -- we're -- I understand the Court's
12 position.
13 THE COURT: Right.
14 MR. LALLI: We would like to have it tried now. I know that
15 the --
16 THE DEFENDANT: Yes.
17 MR. LALLI: -- Court had some scheduling issues that prevent
18 it from hearing this matter and I just wanted for the record to
19 urge the Court to find a way to hear the matter. I'm not sure that
20 that's possible under the circumstances, but we are ready to go.
21 There are --
22 THE COURT: Right.
23 MR. LALLI: -- a number of witnesses from out-of-state.
24 THE COURT: We'll give you the very next available date that
25 has four weeks open.

1 MR. LALLI: Well, that's the problem. I have a -- I am
2 booked well into January -- well into next year and I know Mr.
3 DiGiacomo is also. Many of those are firm sets. I know I have a
4 number of death penalty cases at the first part of the year and I
5 don't -- I don't have Mr. DiGiacomo's --

6 THE COURT: He's behind you.

7 MR. DIGIACOMO: I'm right here.

8 MR. LALLI: Oh, there he is.

9 MR. DIGIACOMO: I'm pulling mine up.

10 MR. LALLI: He's hard to see.

11 [Colloquy between the Court and the Clerk]

12 THE CLERK: So do you want March? Its three weeks.

13 MR. PIKE: We have a death penalty case on the 14th.

14 THE COURT: How about June?

15 THE CLERK: We could do March 15th -- oh, no we can't do that.
16 May?

17 MR. PIKE: May --

18 MR. LALLI: I've got a case that's been continued a number of
19 times; that's going to be set mid May.

20 THE CLERK: May 23rd.

21 MR. LALLI: I won't be able to do it then.

22 MR. CANO: That's on top of Duarte-Herrera.

23 THE COURT: Okay.

24 MR. CANO: So if you want to stack it on top of that.

25 THE COURT: Well, this would take priority --

1 MR. CANO: Right.

2 THE COURT: -- 'cause this -- so is May 23rd good, Mr. Lalli?

3 MR. LALLI: It's not.

4 THE DEFENDANT: No.

5 THE COURT: How about June 6th?

6 MR. PIKE: I have an older death penalty case that's also a
7 go. Double homicide set for June 13th.

8 THE COURT: Is that definitely going or should we -- can we
9 trail? We could give you two trial dates.

10 MR. LALLI: June -- June 6th works for me.

11 THE DEFENDANT: It doesn't work for me.

12 THE COURT: You have some place to go, Mr. Malone?

13 THE DEFENDANT: Yes.

14 THE COURT: What?

15 THE DEFENDANT: Home.

16 THE COURT: All right.

17 THE DEFENDANT: I've been waiting to go home for four years
18 now.

19 THE COURT: I understand. We're trying -- we're trying to
20 get you some place.

21 THE DEFENDANT: Yeah. I'm trying to hurry up and go home.
22 This -- you know, I have a family to take care of too.

23 THE COURT: Well, what we can do, Mr. Pike, is set -- set it
24 for June 6th. If your other case negotiates or gets continued, then
25 we can try this one. If it doesn't, I'll give you another trial

1 date right now.

2 MR. CANO: Okay.

3 MR. PIKE: Okay.

4 THE COURT: That way just in case happens.

5 MR. PIKE: Okay. Thank you, Your Honor.

6 THE COURT: So, we'll -- Carol, we'll give them June 6th for
7 this trial. We'll also give them a date in August to see if
8 there's --

9 THE CLERK: Okay, so Calendar Call would be May 31st with Jury
10 Trial starting on June 6th. And then --

11 MR. LALLI: Your Honor, I have a capital case that's going to
12 go about three weeks. It's already set in August.

13 THE COURT: Can we start -- does it start the first part of
14 August or --

15 MR. LALLI: Starts August 8th. It's going to go approximately
16 three weeks.

17 THE COURT: And I know we were here with Mr. Schieck on a
18 case earlier today from the Special PD's Office where he took --

19 MR. PIKE: That was Gamble,

20 THE COURT: -- three weeks in October.

21 MR. PIKE: Yes.

22 MR. DIGIACOMO: Do you have anything in September?

23 THE CLERK: It would be October.

24 THE COURT: If this is a civil case, sure. You know what,
25 let's pass this a week. Trial date's vacated right now and because

1 of my schedule, well mostly your guys' schedule, let me check with
2 the criminal Chief Judge for next year see if we can have this case
3 transferred. See if someone's willing to pick it up. I mean,
4 we're looking at November or 2012 and I don't want to wait that
5 long.

6 MR. LALLI: I have a case that's -- I hate to be the stick in
7 the mud, but I've got a case with twelve different Co-defendants
8 that's set October, November.

9 THE COURT: Actually, you know what I'm going to do, we're
10 going to pass this two weeks for setting a trial date. If counsel
11 can forward to me with a fax cover sheet the dates you are not
12 available next year.

13 MR. LALLI: Are we going with, I believe it was the -- the
14 tentative -- is it May?

15 THE COURT: Yes.

16 MR. LALLI: Are we going to -- okay.

17 THE COURT: Well, depending on Mr. Pike's case.

18 MR. LALLI: Right.

19 THE COURT: If you tell your office to give him a good deal
20 then he'll be available.

21 MR. DIGIACOMO: What's the date again?

22 MR. LALLI: I'm not in charge any more, Your Honor, or I
23 might do that.

24 THE CLERK: May 31st, June 6th.

25 THE COURT: All right. So we'll pass this two weeks counsel

1 to fax us a cover sheet --

2 MR. PIKE: All right.

3 THE COURT: -- of saying when you're not available.

4 MR. PIKE: We'll do that, Your Honor.

5 THE COURT: And if it's a two week trial, make sure you're
6 setting forth two weeks --

7 MR. LALLI: You just want our 2011 dates?

8 THE COURT: Right. When you're not available. All right.
9 So two weeks.

10 MR. PIKE: Thank you.

11 THE DEFENDANT: Two weeks, sir?

12 THE COURT: Yes, sir.

13 THE DEFENDANT: Come back in two weeks?

14 THE COURT: Yes.

15 THE DEFENDANT: Okay.

16 THE CLERK: November 9th.

17 THE COURT: Sir, but you're announcing ready at this point?

18 THE DEFENDANT: Yes, sir. I'm ready.

19 THE COURT: All right. You've done all your research?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Reviewed --

22 THE DEFENDANT: I'm still -- I'm still --

23 THE COURT: Hang on.

24 THE DEFENDANT: -- using the legal library.

25 THE COURT: Great. Done all your research you need?

1 THE DEFENDANT: I'm still doing it in the legal library, sir,
2 but yes I'm ready to go.

3 THE COURT: Okay. And you've reviewed the evidence code?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. I just want to make sure you've done that;
6 and also you've reviewed the possible penalties that could be
7 imposed on the charges filed against you? You've done that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Great. We'll see you back in two
10 weeks. All right.

11 THE DEFENDANT: Yes, sir. I'll be back.

12 THE COURT: All right.

13 THE DEFENDANT: Okay.

14 MR. LALLI: Your Honor, one more issue with this Defendant.
15 I was informed yesterday I believe there was some issue as to his
16 bail amount because we have a material witness in custody under
17 this case number and his bail was set at ten thousand dollars; I
18 think there was some question at least that the jail had as to what
19 this Defendant's bail amount was.

20 THE COURT: You got that, Officer?

21 THE DEFENDANT: As of right now --

22 CORRECTION'S OFFICER: I don't have that information, Your
23 Honor.

24 THE DEFENDANT: -- Your Honor, it's six and a half million
25 right now, sir. Six and a half million I got no bail on the two

1 murder counts, sir.

2 MR. LALLI: Okay.

3 THE CLERK: Sir, it says two million in the computer.

4 MR. LALLI: But it should be no bail on the -- on the
5 murders?

6 THE COURT: That's what our records show, that's what it is.

7 MR. LALLI: There was some information that maybe he was
8 attempting to bail out, but I'm not sure what the situation was,
9 but I just want to make sure his home stays at the Clark County
10 Detention Center for now.

11 THE COURT: Well, he's held without bail.

12 MR. LALLI: Thank you.

13 THE COURT: Sir, have you had an opportunity to prepare a
14 jury questionnaire or review the one the State had provided? Do
15 you know -- or you can use the same one that we've used for Mr.
16 McCarty?

17 THE DEFENDANT: My understanding that you said that if I
18 didn't prepare one that you prepare one that was more suitable for
19 the Court.

20 THE COURT: No. I would use the McCarty one. You received a
21 copy of that a couple of weeks ago.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have any objection to that one?

24 THE DEFENDANT: Just only the stuff that -- that has McCarty
25 up in it, but that's about it, sir. No.

1 THE COURT: All right. Great. We'll use that one.

2 MR. LALLI: Very good.

3 THE COURT: We'll just change the names on it.

4 MR. LALLI: Understood. Thank you.

5 THE COURT: All right.

6 [Proceeding concluded at 9:39 a.m.]

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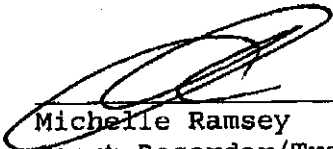
ATTEST: I hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled case
to the best of my ability.

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Michelle Ramsey
Court Recorder/Transcriber

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ORIGINAL

Deanna J. ...
CLERK U.S. COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DOMONIC RONALDO MALONE,

Defendant.

CASE NO. C224572-2

DEPT. XVII

08C224572-2
RTRAN
Recorder Transcript of Hearing
1158010



BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

TUESDAY, NOVEMBER 9, 2010

RECORDER'S TRANSCRIPT OF HEARING RE:

STATUS CHECK: TRIAL SETTING

APPEARANCES:

For the State:

CHRISTOPHER LALLI, ESQ.,
Deputy District Attorney

For the Defendant:

RANDALL H. PIKE, ESQ.,
CHARLES A. CANO, ESQ.,
Special Public Defender
(Standby Counsel)

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

RECEIVED
JAN 12 2011
CLERK OF THE COURT

1 LAS VEGAS, NEVADA; TUESDAY, NOVEMBER 9, 2010

2 [Proceeding commenced at 8:39 a.m.]

3
4 THE COURT: All right. Domonic Malone. Where's Mr. Malone?
5 There he is.

6 THE MARSHAL: Stand up and join us.

7 THE COURT: We have Mr. Pike, Mr. Cano, Mr. Lalli for the
8 State. Status check on trial setting.

9 MR. LALLI: Your Honor, I want to apologize. The Court had
10 asked Mr. DiGiacomo and myself to send you our schedules and with
11 being in trial we just -- we just didn't do it and I apologize for
12 that.

13 THE COURT: And I believe we did receive some from defense --

14 MR. CANO: Yes.

15 THE COURT: -- and we appreciate that.

16 MR. LALLI: Your Honor, they're talking after September of
17 2011 and Mr. DiGiacomo's schedule and my schedule do not
18 accommodate something that late in the year. Mr. DiGiacomo has two
19 trials in October, one of which is a capital case and --

20 THE COURT: Let me stop you there 'cause, counsel, what I was
21 endeavoring to do, and I don't know I would be successful, is every
22 stack next year I have probably at least two firm settings, but
23 they maybe just one week long. It's a sex case or a perhaps a one
24 week long murder trial, not a death penalty case or a child abuse
25 case.

1 And I was going to meet with Chief Criminal Presiding
2 Judge to see if there's a way that I can just block out one of my -
3 - one of my stacks and just farm out my other cases, so I could
4 hear this case earlier.

5 MR. CANO: I think the Court maybe was contemplating a May
6 date originally.

7 THE COURT: I don't know if that's --

8 MR. CANO: I didn't know if that was amenable to the State
9 itself. If we started earlier after May, we could possibly do May.
10 The only issue that we have is that Mr. Pike has another capital
11 case beginning early June.

12 THE COURT: Right.

13 MR. CANO: So we kind of have to try to get that done.

14 THE COURT: I want to look at both schedules and I can see
15 what I can move on my schedule with the assistance of the other
16 Judges here and I can just give you my whole stack earlier and so,
17 but I have to look at everything first.

18 So, let's pass this a week.

19 MR. CANO: But we are -- we are free after mid September.
20 For the rest of the year we are open.

21 THE COURT: Okay.

22 MR. CANO: Just so the Court has that.

23 THE COURT: All right. And I'll get the State's list here.

24 MR. LALLI: Do you want us to send those, Your Honor?

25 THE COURT: E-mail it to me today. We can pass this 'til

1 next Thursday and I should be able to coordinate with the Chief;
2 look at my schedule, look at your schedule see what we can do to
3 get the earliest trial date possible.

4 MR. LALLI: Okay.

5 THE COURT: All right.

6 THE DEFENDANT: Your Honor?

7 THE COURT: Yes, sir.

8 THE DEFENDANT: I have a motion on the 16th of Tuesday -- of
9 next week; is that still going to go forward?

10 THE COURT: Yes, 'cause whatever's scheduled its -- I'll here
11 it on that day.

12 THE DEFENDANT: Okay. Thank you very much.

13 THE COURT: All right. And --

14 MR. CANO: If he has his motion --

15 THE DEFENDANT: May I also have a copy of it? What's going
16 on here? I didn't get no schedules or anything.

17 THE COURT: When you say a copy of everything --

18 THE DEFENDANT: Copies of the schedules.

19 MR. LALLI: I'm not giving Mr. Malone my trial schedule.

20 THE COURT: Right.

21 THE DEFENDANT: I just wanted, you know, make sure that
22 everybody going to be available on the date --

23 THE COURT: Well, sir --

24 THE DEFENDANT: -- [indecipherable] --

25 THE COURT: -- your stand-by counsel I'm going to confirm

1 with their calendar and I'm assuming you'll be available when I
2 pick a trial date.

3 THE DEFENDANT: Well, I'm still here.

4 THE COURT: That's what I'm saying.

5 THE DEFENDANT: I just remembered that -- remember I had
6 addressed this Court on this issue several months ago about how
7 this case would be -- keep continuing and keep continuing on. I
8 just wanted to know when is it going to be confirmed date that is
9 set in stone at least I can at least have an opportunity to be able
10 to return back to society if I can take care of my family.

11 THE COURT: Right.

12 THE DEFENDANT: [indecipherable]

13 THE COURT: Well, sir -- sir, that's why I said we're going
14 to pass this Thursday 'cause I'm going to give you a trial date.

15 THE DEFENDANT: Thank you very much.

16 THE COURT: I want to match up everyone's calendar.

17 MR. LALLI: And if I could just make a record on that point.

18 THE COURT: Sure.

19 MR. LALLI: The Court will certainly recall Mr. Malone had
20 the opportunity to go first. And he vehemently objected to that,
21 so part of the reason his trial isn't going is because of his own
22 fault and I just wanted to make sure that there was a record of
23 that.

24 MR. CANO: Your Honor --

25 THE COURT: Record speaks for itself.

1 MR. LALLI: Thanks.

2 MR. CANO: -- since he has something on calendar set for next

3 Tuesday, do we want to pass that --

4 THE COURT: Let's pass --

5 MR. CANO: -- to Thursday?

6 THE COURT: If there's any --

7 MR. CANO: Just come in on one day?

8 THE COURT: Okay. There's a motion to dismiss set for the

9 16th Tuesday. We'll move that to Thursday so we can have both

10 matters on the same day.

11 MR. CANO: Okay.

12 THE DEFENDANT: I have two motions.

13 MR. PIKE: Thank you very much, Your Honor.

14 THE COURT: Whatever motions you have on, sir, for Tuesday

15 will be bumped to Thursday.

16 THE CLERK: That'll be November 18th.

17 THE DEFENDANT: Okay. Thank you.

18 THE COURT: Okay.

19 MR. LALLI: All right. Thank you.

20 MR. CANO: Thank you.

21 THE COURT: Thank you.

22 THE CLERK: 8:15.

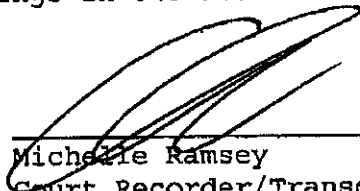
23 MR. LALLI: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 [Proceeding concluded at 8:44 a.m.]

* * * * *

ATTEST: I hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled case
to the best of my ability.


Michelle Ramsey
Court Recorder/Transcriber

1 MOTION/

2 DOMONIC MALONE, NO. 167091

3 CLARK COUNTY DETENTION CENTER

4 330 S. CASINO CENTER BLVD

5 Las Vegas, NV. 89101

6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA)

CASE NO. C224572

9 Plaintiff,)

DEPT NO. XVII

10 vs.)

11 DOMONIC MALONE)

12 Defendant)

13 MOTION FOR (Full TRANSCRIPTION) DISCOVERY OF PROSECUTION

14 RECORDS, FILES AND INFORMATION NECESSARY TO A FAIR TRIAL.

15 COMES NOW, the defendant, DOMONIC MALONE, in proper person, and
16 pursuant to the (5)th, (6)th, (8)th, & (14)th Amendments to the United
17 States Constitution & Nevada Constitution, EJDER(s), Defendant Malone
18 respectfully request this Court to order the production and Transcription
19 of all records, files that are in direct or indirect control of the District
20 Attorney Office; for the purpose of ensuring the defendant on
21 fair trial. Within ten days from the day that discovery is ordered.

22 This Motion is based upon previous motions to Produce Discovery also
23 factual statements set forth in the Pleadings and Authorities contained therein.

24

25 Dated this 29th day of December 2010 Respectfully Submitted

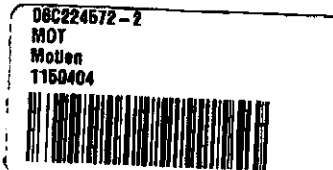
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Alfonso R. Maldonado

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DOMONIC R. MALONE in Pro'Per

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FILED

JAN 08 2011

Office of the Clerk of Court
CLERK OF COURT

1/25/11

Mr. DOMINIC R. MAIONE, 1070891

CCDC

330 S. Casino Center Blvd.

Las Vegas, NV. 89101

Legal Mail

C/o Clerk of the Court

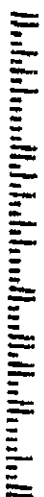
Judge Michael P. Williams Department CCR 000 C224512
RJC

200 Lewis Ave. 3rd Floor

Las Vegas, NV. 89155-1160



891551160



1. MOTION/

2. DOMONIC MALONE, NO. 1670891

3. CLARK COUNTY DETENTION CENTER

4. 330 S. CASINO CENTER BLVD.

5. Las Vegas, NV. 89101

6. PROPER DEFENDANT

7. CHARLES CANO, ESQ.

8. RANDALL PIKE, ESQ.

9. STAND-BY ATTORNEYS FOR MALONE

10.

DISTRICT COURT

11.

CLARK COUNTY, NEVADA

12. THE STATE OF NEVADA)

CASE NO. C224572

13. Plaintiff,)

DEPT NO: XVII

14. vs.)

15. DOMONIC MALONE)

16. Defendant)

17.

MOTION TO DISMISS STAND-BY COUNSEL

18. COMES NOW, the defendant, DOMONIC MALONE, in proper person, and

19. pursuant to the (5)th, (6)th, (7)th, and (14)th Amendments to the United

20. States Constitution & Nevada Constitution, EIGHTH JUDICIAL DISTRICT

21. COURT RULE(S), moves this honorable court to DISMISS STAND-BY

22. COUNSEL: Charles Cano; Randall Pike.

23. This MOTION is based upon previous motions to Dismiss also Federal

24. statements set forth in the Points and Authorities contained therein.

25.

26. Dated this 29th day of December 2010. Respectfully Submitted

27.

28.

Domonic R. Malone

DOMONIC R. MALONE in Pro'per

FILED

JAN 18 2011

John A. Sullivan
CLERK OF COURT

1/25/11

08C224572-2
MDC
Motion to Dismiss Counsel
1150403



RECEIVED
JAN - 4 2011
CLERK OF THE COURT

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FILED

FEB 28 1 08 PM '11

ORIGINAL

Ann. L. Ramsey
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

08C224572-2
RTRAN
Recorder's Transcript of Hearing
1261342


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TRAN

THE STATE OF NEVADA,

Plaintiff,

vs.

DOMONIC RONALDO MALONE,

Defendant.

CASE NO. C224572-2

DEPT. XVII

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

TUESDAY, JANUARY 25, 2011

RECORDER'S TRANSCRIPT OF HEARING RE:

ALL PENDING MOTIONS

APPEARANCES:

For the State:	MARC DIGIACOMO, ESQ., Deputy District Attorney
For the Defendant:	RANDALL H. PIKE, ESQ., CHARLES A. CANO, ESQ., Special Public Defenders

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

CLERK OF THE COURT

RECEIVED
FEB 28 2011

1 LAS VEGAS, NEVADA; TUESDAY, JANUARY 25, 2011

2 [Proceeding commenced at 9:05 a.m.]

3
4 THE COURT: Mr. -- Mr. Malone is present in custody. Mr.
5 Cano, Mr. Pike, Mr. DiGiacomo for the State.

6 We have two motions filed by Mr. Malone. The first one
7 is a motion to dismiss stand-by counsel. Mr. Malone, you -- your
8 motion is just -- what I've received is one page.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Is that the extent of your motion?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And --

13 THE DEFENDANT: Yes, sir.

14 THE COURT: -- and why do you want to dismiss stand-by
15 counsel?

16 THE DEFENDANT: Well, okay I like to remind you that, you
17 know, you say you wanted to protect my rights at the beginning of
18 this case January 5, 2009. Remember that, sir? You know, when I
19 had came here --

20 THE COURT: Sir, you don't ask me questions.

21 THE DEFENDANT: Okay.

22 THE COURT: You have anything to say?

23 THE DEFENDANT: Yes. Well, you know, NRS 34.500 states that
24 when the process defective in some matter of substance by law
25 render it void. Well, the procedure issue that I had in the case

1 is that the first two counts that was the battery and -- battery
2 substantial bodily harm and kidnapping that which I was -- Las
3 Vegas case and I was arrested in Las Vegas, but taken to Henderson
4 Correctional Center where I was booked and charged and I had a
5 preliminary hearing that on those charges that was in the Las --
6 Henderson Courtroom which was bound up together with all the rest
7 additional charges.

8 To my understanding that Judge Byrd did not have
9 procedural rights to even hear that case nor was it allowed to
10 bound up over to District Court which had happened as it was in Las
11 Vegas jurisdiction, not Henderson.

12 Now, I have promptly stated and told the attorneys five
13 years ago that this is exactly what had occurred. Now, I had asked
14 them promptly to correct this. They have, you know, in the
15 position when they was my counsels at the time, they was like
16 telling me that you know, we're going to do that. We shouldn't do
17 it right now because the State would just dismiss it and refile the
18 charges. And at the time I was like okay fine let's do that. You
19 know, 'cause -- it's correct.

20 Now --

21 THE COURT: So your -- your claim is that your stand-by
22 counsel have failed to file those motions they told you they were
23 going to file?

24 THE DEFENDANT: My Court argument is that the stand-by
25 counsel has jeopardized my case for five years because if the

1 procedure is not correct, sir, that means that I've been sitting
2 here for five years without having properly due process which is a
3 violation of my Fifth Amendment. I've been sitting her patiently
4 for five years for that to be simply corrected.

5 Now --

6 THE COURT: Sir, you have stand-by counsel, why don't you
7 file the motion yourself? They're not -- they're not sort of
8 standing by in case you have any questions.

9 THE DEFENDANT: Yes, I understand that, sir. And during my
10 Faretta hearing I had asked for, you know what I'm saying, counsel
11 and stuff like that. You said that you would apply them as stand-
12 by counsel after I stated to the Court that the conflict is with
13 the current stand-by counsel. So in essence, if this case was to
14 get to the point where I need not no longer represent myself, you
15 still give the counsels in which I had contained conflict with
16 which is under the constitution which is that you provided -- you
17 denied me the right to have representation even though you have in
18 presence stand-by counsel which is from the Special Public
19 Defender's Office whom I have a conflict with has not provided me
20 with representation at all, not even on a stand-by level.

21 THE COURT: Okay. Let me hear from Mr. Cano or Mr. Pike.

22 MR. PIKE: Thank you, Your Honor. That issue is brought up
23 and we discussed in detail with him. As the Court is well aware,
24 the Justices of the Peace have County-wide jurisdiction and it's
25 not just a limited to a specific areas.

1 Mr. Malone wanted to challenge the arrest by officers
2 on probable cause and -- and actually in North Las Vegas and not
3 the Las Vegas jurisdiction as was done by SWAT officers and then he
4 was transported upon that basis of probable cause held -- he was
5 arrested on the battery charges held on that and then they filed
6 the murder charges before he was released, so they were
7 investigating it.

8 We raised those issues during the time of the
9 preliminary hearing regarding any statement or to preserve any
10 issues regarding statements or anything else. And we did file the
11 Writ of Habeas Corpus after the time of the preliminary hearing, so
12 those issues will -- were all addressed.

13 Mr. Malone as was seen in his arguments will find a
14 statute and then attempt to establish a claim. We researched all
15 the claims and tried to raise every constitutionally affirm and
16 identifiable motion that we did during the course of our
17 representation while we were lead counsel on this.

18 So, it's -- it's an old saw that he's applying and we
19 consider that and it doesn't -- and we did not file a separate
20 motion other than to separate the claims which is the relief that
21 he sought. He wants to have it done by dismissal and then refiling
22 new charges as opposed to a motion to -- to sever both the counts
23 and the causes of actions. So we brought motions on behalf of the
24 relief that he sought already under the constitutionally firm
25 grounds that we could find.

1 The motion that he's arguing right now is again because
2 of the County-wide jurisdictions of the Justices of the Peace and
3 the ability to rest outside of a jurisdiction on a -- on a probable
4 cause arrest within Clark County was not an issue that was
5 specifically raised in the way in which he wanted it raised.
6 However, the relief sought was raised in other manners.

7 MR. CANO: And additionally, Your Honor, the original crimes
8 that are being alleged happened in Henderson jurisdiction.

9 THE COURT: All right. Thank you. Mr. DiGiacomo, do you
10 have anything to add?

11 MR. DIGIACOMO: No, Judge. Only that the crimes that he was
12 arrested on actually did happen in Henderson. Counts 1 and 2 that
13 he's alleging that he was charged with -- actually I don't believe
14 he's ever been arrested on that was part of the criminal complaint
15 filed by our office. Obviously we have County-wide jurisdiction as
16 well. They were properly found to be joined, so any argument would
17 be futile.

18 So I don't think that's the basis and I don't hear any
19 other basis and I don't think the Court ever found that there was a
20 conflict between counsel. I think what you said was there isn't a
21 conflict so I'm not going to appoint new counsel, but you're free
22 to represent yourself if he passed the Faretta canvass. If he does
23 not want to represent himself any more, he's free to have the
24 Public -- the Special Public Defenders back as counsel.

25 THE DEFENDANT: Excuse me, Your Honor.

1 THE COURT: Yes, sir.

2 THE DEFENDANT: That is incorrect. The May 23rd audio states
3 clearly that I was arrested for the Las Vegas jurisdiction battery
4 counts, not the Henderson battery counts which is the first two
5 counts, sir. That is -- I do not have the audio with me. As you
6 see I'm in jail. However, there is an audio stating exactly what I
7 got arrested for essentially about from the Henderson Detective.
8 It was not for a Henderson battery. It was for the Las Vegas
9 jurisdiction and also, Your Honor, on the transcript, the officer
10 himself stated that the reason why he did not arrest the Co-
11 defendant once who assaulted the Co-defendant because it was a Las
12 Vegas case; that's the correct argument. That's on record and also
13 to have audio detailing exactly what the argument which I'm stating
14 today, sir.

15 THE COURT: All right, sir, it sounds like your attorneys,
16 Mr. Pike and Mr. Cano, have thoroughly reviewed your legal issues
17 and they're not required to file any frivolous motions or cite any
18 case law that does not apply to the argument you -- that you wanted
19 them to make in the past.

20 You are now, as you know, your own attorney. You can
21 file any motion to reconsideration whether I grant them or not, but
22 you are free to file the appropriate motions.

23 And, sir, your motion to dismiss counsel that I have
24 here and also for transcripts, do not have any points and
25 authorities attached to the motion. Therefore, they're improper.

1 I advised you last time that if you -- if you did not follow the
2 rules as you're supposed to that could be grounds for me to no
3 longer allow you to represent yourself. You break the rules again,
4 I'm going to determine that you cannot follow the rules and
5 therefore you'll have these gentleman who will represent you as
6 opposed to stand-by; do you understand that, sir?

7 THE DEFENDANT: Yeah.

8 THE COURT: Okay.

9 THE DEFENDANT: So you're telling me today you're denying me
10 the right to have representation?

11 THE COURT: Sir, you heard by decision. All the legal claims
12 that you've brought up were -- were reviewed and evaluated by two
13 very seasoned attorneys. I'm denying your motion.

14 Your request for transcript, you need to set forth
15 specific reasons why you need particular transcripts and which
16 particular transcripts you do, in fact, want. So that motion is
17 denied without prejudice. Okay.

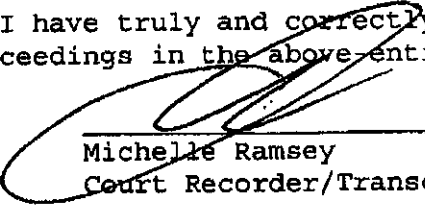
18 We'll see you back at trial, sir. If you have any
19 other motions, please file them appropriately.

20 THE DEFENDANT: Okay. Yes, sir.

21 [Proceeding concluded at 9:14 a.m.]

22 * * * * *

23 ATTEST: I hereby certify that I have truly and correctly
24 transcribed the audio/video proceedings in the above-entitled case
25 to the best of my ability.


Michelle Ramsey
Court Recorder/Transcriber

1 JOC

2 ORIGINAL

FILED

APR 6 8 43 AM '11

Alison A. Robinson
CLERK OF THE COURT

3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6
7 THE STATE OF NEVADA,

8 Plaintiff,

CASE NO. C224572-3

9 -vs-

DEPT. NO. XVII

10
11 JASON DUVAL MCCARTY
12 #0932255

13 Defendant.

14 JUDGMENT OF CONVICTION
15 (JURY TRIAL)

08C224572-3
JOC
Judgment of Conviction
1338883



16
17 The Defendant previously entered a plea of not guilty to the crimes of COUNT 3
18 - CONSPIRACY TO COMMIT KIDNAPPING (Felony), in violation of NRS 200.310,
19 200.320, 199.480; COUNT 4 - FIRST DEGREE KIDNAPPING (Felony), in violation of
20 NRS 200.310, 200.320; COUNT 5 - BATTERY WITH SUBSTANTIAL BODILY HARM
21 (Felony), in violation of NRS 200.481; COUNT 6 - ROBBERY (Category B Felony), in
22 violation of NRS 200.380; COUNT 7 - PANDERING (Felony), in violation of NRS
23 201.300; COUNT 8 - CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor),
24 in violation of NRS 205.060, 199.480; COUNT 9 - CONSPIRACY TO COMMIT
25 KIDNAPPING (Felony), in violation of NRS 200.310, 200.320, 199.480; COUNT 10 -
26 CONSPIRACY TO COMMIT MURDER (Felony), in violation of NRS 200.010, 200.030,
27
28

1 199.480; COUNT 11 – BURGLARY (Felony), in violation of NRS 205.060; COUNT 12 –
2 FIRST DEGREE KIDNAPPING (Felony), in violation of NRS 200.310, 200.320; COUNT
3 13 - FIRST DEGREE KIDNAPPING (Felony), in violation of NRS 200.310, 200.320;
4
5 COUNT 14 – MURDER WITH USE OF A DEADLY WEAPON (Felony), in violation of
6 NRS 200.010, 200.030, 193.165; COUNT 15 - MURDER WITH USE OF A DEADLY
7 WEAPON (Felony), in violation of NRS 200.010, 200.030, 193.165; COUNT 16 –
8 ROBBERY WITH USE OF A DEADLY WEAPON (Felony), in violation of NRS 200.380,
9 193.165; and COUNT 17 - ROBBERY WITH USE OF A DEADLY WEAPON (Felony),
10 in violation of NRS 200.380, 193.165; and the matter having been tried before a jury
11 and the Defendant having been found guilty of the crimes of COUNT 3 –
12
13 CONSPIRACY TO COMMIT KIDNAPPING (Felony), in violation of NRS 200.310,
14 200.320, 199.480; COUNT 4 – FIRST DEGREE KIDNAPPING (Felony), in violation of
15 NRS 200.310, 200.320; COUNT 5 – BATTERY WITH SUBSTANTIAL BODILY HARM
16 (Felony), in violation of NRS 200.481; COUNT 6 – ROBBERY (Category B Felony), in
17 violation of NRS 200.380; COUNT 7 – PANDERING (Felony), in violation of NRS
18 201.300; COUNT 8 – CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor),
19 in violation of NRS 205.060, 199.480; COUNT 9 – CONSPIRACY TO COMMIT
20 KIDNAPPING (Felony), in violation of NRS 200.310, 200.320, 199.480; COUNT 10 –
21
22 CONSPIRACY TO COMMIT MURDER (Felony), in violation of NRS 200.010, 200.030,
23 199.480; COUNT 11 – BURGLARY (Felony), in violation of NRS 205.060; COUNT 12 –
24 FIRST DEGREE KIDNAPPING (Felony), in violation of NRS 200.310, 200.320; COUNT
25 13 - FIRST DEGREE KIDNAPPING (Felony), in violation of NRS 200.310, 200.320;
26
27 COUNT 14 – FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON
28

1 (Felony), in violation of NRS 200.010, 200.030, 193.165; COUNT 15 – FIRST DEGREE
2 MURDER WITH USE OF A DEADLY WEAPON (Felony), in violation of NRS 200.010,
3 200.030, 193.165; COUNT 16 - ROBBERY WITH USE OF A DEADLY WEAPON
4 (Felony), in violation of NRS 200.380, 193.165; and COUNT 17 - ROBBERY WITH USE
5 OF A DEADLY WEAPON (Felony), in violation of NRS 200.380, 193.165; thereafter, on
6 the 5TH day of April, 2011, the Defendant was present in court for sentencing with his
7 counsels, KEVIN LEIK, Deputy Public Defender, and CHRISTOPHER ORAM, ESQ.,
8 and good cause appearing,
9

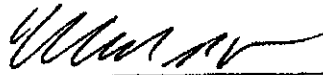
10
11 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
12 addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis Fee
13 including testing to determine genetic markers, and Indigent Defense Civil Assessment
14 Fee of \$250.00, the Defendant is SENTENCED as follows: AS TO COUNT 3 - TO A
15 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole Eligibility of
16 TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC); AS
17 TO COUNT 4 – LIFE with Parole Eligibility after a MINIMUM of FIVE (5) YEARS in the
18 Nevada Department of Corrections (NDC), COUNT 4 to run CONSECUTIVE to COUNT
19 3; AS TO COUNT 5 - TO A MAXIMUM of FORTY-EIGHT (48) MONTHS with a
20 MINIMUM Parole Eligibility of NINETEEN (19) MONTHS in the Nevada Department of
21 Corrections (NDC), COUNT 5 to run CONCURRENT with COUNT 4; AS TO COUNT 6
22 – TO A MAXIMUM of ONE HUNDRED FIFTY (150) MONTHS with a MINIMUM Parole
23 Eligibility of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC),
24 COUNT 6 to run CONCURRENT with COUNT 5; AS TO COUNT 7 - TO A MAXIMUM
25 of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of NINETEEN (19)
26
27
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1 MONTHS in the Nevada Department of Corrections (NDC), COUNT 7 to run
2 CONSECUTIVE to COUNT 6; AS TO COUNT 8 – TWELVE (12) MONTHS in the Clark
3 County Detention Center (CCDC), COUNT 8 to run CONSECUTIVE to COUNT 7; AS
4 TO COUNT 9 – TO A MAXIMUM of SIXTY (60) MONTHS with a MINIMUM Parole
5 Eligibility of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections
6 (NDC), COUNT 9 to run CONCURRENT with COUNT 8; AS TO COUNT 10 - TO A
7 MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole
8 Eligibility of FORTY EIGHT (48) MONTHS in the Nevada Department of Corrections
9 (NDC), COUNT 10 to run CONCURRENT with COUNT 9; AS TO COUNT 11 - TO A
10 MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole
11 Eligibility of FORTY EIGHT (48) MONTHS in the Nevada Department of Corrections
12 (NDC), COUNT 11 to run CONCURRENT with COUNT 10; AS TO COUNT 12 – LIFE
13 WITHOUT the possibility of Parole in the Nevada Department of Corrections (NDC),
14 COUNT 12 to run CONSECUTIVE to COUNT 11; AS TO COUNT 13 – LIFE WITHOUT
15 the possibility of Parole in the Nevada Department of Corrections (NDC), COUNT 13 to
16 run CONSECUTIVE to COUNT 12; AS TO COUNT 14 – Defendant SENTENCED to
17 DEATH; AS TO COUNT 15 – Defendant SENTENCED to DEATH; AS TO COUNT 16 -
18 TO A MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole
19 Eligibility of FORTY-EIGHT (48) MONTHS plus a CONSECUTIVE term of ONE
20 HUNDRED EIGHTY (180) MONTHS MAXIMUM and FORTY-EIGHT (48) MONTHS
21 MINIMUM for Use of a Deadly Weapon in the Nevada Department of Corrections
22 (NDC), COUNT 16 to run CONSECUTIVE to COUNT 13; AS TO COUNT 17 - TO A
23 MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole
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1 Eligibility of FORTY-EIGHT (48) MONTHS plus a CONSECUTIVE term of ONE
2 HUNDRED EIGHTY (180) MONTHS MAXIMUM and FORTY-EIGHT (48) MONTHS
3 MINIMUM for Use of a Deadly Weapon in the Nevada Department of Corrections
4 (NDC), COUNT 17 to run CONSECUTIVE to COUNT 16; with ONE THOUSAND
5 SEVEN HUNDRED SEVENTY-SIX (1,776) DAYS Credit for Time Served.
6

7 COURT FURTHER ORDERED, STAY GRANTED.
8

9 DATED this 6 day of April, 2011
10

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13 MICHAEL VILLANI
14 DISTRICT JUDGE *gd*
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1 TRAN

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COPY

Ann D. Shuman
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,)

10 Plaintiff,)

11 vs.)

12 DOMONIC RONALDO MALONE,)

13 Defendant.)

CASE NO. C224572-2

DEPT. XVII

14
15 BEFORE THE HONORABLE DOUGLAS SMITH, DISTRICT COURT JUDGE

16 THURSDAY, JUNE 9, 2011

17 **RECORDER'S TRANSCRIPT OF HEARING RE:**

18 **DEFENDANT'S MOTION FOR COMPLETE ROUGH DRAFT TRANSCRIPT**

19 APPEARANCES:

20 For the State:

CHRISTOPHER LALLI
Deputy District Attorney

22 For the Defendant:

Pro Se

25 RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; THURSDAY, JUNE 9, 2011

2 [Proceeding commenced at 8:19 a.m.]

3
4 THE COURT: C224572, Domonic Malone, present in custody with

5 --

6 MR. LALLI: Morning.

7 THE COURT: I don't have an opposition. This is Defendant's
8 motion for complete rough draft transcript of co-defendant's trial.

9 MR. LALLI: Your Honor, these have been available for months.
10 They were dailies produced when the trial was ongoing last year.
11 I'm not sure why this pro per Defendant is putting a motion on in
12 front of the Court.

13 Also, what's occurring if you see the second page of
14 this motion, he actually put in a KITE to have the jail get him his
15 transcripts which Judge Villani has admonished him before he can't
16 do. It's incumbent upon him or an investigator that he has to
17 obtain these transcripts. Not the jail.

18 THE COURT: You're not going to get any benefit that an
19 attorney isn't given. And in your motion for the complete rough
20 draft, you don't cite any law or any competent argument.

21 THE DEFENDANT: Well, Your Honor, I didn't write the jail a
22 KITE. The KITE attached to the motion I --

23 THE COURT: I'm talking about the motion. The KITE --

24 THE DEFENDANT: I didn't --

25 THE COURT: You shouldn't be sending KITE's. KITE's aren't

1 going to get you any where with it.

2 THE DEFENDANT: I didn't send a KITE to the jail. I sent the
3 KITE to the -- the County Clerk because I had filed a motion --

4 THE COURT: That's not the way to do it with the County
5 Clerk.

6 THE DEFENDANT: I know. It was just -- that was just for my
7 records to say that I have written them. The paperwork saying --
8 'cause I had sent motions to the County Clerk and they -- it was
9 not filed 'cause I filed a memorandum to this Court. The Court
10 never received it. So I was just letting the County Clerk know
11 that it did not get filed with the Courts.

12 THE COURT: So by -- you think by mistake this motion for
13 complete rough draft was a mistake putting it on?

14 THE DEFENDANT: No, sir. The motion for rough draft
15 transcripts is for the daily trial transcripts that was ordered by
16 the Judge Villani. At the time, I never received them though;
17 that's all I put the motion in for I can't receive them 'cause I
18 never did.

19 THE COURT: You didn't put any argument in your motion.

20 THE DEFENDANT: Yes.

21 THE COURT: You didn't serve it on State. Your -- you're
22 representing yourself.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you're not -- you're not following the rules.

25 THE DEFENDANT: Your Honor, I can only go by what the legal

1 library sent. I filed a KITE --

2 THE COURT: So it's the legal library is -- is representing
3 you?

4 THE DEFENDANT: No, sir. The legal library sent me
5 information to file --

6 THE COURT: You chose to represent yourself, huh?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Huge mistake.

9 THE DEFENDANT: I know, sir. I do agree. I do agree, but
10 what I have to do.

11 THE COURT: You want a lawyer?

12 THE DEFENDANT: I did. Not the ones I got now. No, sir.

13 THE COURT: You're wrong there too. Our contract attorneys
14 are some of the better criminal attorneys in town, but that's up to
15 you.

16 THE DEFENDANT: No, sir. I have --

17 THE COURT: You got to follow the rules and if you don't
18 follow the rules you're going -- you're going to be denied. And
19 then you can't come back at the end and say, well, that's
20 ineffective assistance. I have ineffective assistance 'cause I
21 didn't know I was supposed to serve subpoenas and I didn't know I
22 was supposed to file this motion and I didn't know -- oh, no, it's
23 Clerk fault 'cause the motions didn't get put on.

24 THE DEFENDANT: Your Honor, I'm in jail based on --

25 THE COURT: You think you're smarter than the system and --

1 THE DEFENDANT: No, sir.

2 THE COURT: -- the attorneys. Sure you do or you would have
3 an attorney standing there next to you.

4 THE DEFENDANT: That's an issue with the County Judge on the
5 stand, sir. That wasn't technically my choice. It's just that the
6 choice that he left, left me [indecipherable], sir.

7 THE COURT: You chosen --

8 THE DEFENDANT: So I had to --

9 THE COURT: -- not to take one of the -- obviously, I haven't
10 even looked at it. I don't have a dog in this fight, but I'm
11 telling you it's a mistake. The Supreme Court will tell you it's a
12 mistake for -- for you not to have an attorney, but that's your
13 choice because this is a free Country. So you've chosen to do
14 that. You don't want somebody that the -- that the Court will
15 appoint. You don't want these guys that -- that practice law
16 everyday handling your stuff. You want to do it yourself 'cause
17 you think you're smarter than they are.

18 So, you file the proper motion and this Court will
19 follow it. If you don't file a proper motion, this Court won't
20 follow it. It's all I can tell you. Thanks.

21 MR. LALLI: So, motion denied?

22 THE COURT: Motion's denied.

23 MR. LALLI: Thank you.

24 THE DEFENDANT: So my motion for --

25 THE COURT: You didn't follow the proper motion. That can --

1 get with the law library.

2 THE DEFENDANT: No. Okay.

3 THE COURT: You're the one that wants a law degree where
4 these guys are practicing law and have a degree and know what
5 they're doing and you don't want to listen to them.

6 [Proceeding concluded at 8:24 a.m.]

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20 ATTEST: I hereby certify that I have truly and correctly
21 transcribed the audio/video proceedings in the above-entitled case
to the best of my ability.

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Michelle Ramsey
Court Recorder/Transcriber

1 TRAN

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3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

Ann L. Schum
CLERK OF THE COURT

6
7 THE STATE OF NEVADA,)

8)
9 Plaintiff,)

10 vs.)

11 DOMONIC RONALDO MALONE,)

12 Defendant.)
13

CASE NO. C224572-2

DEPT. XVII

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

14
15 TUESDAY, JUNE 21, 2011

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**

17 **PRO PER MOTION FOR DISCOVERY OF PROSECUTION RECORDS, FILES AND**
18 **INFORMATION NECESSARY TO A FAIR TRIAL**

19 APPEARANCES:

20 For the State:

CHRISTOPHER LALLI, ESQ.,
Deputy District Attorney

21
22 For the Defendant:

Pro Se

23 Stand-by counsel:

RANDAL H. PIKE, ESQ.,
CHARLES A. CANO, ESQ.,
Special Public Defenders

24
25 RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; TUESDAY, JUNE 21, 2011

2 [Proceeding commenced at 8:40 a.m.]

3
4 THE COURT: All right, Domonic Malone. Mr. Malone is present
5 in custody, 2 -- C224572. We have Mr. Pike is present. He's one
6 of the stand-by counsel --

7 MR. PIKE: That's correct, Your Honor.

8 THE COURT: -- in this matter.

9 MR. PIKE: Yes, Your Honor.

10 THE COURT: Mr. Lalli for the State. Defendant's pro per
11 motion for discovery of prosecutorial records, files and
12 information necessary to a fair trial.

13 MR. LALLI: Your Honor, this is probably the third discovery
14 motion he's filed in a -- in a fairly short period of time. To
15 read through it, I mean, it's really a bunch of psycho-babble. It
16 makes absolutely no sense.

17 He talks about specifically articulating those things
18 that he wants at the beginning of his motion and he never gets to
19 that during the body of the motion nor in the conclusion. So,
20 we're really at a loss as to what he's requesting.

21 The Special Public Defender, they have been through our
22 trial numerous times and have everything that we are in possession
23 of, so we're really at a loss in terms of a response.

24 THE COURT: Mr. Malone, what do you want?

25 THE DEFENDANT: Okay, Your Honor. For the record, Your Honor

1 --

2 [Colloquy between stand-by counsel and Defendant]

3 THE COURT: Sir, after conferring with Mr. Pike, have you --
4 can you tell me what you want in your motion?

5 THE DEFENDANT: Yes. Your Honor, I'm asking for the Courts
6 to -- to have the Prosecutor follow the law. It states that they
7 have to give me the discovery. They have not done so. They put
8 the burden on the stand-by counsel for the stand-by counsel to give
9 me the discovery and then they refer to as the arguments that I
10 make prior to the private investigator to give me the discovery.

11 Your Honor, the private investigator and the stand-by
12 counsel is not the -- what the law states that the Prosecutor's
13 supposed to have done. It's the Prosecutor duties to hand me the
14 discovery. Not push the burden off on the stand-by counsel or the
15 private investigator.

16 In my hand for which -- for the record, in my hand what
17 I am holding is what was provided to me in the Banker Box when you
18 allowed the stand-by counsel to give me the discovery. In these
19 documents is the document that's provided by Mr. Patrick Farrell
20 [phonetic] and it's a lot of duplicates up in this. It's not
21 complete evidence impound report.

22 Now, if I've known directly was missing, only thing I
23 can say is that up in these reports it's just a bunch of duplicates
24 to make it seem like it's complete impound report sheet. It's not,
25 sir. I have it right here in my hand.

1 Also --

2 THE COURT: Is this funny, sir?

3 THE DEFENDANT: No. No. No. No. Something else is funny.
4 I'm not -- I'm trying not to be mad in this situation, just
5 articulate. Just best way I can, Your Honor.

6 It is my understanding that cell phones was taken from
7 each individual that's involved in this case. Apartment 217 had
8 some cell phones taken away from Apartment 217. The apartment
9 taken from my -- a cell phone was taken from Donald Herb. A cell
10 phone was taken to -- from Jason McCarty. A cell phone, an ounce
11 of dope was taken from my car. This I know personally because none
12 of these phones nor the ounce of dope appear into the evidence
13 impound report.

14 Also, reason why I believe that is not in the evidence
15 impound report, sir, because on the tape that was taken of the
16 preliminary hearing and -- on June 19th, 2006 where Melissa Estores
17 comes in to testify, she -- you know, it's a video that shows her
18 best friend being intoxicated at that time. Reason why that's
19 important, I bring this up to this Court today and why this is
20 discoverable material because the missing items that's from the
21 evidence impound report only can speak about the things that I know
22 of.

23 THE COURT: Okay, sir, you're arguing some of the facts of
24 the case. What items, what documents do you want?

25 THE DEFENDANT: I want the complete discovery, sir.

1 THE COURT: Okay.

2 THE DEFENDANT: I want the --

3 THE COURT: Hang on. Mr. Lalli, have you turned over the
4 discovery either to Mr. Malone's investigator or Mr. Pike who in
5 turn, turn it over to Mr. Malone? Have you handed a complete copy
6 of the discovery to the Defendant?

7 MR. LALLI: Well, I haven't handed a complete copy of
8 anything to the Defendant. On numerous occasions before I was
9 involved in the case and after, I know that Mr. Pike and Mr. Cano
10 have come over to our office, they've reviewed our files. Mr.
11 DiGiacomo has always given them anything that they believe that
12 they were missing.

13 Mr. Pike is an extremely meticulous attorney. He has a
14 very good handle of the -- the boxes and boxes of discovery in this
15 case. I'm fully confident that if there was something that Mr.
16 Pike did not have, he would have requested it or erred on the side
17 of caution and -- and obtained it.

18 It almost seems -- so I'm confident they have
19 everything, investigators. Whoever the Defendant wants to send
20 other than the Defendant himself, of course, to review our files,
21 they're more than welcome to do that.

22 It almost sounds when the Defendant talks about some
23 videotape from the preliminary hearing at Justice Court, I don't
24 know -- I've never seen that. It's my belief we don't have any
25 such videotape. It's almost as though he wants us to be his

1 investigator for him and go out and get things for him; that's not
2 our responsibility. He has an investigator to do that. We can
3 provide him the discovery we have, but we're not going to
4 investigate his case for him.

5 THE COURT: Mr. Pike or Mr. Cano, is everything that the
6 State has turned over to you been turned over to Mr. Malone?

7 MR. PIKE: Your Honor, I went through and did an inventory
8 because we want to make sure that the client had a copy of
9 everything. We did an inventory of all the discovery that was
10 received, provided a list of the inventory, asked Mr. Malone to
11 indicate the items that he did not have and then made certain that
12 he had a copy of everything that we had.

13 And we've gone through and have -- not only did we need
14 them to go through and do everything as we do normally which is
15 meet with the -- the District Attorney's Office and meet with the
16 detective to determine whether or not we have gone through the
17 detective's folder or file or notebook rather. And so we did all
18 that.

19 In addition to that, we obtained copies of the daily
20 transcripts from the trial of the Co-defendant and provided them to
21 Mr. Wysocki who is Mr. Malone's investigator. If he -- if he is
22 not articulating, what I think he is wanting is the cell phones
23 that were impounded to be processed for any text messages or any
24 recording -- recorded messages, but that from the brief conference
25 that I had with him, that's what I believe that he is trying to

1 articulate.

2 THE COURT: The inventory of documents that you've received
3 and have turned over to Mr. Malone, does that inventory contain any
4 privilege communication or attorney-work product?

5 MR. PIKE: I can redact that if you want me to.

6 THE COURT: Is this what -- 'cause Mr. Malone seems -- Mr.
7 Malone, you seem to make some generalities of what you're missing
8 or not and if -- if Mr. Pike has prepared an inventory of all
9 documents you have, then the State can better address any further
10 request you have, but right now it's all generalities and I don't
11 know what you want me to order at this point.

12 THE DEFENDANT: Your Honor, I'm -- I'm trying to articulate
13 to this Court in general that I did not receive my complete
14 discovery. It's my understanding of what the NRS and what the law
15 states that it's the Prosecutors [indecipherable] to the defense,
16 Your Honor. I am the defense. They came up with many excuses why
17 I cannot get that -- the discovery; saying its in audio disc. It's
18 video conference and different material. So that they're saying
19 that the jail would not allow me to have.

20 So it's a lot of bulk of discovery that I did not see,
21 Your Honor. It's a lot of bulk discovery that I need to see in
22 order to prepare myself properly for trial. I cannot properly
23 defend myself if I don't know what I'm defending myself against,
24 Your Honor. So in a general, I ask in a general as any other
25 attorney would ask for, Your Honor, is for the Prosecutor to just

1 hand over the discovery for which they have; that's in their
2 possession.

3 THE COURT: They handed over to the stand-by counsel who have
4 in turn handed it over to you.

5 THE DEFENDANT: That's what I'm telling this Court, Your
6 Honor, the stand-by counsel only handed me a certain portion of the
7 materials of which they had that was on paper, Your Honor. They
8 did not hand over the complete discovery which all the documents
9 they have because some of the stuff they need to be transcribed and
10 it's on disc. So I cannot say that they had given me everything
11 'cause they did not, Your Honor.

12 My understanding of that is that it's not their job to
13 do so. Just like it's not the job of the Prosecutor -- I mean, the
14 private investigator to do so whom I haven't seen in five months,
15 Your Honor. I don't know what's going in this case. I have been
16 blinded in this case for 15 months now.

17 THE COURT: Okay. Well, sir, you're the one that selected or
18 through some suggestions --

19 THE DEFENDANT: Yes, sir.

20 THE COURT: -- Mr. Wysocki. So what you need to do is
21 contact him and find out why he's not coming down to speak with
22 you.

23 THE DEFENDANT: Your Honor, I have no way of contacting Mr.
24 Wysocki at all. I have made that --

25 THE COURT: You don't have his phone number?

1 THE DEFENDANT: Sir, the phone system is set up differently
2 in the jail now. The phone doesn't go through, sir -- Your Honor.
3 So --

4 THE COURT: You send him a letter? You have his address?

5 THE DEFENDANT: No, sir.

6 THE COURT: You don't have an address for him?

7 THE DEFENDANT: No, sir. Never had an address for Mr.
8 Wysocki at all, sir.

9 MR. CANO: We did send Mr. Wysocki an email that Mr. Malone
10 wanted to get in contact with him and provide us an address so we
11 can provide it to Mr. Malone. I haven't -- he hasn't responded.

12 MR. PIKE: And Mr. Wysocki did come over and pursuant to his
13 appointment as investigator, he has -- he's had complete access to
14 all of our files.

15 THE DEFENDANT: So --

16 MR. CANO: And if we need to burn some discs for him so Mr.
17 Wysocki has access to provide it for Mr. Malone we're more than
18 happy to do that. I do believe we had provided some of the discs
19 that Mr. Malone maybe speaking about to Mr. Wysocki, but in case
20 that there, you know, is any mistakes we can make sure that we run
21 another copy for him.

22 THE COURT: Mr. Malone, your motion -- we need to have more
23 specificity, just set forth some general allegation of discovery.

24 Mr. Pike and Mr. Cano, again if you feel comfortable
25 for some way to redact the inventory of documents, I don't know

1 that that would be attorney-client privilege, just to say we gave
2 you these police reports and forensic reports, whatever that maybe.
3 And can make -- I'm assuming Mr. Malone has a copy. If not, if you
4 can give him a copy of your inventory list. Give a State a copy.

5 And, sir, I'm going to deny your motion as is without
6 prejudice. You can refile with more specificity as far as
7 specifically what you're saying that Mr. Pike did not hand over to
8 you.

9 THE DEFENDANT: But, Your Honor, for the record, you asking
10 me to do something that's impossible to do. I cannot tell you
11 something what I expect to know 'cause I don't -- I'm in jail, sir.

12 THE COURT: Well, sir --

13 THE DEFENDANT: I haven't been able to see nothing.

14 THE COURT: -- well, listen. Mr. Pike has inventory list and
15 it's I don't know probably twenty, fifty or a hundred items on it
16 and you can file a motion and say that Mr. Pike is not being
17 truthful to me and didn't give you item number 90 and if he didn't
18 give you item number 90, we'll make sure you get it.

19 THE DEFENDANT: So --

20 THE COURT: I just can't believe that Mr. Pike or Mr. Cano
21 prepared a fraudulent inventory sheet and say they gave you
22 documents and when they didn't.

23 THE DEFENDANT: Your Honor, for the record I have no
24 intentions on sitting her in this courtroom wasting the Court's
25 time and lying on Mr. Pike or Mr. Cano about saying something that

1 they did do that they didn't. That would be me committing perjury
2 on the stand and wasting the Court's time and my time, sir.

3 For the record, this is -- I'm only telling you what is
4 going on to my understanding of what I have. If I have to bring
5 this whole box back myself to show you every item that's in the box
6 that was given to me for that report to show you that I am telling
7 the truth --

8 THE COURT: Well, sir, listen.

9 THE DEFENDANT: -- that that's what I have to do, sir.

10 THE COURT: File a motion with specifics. You're going to
11 have a list of inventory of items and if you believe that some of
12 those items were not provided to you, then put that in your motion.
13 It's all I'm telling you.

14 MR. CANO: For example, if I'm missing X report, I'm missing
15 this report or I'm missing this statement, I'm missing this thing;
16 I think that's what the Court is telling you give specific examples
17 of what you think you're missing.

18 THE DEFENDANT: But how is it for me to authenticate what I'm
19 supposed to be missing if I can't --

20 THE COURT: Well, sir, you're going to need -- you know,
21 that's one of the problems --

22 THE DEFENDANT: I don't --

23 THE COURT: -- sir, listen. That's one of the problems of
24 you representing yourself. We've gone over this every time and
25 majority of motions we get into the same issues here that they're

1 not really well thought out and you have issues here because you
2 are representing yourself and that is one of the down sides of
3 doing that.

4 Every time you've been in Court, I think you've -- I've
5 brought this to your attention, this is why it was I think in my
6 opinion a bad decision for you to represent yourself; that's your
7 right. You're entitled to do that. You're going to have to follow
8 rules. If Mr. Pike is representing someone on any other case, he
9 would have to articulate to the Court specific documents the State
10 has not turned over. You are under the same rules as an attorney.

11 THE DEFENDANT: Yeah.

12 THE COURT: Okay. So what I'm telling you is, your motion is
13 denied without prejudice. Please refile it with specificity.

14 Mr. Pike, if you can please give Mr. Malone --

15 THE DEFENDANT: Your Honor, not to --

16 THE COURT: -- listen.

17 MR. PIKE: I will. I'll provide it to Mr. Wysocki also.

18 MR. CANO: And, Judge --

19 THE COURT: And also if you can give copy to Mr. Lalli.

20 Again, please redact anything you feel would be attorney-client
21 privilege, but basically I'm assuming it's going to be a list of
22 hundred things. You say, this is what I turned over to you.

23 MR. CANO: And, Your Honor, I think Mr. Malone had mentioned
24 or I think Mr. Lalli had mentioned a videotape from the preliminary
25 hearing. To my understanding, in Henderson when we did the

1 preliminary hearing, everything was transcribed and we do have
2 transcripts of that that had been provided to Mr. Malone.

3 THE DEFENDANT: Your Honor --

4 MR. CANO: There was a film crew though, an independent film
5 crew that was filming the entire preliminary hearing. They were
6 doing a documentary on our office regarding several cases. They
7 decided not to pursue this case as part of the documentary. We
8 have been in contact with them and trying to get a hold of that
9 videotape 'cause they videotaped all the witnesses and
10 unfortunately they weren't willing to turn over that videotape to
11 us. So we have made contact with them.

12 THE COURT: Okay. That's something, sir, that you can
13 subpoena the TV station or what have you to obtain the documents.

14 MR. CANO: It's a French company.

15 THE COURT: Whatever.

16 THE DEFENDANT: Your Honor --

17 THE COURT: It's not the State's responsibility when some
18 independent company videotaped the proceeding.

19 THE DEFENDANT: The reason why I brought that up, Your Honor,
20 for the record, for the State because Marc DiGiacomo and
21 Christopher Oram was the one who was mike'd [phonetic] up at the
22 time. It wasn't --

23 THE COURT: Okay, sir, they don't -- they weren't in control
24 of the cameras. They don't have them. You need to file the
25 appropriate motions and have the appropriate subpoenas served on

1 whatever individual.

2 THE DEFENDANT: Also, Your Honor --

3 THE COURT: Okay.

4 THE DEFENDANT: -- I have --

5 THE COURT: Sir, we're done. Please refile your motion with
6 more specificity.

7 THE DEFENDANT: But, Your Honor, for the record, I wasn't
8 finished making my record though.

9 THE COURT: Okay.

10 THE DEFENDANT: I'm not trying to --

11 THE COURT: No. We're done now. Your motion did not have
12 enough specificity. You're under the same rules as Mr. Pike and I
13 would tell Mr. Pike to refile the motion if he's filed a general
14 motion without specificity. We're done.

15 THE DEFENDANT: Your Honor, but --

16 THE COURT: We're done.

17 THE DEFENDANT: -- can I finish making my record?

18 THE COURT: We're done. Put it in writing.

19 THE DEFENDANT: All right.

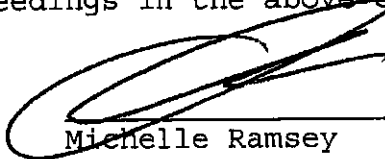
20 [Proceeding concluded at 8:57 a.m.]

21 * * * * *

22 ATTEST: I hereby certify that I have truly and correctly
23 transcribed the audio/video proceedings in the above entitled case
24 to the best of my ability.

24

25


Michelle Ramsey
Court Recorder/Transcriber

1 LAS VEGAS, NEVADA; TUESDAY, SEPTEMBER 21, 2010

2 [Proceeding commenced at 8:47 a.m.]

3
4 THE COURT: Domonic Malone, 224572. Mr. Malone is present in custody.
5 Mr. Pike, Mr. Lalli. This is status check on the Clark County Detention Center library
6 access. The director of the jail has been contacted. Actually, can stand-by counsel
7 and Mr. Lalli approach please.

8 [Bench Conference]

9 THE COURT: Actually, we're going to recall this matter. Mr. Pike is going to
10 speak with Mr. Malone right now. We'll call it back in about two minutes here, Mr.
11 Malone.

12 [Matter trailed]

13 [Matter recalled at 8:52 a.m.]

14 THE COURT: Okay. Recalling the Malone matter. Mr. Pike, you're going to
15 prepare an order for the Court for the Defendant's use of the library.

16 MR. PIKE: I will do that, Your Honor.

17 THE COURT: Okay.

18 MR. PIKE: Thank you very much.

19 THE COURT: And now in this particular matter is there going to be a jury
20 questionnaire?

21 MR. LALLI: Yes, I believe the Court already has that.

22 THE COURT: Do we already one; is that correct?

23 MR. PIKE: That's correct. We had had -- actually because of the manner in
24 which the trial was previously continued, we actually had the questionnaires already

25 --

1 THE COURT: Okay.

2 MR. PIKE: -- provided and have gone through them.

3 THE COURT: And we also have piggy back on this case the McCarty
4 matter. Are the attorneys and yourself, Mr. Lalli, in agreement on the questionnaire
5 for that case?

6 MR. LALLI: It's the same one, Your Honor.

7 THE COURT: It's the same? Okay, just double it up, but we will need to
8 have two separate panels.

9 MR. LALLI: Correct.

10 THE COURT: Okay.

11 MR. LALLI: Correct.

12 THE COURT: All right. We'll get that to the Jury Commissioner. If we have
13 it, we'll get it to the Jury Commissioner.

14 MR. LALLI: Yes. And if you don't -- if the Department were to just let me
15 know I'll make sure that the Court gets one.

16 THE COURT: Okay.

17 MR. CANO: Speaking of -- speaking of the questionnaire and the voir dire
18 process, Your Honor, we should probably get some clarification how we're going to
19 do that considering that we're going to be doing the penalty phase of this and Mr.
20 Malone's doing trial phase of this.

21 THE COURT: Well, at this point, Mr. Malone, since you've insisting on
22 representing yourself, you're going to -- you're going to be in charge of voir dire
23 process to select the jury; do you understand that, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. In the event there's a guilty verdict and in the event we

1 have a penalty phase, the Special Public Defender's Office will be presenting that
2 portion of your case; do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: We've talked about that before.

5 THE DEFENDANT: Yes, sir. We did.

6 THE COURT: Any other matters, Mr. Malone?

7 THE DEFENDANT: Yes. Just a clarification. I have the Court minutes from
8 when I last talked to you about this who get to go to trial first and my Court minutes
9 that I have here, Mr. DiGiacomo advised the State would prefer that Defendant,
10 McCarty, go first and then I could follow immediately after. You Court ordered that
11 and -- and then you said October date was staying and then you said detectives has
12 sixty days prior to trial to shorten out discovery be provided.

13 I'm less than thirty days away from trial and I haven't been ensured
14 that I met with nobody to talk about the discovery about any of that, sir.

15 THE COURT: Well, my understanding is that all discoveries been turned
16 over to you already, sir; is that correct?

17 THE DEFENDANT: The paperwork that I have received from my stand-by
18 counsel has been turned over to me. I have not been able --

19 THE COURT: Has -- has been turned over?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay.

22 THE DEFENDANT: It has been. The -- just the matter of the disc in the
23 supplemental witness list anything else that I might not have it would be on the disc
24 the things that I would not have [indecipherable].

25 THE COURT: Well, if there's -- if there's any -- in any case, sir, if there's any

1 supplemental witness list or any supplemental list of experts if there are any in this
2 case --

3 THE DEFENDANT: Uh-huh.

4 THE COURT: -- the State is required to submit those to you under the Court
5 rules.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. The same for you, if you have any experts, you are
8 under the same constraints as an attorney; that you're under the same rules as far
9 as providing proper notice; do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: We've talked about that before. And, sir, as far as the --
12 which trial goes first, this matter is set for Calendar Call on October 5th as well as the
13 McCarty matter and I'm assuming I have probably eight or ten other matters. At
14 Calendar Call, the Court decides which case goes first.

15 THE DEFENDANT: Oh, yes.

16 THE COURT: Okay.

17 THE DEFENDANT: That was the -- the question was when we first here and
18 you said I was going to go first and then DiGiacomo said that --

19 THE COURT: Okay, sir, I decide who goes first.

20 THE DEFENDANT: Okay.

21 THE COURT: All parties should be ready. The attorneys for McCarty
22 should be ready to go forward and attorneys, you, for Malone and probably my other
23 eight to ten other cases should all be ready to go forward.

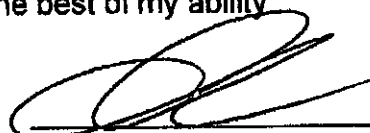
24 THE DEFENDANT: Okay.

25 THE COURT: All right.

1 THE DEFENDANT: I do my best, sir.
2 THE COURT: Well, okay.
3 THE DEFENDANT: All right.
4 MR. LALLI: Thank you.
5 MR. PIKE: Thank you, Your Honor.
6 THE COURT: Thank you. Mr. Pike, if you could expedite that Order over I'd
7 appreciate it.
8 MR. PIKE: Yes, Your Honor. Actually for the -- for the Court's edification
9 apparently they've already initiated that procedure, so it would just be a follow-up.
10 THE COURT: Okay. Great. Thank you.

11 [Proceeding concluded at 8:56 a.m.]
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20 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video
21 proceedings in the above-entitled case to the best of my ability
22

23 
24 Michelle Ramsey
25 Court Recorder/Transcriber

FILED

SEP 27 1 55 PM '10

Ann H. Johnson
CLERK OF THE COURT

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9 Attorneys for Malone

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,) CASE NO. C 224572
13 Plaintiff,) DEPT. NO. XVII
14 vs.)
15 DOMONIC MALONE #1670891,)
16 Defendant.)
17

18 ORDER GRANTING DEFENDANT'S MOTION
19 FOR ACCESS TO LAW LIBRARY

20 DATE OF HEARING: 9/21/10
TIME OF HEARING: 8:15 a.m.

21 Defendant's Motion for access to the legal law library at the Clark County Detention
22 Center having come on for hearing on the 21st day of September, 2010, Defendant, DOMONIC
23 MALONE present, and represented by his attorneys, CHARLES A. CANO, Deputy Special
24 Public Defender and RANDALL H. PIKE, Deputy Special Public Defender, a representative of
25 the District Attorney's Office present on behalf of the State of Nevada, the Court being fully
26 advised, and good cause appearing,

27 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Las Vegas
28

RECEIVED BY
DEPT. 17 ON

SEP 23 2010

SPECIAL PUBLIC
DEFENDER

CLARK COUNTY
NEVADA

1201

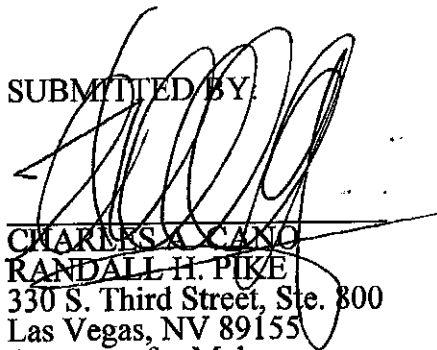
1 Metropolitan Police Department shall allow said defendant, MALONE, access to the legal
2 library at the Clark County Detention Center.

3 IT IS HEREBY FURTHER ORDERED that the Las Vegas Metropolitan Police
4 Department shall allow defendant, MALONE, three (3) hours access per day alternating every
5 other day commencing immediately upon service of this Order until completion of the trial date.

6 DATED this 27 day of September, 2010.

7
8 
9 DISTRICT COURT JUDGE *gsc*

10 SUBMITTED BY:

11 
12 ~~CHARLES A. CANO~~
13 RANDALL H. PIKE
14 330 S. Third Street, Ste. 800
Las Vegas, NV 89155
Attorneys for Malone

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25 CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

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CLERK OF THE COURT

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[Signature]
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DOMONIC RONALDO MALONE,
JASON DUVAL MCCARTY,

Defendant.

CASE NO. C224572

DEPT. XVII

00C224572-2
RTRAN
Recorder's Transcript of Hearing
987700



BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

THURSDAY, SEPTEMBER 30, 2010

RECORDER'S TRANSCRIPT OF HEARING RE:

STATUS CHECK: JURY QUESTIONNAIRE

CLERK OF THE COURT

RECEIVED

OCT 08 2010

1 APPEARANCES:

2 For the State:

CHRISTOPHER LALLI, ESQ.,
MARC DIGIACOMO, ESQ.,
Deputy District Attorneys

4 For the Defendant, Malone:

RANDALL H. PIKE, ESQ.,
DAVID M. SCHIECK, ESQ.,
CHARLES A. CANO, ESQ.,
Special Public Defenders
(Standby Counsel)

8 For the Defendant, McCarty:

CHRISTOPHER R. ORAM, ESQ.,
JONATHAN L. POWELL, ESQ.,

25 RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; THURSDAY, SEPTEMBER 30, 2010

2 [Proceeding commenced at 8:21 a.m.]

3
4 THE COURT: Is Mr. Malone here?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Mr. Malone's present. Mr. Pike, Mr. Schieck is
7 stand-by counsel. Mr. Lalli for the State and you're on this case as well, Mr.
8 DiGiacomo?

9 MR. DIGIACOMO: Yes, Judge.

10 THE COURT: Okay.

11 MR. LALLI: Your Honor, just -- I know that the Court put it on calendar for
12 the purposes of addressing the jury questionnaire --

13 THE COURT: Yes.

14 MR. LALLI: -- as I understand it. Essentially I took the old questionnaire.
15 There were some errors on it. I changed some things. I gave a copy to Mr. Malone
16 in Court this morning, but I'm not sure what the Court's question is.

17 THE COURT: Well, that was the purpose. We just want to make sure.
18 Since we do have the two cases set for Calendar Call next week, just wanted to
19 confirm with all parties that we were going to utilize the questionnaire that had
20 previously been submitted.

21 MR. LALLI: Well, I can tell -- I can tell you, Your Honor, I did have a
22 discussion with Mr. Oram last night, yesterday afternoon. Even though we had
23 submitted this one before and all parties had agreed to it. Apparently they had done
24 an about face and now we're going to have a brand new questionnaire that I haven't
25 even seen yet, so just as I --

1 THE COURT: It's probably good that I put it on calendar today, so I could
2 become aware of this. Okay.

3 MR. LALLI: Correct. And one other thing, Your Honor, it really pertains to
4 Mr. Malone. Normally, we tell jurors in questionnaires that their answers will be
5 given to counsel for all of the parties and are public record. I think because Mr.
6 Malone is representing himself, it is absolutely necessary with the jury -- potential
7 jury is informed that he -- this Defendant charged with murder will actually be getting
8 the questionnaire. I think certainly the system owes our citizens that.

9 And I've also changed some things on it. For instance, the names of
10 children, I don't think the Defendant needs to know the names of these juror's
11 children or where they work; things of that nature, so we kind of toned it down a little
12 bit in terms of the personal information that we got from our jurors because of Mr.
13 Malone representing himself.

14 THE COURT: And I don't know that we need that for -- whether or not Mr.
15 Malone represents himself or not, that we need to have --

16 MR. LALLI: Right. Well, I just wanted to just tell the Court those --

17 THE COURT: Mr. Malone, have you had opportunity to review the proposed
18 questionnaire that you received last time we were in Court?

19 THE DEFENDANT: No. I got one today --

20 THE COURT: Okay.

21 THE DEFENDANT: -- from Mr. Lalli. And I got one here I've never seen
22 before at all, but I got this one today. I haven't seen the original one though. No.

23 THE COURT: Are the parties available 9 tomorrow morning, so everyone
24 has an opportunity to review the questionnaire and so we can finalize that 'cause we
25 do need to get that to the jurors next week?

1 MR. LALLI: I'm available.

2 MR. ORAM: Judge, I'm not available tomorrow morning at 9 o'clock.

3 MR. LALLI: We don't need Mr. Oram.

4 MR. ORAM: Well, if they don't need me --

5 THE COURT: I just want to get these prior resolved here, so on the Malone
6 matter and is one of the stand-by Special PD's available?

7 MR. PIKE: Yes. Mr. Cano from our office --

8 THE COURT: Okay.

9 MR. PIKE: -- will be there.

10 THE COURT: And do you have a copy of the new proposed one from the
11 State?

12 MR. PIKE: We do not, Your Honor. I'm receiving one right now.

13 THE COURT: All right.

14 MR. PIKE: I provided Mr. Malone with the -- the version that Mr. Oram had
15 indicated he preferred. We were able to get that from his office yesterday, so I
16 delivered it to Mr. Malone this morning. And that's the other questionnaire that he
17 has.

18 THE COURT: Mr. Oram, do you have a copy for me?

19 MR. ORAM: Yes, I do, Your Honor. I brought four copies. This was one
20 that we used in the Luxor bombing that you approved. May I approach, Your
21 Honor?

22 THE COURT: Yes. And the State has a copy?

23 MR. ORAM: They have --

24 MR. DIGIACOMO: No.

25 MR. ORAM: -- a copy and I'll make sure they have a copy right now.

1 THE COURT: And do you have an extra one for the Special PD --
2 MR. ORAM: I do.
3 THE COURT: -- or Mr. Malone?
4 MR. ORAM: I believe they already have one --
5 THE DEFENDANT, MALONE: I have one.
6 MR. ORAM: -- but I have an extra copy, so everybody has one.
7 THE COURT: Okay.
8 MR. PIKE: I gave one to him that's what -- that's what I provided to him this
9 morning.
10 THE COURT: All right. All right. Great.
11 So, Mr. Malone, I want you to review the proposed one from the
12 State and the one that Mr. Oram provided your counsel, okay, and we're going to
13 discuss that tomorrow at 9 o'clock.
14 THE DEFENDANT: Okay.
15 THE COURT: All right. And for Mr. Oram, for your client, Mr. McCarty; is
16 Mr. McCarty present?
17 MR. ORAM: He is, Your Honor.
18 THE COURT: Okay. And you're not available --
19 MR. ORAM: Tomorrow morning.
20 THE COURT: -- tomorrow?
21 MR. ORAM: Mr. Powell will be, but I'm not sure about Mr. Sgro.
22 THE COURT: I know we do need to have two attorneys here, but I'm
23 wondering if this is more of a -- as well as a substantive issue, I guess.
24 THE CLERK: Mr. Powell?
25 MR. POWELL: Yes.

1 THE CLERK: May I have your bar number, Mr. Powell?
2 MR. POWELL: 9153.
3 MR. ORAM: He's here for Mr. Sgro.
4 THE COURT: Are you available and the State available Monday at 10
5 o'clock? Oh, I'm not going to be here on Monday, so why don't we just do it at --
6 MR. LALLI: Are you in trial, Judge? We could do it this afternoon.
7 THE COURT: You have time, Mr. Oram and Mr. Powell?
8 MR. ORAM: What time was Court looking at this afternoon? Can we do it at
9 1?
10 MR. LALLI: We've got some training.
11 THE COURT: How about 2:30?
12 MR. ORAM: That's pushing it. I can do it any time between 1 and 2 o'clock
13 or up to 2:30, but I have to be done.
14 THE COURT: How about at 2 o'clock?
15 MR. LALLI: Well, we've got training from 1:30 to 2:30 and then I have to
16 leave the office today at 3.
17 THE COURT: How about Friday? You're not available Friday?
18 MR. ORAM: I would be available all day Monday, all Tuesday, all day
19 Wednesday.
20 THE COURT: We'll do it Tuesday at 10 o'clock. We'll be here at Calendar
21 Call, but if it takes longer, set aside at 10 o'clock period.
22 MR. DIGIACOMO: Very good. Judge, should we do all parties at that time
23 'cause as of right now it's essentially a joint questionnaire?
24 THE COURT: Right. I understand. Well, we'll have two separate trials and
25 because Mr. Malone's in a different status, I just want to have a little extra time. All

1 right.

2 MR. LALLI: Your Honor, can I approach with a Writ of Habeas Corpus Ad
3 Testificandum for one of our witnesses?

4 THE COURT: All right.

5 Mr. Malone, have you been able to go to the law library?

6 THE DEFENDANT: Yes, I have been able to go to the legal library.

7 THE COURT: All right. Great.

8 All right. Anything else by the Malone people? Mr. Malone, do you
9 have anything else to add? We'll see you tomorrow then, right?

10 THE DEFENDANT: We'll see you tomorrow.

11 THE COURT: Okay.

12 THE CLERK: Tuesday.

13 MR. LALLI: Tuesday.

14 THE COURT: I'm sorry, Tuesday.

15 THE CLERK: Tuesday at 10 o'clock.

16 THE COURT: All right.

17 THE CLERK: October 5th, 10 o'clock.

18 THE COURT: And how about for McCarty?

19 MR. ORAM: Just one thing, Your Honor. We have several experts that we
20 have talked too, Mr. Sgro and I met with this week and we're flying them in and two
21 of them are out of state. I want to make sure that the State gives us some
22 indication. I know they can't tell us exactly how long they anticipate their case in
23 chief, but what we're trying to do is, you know, not waste County expense by
24 bringing these people in and so I anticipate that they'll be done with their case in
25 chief within three weeks. Is that fair?

1 MR. LALLI: Yes.

2 THE COURT: Is this trial still five weeks?

3 MR. LALLI: Well, in my own mind, Your Honor, I've kind of set three weeks
4 for each Defendant, so about a total of six.

5 MR. ORAM: So that's fine. I just wanted -- so we're going to be going from
6 October 11th and we should have our experts in probably two weeks out; is that fair?

7 THE COURT: Some where around there.

8 MR. LALLI: Unless -- unless, Mr. Sgro takes an inordinate amount of time
9 picking a jury which he has been known to do.

10 MR. ORAM: Oh, Mr. Sgro is very fast.

11 THE COURT: Well, Mr. Lalli, I had a trial with you and took two and a half
12 days. And so --

13 MR. LALLI: That's a walk in the park.

14 MR. PIKE: Mr. Sgro --

15 MR. LALLI: You're going to appreciate that once Mr. Sgro gets in the
16 courtroom.

17 MR. DIGIACOMO: Mr. Sgro and Mr. Oram and I did a case --

18 THE COURT: All right.

19 MR. DIGIACOMO: -- a couple of years ago, it took seven days to get a jury,
20 whole days.

21 MR. ORAM: That's because Mr. DiGiacomo is --

22 THE COURT: Well, I --

23 MR. ORAM: -- very slow.

24 THE COURT: -- well, we'll see how this works out and hopefully everyone
25 can announce ready on Tuesday.

1 MR. CANO: All right. Your Honor, just for clarification purposes, as of right
2 now, we anticipate that Mr. Oram and Mr. Sgro are going to be going first on the
3 11th, you know, assuming that they're going to be ready --

4 MR. ORAM: We are going to be ready, Your Honor.

5 MR. CANO: -- and Mr. Malone is trailing -- is trailing that?

6 THE COURT: I don't think any decisions been made.

7 MR. DIGIACOMO: I don't think any decisions --

8 THE COURT: Right.

9 MR. DIGIACOMO: -- we'll discuss that at Calendar Call, Judge.

10 THE COURT: Right. Maybe the attorneys can talk about it the next couple
11 of days here.

12 MR. CANO: No, because it was previously stated on the record that Mr.
13 Malone was going to be trailing Mr. McCarty's case and so --

14 MR. LALLI: I thought it was just the opposite.

15 MR. CANO: No, it wasn't.

16 THE COURT: I thought it was the opposite.

17 MR. CANO: It was on the record the other way around.

18 THE DEFENDANT: It is the other way.

19 MR. POWELL: There has been representations that we be going first for Mr.
20 McCarty.

21 THE DEFENDANT: Yeah.

22 MR. DIGIACOMO: I'd actually spoken to Mr. Sgro and told him that I
23 thought we go first on Mr. Malone, but --

24 THE COURT: All right. Well --

25 MR. DIGIACOMO: -- we'll discuss that among the counsel --

1 THE COURT: -- all right.

2 MR. DIGIACOMO: -- and we'll discuss it on Tuesday.

3 THE COURT: I want to make sure everyone's ready. Mr. Malone's in a
4 different situation, so I want to make sure he's completely ready as well as the
5 attorneys for Mr. McCarty.

6 MR. DIGIACOMO: Thank you, Judge.

7 THE COURT: So we'll see everybody on Tuesday.

8 MR. LALLI: Thank you, Your Honor.

9 THE COURT: Thank you.

10 [Proceeding concluded at 8:31 a.m.]

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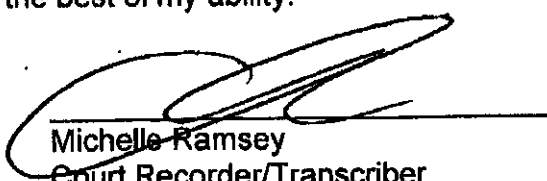
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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video
22 proceedings in the above-entitled case to the best of my ability.

23

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Michelle Ramsey
Court Recorder/Transcriber

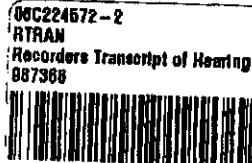
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John L. Barker
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA



THE STATE OF NEVADA,

Plaintiff,

vs.

DOMONIC RONALDO MALONE,
JASON DUVAL MCCARTY,

Defendant.

CASE NO. C224572

DEPT. XVII

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

[HEARING ALSO HEARD BY THE HONORABLE MICHAEL P. VILLANI,
DISTRICT COURT JUDGE]

TUESDAY, OCTOBER 5, 2010

RECORDER'S TRANSCRIPT OF HEARING RE:
STATUS CHECK: JURY QUESTIONNAIRE

CLERK OF THE COURT

OCT 08 2010

RECEIVED

1 APPEARANCES:

2 For the State:

CHRISTOPHER LALLI, ESQ.,
MARC DIGIACOMO, ESQ.,
Deputy District Attorneys

4 For the Defendant, Malone:

RANDALL H. PIKE, ESQ.,
CHARLES A. CANO, ESQ.,
Special Public Defender
(Standby Counsel)

7 For the Defendant, McCarty:

CHRISTOPHER R. ORAM, ESQ.,
ANTHONY P. SGRO, ESQ.,

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23 RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

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1 LAS VEGAS, NEVADA; TUESDAY, OCTOBER 5, 2010

2 [Proceeding commenced at 8:30 a.m.]

3
4 THE COURT: C224572, State of Nevada versus Domonic Malone and
5 Jason McCarty. Record should reflect the presence and representatives of the
6 State and the Defense.

7 MR. LALLI: Your Honor, it's my understanding this matter is just being
8 passed until 1:30 this afternoon.

9 THE COURT: Status Check Jury Questionnaire to be passed 1:30 this
10 afternoon. Do you understand gentlemen?

11 MR. PIKE: Thank you, Your Honor. Yes.

12 THE COURT: Very good. And --

13 MR. LALLI: Just --

14 THE COURT: -- it sounds like this is the commitment -- trial commitment --

15 MR. LALLI: Yes.

16 THE COURT: -- for the next --

17 MR. LALLI: Further notice.

18 THE COURT: -- basically the entirety of the stack. Just so I'm --

19 MR. LALLI: Yes.

20 THE COURT: -- clear and I can inform Judge Villani the parties remain
21 prepared to proceed to trial and he'll be talking to you this afternoon when he gets
22 back into town.

23 MR. LALLI: That's correct. Mr. Sgro and Mr. Oram are not here, but we've
24 been in contact with them and that is my understanding.

25 THE COURT: So they'll be here this afternoon.

1 MR. LALLI: Yes.

2 THE COURT: Very good. Thank you.

3 MR. LALLI: Thank you, Your Honor.

4 [Proceeding concluded at 8:31 a.m.]

5 [Matter trailing]

6 [Matter resumed at 1:56 p.m.]

7 [Hearing heard by Judge Michael P. Villani]

8 THE COURT: Malone, McCarty matter. Okay. Today was Calendar Call
9 first off. I don't know. Did Judge Barker handle that or just continue the Calendar
10 Call 'til --

11 MR. LALLI: Everything's 'til today.

12 THE COURT: -- okay.

13 MR. LALLI: 'Til now, Judge.

14 THE COURT: Okay. First question is -- Mr. Malone, and we have stand-by
15 counsel from the Special Public Defender's Office, Mr. Cano and Mr. Pike. Mr.
16 Malone, are you ready to go to trial?

17 THE DEFENDANT: At this point, no, sir, I'm not ready.

18 THE COURT: Okay. Why not?

19 THE DEFENDANT: I'm not ready because I was told I was going to go
20 second, so I prepared my -- prepared my preparation for trial as far as it going
21 second. So I a lot of my witness list, certain evidence that I had to do, I'm not able
22 to get those in time and if I had to go to trial like right now, today, like next week, I
23 will not be able to get that in and I don't even know whether it even be allowed at
24 this point in time. So, no, sir, I'm not ready.

25 THE COURT: I seem to recall a couple of weeks ago this issue came up

1 and -- and about who was going first or second. I think I had advised everyone that
2 I'm making that decision who goes first or second and I think I know you were here,
3 Mr. Malone, at that time.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And so you haven't filed any list of witnesses, noticing
6 witnesses; is that correct? Is that what you're saying that you -- I don't understand
7 why didn't you get your witnesses lined up after -- after I advised everyone a couple
8 of weeks ago that notices had been made?

9 THE DEFENDANT: Sir, I was just going off what you originally said, sir. Is
10 that I know that when I was here a couple of weeks ago, you had told me that I was
11 -- it's up to your discretion what you going to do and I was trying to let you know that
12 on the record we -- you had said that originally and Mr. DiGiacomo had actually told
13 you it was the discretion of the State about who was going first. And that's when
14 they had told you that Mr. McCarty is willing to take the trial first. So therefore, you
15 say okay. So that's why I had prepared my case for. So I was just stuck into doing
16 that, sir.

17 I understand that you had told me a couple of weeks ago that it's up
18 to your discretion, but I'm kind of in ping pong here so I'm like --

19 THE COURT: Actually, I mean, not to be flippant, but my opinion is the one
20 that matters.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. I thought it would have been clear to you that I had
23 advised you that my opinion matters as to who's going first.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: What if Mr. McCarty for, just saying what if, decides to take a

1 deal today, your case is next up.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Would you -- would you not be ready on Monday?

4 THE DEFENDANT: Sir, I would have to take whatever I have, sir.

5 THE COURT: Any -- anything to add, Mr. Cano or Mr. Pike --

6 MR. CANO: Just for clarification --

7 THE COURT: -- as stand-by?

8 MR. CANO: -- just for clarification on the record, I think it was back in April
9 of this year, Your Honor, when you were kind of like deciding what the order of trial
10 was going to be and I believe that everybody was relying on that. I think Mr. Oram
11 and Mr. Sgro were present when you said that they were going to go first in -- in
12 order of time. And that Mr. Malone's case was going to be following.

13 Although a few weeks you did state to Mr. Malone that that was
14 decision up to the Court as to who's going to be going first and who's going to be
15 going second. He needed to be aware of that in order to follow whatever he needs
16 to do in a timely manner.

17 I don't believe that Mr. Oram or Mr. Sgro were present for that Court
18 appearance itself. So I'm not sure that they were aware that the Court on its own
19 had changed its mind as to what the order of -- order of cases that we're going to
20 proceed forth. I just wanted to make sure that that was clear on the record.

21 THE COURT: I think we were here one or two weeks ago and I think Mr.
22 Oram had said that your -- McCarty's ready.

23 MR. ORAM: McCarty, we're ready.

24 MR. SGRO: And we've been frankly relying on it, Your Honor. And I
25 brought the transcript from the April hearing where the --

1 THE COURT: Oh, I believe what you're saying.

2 MR. SGRO: No, I just want to point out that the Court did order we were
3 going to go first and the reason that's relevant is because this case is lengthy. It's
4 always been estimated to be about four or five weeks. We have three experts in our
5 case. Two from out of state and we have other trials that if we were to go second
6 would be impeded.

7 We -- I have a case in California that a Judge is yelling at our office
8 about for stop -- stop delaying it. It starts -- I have hearings starting in December,
9 trial in January. We have Prentice Marshall with Mr. DiGiacomo in February and I
10 have State versus Kentrell Welch I think in either late April or May. Prentice
11 Marshall is a capital and will -- and will require significant preparation. And the case
12 in California also will require extensive prepare -- so we have locked down our
13 experts. We got them ready to testify and I'd never heard anything about -- about us
14 not going first by the Court until Mr. Oram came back and said Mr. DiGiacomo said
15 something in Court.

16 I contacted Mr. DiGiacomo and we spoke and I actually asked him if
17 he would have an objection if I asked the Court to begin next week Tuesday or
18 Wednesday instead of Monday. And he jokingly I thought said: oh, you'll be fine. I
19 wanted to do something with my kids this weekend 'cause they have staff
20 development day on Friday and they're off.

21 So he joking and then he says: you'll be fine. Malone's going first
22 any way. And I said: that's a knee-jerk. Unfiltered out of my mouth I said: that's
23 BS. I don't recall abbreviating and I said we're going first and that's exactly the
24 conversation. And I hung up and I was going to come to you and ask you if we
25 could start Wednesday. Then Oram -- Mr. Oram comes back and he says they

1 made noises about Malone first and I said no that's absolutely not what we talked
2 about ever. So --

3 MR. ORAM: And, Your Honor, I said last week in Court because I had never
4 heard this. Actually, I heard rumblings of it, but I said to the Court you may recall
5 that we have experts, three experts, from out of state and so we were going three
6 weeks from October 11th and I remember and that was the last I heard and I heard
7 yes, so I went over and told Mr. McCarty okay we're ready. You know, to assure
8 him that I'm not going to ask for a continuance. We'll be ready to go and so I also
9 continued a Federal Trial based upon the fact that I told the Federal Court that I
10 can't go because I have McCarty.

11 This isn't a situation where we're trying to be lazy. We are just being
12 prepared and ready to go.

13 THE COURT: Is the State ready to go against Mr. McCarty?

14 MR. DIGIACOMO: Judge, we're ready as to both Defendants, but just so
15 the record was clear, the Court said in that hearing that they have the transcript just
16 a moment ago that when you severed it over our objection because we didn't feel
17 the Defendant being pro per person would be a basis for severance. You then said
18 Malone would go first and in my knee-jerk reaction I said no we're going to do
19 McCarty first and then there's a discussion about moving one of the two trial dates
20 and I said no let's keep the same date 'cause you never know what's going to
21 happen.

22 After that time I discussed with -- when Mr. Oram says rumblings, I'm
23 the one that told him hey Malone should go first. And here's the reason why the
24 Court should order Mr. Malone to go first 'cause as the Court's very well aware that
25 the tactic used to get the severance in this case is Mr. Malone representing himself.

1 The moment you ordered Mr. Malone to go to trial on Monday, then it's put up time.
2 He really wants to represent himself, let him represent himself, but otherwise, he'll
3 request his lawyers back in which case now the case is joined back together and
4 they're tactic failed because otherwise allowing the Co-defendants to do that, Judge,
5 would -- would allow Co-defendants to control severances in the Eighth Judicial
6 District; something you don't want to do.

7 So as a pure policy consideration, you got to set Malone first
8 because if he really wants to represent himself he knew this was his trial date. If he
9 doesn't really want to represent himself, then you don't need to waste the resources
10 of perhaps the next three months trying to a case that you could have tried in six
11 weeks.

12 MR. SGRO: The difficulty, Your Honor, is that argument is Johnny come
13 lately. When we were in Court and you were invited to consider by the parties who
14 would go first because we knew in April you had told us this is a firm date. I'm not
15 screwing around any more. It was very terse comments from the bench that
16 everyone had to be on notice that we were going. And you gave us both the same
17 date and then the Court says, you actually do say: do you want to do Malone first.

18 Here's Mr. DiGiacomo: All due respect to the Court, the State would
19 prefer to try Mr. McCarty first. You're severing the case. I think the State should
20 have the right to make that choice. We choose to try McCarty first, Judge. We can
21 try them back to back. You then say: all right.

22 Then Mr. DiGiacomo says we'll go 12, 14 weeks which is consistent
23 with that 5-week estimate or so.

24 Then you say to Mr. Oram and I: I'm assuming, Mr. Sgro, Mr. Oram,
25 you'll be ready; correct? We'll be ready. We will. Then here's the order. All right.

1 We'll go with McCarty first. We got the trial date. Any outstanding discovery
2 issues? That's actually what occurred.

3 So we took this to the bank. It's a Court order regarding trial. After
4 we got somewhat chastised for making sure we were going to be ready. No more
5 continuances, etcetera, etcetera. So we then got our out of state experts on board
6 to be present during this trial date. So --

7 THE COURT: I think at this point for a couple of reasons, we'll go forward
8 on the McCarty matter. If the State says they're ready, then we'll go forward. And
9 we'll start it on -- now, is there an issue of starting Monday, Tuesday, Wednesday or
10 -- because I hate to drag this out longer if it's four to five weeks we're trying to get a
11 jury to sit four to five weeks and now we're going to make it four and a half weeks to
12 five and a half weeks.

13 MR. SGRO: There is not a legal issue, Your Honor. It was only an
14 opportunity to take advantage of a day off when I may not be home that much for
15 the next month.

16 THE COURT: Right.

17 MR. SGRO: And it's strictly not legal. Strictly a hundred percent personal. I
18 was going to ask you accommodate a day or two. If the Court is -- is unable to do
19 that for calendaring reasons, I understand and I'll figure it out.

20 THE COURT: I'm assuming he's going to take at least two to three days to
21 select a jury.

22 MR. DIGIACOMO: I think it's going to take significantly a little longer than
23 that.

24 THE COURT: Right.

25 MR. DIGIACOMO: I'm just joking.

1 THE COURT: No. What I'm saying the best case scenario -- I had a non
2 capital case with Mr. Lalli and he took three days.

3 MR. DIGIACOMO: You haven't seen Mr. Sgro. We don't oppose --

4 MR. LALLI: And that wasn't my fault either.

5 MR. SGRO: I'm standing here.

6 MR. DIGIACOMO: I mean, literally, Judge, I mean, the fact of the matter is
7 that a day or two probably won't make a significant difference in the length of the
8 trial because we're not talking about getting a jury maybe that first week even. And
9 so the fact of the matter is is that we told Mr. Sgro that we didn't oppose if he got a
10 day or two in order to handle a personal matter.

11 MR. SGRO: I was just --

12 THE COURT: Okay.

13 MR. SGRO: Right.

14 MR. DIGIACOMO: But it's up to the Court obviously if you want to go --

15 THE COURT: And that won't affect your experts?

16 MR. SGRO: It will not. Well, because they have to do their case in chief
17 first, Your Honor.

18 THE COURT: Right.

19 MR. SGRO: We're ball parking it about two, three weeks out from when we
20 get a jury.

21 THE COURT: Are you asking for a Tuesday start?

22 MR. SGRO: Either Tuesday or Wednesday, whatever the Court would
23 prefer. All of it is extremely helpful and appreciated. We'll take whichever one the
24 Court gives us. I know I heard in the prior case that the Court began a bench trial
25 tomorrow. I don't know if you'll be done by Friday or Monday or if you need that

1 day.

2 THE COURT: No. We'll be done --

3 MR. SGRO: Okay.

4 THE COURT: -- mid Friday.

5 MR. SGRO: Can we do Tuesday then at 1:30, Your Honor? Is that -- or do
6 you start in the morning for a jury?

7 THE COURT: We start at 10.

8 MR. SGRO: Okay.

9 THE COURT: We start at 10.

10 MR. SGRO: Thank you, sir.

11 THE COURT: Let's start Tuesday at 10. All right, Mr. Cano, Mr. Pike, thank
12 you very much for showing up. And Mr. Malone, actually we're going to give you a
13 new trial date; and the, State, you need to be ready.

14 MR. LALLI: Your Honor, we need to resolve the jury questionnaire.

15 THE DEFENDANT, MALONE: Yeah. Yes, sir.

16 MR. LALLI: I think we need Mr. Malone present for that.

17 THE COURT: Okay. All right, I had a proposed one from Mr. Oram and one
18 from the State; have both sides been able to look at those and I don't know if you
19 guys were communicating?

20 MR. LALLI: We looked at them, but I can represent to the Court perhaps his
21 Honor remembers that a year ago, it was over the weekend we discovered that the
22 case needed to be continued, but questionnaires had been completed and using the
23 questionnaire essentially in the form that we provided to the Court.

24 Now at the last minute I had phoned Mr. Oram last week and asked
25 him if there was any last minute tweaking he wanted to do to the questionnaire and

1 his response to me was well no I don't want to use that questionnaire any more. I'm
2 going to have my own. And if the Court is concerned about how long it's going to
3 take jury selection to take, the questionnaire that we used last time was 34
4 questions long. This new proposed questionnaire which is highly objectionable is 63
5 questions long. It's twice as long. And here's just an example of some of the
6 questions in it. Question number 42, what do you believe the roles of the following
7 are: Judges, defense attorneys, prosecutors? Who cares what a juror believes the
8 roles of Judge or prosecutor are.

9 Another question 45, when was the last time you hosted someone of
10 a different racial background? What does that mean? Why is that relevant to these
11 proceedings?

12 Another question, again highly improper, how would knowing that a
13 Defendant made admissions regarding his involvement affect your opinion on why
14 we are having a trial? Fifty-one. So they're asking jurors to prejudge the evidence.

15 Then you go to question that is titled attitude regarding sentencing
16 and the death penalty. They list out aggravating circumstances which is
17 inappropriate. They incidentally list the wrong aggravating circumstances. These
18 are not even the aggravating circumstances relevant or alleged in this case.
19 They've got a large statement of the law which is in direct violation of District Court
20 Rule 7.70. I mean, and I can go on and on and on.

21 What I would propose that we would do is be more than happy to
22 give the defense the opportunity to add, tweak, amend questions in the
23 questionnaire that we've already used in this case and that they agreed to
24 previously, but I think it is certainly a waste of everyone's time to go back to the
25 drawing board especially when you have the highly improper questions that we're

1 seeing in this questionnaire.

2 THE COURT: Mr. Oram?

3 MR. ORAM: Your Honor, it's come to my attention and I do recall last time I
4 really had just slipped my mind. Mr. Lalli's correct when he says he called me the
5 other day. I looked over the questionnaire and my gut reaction was no, this is not
6 sufficient. We use the one from the Luxor bombing and then they pointed out that
7 last year at this time that a jury had already filled out a questionnaire and it was
8 based on what had happened in my personal life that there was a continuance.

9 So I do feel I sort of understand the State's position in that regard.
10 There are some questions we would like in -- in the State's questionnaire we'd like
11 to add to that specifically. We want to make sure about ways and there's a couple
12 of other questions perhaps we can do that to make that acceptable to all parties.

13 THE COURT: And there's a certain deadline for us to get the questionnaires
14 to the jurors. They have to come in a week before --

15 MR. ORAM: I don't think --

16 THE COURT: -- simply --

17 MR. ORAM: -- I don't think we need more than probably ten minutes in the
18 back room.

19 THE COURT: Yes.

20 MR. DIGIACOMO: If you can give us a few minutes, we might be able to
21 resolve it.

22 THE COURT: If the parties can work it out then I'm happy.

23 MR. LALLI: All right.

24 THE COURT: All right, just call -- just tell the Marshal.

25 MR. LALLI: Mr. Malone has a question.

1 THE DEFENDANT, MALONE: Excuse me, Your Honor.
2 THE COURT: Yes, sir.
3 THE DEFENDANT, MALONE: I've never agreed to the first one nor have I
4 received the first one that they have submitted to the Court.
5 MR. LALLI: I handed it to him the last time we were in Court.
6 THE DEFENDANT, MALONE: No. You handed me this.
7 MR. LALLI: That's the one we used last time.
8 THE DEFENDANT, MALONE: Is this the one you submitted?
9 MR. LALLI: Yes.
10 THE DEFENDANT, MALONE: Okay. You didn't tell me you said you
11 personally stated it's different at the time I wasn't representing myself, so --
12 MR. LALLI: Okay. Well you --
13 THE DEFENDANT, MALONE: -- I take it --
14 MR. LALLI: So just for the record, the Defendant has had that since the last
15 time we were all in Court.
16 THE COURT: Right.
17 THE DEFENDANT: Yeah.
18 MR. LALLI: I personally handed it him a copy of it.
19 THE COURT: All right. Well, why don't you go out and meet.
20 MR. SGRO: Your Honor --
21 THE COURT: Yes.
22 MR. SGRO: -- just a quick logistical for scheduling purposes. What time
23 generally will the Court begin? Is there a different start time on different days?
24 What time will we conclude?
25 THE COURT: We'll typically start between 9:30 and 10 everyday.

1 MR. SGRO: Okay. And run until?

2 THE COURT: Five. What we do is everyday we check with the jurors to see
3 if they can stay later, but we will typically tell you the day, let's say on Tuesday, we'll
4 tell you this will be our schedule for Wednesday.

5 MR. SGRO: Okay.

6 THE COURT: But we typically will start at 9:30 to 10 and we'll go to 5
7 o'clock. We've been asked to try to minimize overtime because of our economy.

8 MR. SGRO: Right. Thank you, sir.

9 THE COURT: All right.

10 THE CLERK: October 12th at 10 and three weeks and so that will be
11 November 2nd.

12 THE COURT: No. We don't have a date yet.

13 MR. DIGIACOMO: No.

14 THE CLERK: Okay.

15 THE COURT: We'll get that in just a minute. They're going to go out and
16 meet and see --

17 THE CLERK: Okay.

18 THE COURT: -- if they hash out some problems.

19 One of the things, Mr. Lalli, if you can tell Mr. Oram, we do need on
20 which if we're using the majority of the old one we just need to tweak under question
21 32 concluding questions as far as start time and ending time.

22 MR. LALLI: Your Honor, last week your law clerk requested that I email her
23 a copy of the -- of the most up to date questionnaire.

24 THE COURT: Okay.

25 MR. LALLI: Which I did send her. It does have those -- the correct dates in

1 it.

2 THE COURT: Okay.

3 MR. LALLI: It also indicates that something that I feel is that we certainly
4 owe to our jurors and that is to know at least one of these Defendants represents
5 himself and that Defendant himself will see the questionnaires. It's a little unusual,
6 but I think just out of responsibility to the jury, they must be informed that at least Mr.
7 Malone is representing himself. So those are really the only two substantive
8 changes, but --

9 THE COURT: All right.

10 MR. LALLI: -- we'll look at that.

11 THE COURT: See if you can work it out with Mr. Sgro and Mr. Oram.

12 MR. LALLI: Thank you.

13 MR. SGRO: Thank you, Judge.

14 THE COURT: Just call me when everyone's ready.

15 [Matter trailed]

16 [Matter recalled at 2:45 p.m.]

17 THE COURT: Okay. We're on the record. This is the questionnaire. I have
18 a copy of the questionnaire that appears to have been worked out between the
19 parties. Is there a section here that talks about the length of the trial? Am I just
20 missing it?

21 MR. LALLI: There is, Your Honor. It should be on page 7, concluding
22 questions. This trial is expected to last five weeks. On page 7 under concluding
23 questions, it's all caps, bolded.

24 THE COURT: Oh, okay. Okay.

25 MR. LALLI: We tried to make it obvious. I guess we failed.

1 THE COURT: I'm looking at one of the questions. And actually I would put
2 in -- in the actual question: this trial is expected to last five weeks, is there any
3 reason we can't serve?

4 MR. SGRO: We can add that; that's fine with us, Your Honor.

5 MR. LALLI: It's your questionnaire.

6 THE COURT: All right, Michelle, just change that. And that's it. Okay, so
7 and all we're going to add on number 36, the list of -- of both State's and defense
8 potential witnesses will be listed.

9 MR. LALLI: Yes.

10 THE COURT: And, Michelle, or someone is going to email her those --

11 MR. LALLI: Yes.

12 THE COURT: -- those names.

13 MR. LALLI: We will email those hopefully by days end. We'll have to go
14 through all -- all the notices of witnesses that have been --

15 THE COURT: Right.

16 MR. LALLI: -- filed and call those off, but we'll do that.

17 THE COURT: All right, since you're standing, Mr. Sgro, I'll direct the
18 questions to you.

19 MR. SGRO: Yes, sir.

20 THE COURT: Do you have any objection to the jury questionnaire that's
21 been proposed?

22 MR. SGRO: No, Your Honor.

23 THE COURT: Okay. And, Mr. Lalli, do you?

24 MR. LALLI: No.

25 THE COURT: Okay. For Malone, since his trial we'll have to reset his trial.

1 We can work on a questionnaire prior to that trial that Mr. Malone and the State can
2 agree upon. If not, then obviously I'll select the questionnaire.

3 All right. Mr. Malone, on your questionnaire -- well, let's first off give
4 you a trial date.

5 MR. LALLI: Well, can we request it in three weeks, Your Honor, just -- just in
6 case number one, so he knows in three weeks now he's got to be ready to go to
7 trial, number one. Number two, if for whatever reason we are moving quicker
8 through our case and the defense case, well then its easier to trail it then move it --
9 move it up sooner if that makes sense. So we would request that he be given a
10 date of three weeks from Monday knowing that it will probably be a little earlier than
11 would eventually happens, but at least you'll have that date to work from.

12 MR. CANO: The only issue we got, Your Honor, is this I mean, we'd like to
13 get a certain date because myself and Mr. Pike have to adjust our calendars 'cause
14 we're trailing this case. And we have other cases that we're setting in November
15 that we're going to have to be trailing, so if we have a certain date, we can address
16 those other Courts letting them know that we're going to be in a capital case that's
17 trailing this case starting this date 'cause otherwise if there's a gap in between there,
18 the other Court's are going to expect us to go back to back.

19 MR. LALLI: Well, here's the -- here's the problem, Your Honor. Nobody
20 wants to not get to Mr. Malone's case. We want to get to it now. And it would be
21 ashamed if this trial were to finish -- Mr. McCarty's trial were to finish in three weeks
22 and then Mr. Malone is given five weeks from now and we've got two weeks that we
23 could be using that are just going to be wasted. Nobody wants that to happen. Its
24 better that they're trailing then there's an untimely gap in between the two.

25 THE COURT: And just so you understand, November 15th starts my civil

1 stack.

2 MR. LALLI: All the more reason to set it in three weeks.

3 MR. DIGIACOMO: Judge, look with jury trial as we all know, you know,
4 while you set us to start Tuesday morning, there's always a possibility that for
5 whatever reason Mr. McCarty's case does not go forward and so you vacate him
6 and reset this thing out a year now and now a year and farther down the road. I
7 would urge the Court not to.

8 I mean, if you want to give him a firm date three weeks from now
9 that's one thing, but to vacate it and reset it forever and then ultimately have the
10 possibility that either case winds up resolving when everybody's ready to go --

11 THE COURT: Mr. Cano or Mr. Pike --

12 MR. DIGIACOMO: -- I would say would be problematic.

13 THE COURT: -- are you available start November 1st?

14 MR. CANO: Well, obviously this case is going to take precedent. We have
15 to move some other cases that we have set. Both Mr. Pike and myself have cases.
16 They're set on November 8th that would have to be moved.

17 MR. PIKE: We understand this case takes precedence over --

18 THE COURT: Okay.

19 MR. PIKE: -- over all of our other cases.

20 THE COURT: I'll set this to start November 1st and Calendar Call is October
21 26th at 8:15.

22 THE DEFENDANT, MALONE: October 26th?

23 THE COURT: October 26th is Calendar Call. November 1st is Trial. Mr.
24 Malone, I expect you to be ready on that day.

25 THE DEFENDANT, MALONE: Yes, sir.

1 THE COURT: Okay.

2 THE DEFENDANT, MALONE: Do we address the jury questionnaire now or
3 later?

4 THE COURT: If you have a proposed questionnaire please file it with the
5 Court.

6 THE DEFENDANT, MALONE: Uh-huh.

7 THE COURT: And then I'll -- let's put Mr. Malone back on calendar for --

8 MR. CANO: Would it be fair --

9 THE COURT: -- October --

10 MR. CANO: -- would it be fair to say, Your Honor, that he should file it no
11 later than October 22nd that way we have a week to resolve it or maybe earlier that
12 week by the 20th?

13 THE COURT: See, we have to get the questionnaire a week before the Trial
14 starts.

15 MR. CANO: Right. If we're set for the 1st, the week of the 25th would be a
16 week before. So perhaps we could be back in Court by the 20th of October to
17 finalize anything on the questionnaire that way you have, you know, that we can get
18 to the jury services by the 22nd?

19 MR. LALLI: That's fine, Your Honor. As long as Mr. Malone files whatever
20 he wants to be used.

21 THE COURT: We'll set it on the 19th -- we'll set it on the 19th to discuss your
22 questionnaire. Mr. Malone, we'll make sure you get a copy of the questionnaire
23 we're using for the McCarty matter and you maybe -- it appears Mr. Sgro or Mr.
24 Oram don't have a problem with the questionnaire for their client. We'll make sure
25 you get a copy of this questionnaire and likewise you may not have a problem with

1 it. Okay?

2 THE DEFENDANT, MALONE: Yes, sir.

3 THE COURT: All right, so we'll make sure you get a copy of it and we'll see
4 you back on was it the 19th.

5 MR. LALLI: Your Honor, can you just order that the Defendant files
6 whatever his proposed -- if he proposes any changes so that we can look --

7 THE COURT: Yes.

8 MR. LALLI: -- we can look at them before the 19th?

9 THE COURT: All right, sir, you'll need to have that filed by the 12th if you
10 have your own you wish to propose.

11 THE DEFENDANT, MALONE: Sir, I'm going to have two issues. The one
12 that I have -- the one that's right in front of me now the one that you said is the
13 original one, I'm going to have two issues.

14 THE COURT: Okay. Well here's the -- here's a newer one. Like I said it's
15 been approved by the McCarty attorneys. It doesn't mean you have to approve it,
16 but I'm saying they've checked it out and they're satisfied with it. You maybe
17 satisfied with it as well. Okay, so we'll give you a copy of it. You know, you review
18 it. Okay?

19 THE DEFENDANT, MALONE: Yes, sir.

20 THE COURT: All right. And we're good to go then. We'll start Tuesday at
21 10. And Cliff how many jurors fit in this courtroom?

22 THE MARSHAL: We don't need to have more than 50 in here.

23 THE COURT: All right, so we can -- we'll bring in 50.

24 MR. DIGIACOMO: Okay.

25 THE COURT: See how that goes.

1 MR. LALLI: Thank you.

2 THE COURT: All right. And also counsel, I don't know how soon we'll get
3 the questionnaires back, but as soon as we get them we'll call your offices and
4 perhaps the attorneys can -- when you review them see if you can agree; let's get
5 rid of number 37 and --

6 MR. ORAM: Okay.

7 THE COURT: -- 42 or whatever it may be.

8 MR. ORAM: Okay.

9 THE COURT: You can streamline it.

10 MR. LALLI: All right.

11 MR. SGRO: Are you making four copies, Your Honor, then?

12 THE COURT: Yeah.

13 MR. SGRO: Okay. Great. Thank you.

14 MR. LALLI: Thank you.

15 MR. DIGIACOMO: Thanks, Judge.

16 THE COURT: And that information will be emailed --

17 MR. LALLI: Yes.

18 THE COURT: -- forthwith to Michelle?

19 MR. LALLI: Yes.

20 THE COURT RECORDER: I have a question. On the questionnaire, did
21 you want both Defendants on the caption?

22 MR. SGRO: No.

23 THE COURT RECORDER: No.

24 MR. LALLI: That's fine.

25 THE COURT: Officer, before we leave, Carol if you can run a copy of this

1 and we'll get a copy to Mr. Malone.

2 THE CLERK: Okay.

3 THE COURT: Mr. Malone, the only item that is not filled out is item 36 which
4 will be a list of all potential witnesses, so if you have a different list than the McCarty
5 people, we'll -- we'll include your witnesses as well.

6 THE DEFENDANT, MALONE: Okay.

7 THE COURT: So that's the only change would be item 36 will be a list of the
8 State's witnesses and yours. Okay?

9 THE DEFENDANT, MALONE: Yes, sir.

10 THE COURT: Everything else will be the same. Okay?

11 THE DEFENDANT, MALONE: Yes, sir.

12 THE COURT: All right. Thank you everybody.

13 MR. LALLI: Thank you, Your Honor.

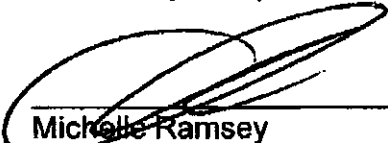
14 THE COURT: We'll see you next week.

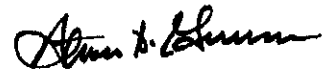
15 MR. PIKE: Thank you.

16 [Proceeding concluded at 2:54 p.m.]

17
18 * * * * *

19
20
21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video
22 proceedings in the above-entitled case to the best of my ability.

23
24 
Michelle Ramsey
25 Court Recorder/Transcriber



CLERK OF THE COURT

1 **NOTC**

2 **DAVID ROGER**
3 Clark County District Attorney
4 Nevada Bar #002781
5 **MARC DIGIACOMO**
6 Chief Deputy District Attorney
7 Nevada Bar #006955
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**

10 Plaintiff,

11 -vs-

12 **DOMONIC RONALDO MALONE,**
13 **#1670891,**
14 **JASON DUVAL MCCARTY,**
15 **#932255,**

16 Defendants.

CASE NO: C-06-224572-2

DEPT NO: XVII

17 **SUPPLEMENTAL NOTICE OF WITNESSES**
18 **[NRS 174.234(1)(a)]**

19 **TO: DOMONIC RONALDO MALONE, Defendant; in Proper Person; and**

20 **TO: CHARLES CANO, SPECIAL PUBLIC DEFENDER'S OFFICE, Standby**
21 **Counsel of Record:**

22 **TO: JASON DUVAL MCCARTY, Defendant; and**

23 **TO: ANTHONY SGRO, ESQ., Counsel of Record; and**

24 **TO: CHRISTOPHER ORAM, ESQ., Counsel of Record:**

25 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF**
26 **NEVADA intends to call the following witnesses in its case in chief:**

27 NAME

ADDRESS

28 GRIFFIN, R.

HPD #1206

///

1 These witnesses are in addition to those witnesses endorsed on the Information and
2 any other witness for which a separate Notice has been filed.

3
4
5 BY



6 DAVID ROGER
7 DISTRICT ATTORNEY
8 Nevada Bar #002781
9
10
11
12

13 **CERTIFICATE OF FACSIMILE TRANSMISSION**

14 I hereby certify that service of the above and foregoing, was made this 7th day of
15 October, 2010, by facsimile transmission to:

16
17 DOMONIC MALONE, ID#1670891
18 c/o CCDC COURT SERVICES
19 FAX: 671-3763

20 SPECIAL PUBLIC DEFENDER'S OFFICE
21 FAX: 455-6273 (Def. Malone)
22 ATTN: CHARLES CANO

23 ANTHONY SGRO, ESQ. (Def. McCarty)
24 FAX #386-2737

25 CHRISTOPHER ORAM, ESQ. (Def. McCarty)
26 FAX #974-0623

27 /s/ J. Georges
28 Secretary for the District Attorney's Office

FILED

NOV 01 2010

John J. Sullivan
CLERK OF COURT

1 MOTION/

2 DOMONIC MALONE, NO. 1670891

3 CLARK COUNTY DETENTION CENTER

4 330 S. CASINO CENTER BVD.

5 LAS VEGAS, NV. 89101

6 PROPER DEFENDANT

7 CHARLES CANO, ESQ

8 RANDALL PIKE, ESQ

9 STAND-BY ATTORNEYS FOR MALONE

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA)

CASE NO. C224572

13 Plaintiff,)

DEPT. NO. XVII

14 vs.)

15 DOMONIC MALONE)

16 Defendant)

17 MOTION to DISMISS for Prosecutorial Misconduct grounds

18 Brady Violation or in the Alternative the Jury to be

19 Instructed on Malone's exact whereabouts during the time of

20 murder(s)

21 COMES NOW, Defendant DOMONIC MALONE, in proper person,

22 hereby moves this Court to Dismiss counts (7)-(18) for Prosecu-

23 torial Misconduct on grounds Brady Violation or in the Alternative

24 instruct the Jury on Malone's exact whereabouts during the estimated

25 time of murder(s).

26 This Motion is made and based on the (5)th, (6)th, (9)th, and

27 (14)th Amendments, U.S. & N.V. Constitution, as well as EIGHTH

28 JUDICIAL DISTRICT COURT RULE(S) the Points and Authorities,

29

00C224572-2
MDSM
Motion to Dismiss
1026101



CLERK OF THE COURT

OCT 27 2010

RECEIVED

18 X
1240

1. arguments of Pro'se defendant at the time of the hearing on this matter.

2

NOTICE OF MOTION

3 TO: STATE OF NEVADA, Plaintiff; and to: District Attorneys Office, Attorney
4 for Plaintiff

5

6 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring
7 on the foregoing Motion on for hearing on the ____ day of ____, 2010 in
8 Department NO: 17, or as soon thereafter as counsel may be heard.

9

STATEMENT OF THE CASE

10 DOMONIC MARONE consistently literates that this is NOT a game, is
11 charged by way of information with (4) counts First Degree kidnapping, (2)
12 counts of Battery with Substantial Bodily Harm, (2) counts of Conspiracy
13 to Commit kidnapping, (2) counts of Pandering, (1) count of Robbery, (2) counts
14 of Robbery with use of a Deadly Weapon, (1) count of Conspiracy to Commit
15 Murder, (1) count of Conspiracy to Commit Burglary, (1) count of Burglary, and
16 (2) counts of Murder with Use of a Deadly weapon. The State intends to seek
17 Death in this case if Defendant is found guilty. Trial is set for Nov. 1, 2010

18

FACTS

19 In concordance with Rule 23 the Special Public Defenders office filed
20 an Motion For Discovery Of Prosecution Records, Files and Information
21 Necessary to a Fair Trial as early as June 22, 2007 FILED Stamped 2007
22 MAY 24 P3:25 on behalf of the defendant (MARONE)

23

POINTS AND AUTHORITIES

24 State failed to disclose exculpatory evidence in order to gain an
25 tactical advantage over the defendant preventing him from receiving the
26 benefits of a fair trial which is a clear violation of Malone's due process
27 rights.

28

ARGUMENT

29 This Motion is made under the authority of Brady v. Maryland, 373 U.S. 83

30

1 (1963) and its progeny, as well as the constitutional and statutory
2 provisions cited in the opening paragraph. See also, Kyles v. Whitley,
3 514 U.S. 419 (1995); Davis v. Alaska, 415 U.S. 308 (1974); Giglio v. United States, 405
4 U.S. 150 (1972); Giles v. Maryland, 386 U.S. 66 (1967); Smith v. Phillips, 455 U.S. 209
5 (1982); United States v. Agurs, 427 U.S. 97 (1976); United States v. Valenzuela-
6 Bernal, 458 U.S. 858 (1982); United States v. Brunel-Alvarez, 976 F.2d 1235 (4th Cir. 1992);
7 United States v. Pitt, 717 F.2d 1334 (11th Cir. 1983); Jimenez v. State, 112 Nev. 610, 918
8 P.2d 687 (1996). The State can "not avoid its duty to disclose under the
9 Constitution - specifically, those defined by Brady and Giglio". Moore v. Kemp,
10 809 F.2d 702, 726 (11th Cir. 1987). See, Miller v. Dugger, 820 F.2d 1135 (11th Cir. 1987).

11 Specifically, NRS 174.295 provides, that
12 If, after complying with the provisions of NRS 174.235 to
13 174.295, inclusive, and before or during trial, a party discovers
14 additional material previously requested which is subject to discovery
15 or inspection under those sections, he shall promptly notify the other
16 party or his attorney or the court of the existence of the
17 additional material.

18 Here in this case the State has had almost (5) yrs to subpoena cell phone
19 records with cell # numbers. These along with accompanying cell tower
20 cites enables all to determine the whereabouts of myself at the time
21 of incident in question. This would have clearly exonerated me from counts
22 (7)-(18) and at the very least counts (10)-(12) for the cites would've
23 shown that I have not been inconsistent as for my involvement in
24 this act of cowardness (crime).

25 Because the State failed to gather these records Daniels v. State 956
26 P.2d 111 (Nev. 1998) They violated their duty under BRADY which violates my
27 (14)th admendment right of equal protection. I am unduly prejudice by
28 the States outright disregards to their duties for i've become hamstrung

- 1 in demonstrating my whereabouts at the time of the murders. This
- 2 blatantly departure from their constitutional duties is so anti-american
- 3 that the courts should Dismiss the murder counts as well as the
- 4 attack counts

5

CONCLUSION

- 6 MAIONE PRAYS that this Honorable COURT GRANT his Motion for
- 7 Dismissal Brady Violation or in the Alternative MAIONE wants the jury
- 8 to be instructed that because the State failed to seek his cell phone
- 9 records the jury must assume that he was not anywhere near the
- 10 sites where MCCARTY and HERB committed the murders and that
- 11 he was not with MCCARTY and HERB
- 12 MAIONE PRAYS that at the bare minimum even on the Pro'se
- 13 level that he is entitle to fundamental fairness as any other
- 14 defendant would be under the same circumstances...

15

16 Respectfully Submitted;

17 *Dominic R. Malone*

18 Dominick R. Malone #1670891

19 330 S. Casino Center Blvd.

20 LV. NV. 89101

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1 MOTION/ORDER

2 DOMONIC MALONE, NO. 1670891

3 CLARK COUNTY DETENTION CENTER

4 330 S. CASINO CENTER BLVD.

5 LAS VEGAS, NEVADA 89101

6 DEFENDANT IN PROPER PERSON

7 CHARLES CANO, ESQ.

8 RANDALL PIKE, ESQ.

9 STAND-BY ATTORNEYS FOR MALONE

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA } CASE NO. C224572

13 Plaintiff, } DEPT. NO. XVII

14 vs. }

15 DOMONIC MALONE, }

16 Defendant }

17 MOTION IN LIMINE TO ABOLISH WITNESS DEPOSITION STATEMENT/

18 REQUEST FOR EVIDENTIARY HEARING REGARDING THIS MATTER

19 COMES NOW, defendant, DOMONIC MALONE, in proper person, and

20 pursuant to the (5)th, (6)th, 8th, and (14)th Amendments to the

21 United States Constitution & Nevada Constitution, EIGHTH JUDICIAL

22 DISTRICT COURT RULES), moves this Court to bar the introduction

23 of the testimony of DONALD JIM HERB at the time of the trial of

24 this matter, as well as all derivative evidence secured therefrom, As

25 well to set an evidentiary hearing for an clear judicial

26 determination on Herb's position in the present case.

27 This Motion is based upon the points and authorities, exhibits,

28 arguments of proper defendant at the time of the hearing on this

29

1 matter as well as the points and authorities contained within
2 Defendants' Writ of Habeas Corpus heretofore file in this matter
3 Specific to this Motion are the conflicting statements of
4 DONALD HERB, who has struck a negotiation with the state and
5 has testified against Mr. Malone. The body of this Motion addresses
6 the manner in which Donald Herb comes by the "Sweet Heart Deal"
7 and subsequently turned to be the State's primary witness. And the
8 reason(s) why the paid-for-testimony should not be admissible against
9 MALONE in trial as it would be violative to MALONE's (14)th admendment
10 right to equal protection.

11 NOTICE OF MOTION

12 TO: STATE OF NEVADA, Plaintiff; and

13 TO: DAVID ROGER, DISTRICT ATTORNEY, Attorney for Plaintiff

14 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring
15 on the above and foregoing MOTION on for hearing on the ____ day of
16 ____ 2010, at the hour of 8:15 a.m. in Department NO:17 of the above
17 title Court, or as soon thereafter as Counsel may be heard

18 POINTS AND AUTHORITIES

19 STATEMENT OF FACTS

20 Defendant DOMONIC MALONE (hereinafter referred to as Malone) by this
21 reference, adopts the statements of facts contained within both the
22 Writ and Motions to Dismiss Failure to Preserve heretofore filed with the
23 Court.

24 Malone notes that on May 25, 2006. Detectives Osaka and
25 Collins went to the residence of Donald Herb (hereinafter referred to as
26 Herb) to question him about his involvement in the deaths of the two
27 victims in this matter. The Detectives, pursuant to the policy of the
28 Henderson Police Department were recording the conversation with Herb.

29

1 Listening to the interrogation by Detectives; it becomes clear that after
2 on bout with half-truths that Collins becomes frustrated and thus
3 begin to lead Herb into the direction that he (Collins) wants Herb
4 to go in. By giving Herb the story on how it is or more defined so with
5 in the tape recording.

6 Specifically, NRS 48.105 provides, that

7 1. Evidence of: (b) Accepting or offering or promising to accept, a
8 valuable consideration in compromising or attempting to compromise
9 a claim which was disputed as to either validity or amount, is not ad-
10 missible to prove liability for or invalidity of the claim or its amount.
11 Evidence of conduct or statements made in compromise negotiations
12 is likewise not admissible.

13 Here in this case Towards the end of the interview Collins states
14 that you gone get accessory by there's three (b) words and then Herb
15 finish Collins statement by saying after-the-fact and then Collins
16 respond by saying right see; audio exhibit (1) ultimately
17 Herb receive this negotiated outside-of-court Sweet Heart deal
18 Accessory after-the-fact the exact one that Collins whom is
19 employed as an Henderson Detective offered previously -- from
20 the prosecuting parties and thus testified for the State .. During
21 his testimony Herb admitted lying to the police about his
22 involvement as well as Romeo's and Malone's involvement (PNT, vol V
23 page 43) Herb took officers out to the locations that he had describe and
24 assisted police in recovering evidence (PNT, vol V 42) Herb also openly admitted
25 under cross examination to half-truth and all that we have to go by is his
26 word.

27 PROCEDURAL STATEMENT POINTS AND ANTICIPATES

28 Since this has been designated as a capital prosecution, exacting
29

1 Standards must be met to assure that it is fair. Furman vs. Georgia 408 U.S. 238, 306,
2 92 S.Ct. 2726, 33 L.Ed 2d 346 (1972)

3 Quoting from Reglemeyer v. State 903 P.2d 799, 111 Nev. 1244 (Nov 1995) Evidence
4 provides insufficient corroboration of accomplice testimony against defendant, and thus
5 does not permit conviction, where it shows no more than an opportunity to commit a crime,
6 simply proves suspicion, or is equally consonant with a reasonable explanation pointing
7 toward innocent conduct on the part of the defendant. N.A.S. 175.291, Sub. 1.

8 Here MALONE asserts that Herb lied about a material fact one of which that
9 would shed light on HERB actually being a SUSPECT and not a WITNESS as the State
10 has placed him. --- See CREEL Exhibit attached --- An accomplice is one who is
11 liable to prosecution for the identical offense charged against the defendant, NRS 175.291
12 (2), or who is culpably implicated in, or unlawfully cooperates, aids or abets in the
13 commission of the crime charged. See: Potter v. State, 96 Nev. 875, 619 P.2d 1222 (1976).
14 Moreover, it is hornbook law "that conduct, to be criminal, must consist of something
15 more than mere action (or nonaction where there is a legal duty to act); some sort of
16 bad state of mind is required as well." W. LaFare, A. Scott, Criminal Law, 176 (1972); see
17 also; Austin v. State, 87 Nev. 578, 491 P.2d 724 (1971) citing; 105 Nev. 107, 771 P.2d 148
18 ORFIELD v. STATE (1984) see also; 6 P.3d 1013, 116 Nev. 770, Garner v. State, (Nov. 2000)

19 As set in NRS 47.060 Specifically, provides, that
20 Preliminary questions concerning the qualification of a person to be a witness, the
21 existence of a privilege or the admissibility of evidence shall be determined by the
22 judge, subject to the provisions of NRS 47.070

23 Also MALONE asserts that he can show beyond a reasonable doubt by clear and
24 convincing evidence that the State has wrongfully bolstered the credibility of HERB
25 instead of his actual culpability. --- Therefore MALONE HEREBY asserts his right to
26 Evidentiary Hearing --- For this court to conduct this analysis, "district courts

1 must make specific factual findings." citing 124 Nev. ---, ---, 187 P.3d 152, 151-53

2 Some v. State (2008) see also; attach exhibit

3 CONCLUSION

4 According to the Georgetown Law Journal of Criminal Procedure (2005) The prose-
5 cutor may not vouch for the credibility of government witnesses, offer his or her
6 personal opinion, or allude to his or her personal integrity or oath of office to
7 bolster the government's case see also; Exhibit Herb

8 MALONE PRAYS that this Honorable Court begins now to allow him to prove
9 his actual innocence by granting the Motion in Limine to Abolish and to prove his
10 actual innocence by ORDERING an Evidentiary Hearing on this matter for an
11 proper judicial determination.

12
13 Respectfully Submitted

14 Dominic R. Malone

15 Dominic R. Malone #1670891

16 330 S. Casino Center Blvd

17 LV. NV. 89101

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CREEL

HEAT-SET WEB, OPEN WEB and SHEET-FED PRINTERS

Donald Herb-
File Malone.

August 3, 2006

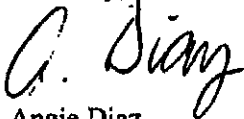
Juan Galiano
Clark County Special Public Defender's Office
330 South Third Street, Suite 800
Las Vegas, NV 89101

Dear Juan:

Per the subpoena dated August 1, 2006, I have enclosed our Human Resources file on Donald Herb (530-23-2638). In addition, this is to certify that at no time in 2006 did Donald report a workplace injury or accident.

If you have questions or need additional information, I can be reached at (702) 784-4960.

Sincerely,



Angie Diaz
Director of Human Resources

Enclosure

Amex Exhibit

Westlaw.

Page 1

Slip Copy, 2009 WL 3191545 (Nev.)
 (Table, Text in WESTLAW), Unpublished Disposition
 (Cite as: 2009 WL 3191545 (Nev.))

Only the Westlaw citation is currently available. An unpublished order shall not be regarded as precedent and shall not be cited as legal authority. SCR 123.

Supreme Court of Nevada.
 Daimon MONROE a/k/a Daimon Devi Hoyt, Appellant,
 v.
 The STATE of Nevada, Respondent.
 No. 52234.

Sept. 10, 2009.

Background: Defendant was convicted by jury in the District Court, Clark County, David Wall, J., of two counts of burglary, grand larceny, and possession of burglary tools. Defendant appealed.

Holding: The Supreme Court held that trial court's failure to hold evidentiary hearing on defendant's motion to suppress evidence required reversal of order denying suppression motion and remand. Reversed and remanded.

West Headnotes

Criminal Law 110  394.6(5)

110 Criminal Law

110XVII Evidence

110XVII(I) Competency in General

110k394 Evidence Wrongfully Obtained

110k394.6 Motions Challenging Admissibility of Evidence

110k394.6(5) k. Hearing and Determination. Most Cited Cases

Criminal Law 110  1181.5(7)

110 Criminal Law

110XXIV Review

110XXIV(U) Determination and Disposition of Cause

110k1181.5 Remand in General; Vacation
 110k1181.5(3) Remand for Determination or Reconsideration of Particular Matters

110k1181.5(7) k. Admissibility of Evidence; Arrest and Search. Most Cited Cases
 District court's failure to hold evidentiary hearing on defendant's motion to suppress evidence seized during officer's search of defendant's van during traffic stop, or to make specific factual findings concerning whether reasonable suspicion existed to stop van or perform protective sweep of van, required reversal of order denying motion to suppress, and remand of matter for evidentiary hearing. U.S.C.A. Const. Amend. 4.

Law Offices of Martin Hart, LLC

Attorney General Catherine Cortez Masto/Carson City

Clark County District Attorney David J. Roger

ORDER OF REVERSAL AND REMAND

*1 This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of burglary, one count of grand larceny, and one count of possession of burglary tools. Eighth Judicial District Court, Clark County; David Wall, Judge. The district court adjudicated appellant Daimon Monroe as a habitual criminal and sentenced him to concurrent terms totaling 96 to 240 months in prison.

On appeal, Monroe raises claims related to the district court's denial of his motion to suppress evidence seized from a van he was driving when he was arrested for the instant offenses. Regarding the underlying merits of the motion, he argues that the stop of the van was not supported by probable cause; the investigation exceeded the scope of the initial stop; the protective sweep of the van constituted an unlawful search; the warrantless search of the van violated the Fourth Amendment; and absent the suppressed evidence, there was insufficient

Slip Copy, 2009 WL 3191545 (Nev.)
 (Table, Text in WESTLAW), Unpublished Disposition
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evidence to sustain the conviction.

Monroe argues that the district court erred in refusing to conduct an evidentiary hearing on the suppression motion. In particular, he asserts that factual disputes existed that neither the preliminary hearing nor the oral argument on the motion adequately resolved. We agree.

"The interplay of the factual circumstances surrounding a search or seizure and the constitutional standards for when searches and seizures are reasonable requires the two-step review of a mixed question of law and fact.... We review the district court's findings of historical fact for clear error but review the legal consequences of those factual findings de novo." *Somee v. State*, 124 Nev. ----, ----, 187 P.3d 152, 157-58 (2008). For this court to conduct this analysis, "district courts must make specific factual findings." *Id.* at ----, 187 P.3d at 158. We "cannot review a district court's decision to admit or suppress evidence" absent such findings. *Id.*; see also *State v. Ruscetta*, 123 Nev. 299, 304, 163 P.3d 451, 455 (2007) (noting that while certain facts may be inferred from ruling, this court will not speculate about factual inferences drawn by district court).

"An automobile stop by police is a seizure within the meaning of the Fourth Amendment." *U.S. v. Garcia*, 205 F.3d 1182, 1186 (9th Cir.2000); see also *Whren v. United States*, 517 U.S. 806, 809-10, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). A police officer may initiate an investigatory stop if the officer has a reasonable articulable suspicion that an individual "has committed, is committing or is about to commit a crime." NRS 171.123(1); *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The detention must be limited in scope and duration. *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). During such a detention, a limited search for weapons is permitted so long as the police reasonably believe the suspect is armed and dangerous. *Somee*, 124 Nev. at ----, 187 P.3d at 158; see also NRS 171.1232(1).

In addition, a police officer may conduct a warrantless search of a vehicle under the "automobile exception" to the warrant requirement if two conditions exist: "first, there must be probable cause to believe that criminal evidence was located in the vehicle; and second, there must be exigent circumstances sufficient to dispense with the need for a warrant." *State v. Harnisch*, 113 Nev. 214, 222-23, 931 P.2d 1359, 1365 (1997) (citation omitted); see also *State v. Harnisch*, 114 Nev. 225, 228-29, 954 P.2d 1180, 1183 (1998), clarified on remand, 114 Nev. 225, 954 P.2d 1180 (1998). This court has defined exigent circumstances as conditions which would cause a reasonable person to believe that a search was necessary "to prevent physical harm to the officers and other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts." *Camacho v. State*, 119 Nev. 395, 400, 75 P.3d 372, 374 (2003) (quoting *Howe v. State*, 112 Nev. 458, 466, 916 P.2d 153, 159 (1996)).

*2 Here, the district court heard argument but did not conduct an evidentiary hearing on Monroe's motion to suppress. In making its decision, the district court apparently relied on conclusions it reached during an evidentiary hearing concerning Monroe's codefendant in the same incident. It is not clear if Monroe was present or participated in that evidentiary hearing. Further, without a record of the codefendant's evidentiary hearing, it is unclear if the district court's factual findings from that hearing are supported by the evidence or are clearly erroneous. In addition, in resolving Monroe's motion, the district court did not make specific factual findings concerning whether reasonable suspicion existed to stop the van that Monroe was driving or perform a protective sweep of the van. The district court also failed to make findings regarding the amount of time that Monroe was detained and when the police officers learned specific information regarding the suspected burglaries.

Given the district court's failure to conduct an evid-

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entiary hearing respecting Moore's motion and the lack of specific findings, we cannot conclude that the State met its burden of proving that the stop of the van was supported by reasonable suspicion, the investigation of the van did not exceed the scope of the stop, the protective sweep of the van was supported by reasonable suspicion, and the search of the van fell within an exception to the warrant requirement. *See Somee*, 124 Nev. at ---, ---, 187 P.3d at 158, 161 (reversing district court order denying motion to suppress where district court did not conduct evidentiary hearing or make written findings); *cf. Ruscetta*, 123 Nev. at 302, 163 P.3d at 453 (similar); *State v. Rincon*, 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006) (similar).

Having determined that the district court erred in denying Monroe's motion to suppress evidence, we

ORDER the judgment of conviction REVERSED
AND REMAND this matter to the district court for proceedings consistent with this order.

Nev., 2009.
Monroe v. State
Slip Copy, 2009 WL 3191545 (Nev.)

END OF DOCUMENT

EXHIBIT
HERB

v.

**DONALD HERB IS NOT A CO-CONSPIRATOR AS A MATTER OF LAW, AND
THEREFORE NEED NOT BE CORROBORATED**

NRS 175.291 states:

1. A conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.

2. An accomplice is hereby defined as one who is liable to prosecution, for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

While a reading of the statute appears to only apply to trial, the Nevada Supreme Court has ruled that the corroboration rule applies to preliminary hearings. *See Lamb v. Bennett*, 87 Nev. 89, 482 P.2d 298 (1971).

Under 175.291, an accomplice is defined as a person who is liable to prosecution for the identical offense charged against the defendant. If, from the testimony of the witness' alone, there is no doubt the witness is liable for the charged crimes, he is an accomplice as a matter of law. *See Rowland v. State*, 118 Nev. 31, 39 P.3d 114 (2002). However, if the testimony of the witness leaves doubt whether he is liable for the charged crime, then the question of whether or not he is an accomplice is a matter of fact. *See id* (citing *Austin v. State* 87 Nev. 578, 588-89, 491 P.2d 724, 730-31 (1971)). Matters of fact are determinations for a jury. *See Ford v. State*, 99 Nev. 209, 660 P.2d 992 (1983).

Donald Herb's testimony taken at face value alone does not establish that he is liable for the murders of Christine and Victoria. From his testimony, there is no evidence to support an accusation that Donny participated in the killing of Victoria and Christine. At most, it may be argued that at some point, he had knowledge that the murder was occurring. However, mere knowledge or approval of, or acquiescence in, the object and purpose of a conspiracy without an agreement to cooperate in achieving such object or purpose does not make one a party to conspiracy. *Doyle v. State*, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996)

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

DOMONIC MALONE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 61006
Electronically Filed
Jan 15 2013 07:58 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPELLANT'S APPENDIX

VOLUME 6

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Michael Villani, District Court Judge
District Court No. C224572

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FILED

JUL 08 2010

Adam L. Johnson
CLERK OF COURT

0001
DOMONIC MALONE, NO. 1670891
CLARK COUNTY DETENTION CENTER
330 S. CASINO CENTER BLVD.
LAS VEGAS NV 89101
DEFENDANT IN PROPER PERSON

DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
State Bar No. 0824
RANDALL H. PIKE
ASSISTANT SPECIAL PUBLIC DEFENDER
State Bar No. 1940
CHARLES A. CANO
DEPUTY SPECIAL PUBLIC DEFENDER
330 South Third Street, 8th Floor
Las Vegas, NV 89155
(702) 455-6265
Stand-By Attorneys for MALONE

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

DOMONIC MALONE,

Defendant.

CASE NO. C 224572
DEPT. NO. 17

Motion for Paralegal; Financial Assistance; Medical; Private Investigator(s)

Date: 7-20-10
Time: 8:15 AM

COMES NOW, Defendant DOMONIC MALONE, in proper person, and hereby submits
the attached Motion.

Notice of Motion

TO: State of Nevada, Plaintiff; and

TO: District Attorney's Office, Attorney for Plaintiff

Please take notice that the attached Motion will be heard in Department 17 on

7-20, 2010, at the hour of 8:15 AM a.m.

Conclusion

Stand-by counsel, Special Public Defender, submits the attached motion for filing on behalf of Domonic Malone, Defendant in Proper Person.

DATED this 7 day of July, 2010.

SUBMITTED BY:

DAVID M. SCHECK
SPECIAL PUBLIC DEFENDER

RANDALL H. PIKE
CHARLES A. CANO
330 South Third Street, 8th Floor
Las Vegas, NV 89155-2316
(702) 455-6265
Attorneys for Defendant

1 MOTION/ORDR

2 DOMONIC MALONE

3 INMATE NO. 1670891

4 CCDC 330 S. Casino Center Blvd

5 Las Vegas, NV. 89101

6 In Proper Person

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA }

10 Plaintiff, }

11 vs. }

12 DOMONIC MALONE #1670891 }

13 Defendant }

CASE NO. C224572

DEPT NO. 17

14 MOTION FOR PARALEGAL; FINANCIAL ASSISTANCE;
15 MEDICAL; PRIVATE INVESTIGATOR(S)

16 COMES NOW, Defendant DOMONIC MALONE, in proper
17 person, hereby requests this Court grant defendants
18 MOTION FOR PARALEGAL; FINANCIAL ASSISTANCE; MEDICAL
19 PRIVATE INVESTIGATOR(S)

20

21 This Motion is made and based on the 5th, 6th, 8th, and
22 14th Amendments; U.S. & N.V. Constitution, EIGHTH JUDICIAL
23 DISTRICT COURT RULE(S), the Points and Authorities
24 Contained herein, and the Affidavit of Defendant
25 attached hereto.

26

27 NOTICE OF MOTION

28 TO: STATE OF NEVADA, Plaintiff, and

1 TO: District Attorneys Office, Attorney for Plaintiff
2 YOU WILL PLEASE TAKE NOTICE that the undersigned
3 will bring on the foregoing MOTION on for hearing on the
4 ____ day of ____, 2010 in Department No. 17, or as soon
5 thereafter as counsel may be heard.

6 POINTS AND AUTHORITIES

7 FACTS

8 Domonic Malone is currently in custody at the
9 Clark County Detention Center. Where as of May 3rd,
10 2010 (see Exhibit A). Defendant along with all other
11 inmate(s) lost the privilege to attend the legal library.

12 ARGUMENT

13 The 14th Amendment gives all citizens the right of
14 equal protection incarcerated or not. As during
15 defendant FARETTA CANVAS, It was stated that Mr. Malor
16 would be held to the same exact stand(s) an license
17 Attorney would.

18 If this to be the case and for the court to show
19 fundamental fairness then an Para legal must
20 be appointed to assist the defendant, as all attorney(s)
21 have at least one and the defendant according to the
22 COURT is to be treated as such.

23 Therefore the accused is entitled to due
24 process under the law pursuant to the 5th and 14th
25 Amendment and to be effective in his defense.

26
27 POINTS AND AUTHORITIES

28 FACTS
(2)

1 Mr. Malone has been indigent since now stand by
2 Counsel Charles Cano & assistant Randy Pike were
3 first appointed to defendants case.

4 FINANCIAL ASSISTANCE (REQUEST)

5 ARGUMENT

6 This honorable Court signed off on the file stamped
7 order Feb 26th 2010 where defendant requested
8 ink pens and or ink markers; legal pads, file folders,
9 post-it notes, rubber bands and a container to house
10 files for the purpose of trial preparation.

11 Stand by counsel, Charles Cano and or Randy Pike
12 attempted to serve on this jail what was contain
13 therein the order.

14 However, the jail prevented Mr. Cano and or Mr. Pike
15 from doing so by saying that they provide defendant
16 with the order items, according to what Mr. Cano disclosed
17 to the defendant. Mr. Malone position is that the
18 County has not provided him with anything and only
19 have charged him for each item he request(s) Being
20 that the defendant is indigent what money he may
21 receive will be extracted from his account depriving
22 him of his personal care items.

23
24 MEDICAL

25 Domonic Malone has unsuccessfully tried to
26 gain medical attention for his impacted tooth
27 for the past two yrs now. Now that the situation
28 has gotten worst. (2) impacted wisdom teeth, 1114

1 bleeding gums; & pain.

2 POINTS AND AUTHORITIES

3 Malone hereby incorporates all the facts
4 contain therein MOTION FOR MEDICAL FEES AND
5 COST FILED 2008 Oct-2 P12:00

6 ARGUMENT

7 Malone also incorporates all arguments
8 contain therein.

9 With only the addition on (2) impacted
10 wisdom teeth, (left and Right) side of face
11 & bleeding from gums.

12 PRIVATE INVESTIGATOR(S)

13 COMES NOW, Defendant DOMONIC MALONE, in
14 Pro'per, hereby request this Court to
15 remove Private Investigator Tom Dillard
16 NV Lic No 657 and Appoint Richard Franky
17 NV License NO. 797 or someone from the office
18 of the R.D.F. INVESTIGATIVE AGENCY.

19 This Motion is made and based on the
20 5th, 6th, 8th, and 14th Amendments,

21 POINTS AND AUTHORITIES

22 FACTS

23 An FARETTA CANVAS was conducted on 1-8-2010
24 there defendant was granted leave to represent
25 himself.

26 Sometime shortly after during Feb. 2010 Mr.
27 Dillard was appointed.

1 ARGUMENT

2 During the the March 18th 2010 hearing
3 you, your Honor stated on pg(7) of the
4 transcript that.

5 :Mr. Dillard's a very experienced in-
6 vestigator and i'm sure if you give him appro-
7 priate investigation form he'll conduct it. lines
8 (11-12).

9 Your Honor, as of this date June 4, 2010
10 nothing has been done on my behalf in
11 regards to investigation(s).

12 I have contacted Mr. Dillard by mail and
13 phone missive's through my wife with an
14 outline of exactly what it is i'm searching
15 for see (Exhibit B)

16 The only thing that Mr. Dillard and myself
17 has done nothing more than meet and greet
18 one another.

19 Article 1, Section 8, of the Nevada Constitution,
20 as well as the 5th, 6th and 14th Amendments to the
21 United States Constitution, guarantee every criminal
22 defendant the right to a fair trial. How fair
23 can Malone's trial be if he's unable to compel
24 Mr. Dillard to conduct a piece meal of an investi-
25 gation.

26 CONCLUSION

27 Wherefore DOMONIC MALONE prays that this Honor-
28 able Court appoint him an paralegal; Further more, 1116

Defendant prays that this Honorable issue an Order making it so. And as also for the following Financial Assistance; Medical fees and cost, and Private Investigator, so that he can begin to prove his actual innocence.

DATED this 23rd day of June, 2010

SUBMITTED BY:

DOMONIC R. MALONE

Domonic R. Malone

330 S. Casino Center Blvd

Las Vegas, NV. 89101

Proper Person

"CERTIFICATE OF SERVICE"

I, DOMONIC MALONE, certify Pursuant to N.R.S. 208.165, A copy of the foregoing was served to;

Special Public Defender Office

330 S. 3rd St, Suite 800

Box 552316

Las Vegas, NV. 89155-2316

Clerk of Court

200 Lewis Ave 3rd Floor

Las Vegas, NV. 89155-1160

Dated this 23rd Day of June 20 10

Exhibit A

EFFECTIVE: May 03, 2010

**9th FLOOR INMATES WILL LONGER
ATTEND THE LEGAL LIBRARY.**

**ALL INMATE LEGAL RESEARCH WILL BE
DONE THROUGH THE USE OF INMATE
REQUESTS (KITES).**

DSD ADMINISTRATION

Exhibit B

June 3rd 2010

Thomas D. Dillard
Professional Investigators Inc
123 North 9th Street
Las Vegas, NV. 89101

Dear Tom:

You are hereby put on notice that this is the second time that i'd contacted your office by mail anticipating that we would have been able to start work on my case.

Before you took over this case Juan the private investigator out of the SPD office informed me that when he went out to Creel Printing concerning the cut injury that Donald Herb claim to have recieved at work was not the case.

However Juan did not tell whom he interviewed nor turn-over to me the work report from Creel Printing.

I need for you to gain control of this information as it is exculpatory evidence.

Also as was instructed by you to write a letter to Mr. Drew Christensen. You never returned on the agreed upon date so I'd forwarded it to him any way.

Like you he has been a hard guy to catch up to I had my wife Tanya leave messages as of this date I have yet to receive a response concerning the paralegal that I'm requesting for. And now that we no longer have access to the legal library: notice enclosed: this help is much needed.

Tom I'm aware that you are a busy man and my patience is more than most however, time is a luxury I no longer have, So please at your earliest convenience honor my request

Or at least give me a reasonable time table that you'll be available to start.

Respectfully
Mr. L. Dominic R. Miller

"AFFIDAVIT" of Domonic Malone

STATE OF NEVADA)

COUNTY OF CLARK)^{SS}

I DOMONIC MALONE, being first duly sworn upon oath, deposes and swears, to the following;

That I am the Affiant herein, of sound mind, good Physical health, and above the age of 21 yrs old, therefore Qualified to testify to all matters herein.

That I make this Affidavit in support of Any MOTION, Pleading, or document filed by, or on behalf of Domonic Malone,

That I make this Affidavit in OPPOSITION to any Motion, Pleading, or document, filed by, or on behalf of the State of Nevada.

That I made the accompanying MOTION FOR PARALEGAL, FINANCIAL ASSISTANCE, MEDICAL, PRIVATE INVESTIGATOR

That I read the accompanying MOTION FOR PARALEGAL, FINANCIAL ASSISTANCE, MEDICAL, PRIVATE INVESTIGATOR and all the attached documents, exhibits, that they are true and correct to the best of my knowledge memory and belief, except those matters wherein I've had to Rely on Information, and believe them Also

Further Affiant says Not.

DATED THIS 23rd DAY of June. 2010

B7 Dominic H. Malone pursuant to N.R.S. 208.
165

FILED

JUL 8 8 1 AM '10

[Signature]
CLERK OF COURT

ROC
DOMONIC MALONE, NO. 1670891
CLARK COUNTY DETENTION CENTER
330 S. CASINO CENTER BLVD.
LAS VEGAS NV 89101
DEFENDANT IN PROPER PERSON

DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
State Bar No. 0824
RANDALL H. PIKE
ASSISTANT SPECIAL PUBLIC DEFENDER
State Bar No. 1940
CHARLES A. CANO
DEPUTY SPECIAL PUBLIC DEFENDER
330 South Third Street, 8th Floor
Las Vegas, NV 89155
(702) 455-6265
Stand-By Attorneys for MALONE

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

DOMONIC MALONE,

Defendant.

CASE NO. C 224572
DEPT. NO. 17

RECEIPT OF COPY

Date: 7/20/10
Time: 8:15 AM

RECEIPT of a copy of the Defendant's Proper Person Motion for Paralegal; Financial Assistance; Medical; Private Investigator(s) is hereby acknowledged this 8 day of July, 2010.

DISTRICT ATTORNEY'S OFFICE

NM
200 Lewis Ave., 3rd Floor
Las Vegas NV 89155

1 TRAN

ORIGINAL

FILED

SEP 22 11 42 AM '10

DISTRICT COURT
CLERK OF THE COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 VS.

10 DOMONIC RONALDO MALONE,

11 Defendant.

CASE NO. C224572

DEPT. XVII

08C224572-2
RTRAN
Recorders Transcript of Hearing
943989



13 BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

14 TUESDAY, JULY 20, 2010

15 **RECORDER'S TRANSCRIPT OF HEARING RE:**
16 **DEFENDANT'S MOTION FOR PARALEGAL FINANCIAL ASSISTANCE**
17 **MEDICAL PRIVATE INVESTIGATOR**

18 APPEARANCES:

19 For the State:

MARC DIGIACOMO, ESQ.,
Deputy District Attorney

21 For the Defendant:

RANDALL H. PIKE, ESQ.,
Special Public Defender
(Standby Counsel)

23 RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

RECEIVED
SEP 22 2010
CLERK OF THE COURT

1 LAS VEGAS, NEVADA; TUESDAY, JULY 20, 2010

2 [Proceeding commenced at 8:25 a.m.]

3
4 THE COURT: All right, 224572. Mr. Pike is here for Mr. Malone. We have
5 Mr. DiGiacomo for the State. This is Defendant's Motion for Paralegal. It says
6 Financial Assistance assuming medical treatment and private investigator. Mr.
7 Malone?

8 THE DEFENDANT: How are you doing, sir?

9 THE COURT: Just fine. You have anything to add to your motion, sir?

10 THE DEFENDANT: I thought maybe I had stated everything that I had
11 needed [indecipherable].

12 THE COURT: No. I've read it all. I just -- I was just wondering if you had
13 anything to add, anything new?

14 THE DEFENDANT: Nothing changed since the motion. I have nothing to
15 ask except for I have a letter from another private investigator agency; that's about
16 it, sir. Do I need to submit it or not?

17 THE COURT: Okay. Mr. Pike, do you have anything to add on behalf of Mr.
18 Malone?

19 MR. PIKE: No, Your Honor. We received it and filed -- put a file cover on it
20 because although he's in proper person the Clerk's Office would not accept it.

21 THE COURT: I appreciate that. Mr. DiGiacomo?

22 MR. DIGIACOMO: Judge, the only thing in the entire motion that concerns
23 me particularly is I mean, the jail hasn't been served, so I don't know if the jail has
24 any position on some of the items he's said in there. I don't know what -- what the
25 concern with the legal library is nor do I know what the concern is whether or not he

1 has a medical issue that needs attention or not, but I do think that the Court needs
2 to do some inquiry of Mr. Dillard just based on the Terrell Young case; that was
3 about attorneys not having contact, but in this particular case since he has an
4 appointed investigator at least the Court should have some contact with Mr. Dillard
5 to make sure that Mr. Dillard is doing something or is doing or is not doing
6 something to -- to investigate the case at this point since we're six months from trial,
7 so --

8 THE COURT: Mr. Malone, since you filed your motion --

9 THE DEFENDANT: Yes.

10 THE COURT: -- have you had any contact with Investigator Dillard?

11 THE DEFENDANT: No, sir. I met him one time; that's it and that's all. I had
12 written him by letter 'cause I was getting in contact with him through my wife and he
13 told my wife that he was working on another case, so writing him a letter informing
14 him of the things that had to be done; that's what I had attached to the motion is the
15 second letter that I had written to him because the first letter I didn't get a copy, but
16 the second letter I got a copy and I attached it to the motion, sir.

17 To that date, I have not gotten a response from that or nothing and I
18 know that some parts of the case is that my discovery was sent to him, other parts
19 or portion that he had if he could be familiar with some of the case. Some of that
20 discovery that I -- as we had first that I can't view up in here because I don't have
21 the opportunity to review it.

22 THE COURT: Okay. All right, sir, we'll put a status check. Okay. We're
23 going to pass it for Thursday to see if we can have Mr. Dillard here to give a little
24 input to the Court.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. And, sir, you know there's obviously some delay
2 going on because Mr. Dillard at least according to you is not performing certain
3 duties.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And this is a perfect example of why if you had these two fine
6 attorneys representing you, this matter would have been resolved a long time ago
7 and they have some excellent investigators in their office.

8 THE DEFENDANT: Yes, sir. I see the problem.

9 THE COURT: Okay. I hope you do 'cause you've -- we've been back to
10 Court a couple of times and each of the situation would have been resolved with Mr.
11 Pike and Mr. Cano representing you.

12 THE DEFENDANT: With the -- yes, sir, I agree.

13 THE COURT: Do you still want to represent yourself, sir?

14 THE DEFENDANT: Fortunately, sir, yes, sir.

15 THE COURT: Okay. We'll be back on Thursday to get a hold of Mr. Dillard.

16 THE CLERK: July 22nd.

17 MR. PIKE: His defense attorney will also attempt to contact him too.

18 MR. DIGIACOMO: Thank you, Judge.

19 THE COURT: I'm sorry.

20 MR. DIGIACOMO: Thank you, Judge.

21 THE COURT: Thank you.

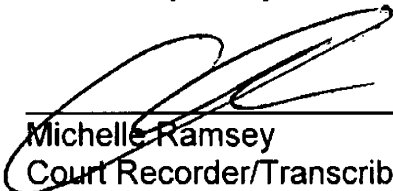
22 [Proceeding concluded at 8:30 a.m.]

23 * * * * *

24

25

1 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video
2 proceedings in the above-entitled case to the best of my ability.

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5 Michelle Ramsey
6 Court Recorder/Transcriber
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FILED

SEP 22 11 42 AM '10

ORIGINAL

DISTRICT COURT

Alton L. Johnson
CLERK OF THE COURT

CLARK COUNTY, NEVADA

TRAN

THE STATE OF NEVADA,

Plaintiff,

vs.

DOMONIC RONALDO MALONE,

Defendant.

CASE NO. C224572

DEPT. XVII

00C224572-2
RTRAN
Recorders Transcript of Hearing
944014



BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

TUESDAY, JULY 27, 2010

**RECORDER'S TRANSCRIPT OF HEARING RE:
DEFENDANT'S MOTION FOR PARALEGAL, FINANCIAL ASSISTANCE,
MEDICAL, PRIVATE INVESTIGATOR**

APPEARANCES:

For the State:

MARC DIGIACOMO, ESQ.,
CHRISTOPHER LALLI, ESQ.,
Deputy District Attorneys

For the Defendant:

RANDALL H. PIKE, ESQ.,
CHARLES A. CANO, ESQ.,
Special Public Defenders
(Standby Counsel)

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

CLERK OF THE COURT
RECEIVED
SEP 22 2010

1 LAS VEGAS, NEVADA; TUESDAY, JULY 27, 2010

2 [Proceeding commenced at 8:41 a.m.]

3
4 THE COURT: 224572, Domonic Malone. Mr. Malone's present in custody.
5 We have Lalli. We have Mr. DiGiacomo. We have Mr. Pike. We have --

6 MR. LALLI: Mr. Wysocki is here, Your Honor.

7 THE COURT: Okay.

8 MR. LALLI: And I don't know. Perhaps I can quickly bring the Court and the
9 Defendant up to speed on what was happening.

10 Initially, Mr. Dillard had accepted the appointment for whatever
11 reason. His schedule did not permit him to follow through with that. Mr.
12 Christensen's office arranged for Mr. Wysocki to work at the Defendant's request in
13 terms of doing investigative work.

14 When Mr. Wysocki was poised to accept that appointment, he was in
15 a car accident which kind of debilitated him for awhile. He's now of sufficient health
16 to resume working and to my understanding he could start; meet with the Defendant
17 as early as today.

18 MR. WYSOCKI: That's correct.

19 MR. LALLI: But to my understanding, Your Honor, no investigative work has
20 been done up to this point.

21 MR. PIKE: Mr. Dillard did come and gathered the documents and began an
22 initial review. Mr. Wysocki has had the opportunity to review those in preparation for
23 assuming the investigative position. I believe this would be the only death penalty
24 case that he would be taken on at this time, so he'd be able to devote sufficient
25 attention to it.

1 THE COURT: All right. Mr. Wysocki, are you able to accept appointment as
2 an investigator in this case?

3 MR. WYSOCKI: Your Honor -- yes, Your Honor. I am. Just for the record, I
4 was contacted also by Drew Christensen about doing it. Went and got all the paper
5 work and had everything done. I believe Your Honor was out of Court or on
6 vacation, so he said to hold up until he found out authorization from you. He
7 contacted me on the morning of the 30th -- on the morning of the 30th of June and
8 evening of the 30th I was in an accident.

9 THE COURT: All right.

10 MR. WYSOCKI: And I'm now just coming back to where I'm able to move.

11 THE COURT: All right. Thank you. Mr. Malone, do you want Mr. Wysocki
12 to handle your investigation in this case?

13 THE DEFENDANT: It don't matter to me, sir. I just wanted to work --

14 THE COURT: My question was, do you want him to handle this investigation
15 for you?

16 THE DEFENDANT: If he wants to, yeah.

17 THE COURT: Okay. I can tell you Mr. Wysocki's handled these types of
18 investigations for probably in excess of twenty years, perhaps longer. And so you
19 need to cooperate with him; do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Now, you also had a motion on. You had a motion
22 for paralegal --

23 THE DEFENDANT: Yeah. Yes, sir.

24 THE COURT: -- motion for assuming some medical treatment.

25 THE DEFENDANT: Yeah, medical treatment, sir.

1 THE COURT: Okay. What's going on with your medical treatment, sir?

2 THE DEFENDANT: Well, it's been ongoing for like two years with my dental,
3 the wisdom tooth. Now I got two of them. My gums been bleeding and stuff, right.
4 Not just only where the teeth is, but my gum period. Well, I went down to the dental
5 after doing my year -- yearly here 'cause every year they check you out here. I went
6 down there and he say you never got that taken care of. I said no and I still got two
7 of my gums still bleeding. But he's still unable to do the extraction themselves. If he
8 was able to do it, he would have done it, but he's not -- he's unable to do it.

9 THE COURT: When is the medical clinic told you as far as why you're not
10 getting that treatment?

11 THE DEFENDANT: Well because it's impacted, sir. The tooth[sic] are
12 impacted; that's the only thing I know. And he's not able to do the extraction.

13 THE COURT: Who's not?

14 THE DEFENDANT: The dentist that's up in the jail.

15 THE COURT: Are they making arrangement? I don't know if it's a medical
16 or dental necessity. Are they making arrangements for that?

17 THE DEFENDANT: That I know of, no, sir. I've been taking mouthwash
18 every other month because the mouthwash that they give me to keep the blood out
19 of my mouth, the taste of it, and that's about it, sir.

20 THE COURT: All right. Mr. Pike or -- oh, Mr. Cano is here as well. Either
21 one of you have any information on this issue?

22 MR. PIKE: Your Honor, we looked towards that and attempted to locate a --
23 a dental practitioner that was close enough to the jail that there could be all the
24 security issues could be addressed and as we went through that the reports we
25 received did not indicate that it was a dental necessity at the time. If that has

1 changed and if there's documentation concerning that and if you want us to follow
2 through on that, we will do that.

3 So Mr. Malone has any indication that's a necessity or the dentist
4 that he talked to or met with, then we'll make the determination as to whether or not
5 that's a dental necessity and we'll put it on calendar for an order or if the State
6 doesn't have an objection to it, we'll prepare a proposed stipulation and order
7 regarding transfer and try and set that up with the approval of Clark County
8 Detention Center's attorney as well as the guards for a secured transportation.

9 Of course, whenever that happens the -- the Defendant can never be
10 aware as to when he's going to be transported or where he's going to be
11 transported. So, as stand-by counsel if you want us to pursue that I'll follow through
12 with that.

13 MR. LALLI: Your Honor, it's not something that we would be willing to
14 stipulate too. I'm not even sure that the Court respectfully has jurisdiction to order
15 the jail to do anything absent some pending case or controversy on the issue, but I
16 mean, the Defendant needs medical treatment, you know, I certainly want him to get
17 it.

18 THE COURT: Well, the key is -- if it's a dental necessity; and has the
19 Defendant signed any medical release to your office, Mr. Pike or Mr. Cano?

20 THE DEFENDANT: Once before and that was it.

21 THE COURT: Pardon?

22 THE DEFENDANT: Just -- just once when I had wrote the kite and gave
23 them the information that was given to me two years ago, but as of late, no, sir. .

24 The pain in my mouth I can deal with the pain. I just can't deal with
25 the fact that my gums are constantly bleeding, sir. And they're not bleeding

1 because I'm brushing my teeth. They're bleeding as I --

2 THE COURT: Well, sir, if you want stand-by counsel to check into this
3 matter, I'm assuming the jail's going to require you to sign a HIPAA release --

4 THE DEFENDANT: Yes, sir.

5 THE COURT: -- okay. And they should have the form there for you. You
6 can fill -- if you want, you can fill that out in favor the Public Defender -- Special
7 Public Defender's Office and then they can check into this matter for you, okay.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: So I'm not ordering any medical treatment or for him to be
10 transported at this time. If you can just -- Mr. Cano or Mr. Pike, if you can check into
11 this matter.

12 MR. PIKE: We will, Your Honor.

13 THE COURT: All right. Anything else, Mr. Malone?

14 THE DEFENDANT: Yes, sir. About the reason why I need a paralegal is the
15 only thing we have is the legal library at the jail and the only thing I have to do is get
16 the right [indecipherable].

17 THE MARSHAL: Hey, guys. Ms. Levi --

18 THE DEFENDANT: Ms. Ramsey, can you hear me?

19 THE COURT RECORDER: No, 'cause it was --

20 THE COURT: Go ahead, sir.

21 THE COURT RECORDER: -- do it again.

22 THE DEFENDANT: I talk low, so it's hard for her to type it in.

23 Okay. On the paralegal issue, reason why I need a paralegal is that
24 the jail prevents me to go into the legal library now because that was taken from us.
25 And when I write kites sometime they tell me to as of the one I have in my hand to

1 please contact your attorney. Well, the person I write my kites too has been
2 unaware that I have been representing myself since the beginning of 'O10, sir, this
3 year. So I've been giving kites here so the information that I need from legal library I
4 don't even to get that sometimes. You know, so I need outside source or somebody
5 that can help me because I'm not able to do it myself. And I --

6 THE COURT: What you're telling me is because the documents in the jail
7 identify that you have an attorney, they're -- they're limiting your access to the law
8 library?

9 THE DEFENDANT: None of us in the jail can physically go to the legal
10 library; no more period. None of us. It's just not me. On that fact, they sort of gave
11 us the kite system when you fill out the kite you get the legal information that you
12 requested. However, sometimes when I fill out kites and ask for legal information,
13 I'm not able to get it from the jail or from the legal library and they tell me to refer to
14 my counsel when they don't know what I'm looking for.

15 So therefore, instead of me being able to go into the library myself to
16 go look for and pick it up myself and get a copy and then therefore prepare a motion
17 I'm not able to do that so therefore when I do find information or try somehow to
18 track it down through other sources I'm still behind and then sometimes my motion if
19 I file it might be late. I don't know how long do I got to file a motions before I set it
20 up with the trial when you no longer accept the motions. So I want to be able to file
21 them first.

22 I note that [indecipherable] I was hoping that, you know, after the 14th
23 Amendment of course, that I would have fairness to give and represent myself. As
24 you had told me earlier that, you know, self representation it is hard, you know what
25 I'm saying to represent yourself. However, that, sir, I'm not -- I know I'm not asking

1 for you to make it easy. All I'm asking this Court is to make it fair; that's it.

2 THE COURT: Excuse me, Officer; are you aware of any restrictions at the
3 jail?

4 THE DEFENDANT: I have the --

5 THE COURT: Hang on. I'm asking the Officer.

6 THE OFFICER: In the North Tower, I don't believe there is a restriction. It's
7 just the South Tower and then disciplinary if they do it by kites, but as far as I know
8 that's -- where he's -- where he's housed, don't they have legal library?

9 THE DEFENDANT: Yes. I have the memo that was passed out when they
10 had started that.

11 THE OFFICER: Oh, they just started it?

12 THE DEFENDANT: Yeah. They had -- I had attached it to my motion.

13 MR. LALLI: Your Honor, it almost sounds to me like he's making requests
14 for --

15 THE DEFENDANT: They had -- the May 3, 2010.

16 THE COURT: All right.

17 THE DEFENDANT: That's when I asked for it.

18 MR. LALLI: Sounds like to me like he's making requests for legal materials -
19 -

20 THE DEFENDANT: No. No.

21 MR. LALLI: -- maybe a case name --

22 THE COURT: Sir, one at a time.

23 MR. LALLI: -- or a case citation and perhaps the information he's giving the
24 jail is unintelligible and so they don't know what he wants; that's kind of his problem.
25 The Court warned him at the onset that this was a monumental task to represent

1 himself. He has the right to do it, but you know it takes some understanding, some
2 fundamental understanding of legal research if he wants to get these materials.

3 THE COURT: Sir, are you giving them an actual case citation?

4 THE DEFENDANT: Sir --

5 THE COURT: Listen to my question.

6 THE DEFENDANT: Yeah.

7 THE COURT: Are you giving the jail or whoever you're requesting the --

8 THE DEFENDANT: Legal library.

9 THE COURT: -- legal materials; are you giving them a case citation?

10 THE DEFENDANT: Yes, on some of my kites. Yes, sir. But the --

11 THE COURT: But some you are not?

12 THE DEFENDANT: Yeah, 'cause some of them are not case cited like the
13 Petrocelli hearing -- the Petrocelli hearing. It's not a cited case. It's just a Petrocelli
14 hearing. Its information -- I have viewed this information once before in the legal
15 library so when I referred to it on the kite, they told me to refer to my attorneys. Now
16 I have the kite that I filled out. I have the response from the legal law library.

17 THE COURT: Well, they're not going to look up -- I mean, if you need to go
18 there, you need a copy of the case. I'm assuming that's part of the rules down
19 there, they'll get you copies of the case, but they're not going to do any research for
20 you and that's one of the problems you have by representing yourself. And I still
21 don't understand why you don't want these two fine gentlemen to represent you
22 'cause they would have these cases for you in about sixty seconds.

23 THE DEFENDANT: Your Honor, like I said I'm not asking to make it easy.
24 Only thing I'm asking is to make it fair, sir. I'm not able to do the stuff. I've never
25 came to this Court and asked about this saying that I had a problem anything with

1 representing myself or about cases or anything until this problem had came up.

2 Now I have been successfully doing this stuff on my own. Right now --

3 THE COURT: Well, you really haven't. What I'm going to do is, Mr. Pike or
4 Mr. Cano, if you could be so kind if you could find out in a clear way what exactly
5 going on. How's being limited and if you could get him that.

6 MR. PIKE: We'll do that. The problem that we run into is that other than the
7 colloquy the Court has had with Mr. Malone, Petrocelli -- a Petrocelli hearing is
8 based upon the case in the name of Petrocelli. So he actually is citing to a case, but
9 he's not giving the cite. He's doesn't even know that it's a case. He's just asking for
10 the hearing, so if -- and that is a hearing generally that the State brings in order to
11 bring in evidence of other bad acts.

12 THE DEFENDANT: And they got to be clear and convincing.

13 THE COURT: Well, I understand that, sir.

14 MR. PIKE: The State -- the State hasn't brought a motion to bring in other
15 bad acts. At this point in time it hasn't been litigated prior to the last trial and I don't
16 anticipate that between that trial setting in which we announced ready, they
17 announced ready that they're going to change their tact all of a sudden and bring in
18 a motion of -- for a Petrocelli hearing for them to bring in more evidence against the
19 Defendant.

20 Now, if he's -- if he's trying to say he wants to present evidence then
21 he -- he should look towards those cases, but a Petrocelli hearing is to the benefit of
22 the State, not to the Defendant. It's not something that they have sought to bring.

23 THE COURT: All right. I obviously understand that. Can counsel --

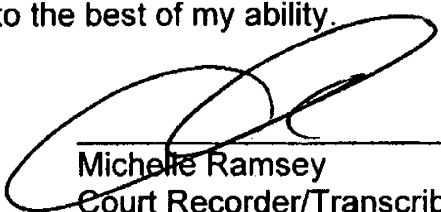
24 MR. PIKE: If he communicates -- if he communicates what -- what materials
25 he wants through his investigator to us we'll print up, you know, the case.

1 THE COURT: All right, sir --
2 MR. PIKE: We'll print up the case so he can have it.
3 THE COURT: -- sir, you can contact your stand-by counsel and they'll pull
4 some cases for you; do you understand that?
5 THE DEFENDANT: Yes, sir.
6 THE COURT: All right. Anything else, sir?
7 THE DEFENDANT: No. That's all that I need, sir. I'd submit it on that.
8 THE COURT: All right. Anything else, Mr. Pike or Mr. Cano?
9 MR. PIKE: No, thank you, Your Honor.
10 THE COURT: State?
11 MR. LALLI: No, sir.
12 THE COURT: All right. Mr. Wysocki, just so you know, you've probably
13 already do, but we have a Trial date October 11, Calendar Call date October 5th.
14 MR. WYSOCKI: Correct.
15 THE COURT: All right. Thank you.
16 MR. LALLI: Thank you, Your Honor.
17 MR. DIGIACOMO: Thank you, Judge.

18 [Proceeding concluded at 8:55 a.m.]

19 * * * * *

20
21
22 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video
23 proceedings in the above-entitled case to the best of my ability.

24 
25 Michelle Ramsey
Court Recorder/Transcriber

FILED

AUG 2 2010

John T. Sullivan
CLERK OF COURT

DOMONIC MALONE, NO. 1670811
CLARK COUNTY DETENTION CENTER
330 S. CASINO CENTER BLVD.
Las Vegas, NV. 89101
DEFENDANT IN PROPER PERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA

) Case No.: C224571

Plaintiff,

) Dept. No.: 17

vs.

) Docket No.: _____

DOMONIC MALONE

Defendant

08C224572-2
MSPR
Motion to Suppress
876249



8/12/2010

MOTION TO SUPPRESS STATEMENTS OF CORRENA PHILLIPS
OR IN THE ALTERNATIVE MOTION IN LIMINE TO PROHIBIT
INTRODUCTION OF STATEMENTS MADE BY
STATE WITNESS 'PHILLIPS' AT THE TIME OF TRIAL

Comes Now, Defendant DOMONIC MALONE, in proper person, and pursuant to the sixth, eighth and fourteenth amendments to the United States Constitution, and the Nevada Constitution, and EIGHTH JUDICIAL COURT RULE(S), moves this Court to bar the introduction of the testimony of Correna Phillips at the time of the trial of this matter, as well as all derivative evidence secured therefrom.

This Motion is based upon the attached points and authorities, arguments of Pro'se defendant at the time of the hearing on this matter as well as the points and authorities contained within Defendant's Writ of Habeas Corpus hereto file in this matter.

Specific to this motion are the conflicting statements of, Correna Phillips, who testified to the PANDERING of the deceased. The body of this motion addresses the manner in which Correna Phillips was examined, and subsequently turned to be State's primary witness.

RECEIVED

AUG 03 2010

CLERK OF THE COURT

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AUG 2 2010

CLERK OF THE COURT

1 DOMONIC MALONE, NO. 1670991

2 CLARK COUNTY DETENTION CENTER

3 330 S. CASINO CENTER BLVD.

4 LAS VEGAS NV. 89101

5 DEFENDANT IN PROPER PERSON

6
7 RANDALL H. PIKE, Esq

8 CHARLES A. CANO, Esq

9 Stand-By Attorneys for MALONE

10
11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 STATE OF NEVADA, }

CASE NO. C224572

14 Plaintiff, }

DEPT. NO. 17

15 vs. }

16 DOMONIC MALONE, Defendant }

17 Motion to Suppress Statements of Correna Phillips or in the Alternative Motion to Limine

18 Date: _____ Time: _____

19 COMES NOW, Defendant DOMONIC MALONE, in proper person, and hereby submits
20 the attached Motion

21 Notice of Motion

22 TO: STATE of Nevada, Plaintiff; and

23 TO: DISTRICT Attorney's Office, Attorney for Plaintiff

24 Please take notice that the attached Motion will be heard in Department 17 on
25 8-12-10, 2010, at the hour of 815 a.m.

CLERK OF THE COURT
AUG 2 2010
RECEIVED

STATEMENT OF FACTS

Defendant DOMANIC MALONE (herein after referred to as Malone), by this reference, adopts the statements of facts contained within both the writ and motions to sever heretofore filed with the Court.

Malone notes that on or about June 2006, Detectives Hosaka and Collins went to the residence of Correna Phillips (herein after referred to as Phillips) to question her about the phone call that they (Detectives) intercepted between Co-defendant (Jason McCarty) and herself. The Detectives, pursuant to the policy of the Henderson Police Department had prior to interviewing Phillips had already obtained an recording of the 3 way conversation of Phillips & McCarty at the Henderson Jail where both McCarty and Malone was detained at.

Listening to the phone conversation intercepted by Detectives. It becomes clear that Phillips intentions where to come and deceive the Court for the benefit of the co-defendant (her friend).

Officers knew as well as the Prosecutors, that prior (as copies of this recording were turned over to defense counsels) of Phillips potential and motivation for lying under oath. However Prosecutor(s) by gross negligence aided in Phillips duplicity of the Court by allowing her to do so. She provided the following as a result of the States negligence (Preliminary Hearing Transcript "PHR" Volume II)

1. [Q (By Prosecutor) Did you tell him you couldn't find it?
A (By Phillips) No. Because he was in jail at the time when we looked. He called and mentioned it to us over the phone from the bail bondsmen three way (p 58)
2. [Q (By co-d's defense counsel) would you lie for Jason McCarty?
A (By Phillips) Yes, I would have at the time. (p 103)
3. [Q (By Prosecutor) Christine was doing deals. What does that mean?
A (By PHILLIPS) She was selling rock,
a what did Victoria do?

1 A: If im not mistake of I recall, Romeo or D-Roc, one of the two,
2 Q Prostitution?

3 LA Yeah (p 12)

4 PHT VOLUME III

5 Q (By defense counsel) Do you remember when Mr. Owens over here was
6 reciting some times about Romeo and D-Roc being a pimp- the 10:50 statement
7 was along the lines about so who was Romeo? and your answer was oh, her
8 pimp?

9 A (By Phillips) Correct

10 Q Detectives says, yeah. Then you say, I think, - Goes on to say that you had
11 a feeling it was D-Roc that was pimping her and Romeo was trying to take her
12 away from D-Roc?

13 A Correct

14 Q Do you recall that?

15 A yes (p 216)

16 Q That's when you are not being truthful because that is prior to the June first
17 statement, correct?

18 A correct

19 Q That is also when you are still trying to cover up for Romeo, your friend?

20 A correct.

21 Q You are trying to minimize his involvement in that sense and trying to implicate
22 Mr. Malone?

23 A correct

24 Q Then your knowledge about Mr. Malone's activities regarding prostituting
25 women really doesn't exist?

A correct

Q Anything that you said regarding his pimp or anything like that, it's
just blatant lies?

1 A Which one are you referring to?

2 Q In regards to Mr. Malone

3 A Malone being D-ROC?

4 A Yeah

5 A correct (p 217)

6 PROCEDURAL STATEMENTS POINTS AND AUTHORITIES

7 Since this has been designated as a capital prosecution, exacting standards
8 must be met to assure that it is fair. The death penalty "is unique in its irre-
9 vocability." Furman vs. Georgia, 408 U.S. 238, 306, 92 S.Ct. 2726, 33 L.Ed. 346
(1972)

10 LEGAL ARGUMENT

11 In the present case Phillips have offered statements to the state that the
12 state misused throughout this entire case, a duplicity that has went un-
13 checked for (4) years and (2) mos. now. "PANDERING" being the nexus which
14 binds Malone to these courts as it provides motive for the states theory of
15 Malone involvement in the murder counts.

16 Malone position is that the misuse of Phillips testimony deprives
17 him of his Due process 14th admend. right to a fair trial. As the states
18 theory derives from a lie that Ms. Phillips told and admitted to doing so under-
19 oath. "Anything you said regarding his pump or anything like that, its just
20 blatant lies? Yeah (p 217)

21 However in order for such false testimony to warrant the relief here
22 sought. Defendant must show that it was material to the case.

23 Here Malone relays on the fact that Phillips testimony of the pandering as
24 indicated in the States Return to Writ of Habeas Corpus and more defined in the
25 States Opposition to defendants Reconsideration of Writ of Habeas Corpus as so"

There was direct evidence of his pandering of Victoria and the facts and

1 Circumstances of the case establishes that he pandered Christine.

2 Correna Phillips testified that Defendant Malone and Rome sent Victoria upstairs
3 to give a blow job to somebody for rock. "(PH, vol 2, 12) That alone is sufficient to
4 support the charge of pandering. (p 21 and 22 of States OPPOSITION FOR RECONSIDERATION)

5 Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 31 Ed. 2d 1217 (1959); Lorraine v. United
6 States, 296 F.2d 335 (9th Cir.)

7 Therefore the PANDERING is material in this instant case and the prosecution's
8 knowing use of perjured and false evidence violates Malone right to due process
9 U.S.C.A. Const. Amend. 14.

10 As quoted in Napue "The principle that a State may not knowingly use
11 false evidence, including false testimony, to obtain a tainted conviction, implicit
12 in any concept of ordered liberty, does not cease to apply merely because the false
13 testimony goes only to the credibility of the witness. The jury's estimate of the
14 truthfulness and reliability of a given witness may well be determinative of
15 guilt or innocence ***."

16 Here we have a clear example of prosecution acting in bad faith by intro-
17 ducing the false evidence and passing it off to the Court(s) through various of
18 documents as the truth. Creating and inference that a fact exists when in fact
19 to the knowledge of the prosecution it does not, constitutes the knowing use of
20 false testimony. E.g., Turner v. Ward, 321 F.2d 918, 920-921 (10th Cir. 1963)

21 STANDING

22 Evidence secured as a result of perjury must be suppressed as "fruits of the
23 poisonous tree." Even if evidence of defendant's guilt were overwhelming, the right to a
24 fair trial may not be abrogated. Jackson v. California, 336 F.2d 521, 523 (9th Cir. 1964)
25 under the circumstances Malones 14th Amendment was violated, a core constitutional
26 right.

1 Therefor, the "fruits doctrine" comes into play. Since the statements of
2 Phillips was perjured, and the derivative evidence, obtained by the suborner
3 must be suppress.

4 Conclusion

5 The Prosecutor(s) duplicity of the Court has went unchecked for a period
6 of (4) years and (2) months & counting this is a death penalty case not
7 a misdemeanor where one is only confined for an approximate (30) days to a
8 period not exceeding (1) year as an gross. This is one in which more than
9 likely an innocent man will be put to death due to the denial of the
10 rights of the alledge to have a fair trial. A criminal trial is not a game
11 in which the state's function is to outwit and entrap its quarry. The
12 state's pursuit is justice, not a victim.

Wherefore DOMONIC MALONE prays that this Honorable Court does not make him the victim and suppress the statements of Correna Phillips. Furthermore, Defendant prays that this Honorable Court issue an Order precluding the introduction of any testimony or evidence derived therefrom.

DATED THIS 28th day of July, 2010.

I, Domonic Ronaldo Malone, do

solemnly swear, under the penalty of perjury, that

the above Motion to Suppress and/or Examine is accurate,

correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

Respectfully submitted,

Domonic R. Malone

DOMONIC R. MALONE #1670991

Proper Person
Defendant

MAJORE, Demeone # 1670891

Name/ID

Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, NV 89101

Proper Person
defendant

1.25

MOTION/ORDER

FILED

AUG - 9 2010

John L. Blum
CLERK OF COURT

DOMONIC MALONE, NO. 1670891

CLARK COUNTY DETENTION CENTER

330 S. CASINO CENTER BLVD.

LAS VEGAS NV. 89101

DEFENDANT IN PROPER PERSON

RANDALL PIKE, ESQ

CHARLES CANO, ESA

Stand-By Attorneys for MALONE

DISTRICT COURT

CLARK COUNTY, NEVADA

08C224572-2
MOT
Motion
886102



STATE OF NEVADA,

CASE NO. C224572

Plaintiff,

DEPT. NO. 17

VS.

8-24-2010

DOMONIC MALONE,

Defendant

MOTION FOR PARALEGAL - (Rehearing)

COMES NOW, Defendant DOMONIC MALONE, in proper person, hereby requests this Court grant defendants MOTION FOR PARALEGAL; Rehearing.

This Motion is made and based on the 5th, 6th, 8th, and 14th Amendments; U.S. & NV. Constitution, EIGHTH JUDICIAL DISTRICT COURT RULE (S), the Points and Authorities, arguments of Pro'se defendant at the time of the hearing on this matter as well as the points and authorities contained within Defendant's ~~ORIGINAL~~ Motion for Paralegal file in this matter.

AUG 9 2010

RECEIVED



3

NOTICE OF MOTION

TO: STATE OF NEVADA, Plaintiff; and TO: District Attorneys Office, Attorney
for Plaintiff

YOU WILL PLEASE TAKE NOTICE that the undersigned will bring
on the foregoing MOTION on for hearing on the _____ day of _____, 2010 in
Department NO. 17, or as soon thereafter as Counsel may be heard.

POINTS AND AUTHORITIES

FACTS

Malone hereby incorporates all the facts contain therein MOTION for
Paralegal; Financial Assistance; Medical; Private Investigator(s) FILED
JUL 08 2010

ARGUMENT

Malone also incorporates all arguments contain therein.

CONCLUSION

Wherefore DOMONIC MALONE is still praying that this Honorable Court
appoint him an paralegal; Further more, Defendant prays that this Honorable
issue an Order making it so. So that he can begin to prove his actual
innocense.

DATED this 5th day of August, 2010

SUBMITTED BY:

DOMONIC R. MALONE

Domonic R. Malone

330 S. Casino Center Blvd.

Las Vegas, NV. 89101

Proper Person

1 DATED THIS 5th day of August, 2010,
2 I, DOMONIC RONALDO MALONE, do
3 solemnly swear, under the penalty of perjury, that
4 the above Motion for Paralegal - (Rehearing) is accurate,
5 correct, and true to the best of my knowledge.
6 NRS 171-102 and NRS 208-165.

7 Respectfully Submitted,

8 *Domonic R. Malone*

9 DOMONIC R. MALONE #167041

10 Proper Person

11 Defendant
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David Schieck

From: LeRoy Kirkegard [L4274K@LVMPD.COM]
Sent: Wednesday, August 11, 2010 9:42 AM
To: Jennifer Togliatti; Melissa Saragosa; 'Zimmerman, Ann'; Steve Grierson; Philip Kohn; Drew Christensen; David Schieck
Cc: John Donahue
Subject: MEDIA RELEASE: Facility Upgrades at C.C.D.C. Cause Temporary Visitation Restrictions
Attachments: PO 133 08-09-10 Facility Upgrades at C.C.D.C. Cause Temporary Visitation Restrictions.pdf

Please see attached release concerning the drilling samples being taken tonight (08/11/10) and the evening of August 18th. The release says social visitation is cancelled from 5:00 p.m. to 11:00 p.m. both nights, but should state ALL visitation is cancelled, including attorney's and law enforcement for those same times. We need to minimize the number of people in the facility should anything occur needing a partial evacuation of the CCDC.

We expect this to be a non-event. The areas where the drilling is too take place will be enclosed and monitored closely by the vendors, CC Safety personnel, Fire Department, and other entities. If there is a problem, we have a Command Post established and plans in place to evacuate the facility as necessary.

Thanks.

Captain Kirkegard

FILED

SEP 22 11 42 AM '10

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Christine L. Ramsey
CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

DOMONIC RONALDO MALONE,

Defendant.

CASE NO. C224572

DEPT. XVII

06C224572-2
RTRAN
Recorders Transcript of Hearing
944022


BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

THURSDAY, AUGUST 12, 2010

**RECORDER'S TRANSCRIPT OF HEARING RE:
DEFENDANT'S PROPER MOTION TO SUPPRESS STATEMENTS OF CORRENA
PHILLIPS OR IN THE ALTERNATIVE MOTION IN LIMINE TO PROHIBIT
INTRODUCTION OF STATEMENTS MADE BY STATE WITNESSES "PHILLIPS"
AT THE TIME OF TRIAL**

APPEARANCES:

For the State:	MARC DiGIACOMO, ESQ., CHRISTOPHER LALLI, ESQ., Deputy District Attorneys
For the Defendant:	RANDALL H. PIKE, ESQ., CHARLES A. CANO, ESQ., Special Public Defenders (Standby Counsel)

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

RECEIVED
SEP 22 2010
CLERK OF THE COURT

1 LAS VEGAS, NEVADA; THURSDAY, AUGUST 12, 2010

2 [Proceeding commenced at 8:46 a.m.]

3
4 THE COURT: 224572, Dominic Malone. Mr. Malone is present in custody.
5 We have Mr. Cano here, stand-by counsel. We have Mr. Lalli and Mr. DiGiacomo.
6 This is Defendant's pro per motion to suppress statements of Ms. Phillips, Correna
7 Phillips or in the alternative motion in limine to prohibit introduction of statements
8 made by State witness, Phillips, at the time of trial. Did the State file an opposition?

9 MR. DIGIACOMO: We did, Judge.

10 THE COURT: I did not receive it.

11 MR. DIGIACOMO: May I approach?

12 THE DEFENDANT: I did not receive it either.

13 MR. DIGIACOMO: It was filed -- actually, the day for response -- I think it
14 was filed yesterday; that's the jail and I thought it was sent to your Chambers
15 yesterday.

16 THE COURT: Okay. Did the -- either the Special PD, stand-by or Mr.
17 Malone get a copy of this?

18 THE DEFENDANT: No.

19 MR. DIGIACOMO: Well, it was faxed to the pro per number at the jail. I
20 don't know if they served him yet.

21 THE COURT: Okay.

22 THE DEFENDANT: No. I was not served, Your Honor.

23 THE COURT: You have an extra copy in your file this morning?

24 MR. DIGIACOMO: I don't; that's my only copy.

25 THE COURT: Okay. It would be easier to get this to him now. If you can,

1 just fax it to my office. We'll pass this a week or two for argument on the motion.

2 MR. DIGIACOMO: That's fine.

3 THE CLERK: August 26th.

4 MR. DIGIACOMO: Judge, there's one other issue. Mr. Wysocki the
5 investigator for Mr. Malone is here and my understanding is that he wants to put
6 something on the record, so if we may.

7 MR. WYSOCKI: Yes, Your Honor, since I was appointed on July 27th and
8 we have a very short period trial date, I think it's two weeks -- two months from
9 today, I want to put on the record and ask also ask for clarification of something from
10 the Court.

11 Number one is I've, since the 27th I've worked on this case richly
12 every single day. I have met with Mr. Malone a number of times and I've
13 established a good working relationship with him. One of the things that's
14 happening such as the response or filing of motions, there's a lot of things that Mr.
15 Malone does not have access to do that are would normally be clerical in nature;
16 filing motions or any pleadings or even preparing subpoenas that he has no ability or
17 it's taking time to get done.

18 In trying to keep the October 12th date a viable date to get everything
19 done, I'm wanting to know if some of the things that would normally I would not do
20 that the attorney's office do that I can do such as making sure that everybody's here.
21 The idea of the motion that was today the Special PD's Office did not have it. I
22 made a copy of it and informed them yesterday. Otherwise, they wouldn't have
23 known.

24 MR. CANO: We weren't aware of it until yesterday, Your Honor.

25 MR. WYSOCKI: In trying to, in an abundance of caution, trying to make sure

1 that this is done right of going above what I normally do as an investigator to make
2 sure it goes.

3 THE COURT: I appreciate that, Mr. Wysocki, that you're going above and
4 beyond the call of duty.

5 Mr. Malone, this is -- stand up, sir -- this is the problem that we've
6 talked about every single time we go to Court that things are not being done
7 properly. You have issues with getting other things accomplished and I just want to
8 make sure you still want to represent yourself, sir.

9 As you can see, you should be able to see for all these times that
10 we've come to Court that you're at an extreme disadvantage and you're looking at
11 the death or potential death penalty in this case; do you understand that?

12 THE DEFENDANT: [unresponsive]

13 THE COURT: I'm going to keep asking every time we come to Court.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that?

16 THE DEFENDANT: Yes, sir. I understand that.

17 THE COURT: Do you still wish to represent yourself?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand these problems?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Well, Mr. Wysocki, it's up to you what you want to do; if you
22 want to type up subpoenas for him or if you, you know if he has things that he wants
23 you to file, he wants you to serve; that's between the two of you.

24 MR. WYSOCKI: I have told him I would do anything I can do to assist to get
25 this done. This is the priority case that I have above everything else that's going on.

1 I would also having worked in the Federal Public Defender's Office in
2 the Habeas Unit for a number of years, realize that like Mr. Malone's pleadings or
3 motions are all in handwritten, I know how this is a potential death case that maybe
4 sitting around being reviewed by a number of people over a number of years. Since
5 his motions are handwritten, if I can turn around and take them and type them up
6 and then have them sign them exactly as it is, so that they're not -- something that
7 doesn't get lost in the translation five to ten years down the road if in -- if in fact --

8 THE COURT: Well, that's between the two of you.

9 MR. WYSOCKI: Okay.

10 THE COURT: If you want to retype his motions and he'll need to sign them
11 and you can file them and serve them.

12 MR. DIGIACOMO: With all due respect, Judge, and not that we have a dog
13 in this, but Mr. Wysocki is not going to be typing his motions for free and he's going
14 to be submitting a bill to Mr. Christensen. Just so the Court is aware of that fact
15 before you tell Mr. Wysocki he's authorized to type and be a clerical worker for Mr.
16 Malone.

17 THE COURT: Well, I would suggest that you contact Mr. Christensen and
18 see if he's going to pay those entries on your bill; that's up to you.

19 MR. WYSOCKI: I have not -- I don't bill for phone calls. I make a record of
20 it, but I don't bill for phone calls. I don't bill for copying. The copies Mr. Pike and Mr.
21 Cano have provided me -- I've got a box and a half of discovery that I got to go
22 through. I've had good access. I don't bill. I'm not planning on billing for this.

23 MR. DIGIACOMO: Then it's fine with you.

24 THE COURT: Okay.

25 MR. DIGIACOMO: I just want to make sure this Court is aware that you

1 weren't putting some sort of legal requirement upon the County to pay for --

2 THE COURT: No, I was --

3 MR. DIGIACOMO: -- clerical work.

4 THE COURT: -- saying if you want to do that.

5 MR. DIGIACOMO: Okay; that's fine.

6 THE COURT: That's up to you.

7 MR. WYSOCKI: That's something that I don't do. I got one other secretary
8 that can do it in a matter of minutes. It's not going to take any time, but in the long
9 run I've had papers that were handwritten ten years before that are in the Court file
10 some place and they tend to get lost, mangled or whatever. I'm trying to -- this is a
11 death case. I'm trying to make sure that if record is something that everybody can
12 work with ten years down the road.

13 THE COURT: Okay.

14 MR. WYSOCKI: The second -- secondly, there's -- I have one other issue.
15 Oh, I understand that in the mitigation issues, if there is a conviction on the death --
16 the death case the Special Public Defender's Office will be doing the mitigation
17 argument. Is -- if there is not a conviction on the death case, but there's a conviction
18 on something else, will they be doing it or do I need to prepare for a sentencing
19 hearing that Mr. Malone will be arguing?

20 THE COURT: I think, Mr. Cano, your motion was -- was to assist him in the
21 mitigation hearing if we get that far.

22 MR. CANO: If we get that far, we will take care of all the mitigation aspects
23 of this case if it gets to a penalty phase, but if he's found guilty of something less
24 than first degree then there won't be a penalty phase.

25 MR. WYSOCKI: Yeah.

1 THE COURT: Right. Okay. And do you know -- I want to impose upon you,
2 Mr. Lalli and Mr. DiGiacomo, can you put on the record one more time for Mr.
3 Malone potential -- potential penalties for the charges he has? Do you have the list
4 there in front of you?

5 MR. DIGIACOMO: Judge, the lists are lengthy. The most the -- the largest
6 charge is obviously is the open murder charge which results in a first degree with
7 use of a deadly weapon. There's actually two counts of that in this particular case.
8 The sentences range from a possibility of death on both charges to a life without the
9 possibility of parole with a consecutive life without the possibility of parole on both
10 charges to life minimum with an equal and consecutive life minimum twenty or
11 twenty to fifty with an equal and consecutive twenty to fifty.

12 Additionally, he has first degree kidnapping counts that allege
13 substantial bodily harm which may result in a life without the possibility of parole
14 sentence in and of themselves. There's a number of robbery with use of a deadly
15 weapon charges which could have a maximum sentence of twelve to thirty years.
16 There's a number of battery with a deadly with substantial bodily harm which could
17 be as high as fifteen year sentence on him and there's a number of other
18 miscellaneous charges.

19 His charge is ultimately if he were to be convicted of all of them could
20 be to the point where I mean, substantially never leaves prison.

21 THE DEFENDANT: Yeah. Your Honor --

22 THE COURT: Do you understand that, sir?

23 THE DEFENDANT: Yeah.

24 THE COURT: Okay.

25 THE DEFENDANT: I've been understand that.

1 THE COURT: I want to ask you, have --
2 THE DEFENDANT: I'm not charged with --
3 THE COURT: -- sir, listen.
4 THE MARSHAL: Just listen.
5 THE COURT: I have a question for you.
6 THE DEFENDANT: Okay.
7 THE COURT: I know we already went over this, but have you personally
8 reviewed these charges on your own --
9 THE DEFENDANT: Yes, sir.
10 THE COURT: -- to determine what the possible penalties are?
11 THE DEFENDANT: Yes, sir.
12 THE COURT: On each and every charge?
13 THE DEFENDANT: [indecipherable]
14 THE COURT: I know we went over that during the Faretta Canvass. I want
15 to make sure that you also personally did that?
16 THE DEFENDANT: Yes, sir. I've been did that.
17 THE COURT: You've done it?
18 THE DEFENDANT: Numerous of times.
19 THE COURT: Okay. Great. Yes, sir. You have a question.
20 THE DEFENDANT: What I was going to address to DiGiacomo, I'm not
21 charged with battery with --
22 THE COURT: Okay. Address it to me and then --
23 THE DEFENDANT: Okay. I'm not charged with battery with substantial
24 bodily harm with a use. I have none of that charge. DiGiacomo just said that when
25 he was giving you all the potential charges I'm facing, that's not one of them.

1 MR. DIGIACOMO: Actually, you know what, he's right. I think maybe --
2 THE DEFENDANT: Yeah.
3 MR. DIGIACOMO: -- the battery with deadly with substantial was reduced at
4 --
5 THE COURT: Okay.
6 MR. DIGIACOMO: -- the prelim, but --
7 THE DEFENDANT: Yeah, that was battery with substantial harm.
8 THE COURT: All right. Sir, every time I talk to you I refer to you as sir or
9 Mr. Malone.
10 THE DEFENDANT: Yes, sir.
11 THE COURT: If you're addressing one of the attorneys here, you refer to
12 them to Mr. DiGiacomo as a courtesy.
13 THE DEFENDANT: Okay.
14 THE COURT: All right?
15 THE DEFENDANT: Yes, sir.
16 THE COURT: All right. Anything else, sir?
17 THE DEFENDANT: Yes, sir. The opposition that the State had just gave
18 you, it's not that big is it? It's just little right?
19 THE COURT: I have not seen it, sir.
20 THE DEFENDANT: Is it in why don't we just go do this today?
21 THE COURT: I need to review the pleadings to make the appropriate
22 decision.
23 THE DEFENDANT: Okay.
24 MR. CANO: Your Honor, my understanding is I think that there's a Court
25 date is already set for the 24th on another motion Mr. Malone had filed.

1 THE COURT: All right. We can just hear them both.
2 THE DEFENDANT: Yeah, on the 24th.
3 MR. DIGIACOMO: I don't have another motion from Mr. Malone.
4 THE DEFENDANT: Yeah, I have a motion for rehearing --
5 THE CLERK: It's a motion for paralegal.
6 THE DEFENDANT: -- for the paralegal, sir.
7 MR. CANO: My suggestion would just be set this hearing date for that date
8 for convenience sake.
9 THE COURT: Have you served the District Attorney's Office?
10 MR. WYSOCKI: Your Honor --
11 THE DEFENDANT: I have served the County's Clerk, sir.
12 THE COURT: Well, you need to -- well, actually, sir, it's up to you to figure
13 out how you serve and who you serve.
14 THE DEFENDANT: Okay.
15 MR. WYSOCKI: Your Honor --
16 THE COURT: That's one of the things -- listen to me.
17 THE DEFENDANT: Yes, sir.
18 THE COURT: That is one of the items that when you represent yourself that
19 you need to figure out how to do. I can't be your attorney or assist you; do you
20 understand that?
21 THE DEFENDANT: Yes, sir.
22 THE COURT: If things are not calendared properly, they're not going to be
23 heard and then -- and then you're not -- not going to be able to argue well I didn't
24 have a motion because the Judge wouldn't hear it.
25 THE DEFENDANT: Yes, sir.

1 THE COURT: I'm not hearing a motion that's not filed properly, it's not
2 served properly.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: That's another reason why you shouldn't represent yourself;
5 you understand that?

6 THE DEFENDANT: Yes, sir. May I address the Court?

7 MR. WYSOCKI: Your Honor, just for clarification; that motion -- he gave me
8 the motion the other day. I made copies of it and had it filed. It had not come back
9 yet; that was the reason for asking about making sure that everybody gets it. Same
10 way with the Special Public Defender's Office, so make sure that this doesn't get
11 delayed or cause things that happen like this; that was -- that's the main reason for
12 trying to get clarification.

13 THE COURT: No. I appreciate that, but it's not on calendar --

14 MR. WYSOCKI: I have the motion. It has not come back yet --

15 THE COURT: Okay.

16 MR. WYSOCKI: -- from -- out of the Clerk's Office. It has been filed, but
17 they do not have it and I will take it. Once it comes back, I'll take it up to Mr. Lalli
18 and Mr. Cano and also back to Mr. Malone.

19 MR. CANO: And we'd also request perhaps District Attorney's Office to
20 send us a courtesy copy of any of their oppositions; that way we're like make sure
21 we don't miss that.

22 THE COURT: I think that's appropriate since you are stand-by counsel.
23 We'll just give you a one or two week continuance.

24 [Colloquy between the Court and the Clerk]

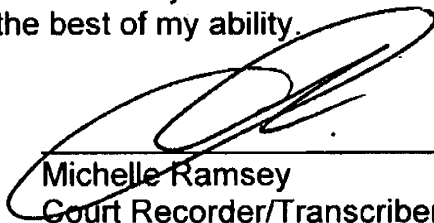
25 THE CLERK: Okay. We'll move both motions to the 26th.

1 MR. CANO: The 26th?
2 THE CLERK: Uh-huh.
3 MR. CANO: Okay, so the 24th is vacated? They're both on the 26th?
4 THE CLERK: Uh-huh.
5 MR. CANO: Okay.
6 THE COURT: Are you available, State?
7 MR. LALLI: Yes.
8 MR. DIGIACOMO: Yes, Judge.
9 THE COURT: All right.
10 MR. LALLI: Thank you.
11 THE COURT: We'll see you then.
12 MR. DIGIACOMO: Thank you.
13 THE DEFENDANT: We're done?
14 THE CLERK: The 26th at 8:15.
15 MR. CANO: Thank you, Your Honor.

16 [Proceeding concluded at 8:58 a.m.]
17
18

19 * * * * *
20

21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video
22 proceedings in the above-entitled case to the best of my ability.

23 
24 Michelle Ramsey
25 Court Recorder/Transcriber

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MOTION/ORDR
DOMONIC MALONE, NO. 1670891
CLARK COUNTY DETENTION CENTER
330 S. CASINO CENTER BLVD.
Las Vegas, Nevada 89101
DEFENDANT IN PROPER PERSON

RANDALL PIKE, ESQ.
CHARLES CANO, ESQ.
STAND-BY ATTORNEYS FOR MALONE

"FILED"
Aug 19 12 30 PM '10
[Signature]
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

DOMONIC MALONE,

Defendant.

Case No: C-224572
Dept. No: 17

06C224572-2
RSPN
Response
903463


RESPONSE TO STATES OPPOSITION TO DEFENDANTS MOTION TO SUPPRESS STATEMENTS

COMES NOW, defendant, DOMONIC MALONE, in proper person, hereby respond to States Opposition to Defendant's Motion to Suppress Statements.

This Response is made and based on the 5th, 6th, 8th, and 14th Amendments; U.S. & N.V. Constitution, EIGHTH JUDICIAL DISTRICT COURT RULE (5), the Points and Authorities contained herein, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

Malone hereby response as to the States Opposition as follows:

//

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RECEIVED

AUG 19 2010

CLERK OF THE COURT

1 POINTS AND AUTHORITIES STATEMENT OF FACTS

2 The state in-correctly claims that the defendant, Malone, is charged with (3) counts of pandering
3 when in fact he is only charged with (2) counts of pandering.

4 //
5

6 The State alleges that Correna was corroborated that Rome, Victoria and Christine showed up at
7 their place in at the sportsman on Tuesday night. (PH, vol. 2, pp. 7-8) While there, Rome or D-
8 Roc sent Victoria upstairs to "give a blow job to somebody for a rock." (PH, vol. 2,12). Also, D-
9 Roc was on the phone talking about taking the girls out to the desert for "PT time" (PH, vol. 2,
10 14).

11 The State provided a live witness, Ms, Estores, who testified that she and Malone
12 remained in the car, while Rome, Victoria and Christine went into the complex (PH, vol., pg 97).
13 The only corroboration is that McCarthy, Victoria, & Christine enter Phillip's apartment however
14 the conflicting element is the addition of Malone which therefore Phillips is not corroborated as
15 indicated in the State's opposition.

16
17 The State would like to mislead this court to believe that on cross examination that what
18 Ms. Phillips testified to the untruthfulness of her May 30th statements to the police, was not
19 related to her testimony before the Court at the Preliminary Hearing.

20
21 In the States attempt to once again pull one over on the Court fail(s) to state that Ms.
22 Phillips 30th statement she admitted to being untruthful "Contain there in that Mr. Malone was
23 prostituting Victoria and I believe was trying to help her by taking her (Victoria) form Him
24 (Malone) – which was consistent with her testimony that she had given previously.

25 So when asked "then your knowledge about Mr. Malone's activities regarding prostituting
26 women really doesn't exist? And answered correct. Was not only about Ms. Phillips May 30th
27 statement to police but also was a clear challenge to the testimony she had given previously.

POINTS AND AUTHORITIES

The state asserts that Ms. Phillips did not make a false statement during the preliminary and that the state did not knowingly rely upon such a false statement and is supported in the record.

Suppression of evidence occurs where "evidence" is gathered in violation of a defendant's constitutional rights.

The state's position is that absent an illegal government action in collection or gathering of the evidence, a suppression cannot occur. And that the testimony of a live witness due to an assertion of perjury has never been held to be subject to the prophylactic rule of exclusion, as it cannot deter government misconduct.

The State seems to believe that they are not to be held accountable for the evidence which Prosecutors present under the color of law to the Court(s) contrary to the state's belief. No Attorney rather they be Defense Counsel or Prosecutor may not submit evidence which would put the integrity of the Court in jeopardy. In the state of Nevada as well in the United States of America.

Also the state claims that the defendant has no grounds upon which to exclude the evidence. Malone states that all he has to prove is that the evidence was false and the state knew of its falsity prior to the introduction; and or; use of.

1. Detectives in this instant case intercepted a (3) -way phone call from the remaining co-defendant and Ms. Phillips, there Ms. Phillips with co-defendant were discussing on how she was going to lie for the co-defendant.
2. Prior to the preliminary hearing copies were turned over to the District Attorney office who then turned copies of the recording(s) over to the defense counsel(s).

The State knew prior to the examining of the Ms. Phillips that not only that she was going

1 To lie but for whom she was going to lie for. However the State allowed Ms. Phillips to do so in
2 hopes of obtaining an illegal conviction. Was clearly an direct violation of Malone(s)
3 constitutional right(s). Addressing Napue v. Illinois; the prosecutor is intentionally neglecting the
4 core issue in Napue which is "the GOVERNMENT INTENTIONALLY USED FALSE
5 TESTIMONY" Which is the core argument in Malone's Motion to Suppress that the
6 Prosecutor(s) intentionally used evidence that they (Prosecutor(s)) known to be false.
7

8 9 STANDING

10 In this stand case prosecutor had reason to believe or in fact knew that each item of
11 evidence discussed above was untrue. Due process of law does not tolerate a prosecutor's
12 selective inattention to such significant facts. It requires that he exercise good faith in
13 prosecuting that case. Such good faith is not fulfilled where the prosecutor allows his witness to
14 give false testimony of which he has advance knowledge and the accuracy of which he has reason
15 to suspect. The duty of good faith is not merely a negative one, to omit from one's case outright
16 lies. It imposes as well an affirmative duty to + 809 avoid even unintentional deception and
17 misrepresentation, and in fulfilling that duty the prosecutor must undertake careful study of his
18 case and exercise diligence in its preparation, particularly where he is confronted with facts
19 tending to cast doubt upon his witness' testimony. The prosecutor's objective is justice; his role
20 is not that of a mere advocate. The goal of justice is hardly satisfied by less. Citing IMBLER V.
21 CRAVEN (298 F. Supp. 795) CIV. No. 68-1543-F April 23, 1969.
22
23

24 25 CONCLUSION

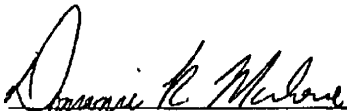
26 The Prosecutor(s) has duped the Court(s) long enough. I have been deprived of freedom
27 without just cause for over (4) years now. The State have file numerous of OPPOSITION(S)
28

1 knowingly that contained false evidence. Credibility of a witnesses is not only for the jury to
2 decide, as this would mean the law that govern(s) the knowingly use of false and or perjured
3 evidence would voided. Thus leaving the door open for any ole behavior. I the defendant in this
4 case was told that I would be held to the exact standards as a licensed attorney would be. Then it
5 is my duty to uphold the integrity of the Court.

6
7 Perjury and offering a false instrument for filing or Record is a felony. While he
8 Prosecutor(s) in this case has duped our Honorable Court(s) for far too long its time to bring the
9 prosecution(s) misrepresentation of facts; mischaracteration of facts; and the knowingly use of
10 false evidence and perjured testimony to an end in the instant case. The prosecutor should not be
11 held to any lower standard than the defendant should be and should be held just as accountable
12 for any documents filed within this court that he (Prosecutor) knew prior to filing were false in
13 content.

14
15 Based on the foregoing, Defendant Malone prays that this Honorable Court grants his
16 Motion to Suppress Statements of Correna Phillips or In the Alternative Motion In Limine To
17 Prohibit Introduction of Statements Made by State witness Phillips at the time of Trial.
18 Furthermore, Defendant prays that this honorable Court hold true to its word in protecting the
19 rights of the accused.

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22 Respectfully Submitted,

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25 Domonic Malone No. 167089
26 Proper Person
27 Defendant
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DISTRICT COURT
CLARK COUNTY, NEVADA

[Signature]
CLERK OF COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

DOMONIC RONALDO MALONE,

Defendant.

CASE NO. C224572

DEPT. XVII

08C224572-2
RTRAN
Recorders Transcript of Hearing
944026



BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

THURSDAY, AUGUST 26, 2010

RECORDER'S TRANSCRIPT OF HEARING RE:
ALL PENDING MOTIONS

APPEARANCES:

For the State:	SANDRA DiGIACOMO, ESQ., Deputy District Attorney
For the Defendant:	CHARLES A. CANO, ESQ., Special Public Defender (Standby Counsel)

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

RECEIVED
SEP 22 2010
CLERK OF THE COURT

1 LAS VEGAS, NEVADA; THURSDAY, AUGUST 26, 2010

2 [Proceeding commenced at 8:43 a.m.]

3
4 THE COURT: This is 224572, Domonic Malone. Mr. Malone --

5 THE DEFENDANT: How you doing, sir.

6 THE COURT: Just fine, Mr. Malone. Mr. Malone is present in pro per
7 person with stand-by counsel, Mr. Cano. Ms. DiGiacomo for the State.

8 Sir, do you have anything to add to your motion?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right.

11 THE DEFENDANT: Court's indulgence real quick.

12 THE COURT: I'm sorry.

13 THE DEFENDANT: Can I talk to my stand-by counsel --

14 THE COURT: Sure.

15 THE DEFENDANT: -- real quick? Okay.

16 THE COURT: Yes, sir. Do you have -- I've read your motion and the State's
17 opposition; do you have anything to add, sir?

18 THE DEFENDANT: Yes, sir. Did you read my response, sir, to the State's
19 opposition?

20 THE COURT: I did not receive your response.

21 THE DEFENDANT: I have a copy of my response. Would you like to --

22 THE COURT: Yeah, if you could hand it to Mr. Cano and he'll provide it to
23 me. We'll need to continue this matter, so I can review your -- your reply brief.

24 THE DEFENDANT: Sir, could we continue it to Friday or just 'til later,
25 whenever?

1 THE COURT: Sir, I need to read your brief. You want me to study it don't
2 you?

3 THE DEFENDANT: That's [indecipherable] either like later on today or
4 Friday, sir.

5 THE COURT: No. I'm in a middle of a trial right now, sir.

6 THE DEFENDANT: Okay.

7 THE COURT: And so how's Tuesday or Thursday of next week? All right,
8 we'll pass it to next Tuesday for argument on your motion, sir.

9 THE MARSHAL: Judge, let's recall page 2.

10 THE COURT: Wait, we need a date.

11 MS. DIGIACOMO: Wait, what's the date?

12 THE CLERK: Hold on. August -- August 31st.

13 THE DEFENDANT: All right. Thank you very much.

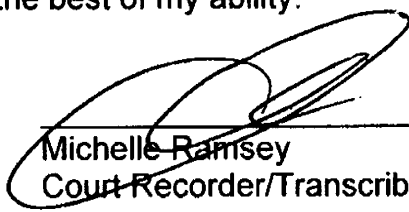
14 THE COURT: You're welcome, sir.

15 MS. DIGIACOMO: Thank you.

16 [Proceeding concluded at 8:45 a.m.]

17
18
19 * * * * *

20
21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video
22 proceedings in the above-entitled case to the best of my ability.

23
24 
25 Michelle Ramsey
Court Recorder/Transcriber

11

FILED

SEP 22 11 42 AM '10

John J. Sullivan
CLERK OF DISTRICT COURT

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

TRAN

THE STATE OF NEVADA,

Plaintiff,

vs.

DOMONIC RONALDO MALONE,

Defendant.

CASE NO. C224572

DEPT. XVII

06C224572-2
RTRAN
Recorders Transcript of Hearing
944028



BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

TUESDAY, AUGUST 31, 2010

RECORDER'S TRANSCRIPT OF HEARING RE:
ALL PENDING MOTIONS

APPEARANCES:

For the State:

MARC DiGIACOMO, ESQ.,
Deputy District Attorney

For the Defendant:

CHARLES A. CANO, ESQ.,
Special Public Defender
(Standby Counsel)

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

RECEIVED

SEP 22 2010

CLERK OF THE COURT

1 LAS VEGAS, NEVADA; TUESDAY, AUGUST 31, 2010

2 [Proceeding commenced at 8:39 a.m.]

3
4 THE COURT: All right, Malone matter, 22 -- 224572, Domonic Malone. Mr.
5 Malone's present. Stand-by counsel, Mr. Cano is here. Mr. DiGiacomo for the
6 State. Is this your motion to suppress statements of Correna Phillips or in the
7 alternative motion in limine to prohibit the introduction of her statements at the time
8 of trial? Go ahead, Mr. Malone. Do you have anything to add?

9 THE DEFENDANT: Yes, sir. Can I have a moment? Okay, the Prosecutor
10 in this case saying that I'm making an assertion of perjury of Correna Phillips. I'm
11 certain -- I'm asserting that this was exactly what Correna Phillips did. I understand
12 was perjury. I'm saying that the Prosecutor in this case knew prior before she even
13 testified that she had a reputation to lie because the Henderson Police Department
14 intercepted a telephone call of her talking to the Co-defendant how she was going to
15 come to Court to lie for him.

16 However, she did not state exactly what exactly that it was she was
17 going to lie about to the Court. It was just made known that she was coming to
18 Court for that specific purpose. Henderson Detectives went to go interview her after
19 intercepting that phone call and then the telephone call was turned over to the
20 Prosecutor in this case which is Mr. DiGiacomo and then my stand-by counsel which
21 is Mr. Cano.

22 We had a preliminary hearing that lasted for seven days. I believe
23 seven days. I went there to Henderson a lot of times. In that, you know, Ms.
24 Phillips, you know, specifically said about the pandering charges that she was lying
25 only for the Co-defendant because originally I was the only one charged with the

1 pandering. The Co-defendant was not charged with the pandering until after that
2 testimony when she said in fact, that she was lying for him on me, but instead of the
3 Burr -- Judge Burr who is the definitely [indecipherable] a little bit did not correctly
4 catch all of that.

5 However, he was provided with the record of the transcripts to show
6 that this is exactly what had happened, so the Prosecutor I'm thinking would practice
7 good faith at the time and correct that mistake. However, they did not. You know,
8 they presented the document in the Habeas Corpus up in Jackie Glass courtroom,
9 District 5 --

10 THE MARSHAL: Judge Glass.

11 THE DEFENDANT: -- Judge Glass in District 5 of December 12, 2006. In
12 that, you know, they had ample time to correct that mistake before even filing of that
13 document. However, they did not done so. In the Habeas Corpus that was -- that
14 was presented at that time did not provide -- include that information which I'm
15 addressing this courtroom today.

16 I did mention that during 2006 beforehand that this is what had
17 happened due to miscommunication or just different views between me and the
18 counsel, my counsel, State appointed counsel, Mr. Cano; we had a difference. You
19 know, it's not that -- it's just something that just slipped through the cracks.
20 However, I addressed the Court to get that addressed the issue that Mr. DiGiacomo
21 had made the mistake about doing it -- by allowing Correna Phillips to testify in the
22 first place.

23 Now, to my understanding of my position as representing myself and
24 the direction that you had told me that you holding me to the same standards as
25 them, the counsels. So my understanding was that I cannot put nobody on the

1 stand to lie for me in my benefit because then I would be making a mockery of the
2 Court. You know, that's not what this Court system is for.

3 Now, I'm not saying that Mr. DiGiacomo made a mockery out this
4 Court. I'm saying that he made a mistake by allowing Correna Phillips to testify and
5 saying that what she testified too is the truth. When, in fact, that in the record it
6 points out that no she was exactly lying and she admitted to lying. You know, so my
7 understanding that this cannot go any forward with her as being a witness in this
8 case because then he will be -- Mr. DiGiacomo, but they be putting on somebody --
9 Ms. Phillips don't understand that he know now to be lying. You know, these
10 telephone calls was before the testimony even took place.

11 Now, you know, the Prosecutor have a wide discretion, but I never
12 knew the discretion be as wide enough that you put anybody on the stand that you
13 want too just to attain what you were trying to elicit from the Court to attain which I
14 don't understand is a legal conviction. However, I'm not convicted yet, so this
15 mistake can be corrected and that's what I'm asking this Court to do is correct the
16 mistake.

17 You know, I'm asking the Prosecutor in this case to practice some
18 good faith and refrain from the bad faith act. At least show cause that a person
19 which is more educated as Mr. DiGiacomo and as talented as he is would have
20 caught the mistake. I know there's a lot of cases that come before the courtrooms
21 that is a lot of stuff that weren't -- he's only one man that he could have missed it, so
22 I'm pointing it out that this is exactly what had happened.

23 So, that's it. You know, I'm just asking for the same -- to my
24 understanding the same position that he had put me in, I would want you to hold Mr.
25 DiGiacomo to the same standard; that if I can't do it, he shouldn't be allowed to do it

1 as well.

2 THE COURT: All right. Thank you, sir. Mr. DiGiacomo?

3 MR. DIGIACOMO: Judge, very briefly. Judge, while I appreciate Mr.
4 Malone's argument to the Court, two things. One, he has no legal basis to exclude
5 the testimony of a witness. Two, obviously Mr. Malone and I have a different take
6 on the factual allegations in his motion and in our opposition, but that's why we have
7 twelve people in our community that'll make a decision.

8 If Ms. Correna gets called to the stand and she testifies, Mr. Malone
9 has all of her prior statements including the phone call where she makes the
10 statement that he is alleging as well as the prior statements which they had at the
11 preliminary hearing before she testified. And he will be able to cross-examine her
12 and the jury can decide exactly what her credibility is; that's what they're entitled to
13 do and unfortunately for Mr. Malone, she doesn't say that she has no evidence that
14 he was pandering and there's a lot of other evidence.

15 To the extent that he's trying to attack the pandering charge that was
16 a subject of the Writ and there were certainly more witnesses than Ms. Phillips that
17 testified to that charge and I'll submit it to the Court.

18 THE COURT: All right. Mr. Malone, you're asking the Court to suppress
19 someone's testimony because you believe that she is lying; and that's something
20 that you should -- that you will be allowed to bring out at trial through cross-
21 examination and any documents or other evidence you can confront her with. So
22 this issue is proper before the trier of facts which would be the jury, so for those
23 reasons I'm going to deny your motion.

24 Mr. DiGiacomo, if you could please prepare the Order.

25 MR. DIGIACOMO: I will, Judge. Thank you.

1 THE COURT: Mr. Malone, any -- are you preparing for trial?
2 THE DEFENDANT: Yes, sir. I have been preparing --
3 THE COURT: Okay.
4 THE DEFENDANT: -- for trial.
5 THE COURT: All right. Good.
6 THE DEFENDANT: Yeah, I am.
7 THE COURT: All right.
8 THE DEFENDANT: May I speak?
9 MR. CANO: Your Honor, I think there was another motion --
10 THE DEFENDANT: Yeah.
11 THE COURT: All right.
12 MR. CANO: -- for the paralegal.
13 THE DEFENDANT: For the paralegal.
14 THE COURT: Okay.
15 THE DEFENDANT: The reason -- this is the reason why I need a paralegal
16 because I did not cite the case law 'cause at the time the legal library could not
17 provide me with the information which I was looking for when I had addressed the
18 fact that you cannot put nobody on the stand that wish the Prosecutor knew
19 beforehand a lie.
20 Your Honor, before I became representing myself in this case, that if I
21 was to tell my counsel that I'm a lie --
22 THE COURT: Sir, you're getting into a different issue.
23 THE DEFENDANT: No. No.
24 THE COURT: The issue --
25 THE DEFENDANT: No.

1 THE COURT: -- no, you listen to me. The issue is a motion for paralegal.

2 THE DEFENDANT: Uh-huh.

3 THE COURT: Paralegal is someone that assists you. Somebody that does
4 research for you. Someone that might prepare briefs for you. When you represent
5 yourself, you've put yourself in that position. Now, is there -- before we had an issue
6 of you getting copies or --

7 THE DEFENDANT: Yes.

8 THE COURT: -- okay. Is that what you're asking for?

9 THE DEFENDANT: No.

10 THE COURT: Or do you actually want someone to assist you in your
11 defense?

12 THE DEFENDANT: I need somebody to assist me in researching, Your
13 Honor, for I can be able to prepare an Order because after today that I was
14 prepared to go to the Supreme Court on the Writ of Mandamus, so I need help with
15 that, Your Honor. I can -- the legal library does not provide me with adequate stuff
16 because I have to write it on a kite and if I do not know specifically the name of it,
17 then they're unable to properly assist me, Your Honor.

18 MR. CANO: I think the breakdown, Your Honor, is that at the legal library
19 he's not allowed to go to research himself. He has to make requests through --

20 THE DEFENDANT: The kite system.

21 MR. CANO: -- the kite system at the jail. Therefore, he can't go look up an
22 issue to see if there's any case law to support whatever is his proposition is and
23 that's the problem he's running into in doing some of his research.

24 THE COURT: Is there any reason why Mr. Malone; and, Mr. Cano, I
25 appreciate you and I'm not sure if it's Mr. Schieck or Mr. Pike or I can't remember

1 which ones the stand-by on this. And I know --

2 MR. CANO: Both myself and Mr. Pike.

3 THE COURT: Okay.

4 THE DEFENDANT: And Mr. Pike.

5 THE COURT: I know the two of you have been going above and beyond the
6 call of duty as stand-by counsel here. Is there any reason Mr. Malone, and I know
7 there's that fine line of your attorney of record or your stand-by, is there any reason
8 Mr. Malone, that if you have any issue of let's say illegal search of a vehicle, I have
9 no idea if that's an issue in this case --

10 THE DEFENDANT: No, sir.

11 THE COURT: -- that you can't ask Mr. Cano for him to pull or tell you the
12 leading case on that particular issue and then you can ask the library in the jail to
13 give you a copy of that particular case.

14 THE DEFENDANT: Yeah. Your Honor --

15 MR. CANO: Well, Your Honor, our office position is that if we're going to
16 start taking that roll, you know, we are going to be counsel of record, so I mean our
17 office position would be that we would not --

18 THE COURT: Right.

19 MR. CANO: -- prefer to do that.

20 THE COURT: No. I understand and appreciate that.

21 Sir, and this is -- every time you come in here, you're asking for
22 things that you can't get for various reasons because of your situation and because
23 of you representing yourself. And every time we come here, I tell you, you know,
24 your decision is -- is not in your best interest.

25 Mr. Cano and Mr. Pike are very seasoned attorneys. They're very

1 aggressive attorneys and I still don't understand why you wish to represent yourself.
2 I don't know if you're playing a game or at the last minute at Calendar Call you're
3 going to say well, I want, you know, I want real attorneys.

4 THE DEFENDANT: Your Honor --

5 THE COURT: Is that your -- is that your intent here?

6 THE DEFENDANT: No, sir. As I told you, this courtroom is not a game,
7 Your Honor.

8 THE COURT: All right.

9 THE DEFENDANT: This is serious. This is my life here. I'm asking for the
10 paralegal because I'm trying to defend my life.

11 THE COURT: Well, sir, I'm not going to appoint someone to do research for
12 you; that's the -- that's the problem when you represent yourself.

13 THE DEFENDANT: Point taken.

14 THE COURT: If you don't know the proper procedures or proper case law,
15 it's unfortunate, but you put yourself in that position. I don't know why you don't
16 want two seasoned attorneys to represent you, but that's your decision, sir, so I'm
17 not going to appoint a paralegal to do research for you.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right.

20 THE DEFENDANT: Thank you.

21 MR. CANO: Judge, in the alternative, I don't know if the Court might take
22 under suggestion some kind of an Order to jail to allow him more research or access
23 to the law library at least other than the kite system.

24 THE COURT: Officer, how does that work if someone requests?

25 CORRECTION'S OFFICER: They write, you know, the kite to the legal

1 library system. It gets them through. They usually have like you said the cite
2 specifics of why they need it, how it relates to the case and case law that they need
3 and then they get photocopies of everything they ask for [indecipherable].

4 THE COURT: Are they able to go to -- I mean, is there an actual library in
5 the jail?

6 THE DEFENDANT: Yes, sir.

7 CORRECTION'S OFFICER: There is an actual library. I haven't been down
8 next door for a little while in the North Tower. They used do it differently. It sounds
9 like now North Tower --

10 THE DEFENDANT: There is.

11 CORRECTION'S OFFICER: -- you have to write kites where they used to
12 go.

13 THE DEFENDANT: Yeah, we used to go --

14 CORRECTION'S OFFICER: But they stopped that --

15 THE DEFENDANT: -- due to --

16 CORRECTION'S OFFICER: -- because they were having --

17 THE COURT: Sir, hang on.

18 CORRECTION'S OFFICER: -- we've been -- there were too many problems
19 with inmates being too loud not conducting themselves in a correct quorum in a
20 library setting, so they've been gone to the kite system which how we've been doing
21 since it's open.

22 THE COURT: Yes, Mr. Malone?

23 THE DEFENDANT: Yes, sir. To get down to the legal library they got to use
24 a transport officer, right. Due to, I don't know shortness of staff or anything how they
25 doing it now, visits have changed up as well because the transport officers to cut

1 back on money or something like that, so therefore to pull the officer out the unit just
2 for me to go to legal library that would be taking a transport officer from a post that
3 he's already assigned to for the day to do that, so that's why they don't do that.
4 They just do the kite system, sir.

5 THE COURT: What I'm going to do is I'm going continue this matter for two
6 weeks. We're going to get a hold of the attorney for the jail to see, so I can get a
7 better understanding of the -- of the system there. All right, so we'll continue this to
8 two weeks and my office will contact or my law clerk will contact the jail attorney.

9 THE CLERK: September 14th, 8:15.

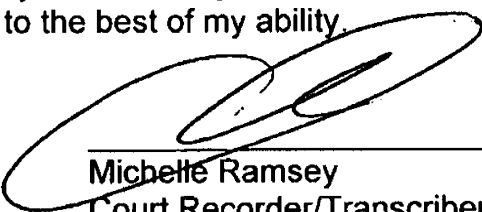
10 MR. CANO: Thank you, Your Honor.

11 THE COURT: Thank you.

12 [Proceeding concluded at 8:52 a.m.]
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19 * * * * *

20
21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video
22 proceedings in the above-entitled case to the best of my ability.

23 
24 Michelle Ramsey
25 Court Recorder/Transcriber

Alvin D. Schuman
CLERK OF THE COURT

1 **NOTC**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **MARC DIGIACOMO**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #006955**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-vs-**

12 **DOMONIC RONALDO MALONE,**
13 **#1670891,**
14 **JASON DUVAL MCCARTY,**
15 **#932255,**

16 **Defendants.**

CASE NO: C-06-224572-1

DEPT NO: XVII

06C224572-2
NOOW
Notice of Witnesses
928377



SUPPLEMENTAL NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

17 **TO: DOMONIC RONALDO MALONE, Defendant; in Proper Person; and**

18 **TO: CHARLES CANO, SPECIAL PUBLIC DEFENDER'S OFFICE, Standby**
19 **Counsel of Record:**

20 **TO: JASON DUVAL MCCARTY, Defendant; and**

21 **TO: ANTHONY SGRO, ESQ., Counsel of Record; and**

22 **TO: CHRISTOPHER ORAM, ESQ., Counsel of Record:**

23 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF**
24 **NEVADA intends to call the following witnesses in its case in chief:**

25 **NAME**

ADDRESS

26 **PONTIUS, LAWRENCE**

INDIANAPOLIS, IN

27 **PONTIUS, CHERYL**

INDIANAPOLIS, IN

28 **///**

These witnesses are in addition to those witnesses endorsed on the Information and any other witness for which a separate Notice has been filed.

BY

David Roger
DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing, was made this 10th day of September, 2010, by facsimile transmission to:

DOMONIC MALONE, ID#1670891
c/o CCDC COURT SERVICES
FAX: 671-3763

SPECIAL PUBLIC DEFENDER'S OFFICE
FAX: 455-6273 (Def. Malone)
ATTN: CHARLES CANO

ANTHONY SGRO, ESQ. (Def. McCarty)
FAX #386-2737

CHRISTOPHER ORAM, ESQ. (Def. McCarty)
FAX #974-0623

/s/ Deana Daniels
Secretary for the District Attorney's Office

jh/MVU

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SEP 22 11 43 AM '10

John J. P.
CLERK OF DISTRICT COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

CASE NO. C224572

DEPT. XVII

DOMONIC RONALDO MALONE,

Defendant.

08C224572-2
RTRAN
Recorders Transcript of Hearing
944032



BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

TUESDAY, SEPTEMBER 14, 2010

RECORDER'S TRANSCRIPT OF HEARING RE:
STATUS CHECK: USE OF CCDC LAW LIBRARY

APPEARANCES:

For the State:

CHRISTOPHER LALLI, ESQ.,
Deputy District Attorney

For the Defendant:

CHARLES A. CANO, ESQ.,
Special Public Defender
(Standby Counsel)

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

RECEIVED

SEP 22 2010

CLERK OF THE COURT

1 LAS VEGAS, NEVADA; TUESDAY, SEPTEMBER 14, 2010

2 [Proceeding commenced at 8:38 a.m.]

3
4 THE COURT: All right, 224572, Domonic Malone. Mr. Malone is present in
5 custody with Mr. Cano. We have Mr. Lalli for the State. This is a status check on
6 Court wanted to get some more information on the use of the library at the jail; is
7 that correct, Mr. Cano --

8 MR. CANO: Yes, Your Honor.

9 THE COURT: -- Mr. Malone?

10 MR. LALLI: Your Honor, it's also on I believe for his motion to suppress.

11 THE DEFENDANT: That was already denied.

12 THE COURT: Right.

13 MR. LALLI: Was that denied at the last Court date?

14 THE COURT: Right.

15 THE DEFENDANT: Yeah, it was. [indecipherable]

16 THE COURT: That's what he said. I believe Mr. Malone said that she was
17 lying and therefore --

18 MR. LALLI: Right.

19 THE COURT: -- her statement should be suppressed.

20 MR. LALLI: Okay.

21 THE COURT: And the Court had found that that was an issue before the
22 jury.

23 Any information on the library situation?

24 MR. CANO: The Court was going to take it upon itself to inquire, Your
25 Honor; that's what you said at the last Court hearing. You were going to have your

1 law clerk call the jail and find out what the status was and then you were going to let
2 us know today.

3 THE COURT: Okay. All right, there was a miscommunication. We'll have
4 that taken care of in a week or so, so we'll put it on next week.

5 MR. CANO: Judge, another matter I think Mr. Malone wanted to bring up as
6 well.

7 THE COURT: Yes, sir.

8 THE DEFENDANT: My trial is coming up. However, I know the problem
9 might be a little behind, but I need to hire an expert. First, can I file my motion in
10 open Court to at least let the Court notice that that's what I'm trying to do at the
11 present time before I run out of time?

12 THE COURT: Well, probably now is you probably have run out of time. I
13 mean, I'll entertain the motion -

14 THE DEFENDANT: Yeah.

15 THE COURT: -- but you should have filed this a long time ago because now
16 if I do grant the motion and I don't know what the expert is going to do. More than
17 likely the expert won't have an opportunity to do whatever investigation he or she
18 wants to do before October 11.

19 MR. CANO: I can clarify, Your Honor. I think what he needs an expert in is
20 in like the area of forensic science as well as like crime scene, DNA, things like that.
21 We have one on board that I anticipate Mr. Malone is probably going to, you know,
22 try to hire on, you know, to consult with and to -- that we've already noticed. His
23 name is George Schiro, so I'm sure Mr. Malone's trying to like get in contact with
24 him, but considering that we're not -- you know, stand-by counsel obviously he
25 needs to go through the Court to get expert witness fees that way he can, you know,

1 notice this witness in a proper manner 'cause the expert witness is coming up due
2 this week I believe.

3 THE DEFENDANT: I have my motion, but I -- may I submit this through my
4 private investigator for it can be typed so it won't get lost in the system or whatnot if
5 that's okay with you?

6 THE COURT: Well, Mr. Cano's willing to get it to your private --

7 THE DEFENDANT: Yes.

8 THE COURT: -- to, was it Mr. Wysocki?

9 THE DEFENDANT: Yes, sir, to typed [indecipherable].

10 THE COURT: Well that's fine. I mean, you can give it to Mr. Cano if he's
11 willing to do that for you, then --

12 MR. CANO: Yeah, I mean, Mr. Wysocki's present here.

13 THE COURT: Okay.

14 THE DEFENDANT: He's present.

15 THE COURT: All right.

16 MR. LALLI: Your Honor, just for everyone's edification, we certainly don't
17 oppose Mr. Schiro coming into this case and testifying the court appointing him if
18 that's what the Defendant wants. I'm sure the Court's familiar with Mr. Schiro.

19 THE COURT: All right. Well, then I'll accept it as an oral motion. Mr.
20 Malone, I'm going to grant your motion for appointment of expert, Mr. Schiro.

21 MR. LALLI: I'm not sure that the Defendant is -- has actually said that --

22 THE COURT: You want him, sir?

23 THE DEFENDANT: Sir, I haven't been able to talk to Mr. Schiro at this point
24 in time, but I have plans on hiring somebody. Mr. Schiro with his references that he
25 has dealing with this case to my understanding prior to me representing myself, so

1 you'd be the first person I have to talk to first to see about showing stuff. If I had
2 known that he's going to be available and be ready to do that for me, sir, but he's
3 most likely would be the type of candidate for [indecipherable]

4 THE COURT: Well, sir, your deadline for -- for noticing an expert is fast
5 approaching; do you understand that?

6 THE DEFENDANT: Yes, sir. I believe just -- just this week, sir.

7 THE COURT: I'm sorry.

8 THE DEFENDANT: I believe it's this week.

9 THE COURT: Okay. Well, it's not for me to tell you 'cause there's no
10 pending motion --

11 THE DEFENDANT: I understand.

12 THE COURT: -- at this point, but this is another reason you shouldn't be
13 representing yourself because you're probably not aware of the exact date of the
14 deadline and Mr. Cano would have been aware of it and you would have this expert
15 on.

16 MR. CANO: He's aware of it, Your Honor.

17 THE DEFENDANT: Yeah. I'm aware of it. I'm just -- I'm saying --

18 THE COURT: Well, actually then since --

19 MR. CANO: If you granted the oral motion then I think what we'll do is I'll
20 facilitate the information for Mr. Malone to get and touch it with Mr. Schiro and we'll
21 just take it from there.

22 THE COURT: All right, so --

23 MR. CANO: And then file a formal notice prior to it being --

24 THE COURT: Well, the oral motion for appointment of expert is granted not
25 necessarily Mr. Schiro.

1 MR. CANO: Okay.

2 THE COURT: And that'll be up to you, Mr. Malone, to decide if you're going
3 to have Mr. Schiro, but understand the trial's fast approaching and, you know, if -- if
4 Mr. Schiro doesn't have time, I don't know if the State is going to file an opposition to
5 motion to continue the trial date.

6 THE DEFENDANT: No. I don't think so, Your Honor.

7 MR. LALLI: We would want a report if an expert's going to be appointed. It
8 would be our only request at this point.

9 MR. CANO: But that's not always required. Experts don't always, you know
10 --

11 THE COURT: Right.

12 MR. CANO: -- forward a report.

13 MR. LALLI: Well, who's -- I mean, I'm sorry I thought that the Defendant was
14 representing himself.

15 THE DEFENDANT: I am, sir.

16 THE COURT: Well, when it comes before me, when that issue comes
17 before me then I'll deal with it, but you just need to follow all the rules, sir. There's
18 proper noticing, there's deadlines and it's not my job to tell you 'cause you're
19 representing yourself.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right.

22 THE DEFENDANT: All right.

23 THE COURT: So right now you can have an expert. You just need to do the
24 notice timely and do -- follow the statute.

25 MR. LALLI: And just so I'm clear, Your Honor, it is a crime scene

1 investigation type expert that we're talking about?

2 THE COURT: Is that correct, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right.

5 MR. CANO: Forensic science I believe.

6 THE DEFENDANT: Yeah. [indecipherable]

7 THE COURT: All right. And I don't want to talk about the facts of the case,
8 Mr. Lalli; we have McCarty set for the same time. As far as you know, is that case
9 ready to go forward?

10 MR. LALLI: Yes.

11 THE COURT: 'Cause we set them back to back.

12 MR. LALLI: Right.

13 THE COURT: And as far as you know with the defense attorneys, are they
14 ready as far as you know?

15 MR. LALLI: To my understanding they are, Your Honor.

16 THE COURT: Okay. All right.

17 MR. CANO: And this matter will be trailing that matter is my understanding.

18 MR. LALLI: No.

19 THE COURT: No. Actually this ones first up. This one was set and then we
20 actually severed them. This is set. We're putting the McCarty matter at a different
21 time and then the State said why don't we just trail it in the event that Mr. Malone's
22 case doesn't go forward that we'd be ready on McCarty.

23 THE DEFENDANT: Your Honor --

24 MR. CANO: I believe it's the other way around, Your Honor, to my
25 recollection.

1 THE DEFENDANT: -- yes, sir. It's the other way around, sir. Mr.
2 DiGiacomo was here present and he said that it's the State position on who they
3 choose to go first for trial. I understand --

4 MR. LALLI: We want --

5 THE DEFENDANT: -- Mr. McCarty --

6 MR. LALLI: -- we want this Defendant tried first.

7 THE DEFENDANT: -- yeah, they try me first and then --

8 MR. LALLI: We want you tried first.

9 THE COURT: Whichever -- however, it fits in the calendar, the Court will
10 select that.

11 THE DEFENDANT: Yeah, that's how it works.

12 THE COURT: Okay. I'm assuming you'll be ready, Mr. Malone?

13 THE DEFENDANT: Sir --

14 THE COURT: Yes.

15 THE DEFENDANT: -- when I was -- to my understanding when I was in trial
16 -- when I had asked for this, you told me that I was going to go first. DiGiacomo said
17 no Mr. McCarty's going to go first, so I've been preparing myself into the timely for
18 me to actually prepare for the trials as far as going second. As I have some filing
19 motions coming into view the trial and I did daily transcripts of the trial and that's
20 [indecipherable] before mine which is I did not have today, but it should be in your
21 courtroom there soon; that's what my understanding of it.

22 Now, to say that I'm going now this will be a clear surprise to me
23 'cause --

24 THE COURT: Sir, your Calendar Call was set many months ago.

25 THE DEFENDANT: -- [indecipherable] --

1 THE COURT: Sir, you were done talking. I'm talking now. Your Calendar is
2 set for October 5th. You were advised of your Calendar Call day and if you had an
3 attorney your attorney would tell you Calendar Call means that's the date we're
4 going to set -- we're going to set your -- trial's going or not.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. So don't assume your case is being continued
7 because you have a Calendar Call for October 5th with a Trial date of October 11,
8 okay; there's probably ten trials set that week and all attorneys and since you're
9 acting as an attorney, all attorneys are aware that they have a great possibility of
10 going forward on that week; do you understand that?

11 THE DEFENDANT: Yes, sir. I do.

12 THE COURT: Okay. All right, so we'll just -- if there's any other motions
13 then if they're calendared, the Court will hear them.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right.

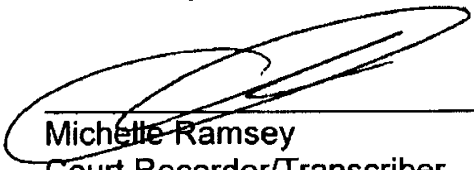
16 MR. LALLI: Thank you, Your Honor.

17 THE COURT: Thank you.

18 [Proceeding concluded at 8:46 a.m.]

19
20 * * * * *

21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video
22 proceedings in the above-entitled case to the best of my ability.

23
24 
25 Michelle Ramsey
Court Recorder/Transcriber

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DISTRICT COURT
CLERK OF THE COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DOMONIC RONALDO MALONE,

Defendant.

CASE NO. C224572

DEPT. XVII

06C224572-2
RTRAM
Recorders Transcript of Hearing
944080



BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

TUESDAY, SEPTEMBER 21, 2010

RECORDER'S TRANSCRIPT OF HEARING RE:
ALL PENDING MOTIONS

APPEARANCES:

For the State: CHRISTOPHER LALLI, ESQ.,
Deputy District Attorney

For the Defendant: RANDALL H. PIKE, ESQ.,
CHARLES A. CANO, ESQ.,
Special Public Defenders
(Standby Counsel)

RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

CLERK OF THE COURT

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SEP 22 2010