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Appellant,

VS.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Aug 05 2013 09:39 a.m.
Case No. 2012-00049
K. Lindeman
Clerk of Supreme Court

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Comes Now Appellant JAQUEZ DEJUAN BARBER, by and through Deputy Public Defender SHARON G. DICKINSON, and pursuant to NRAP 3C (k) moves that that this Honorable Court order full briefing in this appeal due to the legal and factual complexity of some of the issues and because the “case raises one or more issues that involve substantial precedential, constitutional, or policy questions.” NRAP 3C(k)(2)(B)(i) and (ii).

DATED this 2nd day of August, 2013.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By Sharon Dickinson
SHARON G. DICKINSON, #3710
Deputy Public Defender

1 **POINTS AND AUTHORITIES**

2 Jaquez Barber seeks full briefing of the issues in his case because at

3
4 least three of the issues in his Fast Track Statement involve substantial
5 precedential and public policy concerns regarding the juvenile courts and
6 involve matters of first impression which are legally complex.
7

8 A party may seek leave for full briefing pursuant to NRAP 3C (k)
9 which states:

10
11 **(k) Full Briefing, Calendaring or Summary Disposition.**

12
13 (1) Based solely upon review of the rough draft transcript, fast
14 track statement, fast track response, and any supplemental
15 documents, the Supreme Court may summarily dismiss the
16 appeal, may affirm or reverse the decision appealed from
17 without further briefing or argument, may order the appeal to be
18 fully briefed and argued or submitted for decision without
19 argument, may order that briefing and any argument be limited
20 to specific issues, or may direct the appeal to proceed in any
21 manner reasonably calculated to expedite its resolution and
22 promote justice.

23 **(2) Motion for Full Briefing.**

24
25 (A) A party may seek leave of the Supreme Court to remove an
26 appeal from the fast track program and direct full briefing. The
27 motion may not be filed solely for purposes of delay. It may be
28 filed in addition to or in lieu of the fast track pleading.

(B) The motion must identify specific reasons why the appeal is
not appropriate for resolution in the fast track program. Such
reasons may include, but are not limited to, the following
circumstances:

1 (i) The case raises one or more issues that involve substantial
2 precedential, constitutional, or public policy questions; and/or

3 (ii) The case is legally or factually complex.
4

5 (C) If the issues or facts are numerous but not complex, full
6 briefing will not be granted but an excess page motion may be
7 entertained.

8 **REASONS FOR FULL BRIEFING**

9 Jaquez appeals from his convictions for the crimes of burglary and
10 grand larceny. *Exhibit A: Judgment of Conviction.* The allegations in the
11 Amended Information in this case arise out of a juvenile petition that was
12 certified to adult court upon Jaquez's waiver. *See Exhibit B: Amended*
13 *Information;* *Exhibit C: Juvenile Court documents filed under seal.* Jaquez
14 gives the following reasons for full briefing:
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17

18 **1. The juvenile court lost jurisdiction over the petition.**

19 The first issue of first impression involves whether the juvenile court
20 maintains jurisdiction of a juvenile petition filed outside the one year limit of
21 NRS 62D.310. If the juvenile court did not have jurisdiction over the
22 petition then the district court did not have jurisdiction to precede either.
23
24

25 The final disposition of the juvenile petition in this case occurred on
26 09/27/10, when the juvenile court certified the case to adult court. But the
27
28

1 juvenile petition was filed on 05/13/09 thereby making the final disposition
2 of the petition outside the one year limit of NRS 62D.310.
3

4 NRS 62D.310 provides that:

5
6 1. Except as otherwise provided in this section, the juvenile
7 court shall make its final disposition of a case not later than 60
8 days after the date on which the petition in the case was filed.

9 2. The juvenile court may extend the time for final disposition
10 of a case if the juvenile court files an order setting forth specific
11 reasons for the extension:

12 (a) Not later than 60 days after the date on which the petition in
13 the case was filed; or

14 (b) Later than 60 days after the date on which the petition in the
15 case was filed, if the juvenile court finds that the extension
16 would serve the interests of justice. In determining whether an
17 extension would serve the interests of justice, the juvenile court
18 shall consider:

19 (1) The gravity of the act alleged in the case;

20 (2) The reasons for any delay in the disposition of the case; and

21 (3) The potential consequences to the child, any victim and the
22 public of not extending the time for final disposition of the
23 case.

24 3. The juvenile court shall not extend the time for final
25 disposition of a case beyond 1 year from the date on which the
26 petition in the case was filed.

27 The juvenile court minutes do not reflect any extensions. *See Exhibit B sent*
28 *under seal.*

1 This case represents an issue of first impression as to how the Court
2 will interpret NRS 62D.310 and whether the juvenile court lost jurisdiction
3 over the case.
4

5 **2. Arrest warrants do not toll the time period within NRS 62D.310.**
6

7 The second issue of first impression is whether the arrest warrant
8 tolled the one year limitation of NRS 62D.310.

9 The actual petition indicates it was signed on 02/15/08 but filed on
10 05/12/09. The date of the incident is 01/21/09. The words "Arrest Warrant"
11 are typed on the Petition. *Exhibit B: 652-3; 700-91.*
12

13 Other documents filed in juvenile court indicate the State identified
14 Jaquez as a suspect in the incident on 03/12/09, the police sought an arrest
15 warrant on 04/03/09, the court issued an arrest warrant on 05/12/09, the
16 arrest warrant was received by METRO on 05/12/09, possibly served by
17 METRO on 05/12/09, and Jaquez was brought to Juvenile Justice Services
18 on 08/16/10. *Exhibit B: 668-09; 675; 679-80.*
19
20
21

22 Therefore, the court must decide if the arrest warrant tolled the one
23 year time limit. Jaquez contends that it does not toll the time period because
24 the State could have obtained the arrest warrant without filing the petition.
25

26 ///

27 ///

1 **3. Arrest warrants issued in juvenile court are being ignored as**
2 **evidenced by the fact that Jaquez was in the custody of the state when**
3 **the court issued the arrest warrant.**

4 If the Court decides that the arrest warrant tolls the one year time
5 period, then the Court must decide if the time period is tolled when the State
6 fails to serve the arrest warrant or bring the defendant to court when the
7 defendant is in State custody the entire time.
8

9 The judge issued the arrest warrant in juvenile court on 05/12/09.
10
11 *Exhibit B: 679.* The police officer who prepared the affidavit and requested
12 the arrest warrant said Jaquez was arrested on 03/03/09 in another case; and,
13 when his fingerprints were put into the AFIS system, METRO received a
14 match indicating that he was a suspect in the case at bar. *Exhibit B: 668.*
15

16 The case the police officer references is 94F04443B, district court
17 case no. C253779. *Exhibit C.* The minutes from this other case show that
18 Jaquez was in court, in custody, on 03/20/09, after his arrest on 03/03/09,
19 and remained in custody the entire time the case was pending, until he was
20 sentenced to prison on 07/21/09. *See Exhibit C and D.* Jaquez remained in
21 prison until he was brought to juvenile court on 09/13/19. *Exhibit B: 704.* In
22 fact, the minutes reflect the attorney representing Jaquez sought to visit him
23 in prison. *Exhibit B: 704, 707.*
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1 Jaquez contends that the arrest warrant did not toll the time period
2 because he was in the custody of the State the entire time. Moreover, the
3
4 State's failure to bring him to juvenile court for more than one year not only
5 violated his right to due process but showed a conscious indifference to the
6 rules of procedure. Because this appears to be a practice allowed by the
7 juvenile court, this issue is a matter of public policy concerns that needs to
8 be addressed by this Court.
9

10
11 **4. Waiver of the certification hearing.**

12 What procedures are required for a valid waiver of a certification
13 hearing also appears to be a matter of first impresssion.
14

15 At the certification hearing on 09/27/10, the Defense attorney told the
16 court that Jaquez waived his certification hearing. *Exhibit B: 683.*
17 Thereafter, the court asked him a few questions and then made a finding that
18 certification was warranted based on prosecutorial merit and that there was
19 nothing more the juvenile court could do for him based on his age. *Exhibit*
20 *B: 691—93.* The court also noted that because Jaquez was already in adult
21 prison it was more likely that he would grant the State's motion for
22 certification. *Exhibit B: 692.*
23
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26 Although a court's decision to certify a case to adult court is an
27 appealable order (NRS 62D.500), here, Jaquez waived the certification.
28

1 Therefore, the only way this Court may review the certification, jurisdiction,
2 and waiver of the certification for statutory and constitutional violations is
3
4 on direct appeal of his adult case.

5 **5. Right to a speedy trial and right to a trial or hearing.**

6
7 The remedy for a violation of the right to a speedy trial and due
8 process is dismissal of the charges. *Piland v. Clark County Juvenile*
9 *Services*, 85 Nev. 489, (1969). Thus, the case should be dismissed because
10
11 of the delay in juvenile and adult court.

12 In Nevada, a seven month delay is enough to trigger a violation of the
13 right to a speedy trial. In *State v. Erenvi*, 85 Nev. 285 (1969) the Nevada
14 Supreme Court affirmed the dismissal of several cases on the basis of
15 violation of the right to a speedy trial when the prosecutor would not
16 extradite a defendant for trial in Nevada until the defendant's out-of-state
17 prison term was completed. In *Erenvi*, the defendant was scheduled for
18 preliminary hearing on January 9, 1968. Prior to the hearing, the defendant
19 was released to California authorities on a parole violation and then
20 imprisoned in California. The defendant made several requests to be
21 brought to Nevada which were denied. In July of 1968, the defendant filed a
22 motion to dismiss which was granted by the court and affirmed on appeal.
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1 In *Wood v. Sheriff, Carson City*, 88 Nev. 547 (1972), the
2 Nevada Supreme Court granted a pretrial writ of habeas corpus based on a
3
4 violation of the right to a speedy trial. In *Wood*, there was a sixteen month
5 delay between the time the defendant requested a disposition of the charge
6 against him and the time he was returned to Nevada for trial. While in
7 prison in Colorado, Wood learned of the case pending against him in Nevada
8 and wrote the prosecutor asking for disposition of the charge. He received
9 no response. Later, Wood wrote the justice of the peace. Again, no
10 response. Next, an attorney acting on his behalf contacted the prosecutor.
11 Again, no response. Instead, Nevada waited until Wood had completed his
12 time in the Colorado prison and then extradited him to Nevada to stand
13 charges.
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17 Also, in *State v. Lujan*, 112 N.M. 346, 815 P.2d 642 (1991), the
18 New Mexico District Court dismissed a charge with prejudice for a 13-
19 month delay on a charge of an aggravated assault on a police officer. In
20 *Lujan*, Lujan was arrested on June 12, 1989. At the time of the arrest, Lujan
21 was on parole and his parole was revoked. Lujan was released from prison
22 in December of 1989. Subsequently, on February 8, 1990, Lujan was
23 indicted on the charges of aggravated assault on a police officer. The New
24 Mexico District Court's decision to dismiss this indictment with prejudice
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1 was affirmed on appeal. The court of appeals noted that: "Because this case
2 involves a relatively lengthy delay considering the simple nature of the
3 charge and the readily available evidence, we believe the trial court correctly
4 determined that the length of the delay was presumptively prejudicial." *Id.* at
5 644.
6
7

8 CONCLUSION

9 Based on the above, Appellant asks this Court to grant full briefing so
10 the above issues will be thoroughly addressed along with other issues he
11 may raise.
12

13 DATED this 2nd day of August, 2013.
14

15 PHILIP J. KOHN
16 CLARK COUNTY PUBLIC DEFENDER

17 By 
18 SHARON G. DICKINSON, #3710
19 Deputy Public Defender
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1 **DECLARATION OF SHARON G. DICKINSON**

2 1. I am an attorney licensed to practice law in the State of

3
4 Nevada; I am a deputy public defender handling the appeal of the conviction
5 in this case; I am familiar with the procedural history of this case.
6

7 2. Yesterday I received additional documents and information
8 from Mr. Barber's juvenile attorney. The new information led me to believe
9 that full briefing is warranted so that the waiver, certification, speedy trial,
10 and arrest warrant issues may be more thoroughly developed. Many of these
11 issues are issues of first impression. Although Mr. Barber's attorney did not
12 object to the court violating NRS 62D.310, it may be reviewed under the
13 plain error doctrine. Also, even though Mr. Barber waived the certification
14 hearing, the waiver may be reviewed under plain error.
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18 3. On July 31, 2013, I spoke to the juvenile attorney who
19 handled Mr. Barber's case because the file stamp on the petition was not
20 legible. She requested a clear copy from the clerk's office which we
21 received on August 1, 2013. Exhibit B:700. Prior to this, the juvenile
22 attorney did not know the date the petition was filed because of the illegible
23 stamp. She also sent me copies of the minutes.
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1 4. I respectfully ask that this appeal be deemed a regular
2 criminal appeal and not a Fast Track Appeal. I respectfully ask that Rule 3C
3 not apply to this appeal.
4

5 5. This motion is made in good faith and not merely for any
6 purpose of delay.
7

8 I declare under penalty of perjury that the foregoing is true and
9 correct.
10

11 EXECUTED on the 2nd day of August, 2013.
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15 SHARON G. DICKINSON
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CATHERINE CORTEZ MASTO	SHARON G. DICKINSON
STEVEN S. OWENS	HOWARD S. BROOKS

JAQUEZ DEJUAN BARBER
NDOC No. 1039024
c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89018

Employee, Clark County Public
Defender's Office

Employee, Clark County Public
Defender's Office

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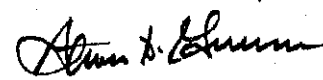
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EXHIBIT A



CLERK OF THE COURT

1 AINF
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781

5 PHILIP BROWN
6 Chief Deputy District Attorney
7 Nevada Bar #006240
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,

15 Plaintiff,

16 -vs-

17 JAQUEZ DEJUAN BARBER,
18 #2705160

19 Defendant.

Case No: C268471-1
Dept No: IV

20 AMENDED
21 INFORMATION

22 STATE OF NEVADA }
23 COUNTY OF CLARK } ss.

24 DAVID ROGER, District Attorney within and for the County of Clark, State of
25 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

26 That JAQUEZ DEJUAN BARBER, the Defendant above named, having committed
27 the crime of BURGLARY (Category B Felony - NRS 205.060) and GRAND LARCENY
28 (Category B Felony - NRS 205.220, 205.222) in the manner following, to-wit: That the
said Defendant, on or about the 21st day of January, 2009, at and within the County of Clark,
State of Nevada, contrary to the form, force and effect of statutes in such cases made and
provided, and against the peace and dignity of the State of Nevada,

//

//

1 COUNT 1 - BURGLARY

2 did then and there wilfully, unlawfully, and feloniously enter, with intent to commit
3 larceny, that certain building occupied by ALDEGUNDA MENDOZA, located at 1873 Star
4 Sapphire Court, Las Vegas, Clark County, Nevada.

5 COUNT 2 - GRAND LARCENY

6 did then and there wilfully, unlawfully, and feloniously with intent to deprive the
7 owner permanently thereof, steal, take, carry, lead or drive away property owned by
8 ALDEGUNDA MENDOZA, having a value of \$250.00, or more, to-wit: \$7,000.00.

9 DAVID ROGER
10 DISTRICT ATTORNEY
Nevada Bar #002781

11
12 BY /s/ PHILIP BROWN
13 PHILIP BROWN
14 Chief Deputy District Attorney
Nevada Bar #006240

15 Names of witnesses known to the District Attorney's Office at the time of filing this
16 Information are as follows:

17 COR or Designee; LVMPD RECORDS

18 DAHN, ROBBIE; LVMPD#05947

19 FARNHAM, VICKI; LVMPD#07836

20 MENDOZA, ALDEGUNDA; 1873 STAR SAPPHIRE CT., LVN 89106

21 NORDSTROM, JAYME; LVMPD#08254

22 PAGE, LELAND; COURT INTERPRETER

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27 DA#10F18646X/hjc/SVU
28 LVMPD EV#0901211550
(TK11)

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EXHIBIT B
(Filed Under Seal Sent Separately)

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EXHIBIT C

Justice Court, Las Vegas Town

09F04443B

118171


STATE VS. BARBER, JAQUEZ

CASE NO. 09F04443B

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES — HEARING	CONTINUED TO:
03/20/09 K. BENNETT-HARON S. JIMENEZ, DA A. WEINSTOCK FOR D. WINDER, ESQ S. OTT, CR V. KENDRICK, CLK	**FURTHER PROCEEDINGS NOT CALENDARED** DEFT PRESENT IN COURT **IN CUSTODY** MOTION BY STATE TO CONSOLIDATE CASE 09F04444X INTO 09F04443X- MOTION GRANTED STATE FILES AND AMENDED CRIMINAL COMPLAINT ADDING ADDITIONAL CHARGES AND CO-DEFENDANT COUNT 1- ATTEMPT MURDER WITH USE OF A DEADLY WEAPON COUNT 2-BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM COUNT 3- POSSESSION OF SHORT BARRELED SHOTGUN COURT SET BAIL: 1- \$00/00 2- \$10,000/10,000 3- \$3,000/3,000 PRELIMINARY HEARING DATE SET **D. WINDER COURT APPOINTED FOR DEFENDANT IN JC #12 DEFT REMANDED TO THE CUSTODY OF THE SHERIFF	03/30/09 9:30A #7 VT
03/25/2009 03/30/2009	EX PARTE MOTION FOR RELEASE OF MEDICAL RECORDS FILED ORDER RELEASING MEDICAL RECORDS FILED	
03/30/2009 K. BENNETT-HARON S. JIMENEZ, DA D. WINDER, ESQ S. OTT, CR V. KENDRICK, CLK	TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT **IN CUSTODY** PRELIMINARY HEARING CALLED OFF MOTION BY DEFENSE COUNSEL TO REDUCE BAIL/ ANDOR HOUSE ARREST STATE OBJECTED REQUESTED HIGH BAIL SETTING RESET BAIL: 50,000/50,000 TOTAL	04/13/09 9:30 #7
	DEFT REMANDED TO THE CUSTODY OF THE SHERIFF	VK
04/13/09 K. BENNETT-HARON S. JIMENEZ, DA M. SANFT, ESQ S. OTT, CR V. KENDRICK, CLK	TIME SET FOR PRELIMINARY HEARING DEFT PRESENT IN COURT **IN CUSTODY** PER NEGOTIATIONS: DEFENDANT UNCONDITIONALLY WAIVES THE RIGHT TO A PRELIMINARY HEARING DEFENDANT BOUND OVER TO THE DISTRICT COURT #12 AS CHARGED DEFENDANT TO APPEAR IN THE LOWER LEVEL ARRAIGNMENT COURTROOM A DEFT REMANDED TO THE CUSTODY OF THE SHERIFF	04/13/09 10:30A #12 V CASE FORWARDED TO APR 21 2009 DISTRICT COURT CLERK'S OFFICE RIM IMAGED

09F04443B
84579



JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
ON MAR 20 2009
COUNTY CLERK

THE STATE OF NEVADA,

Plaintiff,

-VS-

KENDALL HUBBARD #2705161,
JAQUEZ BARBER, #2705160

Defendant.

CASE NO: 09F04443A-B

DEPT NO: 7

AMENDED

CRIMINAL COMPLAINT

The Defendants above named having committed the crimes of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.330, 193.165); BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Felony - NRS 200.481(2)(e); and POSSESSION OF SHORT BARRELED SHOTGUN (Felony - NRS 202.275) in the manner following, to-wit: That the said Defendants, on or about the 24th day of February, 2009, at and within the County of Clark, State of Nevada,

COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill RONALD CHOYCE, a human being, by shooting at and into the body of the said RONALD CHOYCE, with a deadly weapon, to-wit: a firearm, the defendants being responsible under one or more of the following principles of criminal liability, to-wit: (1) by the defendants directly committing the crime and/or (2) by the defendants conspiring with each other to commit the offense of murder whereby the defendants are each vicariously liable for the reasonably foreseeable acts of the other conspirators when the acts were in furtherance of the conspiracy and/or (3) the defendants aiding or abetting the commission of the crime by accompanying each other to the crime scene and by entering into a course of conduct whereby the defendant KENDALL HUBBARD acted as lookout while the defendant JAQUEZ BARBER repeatedly fired a firearm at and into the body of the said RONALD CHOYCE, thereafter the defendant

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EXHIBIT D

JOCP

2009 AUG -3 A 5:43

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAQUEZ BARBER
aka Jaquez Dejaun Barber
#2705160

Defendant.

CASE NO. C253779

DEPT. NO. XII

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of COUNT 3 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony) in violation of NRS 200.481.2e; thereafter, on the 21st day of July, 2009, the Defendant was present in court for sentencing with his counsel, DAN W. WINDER, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee including testing to determine genetic markers, the Defendant is sentenced as follows:

1 TO A MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of SIX (6)
2 YEARS, in the Nevada Department of Corrections (NDC); with ONE HUNDRED
3 FORTY-ONE (141) DAYS Credit for Time Served.

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7 DATED this 30 day of July, 2009

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11 MICHELLE LEAVITT
12 DISTRICT JUDGE
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